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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 05-115
FM Broadcast Stations.	)	RM-11202
(High Point and Liberty, North Carolina)	)	
	)	
	)	
	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 10, 2007 **Released: January 12, 2007**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making*[1] issued at the request of Capstar Limited Partnership ("Petitioner"), licensee of Station WVBZ(FM), High Point, North Carolina; (2) various related pleadings;[2] (3) a request for approval of withdrawal of interest filed by the Petitioner; (4) a *Request for Supplemental Information*;[3] (5) a response to request for supplemental information filed by the Petitioner; and (6) an addendum to response to request for supplemental information filed by the Petitioner. For the reasons discussed below, we will approve the withdrawal of the Petitioner's rulemaking petition.

2. **Background.** The *NPRM* proposed the reallotment, downgrade, and change of community of license for Station WVBZ(FM) from Channel 262C at High Point, North Carolina, to Channel 262C0 at Liberty, North Carolina, pursuant to Section 1.420(i) of the Commission's Rules.[4] Capitol filed a conflicting minor change application for its Station WCMC-FM, Creedmoor, North Carolina,[5] which would be treated as a counterproposal in this proceeding because the application was filed after the rulemaking petition but before the comment deadline of May 9, 2005, set forth in the *NPRM*.[6]

3. In its request for approval of withdrawal of interest, Capitol explained that after the pleading cycle ended, Capitol and the Petitioner entered into a Modification and Option Agreement, which

---

[1] *High Point and Liberty, NC*, Notice of Proposed Rule Making, 20 FCC Rcd 6024 (MB 2005) ("*NPRM*").

[2] These pleadings include: (1) comments filed by the Petitioner; (2) comments filed by Capitol Broadcasting, Inc. ("Capitol"); (3) reply comments filed by the Petitioner; and (4) a motion for leave to file surreply and surreply comments filed by Capitol.

[3] *High Point and Liberty, NC*, Request for Supplemental Information, 21 FCC Rcd 5268 (MB 2006) ("*RSI*").

[4] 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.

[5] *See* File No. BMPH-20050509ACV.

[6] *See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, Report and Order, 7 FCC Rcd 4917 (1992).

modifies the terms of an existing tower lease between the parties with Capitol as the landlord and the Petitioner as tenant for Station WVBZ(FM)'s technical facilities. The Petitioner stated that, under the terms of the Modification Agreement, the Petitioner agreed to amend its transmitter site for Station WVBZ(FM) at Liberty in this proceeding to protect Capitol's application site for its Creedmoor station and not to seek any site in conflict with this station for a period of five years. Thereafter, the Petitioner stated that it made the unilateral decision not to purse the reallotment of Station WVBZ (FM) from High Point to Liberty. The Petitioner contended that its withdrawal complies with Section 1.420(j)[7] because (1) the Modification Agreement does not require the withdrawal of the Petitioner's rulemaking petition; (2) the only consideration that the Petitioner is receiving is an extension of its current lease and a right of first refusal for additional space; and (3) no other monetary consideration is being paid or received by these parties.

4. In the *RSI*, we stated that the Petitioner's withdrawal of its expression of interest in the proposed reallotment of Station WVBZ (FM) to Liberty did not appear to be unilateral. Rather, the Petitioner is eliminating the conflict with the mutually exclusive Creedmoor application in return for something of value – an extension of its current transmitter tower lease and a right of first refusal for additional tower space. As such, the *RSI* found that the Modification Agreement falls within the ambit of Section 1.420(j).[8] Accordingly, the Petitioner was requested to submit a copy of the Modification Agreement and to demonstrate whether the value of the lease extension and the right of first refusal exceeds the Petitioner's itemized legitimate and prudent expenses in prosecuting the proposed reallotment to Liberty.

5. In response to the *RSI*, the Petitioner submitted a copy of the executed Modification Agreement, as well as the Antenna Site Lease Agreement that was referred to in the Modification Agreement. The Petitioner contends that, as to the lease extension for the Petitioner's use of the current tower and the option/rights of first refusal for additional space on Capitol's two towers, the rates are at, or above, fair market value for such tower space and, therefore, do not constitute a monetary benefit to the Petitioner. In support of this position, the Petitioner submitted a letter from an officer of Capitol's real estate subsidiary, listing the monthly rental rates for the radio stations currently located on the two Capital towers.

6. **Discussion.** As we stated in *Georgetown, Mason, Oxford, et al., Kentucky,*[9] where an expression of interest in an FM allotment proceeding is being withdrawn in exchange for an option to buy another station, or in this instance an extension of a lease and a right of first refusal for additional space, the appropriate inquiry is whether the purchase price or lease payments are at fair market value or whether they constitute excessive consideration under Section 1.420(j). We have reviewed the Modification Agreement and the supporting documentation submitted by the Petitioner in this light and agree that the rates are at, or above, fair market value for such tower space and do not constitute a monetary benefit to the Petitioner. Specifically, the Petitioner has demonstrated that its "cost per foot" (the monthly rate divided by the height on the tower of the antenna) is at or above the rates paid by existing users of

[7] This section provides that a party withdrawing an expression of interest in an FM allotment rulemaking proceeding may not receive money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest.

[8] *See, e.g., Georgetown, Mason, Oxford, et al., Kentucky,* Report and Order, 20 FCC Rcd 12976 (MB 2005) (withdrawing an expression of interest in a counterproposal in exchange for the opportunity to purchase an FM station for $60,294 and reimbursement of its legitimate and prudent expenses ordinarily would require documentation to ensure that the purchase price did not constitute excessive consideration; however, waiver of Section 1.420(j) granted because the request was filed during a 90-day settlement window for certain pending FM allotment proceedings); and *Quanah, Archer City, et al. TX,* Request for Supplemental Information, 17 FCC Rcd 994 (MB 2002) (an agreement between a counterproponent and a third party station to downgrade the station to accommodate the counterproposal is subject to the reimbursement limitations of Section 1.420(j)).

[9] 20 FCC Rcd at 12978 (¶ 10).

Capitol's two towers. Because the Petitioner's rates are not discounted from fair market value, there is no consideration to be accounted against the Petitioner's legitimate and prudent expenses in prosecuting its rulemaking petition. Accordingly, we find that the Modification Agreement comports with Section 1.420(j) of the Commission's rules.

7. Accordingly, IT IS ORDERED, That the request for approval of withdrawal of interest filed by Capstar Limited Partnership IS GRANTED.

8. IT IS FURTHER ORDERED, That the rulemaking petition (RM-11202) filed by Capstar Limited Partnership IS DISMISSED.

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

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau