



**Federal Communications Commission
Washington, D.C. 20554**

March 26, 2024

***In Reply Refer to:
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In re: **WKKQ(FM), Barbourville, Kentucky**
Facility ID No. 3954
Application File No. 145185

WKFC(FM), North Corbin, Kentucky
Facility ID No. 164241
Application File No. 145184

Petition for Reconsideration

Dear Petitioners and Objectors:

We have before us a petition for reconsideration (Petition) jointly filed by Choice Radio Corporation (Choice) and Radioactive, LLC (Radioactive) (collectively, Petitioners) on July 10, 2023.¹ Petitioners seek reconsideration of the dismissal of the above-referenced contingent applications for modification of the facilities of FM stations WKKQ, Barbourville, Kentucky (WKKQ) (WKKQ Application) and WKFC, North Corbin, Kentucky (WKFC) (WKFC Application) (collectively, Applications).² We also have informal objections to the Applications filed by Bardstown Radio Team, LLC (Bardstown) on September 3, 2021,³ and Gateway Radio Works, Inc. (Gateway) on June 1, 2021,⁴ and an informal objection to the WKKQ Application filed by Roy Jaynes Broadcasting, LLC (Jaynes) on September 7, 2021 (collectively, Informal Objections).⁵ For the reasons below, we deny the Informal Objections, grant the Petition, and reinstate and grant the Applications.

Background. When Petitioners filed the Applications on May 12, 2021, they proposed a three-station contingent application group (2021 Proposal) that included the modification of WPBK(FM), Crab Orchard, Kentucky (WPBK Application),⁶ and an involuntary channel change for WOKH(FM), Springfield, Kentucky (WOKH Channel Change Request).⁷ On June 1, 2021, Gateway, the licensee of FM translator station W275CO, Winchester, Kentucky (W275CO), objected to the 2021 Proposal on the basis that it would: (1) cause short-spacing between WOKH and WOVO(FM), Horse Cave, Kentucky (WOVO); (2) fail to provide adequate community of license coverage;⁸ and (3) displace W275CO, leaving the W275CO community of license without nighttime local radio service.⁹ On September 3, 2021, the WOKH licensee, Bardstown, objected to the 2021 Proposal, arguing that it would cause short-spacing between WOKH and WOVO and used erroneous allotment coordinates in its engineering analysis.¹⁰ Finally, on September 7, 2021, Jaynes objected to the WKKQ Application on the basis that, as the court-ordered assignee of WKKQ, Jaynes was not committed to implementing the proposed changes.¹¹

On February 10, 2022, Petitioners amended the Applications to propose a two-station contingent group, withdrawing the WPBK Application and WOKH Channel Change Request. Specifically,

¹ Pleading File Nos. 217780 and 217781.

² Choice is the licensee of WKKQ and Radioactive is the licensee of WKFC.

³ Pleading File Nos. 158573 and 158574 (Bardstown Objection).

⁴ Pleading File Nos. 149337 and 149338 (Gateway Objection).

⁵ Pleading File No. 158734 (Jaynes Objection).

⁶ See Application File No. 145182 (WPBK Application) (dismissed per applicant's request on February 11, 2022).

⁷ Specifically, the Petitioners originally proposed the reallocation of WPBK from Channel 275A at Crab Orchard, KY, to Channel 275C3 at Hustonville, KY; the reallocation of WKFC from Channel 270A at North Corbin, KY, to Channel 270A at Crab Orchard, KY; the reallocation of WKKQ from Channel 241C3 at Barbourville, KY, to Channel 241C3 at North Corbin, KY, and the modification of WOKH from Channel 274A to Channel 293A.

⁸ See 47 CFR § 73.315.

⁹ Gateway Objection at 1-2.

¹⁰ Bardstown Objection at 1-3.

¹¹ Jaynes Objection at 1-2. An application to assign the WKKQ license from Choice to Jaynes was filed on February 4, 2021, and dismissed on March 30, 2023. See Application File No. 135218; *Broadcast Actions*, Public Notice, Report No. PN-2-230403-01 (MB April 3, 2023).

Petitioners request the reallocation of WKFC from Channel 270A at North Corbin, Kentucky, to Channel 270A at Hustonville, Kentucky, and the reallocation of WKKQ from Channel 241C3 at Barbourville, Kentucky, to Channel 241C3 at North Corbin, Kentucky. On March 24, 2023, the Bureau notified the Petitioners that because Choice was delinquent on its annual regulatory fees for WKKQ, it would withhold action on the Applications pending payment of the delinquent fees.¹² The Bureau did not receive payment or any response from the Petitioners. Accordingly, on June 6, 2023, it dismissed the Applications due to Choice's failure to pay the delinquent regulatory fees or respond to the *Notification Letter*.¹³

On July 10, 2023, the Petitioners filed the Petition, explaining that Choice did attempt to respond in a timely manner to the *Notification Letter* but sent the response to an incorrect email address.¹⁴ Petitioners also state that the CORES system for filing fees would not accept payment because the accounts had been sent to the U.S. Department of the Treasury (Treasury).¹⁵ On March 12, 2024, Treasury confirmed receipt of all regulatory fees and Choice was returned to "green light" status.

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.¹⁶ In this case, although Choice failed to respond to the email address provided in the *Notification Letter* and sent its response to a nonexistent staff email address, we accept its explanation that it was unaware prior to dismissal that the response to the *Notification Letter* had not been received. Therefore, we find that it could not have raised this issue earlier in the proceeding and the Petition is thus procedurally acceptable.

However, turning to the merits, we find that the technical objections raised by the Objectors were mooted when the Petitioners amended the Applications in February 2022 to eliminate the WPBK Application and WOKH Channel Change Request. The Bureau's engineering review indicates that the 2022 Proposal complies with all relevant spacing and community of license coverage rules. Similarly, Gateway's public interest argument that the 2021 Proposal would displace FM translator station W275CO was mooted by the 2022 Proposal, which does not displace W275CO. Finally, the Jaynes Objection was mooted with Jaynes' passing and the subsequent dismissal of the then-pending WKKQ assignment application.¹⁷ In this respect, we note that grant of the Applications is permissive, not mandatory, in nature and does not prejudice any relief to which the parties may ultimately be entitled to under state law.¹⁸

With the payment of the requisite regulatory fees, the WKKQ Application is no longer in "red light" status, and both Applications are otherwise in compliance with the Commission's rules. Moreover,

¹² Letter from Arthur Doak, Senior Electronics Engineer, Audio Division, FCC, to Jonathan Smith, Choice Radio Corporation, Application File No. 145185 (March 24, 2023) (*Notification Letter*) (explaining that if full payment was not made within 30 days of the notification letter, the WKKQ Application would be dismissed under 47 CFR § 1.1910(b)(3)).

¹³ See *Broadcast Actions*, Public Notice, Report No. PN-2-230609-01 (MB June 6, 2023).

¹⁴ Petition at 2 (response was addressed to art.doak@fcc.gov rather than arthur.doak@fcc.gov).

¹⁵ Petition at 2.

¹⁶ 47 CFR § 1.106(c), (d); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

¹⁷ See Petition at 1-2.

¹⁸ See, e.g., *Mark Lipp, Esq.*, Letter Decision, 26 FCC Rcd 11138, 11141 (MB 2011); *Peggy Haley, N.C.M.*, Letter Decision, 23 FCC Rcd 12687, 12688 (MB 2008).

Petitioners have demonstrated that the 2022 Proposal constitutes a preferential arrangement of allotments under section 307(b) of the Communications Act of 1934, as amended.¹⁹ Therefore, we grant the Petition, deny the Informal Objections, and grant the Applications.

Conclusion/Actions. For the reasons stated above, IT IS ORDERED that the petition for reconsideration jointly filed by Choice Radio Corporation and Radioactive, LLC on July 10, 2023, Pleading File No. 217780, IS GRANTED.

IT IS FURTHER ORDERED that the informal objections filed by Gateway Radio Works, Inc. on June 1, 2021, Pleading File Nos. 149337 and 149338; Bardstown Radio Team, LLC on September 3, 2021, Pleading File Nos. 158573 and 158574; and Roy Jaynes Broadcasting LLC on September 7, 2021, Pleading File No. 158734, ARE DENIED.

IT IS FURTHER ORDERED that the modification applications for WKKQ(FM), Barbourville, Kentucky, filed by Choice Radio Corporation on May 12, 2021, Application File No. 145185, and WKFC(FM), North Corbin, Kentucky, filed by Radioactive, LLC filed on May 12, 2021, Application File No. 145184, ARE REINSTATED AND GRANTED.

IT IS FURTHER ORDERED that the license for WKFC(FM), North Corbin, Kentucky, IS MODIFIED to specify Channel 270A at Hustonville, Kentucky, in lieu of Channel 270A at North Corbin, Kentucky, and the license for WKKQ(FM), Barbourville, Kentucky, IS MODIFIED to specify Channel 241C3 at North Corbin, Kentucky, in lieu of Channel 241C3 at Barbourville, Kentucky.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁹ See 47 U.S.C. § 307(b). To avoid the removal of the sole local service at North Corbin, KY, the authorizations resulting from grant of the Applications will include the condition that WKFC cannot activate service at Hustonville, KY, until WKKQ activates service at North Corbin, KY.