

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

In re Application of

GALAXY COMMUNICATIONS, L.P.	)	Facility ID No. 24131
for Modification of License	)	
Station WTKV(FM), Oswego, NY	)	BPH-20031209ABV
	)	

To: Office of the Secretary  
Attn: The Commission

**REQUEST FOR STAY**

Clear Channel Broadcasting Licenses, Inc., Cumulus Licensing LLC, and Multicultural Radio Broadcasting Licensee, LLC (together, the "Joint Parties"), by their counsel, hereby request that the Commission stay (i) the effectiveness of the Media Bureau's (the "Bureau") decision in the above captioned proceeding, and (ii) the application of Section 73.3555, Note 4 of the Commission's Rules (herein after referred to as "Note 4") to pending applications and proposals that may violate the new multiple ownership rules based on Note 4 as long as they do not create new violations of the multiple ownership rule (Sec. 73.3555). This stay should remain in place until the Commission decides the issue raised in the Joint Parties' Application for Review that is being filed contemporaneously with this Request. As demonstrated herein, a stay will ensure that owners of radio stations in grandfathered clusters will not be required to permanently divest stations that they may be able to own if the Commission grants the Joint Parties' Application for Review. In support hereof, the Joint Parties state as follows:

1. On March 23, 2006, the Bureau issued a letter decision whereby it denied a request by Galaxy Communications, L.P. ("Galaxy") to waive a provision in Note 4 and

dismissed Galaxy's application (the "Galaxy Letter"). The purpose of Galaxy's application was to implement a rule making order to change city of license which had occurred in September 2001.<sup>1</sup> In order to effectuate the change and comply with Note 4, which became effective three years later in September 2004, Galaxy would need to divest itself of two stations in the Syracuse market. Faced with this untenable situation, Galaxy requested a waiver of Note 4. The Joint Parties submit that the Bureau's decision to dismiss the application (with or without a waiver of Note 4) was in error and must be reversed and that is the subject of the Joint Parties' Application for Review.

2. The Joint Parties are adversely affected by the Bureau's application of Note 4 to Galaxy because the Joint Parties (like Galaxy) are licensees of stations that comprise grandfathered clusters under the new multiple ownership rules. In regard to a number of these clusters, the Joint Parties currently have pending with the Commission either rule makings or applications to modify the facilities of stations within a grandfathered cluster, and if Note 4 is applied, the Joint Parties will be required to divest one or more stations in their grandfathered clusters. Thus, the Joint Parties' request a stay.

3. The Commission will grant a stay where an applicant demonstrates that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.<sup>2</sup> These requirements are met here. First, the Joint Parties have adequately demonstrated in their Application for Review that the Bureau's decision in the Galaxy Letter exceeds its delegated authority, is contrary to the public interest, and that the Commission's

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<sup>1</sup> *Oswego and Granby, NY*, 16 FCC Rcd. 16927 (MMB 2001), *recon. denied*, 18 FCC Rcd 17615 (MB 2003).

<sup>2</sup> *See, e.g., Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metropolitan Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

decision to modify Note 4 in the generic rule making proceeding without explanation was arbitrary and capricious. A copy of the Application for Review is attached for reference.

4. Second, the Joint Parties will suffer irreparable harm if a stay is not granted because, as discussed above, the Joint Parties are licensees of stations that comprise grandfathered clusters under the new ownership rules. In regard to a number of these clusters, the Joint Parties currently have pending with the Commission either rule makings or applications to modify the facilities of stations within a grandfathered cluster. Based on Note 4, as currently interpreted by the Bureau, in order for these proposals or applications to be granted, the Joint Parties would have to divest one or more stations in their grandfathered clusters. If they divest, and the Commission grants the relief request in the Joint Parties' Application for Review, the Joint Parties will not be able to get the station(s) back.

5. If, on the other hand, the Joint Parties choose not to divest, the Commission will dismiss the pending applications. Normally, the dismissal may not constitute irreparable harm because the Joint Parties could file to move back to the old city of license. However, many of these applications implement rule makings to amend the FM Table of Allotments and these rule makings are final and cannot be reversed under the public interest priorities. In the AM context, the opportunity to file a major change application occurred in 2000 and 2004. The next opportunity may take more than four years and changes in the spectrum could preclude the filing to return to the old city of license. Under either scenario (divestiture to obtain grant of the application, or wait for another filing window), the Joint Parties will suffer irreparable harm.

6. Third, grant of a stay will not cause substantial harm to any other party because it only maintains the *status quo* until the Commission considers the Joint Parties Application for Review. The Joint Parties are asking that the stay be applied to rule makings and applications

that are currently on file at the Commission. Thus, the practical impact of a stay is that pending applications and rule makings will remain pending.

7. Finally, the public interest clearly favors granting this stay request. In addition to the fact that the Joint Parties will not be required to permanently divest stations, if a stay is not granted, applications that implement rule making proceedings that the Commission has already determined are in the public interest (like Galaxy's application to implement the rule making to move Station WTKV(FM) to Granby) might otherwise be dismissed and the benefits of the rule making (e.g first local service, coverage of white area) may never be realized.

WHEREFORE, for the foregoing reasons, the Joint Parties respectfully request that the Commission stay (i) the effectiveness of the Bureau's decision in the above captioned proceeding, and (ii) the application of Note 4 to pending proposals for stations in grandfathered clusters. This stay should remain in place until the Commission decides the issues raised in the Joint Parties' Application for Review

Respectfully submitted,

CLEAR CHANNEL BROADCASTING  
LICENSES, INC.

CUMULUS LICENSING LLC

MULTICULTURAL RADIO BROADCASTING  
LICENSEE, LLC

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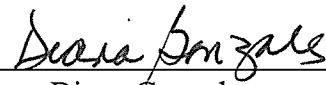
April 21, 2006

Their Counsel

**CERTIFICATE OF SERVICE**

I, Diana Gonzales, hereby certify that on this 21st day of April, 2006, copies of the foregoing “**Request for Stay**” were sent via first-class mail, postage prepaid, to the following:

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