ORIGINAL

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

FILED/ACCEPTED
DEC 22 2008
Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 05-10
Table of Allotments	)	RM-11279
FM Broadcast Stations	)	
(The Dalles, Tualatin, Eugene, Albany,	)	
Lebanon, Paisley, and Diamond Lake,	)	
Oregon and Goldendale, Washington)	)	

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

OPPOSITION TO MOTION TO STRIKE
REPLY TO OPPOSITION TO MOTION FOR STAY

Cumulus Broadcasting LLC ("Cumulus"), acting pursuant to Section 1.45(b) of the Commission's rules, hereby opposes the Motion to Strike Reply to Opposition to Motion for Stay (the "Motion") filed on December 10, 2008 by Portland Broadcasting, LLC ("PB"), Bicoastal Medial Licenses IV, LLC and Extra Mile Media, Inc. (collectively, with PB, the "Joint Petitioners"), which is premised on Section 1.45(d) of the Commission's rules. Consideration of Cumulus' Reply to Opposition to Motion for Stay (the "Reply") would be consistent with the purpose of Section 1.45(d) and, to the extent necessary, a waiver of that rule is warranted. In support of that conclusion the following is stated:

1. On December 4, 2008, Cumulus filed the Reply to the Joint Petitioners' opposition to the motion which Cumulus had filed to stay or otherwise hold in abeyance the proceedings in the above-reference docket until there is a final resolution of pleadings which Cumulus filed with the Federal Aviation Administration (the "FAA").

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Those pleadings requested, in effect, a rescission of the No Hazard Determination *("NHD") which the FAA issued on September 10, 2008 with respect to the relocation of* Cumulus radio station KNRQ-FM ("KNRQ") to Channel 300C in Eugene, Oregon. Cumulus explained that grant of the motion would satisfy the four criteria applicable to stays, in part because rescission of the NHD would undermine any grant of the Joint Petitioners' request to force a relocation of KNRQ to Channel 300C.

2. On December 10, 2008, Joint Petitioners filed their Motion to strike the Reply based on Section 1.45(d) of the Commission's rules. That rule states in pertinent part as follows:

> Oppositions to a request for stay of any order or to a request for other temporary relief shall be filed within 7 days after the request is filed. Replies to oppositions should not be filed and will not be considered.

47 C.F.R. §1.45(d).

3. The rule was adopted because the Commission assumed that there would be a need for "prompt" action if a party sought to delay the effectiveness or application of an outstanding Commission order or in other situations where an expeditious ruling was needed. *Amendment of Parts 0 and 1*, 12 FCC2d 859 (1968) (replies prohibited for requests for stays of orders or other temporary relief "[i]n view of the need for prompt action"). That purpose has governed the Commission's application of the rule. Consequently, the Commission has not adhered to that prohibition against replies in situations where there is no need for "prompt action." *E.g. Redesignation of the 17.7-19.7 GHz Frequency Band*, 19 FCC Rcd 10777, 10782 n.38 (2004) (replies to be accepted on request for temporary relief "in order to fully develop the record").

4. Acceptance of Cumulus' Reply to the Joint Petitioners' opposition to the Motion for Stay would be consistent with the purpose of Section 1.45(d) and prior cases. This is not a situation where "prompt action" is needed. Cumulus is not asking to delay the effectiveness or implementation of a pre-existing Commission order. Rather, Cumulus' Motion for Stay relates to a proceeding that is now almost four (4) years old and where no party will be materially prejudiced if the Commission disposes of that Motion for Stay in the ordinary course.[1]

5. At the same time, there is no question but that the Reply will, as in *Redesignation of the 17.7-19.7 GHz Frequency Band*, *supra*, enable the Commission to develop a full record with respect the Cumulus' stay motion. The Joint Petitioners' opposition to the motion is replete with mistakes and omissions of fact and law, including (a) a failure to account for the irreparable harm to Cumulus (the loss of a construction permit to move KNRQ to Tualatin, Oregon) if the NHD is rescinded after the Commission requires KNRQ to be relocated on Channel 300C, (b) a failure to identify the "substantial harm" that would befall the Joint Petitioners if Cumulus' motion for stay is granted, (c) a failure to account for settled case law which entitles Cumulus to pursue relief at the FAA and obtain rescission of the NHD, and (d) a failure to account for the apparent violation of government ethics laws when PB retained a former FAA engineer to prepare and then submit to the FAA an engineering report on the very same matter that was within that former employee's responsibility at the FAA – a situation

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[1] Indeed, it is noteworthy that Joint Petitioners' opposition to the Motion for Stay failed to identify any "substantial harm" that they would incur if the stay were granted. That failure highlights the absence of any need for expedition.

which tarnished the FAA decision-making process (and could, in and of itself, require a rescission of the NHD).

6. Waivers of Commission rules are warranted where the purpose of the rule would not be compromised by a grant of the waiver. *WAIT Radio v. FCC*, 418 F.2d 1153, 1156 (D.C. Cir. 1969). Acceptance of Cumulus' Reply to the Joint Petitioners' opposition to the Motion for Stay satisfies that standard. Accordingly, to the extent necessary, Cumulus requests a waiver of the rule to accept the Reply.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Joint Petitioners' Motion be denied, that Section 1.45(d) of the Commission's rules be waived to the extent necessary, and that the Reply be accepted for consideration.

Respectfully submitted,

CUMULUS LICENSING LLC

Alan C. Campbell
Michelle A. McClure

Its Counsel

FLETCHER, HEALD & HILDRETH, PLC
1300 N. 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

December 22, 2008

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 "Opposition to Motion to Strike Reply to Opposition to Motion for Stay" was sent this 22nd day of December, 2008, via United States First Class Mail, postage prepaid, to the following:

Peter Doyle, Esq. (Peter.Doyle@fcc.gov)
Chief, Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, SW
Room 2-A360
Washington, DC 20554

John A. Karousos (John.Karousos@fcc.gov)
Assistant Chief, Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Rolanda F. Smith
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Lee J. Peltzman, Esq.
Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
Counselors at Law
1850 M Street, NW
Suite 240
Washington, DC 20036

J. Dominic Monahan, Esq.
Luvaas Cobb
777 High Street, 27853, Suite 300
Eugene, OR 97401

Lewis J. Paper, Esq.
Dickstein Shapiro LLP
1825 Eye Street, N.W.
Washington, D.C. 20006

Erwin G. Krasnow, Esq.
Garvey Schubert Barer
1000 Potomac Street, N.W.
5th Floor, Flour Mill Building
Washington, D.C. 20007

Joan P. George