



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:

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In re: **R&R Radio Corp.**
KDES-FM, Palm Springs, California
Facility ID No. 67354
File No. BPH-20071128ACX

**Application for Construction Permit
for Minor Change**

**Informal Objections
Motion to Dismiss or Designate for Hearing**

Dear Counsel:

We have before us, the application ("Application") of R&R Radio Corp. ("R&R") for a minor change to Station KDES-FM, Palm Springs, California ("Palm Springs") to change transmitter site and change its community of license to Redlands, California ("Redlands"). We also have before us an Informal Objection filed by SBR Broadcasting Corp. ("SBR"), licensee of KCAL-FM, Redlands, (the "SBR Objection"), an Opposition to KDES-FM Community of License Change filed by Gold Coast Broadcasting, LLC, ("Gold Coast"), licensee of KCAQ(FM), Oxnard, California (the "Gold Coast Opposition"), and a Motion to Dismiss or Designate for Hearing filed by Gold Coast (the "Motion to Dismiss").¹ For the

¹ R&R filed an Opposition to Informal Objection (the "R&R Opposition") and a Response to Opposition to KDES-FM Community of License Change (the "R&R Response"). Gold Coast filed a Reply to Response to KDES-FM Community of License Change (the "Gold Coast Reply"). R&R filed an Opposition to Motion to Dismiss or Designate for Hearing (the "Opposition to Motion to Dismiss") and, subsequently, a Request for Expedited Action. Given our disposition of this matter, the Request for Expedited Action will be dismissed as moot. R&R filed a contingent Motion for Extension of Time. R&R sought the extension if the Gold Coast Opposition was deemed a

reasons set out below, we deny the SBR Objection, the Gold Coast Opposition and the Gold Coast Motion to Dismiss, and grant the Application.

Background. R&R's Application seeks to relocate the transmitter site of KDES-FM and change its community of license from Palm Springs to Redlands.² Currently, KDES-FM is licensed as a Class B station in Palm Springs; R&R proposes to operate KDES-FM as a Class A station in Redlands.

Gold Coast submits that the reallocation of KDES-FM to Redlands does not meet the Commission's standards for a "preferential arrangement of allotments."³ It claims that granting the Application would "take away long-standing service from a small regional market to move the station into a larger urban market that is already well-served."⁴ Gold Coast disputes R&R's claim that, with grant of the Application, 31% of the population within KDES-FM's service contour would continue to have service. It submits that, under an alternative "Longley-Rice" contour prediction methodology,⁵ the relocation of KDES-FM would "terminate service to nearly 90% of its current listeners."⁶

Gold Coast also contends that, if the Application is granted, 346 persons, currently within KDES-FM's service area, would then have "access to only four other full-time aural services."⁷ Gold Coast also provides copies of letters filed with the Commission in which certain residents of the Palm Springs area oppose loss of service from KDES-FM.⁸

Although Gold Coast acknowledges that KDES-FM, when relocated, meets the co-channel spacing requirements in Section 73.207 of the Rules, it claims that, nonetheless, there will be "massive harmful interference" to reception of Gold Coast's station KCAQ(FM), Oxnard, California.⁹ It bases its conclusion on two claims: (1) the service and interference contours of KDES-FM and KCAQ(FM) will overlap; and (2) a Longley-Rice analysis shows that interference will occur. Both claims rest on an asserted "anomaly in the Commission's Rules" concerning calculation of stations' height above average terrain,¹⁰ which anomaly, Gold Coast claims, would result in KDES-FM causing greater interference than would be encountered "in an area with more normal terrain."¹¹

formal opposition governed by the filing deadlines in 47 C.F.R. § 1.45. The Motion for Extension of Time will be dismissed as moot. Gold Coast filed its Opposition "pursuant to Section 73.3587 of the Commission's Rules" (the "Rules") governing informal objections. The 47 C.F.R. § 1.45 filing deadlines do not apply to informal objections.

² The Application was filed pursuant to Section 73.3573(g) of the Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest. Any such allotment proposal must result in a preferential arrangement of allotments. *See Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4874 (1989) ("*New Community of License*"), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³ Gold Coast Opposition at 6-9.

⁴ *Id.* at 7.

⁵ *See* Rice, P.L., Longley, A.G., Norton, K.A., Barsis, A.P., "Transmission Loss Predictions for Tropospheric Communications Circuits," NBS Technical Note 101 (Revised), Volumes I and II, U.S. Department of Commerce, 1967.

⁶ Gold Coast Opposition at 11.

⁷ *Id.* at 13.

⁸ *See id.* at 15-16 and Exhibit 6.

⁹ *See Id.* at 16-19.

¹⁰ *Id.* at 18. The claimed "anomaly" is in 47 C.F.R. § 73.310(a) which requires that the radiation center of a station antenna's overall height above average terrain (the "HAAT") must be calculated based on the average of the HAAT along eight equally spaced radials extending from 3 to 16 km from the antenna. *See* 47 C.F.R. § 73.313(d)(4)(i).

¹¹ *Id.*

Gold Coast also submits that KDES-FM should remain in Palm Springs because the city's population is projected to grow at a faster rate than Redlands'. It cites U.S. Census data indicating that Palm Springs has grown by 19% in the last twenty years, whereas Redlands has grown by only 16.5% during the same period.¹²

SBR concedes that Palm Springs currently has seven aural services (and a population of 42,807 persons), whereas Redlands currently has only three local transmission services (and a population of 63,591 persons). It submits, however, that the relative distribution of allotments in the two cities "distort[s] the reality (sic) of the respective populations of the Palm Springs and Redlands markets and the radio stations serving those communities."¹³ The distortion occurs, SBR alleges, because there are fewer stations (26) "home" to the Palm Springs Arbitron Metro (Market 137, population 318,000) compared to the larger number of stations (34) that are "home" to the Riverside-San Bernardino Arbitron Metro (Market 25, population 1,806,800).¹⁴ SBR also concedes that, if the Application is granted, KDES-FM would serve 1,141,140 more persons in Redlands than in Palm Springs,¹⁵ and that "the smaller number of stations assigned to Redlands and the increased population coverage from the Station's relocation might be sufficient to warrant a grant of the application."¹⁶ It argues, however, that the Application should not be granted because a relocated KDES-FM "would leave 1,095 persons with access to only four (4) radio services,"¹⁷ and result in the "the creation of an area with less than five (5) reception services . . . compounded by a population loss of 335,737 persons."¹⁸

R&R asserts that the net population gain from the relocation of KDES-FM - 1,141,140 persons - is an independent "strong public interest factor" supporting its proposal.¹⁹ It disputes Gold Coast's arguments about the appropriate distribution of service, pointing out that the Coachella Valley is "well served" and that, with relocation of KDES-FM, Palm Springs will retain "six stations of its own, three times the number historically deemed by the Commission to be appropriate for a community of its size."²⁰ The Longley-Rice alternate signal propagation methodology, R&R argues, has specifically been rejected by the Commission for the purpose of determining interference between broadcast stations.²¹

In its Motion to Dismiss, Gold Coast claims that R&R would use a combination of a side-mounted antenna and a "lambda" tower section that would impermissibly increase the KDES-FM signal in the direction of the KCAQ(FM) coverage area.²² Such an increase in signal strength, Gold Coast claims, would result in co-channel interference to KCAQ(FM) and indirectly modify the KCAQ(FM) license,

¹² *Id.* at 14 and n.29. (Gold Coast also states that other communities in the Coachella Valley, where KDES-FM currently is located, have grown 90% in the past twenty years. *Id.*)

¹³ SBR Objection at 2.

¹⁴ *Id.* Gold Coast, however, states that the Palm Springs Arbitron Metro is Market 133 with a population of approximately 372,000 persons and that the Riverside-San Bernardino Arbitron Metro is Market 26 with a population of approximately 2,145,400 persons. Gold Coast Opposition at 4-5. Gold Coast and SBR obtained their information from different reference sources. The differences in market rank and population are not significant to our analysis herein.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ R&R Response at 3 (citing *Corona de Tucson, Arizona*, Letter, 22 FCC Rcd 13933 (MB 2009)). See also R&R Opposition at 2,

²⁰ R&R Response at 5.

²¹ *Id.* at 8 (citing *Joseph E. Chautin*, Letter, 22 FCC Rcd 5364, 5367 and n.5 (MB 2007)).

²² See Motion to Dismiss at 4-8.

thereby requiring a hearing under Section 316 of the Communications Act of 1934, as amended.²³ In support of its claim that the KDES-FM antenna would be “directionalized” by the lambda tower section, Gold Coast submits a declaration from Richard Rudman, president of Remote Possibilities Technical Services, who reports his observations of the signal of station KRQB(FM), the station on whose tower KDES-FM’s antenna will be collocated.²⁴ Mr. Rudman observes that the KRQB(FM) signal is “strong,” 84 miles to the west of its transmitter site, but is “noisy and inconsistent” 16.5 miles to the south, in its city of license, San Jacinto, California.²⁵ He concludes, therefore, that “the station is operating with all of the attributes of a highly directional FM antenna system.”²⁶

R&R contends that Gold Coast’s engineering conclusions are defective. First, R&R claims that Gold Coast’s engineer has assumed, without basis, that R&R will use a particular model of transmitting antenna. Second, R&R contends that - contrary to the engineer’s assertion that lambda tower sections “directionalize” the patterns of antennas - the tower section manufacturer states that such sections are intended to improve the omnidirectional characteristics of a side-mounted antenna, not to distort the antenna pattern so that it is directional.²⁷ Third, R&R notes that lambda mounting structures are frequency-specific and the structure upon which the R&R antenna will be mounted is tuned to KRQB(FM)’s operating frequency (91.6 MHz),²⁸ which is 8.6 MHz removed from the KDES-FM operating frequency (104.7 MHz)²⁹ Fourth, R&R claims that Mr. Rudman’s observations of the KRQB(FM) signal do not take into account such factors as terrain, interference, and the orientation of the antennas on the consumer-grade receivers Mr. Rudman used for his observations.³⁰

Discussion. Allocation Priorities. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. Our determination is based upon the FM allotment priorities.³¹ Here, priorities 1-3 do not apply because grant of the Application would not provide a first or second fulltime aural service, or a first local service to Redlands. Thus, our decision is governed by Priority 4, “other public interest matters.”

The parties differ on their estimates of the number of persons whose service would be reduced by KDES-FM’s relocation. Gold Coast claims that grant of the Application would leave 346 persons with only four full-time aural services.³² SBR, citing to the R&R Application,³³ states that 1095 persons would

²³ 47 U.S.C. § 316. (“Section 316”). See Motion to Dismiss at 12 and n.11 (citing *Western Broadcasting Co. v. FCC*, 674 F.2d 44 (D.C. Cir. 1982) (“*Western*”).

²⁴ Motion to Dismiss, Ex. 3.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Opposition to Motion to Dismiss at 9-10 and Attachment 1; Engineering Statement at Appendix A (“Comparison of Lambda Mounts and Conventional Tower Mounts for FM Antenna Systems,” Dowdle, D., Electronics Research, Inc., 2008).

²⁸ Station KRQB(FM).

²⁹ See Opposition to Motion to Dismiss at 10-11.

³⁰ *Id.* Attachment 1, Engineering Statement at 3. R&R also points out that signal strength observations made by Mr. Rudman (a “noisy” signal 16.5 miles to the south of the KRQB(FM) transmitter site and a “strong” signal 84 miles, to the west) would mean that KRQB(FM) radiates an improbable 2.63 megawatts of ERP to the west. *Id.*

³¹ The four 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). *Revision of FM Assignment Priorities and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988) (“*FM Priorities*”).

³² Gold Coast Opposition at 13. Gold Coast, in its Reply, states that “areas within the KDES-FM Loss Area receive as few as only one other fulltime aural service . . .” Gold Coast Reply at 4-5, Engineering Statement at 1. Neither the “areas” nor the population, if any, therein, are identified.

receive only four full-time aural services.³⁴ Our own engineering analysis, however, shows that listeners in KDES-FM's current service area would continue to receive five or more aural services after KDES-FM is relocated.

The Commission has stated that a comparison of proposals under Priority 4 may "take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities and their growth rate."³⁵ Applying Priority 4, we find that the reallocation of KDES-FM from Palm Springs to Redlands is in the public interest for two reasons. First the net gain in service achieved by relocating KDES-FM is substantial:³⁶ a relocated KDES-FM would serve 1,141,140 more persons than currently.³⁷ Also, when KDES-FM is relocated, the population within its present service area will have five or more remaining aural services available.³⁸ Second, under Priority 4, a community receiving a fourth local transmission service is also a "public interest matter"³⁹ Redlands - a community of 63,591 persons - will receive a fourth local transmission service,⁴⁰ whereas Palm Springs - a community of only 42,807 persons - will retain six local transmission services, an abundant number for a community of its size.⁴¹ Gold Coast's reference to the different population growth rates of Palm Springs (19%) and Redlands (16.5%) does not support denial of the Application. The difference in growth rate is small (2.5%) and not decisionally significant given that Redlands is approximately 50% larger than Palm Springs.⁴²

We are unpersuaded by SBR's claim that the benefit of the substantial increase in population achieved by grant of the Application is somehow "distorted" because only twenty-six stations are "home" to the Palm Springs Metro whereas thirty-four stations are "home" to the Riverside-San Bernardino Metro.⁴³ SBR has not quantified the effects of the alleged "distortion," and, in any event, the Commission does not look to "Metro coverage" when evaluating the existing vs. proposed populations served by stations proposing a change in community of license.

³³ In an amendment to the Application, filed Jan. 17, 2008, R&R notes that, although it originally stated that the loss area received five or more fulltime reception services, a recalculation by its consulting engineer showed that a 38 sq. km. segment of the loss area, containing 992 persons would receive only four nighttime reception services. It stated, also, that "another area would be similarly limited." R&R does not state the extent of the area, but believes it to be uninhabited.

³⁴ SBR Objection at 2.

³⁵ *FM Priorities*, 90 FCC 2d at 92 n.8.

³⁶ A net gain in service is a "public interest matter" within the meaning of Priority 4. *See Corona de Tucson, Sierra Vista, Tanque Verde and Vail, Arizona, Animas, Lordsburg, and Virden, New Mexico*, Report and Order, 22 FCC Rcd 13933, 13937 (MB 2007).

³⁷ We do not credit Gold Coast's claim that "barely 10% of KDES' current coverage would continue to receive KDES-FM after it is moved out of the market." Gold Coast Opposition at 10-11. The claim is based on the use of Longley-Rice analysis instead of the F(50,50) coverage curves in the Rules. The Commission has never approved use of Longley-Rice analysis as a means of predicting coverage or interference in the context of FM allotment proceedings. *See infra* nn.49, 50.

³⁸ The Commission deems five or more reception services "abundant." *See Family Broadcasting Group*, Decision, 93 FCC 2d 771 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Nov. 29, 1995); *see also LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995); *Louisburg and Hillsborough North Carolina.*, Report and Order, 21 FCC Rcd 5062, 5063 (2006) (area "well-served with 5 or more full-time reception services").

³⁹ *See, e.g., Rhineland, Wisconsin*, Report and Order, 20 FCC Rcd 2202 (MB 2005).

⁴⁰ Redlands currently has local service from KUOR(FM), KCAL-FM and KCAL(AM).

⁴¹ Palm Springs currently has local service from KPSI(AM), KNWQ(AM), KGAM(AM), KPSC(FM), KPSI-FM, KDES-FM and KPLM(FM).

⁴² *See* R&R Opposition at 2.

⁴³ SBR Objection at 2.

We recognize the strong support that KDES-FM enjoys in the Palm Springs community as evidenced by the several letters Gold Coast solicited urging the Commission to deny R&R's relocation application.⁴⁴ We agree with Gold Coast that, in allotment proceedings, we must take into account that listeners in a community "have an expectation that service will continue."⁴⁵ Listeners' expectations, however, are not dispositive; we must weigh listeners' expectations of continued service in the current community against the benefits to be gained in the new community.⁴⁶ We have done so here and find that the significantly greater population that will receive service from KDES-FM, coupled with the benefit of new local service to Redlands, outweigh the loss of service resulting from relocation of KDES-FM. In so deciding, we are mindful that, with the six local transmission services that remain in Palm Springs listeners in that area will continue to have abundant programming choices.

Interference. We agree with R&R⁴⁷ that, if, as here, an FM application meets the distance-separation criteria in Section 73.207 of the Rules,⁴⁸ claims of "actual" or "real world" interference, no matter how characterized or calculated, are not accepted.⁴⁹ Thus, we do not credit Gold Coast's allegations of "real world" interference based on a so-called anomaly in the Rules, contour-overlap showings, and reliance on Longley-Rice analysis. Neither Longley-Rice nor any other "supplemental" interference analysis is acceptable in FM allotment proceedings.⁵⁰ In sum, we find that Gold Coast has not supported its allegation that KDES-FM would cause "massive interference" to KCAQ(FM).⁵¹

⁴⁴ Gold Coast ran newspaper advertisements "informing listeners in the Palm Springs area about the prospect that KDES-FM could be relocated to Redlands, California." Opposition at 15 n.30. It "subsequently collected and submitted to the FCC hundreds of comments from concerned citizens . . ." *Id.* Given our decision herein, it is unnecessary to address the comments individually, notwithstanding that some of them are styled as informal objections (but do not reflect service on R&R). Thus, although we acknowledge that some residents prefer that KDES-FM not relocate, we find their preference outweighed by the other benefits that accrue from the relocation.

⁴⁵ Gold Coast Opposition at 5.

⁴⁶ See *New Community of License*, 5 FCC Rcd at 7097. ("The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.") The Commission re-affirmed this policy in *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14227-30 (2006).

⁴⁷ See *supra* n.21.

⁴⁸ 47 C.F.R. § 73.207.

⁴⁹ See *Amendments of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12396 (1997) ("*Minor Change in Facilities*"). ("Stations assigned in this manner are protected from interference from new or modified assignments solely on the basis of these distance separation requirements.") See also *Florissant Broadcasting Co., Inc.*, 63 FCC 2d 1041, 1043 (1977) ("the nature and extent of interference protection accorded commercial FM broadcast stations have been determined solely by the mileage separation, power, and antenna height limitations set forth in the Commission's Rules, without regard to the concept of protected and interfering contours."); *Fishers, Lawrence, Indianapolis, and Clinton, Indiana*, Report and Order, 22 FCC Rcd 11660, 11662 (MB 2007) (citing, 47 C.F.R. §§ 73.207, 73.209; *Cordele, Georgia, et al.*, Report and Order, 12 FCC Rcd 9777, 9780 (MMB 1997)).

⁵⁰ See *Minor Changes in Facilities*, 12 FCC Rcd at 12404 ("[w]e want to emphasize that supplemental showings have not been accepted, nor will be accepted, for the purpose of determining interference or prohibited contour overlap between FM broadcast stations. * * * To employ supplemental showings for FM stations in this manner would represent a fundamental change as to how contour protection applications are processed, and would require a separate rulemaking proceeding to specify standards, methods and assumptions, and possibly revised definitions for protected service areas and interference").

⁵¹ Gold Coast Reply at 7.

Unauthorized Directional Antenna. We agree with R&R that Gold Coast has not established that the antenna/tower combination proposed by R&R is an unauthorized directional antenna. The technical showing that Gold Coast advances in support of its claim is wholly speculative and relies on unsupported assumptions about the model of antenna KDES-FM will use⁵² and its radiation pattern when side-mounted on a tower.⁵³ Moreover, Gold Coast's claim that a "lambda" tower section will "directionalize" the KDES-FM antenna pattern is contradicted by the antenna manufacturer, ERI, which states that "[t]he Lambda Antenna Structure was developed to overcome the disadvantages of distortion to the antenna pattern" which occur when antennas are side-mounted on a tower.⁵⁴ We also agree with R&R that Gold Coast's discourse on the effects of lambda tower sections is irrelevant because the lambda tower sections are frequency-selective and the tower section on which the KDES-FM antenna will be side-mounted was designed to correspond to the KQRB(FM) frequency, 96.1 MHz, whereas KDES-FM operates at 104.7 MHz. Finally, we discount the observations that Mr. Rudman made of the KRQB(FM) signals. First, Gold Coast has not established that KRQB(FM) is using the same transmitting antenna that KDES-FM will use. Second, whether or not a "scan button" on a consumer grade receiver will "lock in" to an FM broadcast station signal is not a reliable indicator of absolute signal strength. Third, Mr. Rudman's observations do not take into account such factors as terrain attenuation, reflections, co-channel or adjacent-channel interference and the directivity of the antenna on the consumer-grade receiver used by Mr. Rudman.

Designation for Hearing. Gold Coast's argument that it is entitled to a hearing because its license would indirectly be modified by interference from KDES-FM fails on two counts. First, as shown *supra*, Gold Coast has failed to show that such interference would, in fact, occur. Second, Gold Coast's reliance on *Western* is misplaced because that decision relied on a provision of Section 316 that was deleted when Section 316 was amended the year after *Western* was decided.⁵⁵

Decision/Action. Neither SBR nor Gold Coast have established that grant of the Application is inconsistent with the Commission's allotment priorities or otherwise is not in the public interest. Accordingly, IT IS ORDERED that the Informal Objection filed by SBR Broadcasting Corp., IS DENIED. IT IS FURTHER ORDERED that the Opposition to KDES-FM Community of License Change filed by Gold Coast Broadcasting, LLC, IS DENIED. IT IS FURTHER ORDERED that the Motion for Extension of Time filed by R&R Radio Corp., IS DISMISSED AS MOOT. IT IS FURTHER ORDERED that the Motion to Dismiss or Designate for Hearing filed by Gold Coast Broadcasting, LLC, IS DENIED. IT IS FURTHER ORDERED that the Request for Expedited Action filed by R&R Radio Corp., IS DISMISSED

⁵² See R&R Opposition to Motion to Dismiss at 7. ("Gold Coast has no direct knowledge of the specifics of the antenna to be used by KDES or the manner in which it will be installed, and, thus, its entire motion is based on conjecture.")

⁵³ For example, Gold Coast's engineer's conclusions rest on an antenna pattern he thinks "closely resembles" the antenna pattern KDES-FM will use. Motion to Dismiss, Engineering Statement at 5. He believes that the width of the lambda section of the tower "appears to be approximately 42 inches." *Id.*

⁵⁴ Opposition to Motion to Dismiss, Appendix A.

⁵⁵ Prior to the amendment, Section 316 provided that a licensee had a right "to show cause by public hearing if requested" why its license should not be modified." 47 U.S.C. § 316 (1952). See *Western*, 674 F.2d at 49. The right to a hearing was eliminated in the amended statute, which provides that licensees who believe their licenses would be modified by grant of another application "shall be given reasonable opportunity to protest such order of modification . . .", 47 U.S.C. § 316 (1983), Pub.L. 98-214, § 4(a), 97 Stat. 1467. See also Opposition to Motion to Dismiss at 13-15.

AS MOOT. IT IS FURTHER ORDERED that the Application, File No. BPH-20071128ACX, filed by R&R Radio Corp., IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau