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SEP 3 2010

Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
11th Floor
Arlington, VA 22209

Re: M & M Broadcasters, Ltd.
KLRK(AM), Mexia, Texas
Facility Identification Number: 21493
File Number: BP-20100514ABJ

Dear Ms. Crump:

This is in reference to the referenced application (File Number: BP-20100514ABJ) of M & M Broadcasters, Ltd ("M & M"), the licensee of radio station KRLK(AM), Mexia, Texas (the "Application"). The Application proposes to the move KRLK(AM)'s transmitter site (29 kilometers), increase its day power (from 500 watts to 2.5 kilowatts), reduce its nighttime power (from 128 watts to 72 watts) and change its daytime and nighttime antenna system (from nondirectional to directional). An initial review of the Application reveals several deficiencies and discrepancies, which M & M must correct before the staff can complete the processing of the Application.

Violation of Section 73.37(a) and 73.182(q). A preliminary engineering study of the Application reveals that the new KOKE(AM) measurements are not valid as they appear to be taken from KOKE(AM) operating out of operating tolerance.¹ Specifically, M & M analyzes the KOKE(AM) daytime measurements to be 250 mV/m/km on the 5° radial and 151 mV/m/km for the 15° radial. However, KOKE(AM) is authorized a daytime radiation of 141.16 mV/m/km on the 5° radial and 121.87 mV/m on the 15° radial.² Without using the KOKE(AM) measurement data, we found that the proposal is in violation of Section 73.37(a) of the Commission's Rules in that the proposed 0.5 mV/m and 0.25 mV/m contours respectively overlap the 0.25 mV/m and 0.5 mV/m contours of first-adjacent channel station KOKE(AM), Pflugerville, Texas, in violation of Section 73.37.³ In addition, the proposal enters and raises the RSS of co-channel station WALG(AM), Albany, Georgia, in contradiction of Section

¹ See 47 C.F.R. 73.62.

² Prior to taking the measurement, M & M should have verified that KOKE(AM) was operating in accordance with its license.

³ Had the KOKE(AM) measurement data been accepted, the proposed contours still caused prohibited contour overlap to KOKE(AM) and KLRK(AM).

Section 73.182(q) of the Rules. Specifically, the existing 25% RSS of station WALG(AM) is 3.80 mV/m⁴ and the proposed limit of 0.966 would raise it to 3.92 mV/m.

Environmental Certification. In Section III-A, Item 11 of the Application, M & M certifies that “the proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306,” *i.e.*, that the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments. However, Exhibit 19 to the Application contains the following paragraph:

The site was researched on the National Park Service web site. There is no record on the National Register of Historic Places within nine miles of the proposed site. There is no listing on the Texas Historical Commission nor designated marker for the site. There is no listing for the site in the “Culturally Unidentifiable Native American Inventory database.” The site was researched on the U.S. Fish and Wildlife Service web site and is not listed as a wetland or wildlife refuge. The site is not designated as a National Park Service or Fish and Wildlife Wilderness. The site is not in or near a National Forest Service Wilderness. The appropriate form 620 and other notifications are being filed at this time by the applicant.

We are concerned that the application may have both prematurely certified that the proposal was categorically excluded from environmental processing, as the certification should not have been made at least until the evaluation of the effects of the proposal on historic properties beginning with the filing of the FCC Form 620 had concluded.⁵ Additionally, we are concerned that M & M consult the proper sources for determining the environmental impact of the Application. For example, we are uncertain that the “Culturally Unidentifiable Native American Inventory database” contains a comprehensive listing of all properties significant to federally recognized Indian tribes, as does the Commission’s Tower Construction Notification System⁶ and the Exhibit makes no reference regarding endangered or threatened species or habitats per Section 1.1307(a)(3) of the Rules.

In order to facilitate the completion of the environmental review, we are attaching an environmental checklist, taken from the Commission’s internet site, which lists the premier sources which applicants should consult when evaluating the environmental effects of their proposals. We will withhold action on the Application to provide M & M to amend Exhibit 19 to provide a specific representation with respect to each of the environmental criteria specified in Section 1.1307(a)(1)-(8) of the Rules. We will NOT at this time require that M & M submit

⁴ The existing 25% RSS of WALG(AM) consists of the following: WXVI(1.5765 mV/m); WFBR(1.5151 mV/m); WZRX(1.1539 mV/m); TGXC(1.1324 mV/m); YNAW(1.095 mV/m); KMIC(1.0062 mV/m); WPVL(1.0058 mV/m); WNTS(0.9938 mV/m); XECP-Accepted (0.9782 mV/m); WKTP(0.9726 mV/m); and WIOL (0.9689 mV/m). It is noted that the existing 25% RSS of WALG(AM) could increase to 3.95 mV/m pending acceptance of Mexican station XEVOZ(AM) on CL20090925 by the International Bureau and remove the 73.182 violation. Any question regarding the status of XEVOZ(AM) must be referred to George Fehlner of the International Bureau at (202) 418-2197.

⁵ It is unclear what M & M means when it states that “other notifications” were “being filed.”

⁶ See http://wireless.fcc.gov/outreach/index.htm?job=tower_notification.

supporting documentation for each of those criteria; its specific representation and a list of the source(s) consulted for each category will be sufficient.

Further action on the Application will be withheld for ninety (90) days from the date of this letter in order to provide an opportunity for M & M to file a curative amendment addressing each of the matters discussed above. Failure to respond or file an amendment within this time period will result in the dismissal of the application pursuant to Section 73.3568 of the Rules.

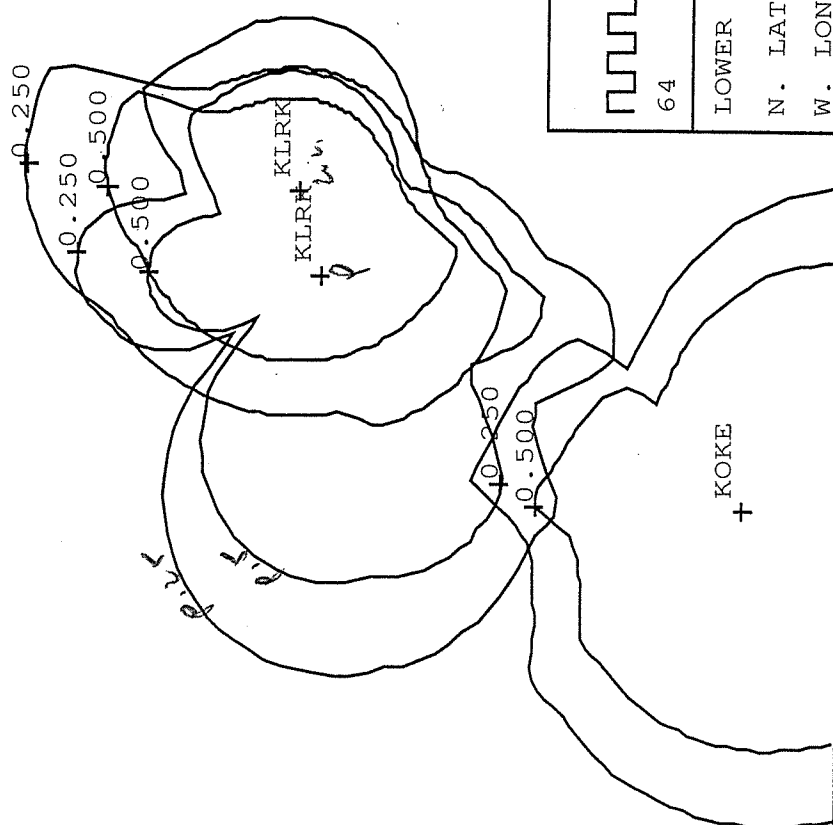
Sincerely,



Son Nguyen
Supervisory Engineer
Audio Division
Media Bureau

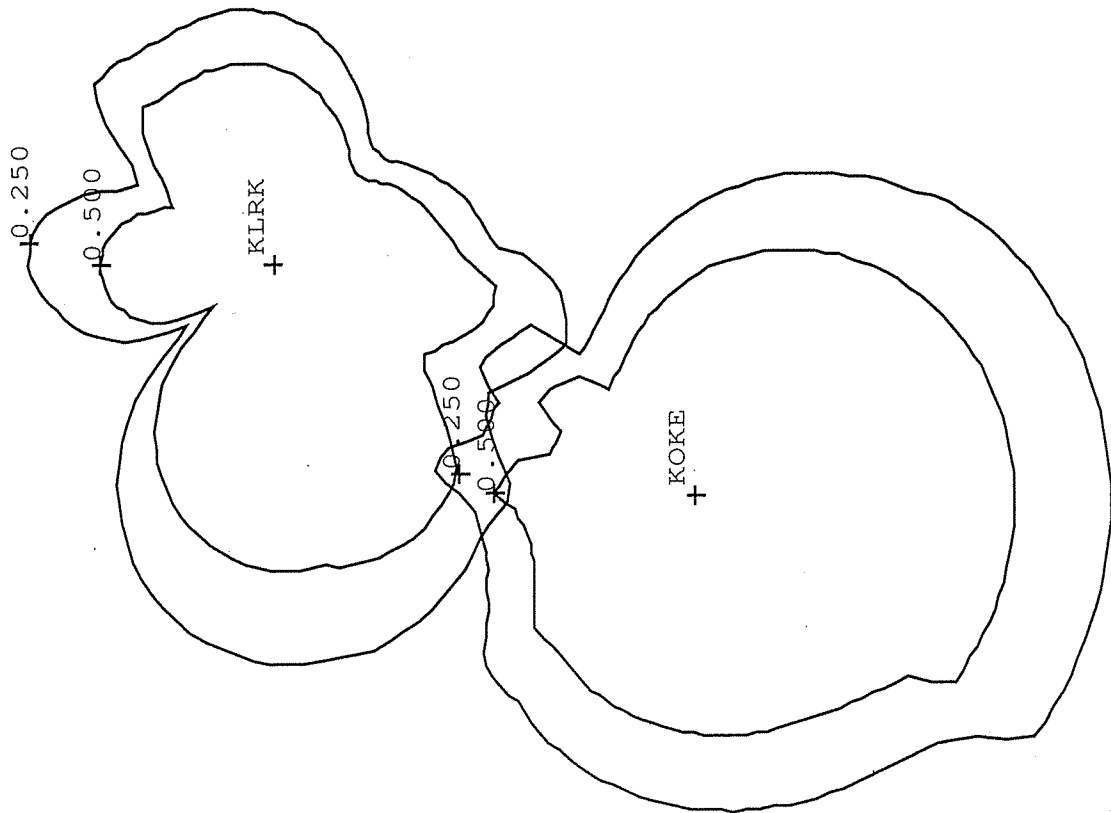
Enclosures

cc: M & M Broadcasters, Ltd.
Charles W. Staples



no more but
acceptable
M-3

KILOMETERS		ALBERS	
64	0	32	64
LOWER LEFT COORDS:		DATE: 9-AUG-10	
N. LAT.: 30 00 00		ENGINEER:	
W. LONG.: 100 00 00		JOB ID.	



with measurements

new overlap
with measurements
mms.

KILOMETERS				ALBERS			
64	0	32	64	128	192		
LOWER LEFT COORDS:				DATE: 9-AUG-10			
N. LAT.: 29 00 00				ENGINEER:			
W. LONG.: 99 00 00				JOB ID.			

FCC ENVIRONMENTAL ASSESSMENT

Applicant: _____ FCC File No.: _____

The Spectrum and Competition Policy Division, Wireless Telecommunications Bureau sends “deficiency letters” to individual licensees and applicants, including tower owners, who have submitted environmental assessments (EAs) with applications (*i.e.*, a filed FCC Form 601 or FCC Form 854) when the EA submitted is insufficient or lacks necessary documentation.

The following checklist is now used by the staff as an attachment to each deficiency letter to inform the licensee, applicant, or tower owner (collectively, “Applicant”) concerning compliance with 47 C.F.R. § 1.1307 of the Commission’s rules. In addition to compiling this information, Applicants are required to comply with all of the Commission’s environmental rules, including 47 C.F.R. § 1.1311 (*i.e.*, “environmental information to be included in the environmental assessment (EA)”), to determine whether a proposed facility may have significant effect on the environment.

Pursuant to 47 C.F.R. § 1.1307, this EA provides insufficient information regarding the proposed facility’s compliance with the following NEPA requirements:

_____ **(a)(1) will be located in an officially designated wilderness area**

Applicant provided insufficient information for the Commission’s staff to determine whether the proposed facility satisfies § 1.1307(a)(1).

If the proposed facility would not be located in an officially designated wilderness area, provide an explanation of how the applicant determined that the proposed facility would not be located in an officially designated wilderness area. Applicant should cite specifically to the sections of the relevant databases, maps, references, or information from the relevant government agencies (*e.g.*, Department of the Interior).

If the proposed facility would be located in an officially designated wilderness area, provide copies of all approvals, permits, or grants from the relevant government agencies approving the proposed antenna structure (*e.g.* Department of the Interior).

_____ **(a)(2) will be located in an officially designated wildlife preserve**

Applicant provided insufficient information for the Commission’s staff to determine whether the proposed facility satisfies § 1.1307(a)(2).

If the proposed facility would not be located in an officially designated wildlife preserve, provide an explanation of how the applicant determined that the proposed facility would not be located in an officially designated wildlife preserve. Applicant should cite specifically to the sections of the relevant databases, maps, references, or information from the relevant government agencies (*e.g.* Department of the Interior).

If the proposed facility would be located in an officially designated wildlife preserve, provide copies of all approvals, permits, or grants from the relevant government agencies approving the proposed antenna structure (e.g. Department of the Interior).

_____ **(a)(3) may affect listed threatened or endangered species or designated critical habitats; or is likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats**

Applicant provided insufficient information for the Commission's staff to determine whether the proposed facility satisfies § 1.1307(a)(3).¹

_____ **If no listed² or proposed³ threatened or endangered species or designated or proposed critical habitats⁴ are present in the county or counties where the "action area"⁵ is located:** Explain the basis for the applicant's determination that there are no listed or proposed threatened or endangered species or designated or proposed critical habitats within the county (or counties) of the project's action area and that there would be no effect on listed or proposed threatened or endangered species or designated or proposed critical habitats within the county (or counties) of the project's action area. Provide the materials (with citations) that formed the basis for this determination (e.g., maps or lists from relevant U.S. Department of the Interior, Fish and Wildlife Service (FWS) databases). If the applicant received a letter from FWS indicating that there would be no effect, provide a copy of the FWS letter so indicating.

_____ **If listed or proposed threatened or endangered species or designated or proposed critical habitats *are present* in the county or counties where the "action area" is located and would not be affected by the proposed antenna structure:** Explain how the applicant determined that there would be no effect on listed or proposed threatened or endangered species or designated or proposed critical habitats within the county (or counties) of the project's action area. Provide the materials (with citations) that formed the basis for this determination (e.g., maps or lists from relevant U.S. Department of the Interior, Fish and Wildlife Service (FWS) databases).

If the applicant received a letter from FWS indicating that there would be no effect, provide a copy of the FWS letter so indicating.

¹ Applicants who need to consult with the United States Fish & Wildlife Service regarding these matters should be aware that they are consulting with that agency pursuant to Section 7 of the Endangered Species Act. Furthermore, the applicant is pursuing such consultation as a "designated non-Federal entity." Additional, important information about this process may be found at:

http://endangered.fws.gov/consultations/sec7_faq.html.

² "Listed species" are defined as any species of fish, wildlife or plant which has been determined to be endangered or threatened under section 4 of the Endangered Species Act.

³ "Proposed species" are defined as any species of fish, wildlife or plant that has been proposed in the Federal Register to be listed under section 4 of the Act.

⁴ "Critical habitat" is defined in Section 3 of the Endangered Species Act.

⁵ U.S. Fish & Wildlife Service defines an action area as "all areas to be affected, directly or indirectly, by the federal action and not merely the immediate area involved in the action." See 50 C.F.R. §402.02(d). For example, an action area would include the site of the proposed antenna structure, its immediate vicinity, and any roads to be constructed to the tower site.

If the applicant did not receive a letter from FWS indicating that there would be no effect, provide a copy of any informal biological assessment prepared by a biologist supporting the applicant's "no effect" determination. Provide the name(s) and qualifications of the biologist(s) who prepared the biological assessment along with any FWS staff who may be familiar with its contents.⁶

_____ If the proposed antenna structure may affect, but is not likely to adversely affect, listed or proposed threatened or endangered species or designated or proposed critical habitats in the action area: Provide a letter from FWS concurring with the applicant's informal biological assessment. If any measures are proposed to mitigate any effects on species or habitats, the assessment must outline those measures with FWS concurrence.

_____ If the proposed antenna structure may affect, and is likely to adversely affect, listed or proposed threatened or endangered species or listed or proposed designated critical habitats in the action area: Prepare a formal biological assessment as outlined in 50 C.F.R. § 402.01 *et seq.* The applicant should provide the formal biological assessment to the Federal Communications Commission for formal consultation with the FWS.

_____ (a)(4) may affect districts, sites, buildings, structures or objects significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places

_____ For proposed facilities that would have no effect or no adverse effect on historic properties, provide a letter from the relevant State Historic Preservation Officer (SHPO) to the applicant or its consultant regarding whether the proposed antenna structure may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible, for listing, in the National Register of Historic Places (historic properties).

If you do not have a letter from the SHPO, provide documentation showing that the applicant complied with the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (NPA), 20 FCC Red 1073 (2004), *See* 47 C.F.R. §1.1307(a)(4), Part 1 Appendix B. *See also* <http://wireless.fcc.gov/siting/npa.html>.

If the proposed facility would come within an Exclusion under Section III of the NPA, provide a statement describing why the facility is excluded.

If the proposed facility would have no effect on historic properties, provide the date the Applicant filed its FCC Form 620 or FCC Form 621 with the SHPO, showing that the 30-day period outlined in Section VII.B.2. of the NPA has expired.

If the proposed facility would have no adverse effect on historic properties, provide the date the Applicant filed its FCC Form 620 or FCC Form 621

⁶ If available, provide information about post-high school formal education including degrees held, area(s) of expertise, years of experience, and membership in any relevant professional accreditation organizations.

with the SHPO, showing that the 30-day period outlined in Section VII of the NPA has expired. The Applicant should also document the date it submitted the FCC Form 620 or FCC Form 621 to the FCC for a 15-day review period (for material submitted electronically) or a 25-day review period (for material submitted by other means), pursuant to Section VII.C.2. of the NPA.

_____ **If the proposed facility would have an adverse effect on historic properties,** provide a copy of the Memorandum of Agreement (MOA) executed by the Applicant, the Federal Communications Commission, the SHPO, and the Advisory Council on Historic Preservation, if applicable, pursuant to Section VII.D.4. of the NPA.

_____ **For all proposed facilities,** in addition to the SHPO letter, other documentation of compliance with the NPA, or MOA, provide a copy of the Applicant's notification to potentially affected Indian tribes through the FCC Tower Construction Notification System (TCNS) or documentation of other reasonable and good faith efforts to identify and contact federally recognized Indian tribes and Native Hawaiian organizations, and a statement showing compliance with the procedures outlined in Clarification of Procedures for Participation of Federally-recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement, *Declaratory Ruling*, FCC 05-176, released October 5, 2005. See <http://wireless.fcc.gov/siting/>.

_____ **(a)(5) may affect Indian religious sites**

Applicant provided insufficient information for the Commission's staff to determine whether the proposed facility satisfies § 1.1307(a)(5).

Provide an explanation of how the applicant determined that the proposed facility would not affect Indian religious sites. Provide documentation of the applicant's good faith efforts to determine whether the proposed antenna structure may affect any Indian religious sites, including any archeological effects on Indian burial mounds. Attach copies of any letters or studies completed by archeologists for the proposed antenna structure. Include reference to any databases, maps, or other sources consulted to identify Indian Tribes whose religious sites might be affected. Attach copies of all correspondence the applicant or its consultant sent to or received from an Indian Tribe regarding the proposed antenna structure, other than correspondence that the Tribe has asked to maintain confidential.

The FCC recognizes that Indian Tribes, as domestic dependent nations, exercise inherent sovereign powers over their members and territory. Applicants consulting with tribal authorities are acting as delegates of the FCC, which has a government-to-government relationship with tribes. Tribal authorities may request FCC participation in consultation on any matter at any time. Any information regarding historic properties or religious or sacred sites to which an Indian Tribe attributes significance may be highly confidential, private, and sensitive, and applicants should respect the wishes of the Tribe with respect to the treatment of such information.

_____ **(a)(6) will be located in a floodplain**

Applicant provided insufficient information for the Commission's staff to determine whether the proposed facility satisfies § 1.1307(a)(6).

If the proposed facility would not be located in a flood plain, provide a copy of the section of the relevant map from the Federal Emergency Management Agency (FEMA) showing that the proposed antenna structure will not be located in a flood plain.

If the proposed facility would be located in a flood plain, provide a copy of the section of the relevant map from the Federal Emergency Management Agency (FEMA) showing the location of the proposed antenna structure. In addition, provide a copy of the building permit from the local jurisdiction where the proposed antenna structure will be located that shows the proposed structure is at least one foot above the flood plain. If the local jurisdiction does not issue building permits, provide independent verification that shows the proposed structure is at least one foot above the flood plain.

_____ **(a)(7) construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion)**

Applicant provided insufficient information for the Commission's staff to determine whether the proposed facility satisfies § 1.1307(a)(7).

If the proposed facility would not be located in a wetland, provide a copy of the section of a map showing that the proposed antenna structure will not be located in a wetland.

If the proposed facility would be located in a wetland, provide a copy of the permit the applicant or its consultant received from the U.S. Army Corps of Engineers permitting the construction of the proposed antenna structure.

_____ **(a)(8) will be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law**

Applicant provided insufficient information for the Commission's staff to determine whether the proposed facility satisfies § 1.1307(a)(8).

Provide documentation that the proposed antenna structure will not be located in a residential neighborhood, as defined by the applicable zoning law (relevant only where high intensity white lights are required by the Federal Aviation Administration (FAA)).

_____ **(b) would cause human exposure to levels of radiofrequency radiation in excess of Commission-adopted guidelines**

Applicant provided insufficient information for the Commission's staff to determine whether the proposed facility satisfies § 1.1307(b).