



Federal Communications Commission
Washington, D.C. 20554

November 07, 2013

In Reply Refer to:
1800B3-RFS

Fred Hannel
10733 East Butherus Drive
Scottsdale, Arizona 85255

Re: New FM, Leahey, Texas
Facility ID No: 191569
File No: BNPH-20130724AGO

Dear Mr. Hannel:

This letter refers to the long-form application (the "Application") of Radio Dalhart, Inc. ("Radio Dalhart"), winning bidder in Auction 94 for FM Channel 257A at Leahey, Texas. The Application proposes to change the community of license from Leahey, Texas, to Comstock, Texas. For the reasons discussed below, we request Radio Dalhart to amend the Application.

Background. The 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. Any reallocation proposal must result in a preferential arrangement of allotments² under the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

Radio Dalhart states that the Application proposes a community of license modification for the new FM Station, Channel 257A, from Leahey, Texas, to Comstock, Texas, and it states that the proposed use of Channel 257A at Comstock is mutually exclusive with the current allotment of Channel 257A at Leahey, Texas. It states that the community of Comstock, Texas (2010 U.S. Census population of 600 persons), is located in Val Verde County, and will receive a first local service while Leahey will continue to receive local service from FM Station KXQK(FM). Radio Dalhart contends that the Application would result in the public interest.

Discussion. We find that the reallocation of the new FM station from Leahey, Texas, to Comstock, Texas would not result in the public interest because the proposed facility modification would create impermissible gray loss areas. Generally, the removal of an unbuilt station would not present the same parallel concerns with loss of service represented by the removal of an operational station because it

¹ 47 C.F.R. § 73.3573(g).

² See *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).

is not a transmission service that the public has become reliant upon.⁴ In *Rural Radio Second R&O*, the Commission set an absolute bar against removal of any facility modification that would create white and gray loss areas.⁵ In this regard, our staff engineering analysis⁶ determines that the reallocation of the new FM station to Comstock, Texas would leave a gray area of 283 km² containing 27 persons in the loss area. Additionally, we recognize that the relocation would provide a second aural reception service to 237 persons within a gray area of 845 km² according to the staff engineering analysis but that does not negate the fact that the proposed facility modification would result in an impermissible gray loss area containing 27 persons.⁷ Based on the foregoing, we find that the Application would not result in the public interest in compliance with the policy set forth in *Rural Radio Second R&O* because it creates impermissible gray loss areas.⁸

Conclusion. Accordingly, for the reasons discussed above, we direct Radio Dalhart to amend the Application within 30 days from the date of this letter.

Sincerely,



Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

cc: Radio Dalhart, Inc.

⁴ See *Chatom and Grove Hill, Alabama*, Report and Order, 12 FCC Rcd 7664 (MMB 1997).

⁵ 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, 2577 ¶ 39 (2011) (“*Rural Radio Second R&O*”); see also *Evan D. Carb*, Letter, 28 FCC Rcd 5667 (MB 2013)(rejecting a city of license modification for a New FM station because it created an impermissible gray loss area stating that the Commission’s imposition of an absolute bar on the creation of “white” or “gray” loss areas in change of community cases makes the size of the loss area immaterial and supersedes prior decisions to the contrary).

⁶ The gain and loss population calculations are based upon the new criteria set forth in the *Second Order on Reconsideration*. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12836 ¶¶ 14-17 (2012).

⁷ *Id.* note 4.

⁸ *Id.* note 5.