

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

In the Matter of ) ) <b>CUSSETA BROADCASTING CORPORATION</b> ) ) and ) ) <b>SIGNATURE BROADCASTING, INC.</b> ) ) For a New FM Broadcast Station ) at Cusseta, Georgia )	File No. BPH-19930701MG Facility ID No. 14761  File No. BPH-19930701ME Facility ID No. 60372
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**MEMORANDUM OPINION AND ORDER**

**Adopted: January 15, 2008**

**Released: January 17, 2008**

By the Commission:

**I. INTRODUCTION**

1. We have before us the April 11, 2003, “Contingent Application for Review” (the “Contingent Application”) filed by Davis Broadcasting Inc., of Columbus (“DBC”).<sup>1</sup> In the Contingent Application, DBC seeks review of a Media Bureau (“Bureau”) decision dated March 14, 2003 (“Staff Decision”),<sup>2</sup> granting the August 13, 1999, request of Cusseta Broadcasting Corporation (“CBC”) to dismiss its above-captioned application for a new FM broadcast station at Cusseta, Georgia (“Request for Dismissal”). For the following reasons, we affirm the Staff Decision and dismiss the Contingent Application.<sup>3</sup>

**II. BACKGROUND**

2. CBC and Signature Broadcasting, Inc. (“Signature”) filed their above-captioned mutually exclusive applications for a new FM broadcast station at Cusseta, Georgia. Before the applicants could be designated for a comparative hearing, the applications were frozen,<sup>4</sup> and were among those originally

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<sup>1</sup> DBC is the licensee, *inter alia*, of WEAM-FM, Buena Vista, Georgia, which is located in the Columbus, Georgia market, where it would compete with a future Cusseta station. DBC thus claims standing based on its status as a potential competitor. *F.C.C. v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940). Also before us is an April 22, 2003, “Statement Regarding Contingent Application for Review,” filed by Cusseta Broadcasting Corp. (“CBC”). In its Statement, CBC requests that, pursuant to 47 C.F.R. § 1.115(h)(1)(iii), we request an Opposition brief from CBC should it be deemed necessary. In light of our disposition of this matter, we do not require such a brief.

<sup>2</sup> *Davis Broadcasting, Inc., et al.*, Letter, Ref. No. 1800B3-TSN (MB Mar. 14, 2003).

<sup>3</sup> File No. BPH-19930701MG.

<sup>4</sup> See *FCC Freezes Comparative Proceedings*, Public Notice, 9 FCC Rcd 1055 (1994) (“Freeze Public Notice”).

scheduled for inclusion in Closed Broadcast Auction No. 25.<sup>5</sup> During a settlement window, the sole shareholder of CBC granted Allen Woodall (“Woodall”), the sole shareholder of Solar Broadcasting Company, Inc. (“Solar”), the then-licensee of Stations WDAK(AM), Columbus, Georgia, and WSTH-FM, Alexander City, Alabama, an option to purchase its stock. Signature also entered into an agreement with regard to the proposed Cusseta station, should it be granted the permit, granting Cumulus Licensing Corp. (“Cumulus”) an option to purchase the assets of the station. Subsequently, Solar entered into an agreement to sell its two above-noted stations to Cumulus, conditioned upon the dismissal of CBC’s Cusseta application. To comply with this condition, Woodall exercised his option to purchase the CBC stock, and then caused CBC to file the Request for Dismissal.

3. DBC opposed Solar’s application to assign the WDAK(AM) and WSTH-FM licenses to Cumulus,<sup>6</sup> based in part on its contention that Woodall had become an unlawful real party in interest to the CBC Cusseta application, and that Woodall and CBC had “abused Congressional and Commission settlement processes and policies.”<sup>7</sup> While, at the request of Cumulus, the Commission dismissed the Solar-Cumulus assignment application on March 19, 2002, it nonetheless addressed the qualifying issues raised by DBC, finding that no substantial and material questions of fact regarding Solar’s or Cumulus’s basic qualifications had been raised in connection with the assignment application. DBC appealed this Order to the United States Court of Appeals for the District of Columbia Circuit, which ultimately affirmed the Commission.<sup>8</sup>

4. DBC also opposed CBC’s Request for Dismissal of its Cusseta application, raising the same real party in interest and abuse of settlement policies issues.<sup>9</sup> In the Staff Decision, the Bureau found that DBC’s contentions regarding these issues were not disqualifying, and granted the Request for Dismissal. DBC then filed its Contingent Application, contending that the Bureau, in the Cusseta Staff Decision, lacked jurisdiction to resolve the real party in interest and abuse of process questions raised in DBC’s Opposition to CBC’s Request for Dismissal.<sup>10</sup> According to DBC, although the Bureau addressed those issues in the Staff Decision, the Bureau lacked jurisdiction, because the Commission had found in favor of Solar on those issues, and DBC had appealed the Commission’s decision to the United States Court of Appeals, which had yet to rule on the appeal.<sup>11</sup> DBC thus concludes that “[o]nly if jurisdiction were returned to the Commission [from the Court of Appeals] should the Commission re-address questions on which it already has reached administratively final determinations.”<sup>12</sup>

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<sup>5</sup> See 47 U.S.C. §309(1)(2); see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order (“*Broadcast First Report and Order*”), 13 FCC Rcd 15920, 15942-43 (1998), *recon. denied*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999).

<sup>6</sup> File Nos. BAL/BALH-19990204EB-EC.

<sup>7</sup> Contingent Application at 2.

<sup>8</sup> *Solar Broadcasting Company, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5492 (2002) (“*Solar Broadcasting Order*”), *aff’d sub nom. Davis Broadcasting Inc., of Columbus v. F.C.C.*, No. 02-1109 (D.C. Cir. May 16, 2003) (“*Solar Broadcasting*”).

<sup>9</sup> See Staff Decision at 4-6.

<sup>10</sup> Contingent Application at 6-9.

<sup>11</sup> *Id.* at 3-4, 6-9.

<sup>12</sup> *Id.* at 5.

### III. DISCUSSION

5. We affirm the Staff Decision and dismiss the Contingent Application. DBC's claim in its Contingent Application that the Bureau lacked jurisdiction over the issues decided in the Staff Decision is based on the fact that those matters were then pending before the court in DBC's *Solar Broadcasting* appeal.<sup>13</sup> Because the Court of Appeals affirmed the Commission's resolution of the issues DBC raised in its opposition to the CBC application dismissal, there is no obstacle to our review of those issues. Finding no error in the Media Bureau's rejection of DBC's objection to CBC's Request for Dismissal, we affirm the Staff Decision. We further find that the Court of Appeals's affirmation of the *Solar Broadcasting Order* moots DBC's jurisdictional objection to the Staff Decision, and on that basis dismiss the Contingent Application.

### IV. ORDERING CLAUSE

6. For the reasons stated above, the Staff Decision IS AFFIRMED, and CBC's Contingent Application for Review IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>13</sup> In the *Solar Broadcasting Order*, the Commission determined that DBC's allegations were not disqualifying, further stating that, "we do not reach any questions presented in the Cusseta proceeding other than whether they raise disqualifying issues warranting further inquiry. All other issues will be addressed when we act on the Cusseta construction permit applications which remain pending." *Solar Broadcasting Order*, 17 FCC Rcd at 5492.