

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Cloverdale, Montgomery)
and Warrior, Alabama))
)

MM Docket No. 94-78
RM-8472
RM-8525

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TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

MOTION FOR A WAIVER OF AUTOMATIC STAY

North Jefferson Broadcasting Company, Inc. ("WLBI"), licensee of Station WLBI(FM), Channel 254C3, Warrior, Alabama, and Deep South Broadcasting Company ("WBAM"), licensee of Station WBAM-FM, Channel 255C, Montgomery, Alabama (hereinafter referred to as "WLBI/WBAM")^{1/}, jointly, by their counsel, hereby respectfully request the Commission to remove the automatic stay imposed on the allotments granted in the Report and Order, DA 95-2413, released December 11, 1995, by virtue of the petition for reconsideration filed by William P. Rogers ("Rogers"). In support hereof, WLBI/WBAM state as follows:

^{1/} On November 30, 1995, the Commission granted an application filed by North Jefferson Broadcasting Company, Inc., seeking Commission consent to assign the license of WLBI to North South Broadcasting Company, L.L.C. (BAPLH-950929GJ). See Public Notice of December 5, 1995. The assignment has not yet been consummated.

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Background

1. The above-captioned proceeding began with the filing of a petition for rule making by Pulaski Broadcasting, Inc. ("Pulaski"), on April 28, 1994. The petition sought the allotment of FM Channel 254A to Cloverdale, Alabama, as that locality's first local aural transmission service. By Report and Order, the Chief, Allocations Branch ruled that Channel 254A would not be allotted to Cloverdale because Pulaski failed to establish that Cloverdale qualifies as a community, as required by Section 307(b) of the Communications Act. Instead, the Chief, Allocations Branch granted the counterproposal of WLBI/WBAM requesting the substitution of Channel 254C1 for Channel 254C3 at Warrior, Alabama, and the downgrade of Station WBAM-FM from Channel 255C to Channel 255C1 at Montgomery, Alabama.

2. On January 11, 1996, Rogers, an unsuccessful party in this rule making proceeding, filed a Petition for Reconsideration of the Report and Order. In the Report and Order, the Chief, Allocations Branch rejected the counterproposal of Rogers for three reasons: (1) it was short spaced to the licensed site of Station WZLQ(FM), Channel 253C1, Tupelo, Mississippi, and was contingent on the relocation of Station WZLQ(FM) at the site for which the permit had expired for more than 30 days; (2) the allotment would not provide a city grade signal to the entire proposed community; and (3) Rogers' engineer used terrain enhancement to demonstrate

coverage of more than 80% of the city. In his Petition for Reconsideration, Rogers asserts that the Chief, Allocations Branch was wrong on all counts. WLBI/WBAM has separately filed an opposition to this petition for reconsideration.

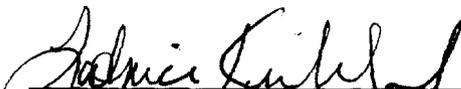
Argument

1. Section 1.420(f) of the Commission's Rules imposes an automatic stay on the Commission's decision pending action on the petition for reconsideration. Although the exact wording of the rule mentions only the authorization of a "different channel", WLBI/WBAM presume the same rule would stay the effect of an upgrade here for Warrior on Channel 254C1 and a downgrade to Channel 255C1 for Montgomery. The Commission, on its own motion, has proposed to eliminate this rule. See Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stay of Certain Allocations Orders, 10 FCC Rcd 7753 (1995). The Commission recognizes that non-meritorious petitions for reconsideration can result in substantial delay to licensees seeking to upgrade. Here, WLBI/WBAM has successfully demonstrated and the Commission has ruled that the channel substitutions are in the public interest. However, due to the Rogers petition for reconsideration which is based, in part, on a technically deficient allotment proposal, WLBI/WBAM is faced with the possibility of not being able to file its applications consistent with the Commission's ruling in this proceeding for an indefinite amount of time. WLBI/WBAM have made arguments which support denial of Rogers' pending proposal. WLBI/WBAM are willing

to bear the risk of an adverse decision in this rule making proceeding. Accordingly, WLBI/WBAM request the Commission to act expeditiously to remove the automatic stay and thereby enable WLBI/WBAM to file their Form 301 applications for the Class C1 channels. See Kingsville and Ingleside, Texas, 10 FCC Rcd 2766 (1995) (where the Commission removed the automatic stay under similar circumstances).

Respectfully submitted,

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February 15, 1996

CERTIFICATE OF SERVICE

I, Jacqueline Solomon, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that on this 15th day of February, 1996, copies of the foregoing "MOTION FOR A WAIVER OF AUTOMATIC STAY" were sent by first class United States mail, postage prepaid, to the following:

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