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May 10, 2012

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BY ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attn: Audio Division, Media Bureau

Re: RM-11656
Reclassification of License of Station KLBJ-FM, Austin, TX
Request for Termination of Proceeding

Dear Ms. Dortch:

On behalf of Emmis Austin Radio Broadcasting Company, L.P. ("Emmis Austin"), I am writing to request that the Commission terminate the above-referenced proceeding and dismiss the Order to Show Cause pertaining to KLBJ-FM, Austin, Texas.

On or about November 15, 2011, Ms. Katherine Pycatt filed a Petition for Rulemaking requesting the allotment of Channel 232C3 to Moulton, Texas.¹ Pursuant to Ms. Pycatt's request and Section 73.3573 note 4 of the Commission's rules, the FCC subsequently issued an Order to Show Cause why Station KLBJ-FM's license should not be reclassified from a Class C FM Station to a Class C0 FM Station.² Accordingly, Emmis Austin would have had to file an application for a construction permit to modify KLBJ-FM's technical facilities by October 15, 2012 to preserve its Class C status. However, on April 28, 2012, Ms. Pycatt filed a request to withdraw her expression of interest for Channel 232C3 at Moulton, Texas.

¹ See Amendment of 73.202(h), FM Table of Allotments, FM Broadcast Stations (Moulton, TX), Petition for Rulemaking, PRM11MB (filed Nov. 15, 2011). Concurrently with the petition, Ms. Pycatt filed an application on FCC Form 301 for facilities consistent with the Moulton proposal and certified that she would participate in the auction for the channel and construct the station proposed in the application.

² See Reclassification of License of Station KLBJ-FM, Austin, TX, Order to Show Cause, 27 FCC Rcd. 2218 (Mar. 6, 2012) (the "Show Cause Order").

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Under established Commission precedent, reclassification is inappropriate under the circumstances described above. Reclassification from Class C to Class C0 is only to occur "where a specific, *bona fide* demand for the spectrum is expressed."³ Where, as here, the petitioner voluntarily withdraws its expression of interest before the requested allocation is granted, that withdrawal constitutes conclusive proof that the application did not constitute a *bona fide* demand for spectrum.⁴ Accordingly, the prerequisite for reclassification has not been met.

For the reasons stated herein, Emmis Austin respectfully requests that the Commission terminate the above-referenced proceeding, dismiss the proposal to allocate Channel 232C3 at Moulton, Texas, dismiss the Show Cause Order, and take no further action with respect to the reclassification of KLBJ-FM, Austin, Texas.

Respectfully submitted,



Marnie K. Sarver

cc (by email): Michael Wagner
Rudy Bonacci
Rolanda F. Smith

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³ See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Red. 21649 ¶ 26 (2000).

⁴ See Amendment of Section 73.202(b), FM Table of Allotments (Tallapoosa, Georgia), Order, 18 FCC Red. 15162 (2003). In the Tallapoosa case, the respondent did not respond to the show cause order or otherwise seek a waiver before the expiration of the designated comment period. However, after the petitioner withdrew its expression of interest (approximately 3 1/2 months after the issuance of the show cause order), the FCC dismissed the proposal "and, correspondingly . . . dismiss[ed] the Order to Show Cause."