



Federal Communications Commission
Washington, D.C. 20554

May 7, 2010

DA 10-787

In Reply Refer to:

1800B3-PHD

Released: May 7, 2010

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In re: KNOR(FM), Krum, TX
Facility ID No. 36289
Liberman Broadcasting of Dallas
License, LLC
File No. BPH-20080805ABD

**Request for Deletion of Special Operating
Condition No. 4**

Dear Counsel:

Before the Audio Division are: (1) a July 22, 2009, Petition to Cancel Implied STA and Compel Operation on Allotted Channel (the "Petition") filed by Liberman Broadcasting of Dallas License LLC ("Liberman"); (2) an August 5, 2009, Opposition to Petition to Cancel Implied STA and Compel Operation on Allotted Channel ("Opposition") filed by Susquehanna Radio Corporation ("Susquehanna");¹ (3) a December 9, 2009, Letter (the "2009 Letter") filed by Liberman;² (4) a January 22, 2010, Motion to Strike Request for Modification and Reissuance of Construction Permit ("Susquehanna Motion to Strike"); and (5) a January 29, 2010, Letter (the "2010 Letter") filed by Liberman. For the reasons set forth below, we delete Special Operating Condition No. 4 to the above referenced construction permit and deny all other forms of relief requested by Liberman or Susquehanna.

Background. In January 2003, the Audio Division issued a Report and Order modifying the license of Station KIKT(FM) to specify Channel 228C3 at Cooper, Texas, in lieu of 228C3 at Greenville, Texas.³ KRBE Lico, predecessor licensee of KIKT(FM),⁴ obtained a construction permit ("Permit 1") in

¹ Susquehanna also filed a January 22, 2010, *Erratum* to the Opposition.

² Liberman also filed a December 10, 2009, *Erratum* to the 2009 Letter.

³ *Greenville and Cooper, Texas*, Report and Order, 17 FCC Rcd 1810 (2002) ("*Cooper R&O*"). See also 67 Fed. Reg. 7289 (rel. Feb. 19, 2002).

October 2003 to implement the city of license change and facility relocation to an existing tower (the “Cooper Facilities”).⁵ Immediately prior to the expiration of this construction permit, on October 5, 2006, Susquehanna filed a new application for the identical Cooper Facilities.⁶ The staff issued a construction permit (“Permit 2”) in December 2006. In August 2008, Liberman, licensee of KNOR(FM), Krum, TX (the “Station”), filed the referenced application to improve the Station’s facilities.⁷ The staff granted this application and issued a construction permit (the “KNOR Construction Permit”) on April 17, 2009. The KNOR Construction Permit included Special Operating Condition No. 4 which prohibits Liberman from implementing operations until Susquehanna initiates broadcasts on KIKT(FM) with the Cooper Facilities. Permit 2 expired on December 7, 2009. On the same day, Susquehanna filed an application, again specifying the Cooper Facilities.⁸ The staff issued a construction permit (“Permit 3”) on December 29, 2009.

In the Petition, Liberman argues that Susquehanna has warehoused the Channel 228C3 allotment at Cooper. It asserts that Susquehanna continues to operate the formerly licensed KIKT facilities at Greenville, Texas, pursuant to an “implied STA.” It requests that the Commission cancel this authorization and compel Susquehanna to move KIKT(FM) to the Cooper Facilities in order to permit Liberman to move forward with its KNOR(FM) upgrade. In Opposition, Susquehanna argues that it is not subject to any order that requires construction of the Cooper Facilities by any specific date. Susquehanna mentions financial hardships and its inability to reach agreement with Liberman regarding a payment to facilitate the KIKT(FM) modification. It claims that there is no precedent which supports cancellation of the KIKT(FM) implied STA and that Commission action would be required to do so.

In the 2009 Letter, filed approximately four months after the Opposition, Liberman requests the deletion of Special Operating Condition No. 4. It claims that Susquehanna has had over six years to implement the city of license modification first requested a decade ago by the prior licensee. Liberman asserts that it is prepared to promptly construct and initiate operations in accordance with the facilities authorized in the KNOR Construction Permit. In response, Susquehanna argues that the 2009 Letter should be stricken as an unauthorized supplement to the Petition. Susquehanna reiterates its argument that the Petition must be referred to the full Commission. Finally, Liberman contends in the 2010 Letter that Susquehanna mischaracterizes the 2009 Letter which reported the expiration of Permit 2. Liberman also claims that the expiration of Permit 2 has rendered moot Special Operating Condition No. 4. Nevertheless, Liberman renews its request for deletion of this condition.⁹

(Continued from previous page)

⁴ On May 5, 2006, subsidiaries of Cumulus Media Partners, LLC acquired control of KRBE Lico. *See* File No. BTCH-20051118ACL, *et seq.* On December 31, 2008, KIKT(FM) and several other licenses were assigned to Susquehanna pursuant to pro forma procedures. *See* File No. BALH-20081211ADY.

⁵ File No. BPH-20030107AAQ.

⁶ File No. BPH-20061005ADV.

⁷ File No. BPH-20080805ABD.

⁸ File No. BPH-20091207ABH.

⁹ We will deny the Susquehanna Motion to Strike. Unlike the cases cited by Susquehanna, the Commission has not established a specific pleading cycle for requests to delete construction permit conditions. In this situation, parties may at any time file informal requests for Commission action. *See* 47 C.F.R. § 1.41. In any event, Susquehanna mischaracterizes the 2009 Letter as a “supplement.” In fact, this filing seeks relief fundamentally different than that requested in the Petition.

Discussion. In 1999, the Commission clarified the protection rights of stations which modify their communities of license. It stated that “[a]fter the allotment rule making has become final, the affected station has at best an ‘implied STA’ to remain on its old frequency until it is ready for operation on its new frequency.”¹⁰ STAs are not within the scope of assignments and allotments which receive protection under the FM non-reserved band technical rules.¹¹ That is, stations operating with STAs – express or implied – are entitled to no protection from operating stations, construction permits, pending applications or subsequently filed applications. Thus, the Audio Division has noted that a station operating with an implied STA “would be subject to established cut-off and application conflicts processing policies with regard to any facility application or rulemaking proposal filed on or after the effective date of the order.”¹²

Permit 1, the first permit authorizing construction of the Cooper Facilities, was issued more than six years ago. Susquehanna or controlling parent entities have had more than four years to complete construction of the Cooper Facilities. When Cumulus Media Partners, LLC (“CMP”) gained control of KIKT(FM) in May 2006 it was fully aware that the Station’s continued operations in Greenville received no protection under the Commission’s technical rules. It also should have been aware that in August 2005 the Commission had granted a KNOR construction permit, substantially identical to the KNOR Construction Permit, and that this permit was in conflict with continued operations at Greenville.¹³ Moreover, the filing of the replacement KNOR(FM) modification application in August 2008 provided further clear notice to CMP that continued KIKT(FM) operations at the existing site were in jeopardy. In this situation, we conclude that deletion of Special Operating Condition No. 4 is in the public interest. Although initiation of operations authorized by the KNOR Construction Permit will result in interference to KIKT(FM), KIKT(FM) lost all protection rights for the formerly licensed Greenville station in early 2002 when the *Cooper R&O* became a final order. Accordingly, deletion of Special Operating Condition No. 4 does not constitute a modification of the KIKT(FM) license subject to the protest procedures set forth in Section 316(a) of the Communications Act of 1934, as amended (the “Act”).¹⁴

We decline Liberman’s request to cancel Susquehanna’s implied STA, an action that would require KIKT(FM) to cease operations. Nevertheless, we emphasize that we expect Susquehanna to expeditiously complete construction of the Cooper Facilities and initiate program tests. In the event that Susquehanna fails to do so, we will consider cancellation of KIKT(FM)’s implied STA. In this regard, we address Susquehanna’s extraordinary claim, asserted in both the Opposition and Motion, that Susquehanna “is not subject to any Commission order that requires completion of KIKT(FM)’s relocation to Cooper by any specific date.”¹⁵ In fact, Permit 3, constitutes an action of the Commission and it requires completion of construction of the Cooper Facilities no later than December 28, 2012. We remind Susquehanna that the

¹⁰ *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525, 17540 n.55 (1999) (subsequent history omitted) (the “*Streamlining Order*”).

¹¹ See 47 C.F.R. §§ 73.207, 73.213 and 73.215.

¹² *Gunnison, Crawford, and Olathe, Breckenridge, Eagle, Fort Morgan, Greenwood Village, Loveland and Strasburg, CO, and Laramie, WY*, Memorandum Opinion and Order, 20 FCC Rcd 5908, 5913 (MB 2005).

¹³ File No. BPH-20031014AFQ. This permit also conditioned KNOR(FM) program test authority on the initiation of service by KIKT(FM) from the Cooper Facilities. Liberman filed the referenced construction permit application after the expiration of this initial construction permit in 2008.

¹⁴ See 47 U.S.C. § 316(a) (Commission may not modify the license of a station without providing licensee written notice and a reasonable opportunity to protest).

¹⁵ Opposition at 2. See also Motion at 3.

Commission has stated that “implicit in the filing of any facility application is that the applicant stands ‘ready, willing, and able’ to construct and operate as proposed.”¹⁶ Neither a difficult economic environment, nor an inability to reach agreement with Liberman on funding a portion of the construction of the Cooper Facilities, nor a change in business plans regarding the build-out of the Cooper Facility relieves Susquehanna from its obligation to complete construction by the established deadline. CMP voluntarily accepted the construction and licensing obligations arising from the finality of the *Cooper R&O*. At this point, Susquehanna’s continuing construction delays are thwarting Liberman’s efforts to implement a major facility improvement in Krum, Texas, while raising serious questions as to whether it is acting in good faith to initiate a first local service at Cooper, Texas. Thus, continued warehousing of this spectrum by Susquehanna in the face Liberman’s long-standing competing demand is plainly contrary to the public interest.

Finally, we believe it would be useful to address Susquehanna’s argument that the staff lacks authority to cancel KIKT(FM)’s implied STA. The Commission delegated authority to the staff to cancel implied STAs for any modifications made in the course of “allotment rule makings.”¹⁷ Susquehanna contends the use of the phrases “old frequency” and “new frequency” in the *Streamlining Order* implicitly limit the scope of cancellation procedures to licenses modified pursuant to order to show procedures. Susquehanna fails to identify any precedent to support its contrived parsing of this language. It also fails to explain why the Commission would delegate to the staff authority to provide relief when the failure to implement an involuntary channel change impedes another station’s ability to move or commence operations but not when a city of license modification has the same result. If anything, the latter is a more egregious situation because the “blocking” licensee voluntarily initiated the proceeding which resulted in the implied STA. In any event, as a general matter, the staff, pursuant to Section 73.1635(b) of the Commission’s Rules, may modify or cancel an STA without prior notice or right to hearing.¹⁸ In reaching this conclusion we uphold our prior determination that an implied STA is subject to summary cancellation if such action is necessary to accommodate the operation of any FM station pursuant to its authorization.¹⁹

Conclusion. Accordingly, IT IS ORDERED, that the July 22, 2009, Petition to Cancel Implied STA and Compel Operation on Allotted Channel IS DENIED. IT IS FURTHER ORDERED, that the December 9, 2009, letter request to delete Special Operating Condition No. 4 in the outstanding KNOR(FM) construction permit (File No. BPH-20080805ABD) IS GRANTED and IS DENIED in all other respects. IT IS FURTHER ORDERED, that the January 22, 2010 Motion to Strike Request for Reissuance of Construction Permit IS DENIED. A reissued KNOR(FM) construction permit will be mailed to Liberman Broadcasting of Dallas License LLC under separate cover.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁶ *Pathfinder Communications Corp.*, 18 FCC Rcd 9272, 9279 (2003).

¹⁷ *Streamlining Order*, 14 FCC Rcd at 17540 n.55.

¹⁸ See 47 C.F.R. § 73.1635(b).

¹⁹ See *Corona de Tucson, Sierra Vista, Tanque Verde and Vail, AZ, and Animas, Lordsburg and Virden, NM*, Memorandum Opinion and Order, 23 FCC Rcd 4792, 4796 (MB 2008).