

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

In the Matter of)	
)	
Nelson Multimedia, Inc.)	
)	
Application for a Major Change to)	File Nos. BMJP-20040127ACW
the Licensed Facilities of)	BMJP-20051031ADG
WSPY(AM), Geneva, Illinois)	Facility ID No. 69700

MEMORANDUM OPINION AND ORDER

Adopted: August 13, 2014**Released: August 14, 2014**

By the Commission:

1. We have before us an Application for Review (“AFR”) filed on August 29, 2011, by Nelson Multimedia, Inc. (“Nelson”). Nelson seeks review of the Media Bureau’s (“Bureau”) dismissal of its application (“Application”) to change the community of license of WSPY(AM) from Geneva to Millbrook, Illinois.¹ WSPY(AM) is the sole local transmission service licensed to Geneva. The Bureau dismissed the Application after rejecting Nelson’s argument that the Commission should grant the Application pursuant to its interference reduction policies² and denying Nelson’s request for waiver of the Commission’s policy prohibiting the removal of a community’s sole local transmission service.³ The Bureau went on to note that, even if it had found waiver justified and performed a traditional fair distribution analysis pursuant to Section 307(b) of the Communications Act of 1934, as amended (“Act”), it still would have rejected the proposal.

2. Nelson challenges the Bureau’s finding that the Commission’s interference reduction policies apply only where an interstation agreement to reduce interference is involved.⁴ After reviewing the entire record, we conclude that Nelson has failed to demonstrate that the Bureau erred. The Bureau properly decided the question of whether the interference reduction policies apply in the absence of an

¹ *Nelson Multimedia, Inc.*, Letter, 26 FCC Rcd 10386 (MB 2011) (“*Letter Decision*”).

² In 1993, the Commission adopted policies intended “to encourage interstation agreements proposing a reduction in AM interference and to provide a procedural framework that would facilitate such agreements. *Policies to Encourage Interference Reduction Between AM Broadcast Stations*, Report and Order, 5 FCC Rcd 4492, 4494 ¶ 14 (1990). Among other things, the Commission created an exception to the general prohibition on filing of contingent applications for construction permits proposing either new or modified facilities set forth in Section 73.3517 of the Commission’s rules in order to permit the filing of contingent applications that lead to “an overall reduction in AM interference. *Id.* at 4493 ¶¶ 6-8. Accordingly, Section 73.3517(c), which reflects this exception, requires that all applications filed under the exception “must state that they are filed pursuant to an interference reduction agreement and must cross-reference all other contingent applications.” 47 C.F.R. § 73.3517(c).

³ *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097 (1990). The Commission reaffirmed this policy in *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14227-30 (2006).

⁴ AFR at 5-10.

interstation agreement to reduce interference and that, since Nelson had failed to indicate that it had entered into such an agreement in connection with its Application, it could not invoke the policies. We uphold the Bureau's finding for the reasons stated in its decision.⁵

3. Nelson also asserts that the Bureau erred in denying its request for a waiver of the Commission's policy prohibiting the removal of a community's sole local service.⁶ Nelson based its waiver request on the fact that the WSPY(AM)'s licensed transmitter site was unavailable. Specifically, Nelson relied on the fact that, when it acquired WSPY(AM), the station's licensed transmitter site was under development and unavailable for purchase or use by it. Nelson also submitted evidence purporting to demonstrate that it had engaged in an exhaustive but fruitless search for a new site but could not find one that would provide adequate community coverage. The Bureau found unconvincing the foundation of Nelson's argument in support of a waiver, noting that Nelson purchased WSPY(AM) with full knowledge that it lacked a transmitter site.⁷ The Bureau also deemed insufficient the evidence that Nelson submitted regarding its search for a new site.⁸ We have reviewed the entire record and all of the evidence submitted by Nelson and conclude that Nelson failed to demonstrate the Bureau erred. The Bureau properly rejected Nelson's request for a waiver of the policy prohibiting the removal of a community's sole local service. Accordingly, we uphold the Bureau's finding for the reasons stated in its decision.⁹

4. Finally, Nelson cites the requirement set forth in Section 307(b) of the Act that the Commission "make such distribution of licenses ... as to provide a fair, efficient, and equitable distribution of radio service."¹⁰ Nelson claims the Bureau failed to consider the efficiency aspect of this mandate. We reject this argument. By its terms, Section 307(b) sets forth a three-part standard for the licensing of proposed new stations and station relocations. Thus, Nelson's attempt to justify the proposed community of license change solely on "efficiency" grounds is misguided. Moreover, the Commission has developed specific standards to carry out its Section 307(b) mandate.¹¹ We conclude that the Bureau properly applied these policies, both in rejecting Nelson's waiver request and in finding that, had it performed a traditional fair distribution analysis, it would reject Nelson's proposal.

⁵ See *Letter Decision*, 26 FCC Rcd at 10389-90.

⁶ AFR at 10-12.

⁷ *Letter Decision*, 26 FCC Rcd at 10394 (noting that the Commission has warned that "no broadcaster should invest in a station with the expectation that the Commission will routinely approve a request to move to a different community" and citing *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14229-14230 ¶ 34 (2006)).

⁸ *Id.* at 10394-95.

⁹ We note that Nelson for the first time argues that, in granting Nelson special temporary authority to operate the Station at reduced power from a different location, the Bureau "overtly recognized the futility of [its] efforts to locate a site which will allow the station to remain in Geneva." AFR at 11-12. This argument fails and we dismiss this portion of the Application for Review because Nelson never presented the argument to the Bureau. Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Commission's rules bar applications for review that rely "on questions of fact or law upon which the [designated authority issuing the decision] has been afforded no opportunity to pass." 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c).

¹⁰ AFR at 12.

¹¹ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 90 ¶ 6 (1982) ("The FM priorities set forth the relative importance of the service to be provided from the perspective of Section 307(b) of the Communications Act.").

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹² and Sections 1.115(c) and (g) of the Commission's Rules,¹³ the Application for Review filed by Nelson Multimedia, Inc. on August 29, 2011, IS DENIED in part and DISMISSED in part.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹² 47 U.S.C. § 155(c)(5).

¹³ 47 C.F.R. §§ 1.115 (c), (g).