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Richard R. Zaragoza, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1122

Alan C. Campbell, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036-3101

Erwin G. Krasnow, Esq.
Garvey Schubert Barer
1000 Potomac Street, N.W., 5th Floor
Washington, D.C. 20007

In re: **KACI-FM, The Dalles, Oregon**
Facility ID No. 49856
File No. BALH-20070205ADT

**Application for Assignment of License
Petition to Deny**

Dear Counsel:

We have before us the above-referenced application (“Assignment Application”) proposing to assign the license of Station KACI-FM, The Dalles, Oregon (the “Station”) from Columbia Gorge Broadcasters, Inc. (“CGB”) to Bicoastal Columbia River, LLC (“Bicoastal”). On March 14, 2007, Cumulus Licensing LLC (“Cumulus”), licensee of Station KNRQ-FM, Eugene, Oregon, filed a Petition to Deny Assignment Application and to Dismiss Modification Application (“Petition to Deny”).¹ For the reasons stated below, we deny the Petition to Deny and grant the Assignment Application.

Background. On March 21, 2005, CGB, Portland Broadcasting, LLC (“PB”), and two other parties (collectively, the “Joint Parties”) jointly filed a counterproposal in a multiple docket FM allocations rulemaking proceeding, MB Docket No. 05-10 (“Rulemaking”).² The key provision in the Rulemaking relevant to the instant transaction was the Joint Parties’ proposal to substitute Channel 250C2 for Channel 249C2, reallocate Channel 250C2 from The Dalles to Tualatin, Oregon, as that community’s first local service, and to modify Station KACI-FM’s license accordingly. The Joint Parties also

¹ On March 23, 2007, CGB filed an Opposition to Petition to Deny Assignment Application and to Dismiss Modification Application (“CGB Opposition”), and on March 28, 2007, Bicoastal filed an Opposition of Bicoastal Columbia River LLC to Petition to Deny Assignment Application (“Bicoastal Opposition”). On April 9, 2007, Cumulus filed a Reply to Oppositions (“Reply”).

² See *Goldendale, Washington*, Notice of Proposed Rulemaking, 20 FCC Rcd 1287 (MB 2005).

requested that Station KNRQ-FM change its frequency to Channel 300C at Eugene, Oregon, in order to accommodate the proposed reallocation of Station KACI-FM to Channel 250C2 at Tualatin. On March 31, 2006, the staff issued an Order to Show Cause directed at Cumulus.³ Cumulus opposed the KNRQ-FM channel modification in its May 2, 2006 comments.⁴ In the September 5, 2006, *Report and Order*, the staff, *inter alia*, dismissed the Joint Parties' proposal to reallocate Channel 250C2 to Tualatin, as well as the channel substitutions necessary to accommodate the reallocation.⁵ This disposition remains subject to a pending petition for reconsideration.

On September 6, 2005, during the pendency of the Rulemaking, CGB and PB executed an Asset Purchase Agreement for the sale of Station KACI-FM from CGB to PB ("PB APA"). While providing for the sale of the Station, the PB APA indicates that an application for assignment of license will not be filed with the Commission until grant of the then-pending Rulemaking proposal.⁶

Subsequently, on February 1, 2007, CGB and Bicoastal executed an Asset Purchase Agreement for the sale of Station KACI-FM to Bicoastal ("Bicoastal APA").⁷ Section 1.1.4 of the Bicoastal APA provides that Bicoastal will accept assignment of "all rights and obligations of CGB under that certain asset purchase agreement between CGB and Portland Broadcasting, LLC."⁸ The Assignment Application was filed with the Commission on February 5, 2007. Cumulus filed its Petition to Deny on March 14, 2007.⁹

Discussion. Cumulus opposes grant of the Assignment Application on two grounds. First, Cumulus argues that CGB will retain a reversionary interest in KACI-FM in violation of Section 73.1150 of the Commission's Rules ("Rules").¹⁰ Second, Cumulus alleges that provisions of the Bicoastal APA

³ See *Monument, Oregon*, Order to Show Cause, 21 FCC Rcd 3332 (MB March 31, 2006).

⁴ Comments of Cumulus Licensing LLC to Order to Show Cause, MB Docket 05-10, May 2, 2006.

⁵ See *Ione, Oregon*, Report and Order, 21 FCC Rcd 10017 (MB 2006).

⁶ See PB APA at § 4.2(a).

⁷ The Bicoastal APA also provides for the sale of Stations KACI(AM), The Dalles, Oregon, as well as KHR(AM) and KCGB-FM, Hood River, Oregon, from CGB to Bicoastal. Additionally, the Bicoastal APA provides for the sale of Station KMSW(FM), The Dalles, Oregon, from M.S.W. Communications, LLC to Bicoastal. The proposed assignment of Station KACI-FM to Bicoastal is the only one of these proposed assignments that is the subject of the Cumulus Petition to Deny.

⁸ Bicoastal APA, § 1.1.4. A copy of the PB APA is attached to the Bicoastal APA as Exhibit A. CGB also filed a copy of the PB APA agreement with the Commission on October 6, 2005, pursuant to 47 C.F.R. § 73.3613.

⁹ Cumulus's Petition to Deny was filed against both the Assignment Application and an application for minor change for the KACI-FM facilities ("Modification Application") (File No. BPH-20070118AEL). The Modification Application was granted on March 22, 2007. See *Broadcast Actions*, Report No. 46451, Public Notice (MB Mar. 22, 2007). In its Reply, Cumulus stated that it would file a separate pleading regarding the Modification Application, and accordingly, we address only the issues raised against the Assignment Application herein.

¹⁰ 47 C.F.R. § 73.1150. In pertinent part, this rule states that a licensee selling a station "may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever." 47 C.F.R. § 73.1150(a).

run contrary to the core Commission policy of licensee control¹¹ because, “in certain critical operational aspects, CGB will continue to determine the fate of KACI [sic] after it has assigned the license for the station to Bicoastal.”¹² In this regard, Cumulus objects to two provisions of the Bicoastal APA: (1) Bicoastal’s agreement to pursue the relocation of Station KACI-FM to Tualatin; and (2) Bicoastal’s agreement to sell Station KACI-FM to PB pursuant to the terms of the preceding PB APA.¹³ CGB responds that the charges “are baseless.”¹⁴

Section 73.1150. Bicoastal contends that there are no provisions in the Bicoastal APA that are in contravention of Section 73.1150, the reversionary interest rule. “Following its acquisition of KACI-FM, [CGB] will retain no right of reversion in the station’s license, no right of reassignment of the license in the future, and no reservation of the right to use the facilities of KACI-FM,” Bicoastal states.¹⁵ We agree and find that the rule is inapplicable by its terms. Cumulus’s allegation is not supported by citation to any Commission decision or other authority. Indeed, in its Reply, Cumulus concedes that nothing in the Bicoastal APA violates the reversionary interest rule *per se*, but rather argues that it violates “the intent” of Section 73.1150.¹⁶ We are not persuaded by Cumulus’s unsupported assertion and find that Cumulus has not raised a substantial and material question of fact calling for further inquiry regarding this issue.¹⁷

Lack of licensee control. Section 1.1.4 of the Bicoastal APA conveys to Bicoastal the rights and obligations of CGB under the PB APA.¹⁸ Section 21.12 of the Bicoastal APA requires Bicoastal to “cooperate with PB in seeking Commission approval of the Rulemaking,” as contemplated in the PB APA.¹⁹ These provisions merely constitute contractual obligations of Bicoastal. No evidence suggests that Bicoastal’s assumption of the agreement was anything other than an independent and *bona fide* business decision by Bicoastal. Moreover, the Bicoastal APA does not evince a violation of the Commission policy that requires a licensee to retain control over its licensed broadcast facilities. When evaluating allegations of *de facto* control, the Commission focuses its review on whether the entity in question makes policies and decisions in three main areas of station operation: programming, personnel and finances.²⁰ Cumulus fails to provide specific allegations of fact to demonstrate that Bicoastal will be

¹¹ See 47 U.S.C. § 310(d).

¹² Reply at 1-2.

¹³ As the successor to the PB APA, Bicoastal will receive Station KYYT(FM), Goldendale, Washington, or its equivalent, from PB, should Bicoastal become obligated to sell KACI-FM to PB. See PB APA at § 4.2(b); see also CGB Opposition at 3, n.3.

¹⁴ CGB Opposition at 2.

¹⁵ Bicoastal Opposition at 2.

¹⁶ Reply at 3.

¹⁷ See 47 U.S.C. § 309(d)(1).

¹⁸ Bicoastal APA at §1.1.4.

¹⁹ *Id.* at § 21.12.

²⁰ See *WHDH, Inc.*, Memorandum Opinion and Order, 17 FCC 2d 856 (1969), *aff’d sub nom. Greater Boston Television, Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied* 403 U.S. 923 (1971).

unable to exercise authority over these areas of station operation. CGB affirms that it “will have no authority to hire, fire or supervise any Bicoastal employee; it will not pay any employee; it will supply no programming to KACI-FM; it will not pay any bills of, lend money to or guarantee any debt of the station or Bicoastal.”²¹ Bicoastal adds that it “has not ceded any licensee control to Columbia Gorge or limited its discretion to operate the station during the term of the [PB] APA by agreeing to abide by the terms of the [PB] APA.”²² Accordingly, we agree with Bicoastal and find that its assumption of both an effort to relocate KACI-FM and to sell the Station to PB pursuant to the terms of the preceding PB APA “is the natural consequence of Bicoastal becoming the assignee of that agreement and not because of any control retained by Columbia Gorge.”²³

Conclusion/Actions. Based on the above, we find that no substantial and material question of fact has been presented. We further find that Bicoastal is qualified as the assignee and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Cumulus Licensing LLC IS DENIED, and that the application to assign the license of Station KACI-FM, The Dalles, Oregon (File No. BALH-20070205ADT) from Columbia Gorge Broadcasters, Inc. to Bicoastal Columbia River, LLC IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ CGB Opposition at 4.

²² Bicoastal Opposition at 3.

²³ *Id.*