

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 04-319
Table of Allotments,	)	RM-10984
FM Broadcast Stations.	)	
(Coal Run, Kentucky and Clinchco, Virginia)	)	
	)	<b>FILED/ACCEPTED</b>

To: Office of the Secretary  
Attn: The Commission

AUG 10 2011  
Federal Communications Commission  
Office of the Secretary

**OPPOSITION TO MOTION TO STRIKE AND  
REQUEST FOR ACCEPTANCE OF OPPOSITION TO MOTION FOR STAY**

East Kentucky Broadcasting Corporation, the licensee of WPKE-FM, Coal Run, Kentucky, by its attorneys, pursuant to Section 1.45(b) of the Commission's rules, hereby opposes the August 8, 2011 Motion to Strike Late-Filed Opposition and Request for Expedited Grant of Unopposed Stay ("Motion to Strike") submitted by Dickenson County Broadcasting Corp., the licensee of WDIC-FM, Clinchco, Virginia. In addition, East Kentucky Broadcasting Corporation, if required, hereby seeks acceptance of its August 2, 2011 Opposition to Motion for Stay. In opposition to the Motion to Strike<sup>1</sup>, and in support of the acceptance of the Opposition to Motion for Stay, the following is submitted:

1. Dickenson County Broadcasting Corp. complains that the August 2, 2011 Opposition to Motion for Stay filed by East Kentucky Broadcasting Corporation was not

---

<sup>1</sup> To the extent that the Motion to Strike also seeks a grant of the Motion for Stay, East Kentucky Broadcasting Corporation opposes that add-on request for the reasons stated in the Opposition to Motion for Stay. East Kentucky Broadcasting Corporation does not oppose, however, expeditious action on a denial of both the Dickenson County Broadcasting Corporation Application for Review and the Motion for Stay.

filed in accord with the time limits imposed by Section 1.45(d) of the Commission's rules which states that "[o]ppositions to a request for stay of any order ... shall be filed within 7 days after the request was filed" and negating the time for mailing contained in Section 1.4(h) of the Commission's rules. Dickenson County Broadcasting Corp. in its zeal to create issues for the Commission in this proceeding proclaims that "East Kentucky's Opposition was filed 8 days too late".<sup>2</sup>

2. In fact, the East Kentucky Broadcasting Corporation Opposition to Motion for Stay was not filed late. Section 1.45(d) of the Commission's rules is applicable to "a request for stay ... (emphasis added)". Dickenson County Broadcasting Corp.'s pleading was a "Motion for Stay". Section 1.45(b) of the Commission's rules clearly and unequivocally states that "[o]ppositions to any motion ... may be filed within 10 days after the original pleading is filed (emphasis added)". The Dickenson County Broadcasting Corp. pleading was a "motion" by its own title and was not a "request". Thus, an opposition to the Dickenson County Broadcasting Corp. Motion for Stay was properly due on August 2, 2011 which was 10 days (with an additional three days for mailing not counting holidays) after the original pleading was filed .

3. It would have been a simple matter for Dickenson County Broadcasting Corp. to title its pleading a "Request for Stay" so as to fall under the timing provisions of Section 1.45(d) of the Commission's rules that it now attempts to invoke. It did not. Therefore, Dickenson County Broadcasting Corp. should not now be burdening both the Commission and East Kentucky Broadcasting Corporation with its frivolous argument

---

<sup>2</sup> Motion to Strike at page 1.

relating to the timing of the filing of the East Kentucky Broadcasting Corporation  
Opposition to Motion for Stay.

4. In any event, it is noted that as of today's date, August 10, 2011, the Commission has not yet acted upon the Dickenson County Broadcasting Corp. Motion for Stay. Therefore, even accepting the argument of Dickenson County Broadcasting Corp. that an opposition might have been filed by an earlier date, there is no prejudice to Dickenson County Broadcasting Corp. from the Commission's acceptance of the East Kentucky Broadcasting Corporation Opposition to Motion for Stay, unless Dickenson County Broadcasting Corp. is making an argument that the party against whom it seeks the stay should not be heard at the Commission. It is assumed that Dickenson County Broadcasting Corporation is secure enough in its belief as to the sufficiency and validity of what it avers in support of its Motion for Stay – arguments such as that employees who are over 60 years of age, as a result of the channel change “might not be able, or willing, to continue to work at the station”<sup>3</sup> – that it does not see the quashing of the Commission's consideration of an opposition as being its only prayer for either a stay or for the relief it seeks in its Application for Review.<sup>4</sup>

5. To the extent necessary, given that the Commission is yet to act upon the Motion for Stay, and given that the acceptance of the East Kentucky Broadcasting Corporation Opposition to Motion for Stay will enable a complete record in this

---

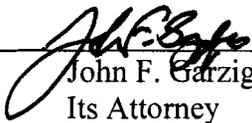
<sup>3</sup> Motion for Stay at page 7.

<sup>4</sup> As Dickenson County Broadcasting Corp. has itself observed in its Motion to Strike at footnote 4, the “laugh test” may well be applicable to its arguments in the Motion for Stay.

proceeding<sup>5</sup>, East Kentucky Broadcasting Corporation hereby seeks acceptance of its  
Opposition to Motion for Stay to the extent required for its consideration.

Respectfully submitted,

**EAST KENTUCKY  
BROADCASTING CORPORATION**

By:  \_\_\_\_\_  
John F. Garziglia  
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC  
1401 I Street, NW, 7<sup>th</sup> Floor  
Washington, DC 20005  
(202) 857-4455

August 10, 2011

---

<sup>5</sup> See e.g. *KM Television of El Dorado, LLC v. Classic Cable of Louisiana, LLC Request for Stay*, 19 FCC Rcd 12845 (MB 2004) at footnote 3.

**CERTIFICATE OF SERVICE**

I, John F. Garziglia, an attorney at the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that a true copy of the foregoing "Opposition to Motion to Strike and Request for Acceptance of Opposition to Motion for Stay" was sent this 10<sup>th</sup> day of August, 2011 via U.S. Mail, postage prepaid, to the following:

Peter Doyle, Esq.  
Federal Communications Commission  
The Portals  
455 12<sup>th</sup> Street, S.W., Room 2-A360  
Washington, D.C. 20554

Andrew Rhodes, Esq.  
Federal Communications Commission  
Audio Division  
455 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Gary S. Smithwick, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016  
(Counsel to Dickenson County Broadcasting Corp.)

  
\_\_\_\_\_  
John F. Garziglia