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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
1998 Biennial Regulatory Review -- )  
Streamlining of Mass Media )  
Applications, Rules and Processes )

MM Docket No. 98-43

To: The Commission

## **REPLY TO JOINT OPPOSITION TO PETITION FOR RECONSIDERATION OF KNOX BROADCASTING GROUP, INC.**

Knox Broadcasting Group, Inc. ("Knox"), the permittee of WJRZ(AM), Toms River, New Jersey, by its attorneys, hereby replies to the Joint Opposition ("Opposition") to Knox's Petition for Reconsideration ("Petition") filed by The New York Times Electronic Media Company and Global Radio, L.L.C. (collectively, "Petitioners").

### **Introduction**

The Petitioners' objections to the Petition must be rejected as being totally without foundation. Petitioners oppose Knox's request for reconsideration because they claim that "it has nothing to do with [the above-referenced] proceeding."<sup>1/</sup> This could not be further from the truth. As discussed in more detail below, this proceeding has everything to do with Knox's pending application. Thus, Knox had every right to file its Petition because Knox is an interested party in

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<sup>1/</sup> See Opposition at 1.

the Streamlining proceeding and is entitled to the same relief that the other permittees received from the *Streamlining MO&O*. Consequently, Petitioners' Opposition should be dismissed.<sup>2/</sup>

### **Discussion**

Petitioners' Opposition is based on the erroneous assumption that the Commission's decision canceling Knox's construction permit for WJRZ(AM) has reached the point of finality upon which no appeal can be taken. Petitioners are wrong. As Knox emphasized in its Request for Waiver of Section 73.3598 of the Commission's Rules ("Waiver Request"), despite the fact that the Commission canceled the permit for WJRZ(AM),<sup>3/</sup> an appeal of that decision is currently pending before the United States Court of Appeals for the District of Columbia.<sup>4/</sup> Since an appeal of the Commission's decision remains pending, the decision to cancel the WJRZ permit is not "final."<sup>5/</sup> In fact, the Court of Appeals stayed the Knox appeal so that Knox could further pursue its administrative remedies under the Commission's new rules relating to the extension of construction permits.

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<sup>2/</sup> In addition, as stated at footnote 1 of Petitioners' Joint Opposition to Request for Waiver of Section 73.3598 of the Commission's Rules ("Waiver Request Opposition"), Petitioners have no interest in the Knox application if Knox agrees to construct its station on its expanded band channel, instead of on 1550 KHz, as originally proposed. Knox repeatedly has agreed in its waiver request and elsewhere to do exactly that, and hence the Petitioners objections are moot. *See* Knox's Reply to Waiver Request Opposition at 1-2 & n.1.

<sup>3/</sup> *See* September 14, 1995 letter decision of the Mass Media Bureau; *see also* Public Notice released September 22, 1995.

<sup>4/</sup> *See* Case No. 99-1059.

<sup>5/</sup> *See Memorandum Opinion and Order, 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules and Processes, FCC 99-267, MM Docket No. 94-149 (rel. October 6, 1999) at n.6 ("the Commission's denial or grant of construction permits or station licenses may be taken to the U.S. Court of Appeals for the District of Columbia").*

Petitioners also assert that the Petition should be dismissed as being “repetitious.”<sup>6/</sup> This assertion is absurd. In its Petition, Knox is requesting similar treatment to the other permittees who received relief from the *Streamlining MO&O*, so its permit can be reinstated and extended. Knox had every right to file the Petition, as Petitions for Reconsideration are permitted by Section 1.429 of the Commission’s Rules, and Knox was timely in doing so.<sup>7/</sup> The action which Knox seeks to have reviewed is one not before considered by the Commission - the extension of a one year grace period to certain permittees. The decision to exclude parties such as Knox from the application of this new grace period is one never before considered by the Commission. Hence, Knox’s Petition could not possibly be repetitious. Section 1.429 of the Rules states that “[a]ny interested person may petition for reconsideration of a final action in a proceeding.” Because of Knox’s situation and the fact that no final action has been taken on the WJRZ(AM) construction permit, Knox is an interested party and, therefore, has every right to file its Petition for reconsideration of the *Streamlining MO&O*. Other interested parties, having an interest similar to that of Knox, have also appealed the Commission’s decision.<sup>8/</sup> The existence of a class of permittees in situations similar to that of Knox

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<sup>6/</sup> See Opposition at 1.

<sup>7/</sup> Petitions for reconsideration shall be filed within 30 days from the date of public notice of such action. 47 C.F.R. § 1.429(d) (1988). In this case, the *Streamlining MO&O* was published in the Federal Register on October 22, 1999. Consequently, the Petition was timely filed.

<sup>8/</sup> On March 2, 2000, Central Florida Educational Television, Inc. (“CFET”) filed Comments Regarding Petitions for Reconsideration (“Comments”) stating that it fully agrees with Knox’s position. CFET also cited the comments of Calipatria Broadcasting Company and Land Rancho Palos Verdes Broadcasters, Inc., who also took the position that the Commission should “interpret the *Streamlining MO&O* to cover any permittee who holds a permit for which the cancellation has not become final.” See Comments at 5. Clearly, Knox is not alone in contending that the *Streamlining MO&O* improperly omitted a class of permittees from its scope.

demonstrates that this is not a unique issue already decided, but a broader policy matter needing resolution by the Commission.

Petitioners further argue that the Commission already concluded that relief was not warranted under the Streamlining proceeding, and that Knox failed to seek further review of this “ruling.”<sup>9/</sup> Petitioners’ conclusions are both completely wrong and irrelevant. Knox has, throughout the proceeding, challenged the limited application of the *Streamlining Order*’s new construction permit rules. Furthermore, once the *Streamlining MO&O* was released, Knox was entitled to file its Petition, as was every other interested party. The only decision made by the Commission, which held that the Streamlining rules did not apply to WJRZ(AM),<sup>10/</sup> was made with respect to the initial *Streamlining Order*, which, unlike the *Streamlining MO&O*, did not invite the filing of waiver requests or provide a one year grace period to all permittees. The changes in policy contained in the *Streamlining MO&O* changed the basis of the initial Commission conclusion that the *Streamlining Order* does not apply to WJRZ(AM). Therefore, Knox’s Petition requesting review of this new ruling is perfectly proper.

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<sup>9/</sup> See Opposition at 2-3.

<sup>10/</sup> See January 13, 1999 Letter to David D. Oxenford, Esq. from Linda Blair, Chief, Audio Services Division, Mass Media Bureau, Ref. 1800B3-PHD at n.5.

**Conclusion**

For the foregoing reasons, Knox requests that the Commission dismiss Petitioners' Opposition, grant Knox's Petition and reinstate the construction permit for WJRZ(AM), Toms River, New Jersey.

Respectfully submitted,

**KNOX BROADCASTING GROUP, INC.**

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Dated: March 6, 2000

**Certificate of Service**

I, Karleen S. Lamie, a secretary with the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that copies of the foregoing "Reply to Joint Opposition to Petition for Reconsideration of Knox Broadcasting Group, Inc." were mailed, first-class postage paid, this 6th day of March, 2000 to the following:

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