

FCC 75-974

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 73 OF THE COMMISSION'S RULES REGARDING AM STATION ASSIGN- MENT STANDARDS	}	Docket No. 20265
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MEMORANDUM OPINION AND ORDER

(Adopted August 19, 1975; Released August 20, 1975)

By THE COMMISSION: COMMISSIONERS HOOKS AND ROBINSON ABSENT.

1. The Commission has before it a motion, filed by the National Black Media Coalition [NBMC, or the Coalition], for stay of the effectiveness of the rules adopted in this proceeding. See *Report and Order*, FCC 75-114, released July 14, 1975. The motion was submitted in conjunction with the Coalition's Petition for Reconsideration in the same proceeding.

2. In support of its motion, NBMC asserts that it satisfies the traditional standard for good cause sufficient to justify a stay. In brief, the Coalition argues that, with respect to its petition for reconsideration, the Coalition is likely to prevail. Further, it is asserted that a denial of the stay would irreparably injure NBMC, since grants of applications, filed under the new rules by existing, White-controlled licensees, would effectively continue the preclusion of Blacks from participation as station owners in the broadcast industry. In addition, the Coalition argues generally that other parties would not be substantially injured by the requested stay and that the public interest in staying the rules outweighs any private injury.

3. We will deny the Coalition's motion. Without considering the likelihood of NBMC's success on the merits of its petition, we find that no irreparable harm will occur if we do not stay the effective date of the new rules. The preclusionary effect perceived by the Coalition would be realized only by the cutting-off of applications filed under the new rules.¹ The effective date of the new rules—for which the stay is sought—is merely the date after which applications submitted under those rules may be *accepted*. We are statutorily required to wait thirty days after notice of acceptance before we can act on applications. See section 309(d) (1) of the Communications Act of 1934, as amended. In addition, in light of the numbers of applications presently in the processing line, action on applications filed under the new rules may

¹ The cut-off procedure for standard broadcast applications is outlined in section 1.571(e) of our rules. Subsequent to an application's acceptance a cut-off date is assigned to the application when it is available and ready for processing. The notice of this assignment, published in the Federal Register, precedes the date assigned by at least thirty days. Once an application's cut-off date has been reached, neither applications mutually exclusive with it, nor petitions to deny it, will be accepted. See section 1.580(i) of the rules. Thus, no preclusionary effect can occur prior to cut-off.

not occur for several months following acceptance. Further, to insure that no preclusionary effect will arise pending our consideration of the Coalition's petition, we will not cut-off applications filed under the new AM rules until completion of such consideration. In this way Blacks cannot possibly be precluded by the effect of the new rules, since no final action on any applications filed under those rules will have been taken.² In light of these factors, we find that good cause for a stay has not been shown. See section 1.106(n) of the rules.

4. Accordingly, IT IS ORDERED, That the motion for stay filed by the National Black Media Coalition IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

² In the interest of orderly and efficient processes, however, we will continue to study all applications filed. In this way we may avoid the significant backlog, and accompanying delay, which would result from a "freeze" on all consideration of applications, in the event the NBMC petition is unsuccessful. Thus, neither the Coalition nor applicants filing under the new rules will be prejudiced by the present action.