

Before the
Federal Communications Commission
Washington, DC 20554

MAR 14 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-155
Table of Allotments,)	RM-9082
FM Broadcast Stations)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle, and)	
Woodward, Oklahoma))	

To: Chief, Mass Media Bureau

**OPPOSITION TO MOTION FOR LEAVE TO
ACCEPT OPPOSITION TO
PETITION FOR RECONSIDERATION**

Ralph Tyler ("Tyler"), by his attorneys, hereby respectfully opposes the "Motion for Leave to Accept Opposition to Petition for Reconsideration" filed on February 28, 2001, by Chisholm Trail Broadcasting Co., Inc. ("Chisholm Trail"). In opposition thereto, the following is shown:

Chisholm Trail's attorney missed the critical filing deadline of February 27, 2001, for filing an opposition to Tyler's Petition for Reconsideration in the above-referenced proceeding. Chisholm Trail's attorney offers as an excuse that the pleading was ready for delivery to the FCC at 2:00 pm on February 27, 2001. Chisholm Trail further claims that the courier service did not pick up the pleading from the law firm's mail room and failed to timely deliver it to the FCC. According to Chisholm Trail's counsel, he first became aware of the missed filing deadline on February 28, 2001, and filed the pleading one day late. Chisholm Trail's attorney claims that he has established "good cause" for late acceptance. Unfortunately for Chisholm Trail, that is not the case. Neither Chisholm Trail nor its counsel has submitted a declaration from the courier

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service or the law firm's mail room employees (or from counsel, for that matter) explaining how Chisholm Trail and its law firm missed a critical filing deadline. Chisholm Trail's counsel apparently sent the package to the firm's mail room and turned his attention to other matters. He did not follow up to assure that the pleading was picked up in time for filing on February 27, 2001.¹ Chisholm Trail has not shown good cause for late filing. See, e.g., *Olive Branch, Mississippi*, 4 FCC Rcd at note 1 (Chief, Policy and Rules, 1989).

Whether or not the parties are prejudiced by Chisholm Trail's negligence is irrelevant to whether Chisholm Trail's paper should be considered. Tyler was constrained by Section 405 of the Communications Act of 1934, as amended, to meet the statutory 30-day deadline following public notice of the Commission's action. If Tyler missed the deadline, his petition could not have been considered. See, e.g., *Knoxville, Clinton, Sweetwater, Cleveland, LaFollette and Oneida, Tennessee*, 78 FCC 2d 1208 (1980). Fundamental fairness dictates that Chisholm Trail should be held to same standard as Tyler when observing filing deadlines. Chisholm Trail had ample time in which to file its pleading. The Report and Order (*Alva, Mooreland, Tishomingo, Tuttle and Woodward, Oklahoma*, DA 00-2885) was released December 22, 2000. Chisholm Trail knew, or should have known, that Tyler would seek reconsideration of the Report and Order. Tyler timely did so on January 29, 2001, and a copy was served on counsel for Chisholm Trail.² In sum, Chisholm Trail had nearly one month to prepare its pleading, yet it chose to wait until the last minute to send the pleading to the FCC. This seriously undercuts Chisholm Trail's "good cause" argument.

¹ Assuming that the pleading was delivered to counsel's mailroom, as claimed, at 2:00 p.m., counsel or the courier service would have had five (5) hours (until 7:00 p.m. when the FCC's offices close) to timely deliver the pleading to the FCC. Based on information and belief, there was no inclement weather or other legitimate reason to prevent the timely filing of Chisholm Trail's pleading.

² Public Notice of Tyler's petition was given February 12, 2001, in the Federal Register (66 Fed. Reg. 9849).

The law does not support Chisholm Trail. There has been no showing that the Commission acted in any manner constituting procedural error in giving notice of the filing of Tyler's petition that would constitute the "extraordinary circumstances indicat(ing) that justice would be thus served" by the entertainment of Chisholm Trail's late-filed paper. See *Gardner v. FCC*, 530 F. 2d 1086, 1092 (D. C. Cir. 1976); *Chapman Radio and Television Co., Inc.*, 46 RR 2d 752, 754 (1979); *Westinghouse Broadcasting Co., Inc.*, 75 FCC 2d 736, 46 RR 2d 1431, 1432 (1980).³

In light of the foregoing, and Chisholm Trail's failure to establish good cause for late filing its pleading styled "Opposition to Petition for Reconsideration" must be dismissed without consideration and Tyler's Petition must be treated as unopposed.

Respectfully submitted,

RALPH TYLER

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March 14, 2001

³ Tyler also notes that denial of Chisholm Trail's Motion will not leave Chisholm Trail without a remedy since it can pursue its rights against its counsel or the courier service in *fora* other than the FCC.

CERTIFICATE OF SERVICE

I, Angela Y. Powell, a paralegal in the law offices of Smithwick & Belendiuk, P.C., certify that on this 14th day of March, 2001, copies of the foregoing were mailed, postage prepaid, to the following:

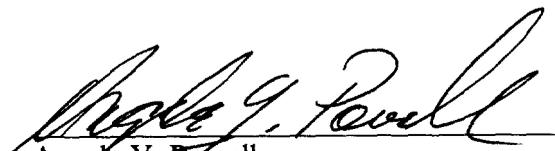
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