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77646

File

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MAY 12 2009

Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In re Application of )  
SSR Communications, Inc. ) File No. BPH-20090420ACQ  
For Minor Modification of WYAB(FM), Flora, MS ) Facility ID No. 77646

To: The Secretary  
For transmission to the Chief, Audio Division, Media Bureau

**REQUEST TO DISMISS AND/OR DENY APPLICATION**

1. Radio Cleveland, Inc. ("RCI"), licensee of WCLD-FM, Cleveland, Mississippi (Facility ID No. 54532), hereby requests that the Commission dismiss and/or deny the minor modification application (the "Application"), filed by SSR Communications, Inc. ("SSR"), in the above-captioned matter.

2. This Request is submitted pursuant to 47 C.F.R. Sec. 1.41 and 73.3587, which govern informal objections.<sup>1</sup> As the Application seeks authorization for "minor change," no formal procedures lie against it. But, "[a]rguments, evidence, and precedent may be presented in an informal objection as readily as in a more formal petition to deny, and are subject to the same evidentiary and legal standards."<sup>2</sup>

3. The core issue in this Request is that the Application is ungrantable. Further consideration by the Commission is, therefore contrary to the public interest as such consideration would merely divert staff time and waste resources.

1 Although standing is not a formal requirement here, insofar as the Application seeks to change the channel of RCI's WCLD-FM, RCI clearly has interests at stake and, therefore, has standing.

2 *Amendments to FM Table of Allotments*, 21 FCC Rcd 14212 (FCC 2006) at para. 12.

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AUDIO SERVICES DIVISION

## DISCUSSION

4. SSR proposes to upgrade the channel class for its WYAB from Class A to Class C3. However, the proposed WYAB upgrade is impossible because, as SSR acknowledges, it would violate the minimum spacing requirements of 47 C.F.R. Sec. 73.207 *vis-a-vis* RCI's WCLD-FM.

5. SSR attempts to remedy this flaw by proposing an involuntary channel change relocating WCLD-FM from its current Channel 280C3 to Channel 225C3 (the "Proposed Relocation Channel").<sup>3</sup> However, the cure is as bad as or worse than the ailment because the Proposed Relocation Channel is not vacant! WDTL-FM, Facility Identification No. 16557 is licensed as a Class C2 service at Cleveland, Mississippi, on the Proposed Relocation Channel.<sup>4</sup>

6. SSR both acknowledges this fact and the legal problem it poses to its proposed modification.<sup>5</sup> The remedy it offers is, however, even more flawed: SSR asserts that WDTL-FM has been silent for more "more than 22 consecutive months . . . and pursuant to 47 U.S.C. Sec. 312(g) "the WDTL-FM license expired as a matter of law" in 2008.<sup>6</sup>

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3 WYAB(FM) application, at Exh. 26B.

4 WDTL-FM's license was renewed in 2005 in FCC File No. BRH-20040219ACR.

5 Exh. 26B at 3.

6 *Id.*

7. IF true (and the FCC has not determined if it is true), WDTL-FM's license could be in jeopardy. Lacking such a determination, what is posed as a simple "matter of law" is not quite so simple.

8. Due process clearly disfavors the summary, irreversible action requested in the Application to make WDTL-FM disappear. *See, e.g., FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940) (requiring that exercise of even the FCC's most plenary authority comport with constitutional due process mandates.) Thus, Section 312(g) allows a station allegedly silent for 12 consecutive months to remain licensed "if the holder of the station license prevails in an administrative or judicial appeal." In order to appeal, there must first be something to appeal. But here, no appealable action has occurred. And even if it had, until all appeals are exhausted and the matter is final – there is simply no vacant channel to reallocate. Both the FM Table of Allotments and the Commission's CDBS data base demonstrate as much: *Channel 225 in Cleveland, Mississippi, is taken.*

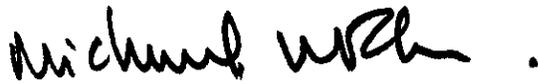
9. As NO Relocation Channel is available to ameliorate the impermissible short-spacing the Application proposes *vis-à-vis* WCLD-FM's operations on Channel 280C3, the Application is ungrantable as submitted.

10. No amendment can cure this. As a result, the Application is faulty under longstanding FCC policy and regulation. *See e.g.*, 47 C.F.R. Sec. 73.3517 (barring contingent applications in all but a very few instances, none of which apply to the Application). The Commission must, therefore, dismiss or deny the Application. To do otherwise would squander precious Commission resources in violation of the clear public interest in efficient administration. *See Cut and Shoot, Texas*, 11 FCC Rcd 16383 (1996).

### CONCLUSION

11. **WHEREFORE**, the aforesaid being said, RCI requests the Commission to promptly dismiss the Application without wasting resources through further consideration, or, if considered, deny the Application because it cannot be granted without violating Section 73.207 of the Commission's Rules.

Respectfully submitted,



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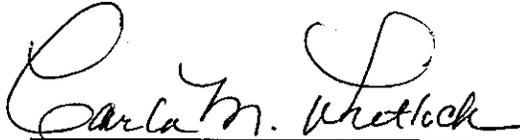
May 12, 2009

**CERTIFICATE OF SERVICE**

I, Carla M. Whitlock, a secretary at the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the *Request to Dismiss and/or Deny Application* was sent this 12<sup>th</sup> day of May, 2009 via United States First Class Mail, postage prepaid, or by email, as indicated, to the following:

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