

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

In the matter of)	
)	
Roberds Broadcasting, Inc.)	
Assignor)	File No. BAL-19990712GX
)	
and)	
)	
Cumulus Licensing Corp.)	
Assignee)	
)	
For Consent to Assignment of License of)	
WGOK(AM), Mobile, AL)	
)	
)	
WYOK Licenses, LLC)	
Assignor)	File No. BALH-19990712GW
)	
and)	
)	
Cumulus Licensing Corp.)	
Assignee)	
)	
For Consent to Assignment of License of)	
WYOK(FM), Atmore, AL)	
)	
)	
M&F Associates, L.P.)	
Transferor)	
)	
and)	File Nos. BTC/BTCH-19990622GU-GX
)	
Cumulus Media, Inc.)	
Transferee)	
)	
For Consent to Transfer Control of Licenses of)	
WDLT(AM), Fairhope, AL; WDLT-FM,)	
Chickasaw, AL; and WBLX-FM, Mobile, AL)	

¹ At the time the applications were filed, the station's call sign was WWRO(FM). The change to WJLQ(FM) was effective September 26, 2000.

Coast Radio, L.C.)
Assignor)
and) File Nos. BAL/BALH-19990702GG-GH
Cumulus Licensing Corp.)
Assignee)
For Consent to Assignment of Licenses of)
WCOA(AM) and WJLQ(FM),¹ Pensacola, FL)

MEMORANDUM OPINION AND ORDER

Adopted: August 27, 2003

Released: September 2, 2003

By the Commission:

1. The Commission has under consideration three Applications for Review filed by Lyn Communications, Inc. (“Lyn”), licensee of station WQUA(FM), Citronelle, Alabama, contesting three decisions by the Chief, Audio Services Division, Mass Media Bureau (the “Staff Decisions”). As explained further below, each of the Staff Decisions denied a Petition to Deny filed by Lyn (collectively, the “Petitions”). As matters raised in the three Applications for Review are essentially identical, we consolidate our resolution of them in this *Memorandum Opinion and Order*.

Background

2. Lyn filed two Applications for Review on November 17, 1999. One requested review of an October 18, 1999, decision that denied Lyn’s September 15, 1999, Petition to Deny and granted the applications assigning the license of station WGOK(AM), Mobile, Alabama, from Roberds Broadcasting, Inc., and the license of station WYOK(FM), Atmore, Alabama, from WYOK Licenses, LLC, to Cumulus Licensing Corp. (“Cumulus Licensing”).² The second Application for Review requested review of a decision issued October 18, 1999, denying Lyn’s August 9, 1999, Petition to Deny and granting the application for transfer of control of April Broadcasting, Inc. (“ABI”), the licensee of stations WDLT(AM), Fairhope, Alabama, WDLT-FM, Chickasaw, Alabama, and WBLX-FM, Mobile, Alabama, from M&F Associates, L.P. to Cumulus Media, Inc.³ (collectively with Cumulus Licensing, “Cumulus”). Lyn filed a third Application for Review on November 22, 1999, requesting review of an October 25, 1999, decision that denied Lyn’s September 13, 1999, Petition to Deny and granted the applications assigning the licenses of stations WCOA(AM) and WJLQ(FM),⁴ Pensacola, Florida, from Coast Radio,

² Letter to William H. Crispin, Esq., Ref. No. 1800B3-ALB (MMB October 18, 1999) (regarding WGOK(AM) and WYOK-FM).

³ Letter to William H. Crispin, Esq., Ref. No. 1800B3-ALB (MMB October 18, 1999) (regarding WDLT(AM), WDLT-FM and WBLX-FM).

⁴ See *supra* note 1.

L.C. to Cumulus Licensing.⁵ Cumulus filed a Consolidated Opposition to all three Applications for Review on December 7, 1999.

3. In each of its Petitions, Lyn had argued that the Commission should designate the particular application(s) at issue (collectively as captioned above, the “Alabama/Florida Applications”) for hearing or defer action pending resolution of allegations against Cumulus raised by Davis Broadcasting, Inc. (“Davis”). Davis had filed a Petition to Deny (the “Davis Petition”) in a proceeding that proposed assignment of licenses of stations WSTH-FM, Alexander City, Alabama, and WDAK(AM), Columbus, Georgia, from Solar Broadcasting Company, Inc. (“Solar”) to Cumulus Licensing (“the Columbus Proceeding”).⁶ The Staff Decisions found that Lyn’s Petitions merely restated issues raised in the Davis Petition and failed to raise new or separate allegations against Cumulus. Moreover, the staff noted, none of the issues raised by the Davis Petition was specific to the Alabama/Florida Applications. The Staff Decisions found that Lyn failed to submit specific allegations of fact showing that grant of any of the Alabama/Florida Applications would be *prima facie* inconsistent with the public interest.⁷ In granting the Alabama/Florida Applications, the Staff Decisions stated that Lyn’s concerns, as raised in the Davis Petition, were to be addressed in the Columbus Proceeding.⁸

4. Lyn’s three Applications for Review reiterate the request to designate the Alabama/Florida Applications for hearing or, alternatively, defer action pending resolution of issues raised by the Davis Petition. Lyn asserts that without such resolution, the Commission may not determine that Cumulus is qualified as a licensee with respect to the stations at issue in the Alabama/Florida Applications.

Discussion

5. Lyn’s arguments have already been resolved in the Commission’s decision in the Columbus Proceeding. In *Solar Broadcasting Company, Inc.* (the “Columbus Order”),⁹ the Commission granted Cumulus’s request to dismiss the applications at issue in the Columbus Proceeding.¹⁰ Such dismissal rendered the Davis Petition moot.¹¹ The Commission nevertheless elected in the *Columbus Order* to address Davis’ allegations against Cumulus.¹² The Commission found that the facts alleged by

⁵ Letter to William H. Crispin, Esq., Ref. No. 1800B3-ALB (MMB October 25, 1999) (regarding WCOA(AM) and WJLQ(FM)).

⁶ File Nos. BAL-19990204EB and BALH-19990204EC. Davis filed its Petition on April 7, 1999.

⁷ See 47 U.S.C. § 309(d)(1).

⁸ See generally *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, 1223-25 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd 421 (1986) (stating that if the Commission has not as an initial matter found that allegations are likely to impact future operations of other stations, there is generally no reason to defer consideration of other assignment or transfer of control applications).

⁹ 17 FCC Rcd 5467 (2002). In the *Columbus Order*, the Commission consolidated a closely related transaction involving the assignment of six Columbus-area stations from Cumulus to Clear Channel Broadcasting Licenses, Inc. with a transaction involving the assignment of WSTH-FM and WDAK(AM) from Solar to Cumulus. Davis filed Petitions to Deny against both the Solar-to-Cumulus and the Cumulus-to-Clear Channel applications. When referencing the Davis Petition in the three Applications for Review, however, Lyn addresses only the Petition to Deny filed by Davis against the Cumulus application to acquire stations WSTH-FM and WDAK(AM) from Solar.

¹⁰ *Columbus Order*, 17 FCC Rcd at 5468.

¹¹ *Id.* at 5471, n. 19.

¹² *Id.*

Davis, even if considered true, did not establish a *prima facie* case that Cumulus had engaged in an unauthorized transfer of control¹³ or that Cumulus had made any disqualifying misrepresentations to the Commission in the Columbus Proceeding.¹⁴ The Commission also found that Davis failed to raise a substantial and material question of fact concerning Cumulus's alleged predatory pricing and other anti-competitive behavior¹⁵ or Cumulus's alleged disqualifying conduct with respect to a pending application for a new FM broadcast construction permit.¹⁶ No issues regarding disqualifying misconduct or Cumulus's basic qualifications as a licensee were designated for hearing in the *Columbus Order*; the Commission found Cumulus qualified to be a licensee.¹⁷ The U.S. Court of Appeals for the District of Columbia Circuit, on May 16, 2003, affirmed the *Columbus Order* and denied Davis' appeal of it.¹⁸ In its Applications for Review, Lyn provides no new evidence in support of the claims raised in the Petitions, nor does Lyn make any new allegations against Cumulus. In light of the foregoing, we find that the issues raised in Lyn's Application for Review are moot.

6. Accordingly, IT IS ORDERED, That the Applications for Review filed by Lyn Communications, Inc. on November 17, 1999, and the Application for Review filed by Lyn Communications, Inc. on November 22, 1999, ARE HEREBY DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³ *Id.* at 5486-89, ¶¶ 71, 74 & 78.

¹⁴ *Id.* at 5490-91, ¶¶ 81-82.

¹⁵ *Id.* at 5484-85, ¶¶ 64-65.

¹⁶ *Id.* at 5492, ¶ 83 (addressing certain allegations by Davis against an application filed by Signature Broadcasting Ltd. for a new facility in Cusseta, GA (File No. BPH-19930701ME) and finding that Davis had not raised a substantial and material question of fact regarding Cumulus' basic qualifications).

¹⁷ *Id.* at 5493, ¶ 86.

¹⁸ *Davis Broadcasting, Inc. of Columbus v. FCC*, Docket No. 02-1109 (D.C. Cir. May 16, 2003) (per curiam). The Court found that Davis presented no substantial and material question of fact requiring the Commission to conduct an evidentiary hearing on the issues raised in Davis' Petition.