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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC Mail Room

In the Matter of:)	
)	
Amendment of Section 73.202(b))	MB Docket No. 08-150
FM Table of Allotments,)	RM-11390
FM Broadcast Stations)	
(Asbury, Iowa, Maquoketa, Iowa, and)	
Mineral Point, Wisconsin))	
)	
In Re: Applications of:)	
)	
KM Communications, Inc.)	
)	
For Construction Permits for a)	File Nos. BPH-20070119AEI
Minor Change in KQMG(FM),)	and BPH-20070119AGH
Independence, Iowa, and for a)	Facility ID Nos. 42080 and 170131
New FM Station, Channel 238A,)	
Mineral Point, Wisconsin)	
)	
To: The Secretary,		
Office of the Secretary		
Attention: Audio Division, Media Bureau		

OPPOSITION TO MOTION TO STRIKE

KM Radio of Independence, L.L.C. ("KM"), licensee of commercial radio station KQMG-FM, Independence, Iowa (Facility ID No. 42080, "KQMG"), by its counsel, and pursuant to Sections 1.45(b) and 73.3587 of the Commission's rules, 47 C.F.R. §§ 1.45(b) and 73.3587, respectfully submits this opposition to the Motion to Strike Unauthorized Supplement and Unauthorized Second Opposition filed by Dodge Point Broadcasting Co., Inc. ("DPB") on December 3, 2008 in the above-captioned proceedings (the "Motion").

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1. **Introduction.** Apparently DPB - - despite being the party that initially elected to combine into one pleading both an informal objection against a KM application and its comments in an FM allotment rule making proceeding - - would like to preclude KM from responding in the same manner, with combined opposition pleadings.¹ However, DPB having chosen this procedural course of action, KM should be permitted to respond in the same manner, and the motion to strike must be denied.

2. **Procedural Background: The FM Allotment and KM Application Proceedings.**

There essentially are two related proceedings that have been addressed in the combined pleadings that have been filed by DPB and KM. First, there is the above-captioned FM allotment rule making proceeding, initiated by an NPRM² released by the Commission, that is considering whether to change the channel of station KMAQ-FM, Maquoketa, Iowa (Facility ID No. 39857, "KMAQ"), change the channel of a vacant reserved Channel 238A allotment for Asbury, Iowa, and allot Channel 238A as a new nonreserved vacant allotment for Mineral Point, Wisconsin. Second, there are KM's above-captioned applications to change the channel and community of license of KQMG

¹ On September 22, 2008, DPB filed a pleading styled as the "Comments of Dodge Point Broadcasting, Co., Inc. and Informal Objection to Applications BNPH-20070119AEI and AGH" (the "DPB Comments/Informal Objection"), as well as "Reply Comments of Dodge Point Broadcasting, Co., Inc." on October 7, 2008 (the "DPB Reply Comments"), in which DPB combined its comments in the FM allotment rule making proceeding with its informal objections to KM's pending application. Following DPB's lead, on October 7, 2008, KM filed combined "Reply Comments and Opposition to Informal Objection" (the "KM Reply and Opposition"), and subsequently, on November 7, 2008, KM filed a "Supplement to the Reply Comments and Opposition to Informal Objection" (the "KM Supplement") which is the subject of the Motion and this opposition.

² See Amendment of Section 73.202(b) FM Table of Allotments (Asbury, Iowa, Maquoketa, Iowa, and Mineral Point, Wisconsin), MB Docket No. 08-150, RM-11390, Notice of Proposed Rulemaking and Order to Show Cause, DA 08-1711 (released August 1, 2008, the "NPRM"). KM timely-filed Comments on September 22, 2008, in response to the NPRM.

(File No. BPH-20070119AEI, the "KQMG Application") and for a new FM station on Channel 238A at Mineral Point, Wisconsin (File No. BPH-20070119AGH, the "Mineral Point Application").

3. In its combined DPB Comments/Informal Objection pleading, DPB elected to include not only comments intended to be responsive to the issues raised in the NPRM (DPB argued that Mineral Point should not get a first local transmission service since it already receives reception service), but DPB also included its informal objections to the KQMG Application, regarding the local public notice of that application (which DPB incorrectly perceives as a fatal defect) and the Section 307(b)³ and Tuck analysis⁴ provided as Exhibit 32 to the KQMG Application. DPB having combined its NPRM comments and informal objection to the KQMG Application in one pleading, KM simply has responded in a like procedural manner, in both the KM Reply and Opposition and the KM Supplement, and therefore the Commission should not strike the KM Supplement.

4. **Procedural Limits Do Not Apply To Informal Objections.** In the Motion, DPB attempts to transfer the procedural limits applicable to FM allotment rule making proceedings to its informal objection. See Motion, *passim*. However, since "the limitations on pleadings and time for filing pleadings" do not apply for informal objection pleadings, see § 73.3587, DPB's attempt to apply rule making procedural limitations to issues DPB could raise and has raised only as an informal objection must be rejected, and the Motion must be denied.

5. DPB suggests that KM should have filed the information included in the KM Supplement about 22 months ago, and that KM failed to request a waiver to allow the KM

³ Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b) ("Section 307(b)").

⁴ See Faye and Richard Tuck, 3 FCC Rcd 5374, 65 RR 2d 402 (1988)("Tuck").

Supplement to be filed in the FM allotment rule making proceeding, see Motion at ¶ 1, but both arguments are incorrect. Starting with the latter, KM expressly requested Commission authorization to file the KM Supplement and the showings therein related to the local public notice issue as “additional comments”, pursuant to Section 1.415(d) of the Commission’s rules, in the interest of a complete record in the rule making proceeding (since DPB had initially raised the local public notice issue, which is an informal objection issue, in the rule making proceeding). See KM Supplement at ¶ 5 (citing 47 C.F.R. § 1.415(d)). DPB therefore is incorrect when it asserts that Section 1.415 does not permit additional pleadings in response to the NPRM, see Motion at ¶ 5, since the Commission may authorize the “additional comments” in response to the Section 1.415(d) request that KM explicitly included in the KM Supplement.⁵

6. The rest of the KM Supplement provided additional information on KM’s Tuck showing, which was filed as Exhibit 32 to the KQMG Application; since this information relates to the KQMG Application, it is properly the subject of the informal objection aspect of DPB’s pleadings, to which “the limitations on pleadings and time for filing pleadings” do not apply, see § 73.3587, and therefore no waiver or additional authorization is required for filing of such supplementary material. DPB is incorrect when it suggests that such additional Tuck information may only be filed when the KQMG Application or related petition for rule making were originally filed, on January 19, 2007. See Motion at ¶ 1. The Tuck showing was required to be filed, and was filed, as an exhibit to the KQMG Application, in response to Section III-B, Question 18, of the Commission’s Form 301 application, which requires applicants such as KM that are proposing a

⁵ Since Section 1.415(d) expressly provides a process for requesting that the Commission authorize additional comments, KM is not required to request a waiver of the Commission’s rules, as DPB suggests. See Motion at ¶¶ 7-9.

community of license change for an existing station to include an exhibit addressing how the proposed change would result in a preferential arrangement of allotments under Section 307(b).

7. KM properly responded to this question and included the required Section 307(b) showing as Exhibit 32 to the KQMG Application. DPB cites no provision of the Commission's rules that precludes KM from amending or supplementing this showing, whether as an amendment to the KQMG Application or in an opposition to an informal objection (as is the case here). Indeed, if the timing of when Tuck information may be filed in this proceeding were of importance to DPB, DPB just as easily could have filed its informal objection and raised the issues 22 months ago as well, closer in time to when the KQMG Application was filed and accepted for filing in January 2007. In any event, the additional information provided in the KM Supplement is relevant to the Tuck showing made in the KQMG Application, and DPB has cited no rule or policy which precludes the Commission from considering any information relevant to the Section 307(b) and Tuck issues related to the KQMG Application, whether filed originally with the exhibit to the KQMG Application, or in pleadings related to same.⁶

8. **Commission Precedent Permits Local Public Notice Cure.** Interestingly, DPB also takes the opportunity of its filing of the Motion to raise additional substantive issues, by challenging whether KM is permitted to cure the local public notice issue by publishing the local public notices

⁶ KM also notes that the record reflects that the proposed change in community of license for KQMG to Solon would result in a preferential change in allotments under Section 307(b) even if Solon were attributed with the existing stations licensed to other urbanized areas, since Independence would continue to be served by at least one other existing AM station, and the proposal also would allow for a first local transmission service for Mineral Point, Wisconsin. See KM Comments at n.5; see also, KQMG Application, Exhibit 32 at n.5. Of course, Solon should not be attributed with stations licensed to other urbanized areas, whether based on the sufficient showing KM originally filed with Exhibit 32 to the KQMG Application, or also the additional information relevant to a Tuck analysis submitted with the KM Supplement.

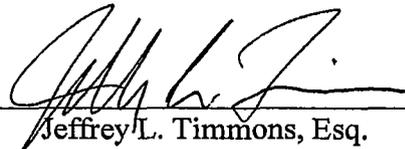
late, and providing documentation of same. See Motion at ¶¶ 10-11. KM of course has no procedural objection to this, since DPB could raise its point by simply filing another informal objection under Section 73.3587, if it chose to do so. However, DPB's arguments simply lack merit; KM has amply demonstrated that established Commission precedent permits a local public notice deficiency to be cured by late publication of the notices in local newspapers, id. at ¶¶ 6-11, even if published well after the filing of the application, id. at ¶ 7, especially where, as in this case, the Commission has issued its own public notices, id. at ¶¶ 8-9, and no party may be prejudiced (since in the case of both the KQMG Application and Mineral Wells Application, the time within which an interested party may file the relevant pleadings - - an informal objection in the case of the KQMG Application, or a petition to deny in the case of the Mineral Wells Application - - has not passed). See KM Reply and Opposition at ¶¶ 6-11 (citing Marri Broadcasting, L.P., 16 FCC Rcd 10772 at ¶¶ 11-13 (Media Bureau 2001), Northwest Broadcasting, Inc., 12 FCC Rcd 3289, 6 CR 685 at ¶ 6 (1997), and WHDM-AM, Inc., 6 FCC Rcd 4329 (1991)); see also, KM Supplement at ¶ 4 (citing KM Reply and Opposition at ¶¶ 6-11).

9. DPB observes that KM has not cited "any change-of-community case" where the Commission has permitted cure of a late local public notice publication. See Motion at ¶ 10. This of course is a bit disingenuous of DPB, since the Commission only changed its rules in recent years to permit a station to change its community of license on a minor change application basis - - and indeed, the KQMG Application was filed on January 17, 2007, the first day that the new community of license change application rules became effective - - so it is not surprising that there is not yet any Commission decisions specific to that point. Nevertheless, there is no logical or policy reason why the Commission's established precedent and policy for permitting cure of a local public notice defect

by late publication should not be followed here, especially where, as KM has demonstrated, the Commission has issued its own public notices, and no party is prejudiced by the late publication.

10. **Conclusion.** Wherefore, the above premises being considered, the Commission should deny DPB's Motion, and consider the KM Supplement and the additional information provided therein related to the KQMG Application and the Tuck showing for same, with respect to the informal objections raised by DPB and/or in the context of the FM allotment rule making proceeding.

Respectfully submitted,
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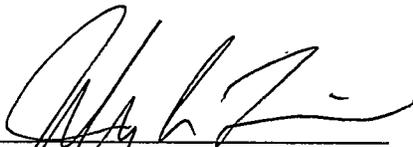
CERTIFICATE OF SERVICE

I, Jeffrey L. Timmons, hereby certify that on this 16th day of December, 2008, copies of the foregoing "Opposition to Motion to Strike" have been served either by Federal Express and then hand delivery (* denotes such delivery) or by United States first class or priority mail, postage prepaid and postmarked by the pleading filing date, upon the following:

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