

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

FILED/ACCEPTED

APR 12 2011

Federal Communications Commission  
Office of the Secretary

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 and Kualapuu, HI) )

To: Marlene H. Dortch, Secretary  
Office of the Secretary, Federal Communications Commission

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION**

Kona Coast Radio, LLC (“Kona Coast”), files this Reply to the Opposition to Petition for Reconsideration filed by Kemp Communications, Inc. (“Kemp”) and Big D Consulting, Inc. (“Big D”). Kona Coast seeks reconsideration of dismissal of its Petition for Rulemaking (the “Petition”) seeking the allotment of Channel 296C3 at Kahuku, Hawaii and the dismissal of the associated Form 301 application (File No. BNPH-20090723AED) (the “Application”).

Kemp and Big D concede that Kona Coast’s Application for Channel 296C3 in Kahuku, Hawaii was filed before Big D’s modification application for Channel 296C3 at Kualapuu, Hawaii (the “Modification Application”).<sup>1</sup> Kemp and Big D take the position that Kona Coast’s Application should not be considered, whereas Big D’s later-filed Modification Application should. Kemp and Big D claim that the Petition for

<sup>1</sup> Kona Coast filed the Application, and the requisite filing fee, for a new station on Channel 296C3 at Kahuku, Hawaii on July 23, 2009. The next day, July 24, 2009, Kona Coast filed the Petition seeking allocation of Channel 296C3 to Kahuku, Hawaii. The Petition was received by the FCC on July 24, 2009 and date-stamped by the Office of the Secretary on August 18, 2009. Big D filed its mutually exclusive Modification Application on August 10, 2009 to upgrade FM station KNAN(FM), Nanakuli, Hawaii from Channel 294C3 to 294C2. The public was on notice of Kona Coast’s proposal as of July 29, 2009, the date of release of the Commission’s Public Notice. Twelve (12) days later, Big D filed the Modification Application.

Rulemaking provides information that Kona Coast's Application does not. Therefore, Kemp and Big D argue that the Application, for notice purposes, is deficient. Kemp and Big D, however, do not point to any such material missing information. The stated purpose in requiring all filings in FM allotment proceedings be filed with the Office of the Secretary is "to provide interested parties and the public with adequate notice of the pleadings that may result in changes to the FM Table of Allotments, to ensure fair and efficient processing including entry in ECFS and to conserve the Commission's limited resources."<sup>2</sup> The Application provides all the relevant information. In fact, it provides even more information than provided in the Petition. The Application specified the channel, ERP, proposed transmitter site location, and all relevant spacing data. The Application, with the exception of general community information for Kahuku, in fact, provides a great deal more information than the Petition. Kemp and Big D point to no material data included in the Petition that was not included in the earlier filed Application which would provide materially "better notice" of the intended use the allocation of Channel 296C3 at Kahuku, Hawaii. Nor can Kemp or Big D point to any way in which they were prejudiced, other than the obvious argument that Kemp and Big D would obviously prefer that Kona Coast's Petition not be considered—a position that prejudices the public. Indeed, consideration of the Petition would not prejudice Kemp from advancing its Counterproposal. The public, however, would be prejudiced by failure to consider an alternative and arguably better proposal.<sup>3</sup>

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<sup>2</sup> See *Caliente and Moapa, Nevada*, Memorandum Opinion and Order, 21 FCC Rcd 11481, 11483 (MB 2006) ("Caliente and Moapa") at paragraph 6.

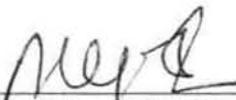
<sup>3</sup> Kemp devotes over half its Reply Comments, at worst, on the low road, and, at best, off point. Kemp claims, "Kona Coast has a propensity for ignoring procedural requirements." (Reply Comments at 3) Kemp takes issue with Kona Coast's Comments filed one (1) day late and claims

Wherefore, Kona Coast respectfully requests that the Commission:

1. Reinstate the Petition for the allotment of FM Channel 296C3 at Kahuku, Hawaii, as well as the associated Application;
2. Rescind the grant of Big D's Modification Application; and
3. Rescind allocation of Channel 296C2 to Kualapuu, Hawaii.

Respectfully Submitted,

**KONA COAST RADIO, LLC**

By:   
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April 12, 2011

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it was not served with a Reply filed in the rulemaking proceeding. Kona Coast fully agrees with Kemp to the extent Kemp's arguments should be considered within the context of the rulemaking, as should Kona Coast's Petition. Kemp's assertions have no bearing on whether the public interest warrants full consideration of Kona Coast's first-filed Application and subsequently filed Petition.

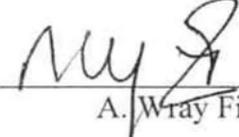
## CERTIFICATE OF SERVICE

I, A. Wray Fitch III, in the law offices of Gammon & Grange, P.C., do hereby certify that I have sent copies of the foregoing REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION, this 12<sup>th</sup> day of April, 2011, by postage paid first class mail to the following:

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