

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Amendment of Section 73.202(b),)
Table of Allotments,) MB Docket No. 07-296
FM Broadcast Stations.) RM- 11412
(Irvington, Kentucky and French Lick,)
Indiana))

FILED/ACCEPTED

SEP 22 2008

To: Marlene H. Dortch, Secretary
Attn: Assistant Chief, Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

**OPPOSITION TO PROPOSED RULE MAKING AND
ORDER TO SHOW CAUSE**

Willtronics Broadcasting ("Willtronics"), the licensee of FM radio station WFLQ(FM), French Lick, Indiana ("WFLQ"), by its attorneys, hereby opposes the Notice of Proposed Rule Making and Order to Show Cause released by the Commission on August 1, 2008 in the above-captioned proceeding ("NPRM/OSC").¹ The purpose of this filing is to show why WFLQ's channel should not be modified to specify operation on Channel 229A in lieu of Channel 261A at French Lick, Indiana.

At the request of L. Dean Spencer, an individual, the Commission has tentatively proposed to take away from the people of French Lick the heritage channel which they have reliably used for *more than 25 years* to tune in WFLQ for critical weather, news and other important information. WFLQ is the only full-service radio station that has ever been licensed to French Lick. Pursuant to the NPRM/OSC, the Media Bureau is

¹ See *Irvington, Kentucky and French Lick, Indiana*, 23 FCC Rcd 237 (2008). The NPRM/OSC was first published in the Federal Register on August 26, 2008 (73 Fed. Reg. 50296, 50297).

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proposing to give this important channel to Mr. Spencer so that he can start a new radio station at Irvington, Kentucky, to the detriment of listeners in French Lick, Indiana.

There are a number of reasons why the proposed rule making and channel substitution should not go forward.

First, Willtronics is a local, husband and wife, single station owner operating in a very small market. As such, Willtronics does not have the wherewithal to “front” the costs that would be required to modify the station’s transmitter, to acquire a newly tuned antenna, to pay for the related engineering, installation and testing, and to pay for the pre-channel change and post-channel change newspaper, billboard, cable and other promotion necessary to alert the French Lick public (as well as to create a new mind set going forward) that they would have to tune their radios to frequency 93.7 MHz, rather than to 100.1 MHz, to receive critical weather (tornadoes, ice storms, snow, etc.) and news information from their only local radio station WFLQ, and to otherwise “rebrand” WFLQ. It is estimated that those costs could very well exceed \$50,000 given the promotional efforts that would have to span at least a twelve month period so that all school events and seasonal weather conditions will have been accounted for. Accordingly, Mr. Spencer needs to be prepared to “front” that amount and any additional amounts that may be determined in the process.

Second, Mr. Spencer has not made clear in either his Comments² or his Supplemental Comments³ that he will participate in any auction bidding process for the channel. The NPRM/OSC cites that Mr. Spencer has represented, through his attorney,

² See Comments filed by L. Dean Spencer on January 14, 2008, in MB Docket No. 07-269.

³ See Supplemental Comments filed by L. Dean Spencer on August 11, 2008, in MB Docket No. 07-269.

that "if the requested FM channel is allotted, [he] will participate in the auction for the channel."⁴ In both the Comments and Supplemental Comments, Mr. Spencer's attorney represents that Mr. Spencer will continue to prosecute his application and build the station promptly if his application is granted, as well as reimburse Willtronics for its reasonable expenses in changing channels consistent with the Commission's guidelines in *Circleville, Ohio*.⁵ Tellingly, there is no mention of Mr. Spencer's willingness to participate in any auction. If he does not intend to so participate, the auction process will be meaningless and the Commission's own auction objectives will not be realized. Furthermore, if Willtronics were required to change channels before the FCC had selected the "winning" applicant, it is not at all clear that Mr. Spencer would agree to "front" Willtronics' channel change-related costs.

Third, Mr. Spencer was recently hospitalized. That event occurred after the filing of his Supplemental Comments. Thus, substantial and material questions of fact are raised about the continuing nature of his past declarations. Such questions are also raised about the willingness of lenders to provide him with the substantial financing that will be needed to (i) fund his participation in the auction bidding process, (ii) fund his "front" payments to Willtronics for the myriad of expenses that would be required to change WFLQ's transmission equipment as well as to inform and remind WFLQ's listeners where they could find the station on the dial; and (iii) fund the process of building the new facility and operating the new station without any cash flow. Lastly, serious questions are raised about his and his family's willingness to take on this substantial

⁴ See *Irvington, Kentucky and French Lick, Indiana*, 23 FCC Rcd 237, 238 (2008).

⁵ See *Circleville, Ohio*, Memorandum Opinion and Order, 8 FCC 2d 159 (1967).

financial commitment in the face of the current local and national economic crises, his other business responsibilities, and his health situation.

Based on the foregoing, the Commission should terminate this proceeding without taking any action to allot Channel 261A at Irvington, Kentucky or otherwise to take that channel away from the people of French Lick, Indiana.

Respectfully submitted,

WILLTRONICS BROADCASTING

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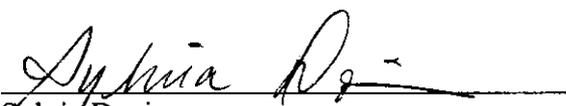
CERTIFICATE OF SERVICE

I, Sylvia Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that a copy of the foregoing **OPPOSITION TO PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE** was served on the following by first-class mail or hand delivery on this 22nd day of September 2008:

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