

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Magnolia, Arkansas and Oil City, Louisiana))

MB Docket No. 02-190) FEDERAL COMMUNICATIONS COMMISSION
RM-10514) OFFICE OF THE SECRETARY

To: Marlene H. Dortch, Office of the Secretary
Attn: Chief, Audio Division
Media Bureau

MOTION TO STRIKE

Cumulus Licensing Corp. ("Cumulus"), transferee of Station KVMA-FM and Columbia Broadcasting Co., Inc. ("Columbia"), licensee of Station KVMA-FM, by their counsel, hereby move to strike the "Supplement to Petition for Reconsideration of Access.1 Louisiana Holding Company LLC" filed in the above-captioned proceeding on September 23, 2003. The Supplement is late-filed and unaccompanied by a motion for its acceptance. Its acceptance would violate the Commission's Rules and the Communications Act.

1. The Commission's Rules provide that a petition for reconsideration *and any supplement thereto* must be filed within 30 days of the date of public notice of the action for which reconsideration is sought. 47 C.F.R. § 1.429(d). It goes on to state that "No supplement to a petition for reconsideration after expiration of the 30 day period will be considered except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement." *Id.* The *Report and Order* in this proceeding was published in the Federal Register on May 22, 2003. 68 Fed. Reg. 27940 (2003). Therefore, the Supplement is three months too late for consideration.

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2. This 30-day deadline is statutory, deriving from Section 405 of the Communications Act. That section provides, “A petition for reconsideration must be filed within thirty days from the date upon which public notice is given. . .” 47 U.S.C. § 405(a). Because the 30-day deadline is statutory, the Commission strictly enforces the requirement that a supplement be accompanied by a separate motion, and will not accept a supplement without good reason. *Second Computer Inquiry, Memorandum Opinion and Order on Reconsideration*, 57 Rad. Reg. 2d 1089, at footnote 93 (1985). In keeping with precedent, Access.1’s failure to follow basic procedural rules should result in the dismissal of its pleading.

3. Moreover, there is no reason for the Commission to consider the Supplement, because it contains nothing of decisional significance. Instead, the Supplement merely demonstrates Access.1’s misunderstanding of the law.

4. The Commission guards against manipulation of its first local service priority when a station seeks to relocate closer to an urban community by requiring, under certain conditions, a showing that the proposed community of license be independent from the center city of the Urbanized Area. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). Once independence is established, through an evaluation of the *Tuck* factors, the inquiry is at an end. *Id.*, citing *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). This approach “provid[es] stations with the opportunity to change their communities of license if this would serve the public interest.” *Headland*, 10 FCC Rcd 10352 at ¶ 11.

5. Arguably, the conditions triggering the independence inquiry are met here. While nothing in the rule making proceeding triggered the application of the *Tuck* factors (since the KVMA-FM 70 dBu signal from the allotment reference point would have covered less than 50 percent of the Shreveport Urbanized Area), the implementing application does place a 70 dBu

signal over more than 50% of the Shreveport Urbanized Area. However, Cumulus has already provided evidence in the *Tuck* format demonstrating the independence of Oil City from Shreveport. See Opposition to Petition for Reconsideration and Opposition to Motion for Stay (filed Jul 29, 2003). Importantly, Access.1 has never once challenged the independence of Oil City from Shreveport.

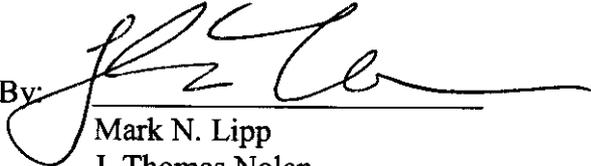
6. Access.1 instead takes issue with Columbia's and Cumulus's characterization, and the Commission's finding, that its assertions regarding the eventual location of the KVMA-FM facilities were "speculation." But this is a red herring. Whether they were speculative or not makes absolutely no difference in the outcome of this case, since the relocation complies with the law. However, Access.1's assertions were, in fact, speculation. At the time Access.1 claimed to know where the KVMA-FM transmitter site would be, it was merely guessing, because neither Columbia nor Cumulus knew for certain, and the engineering work had not been completed. Moreover, Access.1 guessed wrong. Access.1 speculated that the transmitter site would be on "a tower northwest of Shreveport" owned by Cumulus. Comments of Access.1 in MB Docket No. 02-199, at 6. In fact, KVMA-FM will serve Oil City from a different tower owned by Cumulus. Since the assertions were speculation to begin with, there is nothing deceptive or underhanded in continuing to refer to them as speculation.

7. The Commission should decline to hold an evidentiary hearing into whether Cumulus or Columbia lacked candor, as Access.1 requests. Cumulus and Columbia have at all times reported truthfully to the Commission, and have at all times followed all applicable procedural and technical rules. Access.1's request is intended only to delay this proceeding to Access.1's competitive advantage, and the Commission should recognize it as such.

8. Since Access.1 failed to comply with applicable procedural rules, the Commission should strike its Supplement from the record of this proceeding.

Respectfully submitted,

CUMULUS LICENSING CORP.
COLUMBIA BROADCASTING CO. INC.

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October 1, 2003

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Vinson & Elkins, LLP., do hereby certify that I have on this 1st day of October, 2003, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Motion to Strike" to the following:

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