REQUEST FOR WAIVER

Cumulus Licensing LLC ("Cumulus"), holder of earth station authorization E190464 (the "Authorization"), pursuant to Section 1.3 of the Commission's rules, respectfully requests a limited waiver of Section 25.138(a) in order to file this application to modify the Authorization to remove one site location in Albany, Georgia (Site ID #43).

Section 1.3 of the Commission's rules states that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." Case precedent provides that a waiver is appropriate where good cause has been demonstrated and the particular facts make strict compliance inconsistent with the public interest.[1] Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest, and the waiver does not undermine the purpose of the general rule.[2] In the special circumstances of the present case, there is good cause for the Commission to grant this waiver, as a grant will serve the public interest in accurate Commission records and providing optimal programming to be public, and will not undermine the purpose of Section 25.138(a).

The Albany, Georgia earth station was used to receive diverse programming for transmission on radio stations previously owned in the Albany market by Cumulus. Those stations were sold in 2020 to First Media Services, LLC ("FMSL"), and the Media Bureau consented to assignment of the broadcast station licenses.[3] Cumulus no longer operates those radio stations, and no longer operates the earth station used to provide programming to those stations. However, because E190464 authorizes numerous different sites which remain in use, Cumulus cannot just surrender or assign the license as a whole. Rather, it has to delete the specific Albany site. In that circumstance, it serves the public interest in accurate Commission records to allow Cumulus to file a modification application to delete the Albany site from E190464.

FMSL now operates those stations, and needs to use this specific earth station to obtain programming for the stations. Contemporaneous with the submission of this application, FMSL is filing an application to register the same earth station facilities in its own name. As deletion of the Albany site from the Cumulus authorization is a precursor to the same facilities being registered in the name of FMSL, it would serve the

[1] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).
[2] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.
[3] *See* File Nos. BALH-20200429AAC, BALH-20200429AAD, BALH-20200429AAE, BALH-20200429AAF, BAPFT-20200429AAG, granted Nov. 24, 2020.

public interest in the provision of diverse radio programming to the public to allow Cumulus to file a modification application to delete the Albany site from E190464.

In addition to serving the public interest, grant of this waiver would not undermine the purpose of Section 25.138(a) of the rules. The prohibition of filing modification applications in that rule was intended to prohibit claims of protection from interference by *new* C-Band earth station facilities, but it was not intended to prohibit modification applications to facilitate protection of *incumbent* earth stations at 4.0-4.2 GHz.[4]

In sum, good cause has been shown herein for waiver of Section 25.138(a) of the rules to allow the filing of this modification application. Deviation from the rule will serve the public interest, and the waiver does not undermine the purpose of the general rule.

[4] *See, In the Matter of Expanding Flexible Use of the 3.7 to 4.2 GHz Band, First Report and Order,* FCC 20-22 (rel. Mar. 3, 2020) at para. 151 ("With respect to registered incumbent earth stations that are transitioned to the 4.0-4.2 GHz band, we will permit these earth stations to be renewed and/or modified to maintain their operations in the 4.0-4.2 GHz band. We will not, however, accept applications for new earth stations in the 4.0-4.2 GHz portion of the band for the time being, during this transition period.")