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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 05-263
Table of Allotments) RM-11269
FM Broadcast Stations)
(Grants and Church Rock, New Mexico))

FILED/ACCEPTED

SEP - 1 2009

Federal Communications Commission
Office of the Secretary

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

COMMENTS IN SUPPORT OF PETITION
FOR PARTIAL RECONSIDERATION

Spanish Peaks Broadcasting, Inc. ("SPB")¹ submits these Comments in support of the pending Petition for Partial Reconsideration filed by Reynolds Technical Associates ("RTA") in this proceeding.² SPB believes that the Media Bureau has created a new policy for requests to downgrade a vacant allotment which is inconsistent with its policy to delete a vacant allotment and does not serve the public interest. Therefore, SPB supports the request of RTA for reconsideration of this new policy. In support hereof, SPB states as follows:

1. In its *Report and Order*³, the Bureau held that it will not entertain a request to downgrade a vacant allotment unless that channel has been made available for auction. The Bureau seemed to believe that this is not a new policy and that prior cases

¹ SPB is the licensee of three FM stations in Montana.

² These Comments are filed in response to the Federal Register publication of the Public Notice, Report No. 2894 released on August 4, 2009. See 74 Fed. Reg. 41700 (August 18, 2009).

³ 22 FCC Rcd 9426 (MB 2007).

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like *Bethel Springs, Tennessee, et al.*,⁴ allowed the downgrade only because the vacant channel had been made available for application previously. However, the Bureau was wrong about the reasoning in the prior cases and RTA cited numerous instances where vacant channels were routinely downgraded based on a finding that the overall proposal, which included the downgrade, was in the public interest. None of the cited cases involved a previous opportunity to apply in an auction window. Although the vacant channel in *Bethel Springs* may have been made available for application previously, that was not the basis for the Bureau approving the downgrade in that case.

2. The Bureau should follow the policy used for vacant allotments as set forth in the recent case of *Nevada City and Mineral, California*.⁵ In that case, the Bureau asked for expressions of interest in the vacant channel at Nevada City, California, despite the fact that this channel had not been made available for application previously.⁶ Upon receiving no expressions of interest, the channel was deleted in the *Report and Order*.⁷

3. In contrast, the downgrade of a vacant channel is not subject to the solicitation of other expressions of interest even if the party requesting the downgrade states that it is interested in filing for the lower class channel. This disparate treatment makes little sense. With a downgrade of a channel the community will at least have a service with city grade coverage. Compare that to the deletion of a channel, where there is no service at all. It is a fair question to ask why it should be more difficult to have a

⁴ 17 FCC Rcd 14472 (MB 2002)

⁵ DA 09-1032, released May 8, 2009.

⁶ The Nevada City channel was allotted in 2004. *Nevada City, California*, 19 FCC Rcd 23212 (MB 2004).

⁷ See note 5. This policy was recently recognized in *Lane and Quinby, South Carolina*, Memorandum Opinion and Order, DA 09-1808, released August 14, 2009. However, in that case multiple expressions of interest were filed in the form of short form applications for that channel in Auction 79.

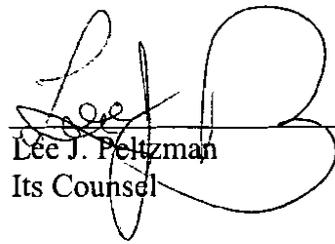
downgrade in class of channel, when, intuitively, it should be more difficult to delete the channel altogether. Nowhere does the Bureau attempt to explain this incongruity. It does not seem to matter whether the overall proposal will benefit the public in one case more than the other. The FCC policies seem irrational. The Bureau will consider deleting a channel that has never been made available for application, but will not consider downgrading that same channel in advance of the auction window, even if the original petitioner states that it has no objection to the downgraded channel. SPB finds it difficult to understand how the Commission's policy for downgrading a vacant channel better serves the public interest than the Commission's policy for deleting a vacant channel.

Accordingly, SPB urges the Bureau to reconsider its policy dealing with requests to downgrade a vacant channel.

Respectfully submitted,

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September 1, 2009

CERTIFICATE OF SERVICE

I, Valerie A. Higgs, hereby certify that I have on this 1st day of September, 2009, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing **“Comments in Support of Petition for Partial Reconsideration”** to the following:

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