

August 25, 2008

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FCC Mail Room

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD. 20743

Re: Petition for Rule Making
La Grande and Prairie City, Oregon
MB Docket No. 08-67; RM-11426
Response to Opposition to Counterproposal by Pacific Empire Radio Corporation

Dear Ms. Dorsch:

Enclosed are an original and four (4) copies of a Response to Opposition to Counterproposal involving the Petition for Rule Making to reallocate Channel 260C1 at La Grande, Oregon and to reallocate Channel 272C at Prairie City, Oregon.

Respectfully submitted,

PACIFIC EMPIRE RADIO CORPORATION

By: 

Jay Mlazgar

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b))
FM Table of Allotments,) MB Docket No. 08-67
FM Broadcast Stations.) RM-11426
(La Grande and Prairie City, Oregon))
)

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

RESPONSE TO OPPOSITION TO COUNTERPROPOSAL

Pacific Empire Radio Corporation ("Pacific Empire"), permittee of Stations KUBQ(FM), La Grande, Oregon, KRJT(FM), Elgin, Oregon, and KKBC(FM), Baker, Oregon, hereby submits its response to the Reply in Opposition filed by KSRV, Inc ("KSRV") in the above referenced rulemaking. (See *Notice of Proposed Rule Making*, DA 08-1425 rel. June 13, 2008)

1. Pacific Empire proposed in its counterproposal to (1) allot Channel 272C to Huntington, Oregon as that community's first local service and (2) allot Channel 254C3 to College Place, Washington as that community's first commercial local service. Pacific Empire states that if the Commission grants this counterproposal, Pacific Empire will apply for Channel 272C at Huntington and Channel 254C3 at College Place and that it will participate in the auction process for the channel. Pacific Empire also states that should it become the winning bidder in the auctions it will construct and operate the stations.

2. In its Reply in Opposition, KSRV states that Pacific Empire's counterproposal is flawed in multiple respects. In reviewing KSRV's Reply in Opposition, Pacific Empire finds that KSRV has made several statements which are without merit.

3. KSRV states that reallocating Channel 260C1 and station KWRL to Elgin, Oregon is simply impermissible under the Commission's rules. KSRV goes on to state that the Commission could not do such a move until such time as KSRV's pending proposal is actually granted. This is not factual. Should the Commission grant Pacific Empire's counterproposal, KSRV's proposal to reallocate Channel 260C1 to LaGrande would be dismissed. This is the reason for a counterproposal. The Commission reviews the merits of each proposal and rules in favor of the proposal that would best serve the public. In this case, the Pacific Empire proposal will result in a net gain in radio service to 357,591 people and add new stations at Huntington, Oregon and College Place, Washington. The KSRV proposal adds no new stations nor does it add radio service to any new listeners. For this reason alone the Commission should rule in favor of the Pacific Empire proposal and dismiss the KSRV proposal. Pacific Empire went out of its way to accommodate KSRV's desire to move to Channel 260C1 in Pacific Empire's proposal which included a move for KWRL to Channel 260C1 and even specified KSRV's desired tower location. From that location, Pacific Empire found that KWRL covers 100% of both LaGrande and Elgin, Oregon with a 70dBu signal. In order to keep the existing level of service at Elgin, the only channel that Pacific Empire could use at Elgin was Channel 260C1. Aware of KSRV's desire to return KWRL to Channel 260C1, Pacific Empire proposed to reallocate Channel 260C1 and KWRL to Elgin, Oregon. In its Reply in Opposition, KSRV stated several times that it does not agree to a change of license for KSRV to Elgin, Oregon. That being the case, Pacific Empire hereby offers to amend its counterproposal and proposes to change KKBC from Channel 237A to Channel 260C1 at the present KUBQ tower site, (FCC Tower # 1223455), under section 73.215, and change its community of license to Elgin, Oregon. This will satisfy KWRL's desire to remain licensed to LaGrande, Oregon; however on Channel 225C1, and eliminates any need for consent from KSRV.

4. KSRV states that the forced reclassification of Channel 239C in Walla Walla, Washington is expressly prohibited. This is incorrect. Pursuant to the reclassification procedures set forth in the Commission's Second Report and Order and Note 2 of Section 1.420 (g) of the Commission's Rules, a petitioner may initiate the reclassification of a Class C FM station to a Class CO station through the filing of an amendment of the FM Table of Allotments. The Commission currently has several such reclassifications in front of it and has ordered several reclassifications in recent years including KIOC, Orange, TX. (*See Reclassification of License of FM Station KIOC, Orange, Texas*, 19 FCC Rcd 19486 (MB 2004).

5. KSRV goes on to state that Pacific Empire's proposal is flawed in its proposed allotment of Channel 254C3 to College Place, Washington stating that under uniform terrain assumption separations the allotment cannot be more than 23.2 kilometers from its proposed community of license. Again on this point KSRV is incorrect. The Commission has set clear guidelines and established requirements which permit an exception to the presumption of uniform terrain. (*see Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988)). Under the Woodstock exception, a rulemaking proponent can exceed uniform terrain assumption separations provided, in addition to depicting the actual terrain, they demonstrate a reasonable assurance of the availability of the proposed transmitter site and that FAA approval of the proposed antenna structure has been obtained. Pacific Empire has inspected the proposed site and found that at 270 degrees from the proposed location there is clear line of sight to the City of College Place in the valley below. The proposed tower is 30 meters and would not require FAA approval. The location is flat and clear of any trees with a road leading on to the site. Pacific Empire finds it suitable and should Pacific Empire be granted the license for the station, they would build the facility at that location. Additionally the proposal filed by Pacific Empire shows that while it is close, the proposed location is not short spaced to

KMNA in Mabton, Washington. KSRV is correct in that KGTS is licensed to College Place, Washington, however KGTS operates as a non-commercial station. The addition of Channel 254C3 would give the City of College Place its first commercial local service. Should the Commission find that College Place is not deserving of a new commercial local service, Pacific Empire submits Garrett, Washington and Walla Walla East, Washington as alternative communities near College Place that have no service that would be covered 100% with a 70dBu signal from Pacific Empire's proposed location.

6. Finally, KSRV states that Pacific Empire's proposal to substitute Channel 290C1 for vacant Channel 280C1 at Monument, Oregon is short spaced to a proposal for Station KHAL in Condon, Oregon. A search of FCC records finds that no such application exists. KSRV cited BPH-20080331ACW involving KSHL's proposed move to Coburg, Oregon. A search of the KSHL application show no mention anywhere of KHAL, Channel 291, or Channel 290. Again in this incidence. The KSRV assertion of a flaw has no basis at all.

7. Pacific Empire believes that it has acted in good faith in putting forward its counterproposal and wishes to move forward. Understanding that KSRV has stated it will not agree to reallocate KWRL to Channel 260C1 at Elgin, Oregon. Pacific Empire offers to the Commission that its proposal be amended to show KKBC changing from Channel 237A to Channel 260C1 at the present KUBQ tower site, (FCC Tower # 1223455), under section 73.215 and its community of license to Elgin, Oregon. Pacific Empire also offers to eliminate KWRL from its proposal thereby eliminating any need of consent from KSRV. This will allow KWRL to remain licensed to LaGrande, Oregon on Channel 225C1. Pacific Empire further asks that the Commission grant its proposal and dismiss the proposal of KSRV. Pacific Empire states that it will apply for Channel 272C at Huntington, Oregon and Channel

254C3 at College Place, Washington and that it will participate in the auction process for the channels. Pacific Empire also states that should it become the winning bidder in the auctions, it will construct and

8. operate the stations. In order to accomplish this change, the following amendments to the FM Table of Allotments are requested (listed alphabetically)

Community	Channel No.	
	Present	Proposed
Baker, Oregon	237A 284C	280C1 284C
College Place, Washington		254C3
Elgin, Oregon	290A	260C1
La Grande, Oregon	225C1 254C2	225C1 237C1
Huntington, Oregon		272C
Monument, Oregon	280C1	290C1
Prairie City, Oregon	260C	294C
Walla Walla, Washington	227C1 239C 246C 264C3	227C1 239C0 246C 264C3

9. Pacific Empire has proposed a number of changes to the FM Table of Allotments which, taken together, will (1) establish first local service to Huntington, Oregon and first commercial local service to College Place, Washington (with a combined population of 8,333); (2) improved allocations for vacant channels at Monument and Prairie City Oregon; (3) a net gain in radio service to 357,591

people; (4) a first aural service to 3,450 persons; and (5) a first local service to 8,333 persons. This counterproposal conflicts with the *NPRM* proposal to substitute Channel 272C for vacant Channel 260C at Prairie City, Oregon and to reallocate Channel 260C1 at La Grande, Oregon. Under the FM allotment priorities, the Commission should favor the public interest benefits proposed herein under priorities 1, 2, and 3 and grant this counterproposal.

Respectfully submitted,

PACIFIC EMPIRE RADIO CORPORATION

By: _____

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