

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

In the Matter of:)
)
Amendment of Section 73.202(b),) MM Docket No. 09-189
Table of Allotments,) RM-11564
FM Broadcast Stations.)
(Kahuku, HI))

FILED/ACCEPTED

To: Marlene H. Dortch
Secretary, Federal Communications Commission
Office of the Secretary
Attn: Assistant Chief, Audio Division, Media Bureau

JAN - 8 2010
Federal Communications Commission
Office of the Secretary

**REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE LATE
COMMENTS**

Kona Coast Radio, LLC ("Kona Coast") files this Reply to the "Opposition to Motion for Leave to File Late Comments," filed December 28, 2009 by Kemp Communications, Inc. ("Kemp").

Kona Coast filed a Petition for Rulemaking seeking allocation Channel 296C3 to Kahuku, HI. The Commission in its Notice of Proposed Rulemaking in this proceeding established a comment date of December 14, 2009, and a reply comment date of December 29, 2009. Kona Coast filed Comments in support of its Proposed Rulemaking one day late, on December 15, 2009. Kemp filed Comments and a Counterproposal proposing that Channel 296C2 be allotted to Kualapuu, Hawaii instead.

The Commission routinely accepts late-filed comments by proponents in support of channel allocations, but Kemp claims that acceptance of the Kona Coast Comments will prejudice Kemp and that the Comments should, therefore, be dismissed. *See, In re*

No. 09-189-044
List A/B

Chillicothe, Ohio et al. 20 FCC Rcd (2005) (accepted late filed comments although rulemaking was opposed).

Dismissal of Kona Coast's Comments will prejudice the public interest. The public is best served by selecting a proposal that will result in a preferential allocation of channels. In fact, this is mandated by Section 307(b) of the Communications Act. The public is best served by determination of which of the two proposals best serves the public.

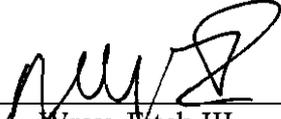
This is not a situation where acceptance of Kona Coast's Comments advantage Kona Coast in any way or harm Kemp. Kemp has been aware of Kona Coast's proposal since the Commission's Notice of Proposed Rulemaking was released. Kona Coast's Comments in support offer nothing new other than to restate its initial intent. Nor has Kona Coast gained any advantage by filing one day late. At the time it filed its Comments, Kona Coast had no idea that Kemp had filed a Counterproposal. Therefore, it is evident that Kona Coast would have filed its Comments in support irrespective of any other filings.

As noted above, the only prejudice in dismissing Kona Coast's Comments is to the public. If Kemp's proposal is preferred as it claims, then acceptance of Kona Coast's Comments makes no difference. If on the other hand Kona Coast's proposal is preferred, then the public is benefited by acceptance of the late-filed comments.¹

¹ Kona Coast filed Reply Comments in this proceeding noting that contrary to Kemp's claim. The population of Kahuka, HI is greater than the population of Kualapuu, HI and that the Kona Coast proposal is therefore the preferred proposal.

Respectfully Submitted,

KONA COAST RADIO, LLC

By: 
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Its FCC Counsel

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January 8, 2010

CERTIFICATE OF SERVICE

I, Francesca Fitch, in the law offices of Gammon & Grange, P.C., do hereby certify that I have sent copies of the foregoing REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE LATE COMMENTS, this 8th day of January, 2010, by postage paid first class mail to the following:

John A. Karousos, Assistant Chief
Audio Division, Media Bureau
Federal Communications Division
445 12th Street, S.W.
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Francesca Fitch