

**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. 02-199
)	RM-10514
(Magnolia, Arkansas and Oil City,)	
Louisiana))	

To: Chief, Media Bureau

**MOTION FOR STAY
OF
ACCESS.1 COMMUNICATIONS-SHREVEPORT, LLC**

I. INTRODUCTION

Access.1 Communications-Shreveport, LLC (“Access.1”), licensee of commercial broadcast radio stations¹ operating in the Shreveport Urbanized Area, pursuant to Section 1.43, and 1.106 of the Commission’s Rules, 47 CFR Sections 1.43 and 1.106, hereby submits its Motion for Stay of the Commission’s Report and Order, released April 30, 2003, in the above-captioned rule making proceeding (the “*Report and Order*”). In the *Report and Order*, the Bureau granted the petition for rule making of Columbia Broadcasting Company, Inc. (“Columbia”), to amend the Table of Allotments to delete Channel 300C1 at Magnolia, Arkansas and allot Channel 300C2 to Oil City,

¹ 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.

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 Motion for Stay, because the *Report and Order* failed to give proper weight to Access.1's arguments regarding the Columbia petition. A stay is required because the *Report and Order* will permit Columbia and Cumulus to effectuate their plan to move KVMA into a position to serve the Shreveport market, thereby disrupting the competitive situation in the market.

Access.1 is filing simultaneously with the filing of this Motion for Stay, a Petition for Reconsideration of the *Report and Order*. Access.1 is setting forth the background and merits of its request for reconsideration in the Petition for Reconsideration. Access.1 hereby incorporates by reference its Petition for Reconsideration into this Motion for Stay. Therefore, Access.1 will not repeat here the factual background of this proceeding, nor will Access.1 repeat at length the merits of its arguments. Instead, Access.1 will address the specific factors to be considered in a motion for stay.

II. THE BUREAU SHOULD STAY THE EFFECTIVE DATE OF ITS APPROVAL OF THE ALLOTMENT PETITION UNTIL THE BUREAU ACTS UPON ACCESS.1'S PETITION FOR RECONSIDERATION

The facts before the Commission demonstrate that a stay is required. The Commission must consider four elements in order to grant a Motion for Stay.² The four elements are: (1) whether the moving party is likely to prevail on the merits, (2) whether the moving party will suffer irreparable harm if a stay is not granted, (3) whether a stay would harm other interested parties, and (4) whether a stay would serve the public interest.³

Access.1 is likely to prevail on the merits. In the accompanying Petition for Reconsideration, Access.1 demonstrates that the *Report and Order* failed to give sufficient weight to the facts presented by Access.1. Access.1 demonstrated that 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

²*Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977).

³*Id.*

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*. Access.1 demonstrated that the Bureau should adopt a policy in which Columbia would 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.. This policy will solve the problem the Bureau now faces of parties circumventing the allotment policy. Therefore, Access.1 submits that it is likely to prevail on the merits.

Access.1 will suffer irreparable harm if a stay is not granted. If Columbia and Cumulus are allowed to circumvent the Commission's policy to move a rural allotment to a site which allow Cumulus to enter the Shreveport Urbanized Area, the new station will significantly alter the Shreveport radio market. The Shreveport market would be permanently altered through an evasion of the Commission's rules, a result which irreparably harms Access.1, because it will have its business permanently affected by such circumvention.

A stay will not harm other interested parties. The only parties affected, Columbia and Cumulus, will not be harmed. Columbia has an operating radio station at Magnolia. A stay will not cause any interruption of service to the public from the Magnolia station. The Commission is obligated to fully examine the facts before it in any proceeding. Columbia and Cumulus will not experience any harm due to the Bureau taking additional time to review the facts.

A stay would serve the public interest. In recent years the number of parties moving stations from rural communities closer to Urbanized Areas has increased. After an allotment proceeding has been concluded, the Commission has no procedure in place to monitor whether the licensees have been modifying their signals to serve Urbanized Areas, which the licensees would not have been

approved to serve under the Commission's allotment priorities. A stay of the instant allotment, to review and revise the policy, to require parties to certify that they will not modify their licenses to serve the Urbanized Area, will greatly limit the number of licensees circumventing the allotment policy. This would greatly serve the public interest.

VI. CONCLUSION

In its accompanying Petition for Reconsideration, Access.1 has requested that the Bureau reconsider its decision in this proceeding granting the allotment of KVMA-FM to Oil City, and, to the extent necessary, Access.1 has requested reconsideration of the Bureau's past practice of deferring the issues raised in this proceeding to the construction permit process. Access.1 submits that the above facts and the facts presented in Access.1's Petition for Reconsideration filed simultaneously with the Motion for Stay, demonstrate that grant of the proposed reallocation should be stayed.

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 "Motion for Stay" was mailed this 13th day of June 2003 to the following:

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