

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(LaGrange, Greenville and)
Waverly Hall, Georgia))

MB Docket No. 03-223
RM-10813

To Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

JOINT REPLY COMMENTS
OF COX RADIO, INC.; CXR HOLDINGS, INC.;
AND DAVIS BROADCASTING INC., OF COLUMBUS

Cox Radio, Inc. and its wholly owned subsidiary, CXR Holdings, Inc., licensee of radio Station WALR-FM, LaGrange, Georgia (collectively "Cox"), and Davis Broadcasting, Inc., of Columbus, licensee of Station WKZJ(FM), Greenville, Georgia ("Davis Broadcasting") (collectively "Petitioners"), by their attorneys, hereby submit these Reply Comments pursuant to the above-captioned *Notice of Proposed Rule Making* ("Notice") released by the Commission on October 24, 2003.¹ The *Notice* seeks comment on Petitioners' joint request, as set forth in their *Petition for Rule Making* dated May 9, 2003 ("Petition"), that the Commission amend Section

¹ Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (LaGrange, Greenville and Waverly Hall, Georgia), *Notice of Proposed Rule Making*, DA 03-3227, MB Docket No. 03-223, RM-10813 (rel. Oct. 24, 2003) (the "Notice").

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73 202(b), the FM Table of Allotments, by (a) deleting Channel 239C3 at Greenville, Georgia and allotting Channel 239A to Waverly Hall, Georgia for use by Station WKZJ(FM) as Waverly Hall's first local service and (b) reallocating Channel 281C1 from LaGrange, Georgia to Greenville, Georgia for use by Station WALR-FM (collectively, the "Waverly Hall Proposal")

On December 15, 2003, Cox and Davis timely filed comments supporting the *Notice* and confirming their continuing interest in the Waverly Hall Proposal. Only one other party, Infinity Broadcasting Corporation ("Infinity"), filed comments in this proceeding.² In its comments, Infinity states that it does not oppose the Waverly Hall Proposal.³ Nevertheless, in its comments, Infinity falsely accuses Petitioners of bad faith in connection with this rulemaking.

Pursuant to a facilities modification agreement between Cox and Davis Broadcasting, on May 9, 2003, Cox filed a petition for rulemaking requesting that the Commission amend the FM Table of Allotments by reallocating Channel 238C1 from Athens to Doraville, Georgia, as the community's first local transmission service at the existing transmitter site location for WBTS(FM) and modifying WBTS(FM)'s authorization accordingly (the "Doraville Proposal")⁴

On the same day and pursuant to the same facilities modification agreement, Petitioners filed the petition for rulemaking proposing the Waverly Hall Proposal. Although the Waverly Hall Proposal and the Doraville Proposal are part of the same agreement, these proposals are not

² Comments of Infinity Broadcasting Corp., filed in MB Docket No. 03-223, RM-10813 on Dec 15, 2003 ("Infinity Comments").

³ *Id.* at 2 ("Infinity does not oppose the NPRM or Joint Petition's proposals for WKZJ and WALR").

⁴ On September 5, 2003, the FCC released a *Notice of Proposed Rule Making* proposing the Doraville Proposal Amendment of Section 73 202(b), Table of Allotments, FM Broadcast Stations (Athens and Doraville, Georgia), *Notice of Proposed Rule Making*, MB Docket No. 03-190, RM-10738 (Sept 5, 2003). On October 24, 2003, Cox timely filed comments confirming its continuing interest in the Doraville Proposal.

technically dependent on each other for effectuation under the FCC's FM allotment policies.

Based on Petitioners' counsel's understanding of FCC processing procedures and pursuant to the informal advice of the FCC staff, Petitioners' counsel therefore filed these proposals as separate petitions for rulemaking due to their lack of technical dependence. By filing the petitions separately, Petitioners acted in good faith and had no intention of misleading or deceiving the FCC staff. Infinity's allegation that Petitioners were attempting to do so is completely false. If, as Infinity alleges, Petitioners wanted to try "to hide the ball," why would they have filed the two petitions for rulemaking on the very same day rather than separating their filing dates by months? Infinity suggests the two proceedings be consolidated so that the Commission can consider the relevance of both requests together. Petitioners would have no objection to consolidating the Doraville and Waverly Hall proceedings should the Bureau wish to do so. In doing so, Cox wishes to emphasize that it desires to provide Doraville with a first local service whether or not the Waverly Hall proposal is adopted. Similarly, the Petitioners in this proceeding have stated their intention to serve Waverly Hall and Greenville respectively without any conditions.

Infinity's allegations that the contractual arrangement between Petitioners somehow contravenes the FCC's rules are also meritless. Facilities modification agreements between parties are commonplace in the context of FM allotment proposals, and the general practice is for one party to offer consideration to the other party so that a preferential arrangement of allotments can be achieved. The FCC does not require the reporting or filing of facilities modification agreements for FM rulemaking proceedings nor does it regulate the amount of the consideration

except where a party is withdrawing an expression of interest.⁵ No withdrawal is taking place here. Surely, Infinity must know the foregoing to be true. Nonetheless, Infinity faults Petitioners for not following rules that do not exist and cites rules, such as the “greenmail” rule, that do not govern the case at hand. Petitioners have acted and will continue to act in good faith and in accordance with FCC’s rules and policies. Infinity’s accusations therefore must be dismissed.

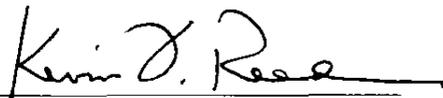
Infinity clearly states that it does not oppose the Waverly Hall Proposal but nevertheless attempts to obstruct the provision of first local service to Waverly Hall by raising false allegations regarding the good faith of the Petitioners. As stated, Petitioners have acted and will continue to act in good faith and in accordance with the FCC’s rules and policies. Irrespective of the outcome of this Waverly Hall proceeding, Cox intends to provide first local service to Doraville should the Doraville Proposal be granted. In their comments filed in this proceeding, Petitioners stated unequivocally that they intend to provide a first local service to Waverly Hall and maintain local service to Greenville, and Petitioners hereby reaffirm their interest.

⁵ See Section 1.420(j) of the Commission’s Rules.

THEREFORE, given that the Waverly Hall Proposal is unopposed, complies with the FCC's rules and proposes a preferential arrangement of FM allotments, Petitioners respectfully request that the Bureau dismiss Infinity's allegations and promptly adopt the proposal as serving the public interest

Respectfully Submitted,

COX RADIO, INC.
CXR HOLDINGS, INC.
DAVIS BROADCASTING, INC , OF
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By 

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December 30, 2003

CERTIFICATE OF SERVICE

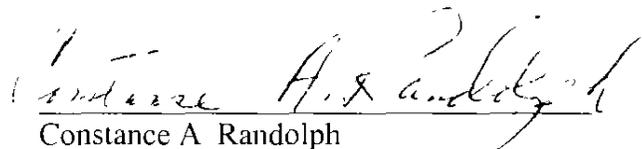
I, Constance A Randolph, a secretary at Dow, Lohnes & Albertson, PLLC, hereby certify that a true and correct copy of the foregoing "Joint Reply Comments of Cox Radio, Inc , CXR Holdings, Inc and Davis Broadcasting, Inc " was sent on this 30th day of December, 2003, via first-class United States mail, postage pre-paid, to the following:

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