



Federal Communications Commission
Washington, D.C. 20554

June 18, 2013

In Reply Refer to:
1800B3-RFS

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Mark Heller, President
WTRW Incorporated
P.O. Box 100
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Re: WOGB(FM), Reedsville, Wisconsin
Facility ID No: 89
File No: BPH-20120720ACQ

Dear Counsel and Mr. Heller:

This letter refers to the above-referenced minor modification application (the "Application") of Citicasters Licenses, Inc ("Citicasters"), licensee of Station WOGB(FM), Channel 276C3, Kaukauna, Wisconsin. The Application proposes a community of license modification for Station WOGB(FM) from Kaukauna, Wisconsin, to Reedsville, Wisconsin. In response to the Application, WTRW Incorporated ("WTRW"), licensee of Station WGBW-AM, Denmark, Wisconsin, filed an Informal Objection ("Objection"). Citicasters filed an Opposition to the Informal Objection ("Opposition"), and WTRW subsequently filed Reply Comments. For the reasons discussed below, we deny the Objection in part and request Citicasters to amend the Application.

Background. This Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,¹ which permits the modification of an FM Station's authorization to specify a new community of license by minor modification application without affording other interested parties an opportunity to file a competing expression of interest. Among other requirements, an applicant for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments² under the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

Citicasters states that Station WOGB(FM) is moving from Kaukauna, Wisconsin, partially located within the Appleton-Oshkosh, Wisconsin Urbanized Area ("UA"), to Reedsville, Wisconsin, a community not located within any urbanized areas. However, it states that while Station WOGB(FM)

¹ 47 C.F.R. § 73.3573(g).

² See 47 C.F.R. § 73.3573(g)(1). See also *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

would provide Reedsville with its first local service,⁴ the station's existing and proposed transmitter site covers over fifty percent of the Green Bay, Wisconsin UA. Therefore, Citicasters claims that its proposal triggers Priority (4), and results in a preferential arrangement of allotments consistent with *Gearhart*⁵ because the intra-urbanized move would provide a net gain of 13,985 persons, receiving a new reception service.

Informal Objection. WTRW states that it opposes the proposed city of license modification for Station WOGB(FM) to Reedsville, Wisconsin, as the community's first local service because Citicasters published several public notices in the local newspaper instructing the public to review the Application public filing at Station WOGB(FM) studio in Milwaukee, Wisconsin, located ninety-four miles south of Reedsville. WTRW asserts that the Application does not result in a net gain of 13,985 persons since Citicasters is not proposing a change in Station WOGB(FM)'s transmitter site. WTRW requests that we consider its counterproposal for Station WOGB(FM) to change its community of license to Wrightstown, Wisconsin in lieu of Reedsville, Wisconsin.

Opposition. Citicasters claims that WTRW's Objection has no merit and should be denied. It admits that it erroneously published the studio location for Station WOGB(FM) but upon discovering the error, it immediately republished the announcements of the filing of the Application in both newspapers in Kaukauna and Reedsville providing the correct studio location prior to the November 16, 2012 deadline for the public comment. Citicasters argues that the net gain population figures, *albeit* theoretical, are consistent with the policy set forth in *Rural Radio Second R&O*,⁶ and in accordance with longstanding Commission policy.⁷ It contends that WTRW's counterproposal should be disregarded because the Commission does not allow the filing of counterproposals against community of license applications.

Reply Comments. WTRW agrees that the re-publication of the public notices in the local newspapers was appropriate and sufficient. However, WTRW claims that Reedsville, Wisconsin would not meet the minimum requirements of *Tuck*⁸ because it is not an independent community. WTRW requests that Citicasters amend its Application since it does not provide actual population net gains or public interest benefits. WTRW contends that Citicasters should be disqualified and not awarded credit for using theoretical population gain figures given the fact that the Commission changed its policy for calculating gain and loss coverage area population for city of license applications. WTRW states that in the *Second Order on Reconsideration*,⁹ the Commission stated that in determining gain and loss areas for

⁴ Citicasters states that Reedsville is an incorporated community with a 2010 U.S. Census population of 1,206 persons. Reedsville has its own local government with a president and village board of trustees, clerk-treasurer, tax assessor, police and fire departments, and public works and utilities departments. It has its own school district, businesses, banks, churches, library and a post office. Reedsville also has recreation facilities, campgrounds, and a museum.

⁵ *Gearhart, Madras, Manzanita and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259 (MB 2011)(stating that "[T]here is no need for a *Tuck* showing where both the station's current and proposed communities of license are located with an urbanized area because such intra-urbanized area moves do not present the same concerns as rural to urban moves.").

⁶ See *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 Rule Making, 26 FCC Rcd 2556 (2011) ("*Rural Radio Second R&O*").

⁷ *C.f.* In the Matter of 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 (2006) ("*Community of License R&O*").

⁸ See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1988) ("*Tuck*") (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

⁹ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12836 ¶ 14 (2012) ("*Second Order on Reconsideration*").

an FM station changing its community of license, the contours should be calculated using the authorized transmitter coordinates for the current facility, and the transmitter coordinates specified for the proposed new or modified facility.

Discussion. Under Section 309(e) of the Communications Act of 1934, as amended, (the “Act”),¹⁰ informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity.¹¹ Upon review of the record, we conclude that WTRW has not raised a substantial and material question of fact calling for further inquiry.

We reject WTRW’s counterproposal. Notwithstanding that counterproposals are impermissible when filed against “cut-off” minor change applications,¹² Commission’s policy prohibits a counterproposal that requests the change of a station’s community of license without the licensee’s consent.¹³ In addition, we disagree with WTRW that the Application needs to rebut the urbanized area service presumption (“UASP”). The UASP and *Tuck* showing are triggered when an applicant claims a Priority 3 preference for a first local service. Moreover, the Commission clarified, in the *Second Order on Reconsideration*, if communities are located in the same urbanized area, absent of compelling showing to rebut the UASP, the applicant must claim Priority 4.¹⁴

Gain and Loss Areas. In the *Second Order on Reconsideration*,¹⁵ the Commission stated that the staff can now evaluate the actual proposed transmitter site when determining gain and loss areas for an FM station changing its community of license. We agree with WTRW that the city of license change would not create a net gain in population since Station WOGB(FM) is not changing its transmitter site. Therefore, we conclude that the Application would not create a net gain of 13,985 persons since Citicasters is not proposing a change in Station WOGB(FM)’s transmitter site.

307(b) analysis. We agree with Citicasters that the Station WOGB(FM) community of license change to Reedsville, Wisconsin triggers Priority (4) because the proposal is considered an intra-UA move

¹⁰ 47 U.S.C. § 309(e).

¹¹ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (stating that an informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹² See *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, Report and Order, 7 FCC Rcd 4917(1992), *recon. granted in part and otherwise denied*, Memorandum Opinion and Order, 8 FCC Rcd 4743, 4745 ¶ 13(1993).

¹³ See *Parker, Arizona*, Report and Order, 17 FCC Rcd 9578 (MB 2002) (dismissing a counterproposal because it proposes an involuntary class downgrade, site change, and community of license change for another station).

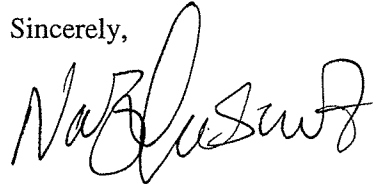
¹⁴ The Commission also stated that “[a]n applicant proposing such an intra-urbanized area move may not claim a Priority (3) preference, unless it also makes a showing to rebut the (UASP). Absent such a showing, the applicant must claim a preference under Priority (4), other public interest matters, by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area.” See *Second Order on Reconsideration* at 12841 (clarifying that “[a]pplicants will not be required to submit *Tuck* showings where both the current and proposed communities are located in the same urbanized area, or the current facilities cover, and the proposed facilities would or could be modified to cover, more than 50 percent of the same urbanized area with a daytime principal community signal).

¹⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12836 ¶ 14 (2012) (“*Second Order on Reconsideration*”).

within Green Bay UA. Under Priority (4), we take into account the number of aural reception services received in the proposed service area, the number of local transmission services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities and their growth rate. Given the fact that the proposal would not result in any population net gains, we request that Citicasters file an amendment to provide a Priority (4) public interest showing, detailing more specific information demonstrating that the proposed city of license modification would result in the public interest.

Conclusion. Accordingly, for the reasons discussed above, we deny the Objection in part and direct Citicasters Licenses, Inc. to amend the Application to provide additional evidence sufficient to establish that the proposed change of community of license constitutes a preferential arrangement of allotments. Failure to file an amendment within 30 days will result in the dismissal of the Application. WTRW Incorporated may submit a response to the amendment within 15 days.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazifa Sawez', written in a cursive style.

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau