



Federal Communications Commission
Washington, D.C. 20554

July 9, 2010

In Reply Refer to:
1800B3-HTS

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In re: **KRPH(FM), Morristown, Arizona**
Facility ID No. 166065
File No. BAPH-20100409AAO

**Application for Assignment of
Construction Permit**

Dear Counsel:

Before the staff is the above-referenced application (the "Application") to assign the construction permit (the "Construction Permit") for FM radio station KRPH, Morristown, Arizona, from Magnolia Radio Corporation ("Magnolia") to Deportes y Musica Comunicaciones LLC ("DyMC"). DyMC also seeks an extension of the expiration date of the Construction Permit to a date eighteen months following the consummation of the proposed transaction. For the reasons set forth below, we deny DyMC's request for additional time to construct and grant the Application.

DyMC seeks to extend the construction deadline pursuant to Section 73.3598(a) of the Commission's Rules. Under this provision, an eligible entity which acquires an "issued and outstanding construction permit . . . shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment . . . whichever is longer, within which to complete construction and file an application for license."¹ DyMC acknowledges that Magnolia, itself, obtained a prior extension of the Construction Permit under this Rule.² It states, however, that "[n]othing in the Rule or the Commission order promulgating the relevant amendments to the Rule suggest that only one extension per permit is possible, assuming other requirements are met."³ We disagree.

¹ 47 C.F.R. § 73.3598(a).

² See File No. BAPH-20090521AFC.

³ Cite to assignee amendment/exhibit, page 2.

In *Diversification of Ownership in the Broadcast Services*,⁴ the Commission stated that it would “allow eligible entities the time remaining on the original construction permit or 18 months, whichever is greater.”⁵ It reiterates the limiting phrase “original construction permit” several paragraphs later.⁶ We believe the best reading of this language is that this exception to our strict broadcast station construction policy is limited to one eighteen-month extension based on one assignment to one eligible entity. The Construction Permit, which is now held by a different permittee and which requires the completion of construction by a different construction deadline, cannot, in any reasonable way, be characterized as an “original construction permit.”

DyMC’s reading of Section 73.3598(a) would permit an endless series of assignments and corresponding extensions of construction permits.⁷ Nothing in the *Diversification Order* suggests Commission support for such a policy. To the contrary, it is impossible to square this outcome with the Commission’s careful attempt to strike “an appropriate balance between the goals of ownership diversity and timeliness of service.”⁸

Finally, DyMC ignores the second requirement for obtaining an extension of construction deadline under this policy, viz. a pledge by the assignee eligible entity to complete construction of the station within the time remaining.⁹ Under DyMC’s rule interpretation, Magnolia or any other eligible entity assignee may renege on its pledge by simply assigning a permit to a successor eligible entity, making this pledge simply an empty gesture. We find that the better interpretation is to conclude that the permittee’s failure to satisfy this pledge constitutes a separate basis for concluding that a construction permit has expired at the end of the extended construction permit. For these reasons, we deny DyMC’s request to extend the Construction Permit which is now scheduled to expire on March 3, 2011.

Based on the above, we find that DyMC’s request for additional time to construct is not warranted. We further find that DyMC is qualified to hold the Station KRPB(FM) Construction Permit

⁴ Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, 5928-31 (2008) (“*Diversification Order*”).

⁵ *Id.* at 5928 (emphasis supplied).

⁶ *Id.* at 5930.

⁷ Such an interpretation not only is at odds with the language of the *Diversification Order*, it also is inconsistent with the history of the rule:

[W]e modified Section 73.3598 so that construction permits would no longer serve as open-ended options to construct stations. See 47 C.F.R. § 73.3598; 1998 *Biennial Regulatory Review*, Report and Order, 13 FCC Rcd 23,056, 23,093 (1998) (modifying Section 73.3598 to provide for a three-year construction period, with limited opportunities to toll that period, and automatic forfeiture of the permit if the station is not constructed as authorized within that period, is “intended to strike a balance between our fundamental interests in expediting new service to the public and preventing the warehousing of scarce spectrum”).

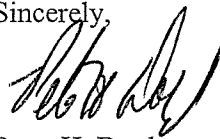
Great Lakes Community Broadcasting, Inc., Memorandum Opinion and Order, 24 FCC Rcd 8239, 8245 n. 24 (MB 2009).

⁸ *Id.*

⁹ *Id.*

and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that DyMC's request for additional time to construct IS DENIED, and that the Application for approval to assign the Construction Permit for Station KRPH(FM) (File No. BAPH-20100409AAO) from Magnolia Radio Corporation to Deportes y Musica Comunicaciones LLC IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle", written in a cursive style.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Magnolia Radio Corporation
Deportes y Musica Comunicaciones LLC