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Linda C. Corso
800 North Main Street
Globe, Arizona 85501

McMurray Communications, Inc.
1245 Aguajito Road
Monterey, CA 93940

In Re: KRDE(FM), Globe, Arizona
Facility ID #37577
Linda C. Corso ("Corso")
BPH-20070119AAJ
Petition for Rulemaking

KXKQ(FM), Safford, Arizona
Facility ID #40916
McMurray Communications, Inc
("McMurray")
BPH-20070119AGE

Dear Applicant:

This letter is in reference to: (1) KRDE's above-captioned contingent minor change application BPH-20070119AAJ to modify the community of license from Globe to San Carlos, Arizona, and change class and effective radiated power; (2) KXKQ's above-captioned contingent minor change application BPH-20070119AGE to change the community of license from Safford to Morenci, Arizona; and (3) the Petition for Rulemaking ("Petition") filed on January 19, 2007 by Corso to substitute Channel 235 for Channel 232 for the vacant allotment at Overgaard, AZ that is scheduled for Auction No. 70. Furthermore, Corso requests a waiver of the freeze on the filing of petitions to modify the allotments scheduled for Auction No. 70.[1] For the reasons set forth below, we deny the request for waiver, dismiss the petition for rulemaking, and dismiss the applications as unacceptable for filing.

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[1] See "Auction No. 70 Freezes Announced for FM Minor Change Applications and Certain Rulemaking Fillings," *Public Notice*, DA 06-2277, dated November 7, 2006. ("*Public Notice*")

Waiver Request. On November 7, 2007, the Media Bureau and the Wireless Telecommunications Bureau announced "a freeze, effective immediately, on the filing of petition to amend the FM Table of Allotments and counterproposals that propose a change in channel, class, or reference coordinates for any of the 121 vacant non-reserved band FM allotments scheduled for Auction No. 70." The public notice specifically stated that "any petition or counterproposal that either proposes any changes to, or fails to fully protect an Auction No. 70 FM allotment or preferred site coordinates specified in an applicant's Form 175 application, will be dismissed." Corso recognizes this and requests a waiver of this freeze.

In support of this waiver request, Corso claims that the section 307(b) considerations which mandate adoption of the KRDE and KXKQ proposals warrant waiver of the filing freeze. In addition, since minor change applications are processed first-come, first-serve, and all contingent applications must be simultaneously filed, Corso states that if Corso and McMurray were to wait for the staff to lift the freeze, they may well be cut off from filing their applications due to an earlier filed application that does not require amendment to an Auction No. 70 allotment. Corso believes that failure to grant the requested waiver will result in Corso and McMurray being treated differently from the other commercial FM licenses. Corso cites *Melody Music, Inc. v FCC*[2] which states that the Commission can not treat similarly situated parties disparately without a rational basis. Thus, Corso claims that the Commission intended to confer on all licensees the ability to avail themselves of the new procedures outlined in the *Report and Order* in MB Docket 05-210.[3] Accordingly, Corso concludes that a waiver is warranted in this instance.

Discussion. We have carefully considered the arguments submitted by Corso and have concluded that Corso's waiver request is inconsistent with Commission precedent. Specifically, the public interest benefits of Corso's proposal do not constitute a distinguishing circumstance warranting waiver of the freeze. The public interest benefits as a whole, however, are best served when the Commission's rules are applied in a fair and consistent manner. Furthermore, granting Corso's freeze waiver would be fundamentally unfair to all parties potentially interested in participating in Auction No. 70. These freezes are designed to promote a more certain and speedy auction process. Finally, Corso's reliance on *Melody Music* is misguided. Under *Melody Music*, the Commission must treat similarly situated applicants and licensees consistently, and disparate treatment without adequate and substantive justification is considered an arbitrary and capricious abuse of discretion. This issue was addressed in Footnote One of the *Public Notice,* which states that although the *Report and Order* lifted the freeze on new petitions to amend the table of allotments, "the freeze will remain in effect for petitions and counterproposals that propose changes to any of the 121 vacant allotments scheduled for Auction No. 70." Thus, all licensees may avail themselves of the procedures in the *Report and Order* as long as they do not propose modifications to the allotments scheduled for Auction No. 70. Accordingly, Corso has not demonstrated unique circumstances warranting grant of its waiver to permit the modification of an Auction No. 70 vacant allotment.

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[2] 345 F.2d 730 (D.C. Cir. 1965)

[3] See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, MB Docket 05-210, FCC 06-163 (adopted Nov. 3, 2006). ("Report and Order")

Conclusion. When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, INC. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded CCR's waiver requests the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances presented are not sufficient to warrant waiver. We conclude that Corso's request for waiver is not in the public interest. In light of the above, Corso's request for waiver IS HEREBY DENIED. The Petition for Rulemaking filed on January 19, 2007 by Corso IS HEREBY DISMISSED. We note that this petition for rulemaking was filed as part of a contingent application group with BPH-20070119AGE and BPH-20070119AAJ. Pursuant to 47 CFR Section 73.3517(e), dismissal of any one of the related petitions or applications as unacceptable will result in the dismissal of all the related applications. Therefore, applications BPH-20070119AAJ and BPH-20070119AGE ARE HEREBY DISMISSED. These actions are taken pursuant to 47 CFR Section 0.283.

Sincerely,

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: John J. McVeigh, Esq.
Lee J. Peltzman, Esq.