

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b)	)	
FM Table of Allotments,	)	
FM Broadcast Stations	)	MB Docket No. 02-198
	)	RM-10513
(Hilton Head Island, Hollywood and	)	
Port Royal, South Carolina)	)	MB Docket No. 02-199
	)	RM-10514
(Magnolia, Arkansas and Oil City,	)	
Louisiana)	)	

To: Chief, Media Bureau

**PETITION FOR RECONSIDERATION  
OF  
ACCESS.1 COMMUNICATIONS-SHREVEPORT, LLC**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. BACKGROUND .....	2
III. THE COMMISSION HAS A STRONG POLICY AGAINST MOVING STATIONS FROM RURAL COMMUNITIES TO URBANIZED AREAS .....	3
IV. COLUMBIA’S PROPOSAL REPRESENTS THE FIRST STEP IN MOVING KVMA-FM INTO THE SHREVEPORT URBANIZED AREA .....	5
V. THE REALLOTMENT WOULD NOT SERVE THE PUBLIC INTEREST .....	9
VI. THE BUREAU FAILED TO GIVE PROPER WEIGHT TO THE EVIDENT SUBMITTED BY ACCESS.1 .....	10
VII. CONCLUSION .....	12

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**PETITION FOR RECONSIDERATION  
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**I. INTRODUCTION**

Access.1 Communications-Shreveport, LLC (“Access.1”), licensee of commercial broadcast radio stations<sup>1</sup> operating in the Shreveport Urbanized Area, pursuant to Sections 1.420, and 1.429 of the Commission’s Rules, 47 CFR Section 1.420 and 1.429, hereby submits its Petition for Reconsideration of the Commission’s Report and Order, released April 30, 2003, in the above-captioned rule making proceeding (the “*Report and Order*”).<sup>2</sup> In the *Report and Order*, the Bureau granted the petition for rule making of Columbia Broadcasting Company, Inc. (“Columbia”), to

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<sup>1</sup> Access.1 is the licensee of radio stations KBTT(FM), Haughton, LA; KSYR(FM),Benton, LA; KOKA(AM), Shreveport, LA, KDKS-FM, Blanchard, LA, KLKL(FM),Minden, LA and KTAL-FM, Shreveport, LA/Texarkana, TX.

<sup>2</sup>The *Report and Order* was published in the Federal Register on May 22, 2003. Vol. 68 Fed. Reg., No. 991, p. 27940. Pursuant to Section 1.427 of the Commission’s Rules, this Petition for Reconsideration is due within 30 thirty days after such publication. Therefore, this Petition for Reconsideration is timely filed.

amend the Table of Allotments to delete Channel 300C1 at Magnolia, Arkansas and allot Channel 300C2 to Oil City, Louisiana as that community's first local transmission service, and to modify the authorization of radio station KVMA-FM to specify Oil City as the community of license.

Access.1 submitted Comments in this proceeding opposing grant of the requested allotment. Access.1 argued that the allotment would permit Columbia to move the station into the Shreveport Urbanized Area and that such a move would not serve the Commission's policies adopted to foster the objectives of Section 307(b) of the Communications Act, 47 U.S.C. §307(b) "to provide a fair, efficient and equitable distribution of radio service."

Access.1 submits this Petition for Reconsideration because the Report and Order fails to give proper weight to Access.1's arguments regarding the Columbia petition.

## **II. BACKGROUND**

KVMA-FM is a C1 station licensed to Magnolia, Arkansas. Access.1 submitted with its Comments, as Exhibit A, the Engineering Statement of Michael D. Rhodes, P.E. of Cavell, Mertz & Davis, Inc. ("Engineering Statement").<sup>3</sup> In his Engineering Statement, Mr. Rhodes stated that Magnolia is 65 kilometers (40.4 miles) from Oil City. Mr. Rhodes stated that, if KVMA-FM is reallocated, the only remaining broadcast station licensed to Magnolia will be KVMA(AM), a Class D station with no protected night time service.

Access.1 pointed out that, on May 22, 2002, Columbia submitted a Form 315 application for Commission consent to transfer control of KVMA-FM to Cumulus Broadcasting, Inc. ("Cumulus"). Access.1 showed that closing of the purchase agreement (the "KVMA-FM Purchase Agreement")

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<sup>3</sup>Access.1 Comments, Exhibit A at 3.

pursuant to which Cumulus would acquire control of Columbia is contingent upon grant of the instant proposal. See KVMA-FM Purchase Agreement, Section 4.1; FCC File No. BTCH-20020522AAH.

### III. ~~THE COMMISSION HAS A STRONG POLICY AGAINST MOVING STATIONS~~

Section 307(b) of the Communications Act requires the Commission to provide a fair, efficient and equitable distribution of radio service. In furtherance of its statutory obligation under Section 307(b) of the Act, the Commission, at Section 73.202(b) of its Rules, 47 CFR §73.202(b), has established a Table of Allotments for all FM radio station allotments. A licensee seeking a change in the Table of Allotments to move the allotment of a station to another community must file a petition for rule making to amend Section 73.202(b), and follow the procedures set forth in Section 1.420 of the Commission's Rules, 47 CFR §1.420. The Commission has given licensees extensive guidance with respect to the procedures to be followed and the criteria the Commission will use in reviewing petitions for rule making seeking reallocation of FM channels.

In *Modification of FM and TV Authorizations to Specify a New Community*, 4 FCC Rcd 3870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Community of License*"), the Commission identified three criteria it will use when considering an application for change of community of license: (1) the proposed use must be mutually exclusive with the existing use; (2) the proposed allotment plan must represent a preferred arrangement of allotments for the communities involved, and (3) the original community must not be deprived of local service.<sup>4</sup> The preferred arrangement of allotment priorities identified by the Commission is: (1) first aural service; (2) second aural service, (3) first local service, and (4) other public interest matters. The Commission noted that

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<sup>4</sup> *Community of License*, 5 FCC Rcd at 7094.

priorities (2) and (3) are given co-equal weight.<sup>5</sup>

The Commission pointed out, however, that it would not blindly apply the first local service preference of the FM allotment priorities when a station seeks to reallocate a channel from a rural community to a suburban community of a nearby urban area.<sup>6</sup> The Commission stated that it would take a close look at any request for change of community of license which proposed a move from a rural community to a suburban community.<sup>7</sup> The staff has followed this Commission direction and has closely examined cases in which a licensee seeks to reallocate a station from a rural area to an urban one. In *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 1995 LEXIS 6207 (1995) (“*Headland*”), the Mass Media Bureau explained its policy for cases in which: “a station is seeking to reallocate its channel and modify its license from a rural community to another community that is located outside but so close to an Urbanized Area that it actually would place a city-grade (70 dBu) signal over all or a majority of the Urbanized Area.”<sup>8</sup> The Bureau stated:

We believe that such cases logically raise the same policy concerns that are present when a station seeks to move to a community within an Urbanized Area because it would be placing a city grade signal over most of the Urbanized Area as if it were licensed to the center city. Consequently, to address these policy concerns, we will henceforth require stations seeking to move from rural communities to suburban communities located outside but proximate to Urbanized Areas to make the same showing we currently require of stations seeking to move into Urbanized Areas if they would place a city-grade (70 dBu) signal over 50% or more of the Urbanized Area. We believe that such an approach strikes a reasonable balance between ensuring that rural stations do not migrate to urban areas in a manner inconsistent with the goals of Section 307(b) of the Communications Act and at the same time

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<sup>5</sup> *Id.* at n. 4.

<sup>6</sup> *Id.* at para. 12-14.

<sup>7</sup> *Id.* citing *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) (“*KFRC*”); *Faye & Richard Tuck*, 3 FCC Rcd 5374, 65 RR 2d 402 (1988) (“*Tuck*”); *New South Broadcasting Corp. v. FCC*, 879 F2d 867, 66 RR 2d 1088 (DC Cir 1989); *Huntington Broadcasting Co. v. FCC*, 192 F2d 3 (DC Cir 1951).

<sup>8</sup> The Mass Media Bureau pointed out that the U.S. Census Bureau defines an “Urbanized Area” as “consisting of central places and adjacent densely settled areas that together have a minimum of 50,000 persons.” See, *Rosehill, Trenton, Aurora, and Ocracoke, North Carolina*, 5 CR 1290, 11 FCC Rcd 21223 (1996).

providing stations with the opportunity to change their communities of license if this would serve the public interest.<sup>9</sup>

The Bureau went on to describe the criteria the Commission will use in considering such a reallocation request:

The Commission relies primarily on three criteria to determine if a first local service is warranted. First, "signal population coverage" is examined. This refers to the degree to which the proposed station could provide service not only to the suburban community, but to the adjacent metropolis as well. Second, we examine the size of the suburban community relative to the adjacent city, its proximity to the city, and whether the suburban community is within or outside but proximate to the Urbanized Area, of the central city. Third, we determine the interdependence of the suburban community with the central city, looking at a wide range of evidence concerning work patterns, media services, opinions of suburban residents, community institutions, and community services.<sup>10</sup>

In making its examination of the interdependence of the suburban community and the central city, the Bureau has examined a variety of additional factors, such as whether the communities are part of the same advertising market, whether the smaller community has its own newspaper, telephone book, planning commission, police department, fire department, municipal water works and schools. The Bureau has also looked at the extent to which persons living in the smaller community work in the central city.<sup>11</sup>

#### **IV. COLUMBIA'S PROPOSAL REPRESENTS THE FIRST STEP IN MOVING KVMA-FM INTO THE SHREVEPORT URBANIZED AREA**

The proposal before the Commission directly implicates the policy established by the Commission in *Community of License* and *Headland*. Columbia has proposed to move the allotment of KVMA-FM 65 kilometers (40.4 miles) from Magnolia, Arkansas, a very small rural community

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<sup>9</sup> *Headland* at par. 11.

<sup>10</sup> *Id.* at par. 12.

<sup>11</sup> *Id.* at par.14.

to Oil City, Louisiana, which is only 39 kilometers (24.2 miles) from Shreveport, Louisiana, an Urbanized Area, having a population of 274,445. In addition, the closest point in Oil City to the closest point in Shreveport is less than 22 kilometers (13.7 miles).<sup>12</sup> Therefore, this proposed move requires close scrutiny.

In its Petition for Rule Making, Columbia asserted that “Oil City is not located within any Urbanized Area, and the 70dBu signal will not cover any portion of an Urbanized Area.”<sup>13</sup> This statement is incorrect. Exhibit A to the Access.1 Comments, the Engineering Statement of Mr. Rhodes, demonstrates that 0.3 percent of the Shreveport Urbanized area will be within the city grade contour of the proposed signal for KVMA-FM at the proposed coordinates and using maximum facilities for a Class C2 station. In addition to this fact, there are other facts not disclosed in the Petition which show that the Petition implicates the Commission’s policy with respect to reallocation from rural communities to Urbanized Areas, and is part of a two step plan to avoid scrutiny under that policy.

Analysis of facts not disclosed in the Petition strongly suggests that the requested move is only the first step in an effort to bring the KVMA-FM allotment directly into the Shreveport Urbanized Area. Columbia has already filed an application to transfer control of the license of KVMA-FM to Cumulus.<sup>14</sup> The KVMA-FM Purchase Agreement provides that a condition precedent to closing is Commission consent to the relocation of the Station’s tower and transmitting facilities to a site and at a height and power acceptable to Cumulus. *See* KVMA-FM Purchase Agreement, Section 4.1; FCC File No. BTCH-20020522AAH.

Cumulus is the licensee of station KRMD, which is licensed to Shreveport. Station KRMD

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<sup>12</sup> Access.1 Comments, Exhibit A at 3.

<sup>13</sup> Columbia Petition for Rule Making at par. 3.

<sup>14</sup> Form 315 Application, File No. BTCH-20020522AAH.

has its transmission system located on a tower northwest of Shreveport. That tower is owned by Cumulus. It is clear from a review of the available facts that the objective is for Cumulus to obtain the license for KVMA-FM and move the transmission system to another location, such as the KRMD tower, where a majority of the Shreveport Urbanized Area would be within the city grade contour of KVMA-FM. If KMVA-FM were to relocate its transmitting facilities to the KRMD tower, 62% of the Shreveport Urbanized Area would be within the city grade contour of Class 2 operation KMVA-FM.<sup>15</sup>

There are additional facts which suggest that the instant application to allot Channel 300C2 to Oil City, Louisiana is merely the first step in a plan whereby Cumulus will relocate the location of the transmission system for KVMA-FM to increase KVMA-FM's coverage of the Shreveport Urbanized Area. Cumulus Media, Inc. is the parent company of Cumulus Broadcasting, Inc. In its Form 10-K filed with the Securities and Exchange Commission on February 28, 2002, Cumulus Media, Inc. described itself as follows:

We are a radio broadcasting company focused on acquiring, operating and developing radio stations in mid-sized markets in the U.S. and, as of December 31, 2001, own and operate 208 stations (153 FM and 55 AM in 44 U.S. markets.

Cumulus Media, Inc. 10-K at 2-3. The Cumulus Media, Inc. 10-K went on to explain why operating groups of stations in these mid-sized markets created significant opportunities for growth. The acquisition of KVMA-FM, if licensed to Oil City, Louisiana, would not be consistent with Cumulus Media, Inc.'s publicly announced strategy of acquiring groups of stations in a mid-sized market, unless Cumulus planned to relocate the KVMA-FM transmitter to a location which would result in a significant portion of the Shreveport Urbanized Area being within the city grade contour of KVMA-FM.

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<sup>15</sup> Access.1 Comments, Exhibit A at 3.

The only reasonable conclusion that can be drawn from the known facts is that the present application to allot Channel 300C2 to Oil City is the first step in a two step strategy involving the current licensee of KVMA-FM (Columbia) and the proposed assignee of the license for KVMA-FM (Cumulus). In this two step strategy, Columbia is to apply for a change in allotment to Channel 300C2 to Oil City, Louisiana and to delete Channel 300C1 at Magnolia Arkansas, with a new location for the KVMA-FM transmitter system which will result in only a small portion of the Shreveport Urbanized Area being within the proposed KVMA-FM city grade contour. If this application is approved, Cumulus would then acquire the license for KVMA-FM pursuant to the KVMA-FM Purchase Agreement. Thereafter, Cumulus would implement step 2 of the strategy by filing an application to move the location of the KVMA-FM transmitter so that all or majority of the Shreveport Urbanized Area would be within the KVMA contour. With this strategy, Cumulus could achieve its goal, changing the community of license for KVMA-FM from a rural area to the Shreveport Urbanized Area, while evading the requirement of a close examination required by *Community of License*.

The Commission should not permit Columbia and Cumulus to use this two step strategy to achieve what the Commission would not permit in a one step strategy, i.e., changing the community of license for KVMA-FM from a rural area to the Shreveport Urbanized Area without the close examination required by *Community of License*. Since the facts strongly suggest that this is exactly what Columbia and Cumulus are attempting to do, the Commission should apply the criteria of *Community of License* to determine, given the likelihood that Columbia and Cumulus are attempting to evade the *Community of License* close examination, whether the request to amend the FM Table of Allotments to delete Channel 300C1 at Magnolia. Arkansas and to allot Channel 300C2 to Oil City, Louisiana should be granted.

## V. THE REALLOTMENT WOULD NOT SERVE THE PUBLIC INTEREST

In his Engineering Statement, Mr. Rhodes demonstrates that the reallocation would not serve the public interest for the additional reason that it will result in a loss of service. Mr. Rhodes explains that KVMA(AM) is licensed to operate with only 0.03 kW (30 Watts) at night. He states that the Nighttime Interference Free contour for KVMA(AM) is 21.9 mV/m and that this contour extends only 2.21 km (1.37 miles) from the transmitter site. He states that this provides nighttime local aural service to only 32% of the population of the City of Magnolia, and only 35% of the area of the city.<sup>16</sup> Mr. Rhodes points out that Section 73.24(i) of the Commission's Rules, 47 CFR Section 73.24 (i), requires a station to provide nighttime interference free service to 80% of its community. He adds that, while Class D stations are exempt from this nighttime service requirement, the rule establishes the minimum level of community coverage considered adequate by the Commission. Thus, Mr. Rhodes concludes, "the removal of KVMA-FM would leave Magnolia, Arkansas without a full-time aural broadcast service."<sup>17</sup>

Mr. Rhodes goes on to demonstrate that the proposed reallocation would create several "gray" areas (areas which would receive less than 5 aural broadcast services). Mr. Rhodes states that, from the location specified in the proposed Rule Making, there will be 162.1 sq. km. of area, with a population of 2,030 persons, that would be left with only 4 aural services. In addition, a small area, 4.8 sq. km and 9 persons, would be left with only 3 aural services.<sup>18</sup> Mr. Rhodes goes on to show that if the calculations are made based upon full Class C1 facilities at KVMA-FM's current location, the potential loss is 12,130 sq. km and the corresponding gain is only 4,340 sq. km. The gray areas also increase in size and population. The area with only 3 remaining services is now

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<sup>16</sup> Access.1 Comments, Exhibit A at 1.

<sup>17</sup> Access.1 Comments, Exhibit A at 1.

<sup>18</sup> Id. at 2.

5.6 sq. km. populated by 9 persons, while the area with only 4 remaining services increases to 413 sq. km. populated by 14,594 persons. Mr. Rhodes concludes, “Removing the Channel C1 allotment from Magnolia, Arkansas would deprive 14,594 people, most of [whom] are located in and around Hope, Arkansas, from having 5 aural broadcast services, and thus [would] prevent them from being “well-served.”

## **VI. THE BUREAU FAILED TO GIVE PROPER WEIGHT TO THE EVIDENCE SUBMITTED BY ACCESS.1**

In the *Report and Order*, the Bureau gave no weight to the above detailed description of the move-in plan revealed by the facts. Instead, the *Report and Order* dismissed this information as “speculative.”<sup>19</sup> The Bureau concluded that “those issues are properly raised when an application for an Oil City station is submitted.”<sup>20</sup> Access.1 submits that the issues raised by Access.1 should not be deferred until an application for an Oil City station is submitted.

The Bureau’s decision will deprive the community of Magnolia with its only full time aural transmission service, even though there is clear evidence that Magnolia is being deprived of that service solely as part of a plan to move the allotment into an Urbanized area. This fails to serve the goals of Section 307 of the Communications Act, and fails to serve the people of Magnolia. It is no solution to this problem to defer consideration of the move-in plan until a construction permit application is filed in Oil City, because at that time, the people of Magnolia have no opportunity to regain the allotment. Even if the Commission denies an application for an Oil City station, the allotment will not revert back to Magnolia. Thus, the ultimate outcome of this proceeding should be addressed at this time.

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<sup>19</sup>*Report and Order* at par. 3.

<sup>20</sup>*Id.*

Specifically, Columbia should be required to affirmatively assert at this time that it intends to construct and operate the proposed Oil City station at a site that will not cover the Shreveport Urbanized area. If the Bureau allows Columbia to receive the requested reallocation without such a commitment, it leaves the central issue in this proceeding unresolved. In the *Report and Order*, the Bureau did not assert that the Commission is unconcerned about the issues raised by Access.1. The Bureau merely stated that it would leave that issue for resolution in another proceeding. There is no reason to leave the principal issue here unresolved until another proceeding. Columbia should be required to affirmatively state that it will not attempt to accomplish through a two step process that which the Commission would not permit it to do in a one step process.

Access.1 notes that Columbia cites other proceedings in which the Bureau has adopted this wait-and-see procedure, and deferred similar issues until a construction permit application is filed. The facts before the Bureau in this proceeding are distinguishable from those prior proceedings. Here the Bureau has the agreement between Cumulus and Columbia evidencing an intent to move the station into the Shreveport Urbanized Area.

Moreover, to the extent the Bureau considers these prior decisions to establish a precedent in this proceeding, the Bureau should reconsider the approach adopted in those decisions. In none of the prior proceedings did the Bureau ever ask the petitioner to affirmatively assert that it would not apply to move the station into the Urbanized Area. The failure to require the petitioner to affirmatively assert that it will not subsequently seek to move the station into the applicable Urbanized Area, is major flaw in the Bureau's processing of questionable allotment proceedings.

The Commission routinely requires broadcast applicants to certify the truth of a substantial number of matters.<sup>21</sup> The Bureau should adopt a policy in this proceeding that, when a petitioner

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<sup>21</sup> See, *e.g.*, FCC Forms 301, 302, 314, and 315.

requests a change in community of license from a rural community to another community, and the move would allow the filing of a modification application which could result in service to an Urbanized Area, the petitioner will be required to certify that it will not file a modification application which will allow it to serve an Urbanized Area.

Such a policy would promote administrative efficiency by eliminating the need to address the issue, such as the one raised here, in another proceeding. It would also allow the Bureau to feel confident that its allotment proceedings are not being “gamed” by parties who will subsequently file construction permit applications seeking to move stations into Urbanized Areas, knowing that such applications will be acted upon by application processing Bureau personnel unfamiliar with the issues raised in the allotment proceeding,

## **VII. CONCLUSION**

Access.1 requests that the Bureau reconsider its decision in this proceeding, and to the extent necessary, reconsider its past practice of deferring the issues raised in this proceeding to the construction permit process. Access.1 has demonstrated that the proposed reallocation is an attempt to move the allotment of KVMA-FM, from a rural community to an Urbanized Area in a manner which will evade scrutiny under the Commission’s reallocation policy set forth in *Community of License*, which disfavors such moves. The Engineering Statement of Michael Rhodes demonstrates that the reallocation would allow KVMA-FM to move into Shreveport without any additional evaluation under the reallocation policy. Mr. Rhodes further shows that the reallocation potentially would leave up to 14,594 persons no longer “well-served,” and would leave Magnolia, Arkansas with no licensed local aural nighttime service. Access.1 submits that the above facts demonstrate that grant of the proposed reallocation would not serve the public interest and should be denied.

Respectfully Submitted,

**ACCESS.1 COMMUNICATIONS-SHREVEPORT, LLC**

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June 13, 2003

**CERTIFICATE OF SERVICE**

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that the foregoing "Petition for Reconsideration" was mailed this 13th day of June 2003 to the following:

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Kathy Nickens

June 13, 2003