

7691 ~~100~~
RECEIVED

AUG 8 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re: Application of)
)
Buchanan Broadcasting Company, Inc.)
)
To Extend STA for WJNT-FM1,)
Pearl, Mississippi)

FCC File No. 20000621AFB

REC'D
AUG 3 3 02 PM '00

To: The Chief, Mass Media Bureau

OPPOSITION TO INFORMAL OBJECTION

Buchanan Broadcasting Company, Inc. ("Buchanan"), by its attorney, pursuant to Section 73.3587 of the Commission's Rules, hereby respectfully opposes an "Informal Objection" filed on July 19, 2000 by WFMN Radio, Inc. ("WFMN") to Buchanan's captioned request (the "STA Extension") to extend special temporary authority ("STA") to operate WJNT-FM1.

In opposition thereto, the following is respectfully shown:

1. The sole purpose of the subject STA Extension was to continue operation of WJNT-FM1. That facility had been authorized by the Commission on December 20, 1999 (the "STA") to alleviate serious nighttime interference caused by a co-channel Cuban broadcast station to AM station WJNT, Pearl, Mississippi. After construction delays, WJNT-FM1 began operation on May 30. As the initial STA was due to expire June 30, the subject STA Extension was timely requested.

2. WFMN's Informal Objection is utterly irrelevant to the pending matter. WJNT-FM1 was not a reward bestowed upon Buchanan for being the world's best broadcaster. Rather, it was issued to preserve service in the face of illegal international interference, pursuant to Congressional policy directives, as set forth in the *Radio Broadcast to Cuba Act*, P.L. 98-111, 97

Stat. 749 (1983). The STA Extension is premised upon a continuation of the same conditions which gave rise to the STA in the first place. WFMN does not even bother to suggest a basis for rebutting such need. Rather, all WFMN is able to muster is a largely abstract claim that WJNT-FM1 has operated outside authorized hours.

3. Although, as noted above, irrelevant, WFMN's contentions of illegal operation will be briefly addressed. Unfortunately, it is difficult to respond to these matters insofar as WFMN's accusations are largely inspecific, with only vague allusions to some sort of "monitoring" and "typical operation". Thus, Buchanan has little choice but to address this matter in an equally general manner.

4. Submitted herewith is the Declaration Under Penalty of Perjury of Stan Carter, Buchanan's Operations Manager and Chief Engineer.¹ As Mr. Carter notes, the Commission's STA was at best vague as to operating hours. Following the lengthy period of construction and equipment testing, Mr. Carter took the responsible step of sending an e-mail to the Commission engineer in order to confirm the intended operating hours of WJNT-FM1. Following a response on June 12 confirming that nighttime hours only were anticipated, Buchanan instructed its operators to run the STA translator only during nighttime hours. Mr. Carter candidly concedes that the parameters of the nighttime authorization may have been exceeded on an inadvertent and occasional basis, but certainly nowhere near the extent which WFMN disingenuously asserts. As a further sign of Buchanan's responsibility, it has now sought to eliminate even the possibility of operator error by installing additional equipment to automate the signing on and off of WJNT-FM1. Accordingly, to the extent that an occasional problem once existed, it should not recur and there is no need for Commission concern.

¹ The declaration has been executed by Thena Gunn, General Manager of WJNT, under authority of Mr. Carter, who is temporarily away from his office, so as not to delay submission of the instant opposition.

5. Unfortunately, there is one further matter which should be addressed. WFMN concludes the portion of its informal objection devoted to the alleged merits with a gratuitous swipe against Buchanan's character. Yet, it is, if anything, WFMN's character which is called into question by this entire matter. One would have thought, if WFMN was genuinely concerned over this matter, that it would have at least picked up the phone to alert WJNT of a problem it suspected in STA operations in order to request that it be promptly corrected. Instead, WFMN did nothing of the sort, but rather waited and then complained directly to the FCC. Unfortunately, this appears to be in keeping with WFMN's general attitude toward competition in the local market. As recounted in Mr. Carter's declaration, Telesouth Communications, Inc. (which controls WFMN as well as numerous other Mississippi stations) has fostered an increasingly acrimonious relationship to Buchanan, with which it competes. Specifically, WFMN's superior resources and inferior ethics have led it to lure away Buchanan employees and disrupt programming arrangements. Most telling of all in light of the current circumstance, WFMN has publicly vaunted the superiority of its FM signal over that of WJNT. In that light, it is abundantly clear that WFMN's manner of pursuing the instant matter is yet another step in its on-going campaign to eliminate its only competition in the news-talk format in the local market. It is therefore quite significant that WFMN seeks through its informal objection to remove the only means by which WJNT can hope to overcome illegal foreign interference to its signal and thereby attempt, in a very modest way, to level the playing field.²

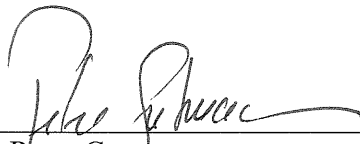
6. In view of the foregoing, Buchanan submits that WFMN's Informal Objection is irrelevant to the subject application and that it should be viewed as little more than a

² Of course, even with WJNT-FM1, the playing field is hardly level since WFMN enjoys the consistency of listeners tuning into a single channel at all hours, whereas Buchanan's audience must constantly shuttle between its AM daytime and FM nighttime modes of operation, a situation which, in and of itself, is hardly comparable to a full time FM – or AM, for that matter – signal.

competitor's improper attempt to further skew competition in the local marketplace, in which it already enjoys a significant advantage.

Respectfully submitted,

BUCHANAN BROADCASTING COMPANY, INC.

By:  _____
Peter Gutmann
Its Attorney

Pepper & Corazzini, LLP
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600

August 8, 2000

DECLARATION UNDER PENALTY OF PERJURY

Stan Carter states under penalty of perjury that the following is true and correct to the best of his personal knowledge and belief:

1. I am the Operations Manager and Chief Engineer of WJNT(AM), Pearl, Mississippi.
2. I have read an Informal Objection filed by WFMN Radio, Inc. directed against our request for an extension of special temporary authority to operate WJNT-FM1. Upon completing construction and nearing the end of equipment testing, I reviewed the authorization for this facility and was confused as to the intended hours of operation. Although the grant stated that its intention was to "allow Buchanan to maintain its service of station WJNT to the community of Pearl, during nighttime hours only, as specified on its AM broadcast license," I thought that this language could be interpreted as a description of the reason behind the grant of STA, rather than as a limit upon operating hours, which otherwise were not limited by the authorization. On May 30, 2000 I sent an e-mail to Trang Nguyen of the FCC's Mass Media Bureau requesting clarification. I noted that if WJNT-FM were to be operated during the day its signal would fall within its nighttime coverage, as the quoted portion of the authorization seemed to suggest. I received a reply by telephone from Trang Nuygen on June 12 stating that WJNT-FM1 was to operate during nighttime hours only. In order to assure compliance with the Commission's interpretation of its STA, I stressed the necessity to board operators of making sure that WJNT-FM1 operated during its specified hours only, posted operating hours for WJNT-FM1, and reviewed sign on and sign off times along with remote control operation. I believed that WJNT-FM1 was in fact operating only during nighttime hours.
3. Upon learning of the WFMN's informal objection, I checked with board operators and came to believe that there may have been some operator error in the sign on and sign off times of WJNT-FM1. However, I do not believe that these errors occurred more than a few times, and I dispute WFMN's suggestion that this problem has been routine. WFMN never alerted us to their concern. The first I heard of this was when our attorney sent a copy of the informal objection. Had I learned of the matter earlier, I could have taken steps to correct it.
4. WJNT-FM1 is operated by a dial-up remote control system, and does require that an operator call the remote control and turn the transmitter on or off. Since the possibility of operator error can exist under such circumstances, we are installing additional equipment to automate the sign on/off of WJNT-FM1. We believe that this will eliminate even the possibility of operator error in the future.
5. I am disturbed over the anti-competitive aspect of WFMN's informal objection. Telesouth Communications, Inc., owner of WFMN-FM, Flora/Jackson, Mississippi also owns, operates and simulcasts programming on WFMM-FM, Sumrall/Hattiesburg, Mississippi, WTMN-FM, Water Valley/Oxford, Mississippi and WTCD-FM, Indianola/Greenwood, Mississippi. Telesouth Communications, Inc. also owns and operates Mississippi News Network, South Carolina Network and Southern Urban Network, all statewide satellite news services.
6. WFMN and WJNT are competitors in the Jackson, Mississippi market. We both broadcast with news and information formats, and in fact we are the only stations in the market

who emphasize programming of this type. Since WFMN went on the air in 1997, they have gone well beyond the bounds of fair competition in order to damage or destroy us. WFMN's motive is obvious - without us, they would have no competition for their format. Some of the steps they have taken so far include the following:

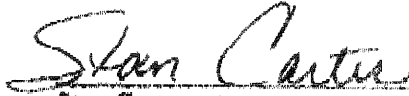

7. At the time WFMN went on the air in 1997, WJNT was the local affiliate for Mississippi Network News. We were given no advance notice that WFMN would take over as the MS Net News affiliate, but we were forced to drop MS Net News once WFMN was on the air. (The network and WFMN are both owned and operated by Telesouth Communications, Inc.)

8. When WFMN went on the air in 1997, they targeted and hired our morning talk show host and subsequently did the same for our weekend talk show host. Since then, they have tried to lure away other employees, including me. Even when they did not succeed in obtaining our employees, they forced Buchanan to pay higher salaries in order to meet their offers. While an FM affiliate of a statewide network can afford to offer higher salaries, this becomes a serious economic burden for a single AM station such as WJNT.

9. Since WFMN went on the air in 1997, they have attempted to purchase the syndication rights for our two most popular programs, Rush Limbaugh and Dr. Laura Schlessinger. We have carried Rush for over 11 years and Dr. Laura since it became available for syndication. At each renewal, WFMN has offered substantial increases in syndication fees for these programs, which we were forced to match in order to retain the rights. While WFMN presumably would claim that this is a natural consequence of open competition for programming, the fact is that we are not playing on a level field because of their vastly greater resources over which they can spread a disproportionate expense.

10. In that light, WFMN has consistently taken advantage of its status as a full time FM station in attempting to poison our relationships with others. For example, from 1995 to 1997, WJNT had an agreement with Jackson Preparatory School to carry their football broadcasts. When WFMN began operation in 1997, we were notified by the football coach at Jackson Prep that they were giving the broadcast rights to WFMN due to their "better nighttime signal." We had already started selling football ad packages for the 1997 season, and so the loss of this programming caused us significant problems at the time with our advertisers. More recently, WFMN has constantly run promotional announcements aimed at our nighttime coverage problems. They include examples such as "and for no additional charge, you can hear us at night" and "no snap, crackle and pop here." Our problem, of course, was due to Cuban interference. Therefore, there is no question in my mind that this informal objection is the latest in WFMN's concerted efforts to deprive us of any opportunity to even attempt to compete with them in a meaningful way.


11. Until WJNT-FM1 was authorized, we were unable to serve our market adequately during nighttime hours due to Cuban interference. In the short time that WJNT-FM1 has been on, listener response has been quite favorable. As the circumstances for which WJNT-FM1 was authorized have not changed, we look to the FCC to grant an extension of the WJNT-FM1 STA.


Stan Carter


CERTIFICATE OF SERVICE

I, Regina S. McFadden, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that on this 8th day of August, 2000, copies of the foregoing Opposition to Informal Objection were mailed, postage prepaid, to the following:

James K. Edmunson, Esquire
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 501
Washington, DC 20016
(Counsel for WFMN Radio, Inc.)


Regina S. McFadden
Regina S. McFadden