

EXHIBIT 1

Introduction

Global News Consultants, LLC (“Global”), permittee of Station KYTS (FM), Ten Sleep, Wyoming,¹ hereby timely responds to the Letter of the Assistant Chief, Audio Division, Media Bureau (the "Division's Letter") dated July 31, 2009.²

The Division's Letter makes a finding that the pending application originally filed by Legend (BMPH-20080916ABE) to modify the station's community of license from Ten Sleep, Wyoming, to Manderson, Wyoming and to specify modified facilities on Channel 271C3, is in violation of Section 73.3573(g)(2) of the Commission's Rules because that channel is not mutually exclusive with Channel 286C3, the original allotment at Ten Sleep.

Global believes the Division's reading of this rule section is in error and that there is no violation. Assuming *arguendo* that there is any rule violation, Global respectfully submits that the policy underlying this rule has not been violated and that the public interest is best served by permitting waiver of the Commission's rules and granting authority for Global to construct KYTS (FM) at Manderson, Wyoming, on either Channel 271C3 or 298C3, all as requested and discussed by Global below.³

Factual Background

Legend hereby alleges the following facts in support hereof, as follows.

On June 28, 2006, as the successful bidder in FCC FM auction 62 and following Legend's payment of \$158,000 to the FCC in connection therewith, the Commission granted Legend a construction permit for authority to construct a new FM station on Channel 286C3 at Ten Sleep, Wyoming.

On July 12, 2006, Legend filed an application (BMPH-20060712AGA) to modify the permit to Channel 286C2 and proposed a new transmitter site. The proposed site, located on land owned by the United States Forest Service, was part of a developed telecommunications site near a ski resort known as Meadowlark (just east of Ten Sleep).

¹ On August 29, 2009, Global became the permittee of KYTS (FM) and successor-in-interest to Legend Communications of Wyoming, LLC ("Legend"), when Global consummated its purchase of this permit from Legend following Commission grant of assignment application BAPH-20090529ACE.

² The Division's Letter was originally addressed to Legend. On August 31, 2009, Global requested and subsequently received an extension of time to respond to the Division's Letter until October 13, 2009.

³ The following factual background is provided in support hereof and certified as true by Legend, which Global respectfully requests the Commission consider because the relevant facts are known to Legend and pre-date Global's purchase of the permit from Legend.

Based on earlier conversations with the appropriate Forest Service authorities, Legend had reasonable assurance that it could construct a tower there at the specified height of 308.7 meters HAAT. On September 12, 2006, the Commission granted Legend's modification application; and, with winter then approaching, Legend planned to construct the facility in the following spring.

On January 31, 2007, Lovcom, Inc. ("Lovcom"), licensee of Station KLQQ (FM), Clearmont, Wyoming, unexpectedly filed an application to upgrade its facility from Channel 284C3 to Channel 285C0. In order to achieve this upgrade, Lovcom requested that the Commission issue an Order to Show Cause to force Legend to change channels from 286C2 to 271C2.

Although Legend had no desire to change (and saw no benefit in changing) to Channel 271C2, Legend recognized that it would likely be forced to do so. Thus, in order to expedite construction of KYTS (FM) and service by it to the public, as well as to reduce burdens on both Legend and the Commission in connection with Lovcom's requested Order to Show Cause, Legend reluctantly agreed to file an application to change channels from 286C2 to 271C2 and Lovcom agreed to reimburse Legend for only the costs of its application (not to exceed \$5,000).

On March 6, 2007, Legend filed its application (BMPH-20070306AAX) to specify Channel 271C2 as an involuntary accommodation to Lovcom as described above. Legend's application, which was granted by the Commission on May 21, 2007, also specified a new transmitter site because the Forest Service informed Legend that it had reversed its earlier decision to allow the tower to be constructed on this developed telecommunications site, purportedly due to concerns about the amount of power to be transmitted -- even though the Forest Service was previously informed about the power.

Legend found this new site located on private property on a nearby ridge at a lower elevation. Legend hired an environmental consulting firm to analyze the site and to confirm that it met all environmental requirements. Despite being initially told that the site was not located on tribal lands and that it would meet all other requirements, Legend was subsequently informed that fossils were found in the vicinity (approximately ½ mile away) and the site should not be used for construction of a tower.

Legend then diligently searched for another site and found still another site also located on private property on another ridge at an even lower elevation. However, after the environmental consulting firm evaluated this site, fossils were again discovered in the vicinity. At that point, about two years after the original permit had been issued, Legend shifted its search efforts to find an existing tower it might use -- even if that required a change of community of license from Ten Sleep.

The community of Ten Sleep is situated in a hole surrounded by the Bighorn Mountain range, which makes line of sight coverage to this community very difficult to achieve. In addition to the environmental concerns and line of sight limitations, Legend found that access to electric power further limited the availability of transmitter sites. Legend was unable to find an existing tower within the area that complied with spacing and coverage rules.

After spending substantial time and great expense trying to find a compliant site, Legend decided to change the KYTS (FM) community of license from Ten Sleep to Manderson, so that an existing tower structure could be used and so the station could be constructed as soon as possible before the initial 3 year period expired on June 28, 2009.

On September 16, 2008, Legend filed an application (BMPH-20080916ABE)⁴ to change the KYTS (FM) community of license and locate its transmission facilities on a tower planned to be constructed, which would provide the community of Manderson, Wyoming, with its first local service.⁵

To allow the community of Ten Sleep to retain first local service, Legend filed both a Petition for Rule Making to propose allotment of a new Class A FM channel there⁶ and an application in advance of a future auction window. On July 30, 2009, the Commission granted this channel and dismissed White Park's counterproposal.

When it became clear that Commission action on the Manderson application was being delayed and that June 28, 2009 (three years from the issuance of the original permit) was rapidly approaching, Legend decided to sell the permit rather than forfeit it and all of the time and expense Legend had invested to date.

Thus, one month before the 3 year construction deadline, Legend filed an application (BAPH-20090529ACE) to assign the permit to Global, an "eligible entity" entitled to an extension of time to construct. On July 29, 2009, the Commission granted this assignment application, requiring consummation within 30 days of grant. Consummation of the assignment of the KYTS (FM) permit was completed on August 28, 2009, as then reported to the Commission.

Legend diligently made every effort to construct the station at Ten Sleep, but with all of the obstacles it faced, and based on its previous efforts, it became clear to Legend that the only way the facility could be constructed was by using an existing tower. In addition, time was running out and Legend could not wait for another environmental study to be completed. So it filed an application far enough in advance to receive a grant and construct the station to provide a first local service at Manderson while preserving the first local service at Ten Sleep.

Legend had no indication that when it had been forced to change channels and when it agreed to file an application so as not to delay the service at Ten Sleep, the effect would be to forfeit the possibility of changing community of license at a later date if it were unable to find a usable site for Ten Sleep.

⁴ Legend also then dismissed its pending application for a Class C1 upgrade (BMPH-20070717AAO).

⁵ On January 9, 2009, White Park Broadcasting, Inc. filed an informal objection to this application.

⁶ On March 9, 2009, White Park filed a counterproposal to this petition.

Legend has spent hundreds of thousands of dollars thus far on all of the preliminary work needed for legal, engineering and environmental studies for the various sites, on due diligence, on the responses to and negotiations with Lovcom first and then later against White Park and on the auction payment. Legend's substantial and bona fide efforts to construct the station at Ten Sleep should be considered in support of the relief requested by Global.

The fact that Legend was forced to change channels should militate against any interpretation that Legend had any intent to or was attempting to avoid compliance with any rule or policy. If it were not for the forced channel change on a non-adjacent channel which now turns out to be in violation of 73.3573(g)(2) itself,⁷ there would be no mutual exclusivity problem with the change of community of license proposal to serve Manderson.⁸

Discussion

Section 73.3573(g)(2) provides that proposals to change community of license, "must be mutually exclusive, as defined in §73.207 or §73.509, with the applicant's current facilities or its current assignment, in the case of a winning auction bidder or tentative selectee". In this case, the KYTS application must be mutually exclusive with the current Ten Sleep assignment because Legend obtained the channel through an auction.

The term "assignment" is defined as follows -- "[a]ssignment is the authorization of a radio frequency channel for use by an entity under specific conditions. Thus, a channel may be allotted to a community or place but assigned to a licensee."⁹ In the same proceeding and as a result of this definition, the FM Table of Assignments (as it was then known in 1983) was changed permanently to the FM Table of Allotments. From that date to the present, channels have been allotted rather than assigned to a community, and the authorization of the channel to the permittee or licensee is known as an assignment. In this case, the channel that was originally allotted to Ten Sleep is Channel 286C3 but the "current assignment" is Channel 271C2.

⁷ Channel 271C2, the channel that was forced upon Legend in the requested Order to Show Cause, is not in conflict with Channel 286C3, the original allotment for Ten Sleep. Nevertheless, the application for this channel was granted. That grant caused further confusion concerning the applicability of the policy in this context.

⁸ Legend would also like to dispel any notion that the application to relocate to Manderson filed two years after it received the original Ten Sleep permit in any way demonstrates that this was Legend's intent or goal all along. Each of the three sites specified in the various earlier applications were located on land east of Ten Sleep in the direction opposite from Manderson. Manderson is located west of Ten Sleep. Legend always intended to serve Ten Sleep throughout this process.

⁹ *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 94 FCC 2d 152 (1983) at paragraph 92.

As described above, Legend believed that its application complied with the cited rule section because the community of license change on Channel 271C3 conflicted with its **current assignment** on Channel 271C2; and, Legend could not have known that the Media Bureau would construe the term “current assignment” to mean “original allotment” as it stated in the Division's Letter. Thus, the Audio Division misinterpreted the applicable rule and is in error concerning the alleged deficiency that it believes exists in the pending 271C3 application.

When Section 73.3573(g) was adopted in *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*,¹⁰ the Commission stated that it was concerned with “rapid successive community changes that sidestep the mutual exclusivity requirement of the new procedure.”¹¹ The Commission also stated that it would consider, on a case by case basis whether a particular application was filed with the intent to undermine allotment policies.¹² Thus, the Media Bureau should consider the pending application based on the policy it has established to discourage successive community of license changes filed with an intent to undermine the Commission's allotment policies, which intent is not present here.

With this in mind, the Bureau should consider all of the facts presented. Over the past 3 year period, Legend tried its best to construct the Ten Sleep station. Legend’s first attempt to construct at the Forest Service site would have succeeded if the Forest Service had not reversed its prior consent for use of that site. Legend did not then seek to change the KYTS (FM) community of license.

Instead, it filed for another site on private property to serve Ten Sleep. When Legend found out that this site would not comply with all environmental requirements, it searched for additional locations and had environmental studies performed on those additional sites. When fossils were found in the vicinity and Legend determined that access to power would be prohibitively expensive, it decided that it must find an existing structure to use for its transmitter site.

By this time, Legend had spent several hundred thousand dollars over the course of two plus years and needed to have a site where the station could be constructed before the permit expired. It was only after exhausting all of its options that it realized that the use of an existing tower would be its only alternative and there were no existing towers that could serve Ten Sleep with the terrain limitations involved.

¹⁰ 21 FCC Rcd 14212 (2006), *recons pending*. The petitions for reconsideration filed in this proceeding raise concerns regarding the clarity of Section 73.3573(g).

¹¹ *Id.* At paragraph 11.

¹² *Id.* In addition, Section 1.420(i) (a parallel rule which was formerly used in this type of situation) states that the proposed new allotment for a community of license change proposal must be mutually exclusive with the permittee’s present assignment (rather than allotment).

There should be no doubt that Legend fully intended to construct this facility and serve Ten Sleep. There was no intent to obtain a permit and then move it to another community. There was no intent to circumvent the Commission's major change rules and accomplish in two minor change applications what it could not accomplish in one minor change application from its original allotment site.

In this regard, the distance between the original allotment site and the current specified site is only 32 kilometers. If Legend had filed to change community of license on Channel 286C3 at Manderson after obtaining its original permit, that proposal would have been mutually exclusive with the original allotment and satisfied this policy. It is only the non-adjacent channel change to 271 that was forced upon Legend that is causing the problem.

In fact, Channel 271C2 should not have been granted earlier. Although that channel is permissible under Section 73.3573(a)(1) and (g)(2) as a same class non-adjacent channel substitution based on the "current assignment" which, at the time was Channel 286C2, it is not in accordance with the policy that requires mutual exclusivity with the original allotment which was Channel 286C3. Had the Bureau enforced this policy, it would have rejected the Order to Show Cause and the subsequent application for Channel 271C2 and required that the proposal be filed as a rule making petition.

Nevertheless, the Audio Division can correct this error. Global is filing a separate application for Channel 289C3 at Manderson in order to be mutually exclusive with its original allotment. The Division's Letter states that "the applicant must specify a proposal that is mutually exclusive to the original allotment on Channel 286C3 in Ten Sleep, WY." The 289C3 application complies with this directive, as Channel 289C3 at Manderson is mutually exclusive with Channel 286C3 at Ten Sleep. See Channel Study in the Engineering Statement.

If the Audio Services Division corrects its mistake and rescinds the grant of Channel 271C2 at Ten Sleep (BMPH-20070306AAX), there will no longer be a problem with mutual exclusivity. The deletion of Channel 271C2 from Ten Sleep and the simultaneous grant of Global's proposal to allot Channel 289C3 at Manderson is consistent with the earlier KLQQ permit grant on Channel 285C0 at Clearmont, WY.¹³

Therefore, Global urges the Audio Division to allow it to specify Channel 289C3 at Manderson so that it can comply with the requirement in the Division's Letter that a mutually exclusive proposal to the original allotment of Channel 286C3 be specified.

¹³ One additional alternative is available. Global cannot turn in its permit for Channel 271C2 and change to the original Channel 286C3 authorization because it would violate the spacing to the Clearmont, Wyoming station. However, simultaneously with the grant of the Channel 289C3 request, the permit for Channel 271C2 can be turned in or cancelled. If the Audio Division is willing to allow Global to turn in the Channel 271C2 permit and revert to Channel 286C3 (so that Channel 286C3 can become the current assignment) and simultaneously change to Channel 289C3, then the Division can avoid having to rule on whether the original grant of Channel 271C2 was indeed an error and the permit can be modified to specify Channel 286C3 at Manderson.

In the alternative, Global requests that the Audio Services Division waive Sections 73.3518 and 73.3520 and grant the pending application for Channel 271C3 at Manderson for the following reasons.

Global has demonstrated in this Exhibit that there is no violation of Section 73.3573(g)(2) as the Division's Letter incorrectly asserts. To the extent necessary, Global requests that a waiver of this rule section requiring a mutually exclusive proposal be granted based on the showing that there has not been any intent or attempt to circumvent the rule's underlying policy with a non mutually exclusive proposal.

A showing has been made that Legend spent the first two years and hundreds of thousands of dollars trying to construct at Ten Sleep. However, it could not overcome the Forest Service's denial after having been told previously that it could use the site. It could not overcome the environmental problems it faced at several sites. It could not obtain access to power at many of the locations. It could not find any existing towers that would serve Ten Sleep or any locations that would overcome the terrain limitations placed on providing line of sight.

It was the involuntary channel change to accommodate Lovcom's upgrade that proved to be the problem. Legend had no control over that situation and would not have changed channels if it were a voluntary decision.

These circumstances justify a waiver or exception to the mutual exclusivity policy because the policy is designed to eliminate the practice of using granted permits to accomplish a major change which could not have been granted in one step. Clearly, there was no intent by Legend to circumvent that policy. If that were the original intent, Legend would have filed a proposal much earlier to change community of license.

Global has provided the Audio Division with a basis for granting a waiver or exception to its requirement of mutual exclusivity with its pending application for Channel 271C3 at Manderson. Alternatively, Global has filed a new mutually exclusive proposal to allot Channel 289C3 at Manderson. Global urges the grant of either application, although it prefers the one for Channel 289C3 at Manderson.

CERTIFICATION

I, W. Lawrence Patrick, as Manager of Legend Communications of Wyoming, LLC, certify under penalty of perjury that the foregoing "Factual Background" is true and correct.

Executed on October 5, 2009.



Legend Communications of Wyoming, LLC
by: W. Lawrence Patrick, Manager