

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

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FLETCHER, HEALD & HILDRETH

In re Application of)
)
1TV.COM, Inc.) File No. BPH-20150529AAA
)
For Minor Modification of the License of)
KIKO-FM, Facility ID Number 11894,)
Claypool, Arizona)

Accepted / Filed

JUN 16 2015

Directed to: Office of the Secretary
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Federal Communications Commission
Office of the Secretary

INFORMAL OBJECTION

Petracom of Holbrook, LLC ("Petracom"), licensee of KRFB(FM), Show Low, Arizona, by its attorneys, hereby respectfully submits its Informal Objection to the above-captioned application of 1TV.COM, Inc. ("1TV.COM") for minor modification of the licensed facilities of KIKO-FM, Claypool, Arizona. With respect thereto, the following is stated:

1TV.COM submitted its application for minor modification of the facilities for KIKO-FM on May 29, 2015, the first day following the end of the temporary filing freeze on such modification applications announced in the Media Bureau's *Public Notice*, "Auction 98 Freeze Announced for FM Minor Change Applications," DA 15-454, released April 22, 2015. The file number indicates that the KIKO-FM application was the very first application filed that day. There are substantial defects in the application and it must be dismissed. Not only does the application attempt more changes to both KIKO-FM and another, non-consenting station than are permissible with one application, but it also impermissibly attempts to force Section 73.215 on that other station, again without consent. Furthermore, the KIKO-FM application fails to acknowledge that it does not comply with Section 73.207, therefore fails to provide allotment co-

ordinates, fails to comply with the rule governing directional antennas, and fails to commit to reimbursing Petracom for the expenses associated with its involuntary channel change, assuming that such a change was accomplished. For all of these reasons, the 1TV.COM application must be dismissed.

First, in assessing the changes that 1TV.COM has proposed for its own station, it must be noted that the application seeks to modify the KIKO-FM authorization from its current Channel 247C2 to Channel 243C. Thus, KIKO-FM is proposing to move four channels and upgrade by two classes. Accordingly, this application does not qualify as a minor change application. Section 73.3573(a)(1) provides that a major change for a commercial or noncommercial FM broadcast station is any change in frequency, with four exceptions. The two which might be relevant to this situation provide that changes “to a higher or lower class co-channel, first-, second-, or third-adjacent channel, or intermediate frequency” (47 C.F.R. §73.3573(a)(1)(ii)) or to substitute channels (47 C.F.R. §73.3573(a)(1)(iv)) will be treated as minor changes. But, 1TV.COM’s proposal does not fit into either definition, in that it is an upgrade but not on an adjacent or intermediate channel, and it is not a substitute channel because it seeks a different class channel. When the Commission adopted the rule allowing for substitute channel proposals to be included in minor change applications, at which time it also eliminated the ability to use rule making proceedings for most facilities changes, it nonetheless explicitly stated that it would “permit an FM non-reserved band permittee or licensee to use notice and comment procedures to modify its current assignment to specify a non-adjacent class upgrade or downgrade in the same community of license.” *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, FCC 06-163, released November 29, 2006, at ¶15. This statement confirms that the changes proposed herein

must be sought in a rule making proceeding and may not be accomplished with an application. *See also*, Technical Support for Informal Objection to BPH-20150529AAA, attached hereto as Exhibit 1.

In addition, in the KIKO-FM application, the response to Section III-B, Question 16, 1TV.COM asserts that the application complies with Section 73.207 of the Commission's Rules. In the Engineering Exhibits attached to the application at Exhibit 27, however, the applicant acknowledges that it does not, in fact, comply with Section 73.207 in that the proposed facilities are short-spaced with a Mexican allotment. Nonetheless, the application provides no allotment co-ordinates. Since these co-ordinates are not provided, the Commission cannot determine whether the modification requested may be made in accordance with the Commission's allotment requirements as mandated by Section 73.203 of the Commission's Rules.

Turning to the application's proposals for KRFM, a further glaring defect is 1TV.COM's attempt not only to downgrade KRFM but also to change its channel to a non-adjacent channel and to create a short-spaced allotment. It appears that 1TV.COM is attempting to use the procedures adopted by the Commission in *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21649 (2000). Pursuant to the procedures adopted therein, an FM station may file an application that would be short-spaced to a Class C facility operating with less than maximum facilities and seek an order to show cause why the Class C station should not be downgraded to Class C0. This procedure also is incorporated in Note 4 to Section 73.3573 of the Commission's Rules. In neither place, however, is there any provision for changing the channel of the station which is potentially to be downgraded. Here, however, that is exactly what 1TV.COM is proposing. It is not proposing the contemplated downgrade on KRFM's current channel, Channel 243. Instead,

it is seeking to change the channel to Channel 253C0, some ten channels away. As noted above, however, Section 73.3573 makes no provision for treating a channel substitution coupled with a change in class as a minor change. Thus, the application's proposal to make such a change must be dismissed on this basis alone.

Likewise egregious is the fact that the proposed modified facilities for KRFM would not be fully spaced. 1TV.COM's own application admits that on Channel 253C0, KRFM would be short-spaced to KMVP-FM. While the application notes that KRFM would be fully spaced on Channel 253C1, this comment lacks any significance. There is no provision for stations operating with less than maximum Class C facilities to be downgraded to Class C1 – only to Class C0. Thus, the short-spaced proposed facility for KRFM would have to be processed pursuant to Section 73.215 of the Commission's Rules. While 1TV.COM's assertion that triggering applications may utilize the contour protection provisions of Section 73.215 with regard to proposals for the applicant's own station, the same does not hold true for the proposal made for the station targeted for a proposed downgrade. Just as a Class C station opposing a downgrade for itself may not rely on the lesser spacing requirements under Section 73.215 to demonstrate the availability of an alternate frequency (*id.* at 21664), the triggering station may not force the Class C station to accept a Section 73.215 condition on its authorization and the resulting lesser interference protection. From the time that Section 73.215 was adopted, it was intended to allow "licensees to weigh the advantages and disadvantages associated with short-spacing under these ... rules, and to base their applications upon what they believe to be in their best interest," (*Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 4 FCC Rcd 1681, 1684 (1989)), and not to allow licensees to force Section 73.215 status on other, unwilling licensees. Accordingly, to the

extent that the 1TV.Com application relies upon Section 73.215 processing for KRFM, it must be dismissed.

Moreover, as set forth in Exhibit 1, 1TV.COM's proposal for KRFM would result in massive short-spacing to the construction permit for an LPFM facility. Petracom recognizes that LPFM stations are secondary to full-service stations and must provide protection against interference even to later-filed full-service facilities. Nonetheless, pursuant to Section 73.809 of the Commission's Rules, it is incumbent upon the full-service station to make a showing of actual interference in order to invoke those interference protection rights. This burden is something that Petracom should not be required to take on involuntarily, and with no benefit to itself.

Further, as noted in Exhibit 1, the directional antenna specified in the KIKO-FM does not satisfy the requirements of Section 73.316(b)(2) of the Commission's Rules. This defect, as with all of the others, requires dismissal of the above-captioned KIKO-FM application.

Finally, while 1TV.COM has proposed that KRFM make significant changes for the benefit of KIKO-FM, 1TV.COM has made no commitment to reimburse Petracom for its expenses, if for sake of argument, an order to show cause were issued and ultimately successful. This situation does not involve a situation in which Petracom may simply accept a downgrade and spend nothing. To the contrary, 1TV.COM's proposal would require KRFM to change its channel to a new frequency ten channels away. A change of such magnitude is likely to require new equipment, possibly including a new antenna and/or transmitter. Attempting to foist such expenses off on another licensee without any compensation is strictly contrary to the Commission's policies.

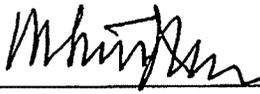
In sum, 1TV.COM's above-captioned application is fatally defective and must be dismissed. It proposes changes to both KIKO-FM and KRFBM which are beyond those allowed in an application, in that both proposals specify both modifications to non-adjacent channels and changes in class. Further, the proposal for KIKO-FM is defective in failing to provide allotment co-ordinates and failure to comply with Section 73.316(b)(2). Finally, 1TV.COM attempts to force short-spacing and Section 73.215 status on KRFBM without its consent and without even making any promises to reimburse Petracom for the substantial expense involved. Because of all of these failures, the above-captioned application must be dismissed.

WHEREFORE, the premises considered, Petracom respectfully requests that the Commission dismiss the above-captioned application of 1TV.COM.

Respectfully submitted,

PETRACOM OF HOLBROOK, LLC

By:



M. Scott Johnson
Anne Goodwin Crump

Its Attorneys

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June 16, 2015

TECHNICAL SUPPORT FOR
INFORMAL OBJECTION TO BPH-20150529AAA
PETRACOM OF HOLBROOK, LLC
KRFM FM RADIO STATION
CHANNEL 243C - 96.5 MHz
SHOW LOW, ARIZONA
June 2015

This Technical Exhibit supports the Informal Objection to BPH-20150529AAA, which is an application proposed by 1TV.COM, Inc. "(1TV)" for modification of its KIKO-FM, Claypool, Arizona. In doing so, BPH-20150529AAA proposes a downgrade and change the frequency of KRFM, Channel 243C, Show Low, Arizona, which is licensed to Petracom of Holbrook, LLC ("Petracom").

In its application, 1TV proposes to upgrade of KIKO-FM from Class C2 facilities to Class C facilities and change the channel from Channel 247 to Change 243. This application goes beyond the scope of §73.3573 of the Commission's rules as a minor change application and is, therefore a major change application. Further, in order to make these changes in KIKO-FM, 1TV proposed that KRFM be ordered to change from Channel 243C to Channel 253C0. 1TV also proposed that KRFM accept classification under §73.215 of the Commission's rules.

The 1TV application should be denied on five points. First, 1TV has proposed a change of channels which is beyond the scope of §73.3573 (a) of the Commission's rules since the change of channels for KIKO is a fourth adjacent channel move, which is contrary to §73.3573(a)(1)(ii) & (iii). Secondly, even assuming an order to make changes were to be issued, 1TV has not proposed to financially compensate Petracom for the necessary changes. Thirdly, the proposed forced change in frequency for KRFM as a Class C0 facility does not meet the

requirements of §73.207 of the Commission's rules. Fourth, the proposed order would force KRFM to accept processing under §73.215 of the Commission's rules which is contrary to FCC policy and not in the public interest as adversely impacting the operation and value of KRFM. Finally the proposed directional antenna system for KIKO-FM does not meet the requirements of §73.316(b)(2).¹

Attached as Exhibit A is a computer printout of the KRFM facility if it were operating on Channel 253C0. Prohibitive shortspaces on Channel 253C0 would exist to the licensed operation of KMVP-FM, Channel 254C, Phoenix, Arizona, and to the construction permit for KPKX-LP, Channel 254L1, Show Low, Arizona. 1TV contends that KRFM could operate as a Class C1 at this site and notes that the licensed site of KRFM is shortspaced as noted above. Further, KRFM cannot be forced to accept processing under §73.215 of the rules. The 1TV proposal is contrary to the "triggered downgrade" provisions of §73.3573, Note 4.²

We have tried to be as accurate as possible in the preparation of this technical statement. All information contained in this statement was extracted from the CDBS database. We assume no liability for omissions or errors in this source. Should there be any questions concerning the information contained herein, we welcome the opportunity to discuss the matter by phone at 912-638-8028 or by email at rsg@grahambrock.com.

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- 1) Directional antennas used to protect short-spaced stations pursuant to §73.213 or §73.215 of the rules, that have a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized.
 - 2)Available alternative frequencies are limited to frequencies that the proposed service could use at the specified antenna location in full compliance with the distance separation requirements of §73.207, without any other changes to the FM Table of Allotments.....

TECHNICAL SUPPORT FOR
INFORMAL OBJECTION TO BPH-20150529AAA
PETRACOM OF HOLBROOK, LLC
KRFM FM RADIO STATION
CHANNEL 243C - 96.5 MHz
SHOW LOW, ARIZONA
June 2015

EXHIBIT A

REFERENCE	CLASS = C0 Int = C	DISPLAY DATES
34 12 20.0 N.	Current Spacings to 3rd Adj.	DATA 062-15
109 56 26.0 W.	Channel 253 - 98.5 MHz	SEARCH 062-15

Call Lat.	Channel Lng.	Location Ant	Power	Azi HAAT	Dist	FCC	Margin
* KPXX-LP	CP 254L1	Show Low	AZ	278.4	5.43	110.5	-105.1
34 12 45.5	109 59 56.0		0.100 kW	-12 M			
Show Low Community Radio B MPL20140909ACV							
* KMVP-FM	LIC 254C	Phoenix	AZ	244.3	29.18	219.5	-0.32
33 19 58.0	112 03 48.0	C	100.000 kW	545 M			
Bonneville International C BMLH20040707ABN							
KKFR	LIC-N 252C	Mayer	AZ	271.5	223.61	219.5	4.1
34 14 03.0	112 22 01.0	NCX	41.000 kW	852 M			
Riviera Broadcasting, Llc BLH20060831AAC							
KCMA-LP	LIC 253L1	Payson	AZ	271.8	128.32	121.5	6.8
34 14 01.0	111 19 58.0		0.003 kW	167 M			
Payson Classical Music Ass BLL20050803ABB							
KPIH-LP	CP 255L1	Payson	AZ	272.8	126.36	83.5	42.9
34 15 13.0	111 18 39.0		0.004 kW	147 M			
Rim Catholic Evangelizatio B MPL20150223ABI							
R10905	ADD 253A	Corona De Tucson	AZ	194.5	260.77	214.5	46.3
31 55 39.0	110 37 57.0		6.000 kW	100 M			
Cochise B'casting & Desert							
KRDX	LIC-D 253A	Vail	AZ	194.5	260.77	214.5	46.3
31 55 39.0	110 37 57.0	DCX	3.900 kW	125 M			
Desert West Air Ranchers C BLH20051103ADD							
R10905	DEL 253A	Vail	AZ	194.5	260.77	214.5	46.3
31 55 39.0	110 37 57.0		6.000 kW	100 M			
Cochise B'casting & Desert							
AL5410	RSV-A 253A	Vail	AZ	194.5	260.77	214.5	46.3
31 55 39.0	110 37 57.0		6.000 kW	100 M			
RM9815							

Reference station has protected zone issue: Mexico
RSV-R = reserved - needs protection, RSV-A = allocation.
All separation margins include rounding
* Spacing does not meet the requirements of §73.207

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

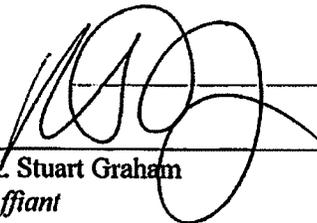
State of Georgia)
St. Simons Island) ss:
County of Glynn)

R. STUART GRAHAM, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Petracom of Holbrook, LLC to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

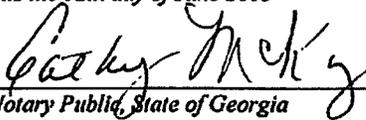
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 12th day of June 2015.



R. Stuart Graham
Affiant

*Sworn to and subscribed before me
this the 12th day of June 2015*



Notary Public, State of Georgia
My Commission Expires: March 12, 2019

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, hereby certify that on this 16th day of June, 2015, I caused a copy of the foregoing "Informal Objection" to be served via U.S. mail, postage prepaid, upon the following:

Jeffrey D. Southmayd, Esquire
4 Ocean Ridge Boulevard South
Palm Coast, FL 32137
Counsel for ITV.COM


Michelle Brown Johnson