

Before the
Federal Communications Commission
Washington, DC 20554

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In re Application of)
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6 Johnson Road Licenses, Inc.)
(Assignor))
)
and)
)
Cumulus Licensing LLC)
(Assignee))
)
For Consent to Assignment of)
Licenses for Stations WMEZ(FM),)
Pensacola, Florida, and WXBM-FM,)
Milton, Florida.)

File No. BALH-20120509AER
Facility ID No. 73256

File No. BALH-20120509AES
Facility ID No. 32946

FILED/ACCEPTED

JUN 27 2012

Federal Communications Commission
Office of the Secretary

To: Secretary
Attn: Chief, Media Bureau

OPPOSITION TO PETITION TO DENY

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June 27, 2012

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OPPOSITION TO PETITION TO DENY

Cumulus Licensing LLC ("Cumulus"), acting pursuant to Section 73.3584(b) of the Commission's rules, 47 C.F.R. §73.3584(b), hereby opposes the Petition to Deny (the "Petition") filed June 13, 2012, by ADX Communications of Escambia and ADX Communications of Pensacola (collectively referred to herein as "ADX") against the above-captioned application (the "Application") requesting Commission consent to assign the licenses for stations WMEZ(FM), Pensacola, Florida, and WXBM-FM, Milton, Florida (collectively, the "Stations"), from 6 Johnson Road Licenses, Inc. to Cumulus.¹

¹ This opposition is supported by the Declaration of Richard S. Denning, Cumulus' General Counsel, which is annexed hereto as Exhibit A.

I. Introduction and Summary.

The Petition revolves around a claim that Cumulus's proposed acquisition of the Stations would violate the Commission's local radio ownership rule, 47 C.F.R. §73.3555(a)(1), because WABD(FM) ("WABD") cannot be included in the number of radio stations in the Mobile, Alabama Arbitron Metro. Specifically, ADX contends that Cumulus is not entitled to rely upon the recent grant of a Form 301 application which changed the community of license of WABD from Atmore, Alabama (which is located outside the Mobile Metro) to Saraland, Alabama (which is located inside the Mobile Metro). According to ADX, Cumulus is subject to a two-year waiting period before it can rely on the change in WABD's community of license. Petition at 2-3.

Assuming the validity of its argument, ADX contends that Cumulus needs to employ the Commission's interim contour-overlap methodology for unrated markets because Atmore, Alabama – WABD's former community of license – is not located in any Arbitron Metro. Petition at 3. Based on its contour-overlap analysis, ADX concludes that Cumulus's proposed acquisition of the Stations would violate the Commission's ownership limits in two of the three radio markets it found to exist. Petition at 5.

The Petition mischaracterizes Commission policy and overlooks facts which are fatal to its claims. As a starting point, the two-year waiting period only applies to those situations – which do *not* include the situation here – where the applicant manipulated “the relevant data boundaries and home market designations [of the station].” *Clear Channel Broadcasting Licenses, Inc.*, 24 FCC Rcd 14078, 14085 (AD 2009). The

Commission has made clear that the two-year waiting period does *not* apply when, as here, “the triggering station is licensed to a community that is geographically within the Metro boundaries. . . .” *Citicasters Licenses, L.P.*, 22 FCC Rcd 17788, 17790 n. 12 (AD 2007).

It would not matter if the two-year waiting period were applicable. The two-year waiting period can be satisfied if the station in question has been “home” to the relevant market for at least two years. *See 2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13726 (2003) (subsequent history omitted); Form 314 Worksheet #3, §A.I.3. In the instant case, WABD has been “home” to the Mobile Metro since at least 2003. Consequently, Cumulus would be entitled to rely on WABD’s inclusion in the Mobile Metro station count even if it could not rely on the change in WABD’s community of license.

Commission policy therefore renders the Petition’s contour-overlap analysis irrelevant. The Petition should be denied forthwith and the Application granted.

II. Legal Requirements.

Section 309(d)(1) of the Communications Act of 1934, as amended (the “Act”), requires that petitions to deny “contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity].” 47 U.S.C. §309(d)(1). That section further provides that “[s]uch allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.” *Id.* In short, the Act requires that any petition to deny an

assignment application contain specific allegations of fact sufficient to show that a grant of the application would be inconsistent with the public interest.

The Commission is obligated to perform a two-step process in reviewing petitions to deny. First, the Commission must determine – based solely on “consideration of the petition and its supporting affidavits” – whether the petition shows that a grant of the application would be *prima facie* inconsistent with the public interest. *Astroline Communications Company Limited Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). If the petitioner demonstrates that a grant of the application would be *prima facie* inconsistent with the public interest then “the Commission determines whether ‘on the basis of the application, the pleadings filed, or other matters which it may officially notice[,] . . . a substantial and material question of fact is presented.’” *Id.* (citations omitted).

III. The Petition.

ADX’s Petition is premised entirely on the Commission’s grant of a Form 301 application that changed the community of license of WABD from Atmore, Alabama (which is located outside the Mobile Metro) to Saraland, Alabama (which is located inside the Mobile Metro). File No. BPH-20120507ABD. The Application states that Cumulus’s acquisition of the Stations in the Pensacola market complies with the Commission’s local radio ownership rule because “WABD is now considered a metro station in the Mobile, Alabama rated market” and “is no longer considered a ‘non-rated’ station requiring a contour overlap review with other attributable Cumulus stations.”² Application, Technical Statement.

² There are 23 AM and FM radio stations in the Pensacola, Florida Arbitron Metro. Upon its acquisition of the Stations, Cumulus will have four (4) FM radio stations in that market – the maximum allowed under the

ADX contends that “Cumulus’ analysis is flawed.” Petition at 2. According to ADX, an applicant cannot rely on a change in a station’s community of license until two years have passed. Petition at 2, quoting *2002 Biennial Regulatory Review*, 18 FCC Rcd at 13726. Assuming the validity of that premise, ADX concludes Cumulus is not entitled to rely on WABD’s change in community of license to Saraland for purposes of the multiple ownership rules. Petition at 3. On the assumption that its analysis is correct, ADX argues that Cumulus was required to demonstrate its compliance with the Commission’s contour overlap methodology for unrated markets because Atmore – WABD’s former community of license – is not located within any Metro boundary. *Id.*

ADX analyzed Cumulus’s proposed acquisition of the Stations under the Commission’s interim contour-overlap methodology and found three (3) radio markets formed by the overlapping principal community contours of certain commonly-owned Cumulus stations and the Stations. Based on that contour-overlap analysis, ADX determined that Cumulus’s proposed acquisition of the Stations would violate the Commission’s local radio ownership rule in two of the three contour-overlap radio markets. *Id.* at 5. ADX therefore concludes that the recent WABD Application “clearly was undertaken to manipulate the Commission’s multiple ownership rules.”³ Petition at 5.

Commission’s local radio ownership rules. If WABD was included in the Pensacola, Florida Metro, Cumulus would own one station more than is allowed under the Commission’s local radio ownership rule.

³ In addition to seeking the denial of the Application, the Petition requests an order “barring” the parties from commencing their Local Marketing Agreement because such activity would constitute an attributable interest and thus allegedly be in violation of the Commission’s multiple ownership rules. Petition at 5. This is, in effect, a request for interim relief which must satisfy the four-part test applicable to such requests. *E.g. Nassau Broadcasting I, LLC*, 23 FCC Rcd 12060, 12064 (AD 2008). ADX does not even acknowledge that burden, let alone try to satisfy it. As demonstrated herein, ADX would be unable to demonstrate a likelihood of success on the merits. It is unlikely that ADX would be able to satisfy the other three criteria as well.

IV. Petition Has No Merit.

The Petition has no merit whatsoever. It mischaracterizes the scope of the 2-year waiting period for changes in a station's "home" designation status and, beyond that, overlooks the fact that WABD has been "home" to the Mobile market since at least 2003. Consideration of the Petition's contour overlap market analyses therefore become unnecessary. Consequently, ADX has failed to satisfy its burden of providing *prima facie* evidence that a grant of the Application would violate the Act or any Commission rule or otherwise be inconsistent with the public interest, convenience and necessity.

A. Two-Year Waiting Period Does Not Apply.

In the *2002 Biennial Regulatory Review*, the Commission abandoned the contour overlap methodology for determining the boundaries of radio markets and instead decided to rely on Arbitron's designated Metropolitan Survey Areas where they existed. In so doing, the Commission recognized that a radio station owner can unilaterally determine whether to allow its station to be designated as "home" to a particular Metro. For that reason, the Commission stated as follows:

We also will not allow a party to receive the benefit of the inclusion of a radio station as "home" to a Metro unless *such station's community of license is located within the Metro* or such station has been considered home to that Metro for at least two years.

18 FCC Rcd at 13726 (emphasis added). The Commission's statement makes it clear that the two-year waiting period applies only to situations where the station is designated as "home" to the Metro – but not when the station's community of license is located inside a Metro boundary.

ADX's Petition nonetheless assumes – without citation to any authority other than the Commission's statement in the *2002 Biennial Regulatory Review* – that the two-year

waiting period applies to situations where, as here, the community of license of the relevant station has been relocated to a community inside a Metro boundary. There is nothing in *2002 Biennial Regulatory Review* to support that conclusion, and it is belied by numerous other Commission statements.

As a starting point, Worksheet #3 to the FCC Form 314 application states as follows:

To demonstrate compliance with the numerical limits in the local radio ownership rule, applicants may not rely on a change in the Metro's geographic boundaries that has occurred since September 4, 2003, unless such change has been in effect for at least two years. In addition, applicants also may not rely on the inclusion of a radio station as "home" to a Metro unless (a) such station was listed by BIA as "home" to the Metro as of September 3, 2004, or (b) such "home" designation has been in effect for at least two years, or (c) *such station's community of license is located within the Metro.*

FCC Form 314 (June 2010), Worksheet #3 at 3 (emphasis added). That worksheet confirms that the two-year waiting period does not apply to situations like the instant one where the station has relocated to a community of license located inside the Metro boundary.

Commission decisions provide further support for that proposition. The facts surrounding WABD's relocation are analogous to those in *Clear Channel Broadcasting Licenses, Inc., supra*. Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") was the licensee of stations WKGR(FM) and WLDI(FM). Both stations were licensed to communities inside the Ft. Pierce-Stuart-Vero Beach Arbitron Metro (the "Ft. Pierce Metro") but were listed by Arbitron as "home" to the West Palm Beach-Boca Raton, Florida Arbitron Metro (the "WPB Metro"). Clear Channel filed an application to change the community of license of WKGR from Ft.

Pierce to Wellington, Florida, which was located inside the WPB Metro. Clear Channel also filed a separate application to change the community of license of WLDI from Ft. Pierce to Juno Beach, Florida, which was also located inside the WPB Metro. Neither application proposed any change in the technical facilities of either station.

A grant of the applications would remove both stations from the Ft. Pierce Metro. 24 FCC Rcd at 14080. That removal would in turn permit Clear Channel to acquire additional stations in the Ft. Pierce Metro, and, while the community of license change applications were pending, Clear Channel did in fact file an application to re-acquire WOLL(FM) ("WOLL"), a station that was home to the Ft. Pierce market but had been placed in a trust (because its continued ownership by Clear Channel would have constituted a violation of the Commission's local radio ownership rule).

Vero Beach Broadcasters, LLC ("VBB") filed an informal objection to the Clear Channel modification applications and a Petition to Deny the WOLL assignment application. In those pleadings, VBB claimed that, as a practical matter, WKGR and WLDI would continue to compete in the Ft. Pierce market (because there would no changes in the stations' technical facilities) and that the addition of WOLL would mean, in effect, that Clear Channel would have more stations in the Ft. Pierce Metro than Commission rules allowed. For that reason, VBB argued that Clear Channel should not be allowed to rely on the changes in the WKGR and WLDI communities of license until expiration of the 2-year waiting period referenced in *2002 Biennial Regulatory Review*.

The Media Bureau (the "Bureau") rejected VBB's objections and granted the Clear Channel applications. The Bureau explained that "the Commission established a

two-year waiting period for changes in Metros as ‘safeguards to deter parties from attempting to manipulate ‘the relevant data boundaries and home market designations.’” 22 FCC Rcd at 14085 (citation omitted). The Bureau observed that “there is no change in the Metro boundaries, creation of new Metros, and/or changes in a station’s home designation by ‘opting in’ or ‘opting out’ of a Metro.” *Id.* (footnote omitted). Instead, Clear Channel proposed to change the communities of license of stations WKGR and WLDI to communities located inside the WPB Metro. The Bureau concluded that invocation of the 2-year waiting period “is not appropriate in this instance.” *Id.* In reliance on that conclusion, the Bureau granted the assignment application to allow Clear Channel to acquire WOLL.

Clear Channel Broadcasting Licenses, Inc. confirms that Cumulus’s reliance on WABD’s new community of license is not subject to the two-year waiting period. As was the case with WKGR and WLDI in *Clear Channel Broadcasting Licenses, Inc.*, Cumulus changed WABD’s community of license to a community located within the Metro boundary. And, as in the case of the WKGR and WLDI modification applications, the WABD Application did not propose any change in WABD’s technical facilities. Consequently, as in the case of WKGR and WLDI, there is no change in the Metro boundaries, creation of a new Metro, and/or changes in a station’s home designation by Cumulus either “opting in” or “opting out” of a Metro. For all of these reasons, invoking the two-year “safeguard” is not appropriate in this instance any more than it was in *Clear Channel Broadcasting Licenses, Inc. Accord*

Citicasters Licenses, L.P., 22 FCC Rcd 17788, 17790 n. 12 (MB 2007) (“[t]he two-year restriction does not apply, however, if the triggering station is licensed to a community that is geographically within the Metro boundaries”).⁴

B. WABD Has Been Home to Mobile Metro for More Than Two Years.

It would not matter if, as ADX asserts, the two-year waiting period did apply to the instant situation. As the *2002 Biennial Regulatory Review* makes clear (and as confirmed by Worksheet #3 for the Form 314 application), a party can rely on a station’s designation as “home” to a market if such designation has been in effect for two (2) years.

As demonstrated by the BIA Geographic Market Report Definition for the Mobile Metro submitted as part of Exhibit 17 to the Application (a copy of which is annexed hereto as Exhibit B), WABD has been “home” to the Mobile Metro since July 2, 2003. Therefore, the instant matter does not involve the kind of situation where a licensee is seeking the benefit of a unilateral change by the licensee to a station’s “home”

⁴ The same conclusion – that the two-year restriction does not apply when a station is relocated to a community inside a Metro – is reflected in other actions as well. In one instance, the Bureau granted an application to change the community of license of station WIIL(FM) from Kenosha, Wisconsin (a community located within the Chicago, IL Arbitron Metro) to Union Grove, Wisconsin (a community located within the Milwaukee-Racine, WI Metro), where no changes were proposed in WIIL’s technical facilities. File No. BPH-200091209AAC (“WIIL Application”). As a result of the grant of the WIIL Application, the licensee/beneficiaries were required to divest only two (rather than three) of their Chicago Metro radio stations to a divestiture trustee in a Form 314 assignment application without waiting for expiration of a 2-year waiting period. File No. BALH-20100401AFQ. *See also* BPH-20070119AEM (BIA FCC Market Definition for Columbia, South Carolina included WNKT(FM) after application granted to change the station’s community of license of station from St. George, South Carolina, a community located within the Charleston, South Carolina Metro, to Eastover, South Carolina, a community located within the Columbia, South Carolina Metro, without waiting for expiration of a 2-year waiting period).

designation in the relevant market. WABD was home to the Mobile market long before Cumulus filed the Form 301 application to change its community of license.

ADX's Petition completely disregards this salient fact – which is fatal to its contention that Cumulus needs to utilize the interim contour overlap methodology for unrated markets to confirm its compliance with the local radio ownership rule.

Conclusion

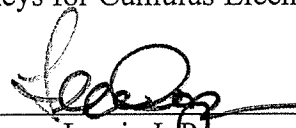
WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission deny the Petition and grant the Application.

Respectfully submitted,

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Attorneys for Cumulus Licensing LLC

By: _____



Lewis J. Paper
Andrew S. Kersting

EXHIBIT A

Declaration of Richard S. Denning

DECLARATION

Richard S. Denning hereby declares as follows:

1. I am Senior Vice President, General Counsel and Secretary of Cumulus Media Inc. ("Cumulus"), whose offices are located at 3280 Peachtree Road, NW, Suite 2300, Atlanta, Georgia 30305. Cumulus is the ultimate indirect parent of Cumulus Licensing LLC ("CLL"), the proposed assignee of radio stations WMEZ(FM), Pensacola, Florida and WXBM-FM, Milton, Florida (collectively, the "Stations"). I also serve as Vice President, General Counsel and Secretary of CLL.

2. I have reviewed the foregoing Opposition to Petition to Deny ("Opposition") to which this Declaration is attached, which concerns a pending application to assign the licenses for the Stations to CLL. With the exception of matters contained in the Opposition of which official notice may be taken, all statements of fact relating to CLL in the Opposition are accurate to the best of my knowledge and belief.

[Signature on the Following Page]

EXHIBIT B

FCC Geographic Market Definition for Mobile, AL



FCC Geographic Market Definition for Mobile, AL

Call Letters	AM/FM	Freq	Type Station	Format	Home Market	Market Designtn Date	Home Mkt Rank	Owner	City & State of License	County of License
WABB	AM	1480	C	News/Talk	Mobile, AL	07/02/2003	97	Dittman Group	Mobile, AL	Mobile
WABD	FM	104.1	C	Top 40	Mobile, AL	07/02/2003	97	Cumulus Media Holdings Inc	Atmore, AL	Escambia
WABF	AM	1220	C	Adlt Stndrd	Mobile, AL	07/02/2003	97	Gulf Coast Broadcasting Co Inc	Fairhope, AL	Baldwin
WASG	AM	540	C	BkGsp/Educ	Mobile, AL	01/14/2009	97	Wilkins Communications Network Inc	Daphne, AL	Baldwin
WAVH	FM	106.5	C	Talk	Mobile, AL	07/02/2003	97	Bigler Broadcasting LLC	Daphne, AL	Baldwin
WBHY	AM	840	C	Chrst/Talk	Mobile, AL	07/02/2003	97	Goforth Media Inc	Mobile, AL	Mobile
WBHY	FM	88.5	NC	Christian	Mobile, AL	07/02/2003	97	Goforth Media Inc	Mobile, AL	Mobile
WBLX	FM	92.9	C	Urban	Mobile, AL	07/02/2003	97	Cumulus Media Holdings Inc	Mobile, AL	Mobile
WBZR	AM	1000	C	Sprts/Talk	Mobile, AL	07/02/2003	97	Gulf Coast Broadcasting Co Inc	Robertsdale, AL	Baldwin
WCSN	FM	105.7	C	AC	Mobile, AL	07/02/2003	97	Gulf Coast Broadcasting Co Inc	Orange Beach, AL	Baldwin
WDLT	FM	98.3	C	Urban AC	Mobile, AL	07/02/2003	97	Cumulus Media Holdings Inc	Chickasaw, AL	Mobile
WGOK	AM	900	C	Black Gospl	Mobile, AL	07/02/2003	97	Cumulus Media Holdings Inc	Mobile, AL	Mobile
WHEP	AM	1310	C	News/Sprts	Mobile, AL	07/02/2003	97	Stewart Broadcasting Co	Foley, AL	Baldwin
WHIL	FM	91.3	NC	Nws/Cls/Jaz	Mobile, AL	07/02/2003	97	University of Alabama	Mobile, AL	Mobile
WIJD	AM	1270	C	Chrst/Talk	Mobile, AL	07/02/2003	97	Wilkins Communications Network Inc	Prichard, AL	Mobile
WKSJ	FM	94.9	C	Country	Mobile, AL	07/02/2003	97	Clear Channel Communications Inc	Mobile, AL	Mobile
WLPR	AM	960	NC	Gospl/SGspl	Mobile, AL	07/02/2003	97	Goforth Media Inc	Prichard, AL	Mobile
WLVM	FM	97.5	C	ChrsContem	Mobile, AL	07/02/2003	97	p Educational Media Foundation	Mobile, AL	Mobile
WMOB	AM	1360	C	Nws/Cst/Tlk	Mobile, AL	07/02/2003	97	Buddy Tucker Association Inc	Mobile, AL	Mobile
WMXC	FM	99.9	C	AAA	Mobile, AL	07/02/2003	97	Clear Channel Communications Inc	Mobile, AL	Mobile
WNGL	AM	1410	C	Relgn/Talk	Mobile, AL	07/02/2003	97	Archangel Communications Inc	Mobile, AL	Mobile
WNSP	FM	105.5	C	Sports	Mobile, AL	07/02/2003	97	.COM+ LLC	Bay Minette, AL	Baldwin
WNTM	AM	710	C	News/Talk	Mobile, AL	07/02/2003	97	Clear Channel Communications Inc	Mobile, AL	Mobile
WQUA	FM	102.1	NC	Religion	Mobile, AL	07/02/2003	97	Family Worship Center Church Inc	Citronelle, AL	Mobile
WRKH	FM	96.1	C	Clsc Rock	Mobile, AL	07/02/2003	97	Clear Channel Communications Inc	Mobile, AL	Mobile
WTOF	AM	1110	C	Religion	Mobile, AL	07/02/2003	97	Buddy Tucker Association Inc	Bay Minette, AL	Baldwin
WXQW	AM	660	C	Black Gospl	Mobile, AL	07/02/2003	97	Cumulus Media Holdings Inc	Fairhope, AL	Baldwin
WZEW	FM	92.1	C	AAA	Mobile, AL	07/02/2003	97	.COM+ LLC	Fairhope, AL	Baldwin

Number of Stations in Geographic Market 28

Previous Stations in Geographic Market

"C" - Commercial Station; "NC" - Non Commercial Station

"p" indicates pending sale to owner listed

EXHIBIT #1

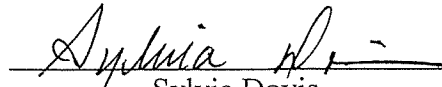
CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, a copy of the foregoing "Opposition to Petition to Deny" was sent by first-class U.S. mail, postage prepaid, to the following:

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Sylvia Davis

*By email.