ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
SSR Communications, Inc.	)	
For a Minor Change in Licensed Facility	)	BPH-20070222ABD
Station WYAB(FM), Flora, Mississippi	)	Fac. ID No.77646
	)	

To: Office of the Secretary
Attn: Audio Division, Media Bureau

REPLY

Central Mississippi Development Group ("Petitioner"), by its counsel, and pursuant to Section 1.106 of the Commission's Rules, hereby replies to the "Opposition to Petition for Reconsideration" filed by SSR Communications, Inc. ("SSR") on March 24, 2008. SSR's Opposition asserts that the Petitioner does not have standing and that the Commission's grant of the above captioned application was proper based on its interpretation of Section 73.3573(g)(2) of the Commission's Rules. However this interpretation is untenable and would undermine the foundations upon which the new community of license procedures rest.[1] In support hereof, Petitioner states as follows:

1. The majority of SSR's Opposition is focused Petitioner's lack of standing to file a Petition for Reconsideration of the grant of the above captioned application and its failure to participate earlier. Petitioner offered its explanation as to why it did not participate earlier. The explanation was honest and forthright. Beyond that no purpose would be served by focusing on

[1] *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) ("Streamlining Order").

the Petitioner.[2] What matters is whether the issue that Petitioner raises is so basic and fundamental to the new community of license procedures, that the Commission must undertake to clarify or revise its rules regardless of Petitioner's alleged procedural irregularities. In this regard, it is undisputed that Ch. 280A at the reference coordinates offered by SSR at Flora does not conflict with the current WYAB license site at Benton. While the proposed application site at Flora does conflict with the current WYAB site, the proposed site is short spaced to WCLD, Cleveland, Mississippi and therefore not eligible to permit the allotment of Ch. 280A to Flora. Therefore SSR designated a separate allotment site in order to justify the allotment of Ch. 280A to Flora under the Commission's rules. These facts are undisputed. What is disputed is whether the Commission requires the allotment site to be mutually exclusive with the licensee's current facilities. SSR does not dispute that the Commission's previous rule making procedures. which required that an allotment site must be identified that is mutually exclusive with the station's existing site in order to warrant a change in city of license and that Section 1.420(i). clearly requires that mutually exclusivity. Therefore it is essential that the Commission determine whether it intended to have Section 73.3573(g)(2) completely supersede Section 1.420(i). It is Petitioner's position that the fundamental theories of due process underlying the Ashbacker[3] case prohibit the use of an allotment site which does not conflict with the station's current site.

2. In the Streamlining Order, the Commission responded to opponents who were concerned with "cutting off the rights of competing proponents who may propose superior

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[2] SSR also notes that Petitioner's counsel was aware of the pending WYAB application because SSR's principal contacted counsel seeking his assistance in asking Capstar TX Limited Partnership ("Capstar") to agree to backfill Benton with Station WQJQ, Kosciusko, MS. Counsel acknowledges that he was contacted by SSR's principal, that he did contact Capstar, and that Capstar was not willing to change the city of license for Station WQJQ to Benton. That was the extent of the contact and counsel's involvement until he was retained by Petitioner after the WYAB permit was issued.

[3] *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

arrangement of allotments."[4] The Commission understood that this argument was based on Ashbacker principles and concluded that as long as the application proposes to be mutually exclusive with the current facilities, no other parties would be able to offer a competing proposal.[5] The Commission relied on the same reasoning that it used for the one step upgrade in class procedures,[6] and in doing so, the Commission clearly intended requiring that an allotment site must be specified that would allow the new community to be allotted a channel consistent with Section 73.207 and 73.315. It is therefore axiomatic that the new allotment site must also be mutually exclusive with the current assignment. Otherwise, such a precedent would eviscerate the allotment stage of the community of license change process and obliterate the integrity of the FM allocation process.

3. As SSR points out, Section 73.3573(g)(2) of the Commission's Rules states that "the facilities specified by the applicant at the proposed community of license must be mutually exclusive ... with the applicant's current assignment."[7] The Commission may have intended that this provision be adhered to in addition to Section 1.420(i) rather than in lieu of the latter provision. Otherwise, the Commission would have deleted Section 1.420(i) since it would serve no other purpose. Alternatively, SSR's interpretation of the word "facilities" in this provision is incorrect. Thus, when the Commission drafted the language in Section 73.3573(g)(2), it must have been referring to a station's allotment reference coordinates when it used the word

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[4] *Streamlining Order* at para. 7.

[5] Citing *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989). In this *Order*, the Commission stated that "the procedure is limited to situations in which the new allotment would be mutually exclusive with the existing allotment." (emphasis added) *Id.* at ¶22. Because community of license change applications filed pursuant to the *Streamlining Order* include an allotment component, Section 1.420(i) and the policies underlying this rule are applicable to community of license change applications.

[6] *See Amendment to the Commission's Rules to Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735 (1993).

[7] 47 C.F.R. §73.3573(g)(2).

facilities.[8] To interpret this provision in the manner asserted by SSR would result in eliminating the need for allotment coordinates entirely. SSR's position is even more untenable in view of its reliance on a short spaced application site (under Section 73.215) to be mutually exclusive with the station's current assignment at Benton. A short spaced site cannot be specified to justify the new designation of a channel at Flora.[9]

4. SSR's interpretation of Section 73.3573 is also contrary to the intent of the Commission.[10] When the Commission adopted new allotment procedures, which streamlined the process to change a station's community of license from two-steps to one-step,[11] it did not eliminate the allotment rules and policies inherent in the rule making step. Rather it combined them at the application stage. One of the fundamental tenets of the Commission's allotment rules and policies is that a station can change community of license without subjecting the license to competing expressions of interest only "where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."[12] (emphasis added).

5. SSR claims that Section 1.420(i) of the Commission's Rules is now irrelevant to community of license change applications filed under the new rules. If this were true, however, it would entirely eliminate the purpose of allotment reference coordinates, which the

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[8] This conclusion is supported by the fact that the Commission does not require that a station's proposed antenna location coordinates be mutually exclusive with a station's present assignment. For example, under the old rules, applicants filing an application implementing a rule making to change community of license did not demonstrate that the transmitter site facilities were mutually exclusive with the station's previous assignment.

[9] Section 73.3573(g)(4) states that "non reserved bad applications must demonstrate the existence of a suitable assignment or allotment site that fully complies with Sections 73.207 and 73.315 without resort to 73.213 or 73.215." Thus, SSR's position is internally inconsistent.

[10] Commission staff has informally indicated that there several provisions in Section 73.3573 that need to be clarified or rewritten in the context of the pending Petitions for Reconsideration in *Streamlining Order* and that the Commission will make the appropriate changes to reflect the actual intent of the Commission. It should do so here.

[11] *See Streamlining Order.*

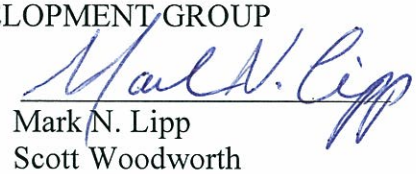
[12] *See* 47 C.F.R. §1.420(i). This rule was promulgated in 1989 when the Commission permitted stations to change community of license without subjecting the license to competing expressions of interest. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License,* 4 FCC Rcd 4870 (1989).

Commission did not do when it adopted the *Streamlining Order*. While the Commission did remove existing stations and permits from the FM Table of Allotments contained in Section 73.202(b), it did not eliminate existing stations' allotment. Rather, a station's allotment is now modified when the new construction permit is issued. For example, Special Operating Condition No. 3 of the WYAB permit expressly modifies WYAB's license to specify operation on Channel 280A at Flora in lieu of Channel 226A at Benton. In fact, the permit actually deletes the allotment at Benton and adds the allotment at Flora consistent with how the Commission amended the FM Table of Allotments under the old rules. Thus, it is clear that there is still a need for allotment coordinates. Further, if the Commission intended to eliminate the allotment when it adopted the *Streamlining Order* it would have permitted applicants to demonstrate compliance with Sections 73.207 and 73.315 from the station's antenna location coordinates. It did not. As mentioned, Section 73.3573(g)(4) requires applicants to demonstrate the existence of an allotment site that complies with Sections 73.207 and 73.315. Moreover, if the allotment reference coordinates were eliminated, there would have been some discussion or explanation in the *Streamlining Order* of such a fundamental change in the process.

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that the Commission rescind the grant of the above captioned application.

Respectfully submitted,

CENTRAL MISSISSIPPI
DEVELOPMENT GROUP

By: 

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April 3, 2008

CERTIFICATE OF SERVICE

I, Elbert Ortiz, in the law firm of Wiley Rein LLP, do hereby certify that I have on this 3rd day of April, 2008, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Reply**" to the following:

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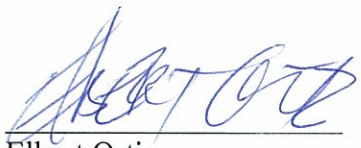

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