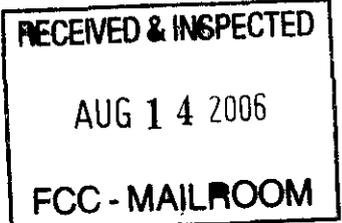


# POLNER LAW OFFICE



DOCKET FILE COPY ORIGINAL

Reply to:

- Pittsburgh Office  
4018 Mt. Royal Blvd., Allison Park, PA 15101
- New England Office  
16 Forest Hills Dr., Madison, CT 06443

August 11, 2006

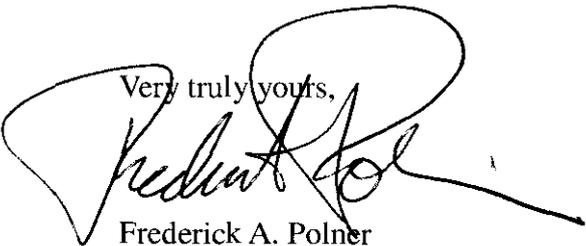
Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445-12th Street, SW  
Washington, DC 20554

**Re: Petition for Rulemaking to Amend the FM Table of Allotments  
MB Docket No. 06-88  
RM-11254**

Dear Secretary:

Please find enclosed herewith an original and four (4) copies of REPLY COMMENTS submitted in the referenced proceeding on behalf of Bittersweet Broadcasting, Inc., licensee of FM Broadcast station KWJK, Boonville, Missouri.

If you should have any questions, please contact the undersigned counsel to the Petitioner.

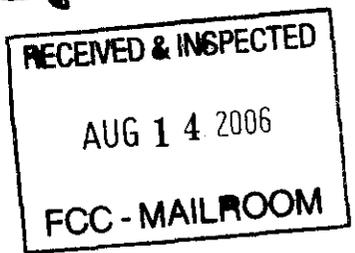
Very truly yours,  
  
Frederick A. Polner

cc: Richard Billings w/ enclosure

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Original



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Boonville and Wheatland, Missouri)

MB Docket No. 06-88  
RM-11254

To: Chief, Media Bureau

REPLY COMMENTS

AND NOW COMES, Bittersweet Broadcasting, Inc. by and through its counsel, Frederick A. Polner, Esquire, and hereby files this, its REPLY COMMENTS, in support whereof the following is averred:

Background

Bittersweet Broadcasting, Inc. ("Bittersweet"), formerly Big Country of Missouri, Inc., filed a petition for rulemaking pursuant to Section 1.420(g)(3) on August 28, 2001 seeking to upgrade its FM broadcast station at Boonville, Missouri from Channel 226A to Channel 226C3 (the "Petition"). Section 1.420(g)(3) allows upgrades of FM stations on mutually exclusive co-channels or adjacent channels without affording other interested parties an opportunity to file competing expressions of interest in the upgraded channel. At that time, the petitioner's broadcast station was KWRT-FM, but effective October 12, 2005 the call letters for that station were changed to KWJK-FM.

The Petition also requested the reclassification of two FM broadcast stations from Class C to Class C0. One station is KMXV(FM); the other is KCKC(FM) (formerly KSRC(FM)). Both of these stations are licensed to Kansas City, Missouri. An Order To

Show Cause was issued by the Commission to downgrade each of those stations, the result of which was a reclassification by the Commission of each to Class C0.

In addition, the Petition also proposed the substitution of Channel 272A for Channel 226A at Wheatland, Missouri with a slight change in the allocation reference coordinates. In 2001, when the Petition was filed, Channel 226A was vacant. Today, that channel still is vacant, but on March 9, 2006, World Radio Link, Inc. ("WRL") filed with the Commission an application for a construction permit to construct a new FM station on Channel 226A as a result of its successful bid in Auction No. 62, which was conducted in January 2006.

On June 9, 2006, the Commission released a Notice of Proposed Rule Making in the captioned matter proposing to amend the FM Table of Allotments to read as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Boonville, MO	226A, 257C2	226C3, 257C2
Wheatland, MO	226A	272A.

In accordance with Sections 1.415 and 1.419 of the Commission's Rules, the Assistant Chief, Audio Division, Media Bureau set July 31, 2006 as the deadline for the filing of Comments in the captioned proceeding.

Comments were timely filed on behalf of Bittersweet. But, no other Comments were timely filed in this proceeding.

On August 7, 2006, Comments were filed in this proceeding on behalf of World Radio Link, Inc. by Gene Wisniewski, but such Comments are not timely filed and should be disregarded as though never having been filed. (Apparently Mr. Wisniewski sent a copy of the World Radio Link, Inc. Comments as an attachment to an email message to to "MMBSecretary" on July 31, 2006 but such communication does not constitute a proper filing and should be disregarded as though never having been filed.)

## DISCUSSION

The Notice of Proposed Rule Making in the captioned matter observes that World Radio Link, Inc. filed an application to construct a new FM broadcast station on Channel 226A at Wheatland, MO. However, in its Comments, Bittersweet points out that that the World Radio Link, Inc. application was not filed until March of this year, fully more than 4 years after the Bittersweet Petition was filed seeking to allocate Channel 272A for Channel 226A at Wheatland with a change in the reference coordinates. Bittersweet

further points out that in such circumstances, the application filed by World Radio Link, Inc. is not entitled to cut-off protection vis-à-vis the allocation of Channel 272A as proposed by Bittersweet in its Petition. Thus, under well established Commission precedent World Radio Link, Inc. must be required to modify its application to specify Channel 272A at Wheatland using the reference coordinates set forth in the Petition. See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992).

In its Comments, Bittersweet argues that it is well to observe that World Radio Link, Inc. filed its application as a result of its participation in Auction No. 62 and even was reminded by the Commission that any application which would be filed as a result of participation in that auction would have to conform to the outcome of the rule making proposed by Bittersweet in its Petition. The Commission even released a Public Notice on June 17, 2005, entitled "Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 62." DA 05-1598. There, the ground rules for participation in the auction were set forth. Under Section I(B)(3) of that Notice, "Due Diligence", all participants were advised by the Commission as follows:

Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction.

and,

Bidders are also responsible for reviewing *all pending rulemaking petitions and open proceedings* that might affect the FM allotment(s) on which they plan to bid.(emphasis added.)

In the instant matter, it is beyond challenge that the Petition filed by Bittersweet was a *pending rulemaking petition* and an *open proceeding*. Thus, as argued by Bittersweet in its timely filed Comments, the Commission is compelled to conclude that World Radio Link, Inc. was placed on notice of the possibility that the allotment of Channel 226A might be changed to Channel 272A with an accompanying change in the reference coordinates. Any application which World Radio Link, Inc. filed as a result of its participation in Auction No. 62, as in the instant matter, is subject to the outcome of this captioned proceeding.

As mentioned earlier in these Reply Comments, the Comments filed on behalf of World Radio Link, Inc. were not timely filed and should be disregarded. But, assuming *arguendo* that such Comments were timely filed and are considered, it is clear that the arguments expressed in those Comments are without merit.

In its Comments, World Radio Link, Inc. says:

WRL is familiar with all rules and regulations concerning the responsibility for reviewing all pending rulemaking petitions and open proceedings that might affect FM allotment(s) on which it bids as expressed in the Public Notice released by the Commission on June 17, 2005 entitled "Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 62

Thus, by its own admission, World Radio Link, Inc. says that it was aware of its obligation for reviewing *all pending rulemaking petitions and open proceedings* that might affect the FM allotment on which it bid. Such obligation for a due diligence investigation not only is a FCC requirement but is essential for the efficient running of the Commission. Yet, in its Comments World Radio Link, Inc. seeks to ignore its due diligence obligation.

In its Comments, World Radio Link, Inc. says that its construction permit application was amended twice to comply with the requests of the Media Bureau, Audio Division, but that at no time was World Radio Link, Inc. requested to amend its application to Channel 272A. It is clear, however, that the Commission's staff has no duty to monitor applications and to advise applicants about those applications. Deltaville Communications, 11 FCC Rcd 10793 (1996); In re Application of Howard University, 23 FCC 2d 714, 715 (1970); nor is reliance on informal staff advise reason to ignore the Commission's formal notices, rules and policy requirements. Camelot, Inc., 61 FCC 2d 15, 38 RR 2d 620 (1976); 220 Television, Inc., 81 FCC 2d 575 (1980).

World Radio Link, Inc. now, in effect, whines that, despite having knowledge of its obligation to review all pending rulemaking petitions and open proceedings affecting its auction bid, it should not now be made to go to the inconvenience and expense of modifying its application. Bittersweet, on the other hand, submits that World Radio Link, Inc. knew or should have known of the pending Bittersweet Petition and should not now be allowed to stand in the way of the fair and efficient use of the limited electromagnetic spectrum simply to feather its own private interests.

#### CONCLUSION

In conclusion, the Commission's grant of the Petition filed in the captioned matter would result in a preferential arrangement of allotments and would serve the public

interest. Further, the Commission's tentative conclusion that the World Radio Link, Inc.'s application is not entitled to cut-off protection is correct and should be affirmed.

Respectfully submitted,

BITTERSWEET BROADCASTING, INC.

By: 

Frederick A. Polner, Esquire\*\*  
Polner Law Office  
16 Forest Hills Drive  
Madison, CT 06443

412-486-3540

Dated: August 11, 2006

\*\* Please note the new law firm, new address, and new phone number

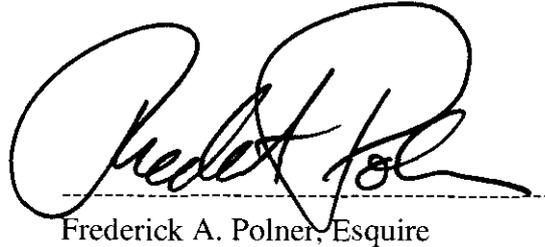
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CERTIFICATE OF SERVICE

I, Frederick A. Polner, Esquire, do hereby certify that I have on this 11<sup>th</sup> day of August 2006, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing REPLY COMMENTS to the following:

World Radio Link, Inc.  
P.O. Box 5429  
Twin Falls, ID 83303-5429

Clark Parrish  
39 Canyon View Road  
Jerome, ID 83338



Frederick A. Polner, Esquire