

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

JUL 31 2006

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Norfolk and Windsor, Virginia))

Federal Communications Commission
Office of Secretary

MB Docket No. 05-150
RM-11214

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

PETITION FOR RECONSIDERATION

CC Licenses, LLC ("Clear Channel") (formerly Clear Channel Broadcasting Licenses, Inc.), licensee of Stations WJCD(FM), Windsor, Virginia ("WJCD") and WKUS(FM), Norfolk, Virginia ("WKUS"), by its counsel, hereby files a Petition for Reconsideration of the *Report and Order* ("R&O") issued June 23, 2006, (DA-06-1309), 71 Fed. Reg. 40981 (2006) in the above captioned proceeding.¹ The R&O erroneously concluded that the reallocation of Station WJCD from Windsor to Norfolk would constitute a migration of the station from a rural to an urban area in violation of a previously unannounced and undefined policy directive under Sec. 307(b) of the Communications Act of 1934, as amended. In addition, the Media Bureau found that the provision of additional service to over one million people was not an adequate public benefit under Priority 4 to counterbalance the migration. Clear Channel will show that the R&O failed to consider material facts as to whether a migration is occurring and that the R&O lacks the foundation upon which to find that the public benefits offered are inadequate under Priority 4. In support hereof, Clear Channel states as follows:

¹ No other parties filed comments.

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Factual Background

1. On February 11, 2005, Clear Channel filed the *Petition for Rule Making* requesting (1) the reallocation of Channel 299A from Windsor to Norfolk, Virginia and the modification of Station WJCD's license accordingly and (2) the reallocation of Channel 287B from Norfolk to Windsor, Virginia and the modification of Station WKUS' license accordingly. In the Petition, Clear Channel demonstrated that the overall net gain in population resulting from these reallocations would total 1,023,941 persons under Priority 4. Several cases were cited in support of the gain in population as a basis for finding that the proposal was in the public interest. Clear Channel also provided a list of stations that would continue to serve the loss area if Station WJCD moves away from Windsor. That list totaled forty stations and supported Clear Channel's assertion that the loss area is well served. *See* Figures 3 and 4 of the Technical Exhibit. Finally, in Figure 8 of the Technical Exhibit, Clear Channel showed that WJCD currently covers 18% of the Norfolk Urbanized Area and that from its proposed new location WJCD would serve 24% of the Norfolk Urbanized Area, a gain of only 6%.

2. The *R&O* completely ignored those facts and determined that under Priority 4, it is concerned with "maintaining local service to Windsor and limiting the migration of stations from less populated to urban areas". At para. 6. The *R&O* offered no discernible facts in support of these concerns. It seemed to overlook the fact that Station WKUS would provide local service to Windsor and that Station WJCD was not currently serving a rural area. The *R&O* did acknowledge the proposed gain in service to over one million people but, without citing any cases, the Media Bureau found that this proposed gain in service to an "already well served" area was not a preferential arrangement of allotments.

Discussion

3. The *R&O* is wrong in several material respects. First, it fails to identify a policy under which it has ever denied a comparable proposal under the *Change of Community R &O*.² Second, it fails to offer any facts in support of its position that WJCD serves a rural area even if there is some policy in existence that prohibits such moves. Third, it fails to offer any facts to support its "concern" that local service to Windsor is not being maintained. On the other hand, Clear Channel offered uncontroverted facts which demonstrate that WJCD is not moving from a rural area and that service to Windsor will be maintained. These facts were ignored.

4. The relevant language in the Commission's decision in *Change of Community MO&O* as quoted in the *R&O* is as follows:

Consistent with longstanding practice applying these residual categories [Priority 4], if the Commission is presented with conflicting options, such as the option of retaining the existing arrangement of allotments or adopting a new arrangement of allotments, it will adopt the proposal which best discharges the Commission's statutory mandate.... Under these circumstances, it is proper for the Commission to *consider* whether a proposal would result in shifting of service from an underserved rural to a well-served urban area and the public interest consequences of any such change.³ [Emphasis added.]

The operative word in the last sentence is that it is proper for the Commission to *consider* the shifting of service from an underserved rural to a well served urban area under Priority 4. The Commission did not prohibit such moves. Rather, it contemplated that such a migration would be a consideration just like service to over a million people would be a consideration.

² See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, (*"Change of Community MO &O"*), 5 FCC Rcd 7094 (1990).

³ *Change of Community MO &O*, 5 FCC Rcd at 7096.

5. In such circumstances, it is incumbent upon the Media Bureau to seek guidance from past cases as to what facts and circumstances would justify a denial of the proposed gain in service to over one million people. But there is no such evaluation. As a result, the public is at a complete loss to understand when this new policy would be triggered. A fair reading of this case, is that there is now an extremely high hurdle to clear in order to change community of license under Priority 4. Apparently a showing of increased service to over one million people is not enough if those people are already well served. However, it would be helpful if the Commission would clarify what kind of showing would justify a change in community of license under Priority 4. What is particularly troubling here is that the facts offered by Clear Channel clearly support a finding that the existing service area is already well served and those facts were ignored. Likewise, several prior cases were cited by Clear Channel (and many more could have been cited) to justify this move under Priority 4 but the Commission staff failed to distinguish the cases that were offered and failed to offer any cases to support the Bureau's position.

6. The facts are that WJCD currently provides service to an area which receives 40 stations. Indeed the urban area where it proposes to move currently has less stations (38)! In addition, the station currently provides a 70 dBu signal to 18% of the Norfolk Urbanized Area and proposes to increase that coverage to 24%, an increase of only 6%. These facts would indicate that the station does not currently serve a rural area. Certainly it is hard to understand how the Bureau determined that the current service area is underserved. Unfortunately the R&O fails to shed any light on this matter. Finally, the Commission erroneously found that local service to Windsor is not maintained. However under the Clear Channel proposal, Windsor will receive a Class B 70 dBu predicted signal from WKUS while, currently, Station WJCD's Class A signal does not cover any portion of Windsor with a predicted 70 dBu signal. (See

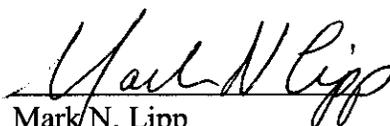
Exhibit 1.) Thus the proposed signal level to Windsor and the class of station will actually be increased.

7. The Media Bureau should clarify its policy under Priority 4. In so doing, it should find that this proposal is not a move from an underserved rural area, that local service to Windsor will be maintained and that the public interest benefit of additional service to over a million people clearly supports a grant of the proposal.

Respectfully Submitted,

CC LICENSES, LLC

By:



Mark N. Lipp
Scott Woodworth
Vinson & Elkins, LLP
1455 Pennsylvania Ave, NW
Washington, DC 20004
202-639-6771

Its Counsel

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Exhibit 1

NORFOLK WINDSOR.rs2

