

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b) )  
Table of Allotments ) MB Docket No. 05-67  
FM Broadcast Stations ) RM - 11116  
(Fishers, Lawrence, Indianapolis ) RM - 11342  
and Clinton, Indiana) )  
)

FILED/ACCEPTED

AUG 14 2007

Federal Communications Commission  
Office of the Secretary

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

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Indy Lico, Inc., licensee of Station WWFT(FM), Lawrence, Indiana, and WFMS Lico, Inc., licensee of Station WFMS(FM), Fishers, Indiana ("Joint Petitioners") by their counsel, hereby oppose the Petition for Reconsideration (the "Petition") filed by Word Power, Inc. ("Word Power") on July 30, 2007.<sup>1</sup> The four issues raised by Word Power were either already addressed by the Bureau or do not provide a basis for reconsideration. Thus, it seems that the Petition is nothing more than a tool to delay the date that Word Power must file an application for WPCR to specify operation on Channel 229A.<sup>2</sup> Thus, the Commission should expeditiously dismiss Word Power's Petition so that the public interest benefits of the Report and Order can be realized in a timely manner. In support hereof, the Joint Petitioners state as follows:

<sup>1</sup> Word Power filed its Petition pursuant to Section 1.429(c) of the Commission's Rules. Pursuant to that rule, Joint Petitioners' Opposition is not due until 15 days after the date of public notice of Word Power's Petition. However, it is unclear whether the Commission plans to publish public notice of the filing of Word Power's Petition. Thus, Joint Petitioners are filing their Opposition pursuant to the time parameters specified in Section 1.106 of the Commission's Rules. Joint Petitioners reserve the right to supplement their Opposition if the Commission subsequently publishes the filing of Word Power's Petition in the Federal Register.

<sup>2</sup> See *Fishers, Lawrence, Indianapolis and Clinton, Indiana*, 22 FCC Rcd 11660, ¶6 (Med. Bur. 2007).

1. In the Report and Order, the Commission (a) substituted Channel 230B1 for Channel 230A, reallocated Channel 230B1 from Fishers to Lawrence, Indiana, as that community's first local service, and modified Station WWFT's license accordingly; (b) reallocated Channel 238B from Indianapolis to Fishers, Indiana and modified WFMS's license accordingly; and, (c) substituted Channel 229A for Channel 230A at Clinton, Indiana, and modified WPCR's license accordingly. These actions resulted in a preferential arrangement of allotments because Lawrence, Indiana (2000 U.S. Census pop. 38,915) will receive its first local service and there will be a net gain of 267,878 persons served. Notwithstanding these significant public interest benefits, Word Power challenges the Commission's decision on four grounds.

2. Word Power first alleges that the Commission ignored evidence that Lawrence, Indiana is not sufficiently independent of the Indianapolis Urbanized Area to warrant a first local service preference. By making this argument, Word Power continues to ignore the fact that a *Tuck* showing is not required. As Joint Petitioners have noted throughout this proceeding, because both Lawrence and Fishers are located in the Indianapolis Urbanized Area, *Tuck* is not applicable.<sup>3</sup> Further, the Commission expressly stated this in the Report and Order at paragraph 6 when it stated that a *Tuck* showing is not required. Thus, the Commission was not required to consider Word Power's evidence regarding Lawrence's independence.

3. Nevertheless, Word Power continues to insist that a *Tuck* showing is required. In fact, the Joint Petitioners submitted ample evidence and cited established case law to demonstrate the independence of Lawrence. While Word Power attempted to dispute the majority of the *Tuck* evidence submitted by Joint Petitioners, Word Power conceded that (i) 16

---

<sup>3</sup> See *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (Mass Med. Bur. 1996); *East Los Angeles, Long Beach, and Frazier Park, California*, 10 FCC Rcd 2864 (Mass Med. Bur. 1995).

percent of employed individuals in Lawrence, work in Lawrence,<sup>4</sup> (ii) two newspapers cover Lawrence and not Indianapolis,<sup>5</sup> (iii) Lawrence has its own local government and elected officials,<sup>6</sup> (iv) there are local businesses that identify with the community by using Lawrence in their name,<sup>7</sup> (v) there is a zip code assigned to Lawrence,<sup>8</sup> and (vi) Lawrence has its own police and fire departments.<sup>9</sup> This evidence alone is more than enough to establish the independence of Lawrence based on well developed case law.<sup>10</sup>

4. Word Power next alleges that the Commission did not condition the Report and Order on the reimbursement of Word Power's expenses for changing WPFR-FM's channel. This argument is baseless. Pursuant to Section 316(a) of the Communications Act and Section 1.87 of the Commission's Rules, the Commission can modify a station's license if such a change is in the public interest. There is no requirement that such modification be conditioned upon payment of expenses to the impacted licensee. The Joint Petitioners recognize that, pursuant to *Circleville, Ohio*,<sup>11</sup> it is the Commission's policy that the station that requested the channel change reimburse the station changing channels for its expenses. However, this is not a condition and Word Power cites no case law to support its conclusion that it is a condition. That being said, as the Joint Petitioners have stated and reiterated throughout this proceeding, they

---

<sup>4</sup> Word Power's Counterproposal at p. 7.

<sup>5</sup> Counterproposal at p. 8.

<sup>6</sup> Counterproposal at p. 9.

<sup>7</sup> Counterproposal at p. 9.

<sup>8</sup> Counterproposal at p. 9.

<sup>9</sup> Counterproposal at p. 10.

<sup>10</sup> See, e.g., *Lebanon and Speedway, Indiana*, 17 FCC Rcd 25064 (Med. Bur. 2002). This case is particularly telling because Speedway, whose independence indicia are weaker than those of Lawrence, is also located in the Indianapolis Urbanized Area and it was granted a first local service preference.

<sup>11</sup> 8 FCC Rcd 2d 159 (1967).

will reimburse Word Power for its reasonable expenses in changing the channel of WPFR-FM. Thus, Word Power has no basis for arguing that the Commission's decision was in error.

5. Word Power next seeks reconsideration on the grounds that "the Commission failed to properly inquire about premature, upgraded operations" by WWFT. Word Power is referring to the Commission's April 19, 2007 letter issued as a result of pleadings filed by Indiana Community Radio Corporation ("ICRC") on September 26, 2006. ICRC claimed, without any credible evidence, that Indy Lico had been operating WWFT with Class B1 facilities rather than its authorized Class A facilities. The Commission's Letter requested that Indy Lico identify all periods of time during which it operated WWFT with Class B1 facilities. Indy Lico responded on April 24, 2007 by stating that it had never operated WWFT with Class B1 facilities.

6. In its Reconsideration, Word Power claims that the Commission's letter was worded too narrowly and that Indy Lico, Inc may have confined its denial of excessive power to WWFT and not to its earlier operation when its call sign was WISG. Word Power, however, did not oppose or comment on the wording of this letter when it was issued. Nor did it oppose or comment on Indy Lico's April 24, 2007 response. Further, neither ICRC nor Word Power have provided any credible evidence that Indy Lico ever operated WWFT or WISG with Class B1 facilities or any other facilities in excess of those stated in its authorization. In that regard, Indy Lico had no intention of confining its response to WWFT. Rather Indy Lico intended its response to apply to WISG as well as WWFT. If Word Power has evidence that WWFT or WISG operated outside of its licensed parameters, it should have submitted such evidence to the Commission. It has not done so and it should not be permitted to use this argument as a means to file a petition for reconsideration.

7. Finally, Word Power claims that the Report and Order was not published in the Federal Register in violation of the Administrative Procedure Act. However, the sole purpose of Federal Register publication is to provide the public with notice of actions by and filings with the Commission. Here, it is clear that Word Power received notice because it filed for reconsideration of the Report and Order. That being the case, the Joint Petitioners fail to understand how the additional notice that Federal Register publication provides would present a basis for Word Power to make any additional filings. Word Power has filed its Petition and regardless of whether the Commission later decides to publish the Report and Order, there is no basis for Word Power to complain of this omission.

WHEREFORE, for foregoing reasons, the Commission should expeditiously dismiss Word Power's Petition. Word Power has not provided any reason to reverse the Report and Order and its Petition only serves to delay the public interest benefits of the Report and Order.

Respectfully submitted,

INDY LICO, INC.

WFMS LICO, INC.

By:



Mark/N. Lipp  
Scott Woodworth  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006  
202-719-7503

Their Counsel

August 14, 2007

**CERTIFICATE OF SERVICE**

I, Elbert Ortiz in the law firm of Wiley Rein LLP, do hereby certify that I have on this 14th day of August, 2007, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Opposition**" to the following:

\*R. Barthen Gorman  
Audio Division, Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Frank R. Jazzo  
Michael W. Richards  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209  
(*Counsel to Word Power, Inc.*)

Jennifer Cox-Hensley  
Indiana Community Radio Corporation  
15 Wood Street  
Greenfield, IN 46140

  
Elbert Ortiz

\* HAND DELIVERED