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

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JUN - 2 2010

FCC Mail Room

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

MEMORANDUM OPINION AND ORDER

Adopted: May 21, 2010

Released: May 24, 2010

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration jointly filed by Portland Broadcasting, LLC ("Portland Broadcasting"), licensee of Station KXPC-FM, Channel 279C, Lebanon, Oregon, Bicoastal Media Licenses IV, LLC ("Bicoastal"),¹ licensee of Station KACI-FM, Channel 249C2, The Dalles, Oregon, and Station KMSW(FM), Channel 224C3, The Dalles, Oregon, and Extra Mile Media, Inc., licensee of Station KHPE(FM), Channel 300C, Albany, Oregon, collectively (the "Joint Petitioners"). Cumulus Licensing LLC ("Cumulus"), licensee of Station KNRQ-FM, Channel 250C, Eugene, Oregon filed an Opposition to the Petition for Reconsideration to which the Joint Petitioners filed a Reply. Portland Broadcasting, Columbia Gorge Broadcasters, Inc. ("Columbia"), M.S.W Communications, LLC ("M.S.W. Communications"), Bicoastal, and Extra Media, Inc. (the "Joint Parties") filed a Motion to Dismiss the Petition for Reconsideration. No other pleadings were received.² For reasons discussed below, we are dismissing the Petition for Reconsideration.

2. **Background.** The Joint Petitioners filed a Petition for Reconsideration of the *Report and Order*,³ which dismissed the Joint Petitioners' Counterproposal,⁴ requesting the reallocation of Channel

¹ Bicoastal acquired Station KACI-FM from Columbia Gorge Broadcasters, Inc., and Station KMSW(FM) from M.S.W Communications, LLC.

² The Joint Petitioners also filed motions to accept several supplemental pleadings to their Petition for Reconsideration. Additionally, in response to the *Public Notice*, Cumulus filed Comments. Portland Broadcasting filed Comments Objecting to the Issuance of Public Notice. See *Public Notice*, 23 FCC Rcd 16468 (MB 2008). Cumulus filed also Response to Comments Objecting to the Issuance of Public Notice to which Portland Broadcasting filed a Reply to Response. Cumulus filed a Motion For Stay and Supplement to Motion For Stay. Portland Broadcasting filed Opposition to Motion for Stay to which Cumulus filed a Reply to Opposition to Motion for Stay. We accept these pleadings to establish a complete record in this proceeding. However, these pleadings are moot given the fact that the Joint Parties have filed a Motion to Dismiss the Petition for Reconsideration.

³ See *Ione, Oregon et al.*, Report and Order, 21 FCC Rcd 10017 (MB 2006); see also *Ione, Oregon et al.*, Order, 22 FCC Rcd 12869 (MB 2007)(severing MB Docket No. 05-09 from MB Docket No. 05-10 in light of the Petition for Reconsideration that was filed in MB Docket No. 05-10).

⁴ In this regard, the Joint Petitioners filed a petition for rule making that was timely filed by the comment deadline in MB Docket 05-10, requesting the reallocation of Station KXPC-FM, Channel 279C to Paisley, Oregon, which conflicted with SSR Communications' proposed allotment of Channel 280C at Monument, Oregon. As such, the

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250C2 to Tualatin and the channel substitutions necessary to accommodate this reallocation due to FAA problems with respect to proposed channel substitution of Channel 300C at Eugene, Oregon for Station KNRQ-FM. Specifically, the Counterproposal requested the substitution of Channel 250C2 for Channel 249C2 at The Dalles, Oregon, reallocation of Channel 250C2 from The Dalles to Tualatin, Oregon, as the community's first local service, and the modification of the Station KACI-FM license; substitution of Channel 300C for Channel 250C at Eugene, Oregon and modification of the Station KNRQ-FM license;⁵ substitution of Channel 279C for Channel 300C at Albany, and the modification of the Station KHPE license; substitution of Channel 251A for vacant Channel 299A at Diamond Lake, Oregon; reallocation of Channel 279C from Lebanon to Paisley, Oregon, as the community's first local service, and the modification of the Station KXPC-FM license; substitution of Channel 272C2 for Channel 224C3 at The Dalles, Oregon, and the modification of the Station KSMW(FM) license; and substitution of Channel 300C2 for Channel 272C2 at Goldendale, Washington, and the modification of the FM Station KYYT license.

3. The Joint Parties filed a Motion to Dismiss the Petition for Reconsideration and the Joint Petitioners' Counterproposal. In this regard, the Joint Parties have entered into a Settlement Agreement with Cumulus that states that Cumulus will pay a total of \$393,000 to resolve any and all disputes they have with respect to the foregoing proceedings in this docket. In its Motion to Dismiss, the Joint Parties request: (1) dismissal of the Counterproposal filed by the Joint Petitioners with prejudice with respect to the proposed substitution of Channel 272C2 for Channel 224C3 at The Dalles, and the modification of the license for Station KSMW(FM); (2) dismissal of Portland Broadcasting's Petition for Reconsideration filed pertaining to the Station KNRQ-FM construction permit,⁶ and its Informal Objection filed against the Station KNRQ-FM pending upgrade application;⁷ (3) cancellation of the Station KACI-FM construction permit;⁸ and (4) grant of the Station KACI-FM modification application, proposing the substitution of Channel 228C2 for Channel 249C2 at The Dalles, which is mutually-contingent with the

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petition was treated as a Counterproposal in MB Docket 05-10. At the request of Two Hearts Communications, LLC and SSR Communications, Inc., we issued an *Order* granting severance of several FM allotment proposals adopted by the *Report and Order* in MB Docket No. 05-9 and MB Docket No. 05-10. See *Ione, Oregon et al.*, Order, 22 FCC Rcd 12869 (MB 2007). The *Report and Order* approved a Settlement Agreement that provided a global resolution to the consolidated proceeding. As such, the actions taken in the *Report and Order* allotting Channel 280C1 at Monument, Oregon, Channel 260C at Prairie City, Oregon, Channel *247C1 at Weiser, Idaho, Channel 267C1 at Prineville, Oregon, Channel 264C2 at Athena, Oregon, Channel 261A at Hermiston, Oregon, Channel 225C1 at La Grande, Oregon, Channel 295C2 at Arlington, Oregon, and Channel 258A at Ione, Oregon are final. Severance of these proposals from the consolidated proceeding did not affect the final outcome of the matter on reconsideration herein.

⁵ We issued an *Order to Show Cause* directed at Cumulus, requesting the licensee to show cause why its Station KNRQ-FM's license, File No. BLH-19910528KF, should not be modified to specify operation on Channel 300C in lieu of Channel 250C at Eugene. See *Monument, Oregon; Prairie City, Prineville, and Sisters, Oregon and Weiser, Idaho; The Dallas, Tualatin, Eugene, Albany, Lebanon, Paisley, and Diamond Lake, Oregon and Goldendale, Washington*, Order to Show Cause, 21 FCC Rcd 3332 (MB 2006).

⁶ The Audio Division granted Station KNRQ-FM a construction permit (File No. BPH-20070119AAFH) to enable the operation of Station KNRQ-FM on Channel 250A at Tualatin in lieu of Channel 250C at Eugene, which is subject to the outcome of this proceeding.

⁷ Cumulus filed a minor change application, which is pending, requesting to upgrade Station KNRQ-FM to Channel 250C2 at Tualatin.

⁸ The Audio Division issued a construction permit, File No. BPH-20070118AEL to relocate Station KACI-FM on Channel 249C2 at The Dalles, Oregon, which forecloses Station KNRQ-FM to operate on Channel 250C2 at Tualatin, Oregon, as proposed in the pending minor change application, BMPH-20080331ACU. However, the Station KACI-FM construction permit at The Dalles has been cancelled as a result of the Settlement Agreement.

disposition of the Station KNRQ-FM modification application.⁹ Moreover, upon grant of the Station KACI-FM modification application, Bicoastal shall complete construction of the newly-authorized facilities pursuant to the conditions of the Station KACI-FM construction permit. Cumulus shall prepare the license application for review and filing by Bicoastal.

4. **Discussion.** In accordance with Section 1.420(j) of the Commission's Rules, we are granting the Joint Parties' Motion to Dismiss. Accordingly, the Petition for Reconsideration is dismissed. In doing so, we approved the Settlement Agreement in accordance with Section 1.420(j) of the Commission's Rules. The Joint Parties will collectively and individually receive payments that are less than the totality of their respective legitimate and prudent expenses incurred in connection with the preparation, filing and advocacy of the Counterproposal. In total, Cumulus will pay \$393,000 in connection with: (1) dismissal of the Counterproposal with prejudice with respect to the proposed substitution of Channel 272C2 for Channel 224C3 at The Dalles, and the modification of the license for Station KSMW(FM); (2) dismissal of Portland Broadcasting's Petition for Reconsideration filed pertaining to the Station KNRQ-FM construction permit, and its Informal Objection filed against the Station KNRQ-FM pending upgrade application; (3) cancellation of the Station KACI-FM construction permit licensed by Bicoastal; and (4) grant of the Station KACI-FM modification application, proposing the substitution of Channel 228C2 for Channel 249C2 at The Dalles, which is mutually-contingent with the disposition of the Station KNRQ-FM modification application. Each party filed a declaration in accordance with Section 1.420(j), containing an itemization of its respective legal, engineering and other legitimate and prudent expenses. The Joint Parties and Cumulus each state in its respective declaration that aside from the Settlement Agreement, neither respective licensee nor any of its members, officers, or employees is a party to any agreement, written or oral, that will require the respective licensee to pay or receive any monies or provide or receive any other consideration from or to the existing and former licensee for the actions described in each respective declaration.

5. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was dismissed.

6. IT IS ORDERED, That the Petition for Reconsideration filed by the Joint Petitioners IS DISMISSED.

7. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

⁹ Bicoastal has filed a minor change application, File No. BPH-20100205ACB, requesting to relocate Station KACI-FM to Channel 228C2 at The Dalles, Oregon, which is currently pending. Haystack Broadcasting, Inc., licensee of Station KWCQ(FM), Condon, Oregon has entered into an agreement with Bicoastal, stating that if the Station KACI-FM modification application is simultaneously filed with a separate channel relocation application for Station KWCQ(FM), Haystack Broadcasting, or any other radio licensee at Cumulus' request, Cumulus shall submit to Bicoastal for review, a request stating that the Station KACI-FM modification application should be treated as mutually-contingent.

8. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
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