

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 88-493

In the Matter of

Amendment of Section 73.202(b), RM-6431  
Table of Allotments, RM-6445  
FM Broadcast Stations.  
(West Point and Blair, Nebraska)

**ORDER DENYING EXTENSION OF TIME  
TO FILE REPLY COMMENTS**

Adopted: February 1, 1989; Released: February 2, 1989

By the Deputy Chief, Policy and Rules Division:

1. By *Notice of Proposed Rule Making*, 3 FCC Rcd 6122 (1988), the Commission sought comments on the mutually exclusive requests of Kelly Communications, Inc. (Kelly) to substitute Channel 300C1 for Channel 300A at West Point, Nebraska, and modify its construction permit for Station KWPN-FM to specify the higher class channel, and that of LDH Communications, Inc. (LDH) requesting the substitution of Channel 299A for Channel 292A at Blair, Nebraska, and the modification of its license for Station KBWH-FM accordingly. The *Notice* specified filing deadlines of December 12 and December 27, 1988, for the submission of comments and reply comments.

2. On December 22, 1988, Kelly and LDH submitted a late-filed request for a thirty (30) day extension of time in which to file reply comments, to and including January 27, 1989. Both parties stated that the additional time was needed because of the impact of the holiday season and for consultation with their respective engineering consultants in order to respond to initial comments as well as to explore the possibility of eliminating the mutual exclusivity. Counsel for LDH also stated that the additional time was needed as he was in the process of relocating his office from Maryland to Florida. On January 11, 1989, the Commission denied the request stating that Kelly and LDH had not presented a sufficient reason to warrant waiver of the filing requirements contained in Section 1.46 of the Rules. The Commission also found that a thirty day extension did not constitute the "brief" extension contemplated by the rules for emergency cases.

3. On January 27, 1989, LDH submitted a request for a further thirty (30) day extension of time. Counsel for LDH states that in early January he learned that he had a conflict in representing LDH in this proceeding and another party seeking a construction permit for a new station at Omaha, Nebraska.<sup>1</sup> Therefore, counsel states that he is ethically required to withdraw from this proceeding. He goes on to state that he had tentatively obtained new counsel for LDH in early January but that the new counsel also has a conflict and thus is unable to represent LDH. Counsel submits that both he and the substitute counsel are now attempting to arrange for new counsel

for LDH, but that such arrangements have not yet been finalized. Counsel states that LDH wishes to pursue its proposal for the substitution of channels at Blair and file its reply comments as quickly as possible. Therefore, he argues that the additional extension of time will serve the public interest and urges that the request be granted.

4. As noted in the January 11, 1989, denial of the earlier request for an extension of time, Section 1.46 of the Rules states that it is not Commission policy to routinely grant requests for extension of time. It further states that such requests must be filed at least seven (7) days prior to the expiration of the filing deadline, absent emergency circumstances, in which case a late-filed request will be considered for a brief extension of time. In justifying the current late-filing, counsel for LDH states that although he has now moved his office to Florida, he was unable to devote time to this proceeding for a week due to his assuming the part-time *pro bono* position of General Counsel to the Miami-Dade Branch of the NAACP during the recent civil disturbances in Miami.

5. We again find that LDH has not presented sufficient reason to warrant waiver of the requirements of Section 1.46 of the Commission's Rules, and we will not take an action now which amounts to reconsidering our denial of the earlier request for extension of time, solely because of a subsequently discovered ethical bar to counsel continuing to represent LDH. However, we also believe it would be inequitable to penalize LDH for any delays occasioned by counsel's withdrawal from representation due to ethical constraints, provided that LDH promptly takes steps to arrange alternative counsel. Accordingly, in view of LDH's loss of counsel, we will consider a motion for acceptance of late-filed reply comments as if it had been filed on or about the date on which the counsel's conflict of interest was discovered. Counsel has stated that the conflict was discovered on or about January 17, 1989. However, in view of the fact that LDH should take prompt steps to arrange alternative counsel, if the reply comments are submitted more than two calendar weeks after the release of this *Order*, the burden on LDH in showing good cause for their acceptance will increase greatly.

6. Accordingly, IT IS ORDERED, That the Request for Further Extension of Time IS DENIED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer  
Deputy Chief  
Policy and Rules Division  
Mass Media Bureau

FOOTNOTE

<sup>1</sup> Counsel states that he is withdrawing from this proceeding by separate letter dated January 27, 1989.