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May 2, 2006

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Portals II – 12th Street Lobby
Filing Counter – TW-A325
445 12th Street, SW
Washington, D.C. 20554

RECEIVED

MAY - 2 2006

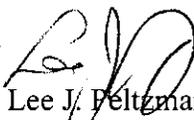
Federal Communications Commission
Office of Secretary

Re: **MB Docket No. 05-10**
RM-11140, 11241, 11279
(The Dalles, Tualatin, Eugene, Albany, Lebanon, Paisley and
Diamond Lake, Oregon and Goldendale, Washington)
Comments on Order to Show Cause

Dear Ms. Dortch:

Transmitted herewith, on behalf of Portland Broadcasting, LLC, Columbia Gorge Broadcasters, Inc., M.S.W. Communications, LLC, and Extra Mile Media, Inc., is an original and four (4) copies of their Comments on Order to Show Cause in the above-referenced rule making proceeding. Please contact undersigned counsel in the event the Commission has any questions with respect to this filing.

Sincerely,



Lee J. Heltzman
Counsel for
PORTLAND BROADCASTING, LLC

Enclosure

No. of Copies rec'd 074
List ABCDE

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

RECEIVED

MAY - 2 2006

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(The Dalles, Tualatin, Eugene, Albany,)
Lebanon, Paisley, Diamond Lake, Oregon)
and Goldendale, Washington))

MB Docket No. 05-10
RM-11140, 11241, 11279

To: Marlene H. Dortch, Secretary

Attn: Chief, Audio Division
Media Bureau

COMMENTS ON ORDER TO SHOW CAUSE

Portland Broadcasting, LLC, Columbia Gorge Broadcasters, Inc., M.S.W.

Communications, LLC and Extra Mile Media, Inc. (together, the "Joint Petitioners"), by their respective counsel, hereby submit their Comments on Order to Show Cause. In support of their position, Joint Petitioners submit the following:

On March 21, 2005, the Joint Petitioners filed a pleading captioned as a Petition for Rulemaking. The Commission on October 4, 2005, released a Public Notice (Report No. 2727), which considered the Joint Petitioners' Petition for Rulemaking as a counterproposal to the initial request of Klickitat Broadcasting in MB Docket No. 05-10. The Joint Petitioners requested in their Petition for Rulemaking, *inter alia*, that the Commission issue Orders to Show Cause directed to Cumulus Licensing, LLC ("Cumulus"), licensee of Station KNRQ-FM, Eugene, Oregon, to show cause why its authorization should not be modified to specify operation on Channel 300C in lieu of Channel 250C and to Haystack Broadcasting, Inc. ("HBI"), licensee

*of Station KYYT(FM), Goldendale, Washington, to show cause why its authorization should not be modified to specify operation on Channel 300C2 in lieu of Channel 272C2.*¹

On March 31, 2006, the Commission issued an Order to Show Cause in MB Docket No. 05-10, directed to Cumulus for it to show cause why its license for Station KNRQ-FM should not be modified to specify operation on Channel 300C in lieu of Channel 250C.

Cumulus has previously attacked Joint Petitioners' rulemaking proposal in Reply Comments, filed October 19, 2005, and in its Response to the Joint Petitioners' Request to Issue Order to Show Cause, filed February 23, 2006. In both cases, Cumulus alleged procedural and substantive infirmities in the Joint Petitioners' Petition for Rulemaking and objected to it being treated as a counterproposal in this proceeding.

A review of Cumulus's assertions show that they are lacking both in procedural and substantive merit and do not begin to invalidate the Joint Petitioners' proposal. One allegation made by Cumulus, that a counterproposal filed by SSR Communications was late filed, has already been rejected by the Commission in its March 31, 2006 Order to Show Cause. As noted by the Commission, SSR Communications incorrectly addressed its March 21, 2006 counterproposal to the Chief, Allocations Branch, Policy and Rules Division, Media Bureau. This resulted in its counterproposal being re-stamped by the Commission Office of the Secretary on April 1, 2005, after the March 21, 2005 deadline for counterproposals in MB Docket No. 05-10. Under Section 1.7 of the Commission's rules, such filings are treated as being filed on the date they are received by the Office of the Secretary, meaning that the SSR Communications' counterproposal was untimely. However, the Commission correctly noted that the filing was made prior to a recent change in the Audio Division's standard notice of proposed rulemaking

¹ Joint Petitioners subsequently reached agreement with HBI regarding reimbursement for the KYYT channel change and submitted a statement from the licensee consenting to the change in channel. *See* Supplement, filed July 12, 2005.

language, which emphasized this filing requirement for all submissions in FM allocation proceedings. See Filing Requirements in FM Allotment Rulemaking Proceedings, DA 05-995, released April 1, 2005 (copy attached). As such, the Commission waived its filing deadline with respect to the SSR Communications counterproposal. The case cited by Cumulus in its Response, Roma, Texas, DA 06-262, released February 10, 2006, involved a counterproposal filed after the April 1, 2005 advisory. Therefore, it has no relevance to the Commission's decision to waive the filing deadline with respect to SSR Communications.

Cumulus next attacks the Joint Petitioners' rulemaking proposal as "procedural alchemy"² and as being "contrived."³ In each case, Cumulus offers no documentation in support of its outrageous allegations, instead relying solely on rank speculation and conjecture. Joint Petitioners are in no way connected to SSR Communications. Their Petition for Rulemaking was neither contrived nor procedurally invalid. The Commission has twice concluded, in its October 4, 2005 *Public Notice* (Report No. 2727) and its more recent March 31, 2006 *Order to Show Cause*, that Joint Petitioners' rulemaking proposal is a timely filed counterproposal in MB Docket 05-10. For all of its belly aching and complaining, Cumulus has provided no information to the contrary.

As noted, Cumulus attacks the Joint Petitioners' proposal for substantive reasons as well. Like its procedural arguments, however, its assertions are easily rebutted. First, Cumulus maintains that the proximity of airports to the proposed KNRQ-FM, Eugene, Oregon and KYYT(FM), Goldendale, Washington transmitter sites and the potential operation of Channel 300 at those locations will create electromagnetic interference to the airports.

² Cumulus Response at p. 6.

³ Cumulus Response at p. 2.

Initially, the Joint Petitioners note that objections like those raised by Cumulus are better handled at the application stage rather than in FCC allotment rulemakings. Cumulus cites no previous Commission decision in which the Commission has considered the matter of potential electromagnetic interference in a rulemaking rather than dealing with the issue at the licensing stage. Moreover, as noted previously by the Joint Petitioners in their February 10, 2006 Request to Issue Order to Show Cause, the FAA issued Determinations of No Hazard to Air Navigation with respect to the KYYT and KNRQ-FM proposals. *See Attachment.*⁴

Cumulus next claims that the proposed upgrade of KMSW(FM), The Dalles, Oregon from Channel 224C3 to Channel 272C2 is an effort “to slip by an unrelated upgrade.”⁵ In fact, while the upgrade of KMSW to higher class is on a non-adjacent channel, it is entirely proper under longstanding Commission precedent. It qualifies as an incompatible channel swap under Section 1.420(g)(3) of the Commission’s rules. In adopting the rule which permits upgrades on co- and adjacent channels without allowing competing expressions of interest, the Commission stated that it would consider analogous proposals involving channel substitutions at other communities which would be necessary to create a mutually exclusive relationship required to comply with Section 1.420(g)(3). *See Modification of FM Broadcast Station Licenses to Higher Class Co-Channel and Adjacent Channels*, 60 RR 2d 114 (1986). *See also Cordele, Hawkinsville and Montezuma, Georgia*, 14 FCC Rcd 7867 (1999); *Pikeville, Kentucky, Clinchco, Virginia and Matewan, West Virginia*, 6 FCC Rcd 3732 (1991). It is only by the substitution of Channel 279C for Channel 300C by Station KHPE(FM) at Albany, Oregon and the substitution

⁴ However, even were Cumulus’ concerns valid and should the FAA issue Air Hazard Determinations, the matter may be easily resolved by having the FAA make localizer changes. As explained by Kevin Terry, Vice President of Engineering/Development of Portland Broadcasting, LLC, that company will reimburse the FAA for its expenses incurred in changing airport ILS localizer frequencies. Portland Broadcasting, LLC has retained the services of Chevalier Aviation Associates, LLC and identified alternate airport localizer frequencies that can be used at the Eugene airport. Accordingly, any identified actual or predicted electromagnetic interference from the proposed KNRQ-FM channel change will be satisfactorily resolved at no cost to either the FAA or Cumulus.

⁵ Cumulus Response at p. 5.

of Channel 300C for Channel 250C by KNRQ-FM at Eugene, Oregon, that clear spacing is created to allow for the allotment of Channel 300C by Station KYYT(FM) at Goldendale, Washington. The deletion of Channel 300C by Station KHPE at Albany is performed pursuant to an agreement by Joint Petitioners and the licensee of that station and, therefore, can be used by no other parties. The substitution of Channel 300C2 for Channel 272C2 at Goldendale and the resulting substitution of Channel 272C2 for Channel 224C3 at The Dalles can only exist within the confines of the Joint Petitioners' rulemaking proposal. As Cumulus has correctly noted, there are no other substitute channels for a Class C2 at The Dalles or Goldendale. Accordingly, the proposed upgrade at The Dalles does not require the Joint Petitioners to specify an additional equivalent class channel for use by other interested parties or allow the acceptance of competing expressions of interest.

Cumulus also alleges that there will be white and gray area created by the relocation of Station KACI-FM from Channel 249C2 at The Dalles to Channel 250C2 at Tualatin, Oregon. Cumulus overlooks the fact that Station KMSW, operating on Channel 272C2, will be identical or even an improvement over the current Station KACI-FM operation. Accordingly, if there is no current white area with respect to the present licensed operation of Station KACI, there can be no such white area with the replacement signal of Station KMSW operating on Channel 272C2. Moreover, even if Cumulus' calculations of white area were correct (which they are not)⁶, its resulting conclusions would still remain erroneous. First, claimed loss area containing a white area of 646 persons borders on being considered *de minimis*. See *Eldorado, Mason, Mertzson and Fort Stockton, Texas*, DA 06-796, released April 7, 2006; *Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, Texas*, 10 FCC Rcd 9360 (1995). Additionally, this relatively small

⁶In its comparison of KYYT, Cumulus failed to treat the station as a licensed facility with a directional antenna. Additionally, Cumulus failed to consider Station KEX(AM), licensed to Portland, Oregon, with its daytime .5 mV/m contour, instead utilizing the nighttime .5 mV/m ground wave.

white area must be compared against the significantly greater white area gain of 2,287 persons, which results from the reallocation of Channel KPXC(FM) from Lebanon to Paisley, Oregon.

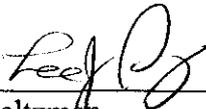
Finally, Cumulus challenges Joint Petitioners' proposal to change the community of license of Station KXPC-FM from Lebanon to Paisley, Oregon. Cumulus argues that Paisley does not qualify as a "community" for FCC allotment purposes because it has suffered a decrease in population recently. Cumulus' assertions border on the preposterous. Initially, it is noted that Paisley is listed in the 2000 U.S. Census and is therefore presumed to have the status of a community. *See Arnold and Columbus, California*, 7 FCC Rcd 6302 (1992). Even Cumulus acknowledges that Paisley is self-governing and has its own school system, post office, fire department, zip code and commercial businesses. Despite this, it argues that because Paisley has lost population between 1990 and 2000 it should be deprived of "community" status. Cumulus would make new FCC law if its assertions were accepted. Clearly, it cannot cite one case that supports its argument. The fact that Paisley has a current population of 250 persons does not differentiate itself from other FCC communities which have recently received allotments. *Estelline, Texas*, 18 FCC Rcd 11761 (2003) (Estelline (population 168 persons) is a community for allotment purposes); *Reydon, Oklahoma*, 18 FCC Rcd 3222 (2003) (Reydon (population 177 persons) is a community for allotment purposes). Cumulus has not demonstrated why Paisley should be deprived of community status or why the Joint Petitioners' proposal should not receive Commission approval.

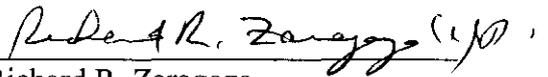
In view of the above, Cumulus has not shown cause why its license for Station KNRQ-FM, Eugene, Oregon should not be modified to specify operation on Channel 300C in lieu of Channel 250C.

Respectfully submitted,

PORTLAND BROADCASTING, L.L.C.

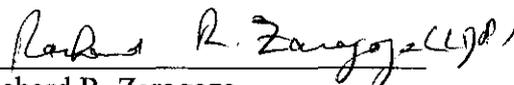
M.S.W. COMMUNICATIONS, LLC

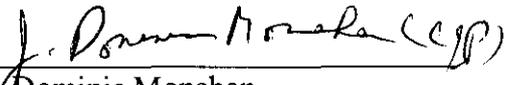
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By: 
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COLUMBIA GORGE BROADCASTERS, INC.

EXTRA MILE MEDIA, INC.

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By: 
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Luvaas Cobb Richards & Fraser, PC
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Dated: May 2, 2006

DECLARATION

I, Kevin Terry, am Vice President of Engineering/Development for Portland Broadcasting, LLC ("Portland Broadcasting"). Portland Broadcasting, licensee of station KXPC-FM Lebanon, OR, is also one of the Joint Parties in a Counterproposal to MB Docket 05-10.

Portland Broadcasting has contracted the services of Jack Chevalier of Chevalier Aviation Associates, LLC ("Chevalier"), to conduct EMI interference studies in the vicinity of FAA facilities at Mahlon Sweet Field Airport ("Mahlon") near Eugene, OR, to determine if the Joint Parties' proposed channel change for KNRQ (FM) Eugene, OR, from 250C to 300C would create interference to the FAA facilities.

In the event that the FAA EMI studies determine that channel 300C (to be used by KNRQ) could cause interference towards the FAA ILS localizers at Mahlon, Chevalier has identified several alternate ILS frequencies that the FAA can utilize for its localizer thereby eliminating any possible interference that would be created when KNRQ moves to channel 300C.

Chevalier and Portland Broadcasting are in the process of working with FAA officials to select the most ideal localizer frequency for FAA use in the event that KNRQ's channel is changed to 300C. In the event that KNRQ's channel is changed to 300C, Portland Broadcasting will, at no expense to Cumulus, reimburse the FAA for its expenses incurred while adjusting the FAA localizer frequency.

The foregoing statement is true and accurate to the best of my knowledge and is made under penalty of perjury.



Kevin Terry

Date: May 2, 2006



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 05-995

Released: April 1, 2005

FILING REQUIREMENTS IN FM ALLOTMENT RULEMAKING PROCEEDINGS

The Audio Division, Media Bureau, issues this reminder regarding filing requirements for rulemaking proceedings to amend the FM Table of Allotments, 47 C.F.R. §73.202(b). In recent months, numerous petitions, counterproposals and comments have been improperly filed in these proceedings. Typically, these filings have been incorrectly addressed to the Media Bureau or the Audio Division, thereby delaying their receipt in the Office of the Secretary and their prompt entry into in the Commission's Electronic Comment Filing System ("ECFS").

As stated in each FM allotment Notice of Proposed Rulemaking, all filings in these proceedings are to be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, and addressed for delivery, as appropriate, to the addresses established by the Secretary for hand delivered, commercial overnight mail, and United States Postal Service-delivered filings. *See* Public Notice, *Reminder, Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, 18 FCC Rcd 16705 (2003); <http://www.fcc.gov/osec>. The first page and cover sheet of each filing must indicate "To: Office of the Secretary." Incorrectly addressed filings will be treated as having been filed on the receipt date shown on the official "Office of the Secretary" date stamp. Failure to follow these requirements may result in the treatment of a filing as untimely. *See* 47 C.F.R. § 1.7.

By: Chief, Audio Division

Contact: William F. Caton, Deputy Secretary, Office of the Secretary, william.caton@fcc.gov,
202-418-0304.

Victoria M. McCauley, Audio Division, Media Bureau, victoria.mccauley@fcc.gov,
202-418-2180.

[FCC]



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2005-ANM-2379-OE
Prior Study No.
1990-ANM-246-OE

Issued Date: 12/29/2005

Gary Kline
Cumulus Media
PO Box 4555
Lafayette, IN 47903

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Antenna Tower
Location: Eugene, OR
Latitude: 44-0-7.0 NAD 83
Longitude: 123-6-54.0
Heights: 373 feet above ground level (AGL)
1668 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

See attachment for additional condition(s) or information.

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking and/or lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory Circular 70/7460-1 K.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study included evaluation of a 373 foot AGL structure that exists at this time. Action will be taken to ensure aeronautical charts are updated to reflect this existing height and the most current coordinates/elevation as indicated in the above description.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (817)222-5538. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2005-ANM-2379-OE.

Signature Control No: 439975-429384

(DNE)

Prentiss Andrews
Specialist

Attachment(s)
Additional Information
Frequency Data

cc: NACO w/map



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2005-ANM-2386-OE
Prior Study No.
1996-ANM-828-OE

Issued Date: 12/01/2005

Gary Kline
Cumulus Media
PO Box 4555
Lafayette, IN 47903

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Antenna - Side Mount
Location: Goldendale, WA
Latitude: 45-40-52.44 NAD 83
Longitude: 120-54-34.23
Heights: 141 feet above ground level (AGL)
3110 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking and/or lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory Circular 70/7460-1 K.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (425)227-2558.
On any future correspondence concerning this matter, please refer to
Aeronautical Study Number 2005-ANM-2386-OE.

Signature Control No: 439995-423244

(DNE)

Kathie Curran
Technician

Attachment(s)
Frequency Data

CERTIFICATE OF SERVICE

I, Karen McNeill, hereby certify that on this 2nd day of May, 2006, true and correct copies of the foregoing Comments on Order to Show Cause have been served via U.S. mail, postage prepaid, or by hand delivery upon the following persons:

John A. Karousos, Assistant Chief*
Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A266
Washington, D.C. 20554

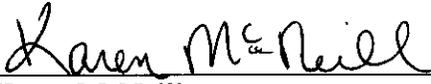
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Karen McNeill

*Denotes Hand Delivery