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MAR 3 1997

Federal Communications Commission  
Office of Secretary

March 3, 1997

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: Station KRGQ(AM)  
West Valley City, Utah  
MM Docket No. 96-201

Dear Mr. Caton:

Transmitted herewith on behalf of Group Communications, Inc., licensee of Station KRGQ(AM), West Valley City, Utah, are an original and six (6) copies of its Motion for Summary Decision in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,



Andrew S. Kersting  
Counsel for Group Communications, Inc.

Enclosures

cc (w/ encl.): Certificate of Service (by hand)

*OLG*

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**RECEIVED**

**MAR 3 1997**

Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
GROUP COMMUNICATIONS, INC. ) MM Docket No. 96-201  
)  
Order to Show Cause Why the License )  
for Station KRGQ(AM), )  
West Valley City, Utah, )  
Should Not Be Revoked )

To: Administrative Law Judge Joseph Chachkin

**MOTION FOR SUMMARY DECISION**

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March 3, 1997

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## SUMMARY

Station KRGQ was forced to suspend its broadcast operations on January 31, 1995, when its licensee, Group Communications, Inc. ("Group"), was evicted from its transmitter site. After timely requesting special temporary authority to remain silent, Group undertook substantial efforts to locate a new site and returned Station KRGQ to normal broadcast operations within approximately four months after the release of the *Hearing Designation Order* in this proceeding. Thus, there is no genuine issue of material fact concerning whether Group had the capability and intent to expeditiously resume the broadcast operations of Station KRGQ, and Issue 1 should be resolved in the licensee's favor by summary decision.

The record also establishes that Group did not violate Section 73.1750 of the Commission's rules because the licensee never intended to permanently discontinue the operation of Station KRGQ, and has taken the necessary steps to return the station to normal broadcast operations. Accordingly, this issue also should be resolved in the licensee's favor by summary decision.

Group also did not violate Section 73.1740 of the Commission's rules because Station KRGQ was never off the air without silence authority. The licensee filed its most recent request for an extension of its silence authority on February 20, 1996, and this request was never acted upon by the Commission's staff. Thus, Group's pending request for continued silence authority as well as its underlying license for KRGQ remain in good standing.

Nevertheless, even assuming, *arguendo*, the Presiding Judge were to take the position that Group's February 20, 1996, extension request expired by its own terms on August 20, 1996, Station KRGQ would have been off the air without silence authority for approximately only five weeks (from August 20 - September 27, 1996), which is a substantially shorter period than stations in other

cases where violations of Section 73.1740 were not sufficient to warrant license revocation. Indeed, to the extent the Presiding Judge were to determine that Group violated Section 73.1740 during the above five-week period, any such rule violation was inadvertent, of short duration, and does not reflect a “deliberate flouting of the Commission’s rules” sufficient to warrant revocation of the KRGQ license. Therefore, regardless of whether the Presiding Judge finds that Group violated Section 73.1740 of the rules, there is no genuine issue of material fact with respect to the ultimate issue of whether such a rule violation impacts adversely upon Group’s basic qualifications. Therefore, this issue also should be resolved in Group’s favor by summary decision.

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
GROUP COMMUNICATIONS, INC.	)	MM Docket No. 96-201
	)	
Order to Show Cause Why the License	)	
for Station KRGQ(AM),	)	
West Valley City, Utah,	)	
Should Not Be Revoked	)	

To: Administrative Law Judge Joseph Chachkin

**MOTION FOR SUMMARY DECISION**

Group Communications, Inc. (“Group”), licensee of Station KRGQ(AM),<sup>1</sup> West Valley City, Utah, by counsel and pursuant to Section 1.251 of the Commission’s rules, hereby requests that the issues designated against it in *Order to Show Cause and Hearing Designation Order*, 11 FCC Rcd 12252 (MMB 1996) (“HDO”), be resolved in the licensee’s favor by summary decision.<sup>2</sup> In support of this motion, the following is stated:

I.  
Procedural History

The HDO designated the following issues against Group:

- (1) To determine whether Group Communications, Inc. has the capability and intent to expeditiously resume the broadcast operations of KRGQ(AM), consistent with the Commission’s Rules.

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<sup>1</sup> Group has a request pending to change the call letters of Station KRGQ to KRGO.

<sup>2</sup> In accordance with Section 1.251(a)(2) of the rules, Group respectfully requests permission to file this motion for summary decision.

- (2) To determine whether Group Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Group Communications, Inc. is qualified to be and remain the licensee of KRGQ(AM).

*HDO*, at ¶5.

By *Order*, FCC 96M-229 (released October 2, 1996), the Chief Administrative Law Judge assigned the Presiding Judge to this proceeding and scheduled a hearing on the above issues for February 12, 1997. Following the issuance of an *Order*, FCC 96M-249 (released November 8, 1996), establishing dates for the exchange of hearing exhibits, notification of witnesses, and the time and place of the scheduled hearing, Group filed a Motion for Suspension of Procedural Dates on January 27, 1997. In its motion, Group noted that the Commission had recently granted its construction permit application which authorized the licensee to move to a new transmitter site and resume broadcast operations. Group reported that the construction of its new facilities had been completed and that it expected to commence program tests by January 31, 1997. By *Order*, FCC 97M-11 (released January 30, 1997), the Presiding Judge granted Group's motion and suspended all procedural dates in this proceeding, including the scheduled hearing.

## II.

### Facts Regarding the Operation of Station KRGQ

Station KRGQ suspended its broadcast operations on January 31, 1995, when Group was evicted from its transmitter site. Group notified the Commission of this fact on February 8, 1995, and stated that it was in the process of establishing operations at a new site on a temporary basis.<sup>3</sup>

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<sup>3</sup> See Letter dated February 8, 1995, from Harry C. Martin, Esq. (Group's FCC counsel) to William F. Caton.

Group noted that it intended to submit an FCC Form 301 application and a request for special temporary authority (“STA”) as soon as its plans were “finalized.” *Id.* Group also requested an STA to remain silent for 60 days. *Id.* The FCC granted Group’s request by letter dated February 13, 1995, and authorized the station to remain silent through May 13, 1995.<sup>4</sup>

On May 12, 1995, Group requested a 60-day extension of its silence authority. The licensee noted that although the station’s tower had been disassembled in preparation to move to a new transmitter site, unfavorable weather conditions resulted in the ground being too wet to accommodate the truck which was to remove the pieces of the steel tower structure.<sup>5</sup> By letter dated May 19, 1995, the FCC granted Group’s request to remain silent for three months from the date of its letter.<sup>6</sup>

On August 16, 1995, Group filed another request for a six-month extension of its silence authority. The licensee noted that it had been searching for a new transmitter site since being evicted from its site on January 31, 1995. Although Group had located a new site, it was still in the process of negotiating with the landowner. Group noted that it also was considering a change in the station’s community of license, which would require it to move to another site located approximately 25 miles

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<sup>4</sup> See Letter dated February 13, 1995, from Sharlene M. Lofty to Harry C. Martin, Esq. (Reply Ref. No. 8910-SML).

<sup>5</sup> See Letter dated May 12, 1995, from Harry C. Martin, Esq. to William F. Caton.

<sup>6</sup> See Letter dated May 19, 1995, from Sharlene M. Lofty to Harry C. Martin, Esq.

east, which also had been identified.<sup>7</sup> By letter dated August 24, 1995, the Commission granted Group's request to remain silent for six months from the date of its letter.<sup>8</sup>

On February 20, 1996, Group requested a further extension of its silence authority for an additional six-month period. The licensee stated that it had made arrangements for a new transmitter site in its present community of license, and had applied for a building permit the previous month.<sup>9</sup> The FCC never acted upon this extension request.

On October 10, 1996, Group filed a minor change application for Station KRGQ to move to its new transmitter site (File No. BP-961010AB). Following the dismissal of its application on November 27, 1996, for certain technical deficiencies,<sup>10</sup> Group amended its application on December 4, 1996, and it was ultimately granted on December 10, 1996.<sup>11</sup> Station KRGQ resumed normal broadcast operations on February 1, 1997,<sup>12</sup> and Group filed its license application for the station on February 13, 1997 (File No. BL-970213AC).

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<sup>7</sup> See Letter dated August 16, 1995, from Harry C. Martin, Esq. to William F. Caton.

<sup>8</sup> See Letter dated August 24, 1995, from Sharlene M. Lofty to Harry C. Martin, Esq. (Reply Ref. No. 8910-SML).

<sup>9</sup> See Letter dated February 20, 1996, from Harry C. Martin, Esq. to William F. Caton.

<sup>10</sup> See Letter dated November 27, 1996, from Joe Szczesny to Harry C. Martin, Esq. (Reply Ref. No. 1800B2-JBS).

<sup>11</sup> See Letter dated December 10, 1996, from Dennis Williams to Harry C. Martin, Esq. (Reply Ref. No. 1800B2-JBS), granting Group's petition for reconsideration, reinstating BP-961010AB *nunc pro tunc*, and granting the application.

<sup>12</sup> See Letter dated February 3, 1997, from Harry C. Martin, Esq. to William F. Caton.

III.  
The Designated Issues Should Be Resolved  
In the Licensee's Favor By Summary Decision

Summary decision is appropriate where there is no “genuine issue as to any material fact” for resolution at the hearing. *Webster-Fuller Communications Associates*, 3 FCC Rcd 6967, 6968 (Rev. Bd. 1988), *recon. denied*, 4 FCC Rcd 1438 (Rev. Bd. 1989). *See also* 47 CFR §1.251(d). As demonstrated below, a hearing no longer is warranted in this proceeding because there is no material issue of fact left to be resolved at such a hearing.

A. Group Has Always Had the Capability and Intent to Resume Broadcast Operations.

In *Cavan Communications*, 10 FCC Rcd 2873 (ALJ 1995), the subject station went off the air on March 29, 1991. The Mass Media Bureau (“Bureau”) released an *Order to Show Cause and Hearing Designation Order*, 8 FCC Rcd 8414 (MMB 1993), on November 30, 1993, which specified the same issues designated in this proceeding.<sup>13</sup> Thus, at the time the issues were designated for hearing, the station had been off the air for two years and eight months. Nevertheless, the ALJ found that the licensee had the capability and intent to expeditiously resume broadcast operations because the station went back on the air on March 18, 1994, slightly more than three and one-half months after the release of the hearing designation order. 10 FCC Rcd at 2876.

Similarly, in *Keyboard Broadcasting Communication*, 10 FCC Rcd 4489 (MMB 1995), the Bureau issued an *Order to Show Cause and Hearing Designation Order*, 9 FCC Rcd 101 (1993), directing the licensee to show cause why its license should not be revoked. The FCC's records

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<sup>13</sup> The hearing designation order also directed the Presiding Judge to determine whether, in the event license revocation was not warranted, a forfeiture should be assessed against the licensee pursuant to Section 503(b) of the Communications Act of 1934, as amended. 10 FCC Rcd 2873.

revealed that the station had been off the air since September 1, 1991, and the licensee's last request for silence authority had expired on July 16, 1993. Accordingly, the Bureau specified the same issues against the licensee which are the subject of this proceeding. 10 FCC Rcd at 4489.

After the case was certified to the Commission, the Bureau, acting pursuant to delegated authority, sent a letter to the licensee requesting information regarding its ability to resume broadcast operations within 90 days. The licensee responded by establishing that it had (i) prepaid rent on its antenna and studio site; (ii) prepaid hazard insurance; and (iii) obtained engineering services to assist in preparing the station's equipment to resume operations. The licensee also provided documentation establishing that it had opened a bank account in which it had deposited sufficient funds to return the station to the air, and later informed the Bureau that it had resumed broadcast operations. *Id.* at 4489-90. In light of the substantial efforts and resources expended by the licensee to return the station to on-air operation, as well as its successful resumption and continuing operation of the station, the Bureau terminated the proceeding without further action. *Id.*

In this case, the record establishes that Group always had the capability and intent to resume broadcast operations. The only reason Station KRGQ went off the air was because Group was evicted from its transmitter site. Group immediately began looking for a new site from which to commence operations on a temporary basis. The licensee had disassembled its tower as early as May 1995, but its efforts to move the steel structure were hampered by poor weather conditions. Although Group located a new site in August 1995, it could not reach an agreement with the landowner. After locating another site and applying for a building permit in early 1996, Group secured the use of its new site in February 1996. Group then filed a minor change application to move to the new site on October 10, 1996, less than two weeks after the *HDO* was released.

Although Group could not return Station KRGQ to on-air operation until its minor change application was granted, Group resumed normal broadcast operations on February 1, 1997, less than two months after the Commission's grant of its minor change application, despite the fact it had to construct its new facility in the middle of winter.

The facts outlined above establish that Group made substantial efforts to locate a new transmitter site after being evicted from its original site, and returned Station KRGQ to normal broadcast operations within approximately four months after the release of the *HDO*, which is approximately only two weeks longer than the amount of time approved of in *Cavan Communications*. Therefore, there is no issue of material fact concerning whether Group had the capability and intent to expeditiously resume the broadcast operations of Station KRGQ, and Issue 1 should be resolved in the licensee's favor by summary decision. *Cavan Communications*, 10 FCC Rcd 2873 (ALJ 1995); *Keyboard Broadcasting Communication*, 10 FCC Rcd 4489 (MMB 1995); *Hometown Media, Inc.*, 11 FCC Rcd 14344 (1996); *Webster-Fuller Communications Associates*, 3 FCC Rcd at 6968.

B. Group Did Not Violate Section 73.1750 of the Commission's Rules.

The record also establishes that Group did not violate Section 73.1750 of the Commission's rules because the licensee never intended to permanently discontinue the operation of Station KRGQ, and has taken the necessary steps to return the station to normal broadcast operations. *Cavan Communications*, 10 FCC Rcd 2873; *Keyboard Broadcasting Communication*, 10 FCC Rcd 4489; *Hometown Media, Inc.*, 11 FCC Rcd 14344. Therefore, this issue also should be resolved in the licensee's favor by summary decision.

C. Group Did Not Violate Section 73.1740 of the Commission's Rules.

Section 73.1740 of the rules prescribes minimum operating schedules for commercial broadcast licensees. Among other things, the rule requires that if a station is going to remain off the air for more than 30 days, the licensee must obtain authorization from the Commission to do so. 47 CFR §73.1740(a)(4). Commission authority to operate for less than the minimum amount required by Section 73.1740 is conferred by a grant of special temporary authority pursuant to Section 73.1635 of the rules. *See* 47 CFR §73.1635.

In this case, Group did not violate Section 73.1740 of the rules because Station KRGQ was never off the air without silence authority. The licensee filed its most recent request for an extension of its silence authority on February 20, 1996, and this request was never acted upon by the Commission. Thus, Group's pending request for further silence authority as well as the underlying KRGQ license remain in good standing. *Cf.* 47 U.S.C. §307(c)(3) (a station's license shall continue in effect pending any FCC hearing and/or final decision on an application for renewal of such license). Indeed, it has been a long-standing practice of the FCC's Audio Services Division to recognize the continuing validity of prior silence authorizations until such time as it acts on any pending STA request for further silence authority. Therefore, because Group's February 20, 1996, request for an extension of its silence authority was timely filed and the Commission has never acted on that request, there has been no violation of Section 73.1740 of the Commission's rules.<sup>14</sup>

Furthermore, even assuming, *arguendo*, the Presiding Judge were to take the position that Group's February 20, 1996, request for a further extension of its silence authority expired by its own

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<sup>14</sup> Although Group did not file its minor change application to move to its new site until October 10, 1996, it had no reason to file another request to extend its silence authority because, as stated above, the Commission had not yet acted on its pending request.

terms on August 20, 1996, this finding should not impact adversely upon Group's qualifications to remain the licensee of Station KRGQ. In *Cavan Communications*, the subject station had been off the air for two years and eight months at the time the hearing designation order was released. In determining whether the licensee had violated Section 73.1740 of the rules, the ALJ found that Cavan Communications committed four separate violations of the rule by going off the air without silence authority for two months (on two separate occasions), eight months, and nine months. 10 FCC Rcd at 2875. Nevertheless, in resolving the ultimate issue of whether the station's license should be revoked, the ALJ held that despite the repeated violations of Section 73.1740, license revocation was not warranted.<sup>15</sup> *Id.* at 2876.

Similarly, in *Hometown Media, Inc.*, 11 FCC Rcd 14344 (1996), the Bureau, in a license renewal proceeding, issued a *Hearing Designation Order*, DA 96-813 (released May 22, 1996), which specified issues similar to those in this proceeding.<sup>16</sup> The subject station went off the air due to financial problems on March 17, 1995. Although the licensee filed an STA to remain silent, the authority expired on February 16, 1996, and no further silence authority was requested. *See Hometown Media, Inc.*, 11 FCC Rcd 11413, 11414 (ALJ 1996). At the time the hearing designation order was released on May 22, 1996, the station had been off the air without silence authority for over three months.

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<sup>15</sup> The ALJ noted, however, that the repeated violations of Section 73.1740 of the rules were "wholly inexcusable," and imposed a forfeiture against the licensee in the amount of \$1,000. 10 FCC Rcd at 2876.

<sup>16</sup> The only difference was in the third issue, which sought to determine whether the subject license renewal application should be granted, rather than whether Hometown Media was qualified to remain a Commission licensee.

In acting upon the licensee's motion for summary decision, the ALJ found that Hometown Media violated Section 73.1740 of the rules, but concluded the following:

. . . [T]he evidence indicates that the rule violation was inadvertent and of short duration and not a deliberate flouting of the Commission's Rules. Under the circumstances, *the rule violation does not impact adversely upon the licensee's basic qualifications.*

*Id.* at 11417, ¶15 (emphasis added), citing *Video Marketing Network, Inc.*, 10 FCC Rcd 7611, 8613 (MMB 1995);<sup>17</sup> *Cavan Communications*, 10 FCC Rcd 2873.

To the extent the Presiding Judge may determine that KRGQ remained off the air without silence authority from August 20 to September 27, 1996, the station would have violated Section 73.1740 of the rules for approximately *only five weeks*, which is a substantially shorter period of time than the stations in *Cavan* (four separate violations, including periods of eight and nine months) and *Hometown Media* (three months), where the violations of Section 73.1740 were not sufficient to warrant license revocation. Therefore, any such rule violation was inadvertent, of short duration, and, as in *Hometown Media*, certainly does not reflect a “deliberate flouting of the Commission’s rules” sufficient to warrant revocation of the KRGQ license. *Cavan Communications*, 10 FCC Rcd 2873; *Hometown Media*, 11 FCC Rcd 14344. Thus, even assuming, *arguendo*, the Presiding Judge were to find that Group violated Section 73.1740 of the rules, there is no genuine issue of material fact with respect to the ultimate issue of whether the rule violation impacts adversely upon Group’s

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<sup>17</sup> In *Video Marketing Network*, the subject station was off the air without silence authority from December 1989, until it resumed broadcast operations on April 26, 1994. Although the Bureau assessed a forfeiture against the licensee in the amount of \$20,000 for a variety of rule violations, it granted the licensee's pending renewal application and application to assign the license to a third party.

qualifications to remain a Commission licensee. Therefore, this issue also should be resolved in the licensee's favor by summary decision.

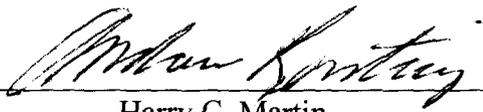
IV.  
Conclusion

As demonstrated herein, there is no genuine issue of material fact with respect to the issues designated in the *HDO* because Group (i) has expeditiously returned Station KRGQ to normal broadcast operations; (ii) never intended to permanently discontinue broadcast operations; and (iii) did not violate Section 73.1740 of the Commission's rules. Therefore, each of the issues should be resolved in the licensee's favor by summary decision. *Webster-Fuller Communications Associates*, 3 FCC Rcd at 6968.

WHEREFORE, in light of the foregoing, it is respectfully requested that the Presiding Judge GRANT this Motion for Summary Decision and RESOLVE the issues designated against Group Communications, Inc. in the *Order to Show Cause and Hearing Designation Order* in the LICENSEE'S FAVOR by summary decision.

Respectfully submitted,

GROUP COMMUNICATIONS, INC.

By:   
Harry C. Martin  
Andrew S. Kersting

Its Counsel

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March 3, 1997

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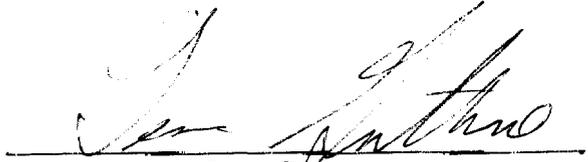
**DECLARATION**

I, Gene Guthrie, hereby declare and state as follows:

I am Vice President, a director and a stockholder in Group Communications, Inc., licensee of Station KRGQ(AM), West Valley City, Utah.

I have reviewed the factual statements contained in the accompanying Motion for Summary Decision. I hereby declare under penalty of perjury that the facts contained therein are true and correct to the best of my knowledge and belief.

Dated this 1 day of March, 1997.

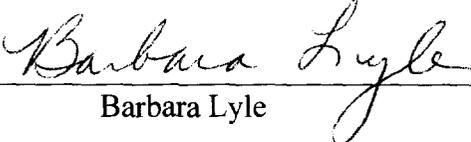
  
\_\_\_\_\_  
Gene Guthrie  
Vice President

**CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 3rd day of March, 1997, copies of the foregoing Motion for Summary Decision were hand delivered to the following:

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Barbara Lyle