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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202)	MM Docket No. <u>00-169</u>
of the Commission's Rules)	
Table of Allotments)	RM-9953
For FM Broadcast Stations)	
(Oswego and Granby, NY))	

To: Chief, Mass Media Bureau

MOTION FOR STAY

Clear Channel Broadcasting Licenses, Inc. ("CCBL"), the licensee of WXBB(FM) (formerly WVOA(FM)), Facility ID No. 22134, DeRuyter, New York, by its attorneys, hereby submits this Motion for Stay, which respectfully requests that the Mass Media Bureau, in its discretion, stay the effect of the Allocations Branch's recent decision in the above-referenced matter (the "Order") pending disposition of the Petition for Reconsideration being filed concurrently by CCBL with the Allocations Branch. 1/

The *Order* (1) granted the request by Galaxy Communications, L.P. ("Galaxy") to amend Section 73.202(b) of the Commission's Rules to re-allocate Channel 288A from Oswego to Granby, New York; (2) specifies an alternate set of reference coordinates for that re-allotment which would block a timely filed application of CCBL to modify the transmitter site of WXBB, see FCC File No. BPH-20001106ABG (the "WXBB Modification Application" or "Modification Application") even though other

1/ See *Oswego and Granby, New York*, Report & Order, MM Docket No. 00-169 (Allocations, released September 21, 2001). Notice of this action was published in the Federal Register on October 9, 2001. CCBL seeks this stay from the Mass Media Bureau, rather than the Allocations Branch, because the *Order* also implicates the Audio Services Division.

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reference coordinates for Granby were readily available; and (3) requires CCBL to amend its pending Modification Application to specify a new site that would protect those alternate reference coordinates by December 5, 2001, or subject the Application to dismissal. Because failing to stay all three aspects of the *Order* pending resolution of the Petition would cause immediate and irreparable harm to CCBL and its efforts to improve WXBB's service to the public, this Motion should be granted.

Section 1.429(k) of the Commission's Rules specifies that the Commission, upon any showing of good cause, will stay the effectiveness of a rule change pending the resolution of a petition for reconsideration of that rule change. 2/ This request for stay more than satisfies this standard.

First, the Petition is likely to succeed on the merits. As detailed in the Petition, the *Order* is contrary to established Commission precedent, policy and procedural requirements, and disserves the public interest. Specifically, the *Order* applied the wrong standard with regard to resolving conflicts between rulemaking proposals and permit applications: it simply ignored the Commission's self-imposed obligation to accommodate, whenever possible, both a reallocation proposal and conflicting modification application through use of alternate reference coordinates for or a site restriction on the reallocation proposal. The *Order* also failed to explain how this case differed from dozens of other cases in which a site restriction or alternate reference coordinates were employed in order to allow two otherwise conflicting proposals to proceed. Moreover, the *Order* neglected the clear policy distinctions in

2/ 47 C.F.R. § 1.429(k).

favor of an actual, bona fide permit site versus a set of theoretical reference coordinates. Accordingly, it is highly likely that the Petition will succeed on its merits.

Second, failure to stay the effectiveness of the *Order* would cause irreparable injury to CCBL. The *Order* requires that CCBL immediately amend its pending Modification Application to protect the new Granby allotment parameters, including the *Order's* specified reference coordinates, or have its application dismissed. Of course, as only the site proposed in the Modification Application will afford WXBB and the public the same service benefits as those contemplated in that application, any required change in that site will cause irreparable injury. For example, under Commission's procedures, as long as the Modification Application remains on file and unamended, subsequent applicants are required to protect its proposed parameters. However, once that application is amended, any subsequent applicants need only to protect the amended application. Accordingly, unless a Stay is issued, WXBB never may be able to locate at the site specified in the Modification Application.

Furthermore, if CCBL does not amend its Modification Application to specify a different transmitter site prior to the *Order's* imminent deadline, the Modification Application is subject to immediate dismissal. However, CCBL knows of no other *actual* transmitter site that would enable it to achieve the public interest benefits attainable through the site proposed in the Modification Application. As a consequence, CCBL and the public irreparably could lose every benefit of CCBL's long-pending Modification Application, including interference protection of the transmitter site proposed in that Application.

Such imminent and irreparable injuries far outweigh any legitimate injury caused to Galaxy as a result of the stay. First, this stay actually benefits Galaxy, in that it enables Galaxy to wait to prepare a construction permit application until this matter is resolved. Otherwise, Galaxy will have to file a construction permit application within 90 days of the effective date of the *Order*, as opposed to being able to wait to prepare such an application until such time as it is certain whether it will need to protect the WXBB Modification Application. Second, during the pendency of the stay, Granby's proposed reference coordinates will continue to be protected under the Commission's Rules, which ensures that Galaxy will be in no worse position after the stay than it is today.

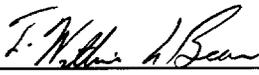
Finally, the public interest will be undoubtedly served by this matter being stayed pending reconsideration. A stay will ensure that the Commission need not squander limited resources processing applications for a modified WTKV or WXBB facility that are likely to require modification following reconsideration of the *Order*. 3/

3/ If Galaxy were to file a permit application that does not protect the transmitter site currently specified within the WXBB Modification Application, Galaxy would proceed subject to, and at the risk of, the final decision on this matter.

Any of the foregoing reasons demonstrate sufficient cause to grant the requested stay. Accordingly, it is respectfully requested that the Bureau stay the effect and requirements of the *Order* pending disposition of the Petition for Reconsideration filed by CCBL.

Respectfully submitted,

**CLEAR CHANNEL BROADCASTING
LICENSES, INC.**

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October 22, 2001

CERTIFICATE OF SERVICE

I, Charlene Jones, hereby certify that on this 22nd day of October, 2001, a copy of the foregoing Motion for Stay was sent by first-class mail, postage prepaid, to:

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