

Community of License Change – Section 307(b) Showing

Central Florida Educational Foundation, Inc. (“CFEF”), the licensee of noncommercial educational (“NCE”) FM broadcast station WHGV, La Crosse, Florida (Facility ID No. 76433), Channel 258A (“WHGV”), proposes to modify WHGV’s authorization to change its community of license to Gainesville, Florida. This modification is considered a minor change pursuant to Section 73.3573(a)(1) and (g) of the Commission’s rules.¹ As demonstrated herein, WHGV’s proposed change in community of license satisfies the criteria for an allotment modification and advances the Commission’s allotment goals in accordance with Section 307(b) of the Communications Act of 1934, as amended (the “Act”),² as it serves the public interest under Priority 4 of the Commission’s FM Allotment Priorities.³

DISCUSSION

An FM broadcast station may change its community of license without subjecting the license to other expressions of interest if: (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission’s allotment priorities.⁴ Each of these criteria are met here.

¹ 47 C.F.R. § 73.3573(a)(1) and (g). The proposed modification complies with Section 73.3573(g)(4) of the Commission’s rules because there is no change to WHGV’s licensed technical parameters – other than a slight edit to WHGV’s tower coordinates to conform with the Commission’s current ASR data. *See* 47 C.F.R. § 73.3573(g)(4) (requiring non-reserved band stations to demonstrate suitability of assignment or allotment site in compliance with Section 73.207 and 73.315 of the Commission’s rules) (citing 47 C.F.R. §§ 73.207 and 73.315)).

² 47 U.S.C. § 307(b).

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 F.C.C.2d 88, 91-93 (1982) (“*Revision of FM Assignment Policies and Procedures Order*”).

⁴ *Emmis Austin Radio Broadcasting, L.P., et al.*, Letter Order, 35 FCC Rcd. 556, 559 (MB 2020) (“*Emmis Austin*”) (citing first *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and

1. WHGV's Proposed and Current Allotments are Mutually Exclusive

First, WHGV's proposed facilities are mutually exclusive with the station's currently authorized facilities.⁵ WHGV's proposed facilities will remain the same because WHGV will continue to operate from its current transmitter site and serve the same service area.

2. WHGV will continue to Serve its Current Community of License

Second, although changing WHGV's community of license to La Crosse, Florida, will remove that community's sole transmission service, this change nevertheless complies with the Commission's allotment policies. As the Commission explained in *Rural Radio* and *Emmis Austin Radio Broadcasting*, the loss of local transmission service to a community of license located within an Urbanized Area is not recognized for Section 307(b) comparisons if either: (a) the station's 70 dB μ contour covers more than 50% of the Urbanized Area; or (b) the current community of license is located within the Urbanized Area.⁶ Here, WHGV's 70 dB μ contour covers 88.6% of the Gainesville, FL Urbanized Area.⁷ Furthermore, because WHGV provides

Order, 4 FCC Rcd. 4870 (1989), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd. 7094 (1990); and then citing 47 C.F.R. §§ 1.420(i) and 73.3573(g)(1)).

⁵ See Statement of Compliance with Assignment Requirements.

⁶ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd. 2556, 2567, ¶ 20 (2011) ("*Rural Radio*") (establishing "a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license"); see also *Emmis Austin*, 35 FCC Rcd. at 561 ("Pursuant to the Commission's decision in [the *Rural Radio*], KXAI(FM), at its current location at Refugio, provides service to the Corpus Christi UA, which receives multiple local audio services. Because the community of Refugio is part of the Corpus Christi UA, the reallocation of Station KXAI(FM) to Balcones Heights will not violate the Commission's policy prohibiting the removal of a community's sole local aural service.").

⁷ See WHGV Contour Map, attached hereto as **Attachment A**. While the *Rural Radio* specifies the 70 dB μ contour as the basis for this criterion, CFEF notes that the principal community contour for NCE FM stations, such as WHGV, is defined as the 60 dB μ contour, not

service to more than 50% of the Gainesville, FL Urbanized Area from its current location, WHGV is already presumed to serve the Gainesville, FL Urbanized Area rather than its current community of license, La Crosse, Florida.⁸ Therefore, the station's proposed community of license change satisfies the second criteria.

3. WHGV's Proposed Change in Community of License is in the Public Interest

Finally, the proposal satisfies Priority 4 of the Commission's FM Allotment Priorities because it would incentivize WHGV to serve the larger service area already reached by its signal. As the Commission observed in *Rural Radio*, "it does not serve the public interest to limit broadcasters to service geared toward their communities of license to the exclusion of the rest of their service areas."⁹ Here, WHGV's current community of license, La Crosse, Florida, comprises only 0.13% of the total population served by the station.¹⁰ In contrast, WHGV's proposed community of license, Gainesville, Florida, comprises 51.5% of the total population currently served by the station.¹¹ Accordingly, WHGV's proposed community of license change is in the public interest as it would incentivize the station to serve the larger Gainesville, Florida, community, while continuing to serve the station's existing community of license.

the 70 dB μ contour. *Compare Rural Radio*, 26 FCC Rcd. at 2572, ¶ 30 & 2577, ¶ 38, with 47 C.F.R. § 73.515. Regardless, nearly all of WHGV's current 60 dB μ contour covers both Gainesville, Florida, and the Gainesville, FL Urbanized Area, and thus either contour suffices in this instance. *See* WHGV Contour Map.

⁸ *See supra* note 6.

⁹ *Rural Radio*, 26 FCC Rcd. at 2570, ¶ 26. *See also id.* at 2570, ¶ 27 ("[W]e believe it is unrealistic to limit our Section 307(b) evaluation of an applicant's proposal to that service provided to its proposed community of license and ignore its incentives to serve the larger coverage area.").

¹⁰ WHGV Contour Map.

¹¹ *Id.*

Furthermore, Gainesville, Florida, is a well-established community that meets the criteria for a community of license. The Commission has defined “communities” as geographically identifiable population groupings with common local interests – a criteria generally satisfied if the proposed community is either incorporated or listed in the U.S. Census.¹² Gainesville was incorporated in 1869, and is listed in the U.S. Census.¹³ As of the 2020 U.S. Census, Gainesville had a population of 141,085, which has increased 13.5% over the past decade.¹⁴ Accordingly, Gainesville is a well-established community, and a detailed exhibit demonstrating such criteria under Section 307(b) is not necessary.

Finally, as WHGV’s technical parameters will remain unaffected by the proposed community of license change, no underserved area or population will be created as a result of the modification. Although WHGV’s proposed community of license change constitutes the loss of the sole transmission service to La Crosse, Florida, a backfill to that community is not required as a result of the proposed modification because, as set forth above, WHGV is presumed to currently serve the Gainesville, FL Urbanized Area rather than just La Crosse, Florida.¹⁵

¹² *Revision of FM Assignment Policies and Procedures Order*, 90 F.C.C.2d at 98.

¹³ *Gainesville, Florida*, WIKIPEDIA, https://en.wikipedia.org/wiki/Gainesville,_Florida (last visited Dec. 28, 2022).

¹⁴ *Gainesville, Florida*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/Gainesvillecityflorida/POP815220> (last visited Dec. 28, 2022).

¹⁵ *See Emmis Austin*, 35 FCC Rcd. at 558 n.11 & 560 (community of license change granted without backfill after removal of sole local transmission service); *Marissa G. Repp, Esq., et al.*, Letter Order, 27 FCC Rcd. 13090, 13094 (MB 2012) (community of license change granted without backfill after removal of second local transmission service) (citing *Rural Radio*, 26 FCC Rcd. at 2577-78).

CONCLUSION

For the foregoing reasons, WHGV's proposed change in community of license to Gainesville, Florida, is in the public interest and would be conducive to a "fair, efficient, and equitable distribution of service" under Section 307(b) of the Act.¹⁶ Therefore, the instant modification application should be granted.

¹⁶ 47 U.S.C. § 307(b).

Attachment A

WHGV Contour Map