

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

DOCKET FILE CORRECTED

SEP 13 2006

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Arapaho, Edmond, Oklahoma City, )  
Ponca City, Stillwater, and )  
The Village, Oklahoma) )  
 )

Federal Communications Commission  
Office of Secretary

MB Docket No. 05-136  
RM-11163  
RM-11296

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

**SUPPLEMENT**

Citadel Broadcasting Company ("Citadel"), licensee of Stations KKWD(FM), Edmond, Oklahoma, and KATT-FM, Oklahoma City, Oklahoma, by its counsel, hereby supplements its Counterproposal filed in this proceeding on May 10, 2005.<sup>1</sup> This Supplement is necessary in order to make the Commission Staff aware of the release of a recent decision -- *Columbus and Monona, Wisconsin* --<sup>2</sup> that is relevant to certain short spacings identified on the channel study for Channel 251C1 at The Village, Oklahoma (for use by KKWD(FM)). This channel study is labeled Exhibit E, Figure 1 in the Counterproposal and for convenience a copy is attached hereto as Attachment 2. In support hereof, Citadel states as follows:

1. The channel study for Channel 251C1 at The Village revealed short spacings to proposals for Channel 251A at Maysville, Oklahoma, and for Channel 251A at Cromwell, Oklahoma in MB Docket No. 04-404, which were pending at the time Citadel filed its

<sup>1</sup> Citadel is contemporaneously filing a "Motion to Accept Supplement."

<sup>2</sup> *Columbus and Monona, Wisconsin*, Memorandum Opinion and Order, DA 06-1758 (Med. Bur. 2006) ("*Columbus*"). A copy of this case is attached as Attachment 1.

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Counterproposal.<sup>3</sup> However, the expressions of interest for both of these proposals were withdrawn prior to the filing of Citadel's Counterproposal.<sup>4</sup> In its Counterproposal, Citadel noted that these proposals had been withdrawn and should be of no concern to the FCC's technical analysis. In doing so, Citadel relied on the decision in *Bristol, Vermont*.<sup>5</sup>

2. In *Bristol* the Media Bureau ("Bureau") accepted, issued a Notice of Proposed Rule Making for, and granted Blue Sky Broadcasting, LLC's ("Blue Sky") proposal to allot Channel 248A to Bristol, Vermont even though, when Blue Sky filed its proposal, it was short spaced to a proposal to allot Channel 248A to Westport, New York. The Bureau reasoned that, because the proposal for Channel 248A to Westport was defective due to a short-spacing to another facility and because the public interest would be served by allotting Channel 248A to Bristol as that community's first local service, it would grant Blue Sky's proposal to allot Channel 248A to Bristol.

3. The facts of this case are not only analogous to those in *Bristol*, they are in fact even more compelling. Here, Citadel's proposal was not contingent on a determination that another pending proposal was defective; rather, it relied on two proposals that had already been withdrawn.<sup>6</sup> Thus, Citadel had reason to believe that the Commission staff would accept its Counterproposal at the time it was filed based on established policy. However, 7 months after

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<sup>3</sup> The channel study for Channel 251C1 at The Village also revealed a short spacing to a proposal for Channel 249A at Purcell, Oklahoma that was dismissed in MM Docket No. 00-148. As noted in the Counterproposal that docket was still pending on Application for Review. Thus, Citadel requested treatment under the policy set out in *Auburn, Alabama, et al.*, 18 FCC Rcd 10333, 10340-41 (MB 2003). In *Auburn*, the FCC held that a rule making decision could be relied upon by future rule making proponents during the pendency of any appeal proceeding. The application for review in MM Docket No. 00-148 is pending and, thus, Citadel is still requesting treatment under *Auburn*.

<sup>4</sup> Charles Crawford (the Petitioner) withdrew his expression of interest in Channel 251A at Maysville on May 5, 2005. Katherine Pyeatt withdrew her expression of interest in Channel 251A at Cromwell on May 5, 2005. Okie Broadcasting withdrew its expression of interest in Channel 251A at Maysville on May 9, 2005. These were the only expressions of interest filed in that proceeding.

<sup>5</sup> 15 FCC Rcd 18917 (MMB 2000) ("*Bristol*").

<sup>6</sup> The Commission dismissed the Maysville and Cromwell proposals in MB Docket No. 04-404 on June 29, 2005.

Citadel filed its Counterproposal, the Commission repudiated the *Bristol* processing policy in *Oil City*,<sup>7</sup> which is why *Columbus* is relevant to this proceeding.

4. The Bureau's decision in *Columbus* is relevant because it relates to the application of a new policy to rule making proposals that were filed before the new policy was issued. In *Columbus*, the proponent petitioned to reallocate Station WTLX(FM) from Columbus to Monona, Wisconsin. In order to avoid depriving Columbus of its sole local service, the proponent relied upon an application to change the community of license of co-owned Station WTTN(AM) from Watertown to Columbus, Wisconsin. In its initial decision, the Bureau denied the proposal because it violated the newly implemented policy that an ungranted construction permit application could not replace the loss of a sole local service. This policy was announced in *Aguila*.<sup>8</sup> However, the Bureau reversed its decision on reconsideration because the proponent's rule making proposal in *Columbus* was filed before the FCC announced its new policy in *Aguila*. In doing so, the Bureau noted that the *Aguila* decision only applied to rule making proposals filed "in the future."<sup>9</sup>

5. When the Commission repudiated its *Bristol* processing policy in *Oil City*, it also noted that its decision only applied to rule making proposals filed "in the future." Specifically it

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<sup>7</sup> *Dubach, Natchitoches, Oil City and Shreveport, Louisiana, et al*, 20 FCC Rcd 19495 (2005) ("*Oil City*"). A copy of this case is attached as Attachment 3. In *Oil City*, the Commission allotted Channel 247C2 to Waskom, Texas and Channel 248A to Natchitoches, Texas, even though these proposals were short spaced to proposals in MB Docket No. 04-317 for Center, Texas and Logansport, Louisiana. As is the case in this proceeding, the four parties that expressed interest in the Center and Logansport channels withdrew from the proceeding. Even though these withdrawals were not yet final, the Commission granted the proponent's proposal.

<sup>8</sup> See *Aguila, Arizona, et al.*, Notice of Proposed Rule Making, 18 FCC Rcd 15202, n. 2 (Med. Bur. 2005) ("*Aguila*").

<sup>9</sup> The decision in *Columbus* was also based on the fact that reinstatement of the petitioner's proposal did not prejudice any other party because no mutually exclusive proposals were filed. This is also the case in this proceeding. Charles Crawford, the only other party in this proceeding, withdrew his petition to allot Channel 251C3 at Arapaho, Oklahoma on May 25, 2005.

“direct[ed] the staff to dismiss promptly such untimely filings *in the future*.”<sup>10</sup> The Commission also noted that its decision would be applied “*on a going forward basis*.”<sup>11</sup> Thus, it is clear from the Commission’s decision that the applicability of *Oil City* and the repudiation of *Bristol* is a prospective and not a retroactive decision. The recent decision in *Columbus* supports this conclusion. The terms “in the future” and “on a going forward basis” cannot have any other logical explanation. Thus, because Citadel’s Counterproposal was filed almost 7 months before the Commission’s decision in *Oil City*, that decision does not apply to this proceeding and Citadel’s Counterproposal is not technically defective due to the *Bristol* processing policy.

6. Accordingly, the Bureau should not apply the new *Oil City* policy retroactively when it expressly stated it would not do so, particularly since it followed this exact course in its recent *Columbus* decision. The public interest could benefit from Citadel’s proposal (which includes a first local service to a 10,157 persons and a net gain in radio service to 382,639 people), and no other proposal would be adversely affected.

Respectfully Submitted,

CITADEL BROADCASTING COMPANY

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Its Counsel

September 12, 2006

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<sup>10</sup> 20 FCC Rcd 19495, note 17 (emphasis added).

<sup>11</sup> *Id* at ¶ 7 (emphasis added).

**CERTIFICATE OF SERVICE**

I, Deborah Morris, do hereby certify that I have on this 12th day of September, 2006, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Supplement**" to the following:

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Audio Division, Media Bureau  
Federal Communications Commission  
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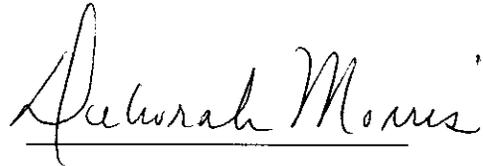
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Deborah Morris

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. 05-122
FM Broadcast Stations.	)	RM-11198
(Columbus and Monona, Wisconsin)	)	
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER  
(Proceeding Terminated)**

**Adopted: August 31, 2006**

**Released: September 5, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Petition for Reconsideration of a *Report and Order*<sup>1</sup> in this proceeding filed by Good Karma Broadcasting, LLC, licensee of Station WTLX(FM), Columbus, Wisconsin ("Petitioner") ; and (2) a Motion to Supplement Petition for Reconsideration filed by the Petitioner.<sup>2</sup> For the reasons discussed below, we will grant reconsideration.

**BACKGROUND**

2. At the request of the Petitioner, the *Notice of Proposed Rule Making*<sup>3</sup> in this proceeding proposed the reallocation and change of community of license for Station WTLX(FM) from Channel 263A at Columbus, Wisconsin, to Channel 263A at Monona, Wisconsin, pursuant to the provisions of Section 1.420(i) of the Commission's rules.<sup>4</sup> The *NPRM* stated that the reallocation would provide a first local aural service at Monona (pop. 8,018) without depriving Columbus (pop. 4,479) of its sole local service. In order to prevent the removal of the sole local transmission service in Columbus, the Petitioner relied upon a simultaneously filed "back-fill" application to change the community of license of its Station WTTN(AM), 1580 kHz, from Watertown, Wisconsin, to Columbus, which was filed in connection with AM Auction No. 84 and was not mutually exclusive with any other applications submitted in the filing window.<sup>5</sup>

<sup>1</sup> *Columbus and Monona, WI*, Report and Order, 20 FCC Rcd 16253 (MB 2005) ("R&O").

<sup>2</sup> The Petitioner's Motion to Supplement, which was filed on April 11, 2006, seeks to update the record in this proceeding by providing information on facts that have changed since the Commission released its R&O. We will grant the Motion to Supplement because it will facilitate resolution of this case. See *Butler and Reynolds, GA*, Memorandum Opinion and Order, 21 FCC Rcd 1516 n.2 (MB 2006).

<sup>3</sup> *Columbus and Monona, WI*, Notice of Proposed Rule Making, 20 FCC Rcd 6049 (MB 2005) ("NPRM").

<sup>4</sup> This rule permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.

<sup>5</sup> See File No BMJP-20050118AJT.

3. The *R&O* dismissed the Petitioner's rulemaking proposal because it was contingent upon an ungranted construction permit application as a "backfill" to replace the prospective loss of a sole local service. The *R&O* explained that relying upon an ungranted AM "backfill" application is not conducive to the efficient processing of petitions for rule making.<sup>6</sup> The *R&O* stated that the petition for rule making may be refiled after the AM license application is granted, specifying Columbus as the new community of license.

4. In its Petition for Reconsideration, the Petitioner contends that its rulemaking proposal should be reinstated and granted for two reasons. First, the Petitioner argues that the *R&O* failed to apply precedent in dismissing the rulemaking petition. In support of this position, the Petitioner states that in *Marion and Johnston City, IL*,<sup>7</sup> the staff simultaneously approved the change of community of license of an expanded band AM station from Johnston City, Illinois, to Berwyn, Illinois, and a "backfill" reallocation of an FM station from Marion, Illinois, to Johnston, City. To prevent the removal of a sole local service, the staff imposed a condition that the AM station could not commence operations at Berwyn until the FM station commenced operations at Johnston City. The Petitioner asserts that the same approach should be applied in the instant proceeding and that the proposed reallocation to Monona should be granted subject to the initiation of replacement radio service at Columbus.

5. Second, the Petitioner argues that the newly adopted policy prohibiting the reliance upon ungranted AM "backfill" applications to prevent the prospective loss of service should not be applied in this instance because it was intended, by its terms, to apply only to rulemaking petitions "in the future." As such, the Petitioner submits that this policy should apply only to rulemaking petitions filed after September 26, 2005, the date that the policy was announced. Because the Petitioner's rulemaking petition was filed eight months before the new policy was adopted, it argues that the policy should not be applied in this case.<sup>8</sup>

6. In its Motion to Supplement Petition for Reconsideration, the Petitioner points out that the WTTN(AM) application was granted on April 7, 2006. Because its proposal no longer relies on an ungranted AM application as a "backfill" to replace the prospective loss of the sole local service at Columbus, the Petitioner contends that the basis for the dismissal of its rulemaking petition no longer exists and that its proposed reallocation should be granted.

#### DISCUSSION

7. At the outset, we clarify that the policy set forth in *Aguila and Apache Junction, AZ*, of prohibiting the reliance upon ungranted AM "backfill" applications to prevent the prospective loss of service is predicated upon our concern that these AM applications are subject to the auction process. The complexity and length of time of the auction process, as well as the potential for an AM major change application to become mutually exclusive with other applications filed during an auction window, is not conducive to the efficient processing of FM rulemaking petitions. By way of contrast, the AM application relied upon in *Marion and Johnston City, IL*, which involved an expanded band AM station, was not subject to the auction process and can more easily be coordinated with an FM rulemaking petition than an AM auction application. As a result, we believe that the *Marion and Johnston City, IL*, case is distinguishable from the present proceeding.

<sup>6</sup> See *Aguila, Apache Junction, et al., AZ*, Notice of Proposed Rule Making, 18 FCC Rcd 15202, 15203 n.2 (MB 2005). Therein, the staff stated that "[i]n the future, any petition for rule making which specifies an ungranted construction permit application as a 'backfill' to replace the prospective loss of a sole local service will be returned." *Id.*

<sup>7</sup> Report and Order, 18 FCC Rcd 15346 (MB 2003).

<sup>8</sup> In the alternative, the Petitioner requests a waiver of this policy based upon the same reasoning set forth above.

8. It is well established that the Commission may change its processing rules at any time and parties do not have a vested right that a particular rule or policy will continue to be applied.<sup>9</sup> However, we will, for equitable reasons, reinstate and process the Petitioner's rulemaking petition. Our decision is based upon the fact that the Petitioner's proposal was filed before the release of the decision in the *Aguila and Apache Junction, AZ*, proceeding, announcing the new processing policy.<sup>10</sup> Further, reinstating the Petitioner's proposal will not prejudice any other parties because no mutually exclusive proposals were filed.

9. We will conditionally reallocate and change the community of license of Station WTLX(FM) from Channel 263A at Columbus, Wisconsin, to Channel 263A at Monona, Wisconsin, because the requirements of Section 1.420(i) have been met.<sup>11</sup> First, the proposed use of Channel 263A at Monona is mutually exclusive with the current use of Channel 263A at Columbus. Second, Columbus will not be deprived of its only local service because we will prohibit Station WTLX(FM) from commencing operations at Monona until Station WTTN(AM) commences operations at Columbus in accordance with its now-granted construction permit. Third, the provision of a first local service at Monona under Priority (3) of the FM Allotment Priorities<sup>12</sup> will result in a preferential arrangement of allotments over the retention of a second local service at Columbus under Priority (4).<sup>13</sup>

10. Monona is a community for allotment purposes because it is incorporated and listed in the U.S. Census. As described in the *NPRM*, Monona has a Common Council comprised of a mayor and six alderpersons. The city also has its own police, volunteer fire/emergency, medical service, and public works departments, and a commercial base with over 500 businesses. Further, because Monona is located within the Madison, Wisconsin, Urbanized Area and the 70 dBu signal of Station WTLX(FM) will encompass 83 percent of that Urbanized Area, the Petitioner submitted a *Tuck* showing.<sup>14</sup> We find that a majority of the eight *Tuck* factors are present and that Monona is sufficiently independent of the Madison Urbanized Area to warrant a first local service.<sup>15</sup>

11. A staff engineering analysis reveals that the reallocation of Station WTLX(FM) will result in a gain of 321,238 persons and a loss of service to 35,479 persons, for a net gain of 285,759. However, most of the loss area is well served with five or more aural services.<sup>16</sup>

<sup>9</sup> See, e.g., *Chadmoore Comm., Inc. v. FCC*, 113 F.3d 235, 240-41 (D.C. Cir. 1997) (filing of upgrade applications did not vest petitioners with a legally cognizable expectation that criteria for considering their applications would remain unchanged). See also *Letter to Pamela C. Cooper, Esq., et al.*, 16 FCC Rcd 12668, 12672 (MMB 2001) (changes in processing rules may be applied in cases arising before their promulgation).

<sup>10</sup> As previously noted, the AM "backfill" application relied upon by the Petitioner was granted on April 7, 2006.

<sup>11</sup> The reference coordinates for Channel 263A at Monona are 43-08-19 NL and 89-22-27 WL.

<sup>12</sup> The FM allotment priorities are (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 91 (1982).

<sup>13</sup> We note that there is pending a previously filed application for a new AM station at Monona (File No. BNP-20040129ATZ) that is mutually exclusive with two other applications in AM Auction No. 84. However, a request for approval of a settlement has been filed under which the Monona application would be dismissed. See Joint Request for Approval of Agreement, MX Group. No. 84-18 at 2.

<sup>14</sup> See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1988) ("*Tuck*").

<sup>15</sup> Specifically, factors 1 (significant percentage of workforce employed in the community); 2 (a local media outlet); 4 (local government and elected officials); 5 (zip code); 6 (commercial establishments, health facilities); and 8 (local services such as police, public works, fire, and bus system) are present.

<sup>16</sup> Although 824 persons in an area of 24 square kilometers will be reduced from five to four aural reception services and 1,878 persons in an area of 133 square kilometers will be reduced from four to three services, the services (continued....)

12. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) of the *Communications Act of 1934, as amended*, and Sections 0.61, 0.204(b), and 0.283 of the Commission's rules, IT IS ORDERED, That effective October 20, 2006, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, for the communities listed below, as follows:

<u>Communities</u>	<u>Channel Number</u>
Columbus, Wisconsin	---
Monona, Wisconsin	263A

13. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the license of Good Karma Broadcasting, LLC, for Station WTLX(FM), Channel 263A, Columbus, Wisconsin, IS MODIFIED to specify operation on Channel 263A at Monona, Wisconsin, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620;
- (c) Operating authority for Station WTLX(FM) at Monona, Wisconsin, may not be granted until operations have been commenced by Station WTTN(AM), 1580 kHz, Columbus, Wisconsin; and
- (d) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules.

14. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change of community of license and/or upgrade. As a result of this proceeding, the licensee of Station WTLX(FM) is required to submit a rulemaking fee in addition to the fee required for the application to effect the change in community of license.

15. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Good Karma Broadcasting, LLC, IS GRANTED.

16. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Good Karma Broadcasting, LLC, (RM-11198) IS GRANTED.

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

(...continued from previous page)

remaining in these loss areas are comparable to those of other relocations granted by the Commission. See, e.g., *Scappose and Tillamook, OR*, 15 FCC Rcd 10899 (MMB 2002) (4,312 persons left with four aural services, 2,461 persons with three aural services, and 19 persons with two aural services).

18. For further information concerning this proceeding, contact Andrew J. Rhodes, Audio Division, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau

**ENGINEERING STATEMENT  
In Support of a  
COUNTERPROPOSAL**



MB Docket 05-136, RM-11163  
KKWD 251C1 The Village, OK  
Citadel Broadcasting Company

**ADD 251C1 The Village, OK - (KKWD)**

(Deleting Ch 250A at Edmond and allotting Ch 251C1 The Village, OK)

REFERENCE			CLASS = C1		DISPLAY DATES		
35 35 22 N			Current	Spacings	DATA	05-03-05	
97 29 03 W			Channel 251 - 98.1 MHz		SEARCH	05-04-05	
Call	Channel	Location	Dist	Azi	FCC	Margin	
<b>Community of</b>	<b>The Village</b>	<b>OK</b>	<b>6.84</b>	<b>241.9</b>			
Reference Coordinates:							
North Latitude: 35-23-03							
West Longitude: 97-43-27							
<b>KKWD</b>	<b>LIC 250A</b>	<b>Edmond</b>	<b>OK</b>	<b>2.63</b>	<b>213.6</b>	<b>133.0</b>	<b>-130.37</b>
Of No Concern:							
Licensed facility of KKWD before proposed modification							
<b>KVRO</b>	<b>LIC 251A</b>	<b>Stillwater</b>	<b>OK</b>	<b>75.67</b>	<b>22.3</b>	<b>200.0</b>	<b>-124.33</b>
Of Concern:							
Substitution of Ch 266A proposed at site							
<b>RADD</b>	<b>ADD 251A</b>	<b>Maysville</b>	<b>OK</b>	<b>86.04</b>	<b>175.2</b>	<b>200.0</b>	<b>-113.96</b>
Of Concern:							
MX with instant counterproposal but was withdrawn by initial petitioner							
<b>KJME</b>	<b>LIC 251C1</b>	<b>Lawton</b>	<b>OK</b>	<b>136.19</b>	<b>215.7</b>	<b>245.0</b>	<b>-108.81</b>
Of No Concern:							
Channel deleted in MB Docket 01-293							
<b>RADD</b>	<b>ADD 251A</b>	<b>Cromwell</b>	<b>OK</b>	<b>96.81</b>	<b>104.8</b>	<b>200.0</b>	<b>-103.19</b>
Of Concern:							
MX with instant counterproposal but was withdrawn by initial petitioner							
<b>RADD</b>	<b>ADD 251C3</b>	<b>Arapaho</b>	<b>OK</b>	<b>130.64</b>	<b>264.4</b>	<b>211.0</b>	<b>-80.36</b>
Of Concern:							
Mutually Exclusive with the Citadel Broadcasting Company counterproposal							
<u>This is the MX point with the instant Counterproposal</u>							
<b>AP252</b>	<b>APP 252C1</b>	<b>Kiowa</b>	<b>KS</b>	<b>156.86</b>	<b>323.8</b>	<b>177.0</b>	<b>-20.14</b>
Of No Concern:							
Applicant unsuccessful in auction #37							
<b>RADD</b>	<b>ADD 249A</b>	<b>Hennessey</b>	<b>OK</b>	<b>71.06</b>	<b>323.5</b>	<b>75.0</b>	<b>-3.94</b>
Of Concern:							
Site modification proposed. See Hennessey below.							
MM Docket MB 05-85							

Continued on next page

Exhibit E, Figure 1

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. 05-47
FM Broadcast Stations.	)	RM-11157
(Dubach, Natchitoches, Oil City and Shreveport,	)	RM-11179
Louisiana, and Groesbeck, Longview,	)	RM-11232
Nacogdoches, Tennessee Colony and Waskom,	)	
Texas)	)	

**REPORT AND ORDER**  
(Proceeding Terminated)

**Adopted: November 28, 2005**

**Released: December 2, 2005**

By the Commission:

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding.<sup>1</sup> Cumulus Licensing LLC ("Cumulus") filed a Counterproposal. Access.1 Louisiana Holding Company, LLC ("Access.1") filed Opposition Comments. Cumulus and Charles Crawford filed Reply Comments. For the reasons discussed below, we are substituting Channel 247C2 for Channel 300C2 at Oil City, Louisiana, reallocating Channel 247C2 to Waskom, Texas, and are modifying the Station KBED license to specify operation on Channel 247C2 at Waskom. In order to restore local service at Oil City, we are reallocating Channel 266C from Shreveport, Louisiana, to Oil City, and are modifying the Station KRMD license to specify Oil City as the community of license. As a result, Channel 266C will be the only FM allotment at Oil City. To accommodate these reallocations, we are substituting channels in five communities in Louisiana and Texas.

2. At the request of Charles Crawford, the *Notice* proposed the allotment of Channel 300A at Tennessee Colony, Texas, as a first local service. In response to the *Notice*, Cumulus, licensee of Station KQHN (formerly KVMA-FM, then KBED), Channel 300C2, Oil City, Louisiana, and Station KRMD, Channel 266C, Shreveport, Louisiana, filed a Counterproposal involving seven communities in Texas and Louisiana.<sup>2</sup> The Counterproposal was necessitated by the fact that on January 12, 2005, the Commission ordered Station KQHN to discontinue operation due to interference to navigational equipment used by aircraft at the Barksdale Air Force Base.<sup>3</sup> As discussed below, the Counterproposal will enable Station

<sup>1</sup> *Tennessee Colony, Texas*, 20 FCC Rcd 2255 (MB 2005).

<sup>2</sup> During the course of this rulemaking proceeding, Cumulus changed the Station KBED call sign to KQHN effective April 7, 2005.

<sup>3</sup> See Letter from James Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Cumulus Licensing LLC (January 12, 2005).

KQHN to resume operation at Waskom while preserving local service at Oil City through the modification of the Station KRMD license.<sup>4</sup>

3. We are substituting Channel 247C2 for Channel 300C2 at Oil City, Louisiana, reallocating Channel 247C2 to Waskom, Texas, and modifying the Station KQHN license to specify Waskom as its community of license.<sup>5</sup> This action is taken pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest where the amended allotment would be mutually exclusive with the licensee's present authorization.<sup>6</sup> *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>7</sup> When considering a reallocation proposal, a comparison is made between the existing and proposed allotments to determine whether the proposed reallocation would result in a preferential arrangement of allotments. This reallocation would permit Station KQHN to resume operation and would result in Waskom having its first local service, a Priority 3 factor. In contrast the existing arrangement of allotments would preserve a fourteenth station licensed to Shreveport, a Priority 4 factor. Waskom is an incorporated community with its own local government and elected officials. In addition to the Waskom Independent School District, Waskom has its own fire department, water works and sanitation facility. Waskom has its own zip code, local Post Office and local newspaper, the Waskom Review. Waskom has a public library, local businesses, medical services, and civic organizations. Thus, we find that Waskom is a community for allotment purposes. Because there is no change in transmitter site, there will be no population gaining or losing service. The only difference is that Station KQHN will now be obligated to provide a local service to Waskom. Both the current and proposed arrangement of allotments would provide for and/or restore a first local service in Oil City, and thus are equal on this basis. In these circumstances, the new Waskom allotment is preferred over the preservation of a local Shreveport service.

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<sup>4</sup> On March 8, 2005, we issued a *Public Notice* (Report No. 2695), announcing that we will be processing a separate Petition for Rule Making filed by Charles Crawford for a Channel 299A allotment at Groesbeck, Texas, as a counterproposal in this proceeding. Upon further engineering review, we have determined that the proposed Channel 299A allotment at Groesbeck does not conflict with the underlying proposal for a Channel 300A allotment at Tennessee Colony, Texas, or any other proposal in this proceeding. For this reason, the *Public Notice* is without effect *ab initio*, and we will process the Petition for Rule Making for Channel 299A at Groesbeck in a separate proceeding.

<sup>5</sup> The reference coordinates for the Channel 247C2 allotment at Waskom, Texas, are 32-29-36 and 93-45-55. In this situation, the Channel 300C2 allotment at Oil City and the Channel 247C2 allotment at Waskom are mutually exclusive as required by Section 1.420(i) of the rules due to a 10.8 MHz I.F. separation requirement set forth in Section 73.207(b) of the rules.

<sup>6</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990) ("Community of License").

<sup>7</sup> 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

4. In order to maintain local service in Oil City, we are reallocating Channel 266C from Shreveport, Louisiana, to Oil City, and are modifying the Station KRMD license to specify Oil City as its community of license.<sup>8</sup> We also note that there will be a net loss in service to 56,303 persons. However, the population losing service will continue to receive more than five aural services.<sup>9</sup> Moreover, the reallocation will ensure a continued local service to Oil City, which otherwise might be left with an unusable allotment.

5. To accommodate the reallocation of Channel 247C2 to Waskom, Texas, we are making four other channel substitutions. First, we are substituting Channel 300C2 for vacant Channel 247C2 at Longview, Texas.<sup>10</sup> In order to accommodate Channel 300C2 at Longview, we are substituting Channel 299C3 for Channel 299C2 at Nacogdoches, Texas, and are modifying the Station KTBQ license to specify operation on Channel 299C3.<sup>11</sup> The allotment of Channel 299C3 to Nacogdoches will result in a net loss of service to 62,045 persons. The loss area will continue to receive more than five aural services. Capstar TX Limited Partnership, licensee of Station KTBQ, has consented to this modification of its license. To accommodate the reallocation of Channel 247C2 to Waskom, we are also substituting Channel 248A for Channel 247C3 at Natchitoches, Louisiana, and are modifying the Station KDBH-FM license to specify operation on Channel 248A.<sup>12</sup> Baldrige-Dumas Communications, Inc., licensee of Station KDBH-FM, has consented to this modification of its license. As a result of this license modification, 4,396 persons will lose service. This loss area will continue to receive more than five aural services. Finally, to accommodate Channel 248A at Natchitoches, we are substituting Channel 249C2 for Channel 249C1 at Dubach, Louisiana, and are modifying the Station KPCH license to specify operation on Channel 249C2.<sup>13</sup> Communications Capital Company II of Louisiana LLC, licensee of Station KPCH, has consented to the modification of its license. Because Station KPCH has not commenced operation on Channel 249C1, there will be no loss of existing service to any population.

6. Charles Crawford, the proponent for the Channel 300A allotment at Tennessee Colony, Texas, has withdrawn his expression of interest for the Tennessee Colony allotment. In accordance with Section 1.420(j) of the rules, Charles Crawford has filed an affidavit stating that he has not received or will not receive consideration for the withdrawal of his proposal.

MB Docket No. 04-317

7. The Channel 247C2 Waskom and Channel 248A Natchitoches allotments conflict with mutually exclusive proposals in MB Docket No. 04-317 to allot Channel 248A to Center, Texas, and the

<sup>8</sup> The reference coordinates for the Channel 266C allotment at Oil City, Louisiana, are 32-40-08 and 93-52-45.

<sup>9</sup> The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559; *see also LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

<sup>10</sup> The reference coordinates for the Channel 300C2 allotment at Longview, Texas, are 32-42-01 and 94-40-47.

<sup>11</sup> The reference coordinates for the Channel 299C3 allotment at Nacogdoches, Texas, are 31-38-09 and 94-38-50.

<sup>12</sup> The reference coordinates for the Channel 248A allotment at Natchitoches, Louisiana, are 31-46-09 and 93-01-38.

<sup>13</sup> The reference coordinates for the Channel 249C2 allotment at Dubach, Louisiana, are 32-40-09 and 92-37-58.

counterproposal to allot Channel 248A to Logansport, Louisiana.<sup>14</sup> Because the Cumulus Counterproposal was not filed by the October 4, 2004, comment date in MB Docket No. 04-317, this Counterproposal is subject to dismissal.<sup>15</sup> Acceptance of counterproposals after the comment date is disruptive to the efficient processing of allotment rulemaking proceedings. We are particularly concerned that waivers of this filing deadline could lead to abuses of our FM allotment procedures by permitting parties with no timely expression of interest in a proceeding to affect its outcome.<sup>16</sup> With the exception of one staff decision,<sup>17</sup> we are unaware of any case in which the Commission has waived Section 1.420(d) to permit consideration of an untimely counterproposal. This case, however, presents rare and exceptional circumstances which warrant waiver of Section 1.420(d) of the rules. Station KQHN has been ordered off the air by the Commission staff. As noted above, this action was taken in response to a complaint of interference to military aircraft communications equipment. The design of the military communications equipment makes it extremely unlikely that Cumulus will be able to resolve this interference issue. The Cumulus Counterproposal is the only technical solution that would enable Station KQHN to resume operations promptly. As part of its Counterproposal, Cumulus included statements from Charles Crawford, Team Broadcasting Company, Inc., Noalmark Broadcasting Corporation, and Logansport Broadcasting, the four parties in MB Docket No. 04-317, withdrawing their respective expressions of interest in pursuing any allotment in that proceeding.<sup>18</sup> No other party has filed a rulemaking petition or application which would be prejudiced by the acceptance of the Cumulus Counterproposal. On these facts, we conclude that waiver of Section 1.420(d) is warranted to permit Station KQHN to resume broadcast operations. Requiring Cumulus to initiate a new proceeding to consider its Counterproposal would needlessly delay the restoration of local service to Oil City. We emphasize, however, that on a going forward basis that we will continue to strictly apply Section 1.420(d). This singular waiver is based solely on the extraordinary facts of this case.

Comments of Access.1 Louisiana Holding Company, LLC

8. Access.1 filed Comments in opposition to the Cumulus Counterproposal. In its Comments, Access.1 contends that the reallocation to Waskom would exacerbate the migration of this station from the

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<sup>14</sup> *Center, Texas*, 19 FCC Rcd 15384 (MB 2004).

<sup>15</sup> Section 1.420(d) of the Commission's rules requires a counterproposal to be filed by the specified comment date in a rulemaking proceeding. See also *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990).

<sup>16</sup> In this regard, the rule waiver at issue in this proceeding is distinguishable from and significantly more problematic than our long-established policy of accepting late filed expressions of interest in uncontested cases. See *Amor Family Broadcasting Group*, 918 F. 2d 960 (D.C. Cir. 1990).

<sup>17</sup> In *Bristol, Vermont*,<sup>14</sup> FCC Rcd 11637 (MMB 1999), the staff issued a *Notice of Proposed Rule Making* proposing a Channel 248A allotment at Bristol notwithstanding the fact that a conflicting use of Channel 248A had been already suggested as a possible means to resolve an earlier proceeding and the petition requesting the Bristol Channel 248A allotment was filed after the counterproposal deadline in the earlier proceeding. That *Notice* as well as the subsequent *Report and Order*, 15 FCC Rcd 18917 (MMB 2000), allotting Channel 248A were inconsistent with our action in *Pinewood, South Carolina, supra*. We repudiate the *Bristol, Vermont* processing policy and direct the staff to dismiss promptly such untimely filings in the future.

<sup>18</sup> These withdrawals complied with Section 1.420(j) of the Commission's rules which limits reimbursement to the withdrawing party to no more than legitimate expenses. On April 25, 2005, we dismissed all proposals and terminated MB Docket No. 04-317. *Center, Texas, and Logansport, Louisiana*, 20 FCC Rcd 8213 (MB 2005).

rural community of Magnolia, Arkansas to the Shreveport Urbanized Area.<sup>19</sup> In addition, Access.1 argues that the proposed Channel 247C2 allotment at Waskom is not mutually exclusive with the existing Channel 300C2 allotment at Oil City, and notes that the reallocation to Oil City will result in "large areas and populations" losing service. Access.1 also notes that the allotment of Channel 247C2 at Waskom will result in the loss of low power Station KLBK-LP which serves the minority community of Shreveport. Finally, Access.1 argues that the allotment of Channel 247C2 to Waskom "may still result" in interference to air navigation and that the Commission should "take a closer look" at the "underlying arrangements" between Cumulus and the stations modifying their licenses to accommodate the reallocation proposal. We will consider each of these arguments.

9. Station KQHN will provide a first local service to Waskom and be a significant public benefit to that community. In this regard, we are aware that Station KQHN will provide the entire Shreveport Urbanized Area with a 70 dBu signal. For this reason, we do not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedent<sup>20</sup> and consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most importantly, the independence of the suburban community. In considering this reallocation proposal, we note that the *Huntington* doctrine is a limited exception to the Section 307(b) presumption that every community needs at least one local service.<sup>21</sup>

10. In its Comments, Access.1 has not argued that Waskom is not entitled to consideration as a first local service. An argument that this action "exacerbates" a migration to an Urbanized Area does not warrant denying a first local service to Waskom. As stated earlier, Waskom, with a population of 2,068 persons, is entitled to consideration as a first local service. The population total is substantial and supports consideration as a first local service.<sup>22</sup> With respect to coverage of the Urbanized Area, we note that as a Class C2 facility, Station KQHN will invariably cover a significant portion, if not all, of the Shreveport Urbanized Area. As discussed in paragraph 3, *supra*, and consistent with the factors set forth in *Faye and Richard Tuck*, Waskom is sufficiently independent of the Shreveport Urbanized Area to warrant a first local service preference.

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<sup>19</sup> In its opposition Comments, Access.1 refers to its Application for Review filed in an earlier proceeding, MB Docket No. 02-199, in which we reallocated Channel 300C2 from Magnolia, Arkansas, to Oil City and modified the Station KQHN license to specify Oil City as the community of license. *Magnolia, Arkansas, and Oil City, Louisiana* 19 FCC Rcd 1553 (MB 2004). We are now only considering the reallocation of Channel 247C2 to Waskom. Our action in this proceeding is subject to the outcome of the Application for Review and could be modified by an outcome in that proceeding. Finally, our action in this proceeding does not affect any separate request by Cumulus to resume Station KQHN operation by special temporary authority.

<sup>20</sup> See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>21</sup> See *Faye and Richard Tuck*, *supra*.

<sup>22</sup> *C.f. Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996) (community with a population of less than 1 per cent of the central city considered as a first local service); *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (MMB 1992) (community with a population of 1,514 persons considered as a first local service).

11. In reallocating Channel 247C2 to Waskom, we recognize that the channel substitutions *necessary to accommodate this reallocation would result in a significant number of persons losing existing service.* In each instance, the population losing service will continue to receive in excess of five services. As such, we will not preclude a first local service at Waskom, the resumption of service by Station KQHN and the restoration of local service at Oil City on the basis of well-served populations losing some service. There is no basis for us to take a "closer look" at the "underlying arrangements" between Cumulus and the stations modifying their authorizations to accommodate the reallocation proposal. Access.1 has not alleged a violation of any Commission rule or policy. Instead, Access.1 merely suggests that the licensees of these stations may have received financial consideration for their cooperation. This allegation is unsupported speculation by Access.1. Moreover, the licensees of these stations have not filed any competing expressions of interest in this proceeding. Therefore, Cumulus and these licensees would not be subject to the filing and disclosure requirements and the limitation of financial and other consideration set forth in Section 1.420(j) of the rules. We also reject the Access.1 argument that the proposed Waskom reallocation is not mutually exclusive with the existing authorization at Oil City as required by Section 1.420(i) of the rules. Access.1 has identified a site for a Channel 247C2 allotment at Waskom which is not mutually exclusive with the Oil City authorization. Such a showing does not preclude consideration of the Cumulus proposal. *Community of License* and Section 1.420(i) only require that the proposed reallocation set forth in the petition for rule making be mutually exclusive with the underlying authorization. There is no requirement that the rulemaking proponent demonstrate the unavailability of fully spaced sites in the proposed new community.

12. We also reject the argument that the Cumulus Counterproposal "may still" result in interference to air navigation. In support of this contention, Access.1 merely states that Cumulus has not received a "no hazard" determination from the FAA regarding the Channel 247C2 proposal and that we are "at risk" of expending a "great deal of time and resources" in considering the Cumulus Counterproposal only to have it rejected by the FAA. In response to this argument, Cumulus submitted an engineering exhibit from an aviation consultant. In that exhibit, the consultant notes that the Waskom proposal does not involve any change in structure height and would not require prior FAA notification. The FAA has been notified of the new frequency on the existing tower (97.3 MHz). On the basis of its study testing 97.3 MHz against all ILS localizers within 60 miles of the structure using the FAA Airspace Analysis Model, the aviation consultant has determined that there would be no electromagnetic interference to any ILS localizer or B-52 aircraft at Barksdale Air Force Base. Access.1 also states that a Channel 247C2 operation in Waskom could result in the termination of service by low power FM Station KBLK-LP which serves the minority community of Shreveport. While we recognize the valuable service being provided by Station KBLK-LP and other low power FM stations, these facilities are secondary services and must protect subsequently authorized full service stations.<sup>23</sup> In *Creation of a Low Power Radio Service*, the Commission specifically stated that it would not compromise the technical integrity of the FM service or prevent existing stations from modifying their facilities. In the event Station KBLK-LP interferes with the new primary service in Waskom, Station KBLK-FM would be required to suspend operation.<sup>24</sup> In regard to service to Shreveport, we note that 13 AM and FM stations are licensed to serve that community.

<sup>23</sup> *Creation of a Low Power Radio Service*, 14 FCC Rcd 2471 (1991).

<sup>24</sup> See 47 C.F.R. § 73.809(a). Should interference occur, Station KBLK-LP would be permitted to file a minor change application to specify any other rule-compliant frequency. See 47 C.F.R. § 73.870(a).

13. The Commission will send a copy of this Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

14. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective January 17, 2006, the Table of FM Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Dubach, Louisiana	249C2
Natchitoches, Louisiana	248A, 264C3
Oil City, Louisiana	266C
Shreveport, Louisiana	229C, 233C, 243C1, 259C2, 275C2
Longview, Texas	289C, 300C2
Nacogdoches, Texas	221A, 277C2, 299C3
Waskom, Texas	247C2

15. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cumulus Licensing LLC for Station KQHN, Channel 300C2, Oil City, Louisiana, IS MODIFIED to specify operation on Channel 247C2 at Waskom, Texas, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cumulus Licensing LLC for Station KRMD, Channel 266C, Shreveport, Louisiana, IS MODIFIED to specify operation on Channel 266C at Oil City, Louisiana, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

17. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Capstar TX Limited Partnership for Station KTBQ, Channel 299C2, Nacogdoches, Texas, IS MODIFIED to specify operation on Channel 299C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

18. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Baldrige-Dumas Communications, Inc., for Station KDBH-FM, Channel 247C3, Natchitoches, Louisiana, IS MODIFIED to specify operation on Channel 248A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

19. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Communications Capital Company II of Louisiana, LLC, for Station KPCH, Channel 249C1, Dubach, Louisiana, IS MODIFIED to specify operation on Channel 249C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance

with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

20. IT IS FURTHER ORDERED, That Section 1.420(d) of the Commission's rules IS WAIVED in order to permit consideration of the Cumulus Licensing LLC Counterproposal in this proceeding notwithstanding the fact that it was untimely with respect to an earlier proceeding in MB Docket No. 04-317.

21. Pursuant to Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, each licensee is required to submit a rulemaking fee in addition to the fee required for the application to affect the change in community of license.

22. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary