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KOERNER & OLENDER, P.C.

**Attorneys at Law
11913 Grey Hollow Court
North Bethesda, MD 20852-5706**

**Tel. (301) 468-3336
Fax (301) 468-3343**

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AUCS SERVICES DIVISION

January 13, 2014

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JAN 13 2014

Federal Communications Commission
Office of the Secretary

Robert L. Olender *
rolender.law@comcast.net

James A. Koerner
jkoerner.law@comcast.net

*not admitted in MD

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals, TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Hende Broadcasting, Inc.
Facility ID No. 193061
Wilmington, OH
File No. BNPL-20131021ABP

Dear Ms. Dortch:

On behalf of Grant County Broadcasters, Inc., there are transmitted herewith an original and four (4) copies of its Reply to Opposition to Petition to Deny with respect to the above-referenced application.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,



Robert L. Olender
Counsel for
Grant County Broadcasters, Inc.

Cc: Jeffrey Ziesmann

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**Before the
Federal Communications Commission
Washington, DC 20554**

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AUDIO SERVICES DIVISION

Federal Communications Commission
Office of the Secretary

In re Application of)
)
HENDEE BROADCASTING, INC.)
)
New Low Power FM Station,)
Facility ID Number 193061)
Wilmington, OH)
)
For Construction Permit)

File No. BNPL-20131021ABP

To: Office of the Secretary
Attn: Chief, Media Bureau

REPLY TO OPPOSITION TO PETITION TO DENY

Grant County Broadcasters, Incorporated, licensee of FM Station WNKR, Williamstown, Kentucky (“WNKR”), by its attorneys, hereby replies to the Opposition to Petition to Deny (“Opposition”) in this matter filed December 31, 2013 by Hendee Broadcasting, Inc. (“Hendee”).

In its Petition to Deny the captioned application (“Petition”), WNKR proffered evidence that operation of the facility sought by Hendee would interfere with the off-the-air reception of WNKR by listeners of that station.¹ In its Opposition, Hendee casually dismisses the notion of such interference as “technically inconceivable” and insists that it is deserving of a grant because it meets the mileage separation requirements of the rules.

In 2011, Educational Media Foundation (“EMF”), which has vast experience with FM translators, filed an application for a construction permit on FM Channel 294 at

¹ See Petition Attachments A and B.

Middletown, Ohio, not too distant from the proposed Hendee location. Like Hendee, EMF also met all of the mileage separation requirements, and was granted a construction permit. Yet, when the EMF translator went on the air, there were numerous complaints of interference to the reception of WNKR in the same area which will be served by the proposed Hendee facility. Without even requiring WNKR to go to the FCC, EMF took the Channel 294 facility off the air.²

Section 73.807 of the Rules³, like Section 74.1204⁴, is a predictor of where electrical interference is expected to occur. Applications which do not comply with those mileage separations will not be granted. Section 74.1203⁵ is a remediator, to address those situations in which unexpected interference actually occurs. Where there are instances of “unexpected” interference, the secondary service station is required to remedy the interference or discontinue operation.. In the case of co-channel interference, no amount of filtering can remedy the problem, so discontinuance of operation is the only possible remedy.

As detailed in the attached Affidavit of Jeffrey Ziesmann, Station WNKR is a full Class A FM station. Its power of 1.8 kw of power is the maximum allowed considering the antenna height above average terrain of 185 meters. That height, together with the nature of the terrain and the history of Channel 294 in the area allows off-air reception of WNKR at significant distances north of the transmitter site.

² Petition Attachment B.

³ 47C.F.R. § 73.807.

⁴ 47 C.F.R. § 74.1204.

⁵ 47 C.F.R. § 74.1203.

Not only is reception at distances specified on the map submitted with the Petition conceivable, it actually exists, as can be attested by EMF. The listeners listed in Mr. Ziesmann's Affidavit are those which led to EMF's decision to turn off its Channel 294 translator and seek an alternate frequency.

Hendee appears to be of the impression that the low power FM service is not the same as the FM translator service, i.e., a secondary service.⁶ However, the Local Community Radio Act of 2010 ("LCRA")⁷ specifically provides that FM translator stations, FM booster stations and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.

Significantly, the very document cited by Hendee⁸ explains the requirements.

"An interfering FM translator station must remedy the interference or cease operation. The Commission has interpreted this rule broadly. It places no geographic or temporal limitation on complaints. It covers all types of interference. The reception affected can be that of a fixed or mobile receiver."⁹

The Commission goes on to state that "We conclude that it is appropriate to handle complaints in a manner similar to that used to handle complaints of interference caused by FM translators."¹⁰ Accordingly, Hendee's conclusion that low-power FM stations are not secondary services and are not limited by interference to full power FM stations under precedent set for FM translators is simply wrong.

⁶ Opposition, pp.3-4

⁷ Pub. L No 111, 124 Stat. 4072 (2011).

⁸ *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fifth Order on Reconsideration and Sixth Report and Order*, 27 FCC Rcd 15402 (2012) ("*LPFM Sixth Report and Order*").

⁹ *Id.* at 15431. (footnotes omitted)

¹⁰ *Id.* at 15432

The recent EMF experience with a Channel 294 translator makes it obvious that operation of the proposed Hendee facility will, in fact, cause interference to the reception of the WNKR signal. Grant of a construction permit to Hendee will do a disservice to all concerned. If Hendee constructs the facility and begins operation, there will be interference to reception to WNKR. Based on the EMF experience, listeners will complain, and Hendee will have to cease operation after having spent the money to construct. WNKR, for its part, will have to receive the listener complaints and expend resources to bring those complaints to the attention of the Commission and Hendee. The Commission will have expended its resources granting the construction permit and then requiring Hendee to discontinue operation. Finally, the public, WNKR listeners, will suffer interference for some period of time until the matter is resolved.

For the above reasons, the Commission is urged not to grant the captioned application.

Respectfully submitted,

GRANT COUNTY BROADCASTERS,
INCORPORATED

By: Robert L. Olender / MR
Robert L. Olender
Its Attorney

Koerner & Olender, P.C.
11913 Grey Hollow Court
North Bethesda, MD 20852

(301)468-3336

January 13, 2014

AFFIDAVIT


I, Jeffrey K. Ziesmann hereby declare under penalty of perjury that I am the General Manager and Chief Executive Officer of Grant County Broadcasters, Incorporated, licensee of FM station WNKR at Williamstown, Kentucky (FCC Facility ID #24817) and that the following statements are true to the best of my information concerning application BNPL-20131021ABP for new LPFM service on channel 294 at Wilmington, Ohio and WNKR, licensed to Williamstown, Kentucky and transmitting from our licensed facilities north of Dry Ridge, Kentucky,

What follows is my response to the opposition to our petition to deny the application referenced above for new LPFM service at Wilmington, Ohio:

- 1) WNKR is not, strictly speaking, simply a 1.8 kilowatt station. We are a class A FM station, which is 6 kilowatts at 300ft HAAT or the equivalent. Like literally thousands of other FM stations who actually understand FM propagation characteristics, we have correctly identified height as being more important than power. The fact that this 50% increase in HAAT comes at the expense of 70% of the ERP for a class A station indicates that The Commission recognizes height as being more important in determining coverage as well. As such, our license specifies 1.8kw ERP at 607ft HAAT, quite tall for our class of station. Even more important, the absence of co-channel interference, as my first affidavit states, is the most important factor of all. We know of other class A FM stations that are also receivable at substantial distances for the same reasons.
- 2) Channel 294, in our area, was occupied by class B WSRW-FM at Hillsboro Ohio from 1962 to the end of 2007. That means that WSRW-FM enjoyed full class B protection on channel 294 from the dawn of FM viability to seven years ago. Channel 294 was therefore well-protected when we commenced operations on it in early 2008, and this protection from primary facility interference remains largely intact due the spacing between us, a co-channel FM in Dublin (over 100 miles from us) and a first adjacent class B FM at Greenville, Ohio. Therefore, it is not surprising that reception of WNKR is possible at significant distances to the north. It takes very little signal to be useable on modern receivers in the absence of terrain obstructions and/or co-channel interference.
- 3) Their response to our petition alleges "imaginary" users. Not only do we have the names and addresses of the listeners at the locations in question, which I have attached to this affidavit, the response fails to take into account favorable terrain situations between our transmitter and these listeners that would allow reception, or the quality of the receiving equipment and receiving antennas these listeners may be using, both of which can extend any station's signal range substantially.
- 4) WNKR does not claim to put a signal into the areas in question that is substantial in strength. On the contrary, our signal that far out is both spotty and weak. It is a tribute to our programming and our presentation that these listeners are willing to tolerate these less than ideal conditions. This makes the Wilmington proposal all the more problematic. This is a co-channel proposal. As our signal into these areas is weak, it will take very little signal from the proposed LPFM to completely obliterate it. FM receivers have a characteristic (and specification) called the capture ratio. In the presence of two co-channel stations, this is how much stronger one signal has to be than the other for the receiver to "choose" the stronger signal and completely reject the weaker one. At some of the submitted locations, the LPFM would certainly obliterate our signal. At others, a directional receiving antenna might be required to get a stationary receiver to

"choose" our signal. At still others neither station will be dominant with an un-useable hash or rapid switching back and forth being the result. And of course, all car receiving antennas are non-directional. This, in areas where listeners currently get a useable signal.

- 5) The applicant may not especially like the fact that we have listeners in the area they propose to serve, but we have had nearly 6 years of interference free operation to the north to gather them in. The law does not require that there be hundreds of them or that they be within a certain geographic boundary. On the contrary, we are charged as a licensee with putting the highest quality programming on the air possible and to be of service to the largest group of listeners possible. Despite the mocking tone of their response, the fact that these listeners exist is proof that we are doing the job our license charges us with, and doing it well.
- 6) The interference of the proposed LPFM extends considerably south and east of Wilmington proper and will interfere with many WNKR users that are considerably closer to our transmitter than the distance between it and Wilmington proper and who have received us for years. This point is ignored in their response.
- 7) The law does in fact consider LPFM service to be secondary, and prescribes the same remedy for LPFM services and translators in the case of interference to a primary station. That remedy is proof of regular use by the listeners of the interfered with station. We meet that standard of proof and as such this LPFM cannot operate long-term as proposed. Hence, the history of interference in the same areas from the Mason translator is relevant. It means that, if this proposal is granted, some WNKR listeners will experience an interruption in their reception for the second time in 2 years. It also means that we will, also for the second time in 2 years, have to bear all of the expenses of documenting the same listeners twice. The FCC is aware of the first incident and therefore is aware that our signal is used regularly at these locations. As such, it can grant us relief.
- 8) WNKR is the LP2 primary EAS station for our region. Every county that we have documented listeners in is programmed into our equipment to receive emergency and weather bulletins immediately. Some of these listeners, not being able to receive us any longer, may be denied this vital information and there is no guarantee that the service from the LPFM would be a viable replacement in their location.
- 9) Granting our petition to deny will impose no hardship on the population of Wilmington. There is one AM and one FM primary station licensed to Wilmington, and there is near city-grade service from an FM in nearby Washington Court House. Finally, there is additional service from many stations in 3 surrounding major markets.


Jeffrey K. Ziesmann


1/7/14

REGULAR USERS OF WNKR LOCATED
WITHIN PROPOSED SERVICE AREA OF OR WHO WOULD RECEIVE HARMFUL INTERFERENCE
FROM THE PROPOSED WILMINGTON OHIO LPFM

1. Mike Wiles
3799 Fischer Rd.
Clarksville, Ohio 45113
(937) 725-0931
Regular user for 4 years
Listens on his farm property 10 miles south of Wilmington

2. George Seibert
3299 Bolender
Bethel, Ohio 45106
(513) 214-2864
Regular user for 5 years
Listens on commuter route from Bethel to Wilmington, Ohio

3. Mike Handley
1267 McGuffy Lane
Batavia, Ohio 45103
(513) 752-1667
Regular user for 10 years
Listens on commuter route from Batavia to Wilmington; also listens regularly in West Chester, Ohio

4. Jason Grooms
13281 Blake-Grant Rd.
Mt. Orab, Ohio
(513) 623-3875
Regular user for 1 year
Truck driver. Listens on his route which covers Clermont, Brown and Highland counties

5. Sherry Arrigo
320 North Union
Bethel, Ohio 45106
(513) 734-3993
Regular user for 16 years
Listens at home

6. Teddy Combs
4267 Long Lake Dr.
Batavia Ohio 45103
(513) 430-1947
Regular user for 2 years
Listens on his truck route from Blanchester, Ohio to Eastgate (Batavia)

7. Bob Nester
2922 Moore Rd.
Bethel, Ohio 45106
(513) 734-2104
Regular user for 4 years
Listens on his daily commuter route from Bethel to Mason, Ohio

8. Brent Caldwell
49 Williams Dr.
Georgetown, Ohio 45121
(937) 378-1625
Regular user for 5 years
Listens in Georgetown, Ohio

9. Rob Mitchell
6559 Goshen Rd.
Goshen, Ohio 45122
(513) 415-4641
Regular user for 4 years
Listens on his commuting route from Goshen to Milford, Ohio

10. Billy Atkins
9827 Dallasburg Rd.
Loveland, Ohio 45142
(513) 282-5351
Regular user for 3 years
Listens on commuter route between Loveland and Williamsburg, Ohio

11. Lorrie Craig
3523 Trovillo
Morrow, Ohio 45152
(513) 933-9393
Regular user for 1 month
Listens on commuting route from Morrow to Evendale, Ohio

12. Larry Miller
1689 Woodville Pk.
Loveland, Ohio 45140
(513) 722-2577
Regular user for 5 years
Listens on commuting route to Lebanon, Ohio

13. Steve Lema
1687 Maplewood Dr.
Lebanon, Ohio 45036
(513) 383-2763
Regular user for 1 year
Listens between Cincinnati and Dayton. Reports good reception in Waynesville, Ohio

14. Chris Gabbard
3293 Musgrow Rd.
Williamsburg, Ohio 45171
(513) 374-2065
Regular user for 10 years
Listens from Williamsburg to Cincinnati, Ohio

15. Jamie McAllister
13112 U.S. Route 68
Bethel, Ohio 45106
Regular user for 10 years
Listens commuting from Bethel to South Lebanon, Ohio

16. Earl Gorman
622 Boyd Ave.
West Union, Ohio 45693
(937) 217-3844
Regular user for 2 months
Listens commuting from West Union to Batavia, Ohio

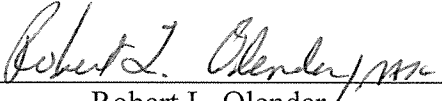
17. Phil Barias
4226 Mt. Carmel- Tobasco Rd.
Cincinnati, Ohio 45255
(513) 515-2691
Regular user for 6 months
Listens from Cincinnati to Adams County, Ohio

18. Eric Kelso
1595 Locust St.
Moscow, Ohio 45153
(513) 405-5707
Regular user for 1 year
Listens on his delivery route from Moscow to Amelia, Ohio
19. Kelly Blake
5023 Mason-Morrow Rd.
Morrow, Ohio 45152
(513) 899-2019
Regular user for 10 years
Listens on commuting route from Morrow to Mason, Ohio
20. Mark Kramer
8608 Harrison Rd.
Cleves, Ohio 45002
(513) 646-1721
Regular user for 2 years
Listens on commuting route from Cleves to Monroe, Ohio
21. Tim Shroeder
7524 Oak Grove Rd.
Georgetown, Ohio 45121
(937) 378-6352
Regular user for 1 year
Truck driver. Route between Georgetown and Monroe, Ohio
22. Ken Markham
12353 Gainesway
Walton, Kentucky 41094
(859) 493-5165
Regular user for 13 years
Listens in his car regularly in Blue Ash, Ohio
23. Denny Richter
9600 Allegro Ct.
Loveland, OH 45140
(513) 683-9286
Regular user for 16 years
Listens on his commuting route from the Symmes Township line on Montgomery Rd.
to Kings Mills (Kings Island), Ohio

CERTIFICATE OF SERVICE

I, Robert L. Olender, do hereby certify that a copy of the foregoing Reply to Opposition to Petition to Deny was served this 13th day of January, 2014, via first class US mail upon the following:

Jeffrey D. Southmayd, Esq.
Southmayd & Miller
4 Ocean Ridge Boulevard South
Palm Coast, FL 32137
Counsel for Hendee Broadcasting, Inc.


Robert L. Olender