

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of

Federal Communications Commission  
Office of Secretary

Amendment of Section 73.202(b)	)	
Table of Allotments	)	MB Docket No. 05-282
FM Broadcast Stations	)	RM - 11229
(Rockmart, Aragon, and Ellijay Georgia,	)	RM - 11333
Lynchburg, Chattanooga, Decatur, Harrison,	)	RM - 11337
and Wartrace, Tennessee, and Anderson,	)	
South Carolina)	)	
	)	

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

**MOTION TO STRIKE COMMENTS**

J. L. Brewer Broadcasting of Cleveland, LLC, licensee of Station WAYA(FM), Spring City, Tennessee, and J. L. Brewer Broadcasting, LLC, licensee of Station WMPZ(FM), Ringgold, Georgia, ("Brewer"), by its counsel, requests that the Commission strike the "Comments Showing Cause Why The License Of WLJA(FM) Must Not Be Modified" (the "Comments") filed by Tri-State Communications, Inc. ("Tri-State") on August 31, 2006. The Comments do not respond to the Order to Show Cause.<sup>1</sup> Instead, Tri-State repeats its allegations made in previous pleadings opposing Brewer's proposal in this proceeding. Thus, the Comments must be stricken from this proceeding. In support hereof, Brewer states as follows:

1. Brewer filed its Counterproposal in this proceeding on December 5, 2005. In its proposal, Brewer requested that the Commission issue an order to show cause to Tri-State to show cause why the license of Station WLJA-FM should not be modified to specify operation on Channel 266A in lieu of Channel 228A. This change was necessary in order to permit Station WMPZ(FM) to change channel and community of license from Channel 229A at Ringgold, Georgia to Channel

<sup>1</sup> See *Rockmart, Georgia, et al., Order to Show Cause*, 21 FCC Rcd 8633, ¶ 3-4 (rel. July 28, 2006).

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228A at Harrison, Tennessee. After Brewer filed its Counterproposal, Tri-State filed two pleadings titled "Reply Comments" on December 20, 2005 and July 3, 2006, and a "Statement in Opposition to Counterproposal" on August 4, 2006. In all three of these pleadings, Tri-State alleged that two defects existed in Brewer's Counterproposal: (1) that Brewer's proposal to allot Channel 228A at Harrison, Tennessee fails to provide line-of-sight coverage over all of Harrison; and (2) that Harrison is not independent of the Chattanooga Urbanized Area under the *Tuck*<sup>2</sup> criteria.

2. Brewer responded to these allegations in its "Response to Reply Comments" filed on January 6, 2006, and "Reply Comments" filed on August 4, 2006. Specifically, Brewer demonstrated that its proposal to allot Channel 228A at Harrison, Tennessee complies with the Commission's line-of-sight rules, policies, and case law, and that Harrison, Tennessee is clearly an independent community under the *Tuck* criteria and relevant case law.<sup>3</sup> Tri-State, however, has disingenuously attempted to assert these arguments for the fourth time apparently believing that if it alleges these defects often enough, the Commission may go along. Indeed, the majority of Tri-State's "Comments" were taken word-for-word from Tri-State's previous pleadings. This is a clear abuse of the FCC's processes and thus the Commission must strike Tri-State's Comments from this proceeding.

3. Finally, the fact that Tri-State did not even attempt to make any showing "why the license of Station WLJA-FM should not be modified to specify operation on Channel 266A, in lieu

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<sup>2</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*").

<sup>3</sup> In regard to *Tuck*, Tri-State finally acknowledges that the proposed relocation of Station WMPZ to Harrison, TN does not implicate *Tuck* because both Ringgold, Georgia and Harrison, Tennessee are already located in the Chattanooga, Tennessee Urbanized Area. See Comments at pp. 5-6. Yet, it makes a feeble attempt to argue that since Ringgold is only partially located within the Urbanized Area a *Tuck* showing should be required. This is irrelevant and Tri-State cites no case law to support its conclusion that *Tuck* should apply. Tri-State also asserts that "Missionary Ridge prevents WMPZ's signal from satisfactorily reaching Chattanooga." See Comments at ¶ 13. This argument is irrelevant because WMPZ does not propose to provide service to Chattanooga.

of Channel 228A” means that it is therefore deemed to have consented to the proposed channel change.<sup>4</sup>

WHEREFORE, for the foregoing reasons, the Commission should strike Tri-State’s “Comments” and conclude that Tri-State is deemed to have consented to the proposed channel change.

Respectfully submitted,

J. L. BREWER BROADCASTING OF  
CLEVELAND, LLC

J. L. BREWER BROADCASTING, LLC

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September 11, 2006

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<sup>4</sup> 47 C.F.R. § 1.87(h); see *Arlington, Oregon, et al.*, 19 FCC Rcd 12803, ¶¶ 13-14 (Med. Bur. 2004); *Pleasanton, Topeka, Iola, and Emporia, Kansas*, 16 FCC Rcd 14085, n. 1 (Mass Med. Bur. 2001); *George West, Pearsall, and Victoria, Texas*, 15 FCC Rcd 17307, ¶ 2 (Mass Med. Bur. 2000).

<sup>5</sup> Please note the change in address for Brewer’s counsel for the purpose of service.

**CERTIFICATE OF SERVICE**

I, Diana Gonzales in the law firm of Wiley Rein & Fielding LLP, do hereby certify that I have on this 11th day of September, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Motion to Strike**" to the following:

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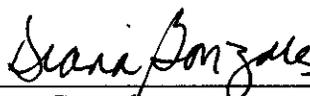
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