

Section 307(b) Showing

Praise Communications Inc. ("PCI"), licensee of Station WTUA(FM), St. Stephen, South Carolina, submits this statement in support of its application to change the allotment for Station WTUA from Pinopolis, South Carolina to St. Stephen, South Carolina. PCI will demonstrate, pursuant to Section 307(b) of the Communications Act, 47 U.S.C. § 307(b), *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212, ¶ 10 (2006) ("*Community of License*") and *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, 26 FCC Rcd 2556 (2011), *recon.* 27 FCC Rcd 12829 (2012) ("*Rural Radio*") that the proposed city of license change is in the public interest.

Station WTUA filed an application to change its community of license in 2009¹ to specify Pinopolis as its first local service. In addition, Glory Communications, Inc. ("Glory") (an affiliated licensee with the same ownership) filed a contingent application to change the community of license for Station WEA(AM), Camden, South Carolina, to maintain the first local service at St. Stephen, South Carolina. A condition on the WTUA permit specified that WTUA could not commence operations at Pinopolis until WEA commenced operation at St. Stephen. These two applications were granted on September 22, 2009. However, PCI immediately ran into difficulty trying to implement the WEA permit. Although there was no opposition filed against either application prior to the grants, a "Petition for Rescission of Construction Permits" was submitted on October 26, 2009. The Petition claimed that the proposed site for WEA may have a significant environmental impact and was not properly cleared by the South Carolina

¹ BPH-20090421ABK.

Historical Preservation Organization. It was not until April 27, 2016, that the FCC acted on the Petition in favor of Station WEAJ. See Exhibit 1.

Glory decided not to implement the WEAJ permit without finality which, in turn, delayed PCI's ability to change the WTUA city of license. Unfortunately, by then, the WTUA and WEAJ authorizations expired (on January 22, 2016). PCI immediately refiled its application on May 2, 2016 (BPH-20160502ABB) for WTUA but discovered that Station WCOO(FM), Kiawah Island, South Carolina, had filed a conflicting application on January 25, 2016 (BPH-20160125AAF) exactly 3 days after the WTUA permit had expired (BPH-20120921AEU). The conflict involved the reference coordinates for the Pinopolis Ch. 290A allotment. WCOO's proposal to change the reference coordinates for the Pinopolis allotment had the effect of precluding WTUA's transmitter site location.

Despite PCI's opposition to the reference coordinate change, the Media Bureau granted the WCOO application, and dismissed WTUA's 2016 application. See Exhibit 2. Since PCI was counting on locating its facility at its selected transmitter site and spent a considerable amount of time and expense for this purpose and since the contingent application plan was based on locating at this site, PCI was forced to go back to the drawing board to locate another transmitter site. The result of this extensive effort is to propose, in the instant application, an upgraded facility and continue serving St. Stephen which, as will be demonstrated, is preferred under the Commission's allocation priorities for a first local service. In addition, Station WEAJ will no longer need to relocate to St. Stephen. There is no allocation component for this AM station.

As demonstrated in the Engineering Statement, Ch. 290C3 can be allotted to St. Stephen consistent with Section 73.207 of the Commission's Rules provided the reference coordinates are modified for (1) Station WLUB(FM), Augusta, Georgia (see Exhibits 2 and 2A; (2) Station WEZV, North Myrtle Beach, South Carolina see Exhibits 3 and 3A and (3) Station WYAY(FM), Bolivia, North Carolina see Exhibits 4 and 4A. As noted, the Media Bureau previously changed the WTUA reference coordinates over PCI's objection. Thus, this process of changing the reference coordinates of other stations has become standard procedure.

The proposed change in community of license satisfies the requirements set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons.*

granted in part, 5 FCC Rcd 7094 (1990) where the Commission stated that a 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.² These criteria are met here.

First, the proposed use of Ch. 290C3 at St. Stephen is mutually exclusive with the current allotment of Ch. 291A at Pinopolis and provide the requisite 70 dBu signal over St. Stephen. See Exhibit 1A and Figure 7A. Second, Pinopolis will not be deprived of its only local service since the vacant allotment at Pinopolis is unbuilt.³ Third, the

² The FCC's FM allotment priorities are as follows: (1) first full-time aural service, (2) second full-time aural service, (3) first local service, and (4) other public interest matters.

provision of a first local service to the larger community of St. Stephen (pop.1,798 US Census) should be favored over Pinopolis (948 US Census) under Priority 3.

In addition to preserving a first local service to St. Stephen, the proposal will provide a net gain in service to 24,270 persons within the 60 dBu contour. See Exhibit 5. There will be at least 5 remaining services in the loss area. See Exhibits 6 and 6A.

Furthermore, as shown in the Engineering Statement at Figure 1, the proposed reallocation to St. Stephen will not violate the *Rural Radio* prohibition because the proposed 70 dBu contour will not cover over 50% or more of the Charleston, South Carolina Urbanized Area ("UA") or any other UA. In addition, the Engineering Statement demonstrates that this prohibition cannot be violated in a subsequent application.

Accordingly, the proposed change in community of license to St. Stephen, South Carolina complies with all Commission's policies and therefore should be granted.

³ See *Potts Camp and Saltillo, Mississippi*, MO&O, 16 FCC Rcd 16116, 16120 (2011) ¶¶9, *aff'd, sub nom. Sisk v. FCC*, 2003 WL 21076921 (DC Cir.); *Avondale, CO*, BNPH-20110602AAW DA 13-906 (MB 2013).

Exhibit 1



Federal Communications Commission
Washington, D.C. 20554

April 27, 2016

In Reply Refer to:
1800B3-SS

Dan J. Alpert, Esq.
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In re: **Glory Communications**
WEAF(AM), Camden, SC
Facility ID No. 24146
File No. BP-20090421ABJ

Praise Communications, Inc.
WTUA(FM), St. Stephen., SC
Facility ID No. 23895
File No. BPH-20090421ABK

**"Petition for Rescission of
Construction Permits"**

Dear Counsel:

We have before us an October 26, 2009, "Petition for Rescission of Construction Permits" (Petition), filed by Thomas B. Daniels, Jr. (Daniels) and related responsive pleadings.¹ Daniels seeks reconsideration of the staff's grant of the referenced applications for minor change to the licensed facilities of Stations WEAF(AM), Camden (Station), and WTUA(FM), St. Stephen, South Carolina, filed by Glory Communications, Inc. (Glory), and Praise Communications, Inc. (Praise), respectively (WEAF 2009 Application and WTUA 2009 Application). For the reasons set forth below, we treat the Petition as a timely Petition for Reconsideration of the Application grants and dismiss it.

¹ Daniels is licensee of competing Stations WZJY(AM) and WAZS(AM), Charleston, South Carolina. On November 16, 2009, Glory filed a "Motion to Strike Petition for Rescission of Construction Permits." On March 2, 2010, Daniels filed an "Opposition to Motion to Strike Petition for Rescission," to which Glory filed a pleading styled, "Motion to Strike Opposition Pleading" on March 31, 2010.

Background. On April 21, 2009, Glory filed the WEA 2009 Application for a construction permit to change the Station's community of license from Camden to St. Stephen, South Carolina. It was a contingent application filed pursuant to Section 73.3517(e) of the Commission's Rules (Rules)² in conjunction with Praise's WTUA 2009 Application for a construction permit for change of the community of license of Station WTUA(FM) from St. Stephen to Pinopolis, South Carolina. In the WEA 2009 Application, Glory certified that "[t]he proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306 (*i.e.*, [t]he facility will not have a significant environmental impact and complies with the maximum permissible radio frequency electromagnetic exposure limits for controlled and uncontrolled environments)."³ The staff published the required *Federal Register* notice for the applications on June 26, 2009,⁴ and subsequently granted the uncontested WEA and WTUA 2009 Applications on September 22, 2009 (WEA Permit and WTUA Permit, respectively).⁵

On October 26, 2009, Daniels filed the Petition, arguing that: (1) Glory falsely certified in the WEA Application that its proposed facility was excluded from environmental processing and that its proposal would have no significant environmental impact;⁶ (2) the WEA Application violated Section 106 of the National Programmatic Agreement (NPA)⁷ because Glory never contacted the South Carolina State Historical Preservation Organization (SHPO) to review the historical or archaeological impact, if any, of construction of Glory's proposed new broadcast tower;⁸ and (3) Glory's false certification raises questions of misrepresentation in violation of Section 1.17 of the Rules.⁹ Daniels also argues that the WEA 2009 Application was prematurely granted and that action, and the grant of the WTUA 2009 Application, must be rescinded pursuant to Section 73.3517 of the Rules.¹⁰

In opposing the Petition, Glory argues that compliance with the NPA was not required because its proposed tower is less than 200 feet high and located in an industrial area.¹¹ Glory also makes the

² 47 CFR § 73.3517(e).

³ See WEA Application at Section III-A, Item 11.

⁴ 74 Fed. Reg. 30572 (Jun. 26, 2009).

⁵ See *Broadcast Actions*, Public Notice, Report No. 47078 (rel. Sep. 25, 2009).

⁶ Petition at 1; see also 47 CFR § 1.1306.

⁷ See *National Historic Preservation Act of 1966*, as amended, 54 U.S.C. § 306108 (formerly codified at 16 U.S.C. § 470f); *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act*, 47 CFR Pt. 1, App. C, § III.C ("NPA"); *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, Appendix B, Section III.C (2004) ("NPA Report & Order"); see also 47 CFR § 1.1307(a)(4).

⁸ Petition at 2-7. Daniels also attaches the Declaration -- made under penalty of perjury -- of Chip Early, technical director of Jabar Communications, Inc., who states that he contacted Caroline Wilson of the South Carolina SHPO who stated that she could find no record of Glory submitting a proposal of its new tower for review. See "Declaration of Chip Early" at 1.

⁹ Petition at 2; see also 47 CFR § 1.17.

¹⁰ Petition at 8; see also 47 CFR § 73.3517.

¹¹ Motion to Strike at 1. We note that Glory states that the proposed tower "is located in a previous sand mine, which is considered industrial in nature." *Id.* at 2.

somewhat inconsistent claim that, because the WEAf 2009 Application was in full compliance with the NPA, “there was no misrepresentation” in the WEAf 2009 Application.”¹²

In its Opposition to the Motion to Strike, Daniels reasserts the arguments made in his Petition. Additionally, he argues that although Glory alleges its site is “industrial in nature,” the site is not in an “industrial park,” as defined by the NPA, and therefore, Glory violated the NPA by not submitting its tower proposal to the South Carolina SHPO.¹³

Subsequently, Glory modified the WEAf Permit to specify different site coordinates,¹⁴ but it ultimately did not construct those facilities or file a covering license application, and the WEAf Permit expired by operation of law on September 22, 2012, pursuant to Section 73.3598(e) of the Rules.¹⁵ Glory and Praise re-filed their contingent proposals on September 21, 2012¹⁶ – the day before the WEAf and WTUA Permits were to expire – with Glory specifying the same antenna site as the Modification Application. The staff published notice of the WEAf 2012 Application in the *Federal Register* on October 15, 2012, and granted the unopposed WEAf 2012 Application on January 17, 2013, specifying an expiration date of January 17, 2016.¹⁷

Discussion/Action. Daniels styles the Petition as a “Petition for Rescission of Construction Permits.” Neither the Act nor the Commission’s rules specifically create the right of third parties, such as Daniels, to file petitions to rescind an authorization.¹⁸ However, rather than dismiss the pleading as unauthorized, we shall treat it as a timely petition for reconsideration.¹⁹

¹² *Id.* at 2.

¹³ Opposition to Motion to Strike at 2.

¹⁴ See File No. BMP-20120604ADN (Modification Application). See also *Broadcast Actions*, Public Notice, Report No. 47811 (rel. Aug. 28, 2012), p.6. The coordinates specified in the WEAf 2009 Application were: 32° 27’ 03” NL; 79° 58’ 58” WL. Those specified in the Modification Application were 33° 26’ 26” NL; 79° 59’ 49” WL.

¹⁵ 47 CFR § 73.3598(e). Glory did not construct the facilities authorized in the WTUA Permit, and therefore, the WTUA Permit expired on that same day.

¹⁶ See File Nos. BP-20120921AET (WEAf 2012 Application) and BPH-20120921AEU (WTUA 2012 Application).

¹⁷ See *Broadcast Actions*, Public Notice, Report No. 47910 (rel. Jan. 23, 2013). The staff also granted the unopposed WTUA 2012 Application on January 22, 2013. See *Broadcast Actions*, Public Notice, Report No. 47912 (rel. Jan. 25, 2013). Glory has not filed a covering license application for the WEAf 2012 Application, and it appears that the permit issued pursuant to that application has expired. 47 CFR § 73.3598(e).

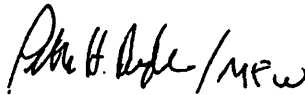
¹⁸ See, e.g., *Radio Para La Raza*, Memorandum Opinion and Order, 40 FCC 2d 1102, 1106, para. 11 (1973) (unlike Section 309 of the Act, Section 312 does not create rights in third parties but reserves for the Commission the authority to institute revocation proceedings).

¹⁹ *Anderson Radio Broad., Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 578 n.8 (2008) (“Petition for Rescission of Construction Permit” treated as timely petition for reconsideration). Additionally, we will treat Glory’s “Motion to Strike” as an Opposition to the Petition, and we will treat Daniels’ “Opposition to Motion to Strike” as a Reply to Glory’s Opposition. See, e.g., *Atlantic Morris Broad., Inc.*, 11 FCC Rcd 4723 n. 3 (“Motion to Add Misrepresentation Issue” treated as a “Reply” pursuant to Section 1.45). These are the only pleadings authorized by 47 CFR § 1.45. Any additional pleadings after Daniels’ constructive Reply could be filed only with the Commission’s permission and should have been accompanied by a petition for leave to file the unauthorized pleading. No such motion was filed with respect to Glory’s “Motion to Strike Opposition Pleading,” and it will not be considered.

Nevertheless, when treated as a petition for reconsideration, Daniels' Petition is procedurally deficient pursuant to Section 1.106(b)(1) of the Rules.²⁰ Daniels did not object to the WEAJ or WTUA 2009 Applications prior to their grants, even though they were pending for more than five months and had been published in the *Federal Register*, and Daniels has not demonstrated in the Petition why he could not have done so. Additionally, the WEAJ Permit, as modified to specify a new site, expired by its own terms without having been constructed. Accordingly, the issues raised by Daniels are now moot.²¹ We therefore will dismiss the Petition on these grounds.

ACCORDINGLY, IT IS ORDERED that, the Petition for Rescission of Construction Permits filed on October 26, 2009, by Thomas B. Daniels, Jr., treated herein as a petition for reconsideration, IS DISMISSED.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter H. Doyle / MFW".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Thomas B. Daniels, Jr.
Glory Communications, Inc.
Praise Communications, Inc.

²⁰ 47 CFR § 1.106(b)(1) (if the petition is filed by a person not a party to the proceeding, it shall state the manner in which the person's interests are adversely affected by the action taken and shall show good reason why it was not possible to participate in the earlier stages of the proceeding).

²¹ Although we do not rule on Daniels' allegations, we have reviewed the facts presented in the Petition and have concluded that, even if a violation were adjudicated based on those facts, such a violation would not result in our finding either that Glory is not qualified to be a Commission licensee or that reconsideration of the Permit grants would have been warranted.

Exhibit 2

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, SW
WASHINGTON, DC 20554

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AUDIO DIVISION
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May 26, 2016

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Re: WCOO(FM), Kiawah Island, South Carolina
L.M. Communications II of South Carolina, Inc.
Facility ID No. 50729
File No. BPH-20160125AAF

WTUA(FM), Pinopolis, South Carolina
Praise Communications, Inc.
Facility ID No. 23895
File No. BPH-20160502ABB

Dear Counsel:

This letter concerns minor change application BPH-20160125AAF (WCOO(FM) Application), submitted by L.M. Communications II of South Carolina, Inc. (LMC), licensee of commercial FM station WCOO(FM), Kiawah Island, South Carolina, requesting modification of the licensed WCOO(FM) facilities;¹ an Informal Objection to the Application (Praise Objection) submitted by Praise Communications, Inc. (Praise), licensee of commercial FM station WTUA(FM), Pinopolis, South Carolina;² related responsive pleadings to the Praise

¹ File No. BLH-20011012AAX. Station WCOO(FM) is licensed to operate on channel 288C2 (105.5 megahertz (MHz)) at Kiawah Island, South Carolina, using 50 kilowatts (kW) effective radiated power (ERP), 133 meters antenna radiation center height above average terrain (HAAT), and a circularly polarized, nondirectional, FM antenna at a transmitter site described by geographic coordinates 32° 39' 57" North Latitude, 80° 03' 11" West Longitude, referenced to 1927 North American Datum (NAD 27).

² WTUA(FM), Facility ID No. 23895, was formerly licensed, File No. BLH-19900606KC, to operate on channel 291A (106.1 MHz) at St. Stephen, South Carolina, using 6.0 kW ERP, 100 meters antenna radiation center HAAT, and a circularly polarized, nondirectional antenna at a transmitter site described by geographic coordinates 33° 29' 36" North Latitude, 79° 53' 21" West Longitude, referenced to NAD 27. Commission grant of Construction Permit (CP) BPH-20090421ABK modified the WTUA(FM) assignment and license BLH-19900606KC to specify operation on channel 290A at Pinopolis, South Carolina, in place of channel 291A at St. Stephen, South Carolina.

Objection,³ and minor change application BPH-20160502ABB (WTUA(FM) Application) requesting modification of the licensed WTUA(FM) facilities that was submitted by Praise and is in queue behind the WCOO(FM) Application.⁴ For the reasons discussed below, we deny the LMC request that the Commission order modification of the WTUA(FM) assignment and license, grant the LMC request to modify the reference site coordinates for the channel 290A assignment at Pinopolis, South Carolina, reserved for WTUA(FM) use, grant the WCOO(FM) Application, and dismiss the WTUA(FM) Application.

Background. In the WCOO(FM) Application, LMC proposes to relocate the WCOO(FM) transmitting facilities to a new site, decrease ERP, and increase antenna radiation center HAAT. Our initial review of the WCOO(FM) Application revealed that the proposed facilities violated the minimum distance separation requirements of Section 73.207 of the Commission's rules⁵ with respect to the second-adjacent channel 290A assignment at Pinopolis, South Carolina, reserved for use by WTUA(FM) (WTUA(FM) Assignment). Commission staff sent LMC's counsel a letter on February 11, 2016, identifying this application defect, and giving LMC 30 days to submit an amendment proposing facilities that meet all pertinent Commission rules governing FM broadcast stations.⁶

LMC submitted an amendment to the WCOO(FM) Application on March 4, 2016. However, instead of modifying the proposed WCOO(FM) facilities to protect the WTUA(FM) Assignment, LMC requested that the Commission issue an Order to Show Cause (OSC) to Praise ordering the return of WTUA(FM) to its former channel 291A facilities at St. Stephen, South Carolina. LMC argued that such a change is justified due to Praise's failure to construct channel 290A facilities at Pinopolis, South Carolina, despite having had two CPs and six years to do so.⁷

In the Praise Objection, Praise requests dismissal of the WCOO(FM) Application for failure to protect the WTUA(FM) Assignment. Praise argues that the proposed change in the WTUA(FM) Assignment must be accomplished by the filing and grant of a petition for rule making requesting modification of the assignment, not by another licensee's request in a modification application. Additionally, Praise discusses the difficulties it has encountered that prevented timely construction of the authorized WTUA(FM) channel 290A facilities at Pinopolis, South Carolina, and its intentions to complete construction of channel 290A facilities at Pinopolis in the near future.

In the LMC Reply, LMC argues that WTUA(FM) is not operating in accordance with its license, and that WTUA(FM)'s only current authority to broadcast on channel 291A at St. Stephen, South Carolina, is an unprotected, implied Special Temporary Authority. LMC contends that Praise's six year failure to construct the authorized channel 290A facilities at Pinopolis, South Carolina, is precluding WCOO(FM)'s proposed facility improvement, as well as future improvements by other stations, and that modification of the WTUA(FM) Assignment and license to reflect WTUA(FM)'s actual operation would be in the public interest. Additionally, as an alternative to its request seeking the return of WTUA(FM) to channel 291A at St. Stephen, South Carolina, LMC specifies modified assignment reference site coordinates for the WTUA(FM) Assignment that are fully

³A Reply to Informal Objection (LMC Reply) was submitted by LMC on March 18, 2016; a Reply to Reply to Informal Objection (Praise Reply) was submitted by Praise on March 30, 2016, and a Supplement to Reply to Reply to Informal Objection (Praise Supplement) was submitted by Praise on May 9, 2016.

⁴ As defined in 47 CFR § 73.3564(e) (Section 73.3564(e)).

⁵ 47 CFR § 73.207 (Section 73.207).

⁶ Letter from Susan N. Crawford, Audio Division, FCC Media Bureau, to Sally A. Buckman, Esq. (February 11, 2016).

⁷ WTUA(FM) CP BPH-20090421ABK expired as a matter of law on September 22, 2012, without construction of the authorized facilities. Praise was granted a second CP for the same facilities, BPH-20120921AEU, and it expired as a matter of law on January 22, 2016, without construction of the authorized facilities. Despite the expiration of these CPs, the modifications of the WTUA(FM) Assignment and the WTUA(FM) license effectuated by CP BPH-20090421ABK remain in force and must be protected.

spaced to the proposed WCOO(FM) site,⁸ and asks that the Commission modify the WTUA(FM) Assignment accordingly. LMC asserts that the proposed change in the WTUA(FM) Assignment reference site coordinates would permit grant of the WCOO(FM) Application.

In the Praise Reply, Praise states that it has diligently tried to construct the authorized WTUA(FM) channel 290A facilities at Pinopolis, South Carolina, but was thwarted in its efforts by the filing of a Petition for Rescission of Grant of WTUA(FM) CP BPH-20090421ABK in 2009 that was still pending before the Commission when the CP expired in 2012,⁹ and a Federal Aviation Administration (FAA) objection to the WTUA(FM) transmitting facilities authorized by WTUA(FM) CP BPH-20120921AEU.

On May 2, 2016, Praise submitted the WTUA(FM) Application requesting a third CP to authorize construction of WTUA(FM) channel 290A facilities at Pinopolis, South Carolina, followed shortly by the filing of the Praise Supplement in which Praise reports receipt of FAA approval of the facilities proposed in the WTUA(FM) Application and filing of the WTUA(FM) Application.

Discussion. It is well established policy that the Commission will not force an existing station to change its community of license.¹⁰ Praise opposes LMC's request that the Commission order WTUA(FM) to return to its former channel and community of license. As a result, we will deny LMC's request that the Commission modify the WTUA(FM) Assignment to substitute channel 291A at St. Stephen, South Carolina, for channel 290A at Pinopolis, South Carolina, and WTUA(FM)'s license to specify operation on channel 291A at St. Stephen, South Carolina.

Our review of LMC's request to modify the geographic coordinates of the WTUA(FM) Assignment reference site shows that the reference site coordinates for the WTUA(FM) Assignment specified by LMC¹¹ meet the minimum distance separation requirements of Section 73.207 of the Commission's rules toward all existing and known pending FM assignments and allotments, and that assumed maximum permissible Class A facilities located at that site are predicted to provide 70 dBu or greater signal strength over 100 percent of Pinopolis, South Carolina. Additionally, the WTUA(FM) Assignment reference site specified by LMC is not located offshore, in a National or state park or forest, on or near an airport, or in any otherwise unsuitable area. Therefore, we will grant LMC's request to modify the WTUA(FM) Assignment reference coordinates

The facilities proposed in the WTUA(FM) Application are short-spaced to the WCOO(FM) facilities proposed in the WCOO(FM) Application.¹² Praise requested processing of the WTUA(FM) Application pursuant to Section 73.215 of the Commission's rules¹³ which would allow this short-spacing between proposed WTUA(FM) and proposed WCOO(FM), provided that the proposed WTUA(FM) facilities meet the minimum distance separation requirements and contour protection requirements of Section 73.215 with respect to the

⁸ The geographic coordinates for the channel 290A assignment at Pinopolis, South Carolina, proposed by LMC are 33° 15' 51" North Latitude, 80° 06' 45" West Longitude, referenced to NAD 27.

⁹ WTUA(FM) CP BPH-20090421ABK was part of a two station contingent application group with station WEA(AM) minor change application BP-20090421ABJ which proposed relocation of WEA(AM) to St. Stephen, South Carolina, from Camden, South Carolina. A "Petition for Rescission of Construction Permits" (Petition) requesting that the Commission rescind the grant of WTUA(FM) CP BPH-20090421ABK and WEA(AM) CP BP-20090421ABJ because the authorized WEA(AM) facilities violate Section 106 of the National Programmatic Agreement was filed by Thomas B. Daniels, Jr., on October 26, 2009. Commission staff treated the Petition as a Petition for Reconsideration of grant of the WTUA(FM) and WEA(AM) CPs, and dismissed the Petition as procedurally deficient by letter from Peter Doyle, Chief, Audio Division, Media Bureau, to Dan J. Alpert, Esq. and Stephen T. Yelverton, Esq. on April 27, 2016.

¹⁰ See, e.g., *Fishers, Lawrence, Indianapolis and Clinton, Indiana*, Report and Order, 22 FCC Rcd 11660, 11662, para. 4 (MB 2004), and *Parker, Arizona*, Report and Order, 17 FCC Rcd 9578, 9579, para. 3 (MB 2002).

¹¹ 33° 15' 51" North Latitude, 80° 06' 45" West Longitude, referenced to NAD 27.

¹² Section 73.207 requires that proposed WCOO(FM) and proposed WTUA(FM) be separated by 55 kilometers.

¹³ 47 CFR § 73.215 (Section 73.215).

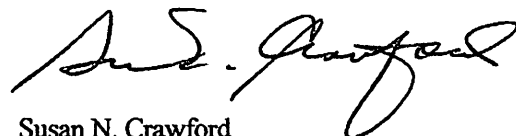
proposed WCOO(FM) facilities. Although the proposed WTUA(FM) facilities meet the minimum distance separation requirements for short-spaced stations set forth in Section 73.215(e),¹⁴ they create prohibited contour overlap with the proposed WCOO(FM) facilities, in violation of Section 73.215(a).¹⁵ As a result, the WTUA(FM) Application conflicts with the WCOO(FM) Application.

The WCOO(FM) Application was filed on January 25, 2016. The WTUA(FM) Application was filed on May 2, 2016. Section 73.3564(e) states “[A]pplications for minor modification of facilities may be tendered at any time, unless restricted by the FCC. These applications will be processed on a “first come/first served” basis and will be treated as simultaneously tendered if filed on the same day. Any applications received after the filing of a lead application will be grouped according to filing date, and placed in a queue behind the lead applicant.” Thus, since the WTUA(FM) Application conflicts with the WCOO(FM) Application, and the WCOO(FM) Application was filed first, the WTUA(FM) Application is in queue behind the WCOO(FM) Application. Section 73.3573(f) of the Commission’s rules¹⁶ states “[T]he rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable.” In this case, we have determined that the lead applicant is acceptable and the lead application grantable. Therefore, upon grant of the WCOO(FM) Application, the queue dissolves, and the WTUA(FM) Application will be dismissed.

Actions. Accordingly, it IS ORDERED that the LMC request for the Commission to order modification of the WTUA(FM) Assignment and license BLH-19900606KC IS DENIED; the LMC request to modify the geographic coordinates of the WTUA(FM) Assignment reference site IS GRANTED; WCOO(FM) minor change application BPH-20160125AAF IS GRANTED, and WTUA(FM) minor change application BPH-20160502ABB IS DISMISSED.

These actions are taken pursuant to Section 0.283 of the Commission’s rules.¹⁷

Sincerely,



Susan N. Crawford
Audio Division
Media Bureau

cc: L.M. Communications II of South Carolina, Inc.
Praise Communications, Inc.
Clyde Scott, Jr. (via email)
William A. Culpepper (via email)

¹⁴ Section 73.215(e) requires that the proposed WTUA(FM) and proposed WCOO(FM) transmitter sites be separated by 49 kilometers. The actual distance between the proposed WTUA(FM) and proposed WCOO(FM) sites is 50.1 kilometers.

¹⁵ The proposed WTUA(FM) interfering 100 dBμ F(50,10) contour overlaps the proposed WCOO(FM) protected 60 dBμ F(50,50) contour.

¹⁶ 47 CFR § 73.3573(f).

¹⁷ 47 CFR § 0.283.