

ORIGINAL

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

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

FILED/ACCEPTED

NOV - 3 2008

Federal Communications Commission
Office of the Secretary

TO: The Secretary
Attention: Chief, Audio Division, Media Bureau

**REPLY OF CUMULUS LICENSING LLC TO JOINT PARTIES OPPOSITION TO MOTION FOR LEAVE
TO SUPPLEMENT OPPOSITION TO PETITION FOR RECONSIDERATION**

Cumulus Licensing LLC ("Cumulus"), by its attorneys, submits its Reply to the "Opposition to Motion for Leave to Supplement Opposition to Petition for Reconsideration" filed in this proceeding by Portland Broadcasting, LLC and its partners (the "Joint Parties") on October 22, 2008.

Preliminary Statement

This proceeding involves a long running effort by the Joint Parties to force Station KNRQ(FM), Eugene, Oregon to modify its operation from Channel 250C to Channel 300C. The proceeding was initiated with the filing of a Petition for Rule Making by the Joint Parties on March 21, 2005. In light of the issuance of a Notice of Presumed Hazard ("NPH") issued by the Federal Aviation Administration ("FAA") on April 15, 2006, the Commission dismissed the Joint

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Parties' petition. *Report and Order*, 21 FCC Rcd 10017 (MB 2006). The Joint Parties filed a Petition for Reconsideration of the Commission's decision, which remains pending.

The Joint Parties subsequently filed motions with the Commission to supplement that petition with descriptions of the Joint Parties' efforts to have the FAA reverse the NPH. On September 10, 2008, the FAA issued a Determination of No Hazard (the "DNH") with respect to the proposed use of Channel 300C at the KNRQ transmitter site at Eugene. The DNH was not based on any existing change in the airport frequencies but on a contemplated change that would be funded by the Joint Parties.¹ In a "Further Supplement to Petition for Reconsideration" filed on September 29, 2008, the Joint Parties filed the DNH and urged the Commission to grant their reconsideration petition.

On October 9, 2008, Cumulus filed its "Motion for Leave to Supplement Opposition to Petition for Reconsideration."² The sole purpose of Cumulus' Motion was (1) to apprise the Commission of proceedings at the FAA that might result in a rescission of the DNH and (2) to request that the Commission defer action in the instant docket until those FAA proceedings are completed. The Joint Parties oppose that Motion because the FAA has changed the ILS frequencies at the airport so that the issue is moot, and any complaint Cumulus has with the FAA is allegedly irrelevant to the Commission's decision in the instant docket.

¹ Cumulus stated in its Motion that the airport frequencies would not be changed until the Commission rendered a decision in the instant docket. The Joint Parties chastised Cumulus for making that statement, alleging that "it is absolutely wrong." Opposition at 4 n. 5. Annexed hereto as Exhibit 1 is an email from James Whitlow, the FAA's Deputy Chief Counsel, advising Cumulus that the airport frequencies would not be changed until after the Commission rendered a decision.

² Cumulus filed an Opposition to Petition for Reconsideration on November 9, 2006.

Response to Joint Parties' Opposition

There is no reasonable basis to oppose the supplementation of the record with information about the pending FAA proceedings, and the Joint Parties (who have also asked for leave to supplement the record about FAA matters) do not appear to oppose Cumulus' effort to supplement the record with information about the pending FAA proceedings. Rather, the Joint Parties have focused their argument on the merits of Cumulus' request (after the record has been supplemented) that the proceedings in the instant docket be deferred until the FAA proceedings have been concluded.

The Joint Parties' objection to Cumulus' request for the Commission to wait for the conclusion of the FAA proceedings is ironic. The Joint Parties caused the bifurcated nature of these proceedings by their failure to address the issue of electromagnetic interference to ILS frequencies up front, rather than after the Commission dismissed their Petition. The Joint Parties were well aware of the problems encountered with the use of Channel 300 in close proximity to aviation frequencies since one of the Joint Parties, Extra Mile Media, Inc., operates Station KHPE(FM), Albany, Oregon on Channel 300 and claims to have experienced interference on Channel 300.³

Contrary to the Joint Parties' claims, the FAA proceedings remain relevant to the Commission's ultimate decision with respect to KNRQ. It may be that the FAA has made the

³ Indeed, Cumulus has experienced severe problems trying to operate an FM station on Channel 300 as a result of its experience in being forced to take Station KQHN(FM), Channel 300C2, Oil City, Louisiana, off the air for almost one year as a result of an after-the-fact FAA determination that the station caused interference to navigation aids in the Shreveport area. Accordingly, Cumulus is extremely sensitive to the issue of potential electromagnetic interference created to air navigation aids by broadcast stations, and strongly opposed to the operation of KNRQ(FM) on Channel 300.

changes in the airport frequencies. However, it is axiomatic that the change in the airport frequencies can be reversed (and the DNH rescinded). There is no public interest benefit in the Commission spending its limited resources in resolving issues relating to the Joint Parties' reconsideration petition - and perhaps forcing KNRQ to move to a different channel - unless and until there is a final disposition of the FAA proceedings.⁴

The Commission should therefore defer action in MB Docket 05-10 until the FAA proceedings are complete and final.

⁴ It is noteworthy that the Joint Parties have filed pleadings objecting to the construction of KNRQ's modified facilities on Channel 250 in Tualatin, Oregon, because those newly-constructed facilities may have to be removed if the Joint Parties' reconsideration petition is granted. The same argument applies to the Joint Parties' request in the instant proceeding that the Commission ignore the possibility of the FAA reversing its issuance of the DNH - with one critical difference. In the case of the new KNRQ facilities in Tualatin, Cumulus would be *voluntarily* assuming the financial risk of constructing new facilities; in the case of Portland Broadcasting's reconsideration request in the instant docket, the Commission would have to assume the risk of expending its limited resources on a result that might have to be rescinded if the FAA were to reverse its decision, and Cumulus could be forced to *involuntarily* assume the financial risk of constructing new facilities that could not be used.

Conclusion

Wherefore, in view of the foregoing and the entire record herein, it is respectfully requested that (1) the Commission grant Cumulus' Motion to supplement the record and (2) defer any further action in MB Docket No. 05-10 until there is a final the FAA proceedings are concluded.

Respectfully submitted,

CUMULUS LICENSING LLC

A handwritten signature in black ink, appearing to read "Michelle A. McClure", is written over a horizontal line.

Alan C. Campbell
Michelle A. McClure

Its Counsel

FLETCHER, HEALD & HILDRETH, PLC
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November 3, 2008

ATTACHMENT 1

Michelle McClure

From: Michelle McClure
Sent: Monday, November 03, 2008 3:45 PM
To: Michelle McClure

-----Original Message-----

From: james.whitlow@faa.gov [mailto:james.whitlow@faa.gov]
Sent: Thursday, September 18, 2008 2:54 PM
To: Paper, Lew
Subject: Re: Portland Broadcasting Reimbursable Agreement - Eugene, OR Airport

I understand you're out of this office, but this isn't time critical.

I just want to give you an update of where I think we are. Although it's been a little difficult to tie this down, I have been informed by my folks that FAA does not intend to actually start the relocation under the reimburseable agreement unless the FCC rules that you should move. I've also been informed that if you raise your concern to the FCC that there might still be an interference problem, they will formally ask the FAA for an opinion before they decide.

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Certificate of Service

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, PLC, do hereby certify that a true copy of the "Reply of Cumulus Licensing LLC to Joint Parties Opposition to Motion for Leave to Supplement to Opposition to Petition for Reconsideration" was sent this 3rd day of November, 2008, via United States First Class Mail, postage prepaid, to the following:

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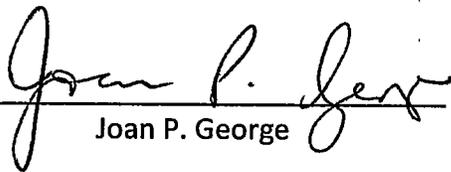
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