

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

FILED/ACCEPTED

DEC 15 2006

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Ione, Oregon; Walla Walla,)
Washington, and Athena,)
Hermiston, La Grande and)
Arlington, Oregon))
)
(Monument, Oregon; Prairie)
City, Prineville and Sisters,)
Oregon, and Weiser, Idaho; The)
Dalles, Tualatin, Eugene,)
Albany, Lebanon, Paisley and)
Diamond Lake, Oregon, and)
Goldendale, Washington))

MB Docket No. 05-9
RM-11141
RM-11242

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

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

MOTION TO SEVER

Horizon Broadcasting Group, LLC ("Horizon"), by its attorneys, and SSR Communications, LLC ("SSR") hereby move to sever certain aspects of MB Docket No. 05-10 from the remainder of this consolidated rulemaking proceeding. Horizon and SSR are collectively referred to herein as "Movants."

I. Background.

Numerous issues in this proceeding were resolved by the Report and Order (Ione, Oregon; Walla Walla, Washington, et al.) ("R&O") released September 5, 2006 (DA06-1759), 71 Fed Reg. 56407 (Sept.

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27, 2006). The *R&O* covered both MM Docket 05-09 ("05-09") and MM Docket 05-10 ("05-10").

In the final analysis, the most important aspect of 05-09 turned out to be the counterproposal of Two Hearts Communications ("Two Hearts") to change the city of license of its Station KHSS from Walla Walla, Washington to Athena, Oregon, and to upgrade KHSS' channel to 264C2. The *R&O* approved this plan.

Turning to MM Docket 05-10, this proceeding arose out of a petition for rulemaking filed by Klickitat Broadcasting, seeking allotment of Channel 229A to Monument, Oregon. For reasons not germane here, in the Notice of Proposed Rulemaking in 05-10, the Commission proposed allotment of Channel 266A to Monument instead of Channel 229A.¹

On the comment deadline, two counterproposals were received. SSR proposed various changes to channel allotments in central and eastern Oregon, including the allotment of Channels 265C to Prairie City, 280C to Monument and 267C1 to Prineville, Oregon, and a change in the operating frequency of Horizon's station KWPK in Sisters, Oregon. In order to accommodate this plan, SSR also asked for a change in a vacant noncommercial frequency assignment in Wieser, Idaho. At the same time, the counterproposal filed by a set of parties referred to in the *R&O* as the "Joint Petitioners"

¹ *Monument, Oregon*, Notice of Proposed Rule Making, 20 FCC Rcd 1287 (MB 2005).

sought to modify a number of allotments in northern and western Oregon as well as Goldendale, Washington. One of those proposed changes was the reallocation of Channel 279C, currently used by station KXPC-FM, from Lebanon to Paisley, Oregon. That change conflicted with the Channel 280C allotment that SSR suggested for Monument, Oregon in its counterproposal. The Joint Petitioners also requested that the channel allotment of station KNRQ-FM, Eugene, Oregon (licensed to Cumulus Licensing LLC), be changed to Channel 300C. Cumulus opposed that plan, raising, *inter alia*, concerns about FAA permission for Cumulus's station KNRQ-FM to operate on Channel 300C at its existing site.

The Commission consolidated MM Docket 05-09 with MM Docket 05-10 because Two Hearts' counterproposal in 05-09 to allot Channel 264C2 to Athena, Oregon conflicted with SSR's counterproposal in 05-10 to allot Channel 265C at Prairie City, Oregon. *R&O* at paras. 1, 5.

The conflict between the Two Hearts' counterproposal in 05-9 and SSR's counterproposal in 05-10 was resolved by a settlement agreement between these parties. Under the terms of the settlement, SSR agreed to drop its request for use of Channel 265C in Prairie City, thus freeing Two Hearts to proceed with its upgrade plans, subject to FCC approval. The modifications agreed

to in the settlement would also obviate the need for KWPK to change frequencies. Specifically, under the settlement SSR agreed to substitute Channel 280C1 for 280C at Monument, Oregon, thereby eliminating not only the need for a change in the operating frequency of Horizon's station, but also the conflict with the Joint Petitioners' proposal to move KXPC-FM to Paisley.

The settlement was approved by the Commission in the R&O. Thus, the R&O substituted Channel 260C for 265C at Prairie City, allotted Channel 280C1 to Monument in lieu of Channel 280, added Channel 267C1 to Prineville, and relieved Horizon from any duty to move to a new channel.

Inasmuch as the settlement removed the only conflict between SSR's counterproposal and the counterproposal filed in 05-10 by the Joint Petitioners, neither Two Hearts, SSR nor Horizon took any position on any aspect of the Joint Petitioners' plan. By the same token, neither Two Hearts, SSR nor Horizon took any position one way or the other on Cumulus' opposition to that plan.

In the R&O, for reasons completely unrelated to the objectives of and pleadings filed by Two Hearts, SSR and Horizon, the Audio Division dismissed the Joint Petitioners' counterproposal. The Audio Division did so solely in response to comments filed by Cumulus, rather than for any reason relating to the Movants. R&O at para. 14.

On October 27, 2006, the Joint Petitioners filed a Petition for Reconsideration of that portion of the R&O which dismissed their counterproposal. The Petition for Reconsideration did not take issue with any of the changes that the R&O made in communities east of the Cascade Mountains, as urged by SSR and Two Hearts and as agreed to in their settlement. Nor did the Joint Petitioners, in their Petition for Reconsideration, object to KWPK being left on its original channel in Sisters, as determined in the R&O.

Last month, Two Hearts filed a Motion to Sever the matters identified in 05-09 from the issues open in 05-10. As recited there, the Movants herein have no objection to a grant of Two Hearts' Motion to Sever.

Discussion

The allotment changes that were adopted by the R&O eliminated all conflicts between the allotment proposals of SSR and Two Hearts. The R&O also satisfied Horizon's wish to be left alone. The Petition for Reconsideration does not challenge the propriety of any of those allotment changes. Therefore, there is no reason why that portion of 05-10 relating to Monument, Prairie City, Prineville and Sisters, Oregon, and Weiser, Idaho, should not be immediately severed from this consolidated proceeding. That way, the new allotments to Monument, Prineville and Prairie City, and the Audio Division's rejection of the proposed change in Horizon's

operating frequency, can become final.²

Moreover, severance of Monument, Prineville, Prairie City and Sisters, Oregon from this proceeding will serve the public interest by clearing the way for SSR and others to apply for construction permits on the new allotments, thereby hastening the day when Monument and Prairie City will begin receiving their first local broadcast services, and when Prineville will receive an additional service. Further, such severance will clarify the future for any party that may wish to apply for the vacant channel in Weiser, Idaho at the appropriate time, as that potential station's frequency assignment will be settled and final.

The various attorneys for Two Hearts, Cumulus and each of the Joint Petitioners have authorized the undersigned to state that they have no objection to a grant of this Motion.

SSR hereby verifies that the statements made in this Motion are accurate to the best of its knowledge, information and belief, that there is good ground to support it, and that it is not interposed for the purpose of delay.

THEREFORE, Horizon and SSR submit that the public interest would be served by the immediate severance of matters related to Monument, Prairie City, Prineville and Sisters, Oregon, and Weiser, Idaho from this proceeding, and by the issuance of an order stating

² As a practical matter, the actions taken in the R&O have already eliminated the conflict between the plans of the Movants and those of the Joint Petitioners.

that by virtue of such severance the allotment changes made as to those communities are final.

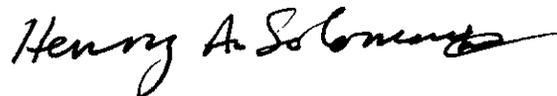
Respectfully submitted,

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December 8, 2006

Certificate of Service

I hereby certify that on this 15th day of December, 2006, copies of the foregoing Motion to Sever have been served via U.S. mail, postage prepaid, or where indicated by an asterisk via hand delivery, upon the following persons:

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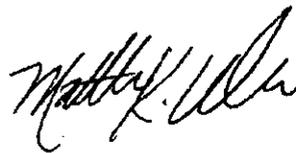
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