



Federal Communications Commission
Washington, D.C. 20554

January 25, 2008

DA 08-160

In Reply Refer to:
1800B3-JBS/KCB/JP
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Mr. Martin D. Hadfield
Vice President, Engineering
Entercom Sacramento License, LLC
5345 Madison Avenue
Sacramento, CA 95841

In re: KCTC(AM), West Sacramento, CA
Entercom Sacramento License, LLC
Facility ID No. 67848
File No. BP-20070119ACI

Dear Mr. Hadfield:

We have before us the captioned minor change application (the "Application") filed by Entercom Sacramento License, LLC ("Entercom"), licensee of Station KCTC(AM), Sacramento, California (the "Station") and a February 19, 2007, Informal Objection filed by D. Scott McDonald ("McDonald"). For the reasons set forth below, we deny McDonald's Informal Objection and grant the Application.

Background. Station KCTC(AM) is currently licensed to serve Sacramento, California, with daytime and nighttime facilities located at separate sites. Following the sale and impending loss of the current nighttime site, Entercom filed the Application for a construction permit to relocate the nighttime transmission site of the Station to the presently licensed daytime transmission site of Station KCTC(AM) on January 19, 2007. To comply with the Commission's applicable technical requirements, and to protect licensed and proposed facilities from impermissible interference, Entercom proposes a reduction in nighttime power from 5 kW to 500 watts and a change in the Station's designated community of license to West Sacramento, California. It proposes no change to KCTC(AM)'s existing 5 kW daytime operation.

On February 19, 2007, McDonald filed an Informal Objection against the Application. McDonald states that the Commission should not grant the Application because the proposal will greatly reduce existing nighttime service to the Sacramento market; this, he claims, would render the Station "worthless" and thus, that implementation of the proposed facility modification would not be "to the benefit of the Sacramento radio consumer." On June, 4, 2007, Entercom filed a Response to the Informal Objection (the "Response") which included an engineering statement. According to Entercom's engineering statement, the loss of some nighttime interference-free ("NIF") service as a result of the change will be offset by an increase in new NIF service beyond the area served by the current licensed nighttime facilities.¹ In addition, Entercom submits that the entire "loss" area is extremely well-served by existing stations which provide NIF service to all or a portion of the affected area.²

¹ See Entercom's Response, Engineering Statement, Exhibit 1.

² See Entercom's Response, Engineering Statement, Exhibits 2 & 3.

Discussion. Informal Objection. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”),³ 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 Section 309(a) of the Act,⁴ which governs our evaluation of grant of a construction permit application. Specifically, Section 309(a) provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters as that we may officially notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.

As an initial matter, we note that the reduction in nighttime power and change in the Station’s designated community of license is required to bring the Station into compliance with the Commission’s technical requirements. To the extent that the Application proposes West Sacramento as the Station’s new community of license, allegations regarding a reduction in coverage to Sacramento are not relevant.

McDonald’s main objection is that the facility change would result in a reduction in existing nighttime service. We recognize that McDonald’s allegation is correct, in that the proposed facilities modifications will result in a net loss of the Station’s NIF service area. However, this loss area is offset, in part, by an increase in new NIF service beyond that currently provided by the Station.⁵ Moreover, the entire loss area is extremely well served by existing stations, including at least forty-two radio stations which provide NIF AM or protected FM service to all or a portion of the affected area. At least three AM stations provide NIF service and at least 10 FM stations provide protected service to the entire loss area.⁶ Based on the above, we find that the McDonald has not raised a substantial and material question of fact warranting further inquiry.

The Application. The procedure for changes in community of license for full-power AM and FM broadcast stations was revised in 2006.⁷ Such changes are now considered minor modifications, requiring an applicant to file a minor modification application along with a detailed exhibit demonstrating that the proposed change constitutes a preferential arrangement of allotments under Section 307(b) of the Act⁸ as compared to the current arrangement of allotments.

³ 47 U.S.C. § 309(e).

⁴ 47 U.S.C. § 309(a). *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), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁵ *See* Entercom’s Response, Engineering Statement, Exhibits 1, 2 & 3.

⁶ *Id.*

⁷ *See 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 Report and Order*”).

⁸ 47 U.S.C. § 307(b).

We have evaluated Entercom's submissions and we find that the Application proposes a preferential arrangement of allotments under Section 307(b) of the Act.⁹ There is currently one station licensed to West Sacramento, and thus Entercom's proposal must be evaluated under priority (4), "other public interest matters." Retention of Station KCTC(AM) in Sacramento is also evaluated under priority (4) because there are currently nineteen stations licensed to Sacramento. Entercom has shown that it must relocate the Station's nighttime facilities. After an exhaustive search for a new site,¹⁰ Entercom determined that the "best option available" was to co-locate the Station's daytime and nighttime facilities, despite having to reduce nighttime power to comply with the Rules.¹¹ Entercom acknowledges that it cannot meet the nighttime city coverage requirements contained in Section 73.24(i) of the Rules,¹² and thus proposed a new community of license, West Sacramento, in the Application. The net loss of NIF service is not decisional because Sacramento retains ample local service, and the nighttime "loss area" created by the relocation of KCTC(AM)'s nighttime facilities is well-served by other stations.

Conclusion/Actions. Accordingly, it is ORDERED, that the Informal Objection of D. Scott McDonald IS DENIED. It is FURTHER ORDERED, that the application (File No. BP-2007019ACI) for modification of the facilities of Station KCTC(AM), West Sacramento, California IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Brian M. Madden, Esq. (Counsel for Entercomn Sacramento License, LLC)
D. Scott McDonald (by e-mail)

⁹ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88 (1982) ("*FM Assignment Policies*"). The FM allotment priorities are as follows: (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). The priorities set forth in *FM Assignment Policies* are also used in evaluating applicants for new AM stations. *Alessandro Broadcasting Co.*, Decision, 99 FCC2d 1 (Rev. Bd. 1984).

¹⁰ At the request of the staff, Entercom submitted a letter on August 20, 2007, detailing its efforts to investigate alternative sites to preserve KCTC(AM)'s 5 kW nighttime operation. It details the investigation of four separate sites, each of which ultimately was rejected because the owner refused to sell the property, local zoning ordinances forbade construction of the necessary tower array, or because the site was prohibitively expensive.

¹¹ *Community of License Report and Order* at 14229-30.

¹² 47 C.F.R. § 73.34(i), which requires, *inter alia*, that an AM station's nighttime 5 mV/m contour or NIF cover 80% of the station's community of license.