

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. 05-47
FM Broadcast Stations.	)	RM-11157
(Dubach, Natchitoches, Oil City and Shreveport,	)	RM-11179
Louisiana, and Groesbeck, Longview,	)	RM-11232
Nacogdoches, Tennessee Colony and Waskom,	)	
Texas)	)	

**REPORT AND ORDER**  
(Proceeding Terminated)

**Adopted: November 28, 2005**

**Released: December 2, 2005**

By the Commission:

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding.<sup>1</sup> Cumulus Licensing LLC (“Cumulus”) filed a Counterproposal. Access.1 Louisiana Holding Company, LLC (“Access.1”) filed Opposition Comments. Cumulus and Charles Crawford filed Reply Comments. For the reasons discussed below, we are substituting Channel 247C2 for Channel 300C2 at Oil City, Louisiana, reallocating Channel 247C2 to Waskom, Texas, and are modifying the Station KBED license to specify operation on Channel 247C2 at Waskom. In order to restore local service at Oil City, we are reallocating Channel 266C from Shreveport, Louisiana, to Oil City, and are modifying the Station KRMD license to specify Oil City as the community of license. As a result, Channel 266C will be the only FM allotment at Oil City. To accommodate these reallocations, we are substituting channels in five communities in Louisiana and Texas.

2. At the request of Charles Crawford, the *Notice* proposed the allotment of Channel 300A at Tennessee Colony, Texas, as a first local service. In response to the *Notice*, Cumulus, licensee of Station KQHN (formerly KVMA-FM, then KBED), Channel 300C2, Oil City, Louisiana, and Station KRMD, Channel 266C, Shreveport, Louisiana, filed a Counterproposal involving seven communities in Texas and Louisiana.<sup>2</sup> The Counterproposal was necessitated by the fact that on January 12, 2005, the Commission ordered Station KQHN to discontinue operation due to interference to navigational equipment used by aircraft at the Barksdale Air Force Base.<sup>3</sup> As discussed below, the Counterproposal will enable Station

<sup>1</sup> *Tennessee Colony, Texas*, 20 FCC Rcd 2255 (MB 2005).

<sup>2</sup> During the course of this rulemaking proceeding, Cumulus changed the Station KBED call sign to KQHN effective April 7, 2005.

<sup>3</sup> See Letter from James Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Cumulus Licensing LLC (January 12, 2005).

KQHN to resume operation at Waskom while preserving local service at Oil City through the modification of the Station KRMD license.<sup>4</sup>

3. We are substituting Channel 247C2 for Channel 300C2 at Oil City, Louisiana, reallocating Channel 247C2 to Waskom, Texas, and modifying the Station KQHN license to specify Waskom as its community of license.<sup>5</sup> This action is taken pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest where the amended allotment would be mutually exclusive with the licensee's present authorization.<sup>6</sup> *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>7</sup> When considering a reallocation proposal, a comparison is made between the existing and proposed allotments to determine whether the proposed reallocation would result in a preferential arrangement of allotments. This reallocation would permit Station KQHN to resume operation and would result in Waskom having its first local service, a Priority 3 factor. In contrast the existing arrangement of allotments would preserve a fourteenth station licensed to Shreveport, a Priority 4 factor. Waskom is an incorporated community with its own local government and elected officials. In addition to the Waskom Independent School District, Waskom has its own fire department, water works and sanitation facility. Waskom has its own zip code, local Post Office and local newspaper, the Waskom Review. Waskom has a public library, local businesses, medical services, and civic organizations. Thus, we find that Waskom is a community for allotment purposes. Because there is no change in transmitter site, there will be no population gaining or losing service. The only difference is that Station KQHN will now be obligated to provide a local service to Waskom. Both the current and proposed arrangement of allotments would provide for and/or restore a first local service in Oil City, and thus are equal on this basis. In these circumstances, the new Waskom allotment is preferred over the preservation of a local Shreveport service.

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<sup>4</sup> On March 8, 2005, we issued a *Public Notice* (Report No. 2695), announcing that we will be processing a separate Petition for Rule Making filed by Charles Crawford for a Channel 299A allotment at Groesbeck, Texas, as a counterproposal in this proceeding. Upon further engineering review, we have determined that the proposed Channel 299A allotment at Groesbeck does not conflict with the underlying proposal for a Channel 300A allotment at Tennessee Colony, Texas, or any other proposal in this proceeding. For this reason, the *Public Notice* is without effect *ab initio*, and we will process the Petition for Rule Making for Channel 299A at Groesbeck in a separate proceeding.

<sup>5</sup> The reference coordinates for the Channel 247C2 allotment at Waskom, Texas, are 32-29-36 and 93-45-55. In this situation, the Channel 300C2 allotment at Oil City and the Channel 247C2 allotment at Waskom are mutually exclusive as required by Section 1.420(i) of the rules due to a 10.8 MHz I.F. separation requirement set forth in Section 73.207(b) of the rules.

<sup>6</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990) ("Community of License").

<sup>7</sup> 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

4. In order to maintain local service in Oil City, we are reallocating Channel 266C from Shreveport, Louisiana, to Oil City, and are modifying the Station KRMD license to specify Oil City as its community of license.<sup>8</sup> We also note that there will be a net loss in service to 56,303 persons. However, the population losing service will continue to receive more than five aural services.<sup>9</sup> Moreover, the reallocation will ensure a continued local service to Oil City, which otherwise might be left with an unusable allotment.

5. To accommodate the reallocation of Channel 247C2 to Waskom, Texas, we are making four other channel substitutions. First, we are substituting Channel 300C2 for vacant Channel 247C2 at Longview, Texas.<sup>10</sup> In order to accommodate Channel 300C2 at Longview, we are substituting Channel 299C3 for Channel 299C2 at Nacogdoches, Texas, and are modifying the Station KTBQ license to specify operation on Channel 299C3.<sup>11</sup> The allotment of Channel 299C3 to Nacogdoches will result in a net loss of service to 62,045 persons. The loss area will continue to receive more than five aural services. Capstar TX Limited Partnership, licensee of Station KTBQ, has consented to this modification of its license. To accommodate the reallocation of Channel 247C2 to Waskom, we are also substituting Channel 248A for Channel 247C3 at Natchitoches, Louisiana, and are modifying the Station KDBH-FM license to specify operation on Channel 248A.<sup>12</sup> Baldrige-Dumas Communications, Inc., licensee of Station KDBH-FM, has consented to this modification of its license. As a result of this license modification, 4,396 persons will lose service. This loss area will continue to receive more than five aural services. Finally, to accommodate Channel 248A at Natchitoches, we are substituting Channel 249C2 for Channel 249C1 at Dubach, Louisiana, and are modifying the Station KPCH license to specify operation on Channel 249C2.<sup>13</sup> Communications Capital Company II of Louisiana LLC, licensee of Station KPCH, has consented to the modification of its license. Because Station KPCH has not commenced operation on Channel 249C1, there will be no loss of existing service to any population.

6. Charles Crawford, the proponent for the Channel 300A allotment at Tennessee Colony, Texas, has withdrawn his expression of interest for the Tennessee Colony allotment. In accordance with Section 1.420(j) of the rules, Charles Crawford has filed an affidavit stating that he has not received or will not receive consideration for the withdrawal of his proposal.

MB Docket No. 04-317

7. The Channel 247C2 Waskom and Channel 248A Natchitoches allotments conflict with mutually exclusive proposals in MB Docket No. 04-317 to allot Channel 248A to Center, Texas, and the

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<sup>8</sup> The reference coordinates for the Channel 266C allotment at Oil City, Louisiana, are 32-40-08 and 93-52-45.

<sup>9</sup> The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559; *see also LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

<sup>10</sup> The reference coordinates for the Channel 300C2 allotment at Longview, Texas, are 32-42-01 and 94-40-47.

<sup>11</sup> The reference coordinates for the Channel 299C3 allotment at Nacogdoches, Texas, are 31-38-09 and 94-38-50.

<sup>12</sup> The reference coordinates for the Channel 248A allotment at Natchitoches, Louisiana, are 31-46-09 and 93-01-38.

<sup>13</sup> The reference coordinates for the Channel 249C2 allotment at Dubach, Louisiana, are 32-40-09 and 92-37-58.

counterproposal to allot Channel 248A to Logansport, Louisiana.<sup>14</sup> Because the Cumulus Counterproposal was not filed by the October 4, 2004, comment date in MB Docket No. 04-317, this Counterproposal is subject to dismissal.<sup>15</sup> Acceptance of counterproposals after the comment date is disruptive to the efficient processing of allotment rulemaking proceedings. We are particularly concerned that waivers of this filing deadline could lead to abuses of our FM allotment procedures by permitting parties with no timely expression of interest in a proceeding to affect its outcome.<sup>16</sup> With the exception of one staff decision,<sup>17</sup> we are unaware of any case in which the Commission has waived Section 1.420(d) to permit consideration of an untimely counterproposal. This case, however, presents rare and exceptional circumstances which warrant waiver of Section 1.420(d) of the rules. Station KQHN has been ordered off the air by the Commission staff. As noted above, this action was taken in response to a complaint of interference to military aircraft communications equipment. The design of the military communications equipment makes it extremely unlikely that Cumulus will be able to resolve this interference issue. The Cumulus Counterproposal is the only technical solution that would enable Station KQHN to resume operations promptly. As part of its Counterproposal, Cumulus included statements from Charles Crawford, Team Broadcasting Company, Inc., Noalmark Broadcasting Corporation, and Logansport Broadcasting, the four parties in MB Docket No. 04-317, withdrawing their respective expressions of interest in pursuing any allotment in that proceeding.<sup>18</sup> No other party has filed a rulemaking petition or application which would be prejudiced by the acceptance of the Cumulus Counterproposal. On these facts, we conclude that waiver of Section 1.420(d) is warranted to permit Station KQHN to resume broadcast operations. Requiring Cumulus to initiate a new proceeding to consider its Counterproposal would needlessly delay the restoration of local service to Oil City. We emphasize, however, that on a going forward basis that we will continue to strictly apply Section 1.420(d). This singular waiver is based solely on the extraordinary facts of this case.

Comments of Access.1 Louisiana Holding Company, LLC

8. Access.1 filed Comments in opposition to the Cumulus Counterproposal. In its Comments, Access.1 contends that the reallocation to Waskom would exacerbate the migration of this station from the

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<sup>14</sup> *Center, Texas*, 19 FCC Rcd 15384 (MB 2004).

<sup>15</sup> Section 1.420(d) of the Commission's rules requires a counterproposal to be filed by the specified comment date in a rulemaking proceeding. See also *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990).

<sup>16</sup> In this regard, the rule waiver at issue in this proceeding is distinguishable from and significantly more problematic than our long-established policy of accepting late filed expressions of interest in uncontested cases. See *Amor Family Broadcasting Group*, 918 F. 2d 960 (D.C. Cir. 1990).

<sup>17</sup> In *Bristol, Vermont*, 14 FCC Rcd 11637 (MMB 1999), the staff issued a *Notice of Proposed Rule Making* proposing a Channel 248A allotment at Bristol notwithstanding the fact that a conflicting use of Channel 248A had been already suggested as a possible means to resolve an earlier proceeding and the petition requesting the Bristol Channel 248A allotment was filed after the counterproposal deadline in the earlier proceeding. That *Notice* as well as the subsequent *Report and Order*, 15 FCC Rcd 18917 (MMB 2000), allotting Channel 248A were inconsistent with our action in *Pinewood, South Carolina, supra*. We repudiate the *Bristol, Vermont* processing policy and direct the staff to dismiss promptly such untimely filings in the future.

<sup>18</sup> These withdrawals complied with Section 1.420(j) of the Commission's rules which limits reimbursement to the withdrawing party to no more than legitimate expenses. On April 25, 2005, we dismissed all proposals and terminated MB Docket No. 04-317. *Center, Texas, and Logansport, Louisiana*, 20 FCC Rcd 8213 (MB 2005).

rural community of Magnolia, Arkansas to the Shreveport Urbanized Area.<sup>19</sup> In addition, Access.1 argues that the proposed Channel 247C2 allotment at Waskom is not mutually exclusive with the existing Channel 300C2 allotment at Oil City, and notes that the reallocation to Oil City will result in “large areas and populations” losing service. Access.1 also notes that the allotment of Channel 247C2 at Waskom will result in the loss of low power Station KLBK-LP which serves the minority community of Shreveport. Finally, Access.1 argues that the allotment of Channel 247C2 to Waskom “may still result” in interference to air navigation and that the Commission should “take a closer look” at the “underlying arrangements” between Cumulus and the stations modifying their licenses to accommodate the reallocation proposal. We will consider each of these arguments.

9. Station KQHN will provide a first local service to Waskom and be a significant public benefit to that community. In this regard, we are aware that Station KQHN will provide the entire Shreveport Urbanized Area with a 70 dBu signal. For this reason, we do not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedent<sup>20</sup> and consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most importantly, the independence of the suburban community. In considering this reallocation proposal, we note that the *Huntington* doctrine is a limited exception to the Section 307(b) presumption that every community needs at least one local service.<sup>21</sup>

10. In its Comments, Access.1 has not argued that Waskom is not entitled to consideration as a first local service. An argument that this action “exacerbates” a migration to an Urbanized Area does not warrant denying a first local service to Waskom. As stated earlier, Waskom, with a population of 2,068 persons, is entitled to consideration as a first local service. The population total is substantial and supports consideration as a first local service.<sup>22</sup> With respect to coverage of the Urbanized Area, we note that as a Class C2 facility, Station KQHN will invariably cover a significant portion, if not all, of the Shreveport Urbanized Area. As discussed in paragraph 3, *supra*, and consistent with the factors set forth in *Faye and Richard Tuck*, Waskom is sufficiently independent of the Shreveport Urbanized Area to warrant a first local service preference.

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<sup>19</sup> In its opposition Comments, Access.1 refers to its Application for Review filed in an earlier proceeding, MB Docket No. 02-199, in which we reallocated Channel 300C2 from Magnolia, Arkansas, to Oil City and modified the Station KQHN license to specify Oil City as the community of license. *Magnolia, Arkansas, and Oil City, Louisiana* 19 FCC Rcd 1553 (MB 2004). We are now only considering the reallocation of Channel 247C2 to Waskom. Our action in this proceeding is subject to the outcome of the Application for Review and could be modified by an outcome in that proceeding. Finally, our action in this proceeding does not affect any separate request by Cumulus to resume Station KQHN operation by special temporary authority.

<sup>20</sup> See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>21</sup> See *Faye and Richard Tuck*, *supra*.

<sup>22</sup> *C.f. Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996) (community with a population of less than 1 per cent of the central city considered as a first local service); *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (MMB 1992) (community with a population of 1,514 persons considered as a first local service).

11. In reallocating Channel 247C2 to Waskom, we recognize that the channel substitutions necessary to accommodate this reallocation would result in a significant number of persons losing existing service. In each instance, the population losing service will continue to receive in excess of five services. As such, we will not preclude a first local service at Waskom, the resumption of service by Station KQHN and the restoration of local service at Oil City on the basis of well-served populations losing some service. There is no basis for us to take a “closer look” at the “underlying arrangements” between Cumulus and the stations modifying their authorizations to accommodate the reallocation proposal. Access.1 has not alleged a violation of any Commission rule or policy. Instead, Access.1 merely suggests that the licensees of these stations may have received financial consideration for their cooperation. This allegation is unsupported speculation by Access.1. Moreover, the licensees of these stations have not filed any competing expressions of interest in this proceeding. Therefore, Cumulus and these licensees would not be subject to the filing and disclosure requirements and the limitation of financial and other consideration set forth in Section 1.420(j) of the rules. We also reject the Access.1 argument that the proposed Waskom reallocation is not mutually exclusive with the existing authorization at Oil City as required by Section 1.420(i) of the rules. Access.1 has identified a site for a Channel 247C2 allotment at Waskom which is not mutually exclusive with the Oil City authorization. Such a showing does not preclude consideration of the Cumulus proposal. *Community of License* and Section 1.420(i) only require that the proposed reallocation set forth in the petition for rule making be mutually exclusive with the underlying authorization. There is no requirement that the rulemaking proponent demonstrate the unavailability of fully spaced sites in the proposed new community.

12. We also reject the argument that the Cumulus Counterproposal “may still” result in interference to air navigation. In support of this contention, Access.1 merely states that Cumulus has not received a “no hazard” determination from the FAA regarding the Channel 247C2 proposal and that we are “at risk” of expending a “great deal of time and resources” in considering the Cumulus Counterproposal only to have it rejected by the FAA. In response to this argument, Cumulus submitted an engineering exhibit from an aviation consultant. In that exhibit, the consultant notes that the Waskom proposal does not involve any change in structure height and would not require prior FAA notification. The FAA has been notified of the new frequency on the existing tower (97.3 MHz). On the basis of its study testing 97.3 MHz against all ILS localizers within 60 miles of the structure using the FAA Airspace Analysis Model, the aviation consultant has determined that there would be no electromagnetic interference to any ILS localizer or B-52 aircraft at Barksdale Air Force Base. Access.1 also states that a Channel 247C2 operation in Waskom could result in the termination of service by low power FM Station KBLK-LP which serves the minority community of Shreveport. While we recognize the valuable service being provided by Station KBLK-LP and other low power FM stations, these facilities are secondary services and must protect subsequently authorized full service stations.<sup>23</sup> In *Creation of a Low Power Radio Service*, the Commission specifically stated that it would not compromise the technical integrity of the FM service or prevent existing stations from modifying their facilities. In the event Station KBLK-LP interferes with the new primary service in Waskom, Station KBLK-FM would be required to suspend operation.<sup>24</sup> In regard to service to Shreveport, we note that 13 AM and FM stations are licensed to serve that community.

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<sup>23</sup> *Creation of a Low Power Radio Service*, 14 FCC Rcd 2471 (1991).

<sup>24</sup> See 47 C.F.R. § 73.809(a). Should interference occur, Station KBLK-LP would be permitted to file a minor change application to specify any other rule-compliant frequency. See 47 C.F.R. § 73.870(a).

13. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

14. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective January 17, 2006, the Table of FM Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Dubach, Louisiana	249C2
Natchitoches, Louisiana	248A, 264C3
Oil City, Louisiana	266C
Shreveport, Louisiana	229C, 233C, 243C1, 259C2, 275C2
Longview, Texas	289C, 300C2
Nacogdoches, Texas	221A, 277C2, 299C3
Waskom, Texas	247C2

15. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cumulus Licensing LLC for Station KQHN, Channel 300C2, Oil City, Louisiana, IS MODIFIED to specify operation on Channel 247C2 at Waskom, Texas, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cumulus Licensing LLC for Station KRMD, Channel 266C, Shreveport, Louisiana, IS MODIFIED to specify operation on Channel 266C at Oil City, Louisiana, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

17. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Capstar TX Limited Partnership for Station KTBQ, Channel 299C2, Nacogdoches, Texas, IS MODIFIED to specify operation on Channel 299C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

18. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Baldrige-Dumas Communications, Inc., for Station KDBH-FM, Channel 247C3, Natchitoches, Louisiana, IS MODIFIED to specify operation on Channel 248A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

19. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Communications Capital Company II of Louisiana, LLC, for Station KPCH, Channel 249C1, Dubach, Louisiana, IS MODIFIED to specify operation on Channel 249C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance



with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

20. IT IS FURTHER ORDERED, That Section 1.420(d) of the Commission's rules IS WAIVED in order to permit consideration of the Cumulus Licensing LLC Counterproposal in this proceeding notwithstanding the fact that it was untimely with respect to an earlier proceeding in MB Docket No. 04-317.

21. Pursuant to Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, each licensee is required to submit a rulemaking fee in addition to the fee required for the application to affect the change in community of license.

22. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary