

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

SECRET FILE COPY ORIGINAL

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 Secretary  
Attention: Chief, Audio Division  
Media Bureau

FILED/ACCEPTED

FEB - 3 2009

Federal Communications Commission  
Office of the Secretary

**SUPPLEMENT TO MOTION FOR STAY**

Cumulus Licensing LLC ("Cumulus"), by its attorneys, hereby submits its Supplement to Motion for Stay, filed November 14, 2008, with respect to the above-captioned proceeding. Attached as Exhibit A is a copy of a letter decision issued by the Federal Aviation Administration ("FAA") whereby the FAA (1) denied Cumulus' request to terminate the reimbursable agreement between the FAA and Portland Broadcasting, LLC ("PB") with respect to the localizer frequencies in use at the Eugene, Oregon airport and (2) denied Cumulus' request to enter into a reimbursable agreement with the FAA to change the frequencies back to those in use prior to implementation of the PB agreement.

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The FAA's decision is not yet final. Petitions for review can be filed with the United States Court of Appeals within sixty (60) days of the issuance of the FAA order.

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  
1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
703-812-0400

February 3, 2009

**EXHIBIT A**



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.  
Washington, D.C. 20591

January 26, 2009

Lewis J. Paper, Esq.  
Dickstein Shapiro LLP  
1825 Eye Street, NW  
Washington, DC 20006-5403

Dear Mr. Paper:

This is in response to your request that the FAA terminate the reimbursable agreement with Portland Broadcasting with respect to changing the localizer frequencies at the Mahlon Sweet Field Airport in Eugene, Oregon, and the other related issues you have raised directly to the Office of the Chief Counsel. I have been designated by the Chief Counsel to make the final agency decision on these matters.

Your request that FAA terminate the reimbursable agreement or defer its implementation is denied. The agency's authority to enter into a reimbursable agreement flows from our determination that the agreement would be in the public interest. Here, accepting payment to change the localizer frequencies so that our air navigation aids would no longer be an impediment to the FCC's assignment of a radio frequency is clearly in the public interest. Therefore, I must conclude that the FAA Northwest Mountain Region had ample authority to enter into the reimbursable agreement. This is true even though the agreement is not being funded by the entity that would be ordered to move to the conflicting radio frequency, and was executed in advance of a determination by the FCC that such a move should be ordered.

In reaching this decision, I have taken into account the ethical issues you raised concerning a former FAA employee who participated in the initial hazard determination process, and then subsequently prepared an analysis and recommendation on how the hazard could be eliminated by the actions funded by the reimbursable agreement. The Northwest Mountain Region, through its Regional Administrator, was also concerned about the ethical implications of the former employee's participation in the reimbursable agreement process, and requested an investigation by the DOT Office of the Inspector General. After reviewing that report, the Northwest Mountain Region concluded that the former employee's preparation of the analysis and recommendation for Portland Broadcasting did not preclude the agency from entering into the reimbursable agreement. I concur with their conclusion. The initial hazard determination is a separate matter from the subsequent proposal from Portland Broadcasting to eliminate the hazard through the reimbursable agreement. I agree with the Northwest Mountain Region's determination that the employee's conduct was not an ethical violation.

I have also considered the other matters you raised, including the fact that the entity who funded the reimbursable agreement and then requested a new hazard determination was not the entity that would move to the new frequency. Although these occurrences are a tad

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unusual, they are not really relevant to the agency's authority to enter into the reimbursable agreement or issue the new "no hazard" determination.

I must also inform you that FAA has rejected your request for the agency to enter into a reimbursable agreement with Cumulus Broadcasting to change the frequency back, pending an FCC determination on Portland Broadcasting's request to the FCC. There currently is no public interest justification for changing the frequency again until the FCC decides, particularly since this would return our navigation aid to the status of an impediment to assignment of the frequency by the FCC.

Finally, I want to emphasize that the FAA's decision to enter into the reimbursable agreement should not be construed by anyone as an endorsement of the motion to the FCC to have your company move to the new frequency. Our finding that it would be in the public interest to change the localizer frequency should not be cited or relied upon to influence the merits of the FCC's decision on Cumulus Broadcasting's request for an order.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Whitlow", with a long horizontal flourish extending to the right.

James W. Whitlow  
Deputy Chief Counsel for Policy and Adjudication

**CERTIFICATE OF SERVICE**

I, Barbara L. Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, PLC, do hereby certify that a true copy of the "Supplement to Motion for Stay" was sent this 3rd day of February, 2009, via United States First Class Mail, postage prepaid, to the following:

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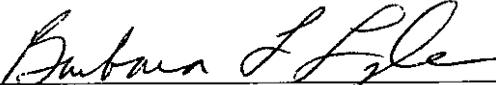
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