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December 9, 2004

ORIGINAL

Our File No. 21554-00100-61

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

RECEIVED

DEC - 9 2004

Federal Communications Commission  
Office of Secretary

Re: Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations, Akron, CO  
Akron Broadcasting Company  
Docket No. RM-10630  
Request for Expedited Consideration of Rule Making Proposal

Dear Ms. Dortch:

Transmitted herewith on behalf of Akron Broadcasting Company, are an original and four copies of its Request for Expedited Consideration of Rule Making Proposal in the above-referenced matter.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,

John M. Pelkey

Enclosures  
JMP:yg

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

**RECEIVED**

DEC - 9 2004

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) RM-10630  
Table of Allotments )  
FM Broadcast Stations )  
(Akron, CO) )

To: Office of the Secretary

**DOCKET FILE COPY ORIGINAL**

Attention: Assistant Chief, Audio Division  
Media Bureau

**Request for Expedited Consideration of Rule Making Proposal**

Akron Broadcasting Company ("ABC"), through counsel, hereby respectfully requests that the Commission expedite the above-referenced rule making and proceed to the issuance of a Notice of Proposed Rule Making so that the residents of the community of Akron, Colorado, can begin receiving as soon as possible the long-delayed service to which they are entitled. In support of this request, ABC states as follows:

Through a Petition for Rule Making and an amendment thereto,<sup>1</sup> ABC has requested that the Commission amend the FM Table of Allotments to allot Channel 279C1 to Akron, Colorado, as that community's first local service.<sup>2</sup> Allocation of Channel 279C1 to Akron would provide

<sup>1</sup> ABC filed its Petition for Rule Making ("Petition") on May 24, 2002, and amended that Petition in an Amendment to Petition for Rule Making ("Amendment") filed on July 29, 2002. It appears that the Amendment was placed in "PRM02MB," the general repository for 2002 rule making petitions, rather than in RM-10630, the file number established for the Akron proceeding.

<sup>2</sup> ABC included in its Petition and its Amendment the requisite commitment to file an application for a new station on Channel 279 at Akron and to construct the facilities if its application is granted. Petition at 1; Amendment at 1.

the 1,711 residents of Akron with their first local service<sup>3</sup> and would permit 41,799 people to receive an additional service.<sup>4</sup> The allocation of Channel 279C1 to Akron requires the downgrade of Station KRFX(FM), Denver, Colorado, to Class C0 status, however. ABC accordingly requested that the Commission issue an order requiring Jacor Broadcasting of Colorado, Inc. (“Jacor”), licensee of KRFX, to show cause why KRFX should not be downgraded to Class C0 status in accordance with the procedures established in the *Streamlining*<sup>5</sup> rule making,

In response to ABC’s amended Petition, the Commission, on March 4, 2003, issued an *Order to Show Cause* in which it required Jacor to file a written statement by April 18, 2003, showing with particularity why its license should not be modified. The Commission explained that, if Jacor chose to respond to the *Order to Show Cause* by committing to file an application to modify the KRFX facilities to bring them up to the minimum requirements for Class C status, it would be required to file an acceptable application for a construction permit to increase the antenna height to greater than 450 meters HAAT and 100 KW ERP within 180 days of April 18, 2003, i.e., by October 15, 2003.

Jacor submitted a Statement in Response to Order to Show Cause on April 18, 2003. In that Statement, Jacor informed the Commission that it intended to seek to modify the KRFX(FM) facilities through the filing of “an acceptable application for a construction permit to increase the antenna height [of the station] to greater than 450 meters HAAT and 100 KW ERP or the equivalent.” Jacor Statement at 2. Jacor further acknowledged that it understood the obligation imposed upon it by the *Order to Show Cause* to file an application proposing

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<sup>3</sup> Petition at 3.

<sup>4</sup> Amendment at 2.

<sup>5</sup> *1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, 15 FCC Rcd 21649 (2000).

minimum Class C facilities when it urged that ABC's petition should be dismissed once Jacor had filed "an acceptable construction permit application to increase antenna height to at least 451 meters HAAT." *Id.*

In point of fact, Jacor never filed an application for a construction permit to increase KRFX's antenna height to at least 451 meters HAAT. Instead, eight days after it committed to file an application specifying full Class C facilities, Jacor filed an application that actually proposed to decrease the KRFX(FM) HAAT from 320 meters to 237.5 meters – well short of the 451 meter HAAT to which Jacor had committed. See BPH-20030424AA0. Rather than filing an application that specified full Class C facilities, Jacor included with its application a perfunctory one-sentence waiver request wherein it requested a waiver of Section 73.313(d) of the Commission's rules to allow it to exclude terrain data along four radials for purposes of calculating the station's height above average terrain. The application proposed facilities that met the minimum height requirement for Class C stations only if those four radials were excluded.

ABC and other parties immediately filed objections pointing out that the Jacor application failed to specify minimum Class C facilities and explaining that a grant of the waiver that had been requested by Jacor would be contrary to the public interest. ABC filed its objection on June 9, 2003 while Meadowlark Group, Inc., filed an objection on May 20, 2003, and Mr. Alfred Hislop also filed an objection on June 9, 2003. All three of these objections were filed well in advance of the expiration of the 180-day period during which Jacor was required to file an application requesting authority to construct Class C facilities. Even though it had been made aware of the fact that its application was deficient and thus did not constitute the "acceptable application" demanded by the *Order to Show Cause* and the Commission's rules, Jacor, by

failing to amend its application so as to specify Class C facilities by the October 15, 2003 deadline, gambled that its waiver request would be granted.

Jacor lost the bet. By letter of November 9, 2004, the Commission staff dismissed the Jacor application because the requested waiver was contrary to the public interest.<sup>6</sup> The Commission particularly noted that a grant of the waiver would “frustrate the expansion of radio service to the listening public.”<sup>7</sup> In so holding, the staff specifically referenced ABC’s demonstration that the allocation of Channel 279C1 to Akron, Colorado, would enable some 40,000 people to receive radio service and that the Akron proposal could not be implemented if the waiver requested by Jacor were granted.<sup>8</sup>

With the dismissal of Jacor’s application, there no longer is any need to defer action on ABC’s Petition. The Commission provided Jacor with an opportunity to file an application for authority to construct full Class C facilities. Jacor committed to the Commission that it would file such an application. Jacor, however, chose not to file such an application and the deadline for filing such an application expired more than a year ago. As a result, the Commission should now issue a Notice of Proposed Rule Making seeking comment on ABC’s proposal to allot Channel 279C1 to Akron. Akron’s Petition was filed more than two and one-half years ago. Nearly one and one-half years ago, numerous residents of Akron, including the Mayor, a Commissioner, the President of the Chamber of Commerce, the President of the Washington County Economic Development Corporation, and the Principal of the Akron Elementary and Junior High School, filed a Statement supporting the allotment of Channel 279C1 to Akron. In that Statement, the Akron residents pointed out that Akron, a community without a broadcast

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<sup>6</sup> Letter of November 9, 2004, from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, to Marissa G. Repp, Esq. (the “Doyle Letter”).

<sup>7</sup> *Doyle Letter* at 9.

<sup>8</sup> *Doyle Letter* at 5.

outlet, is the county seat and that it needs a radio station serving a wide geographic area to provide a reliable means of communication in local emergencies and to tie together the residents and businesses that are often separated by considerable distances in the rural area in which Akron is located. Unfortunately, the needs of the residents of Akron and the surrounding area have continued to go unmet in the years since ABC filed its Petition. Jacor has already received what is, for all intents and purposes, a one-year extension of its Class C status without being required to offer Class C service. Now that Jacor's waiver request has been denied, the Commission should promptly address the unmet needs of the residents of Akron and the surrounding area and, consistent with the mandate of Section 307(b), should expeditiously issue a Notice of Proposed Rule Making in response to ABC's Petition.<sup>9</sup>

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<sup>9</sup> Pursuant to Section 1.102 of the Commission's rules, the dismissal of the Jacor application became effective on November 9, 2004, which was the date on which the full text of the *Doyle Letter* was released to the Public. See *Daily Digest*, Vol. 23, No. 213 (November 9, 2004). As a result, it is now appropriate for the Commission to proceed with the issuance of the Notice of Proposed Rule Making seeking comments on ABC's proposal. See *Auburn, Northport, Tuscaloosa, Camp Hill, Gardendale, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama*, 18 FCC Rcd 10333, 10340-41 (2003).

Accordingly, ABC respectfully requests that the Commission expeditiously act to issue a Notice of Proposed Rule Making seeking comments on ABC's proposal.

Respectfully submitted,

AKRON BROADCASTING COMPANY

Garvey, Schubert Barer  
5th Floor  
1000 Potomac Street, NW  
Washington, DC 20007  
(202) 965-7880

By:   
John M. Pelkey  
Its Attorney

Date: December 9, 2004

## CERTIFICATE OF SERVICE

I, Yvette Graves, do hereby certify that I have, this 9th day of December 2004, sent copies of the foregoing "Request for Expedited Consideration of Rule Making Proposal" by hand-delivery or first-class, United States mail, postage prepaid, to the following:

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Victoria McCauley, Esq.\*  
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