

**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

**OPPOSITION TO MOTION TO STRIKE  
OF  
ACCESS.1 LOUISIANA HOLDING COMPANY LLC**

Access.1 Louisiana Holding Company LLC (“Access.1”), pursuant to Sections 1.45 and 1.429 of the Commission’s Rules, 47 CFR Sections 1.45 and 1.429, hereby submits its Opposition to Motion to Strike (“Opposition”). Simultaneously with the filing of this Opposition, Access.1 is also submitting a “Motion for Leave to File Supplement” regarding the “Supplement to Petition for Reconsideration,” filed September 23, 2003 (“Supplement”).

This Opposition is submitted to oppose the Motion to Strike filed jointly by Cumulus Licensing Corp. (“Cumulus”) and Columbia Broadcasting Commission., Inc. (“Columbia”) (collectively referred to as the “Applicants”). For the reasons set forth herein, Access.1 submits that the Bureau should deny the Motion to Strike, grant the accompanying Motion for Leave to File Supplement and grant the reconsideration requested in Access.1’s Petition for Reconsideration for the reasons set forth in that Petition and in the Supplement.

**I. GOOD CAUSE EXISTS FOR ACCEPTANCE OF ACCESS.1'S SUPPLEMENT**

In their Motion to Strike, the Applicants principally rely upon a procedural argument, arguing that Access.1 did not request leave to file its Supplement, and incorrectly arguing that the Bureau cannot now consider the Supplement on its merits. This argument is contradicted by the rule cited by the Applicants. Section 1.429(d), relied upon by the Applicants to support their argument, provides that a supplement may be filed after the 30 day period for filing petitions for reconsideration, upon leave granted pursuant to a request for acceptance.

Accompanying this Opposition is Access.1's Motion for Leave to File Supplement, requesting leave to file the Supplement submitted by Access.1 on September 23, 2003. The Supplement fully demonstrates that good cause exists for consideration of the Supplement. The Supplement demonstrates that the Applicants took actions that completely changed a central factual issue raised in Access.1's Petition for Reconsideration after the filing of Access.1's Petition for Reconsideration. Access.1 filed its Supplement as soon as Access.1 became aware that the facts addressed in its Petition for Reconsideration had changed. Given the critical significance of the changed facts to the issues being considered by the Bureau, the Bureau must consider the facts presented in the Supplement. The Bureau cannot make a reasoned determination on the matter before it without considering the new facts presented in the Supplement. Therefore, good cause exists for acceptance of the Supplement.

## **II. THE APPLICANTS ATTEMPTED TO DECEIVE THE BUREAU BY CONTINUING TO CHARACTERIZE ACCESS.1'S ARGUMENTS AS "SPECULATION" AFTER THE APPLICANTS FILED THE AMENDED CONSTRUCTION PERMIT APPLICATION**

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After arguing, without basis, that the Bureau should not accept Access.1's Supplement, the Applicants present the rather amazing argument that, because Access.1's arguments against the rulemaking proceeding were "speculative" when those arguments were first made, there was "nothing deceptive or underhanded in continuing to refer to them as speculation" even after Cumulus filed the amended construction permit application.<sup>1</sup> In essence, the Applicants are arguing that speculation that an application will be filed remains speculation even after the application is actually filed. To the contrary, "speculation" stopped being "speculation" and became "accomplished fact" after the Cumulus application was filed. It is ludicrous for the Applicants to continue to argue that Access.1's arguments are still "speculation," and it was "deceptive and underhanded" for Columbia to refer to Access.1's arguments as speculation in Columbia's Opposition to Access.1's Petition for Reconsideration.<sup>2</sup> Columbia had an obligation to advise the Bureau that Cumulus had filed the amended construction permit application and to acknowledge that Access.1's arguments were no longer speculation. Columbia's failure to so advise the Bureau demonstrated a lack of candor.<sup>3</sup>

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<sup>1</sup> Applicants' Motion to Strike at 3.

<sup>2</sup> Columbia Opposition to Petition for Reconsideration and Opposition to Motion for Stay, filed July 29, 2003 at 4-5 .

<sup>3</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-1191, 59 RR 2d 801 (1986) (*Character Qualifications*). See, *Knox Broadcasting, Inc.*, 12 FCC Rcd 3337, 6 CR 1411 (1997); *Zephyr Broadcasting, Inc.*, 11 FCC Rcd 19627, 5 CR 550; *Pine Tree Media, Inc.*, 8 FCC Rcd 7591, 74 RR 2d 424 (1993); *Atkins Broadcasting*, 8 FCC Rcd 674, 71 RR 2d 1398 (1993).

Columbia's characterization of Access.1's arguments as mere "speculation" after the filing of Cumulus's construction permit application demonstrates a severe lack of candor and failure to disclose a material fact on the part of Columbia. The Bureau should therefore designate the instant Columbia rulemaking petition for a hearing on a character issue to determine whether Columbia and Cumulus lacked candor in responding to Access.1's Petition for Reconsideration.

### **III CONCLUSION**

WHEREFORE, Access.1 requests that the Bureau dismiss the Applicants' Motion to Strike, grant Access.1 leave to file its September 23, 2003 Supplement, and reconsider its decision in this proceeding. Access.1 has demonstrated that the proposed reallocation is nothing more than an attempt by Columbia and Cumulus to move the allotment of KVMA-FM, from a rural community to the Shreveport Urbanized Area in a manner designed to evade scrutiny under the Commission's reallocation policy set forth in *Community of License*,<sup>4</sup> which disfavors such moves. In addition, the Commission should designate this proceeding for a character hearing to determine whether Columbia and Cumulus lacked candor and failed to disclose a material fact when they continued to give the Bureau the impression that they had not already filed a construction permit application to cover 100% of the Shreveport Urbanized Area, after they had filed such an application.

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<sup>4</sup> *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*").

Respectfully Submitted,

**ACCESS.1 LOUISIANA HOLDING COMPANY LLC**

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October 15, 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 “Opposition to Motion to Strike of Access.1 Louisiana Holding Company LLC” was mailed this 15th day of October, 2003 to the following:

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October 15, 2003