

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

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) MM Docket No. 05-115
FM Broadcast Stations.) RM-11202
(High Point and Liberty, North Carolina))
)
)
)

REQUEST FOR SUPPLEMENTAL INFORMATION

Adopted: May 17, 2006

Released May 19, 2006

Comment Date: June 20, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Notice of Proposed Rule Making issued at the request of Capstar Limited Partnership ("Petitioner"), licensee of Station WVBZ(FM), High Point, North Carolina; (2) various related pleadings; and (3) a request for approval of withdrawal of interest filed by the Petitioner.

2. The NPRM proposed the reallocation, downgrade, and change of community of license for Station WVBZ(FM) from Channel 262C at High Point, North Carolina, to Channel 262C0 at Liberty, North Carolina, pursuant to Section 1.420(i) of the Commission's Rules. In its comments, Capitol had no objection to the reallocation of Station WVBZ(FM) to Channel 262C0 at Liberty; however, Capitol urged the Commission to adopt modified reference coordinates for Station WVBZ(FM) at Liberty in order to accommodate the modification of construction permit application filed by Capitol for its Station WCMC-FM, Creedmoor, North Carolina. Without such a change in the reference coordinates, the WCMC-FM modification application is mutually exclusive with the Petitioner's rulemaking petition and would be treated as a counterproposal in this proceeding because the application was filed after the rulemaking petition but before the comment deadline of May 9, 2005 set forth in the NPRM.

3. In its request for approval of withdrawal of interest, Capitol explains that after the pleading cycle

1 High Point and Liberty, NC, Notice of Proposed Rule Making, 20 FCC Rcd 6024 (MB 2005) ("NPRM").

2 These pleadings include: (1) comments filed by the Petitioner; (2) comments filed by Capitol Broadcasting, Inc. ("Capitol"); (3) reply comments filed by the Petitioner; and (4) a motion for leave to file surreply and surreply comments filed by Capitol.

3 This rule permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.

4 See File No. BMPH-20050509ACV.

5 See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, Report and Order, 7 FCC Rcd 4917 (1992).

ended, Capitol and the Petitioner entered into a Modification and Option Agreement, which modifies the terms of an existing tower lease between the parties with Capitol as the landlord and the Petitioner as tenant for Station WVBZ(FM)'s transmitter. The Petitioner states that, under the terms of the Modification Agreement, the Petitioner agreed to amend its transmitter site for Station WVBZ(FM) at Liberty in this proceeding to protect Capitol's application site for its Creedmoor station and not to seek any site in conflict with this station for a period of five years. Capitol agreed that it will not raise any objection to the reallocation of Station WVBZ(FM) from High Point to Liberty, as proposed in this docket.

4. Following the execution of the Modification Agreement, and upon consideration of the technical constraints, the Petitioner states that it made the unilateral decision not to pursue the reallocation of Station WVBZ(FM) from High Point to Liberty. Consequently, rather than seeking new reference coordinates for Liberty in this docket, the Petitioner is withdrawing its interest in the reallocation and submitting this request for approval of its withdrawal as required by Section 1.420(j).⁶ The Petitioner contends that its withdrawal complies with Section 1.420(j) because the Modification Agreement does not require the withdrawal of the Petitioner's rulemaking petition but, in an abundance of caution, requests that, to the extent required, the Commission approve the terms of the Modification Agreement. In support of this request, the Petitioner, with the consent of Capitol, submitted certifications from principals of the two companies, stating that the only consideration that the Petitioner is receiving is an extension of its existing tower lease and a right of first refusal for additional space of its current tower. The affiants also assert that the only consideration that Capitol is receiving is an extension of its current lease with the Petitioner and the protection of its Creedmoor site for five years. The parties claim that no other monetary consideration is being paid or received by these parties.

5. Contrary to the Petitioner's assertions, it does not appear that the Petitioner's withdrawal of its expression of interest in the proposed reallocation of Station WVBZ(FM) to Liberty is unilateral. Rather, based upon the record before us, the Petitioner's withdrawal of its expression of interest is intended to eliminate the conflict with the mutually exclusive Creedmoor application, which is the purpose of the parties' Modification Agreement. The Petitioner is eliminating the conflict with the mutually exclusive Creedmoor application in return for something of value – an extension of its current transmitter tower lease and a right of first refusal for additional tower space. As such, the Modification Agreement falls within the ambit of Section 1.420(j).⁷ Accordingly, as required by this rule, the Petitioner is requested to submit a copy of the Modification Agreement and to demonstrate whether the value of the lease extension and the right of first refusal exceeds the Petitioner's itemized legitimate and prudent expenses in prosecuting the proposed reallocation to Liberty.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 20, 2006. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the parties, as follows:

⁶ This section provides that a party withdrawing an expression of interest in an FM allotment rulemaking proceeding may not receive money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest.

⁷ See, e.g., *Georgetown, Mason, Oxford, et al., Kentucky*, Report and Order, 20 FCC Rcd 12976 (MB 2005) (withdrawing an expression of interest in a counterproposal in exchange for the opportunity to purchase an FM station for \$60,294 and reimbursement of its legitimate and prudent expenses ordinarily would require documentation to ensure that the purchase price did not constitute excessive consideration; however, waiver of Section 1.420(j) granted because the request was filed during a 90-day settlement window for certain pending FM allotment proceedings); and *Quannah, Archer City, et al. TX*, Request for Supplemental Information, 17 FCC Rcd 994 (MB 2002) (an agreement between a counterproponent and a third party station to downgrade the station to accommodate the counterproposal is subject to the reimbursement limitations of Section 1.420(j)).

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7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

9. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner

⁸ *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, Order, 46 FR 11549 (February 9, 1981).

constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding

FEDERAL COMMUNICATIONS COMMISSION

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