

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FILED/ACCEPTED

OCT 22 2008

Federal Communications Commission
Office of the Secretary

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

MB Docket No. 05-10
RM-11279

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

**OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENT OPPOSITION
TO PETITION FOR RECONSIDERATION**

Portland Broadcasting, LLC, licensee of Station KXPC-FM, Lebanon, Oregon,
Bicoastal Media Licenses IV, LLC (successor in interest to Columbia Gorge
Broadcasters, Inc. and M.S.W. Communications, LLC), licensee of Station KACI-GM,
The Dalles, Oregon and Station KMSW(FM), The Dalles, Oregon and Extra Mile Media,
Inc., licensee of Station KHPE(FM), Albany, Oregon (collectively, the "Joint
Petitioners"), hereby oppose the Motion for Leave to Supplement Opposition to Petition
for Reconsideration filed by Cumulus Licensing LLC ("Cumulus"). In support of their
position, the Joint Petitioners submit the following:

As pointed out by Cumulus, it has opposed the Joint Petitioners' rule making
proposal throughout the proceeding based on Cumulus' contention that modifying the
licensed facilities of Cumulus Station KNRQ-FM, Eugene, Oregon from Channel 250C
to Channel 300C would create a hazard to air navigation. The Media Bureau, in its

Report and Order, 21 FCC Rcd 10017(MB 2006), dismissed the Joint Petitioners' rule making proposal based on the issuance of a Notice of Presumed Hazard by the Federal Aviation Administration ("FAA") stating that the proposed allotment of Channel 300C at KNRQ-FM's transmitter site would have an adverse physical or electromagnetic interference (EMI) effect upon navigable air space or air navigation facilities. As a result of the FAA Notice of Presumed Hazard, the Bureau concluded that use of Channel 300 at Station KNRQ-FM's "current transmitter site would have a negative impact on air/ground communications and cause unacceptable interference to the Eugene, Oregon Instrument Landing System (ILS) operated by the FAA."¹

Cumulus has repeatedly cited the FAA determination that use of Channel 300 would create a hazard to air navigation in support of its position that the Joint Petitioners' rule making proposal should be dismissed.² The Joint Petitioners have contended throughout this proceeding that any concerns expressed by Cumulus regarding changes in the operating channel of Station KNRQ-FM could easily be resolved by having the FAA make localizer frequency changes, a not unusual manner of proceeding.³

On September 10, 2008, as previously reported by the Joint Petitioners, the FAA issued a Determination of No Hazard to Air Navigation with respect to the proposed allotment of Channel 300C at the KNRQ-FM antenna tower site. The Determination of

¹ 21 FCC Rcd at 10020.

² See eg, Comments of Cumulus Licensing LCC to Order to Show Cause, filed May 2, 2006 at pp. 4-5 ("the FAA has concluded that the use of Channel 300 at the KNRQ transmitter site will create a hazard to air navigation as a result of the potential for electromagnetic interference, [and as such] the Joint Petition must be dismissed, and the proceeding must then be terminated."); Opposition to Petition for Reconsideration, filed November 9, 2006 at p. 2 ("the Commission correctly dismissed [Joint Petitioners'] counterproposal due to the FAA's valid and very real concern of interference to navigation aids used at the Mahlon Sweet Field, which serves the Eugene area").

³ See Joint Petitioners' Comments on Order to Show Cause, filed May 2, 2006 p.4n. 4; Petition for Reconsideration, filed October 27, 2006 at pp. 2-3 and Engineering Statement; Reply to Opposition to Petition for Reconsideration, filed January 18, 2007 at pp. 2-4 and Engineering Statement.

No Hazard expressly noted that the previous electromagnetic interference concerns expressed in the FAA Notice of Presumed Hazard--which the Bureau cited as the basis of its dismissal of the Joint Petitioners' proposal--had "been mitigated" in view of the commitment made in a Reimbursable Agreement between the FAA and Portland Broadcasting, LLC to fund localizer frequency changes. As such, "the FAA's EMI objection was removed" in view of the "mitigation of the identified EMI issues for any potential frequency change at the [KNRQ-FM] tower location."

Cumulus' latest in a series of oppositions to the Joint Petitioners' proposal, filed as a Motion for Leave to Supplement Opposition to Petition for Reconsideration, marks a change in strategy by Cumulus. Whereas, previously, Cumulus had argued to the Commission that the FAA considered there to be no solution to the potential EMI problem at the Eugene Airport and that the FAA adverse determination would not be changed⁴ and should, therefore, be relied upon by the Bureau in its rule making decision, Cumulus now has had a change of heart. In contravention to its earlier position that the Commission absolutely rely on an FAA determination (when it was adverse to Joint Petitioners' position), Cumulus now argues that the Commission should ignore an FAA Determination of No Hazard to Air Navigation. Cumulus cites no FCC precedent in support of such a position, nor does it attempt to explain the illogic of its argument. Instead, it asserts that the Commission should take the highly unusual step of ignoring an FAA Determination of No Hazard because Cumulus subsequently filed an extrajudicial attack on the FAA (without any basis with respect to FAA procedures). Cumulus misstates the purpose of the Reimbursable Agreement between the FAA and Portland

⁴ See eg, Cumulus Licensing, LLC, Opposition to Petition for Reconsideration, filed November 9, 2006 at p. 7 ("the decision by the FAA...will not be changed, nor are the Joint Petitioners currently engaged in any proceedings at the FAA to do so").

Broadcasting--which is to improve aviation safety--however, the reality is that whatever complaint Cumulus has with the FAA, its complaint is irrelevant to the FCC's licensing decision.⁵

Not only is Cumulus' complaint to the FAA irrelevant to the pending FCC proceeding, but the FAA obviously has found it irrelevant to its own case. As documented by the attached email, Anne Kusaka, an FAA official, has confirmed that frequency changes at the Eugene Airport were made last week and "the localizers were successfully flight checked on or about 10/16. Approval of the permanent frequency assignments have also been released so the project is now completed..." Accordingly, there can no longer be any question but that the FAA Determination of No Hazard, issued on September 10, 2007, is valid and in effect.

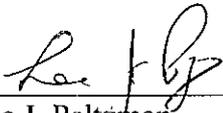
⁵ Cumulus goes so far as to state that the FAA will not change frequencies at the Eugene Airport unless and until the Commission issues a decision granting Joint Petitioners' rule making proposal. It cites no basis for this conjecture, nor can it since it is absolutely wrong. Throughout this entire proceeding Cumulus has played a game, reciting to the FCC that it should not grant the Joint Petitioners' rule making proposal because the FAA is adverse to its approval and then, after the FCC released a decision dismissing the Joint Petitioners' proposal, telling the FAA that the FCC had ruled against the Joint Petitioners and, therefore, the FAA should not consider reaching any agreement with Portland Broadcasting to improve aviation safety at the Eugene Airport.

As such, the Cumulus Motion is devoid of any legal validity and should be ignored if it is not outright denied. There is no basis for deferring further action in MB Docket 05-10. The time for a decision is now.

Respectfully submitted,

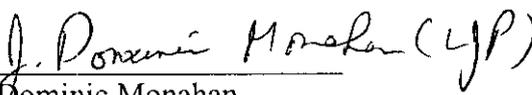
PORTLAND BROADCASTING, LLC

BICOASTAL MEDIA LICENSES IV, LLC

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Dated: October 22, 2008

Lee Peltzman

From: kevindterry [kevindterry@gmail.com]
Sent: Wednesday, October 22, 2008 11:23 AM
To: Lee Peltzman
Subject: Fwd: EUG Status

Send below

Kevin Terry
kevindterry@gmail.com
(801)560-9595 (cell)
(435)658-4613 (office)
(801)606-7802 (fax)

Sent from my iPhone

Begin forwarded message:

From: Anne.Kusaka@faa.gov
Date: October 22, 2008 9:11:50 AM MDT
To: kevindterry <kevindterry@gmail.com>
Subject: Re: EUG Status

Hi Kevin,

The frequency changes were made last week and the localizers were successfully flight checked on or about 10/16. Approval of the permanent frequency assignments has also been received so the project is now completed and all that remains is financial close out.

Thanks,

Anne Kusaka, PE
NAS Planning & Integration Team (AJO2-W32)
Lead Planner (WA & OR)
425-203-4639

kevindterry
<kevindterry@gmail.com>

To
Anne Kusaka/ANM/FAA@FAA
10/21/2008 05:40 PM cc
Subject
EUG Status

Anne,

I was just checking in to see if the weather cooperated last week to get the EUG ILS changes implemented. Thanks again for your help.

Kevin Terry

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2008, true and correct copies of the foregoing "Opposition to Motion for Leave to File Supplement Opposition to Petition for Reconsideration" have been served via U.S. mail, postage prepaid, upon the following persons:

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Malinda L. Ellerman

*Hand Delivery