FEDERAL COMMUNICATIONS COMMISSION
445 TWELTH STREET, SOUTHWEST
WASHINGTON, D.C. 20554

August 22, 2002
(corrected version)

IN REPLY REFER TO: 1800B3-JR

Scott C. Cinnamon, Esquire
1090 Vermont Ave., NW
Suite 800, #144
Washington, D.C. 20005

In re: **Station WQMR(FM)**, Snow Hill, MD
Facility ID No. 88291
Minor modification
File No. BMPH-20020624AAW
Snow Hill Broadcasting, LLC
Informal Objection
Motion to Rescind Grant

Dear Counsel:

This letter concerns the August 5, 2002 informal objection and the August 8, 2002 "Motion to Rescind Grant" ("motion") filed by Radio Broadcast Communications, Inc. ("RBC"). RBC's objection is directed against the application of Snow Hill Broadcasting, LLC ("SHB") for a minor modification to the construction permit for Station WQMR(FM), Snow Hill, Maryland,[1] which the staff granted, also on August 5, 2002. In its motion, RBC requests that we rescind the grant of SHB's application.[2] For the reasons set forth below, we dismiss RBC's informal objection and deny its motion.

RBC's August 5, 2002 informal objection was initially captioned as a petition to deny.[3] In its motion, RBC correctly notes that a petition to deny does not lie against a minor modification application. Thus, RBC maintains that its "petition" must be considered as an informal objection. We will so consider it pursuant to 47 C.F.R. § 73.3587.

Section 73.3587 mandates that an informal objection be filed *before* Commission "action" on an application. As noted, we granted SHB's application on August 5, 2002. The grant was put on public notice August 8, 2002.[4] RBC argues that, because its informal objection was filed prior to

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[1] File No. BPH-19970909MH.

[2] SHB filed an opposition to the objection and the motion on August 20, 2002.

[3] The pleading is entitled, "Petition to Deny and Request for Hearing."

[4] *See* Public Notice No. 45294.

the public notice date, the grant must be rescinded pending a determination on its merits.[5]

Contrary to RBC's argument, its informal objection was not timely filed, and we will dismiss it. RBC cites no precedent to support its contention, and we reject its argument that the "action" predicate of § 73.3587 is conditioned on issuance of a public notice announcing an application grant. The Commission has previously addressed this issue in *Aspen FM, Inc.*[6] That case involved an August 22, 1996 application grant, an informal objection filed the next day, August 23, 1996, and a subsequently released August 27, 1996 Public Notice announcing the grant.[7] Therein, the Commission determined that the Mass Media Bureau correctly dismissed as untimely an informal objection that was not filed prior to grant of the application but was filed prior to release of the Public Notice announcing the grant.[8]

In light of the above, and pursuant to 47 C.F.R. Section 0.283, the August 5, 2002 Petition to Deny filed by Radio Broadcast Communications, Inc. IS CONSIDERED AS AN INFORMAL OBJECTION AND IS DISMISSED, and its August 8, 2002 "Motion to Rescind Grant" IS DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Mark N. Lipp, Esquire

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[5] According to RBC, where, as here, public notice of a grant is required, the act of granting an application is not an "action" for purposes of § 73.3587 until issuance of a public notice. First, RBC references language in our rule governing computation of time, 47 C.F.R. § 1.4, "… the first day to be counted when a period of time begins with an action . . . is the day after the day on which public notice . . . is given." RBC asserts that this is analogous to treatment accorded FCC documents in subsection (b)(2), where a deadline is calculated based on a "release," as opposed to an "adoption" date. Second, RBC references language in the rule governing effective dates of Commission actions and finality thereof, 47 C.F.R. § 1.103, "Unless otherwise specified . . ., the effective date of any Commission action shall be the date of public notice . . . as defined in Section 1.4(b)." Finally, RBC maintains that to hold the grant, as opposed to the public notice date, relevant would create an anomaly, inasmuch as a reconsideration petition cannot be filed until after public notice, and there would be "several days" of "procedural limbo" where a party could file neither an informal objection nor a reconsideration petition.

[6] 12 FCC Rcd 17852 (1997).

[7] Report No. 43813 (August 27, 1996).

[8] 12 FCC Rcd at 17856.