

Section 307(b) Statement

Clear Channel Broadcasting Licenses, Inc., the licensee of WQNS(FM), FCC Facility ID No. 41008 (“WQNS” or the “Station”), is requesting a construction permit for the minor modification of the Station to specify technical changes and a change in community of license from Waynesville, North Carolina, to Woodfin, North Carolina (the “Application”).

This exhibit, being filed the Application, together with the Technical Exhibit to the Application, demonstrates that the proposed modification of the Station constitutes a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. Section 307(b)). Furthermore, as set forth in the Technical Exhibit, the facilities specified in the Application is mutually exclusive, as defined in Section 73.207 of the Commission’s Rules, with the current assignment of the Station. The applicant will comply with the local public notice provisions of Sections 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f) of the Commission’s Rules, and understands that the exception contained in Section 73.3580(e) of the Commission’s Rules does not apply to an application proposing to change the community of license of an FM station.

As confirmed in the Technical Exhibit to the Application, there is an assignment/allotment site for the facility at the proposed community of license that fully complies with Sections 73.207 and 73.315 of the Commission’s Rules without resort to Sections 73.213 or 73.215 of the Commission’s Rules.

In determining whether a proposed community of license change constitutes a preferential arrangement of allotments under Section 307(b) of the Act, the Commission

considers whether the proposal would serve one or more of the Commission's four priorities. 1/

Pursuant to Commission policy set forth in its *Rural Radio Order*, 2/ because the proposed community of license of the Station is located within an Urbanized Area (Asheville, North Carolina) (as is the current licensed community of license), given the presumption of service to the Urbanized Area, the Commission will evaluate such a proposal under Priority (4) – other public interest matters. 3/ As stated by the Audio Division, a proponent of such an intra-Urbanized Area modification must “make its showing 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.” 4/ That is, because the Commission “will treat the application, for Section 307(b) purposes, as proposing service to the entire

1/ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) (“*FM Assignment Policies*”). The four priorities are: (i) one full-time aural reception service to a community; (ii) a second full-time aural reception service to a community; (iii) one local transmission service to a community; or (iv) other public interest factors. The second and third criteria have equal priority. *Id.* at 91.

2/ See *Policies to Promote Rural Radio Service and to Streamline Allotment an 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 Order*”), *petitions for recon. pending*.

3/ See *Rural Radio Order*, 26 FCC Rcd at 2567 [¶ 20] (Commission establishes “a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes, as proposing service to the entire urbanized area rather than the named community of license.”). It is noted that no *Tuck* showing was required pre-*Rural Radio Order*, or is required post-*Rural Radio Order*, when the current and proposed communities are both located in an Urbanized Area. See *Radio One Licenses, LLC*, 26 FCC Rcd 14325, 14327 (Chief, Audio Div., Med. Bur. 2011) (“*Radio One Licenses*”) (“As both [the licensed and proposed communities] are located in the Baltimore Urbanized Area, [the applicant] correctly notes that it is not required to provide a showing of community independence under *Faye and Richard Tuck*.”); *Gearhart, Madras, Manzanita, and Seaside, Oregon*, 26 FCC Rcd 10259, 10262 [¶ 9] (Ass’t Chief, Audio Div., Med. Bur. 2011) (“*Gearhart*”) (“there is no need for a *Tuck* showing where both the station’s current and proposed communities of license are located within an Urbanized Area because such intra-urbanized area moves do not present the same concerns as rural to urban moves.”).

4/ *Radio One Licenses*, 26 FCC Rcd at 14327. See also *Gearhart*, 26 FCC Rcd at 10263-64 [¶ 10] (relocation of community of license within Urbanized Area furthers Priority (4) when population increases by over 250,000 persons and additional portion of the Urbanized Area will be served); *Cumulus Licensing LLC*, 26 FCC Rcd 12496 (Chief, Audio Div., Med. Bur. 2011) (post-*Rural Radio Order* change in community of license granted when 60 dBu service increased by over 225,000 persons and former community and service area would continue to receive a multitude of aural services).

urbanized area rather than the named community of license,” 5/ the relocation of the Station from Waynesville to Woodfin is not viewed as the removal of the second local transmission service from one community and establishment of a first local transmission service to a new community. Instead, the Commission evaluates the proposal to determine whether it improves service to the Urbanized Area.

The Technical Exhibit to the Application demonstrates that implementation of the modifications proposed in the Application would allow the Station to provide service to a greater population as compared to the current license – overall and also within the Asheville, North Carolina Urbanized Area. Specifically, the net increase of population to be served within the 60 dBu contour of WQNS(FM) if assigned to Channel 286A at Woodfin as compared to its present assignment is 114,120. In terms of improved service to the Asheville, North Carolina Urbanized Area, as detailed in the Technical Exhibit to the Application, the population served within that Urbanized Area will increase from 64,184 to 148,463, which more than doubles the percentage of the population in the Urbanized Area that would receive 60 dBu service (from 26.4 percent to 61 percent). Similar significant gains in the percentage of the area of the Urbanized Area that would be served (from 30.5 percent to 54.8 percent) are documented in the Technical Exhibit, as are the 70 dBu contour service gains. With this improved service to the Asheville Urbanized Area, the Application clearly constitutes a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment/assignment.

It is noted that, to the extent it is still relevant post-*Rural Radio Order* for an intra-Urbanized Area community, Woodfin, North Carolina, is a community suitable for allotment purposes. Commission precedent holds that a community that is a Census Designated

5/ *Rural Radio Order*, 26 FCC Rcd at 2567 [¶ 20].

Place *or* that is incorporated presumptively qualifies as a community for allotment purposes and thereby merits its own local transmission service. 6/ Woodfin qualifies under both criteria.

Woodfin is listed as a town in the U.S. Census with a 2010 population of 6,123. 7/ The Town of Woodfin was incorporated in 1971. 8/ Woodfin is governed by a Mayor and a six member Board of Aldermen elected through staggered elections. 9/ The Town of Woodfin employs a Town Administrator and Town Clerk. 10/ The Town of Woodfin also maintains: a Police Department, supervised by a Chief of Police; an Environmental Services Department, supervised by a Superintendent; a Street/Public Works Department, with a Department Head; and a Parks and Recreation Department, headed by the Town Administrator. 11/ The Woodfin Board of Aldermen appoints members to the Planning and Zoning Board of Adjustment to review significant subdivisions, conditional uses, potential revisions to land use law, variance requests, rezoning petitions, and similar zoning and planning matters. 12/ The Town operates the Woodfin Community Center, which comfortably seats over 200, features a full kitchen, stage and ample parking, and is available for residents to rent space for a family event, company meeting,

6/ See, e.g., *Cleveland and Ebenezer, Mississippi R&O*, 10 FCC Rcd 8807, 8808 [¶ 6] (MMB 1995) (“The Commission’s long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the community is either incorporated or listed in the U.S. Census.”); see also *Reydon, Oklahoma R&O*, 18 FCC Rcd 3222, 3222 [¶ 2] (MB 2003).

7/ See U.S. Census Bureau, Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data, at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1 (“2010 Census”) (copy at Attachment 1).

8/ See Buncombe County Hazard Mitigation Plan, Draft at 114 (Aug. 23, 2004) at <http://www.buncombecounty.org/common/emergency/Town%20of%20Woodfin.pdf> (excerpt at Attachment 2).

9/ See *id.*

10/ See Town of Woodfin, Annual Budget, Fiscal Year 2012-2013, at <http://www.woodfin-nc.gov/budget/> (“Town of Woodfin Annual Budget”) (copy at Attachment 3).

11/ See *id.* at 23-30.

12/ See Official Government Website for Town of Woodfin, Planning/Zoning at <http://www.woodfin-nc.gov/planningzoning/> (copy at Attachment 4).

church social or similar event. 13/

Buncombe County Schools operates the Woodfin Elementary School in Woodfin, to educate children in grades Kindergarten through fifth grade. 14/ Other educational opportunities in Woodfin include the Asheville Montessori School North, Woodfin Campus, at 360 Weaverville Road. 15/ Social and recreational activities in Woodfin include the Woodfin Golden Age Club, for Woodfin residents aged 55 and up, which meets on the second and fourth Tuesdays of every month, 16/ and the YMCA at 40 North Merrimon Avenue. As noted in a local guidebook, Woodfin has a number of parks: Woodfin River Park, located at 1050 Riverside Drive; Roy Pope Memorial Park, located at 90 Elk Mountain Road; and South Woodfin Park, located at the intersection of Lookout Road and Midwood Drive. 17/

As can be confirmed on website directories, health care providers located in Woodfin include: Acupuncture Center of Asheville, 12 Elk Mountain Road; Blue Ridge Pediatric Dentistry, 218 Elkwood Avenue; Elements of Wellness, 3 Woodfin Avenue; Philip R. Ricker, OMD, 12 Elk Mountain Road; and Temple Guardian Integrative Health Solutions, 3 Woodfin Avenue. Houses of worship within Woodfin include: Church of The Redeemer, 1201 Riverside Drive; Elk Mountain Baptist, 197 Elk Mountain Road; Elkwood Methodist Church, 27 Elkwood Avenue; Gateway Christian Community, 20 Integrity Drive; and Jehovah's Witnesses Kingdom Hall North Congregation, 40 Brookdale Road.

13/ See Official Government Website for Town of Woodfin, Community Center, at <http://www.woodfin-nc.gov/community-center> (copy at Attachment 5).

14/ See Buncombe County Schools, Woodfin Elementary, at <http://www.buncombe.k12.nc.us/domain/1714> (copy at Attachment 6).

15/ See Asheville Montessori School, Woodfin Campus, at <http://www.ashevillmontessorischool.com/woodfin-campus/woodfin-map/> (copy at Attachment 7).

16/ See Official Government Website for Town of Woodfin, Woodfin Golden Age Club, at <http://www.woodfin-nc.gov/woodfin-golden-age-club/> (copy at Attachment 8).

17/ See The Ultimate Guide to Asheville & The Western North Carolina Mountains at <http://www.ashevilleguidebook.com/wnc/wnc-cities/woodfin.htm> (copy at Attachment 9).

The following are among the food establishments in Woodfin: The Bavarian Restaurant & Biergarten, 332 Weaverville Highway; Bellagio Bistro, 133 Weaverville Road; and Frank's Roman Pizza, 85 Weaverville Road. Examples of other businesses located in Woodfin are: Biblio Bookstore, 2002 Riverside Drive; The Cinema Preservation Group, 2002 Riverside Drive; East Coast Medical Oxygen, 310 Elk Park Drive; I Play, 2000 Riverside Drive; Mike's Auto Service, 108 Elkwood Avenue; Mills Manufacturing Corporation, 22 Mills Place; Real World Audio, 512 Elk Park Drive; and Reds Service Center, 80 Weaverville Highway.

Woodfin is a growing town, with plans for further development. The population of Woodfin has nearly doubled from 2000 to 2010 – from 3,162 to 6,123 persons, a 93.6 percent increase. ^{18/} As stated by the Woodfin Town Administrator in the 2012-2013 Town Budget: “The Town continues to identify novel and innovative approaches in order to maintain its footing as a regional economic engine. The primary tool of this strategy is focusing efforts on luring large scale commercial and medium scale industrial development to our community.” ^{19/}

In sum, Woodfin is well qualified to be assigned an FM station allotment, and the public, and in particular the residents of the Asheville Urbanized Area, will be better served under the proposal set forth in the Application than the current station allocation. The record here establishes that grant of the Application would further the public interest in the fair, efficient, and equitable distribution of radio services.

^{18/} See Quick Facts from the US Census Bureau, Woodfin, at <http://quickfacts.census.gov/qfd/states/37/3775280.html> (copy at Attachment 10). In comparison, the Station's current community of license, Waynesville, experienced only a 6.9 percent population increase over that ten year period. See Quick Facts from the US Census Bureau, Waynesville, at <http://quickfacts.census.gov/qfd/states/37/3771500.html> (copy at Attachment 11).

^{19/} See supra note 10, Town of Woodfin Annual Budget, at 10.