

DOCKET NO. 03-44

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

AUG 17 2007

Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 03-44
FM Broadcast Stations) RM - 10650
(Water Mill and Noyack, New York)) RM -
)

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

REPLY

Sacred Heart University, Inc. ("SHU"), licensee of Station WSUF(FM), Noyack, New York, by its counsel, hereby replies to the Public Notice released on August 1, 2007, in the above captioned proceeding.¹ The Public Notice requests comment on the Petition for Reconsideration filed by SHU, which, *inter alia*, demonstrates that the Commission failed to consider SHU's Counterproposal in this proceeding. Monroe Board of Education ("Monroe") also filed a Petition for Reconsideration, which opposed the allotment of Channel 233A at Water Mill due to the interference caused to three translators owned by Monroe.² The purpose of this pleading is to offer a solution that will accommodate both SHU and Monroe. In support hereof, SHU states as follows:

1. Isabel Sepulveda, Inc. ("Sepulveda"), the original petitioner in this proceeding, has failed to file an acceptable expression of interest for its proposal to allot an FM channel to Water Mill, New York, despite having had several opportunities to do so. Section 1.52 of the

¹ See Report No. 2823. This Public Notice was published in the Federal Register on August 10, 2007. See 72 Fed. Reg. 45049.

² The Commission published notice of Monroe's Petition for Reconsideration on March 24, 2006. See Report No. 2766.

Commission's Rules states "[a] party who is not represented by an attorney shall sign and verify the document..." None of the filings in which Sepulveda has expressed interest have been verified pursuant to Section 1.52 of the Commission's Rules. Thus, the Commission must reverse the allotment of a channel to Water Mill because there is no valid expression of interest by any party on file in this proceeding. As a result, the only proposal left for the Commission to consider is the Counterproposal submitted by SHU requesting the allotment of Ch. *277 to Noyack, New York with its reservation for noncommercial educational use and the modification of WSUF's license to that channel accordingly.

2. The *Report and Order* in this proceeding allotted Channel 233A to Water Mill, New York, in response to a Petition filed by Sepulveda requesting Channel 277A at that community.³ In its Comments and Counterproposal filed in this proceeding, SHU proposed that Channel *277A be allotted to Noyack and reserved for noncommercial educational (NCE) use by WSUF. As demonstrated in SHU's Petition for Reconsideration, the Commission failed to consider SHU's Counterproposal in the *Report and Order*. Thus, SHU requested that the Commission reconsider its decision to allot a channel to Water Mill and instead consider and grant SHU's Counterproposal to allot Ch. *277A to Noyack and reserve it for NCE use by WSUF. As discussed extensively throughout this proceeding, SHU submitted this proposal because it will permit SHU to operate NCE Station WSUF with improved facilities and to expand its valuable local NCE programming to a larger audience.⁴ Grant of SHU's Counterproposal will also resolve any interference concerns raised by Monroe.

³ See *Water Mill and Noyack, New York*, 21 FCC Rcd 1150 (2006). Channel 277A was allotted to Water Mill instead of Channel 233A because Channel 277A at Water Mill would cause interference to a translator owned by SHU.

⁴ WSUF currently operates on Channel 210B1 with a directional antenna that is vertically polarized to protect TV Channel 6 Station WLNE, New Bedford, Massachusetts. This proposal to reserve a commercial channel for NCE use is in the public interest and complies with the Commission's standards for reserving commercial channels for

3. Clearly, consideration and grant of SHU's Counterproposal is in the public interest and it can be granted because Sepulveda's expression of interest in a channel at Water Mill is defective. The Commission has been strict in its enforcement of Section 1.52 in rule making proceedings of this nature because "there is a significant potential for abuse of the allotment process."⁵ Sepulveda has filed three pleadings in this proceeding, two of which contained her expressions of interest. None were verified.⁶ This is a defect that cannot be cured because it would prejudice the proposal submitted by SHU.⁷ In *Steelville*, which was decided by the full Commission, the Commission dismissed a proposal that was not filed by an attorney because the party that filed the proposal did not verify pursuant to Section 1.52. The Commission was not willing to waive the verification requirement because it would prejudice other parties in the proceeding that had filed valid proposals. The facts of this case are identical to those of *Steelville*. Sepulveda failed to verify any of her pleadings in violation of Section 1.52 and the rule cannot be waived because it would prejudice SHU, which filed a valid Counterproposal. Thus, the Commission must dismiss Sepulveda's Petition for Rule Making and expression of interest in a channel at Water Mill.⁸ Further, because, there is no longer an expression of interest for a channel at Water Mill, the Commission should expeditiously issue a Public Notice of SHU's Counterproposal. In addition to helping WSUF resolve its Channel 6 interference issues, grant of SHU's Counterproposal will insure that Monroe's translators will remain on-the-air.

NCE use. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000).

⁵ See *Lincoln, Osage Beach, Steelville, and Warsaw, Missouri*, 17 FCC Rcd 6119, 6123 (2002) ("*Steelville*").

⁶ On August 12, 2002, Sepulveda filed a Petition for Rule Making. On March 17, 2003, Sepulveda filed Comments. On May 30, 2006, Sepulveda filed an Informal Request for Clarification.

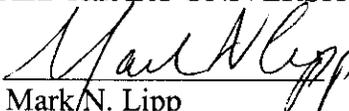
⁷ *Steelville*, *supra* at 6123.

⁸ *Id.*

WHEREFORE, in view of the significant public interest benefits associated with the allotment of Channel *277A at Noyack for use by SHU's Station WSUF(FM), and Sepulveda's failure to verify her pleadings, the Commission must dismiss Sepulveda's Petition for Rule Making, rescind grant of the *Report and Order*, and grant SHU's Counterproposal

Respectfully Submitted,

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August 17, 2007

CERTIFICATE OF SERVICE

I, Elbert Ortiz in the law firm of Wiley Rein LLP, do hereby certify that I have on this 17th day of August, 2007, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Reply**" to the following:

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