



Federal Communications Commission
Washington, D.C. 20554

February 29, 2016

In Reply Refer to:
1800B3-RFS

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
Post Office Box 41177
Washington, DC 20018-0577

In re: KQOH(FM), Marshfield, Missouri
Facility ID No. 76946
File No. BPED-20150810AED

Dear Counsel:

We have before us a minor change application, as amended, filed by Catholic Radio Network, Inc. ("Catholic Radio"), licensee of Station KQOH(FM), Channel 220A, Marshfield, Missouri. The Application proposes to change the community of license of Station KQOH(FM) from Marshfield to Fair Grove, Missouri. For the reasons set forth below, we dismiss the Application.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules, which sets forth the requirements for modification of an FM Station license to specify a new community of license without providing an opportunity for competing expressions 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 allotments.¹ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.²

The proposed change of community of license would constitute a move into the Springfield urbanized area because the station could be modified to cover over 50 percent of the urbanized area. In compliance with *Rural Radio*,³ Catholic Radio submitted a *Tuck Showing* demonstrating that Fair Grove is independent of the Springfield urbanized area warranting a first local preference.

¹ See 47 C.F.R. § 73.3573(g). 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).

² *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).

³ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 25 FCC Rcd 2556, 2567 (subsequent history omitted) ("*Rural Radio*"). The Commission further provided that this presumption may be rebutted by a "compelling showing" of the independence of the community from the urbanized area, the community's specific need for an outlet for local expression, and the ability of the proposed station to provide that outlet. *Id.* at 2572.

Discussion. The Commission established a rebuttable presumption “that when the community proposed is located in an urbanized area, would cover over 50 percent or could through a rule-compliant minor modification application without changing the proposed antenna configuration or site, cover 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.”⁴ Catholic Radio has attempted to rebut this presumption and claims that the relocation of Station KQOH(FM) would result in a first local service at Fair Grove under Priority 3 of the FM Allotment Priorities rather than an additional station in the Springfield Urbanized Area. We disagree. The two primary prongs of the *Tuck*⁵ test – (1) the degree to which the proposed station will provide coverage to the urbanized area and (2) the size and proximity of the proposed community relative to the central city of the urbanized area -- support application of the presumption. Specifically, under prong (1), Station KQOH(FM) could cover at least 50 percent of the Springfield Urbanized Area with a 70 dBu signal. Likewise, under prong (2), Fair Grove (located 14.8 miles) is within close proximity of Springfield, and Fair Grove’s population (1,393 persons) is relatively small in relation to the population of Springfield (159,498 persons). While there is a mixed showing on the third prong, the interdependence of the proposed community and the urbanized area, we find that this is insufficient to rebut the presumption given that primary emphasis is now placed on the first two prongs.⁶ Accordingly, we conclude that Catholic Network has not made a “compelling” showing to rebut the presumption that the reallocation of Station KQOH(FM) to Fair Grove, Missouri would be an additional station in the Springfield Urbanized Area rather than a first local service at Fair Grove under Priority 3. Therefore, we will examine the Application under Priority 4, other public interest considerations.

We find, under Priority 4, the Application would not result in a preferential arrangement of allotments. Specifically, the reallocation is considered a “move-in” of Station KQOH(FM) as at least a twenty-seventh service to the Springfield urbanized area and the loss of a second local service at the community of Marshfield, Missouri (population 6,633 persons). Under established precedent,⁷ the retention of a second local service at Marshfield is preferred over an additional service to the Springfield urbanized area under Priority 4. While there would be a net gain of service to 119,087 persons, this gain in service does not outweigh the loss of a second local transmission service.⁸ The entire gain area is well served with more than five reception services. Accordingly, we conclude that the Application is disfavored under Section 307(b) and Priority 4.

⁴ See *Rural Radio*, 26 FCC Rcd at 2572 (¶ 30).

⁵ See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (“*Tuck*”).

⁶ *Id.* note 4.

⁷ See, e.g., *KTIA Letter*, 27 FCC Rcd at 172 (finding, under Priority 4, that retention of fourth local service at Boone is preferred over the allotment of a seventeenth local service to the Des Moines, Iowa, urbanized area; *Bryan Broadcasting*, Letter, 27 FCC Rcd 8058, 8064 (MB 2012) (dismissing application and finding that retention of second local service at one community is preferred under Priority 4 over addition of a twelfth local service to an urbanized area).

⁸ See, e.g., *KTIA Letter*, 27 FCC Rcd at 172 (finding that a net gain of service is not decisionally significant where gain and loss areas are well served and there would be a loss of a fourth local service).

Conclusion. Based on the foregoing, the Application, File No. BPED-20150810AED is unacceptable for filing pursuant to 47 C.F.R. § 73.3566(a) and is HEREBY DISMISSED.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nazifa Sawez".

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau