



Federal Communications Commission
Washington, D.C. 20554

December 4, 2012

In Reply Refer to:
1800B3-RFS

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Re: New FM, Belle Rose, Louisiana
Facility ID No: 190402
File No: BNPH-20120515ABA

Dear Counsel:

This letter refers to the referenced minor change community of license application of Alex Media, Inc. ("Alex Media"), winning bidder in Auction 93 for Channel 295C3 at Franklin, Louisiana. Alex Media proposes the community of license modification for the new FM station from Channel 295C3 at Franklin, Louisiana, to Channel 295A at Belle Rose, Louisiana, as the community's first local service. Guaranty Broadcasting Company of Baton Rouge, LLC ("Guaranty Broadcasting")¹ filed Comments and Opposition ("Informal Objection").² Alex Media filed a Response to Informal Objection ("Reply"). For the reasons discussed below, we grant the community of license modification application for a new FM station at Belle Rose, and deny the Informal Objection.

Background. This application was filed pursuant to Section 73.3573(g) of the Commission's Rules,³ 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. Among other requirements, an applicant for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments⁴ under the FM allotment priorities set forth in *Revision of FM Assignment Policies and*

¹ Guaranty Broadcasting is the licensee of radio stations WDGL(FM) and WTGE(FM), Baton Rouge, Louisiana; WBRP(FM), Baker, Louisiana; KYPY(FM), Donaldsonville, Louisiana; and WNXXFM, Jackson, Louisiana. Guaranty states that all of these stations serve the Baton Rouge radio market, and they would be competitors to the new proposed Belle Rose station. It states that these stations in the Baton Rouge radio market would be adversely affected by grant of the instant application.

² Guaranty Broadcasting also filed a Supplement to Informal Objection ("Supplement").

³ 47 C.F.R. § 73.3573(g).

*Procedures.*⁵

In support of its proposal, Alex Media states that the proposed use of Channel 295A at Belle Rose, Louisiana is mutually exclusive with the current use of Channel 295C3 at Franklin, Louisiana; and its proposed city of license modification results in a preferential arrangement of allotments under Priority (3) because Belle Rose (2010 U.S. Census population of 1,902 persons) would receive a first local service, whereas the retention of the new FM station at Franklin (2010 U.S. Census population of 7,660 persons) would advance Priority (4) since Franklin would retain a second local service.⁶ Moreover, Alex Media states that the community is not located within the defined boundaries of the Baton Rouge (“Urbanized Area”) UA. In compliance with *Rural 2d R&O*,⁷ Alex Media certifies that, at the time of filing, there were no existing towers available which the proposed station could subsequently be modified to cover at least fifty percent of the Baton Rouge UA. In addition, Alex Media states that its proposal involves a new unbuilt FM station so the proposed city of license modification would not be remove an “existing” second local service from Franklin, a community larger than 7,500 persons.⁸

Informal Objection. Guaranty Broadcasting filed comments opposing Alex Media’s application because it states that the community of Belle Rose is smaller than Franklin, and the population of Belle Rose is less than one percent of the population of the nearby city of Baton Rouge (2010 U.S. Census population of 229,493 persons). Guaranty Broadcasting questions Alex Media’s intention to serve the community of Belle Rose in lieu of the more lucrative Baton Rouge UA, and it argues that Belle Rose is not independent of the Baton Rouge UA under the revised Commission’s policies.⁹ Thus, Guaranty Broadcasting claims that the application should be dismissed because Alex Media could modify its facilities to cover at least fifty percent of the Baton Rouge UA.

Reply. Alex Media contends that its proposal complies with all current Commission policies, and applicable case precedent. It reiterates that the proposed city of license modification to Belle Rose, Louisiana results in a preferential arrangement of allotments under Priority (3). Alex Media argues that it provided the required certification that stated that there are no available transmitter sites where the new FM station could be modified to cover at least fifty percent of the Baton Rouge UA, and meet the city-

⁴ See 47 C.F.R. § 73.3573(g)(1). 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).

⁵ *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).

⁶ *Id.* Additionally, Alex Media asserts that the proposed Channel 295A at Belle Rose could provide a new reception service to 153,554 persons while Channel 295C3 at Franklin would provide a new reception service to 65,225 persons, a net gain increase of 88,329 persons. It states that both the gain and loss areas are considered well-served with at five reception services, and the proposal does not create any white and gray areas.

⁷ 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, 26 FCC Rcd 2556, 2567, 2575 ¶ 35 n. 97 (2011)(“*Rural 2d R&O*”) (stating that an applicant must certify that no rule-compliant sites are available from which the station could be modified to cover at least fifty percent of an urbanized area).

⁸ *Rural 2d R&O* at 2578.

⁹ *Rural 2d R&O* at 2576 ¶ 36.

grade requirements for the community of Belle Rose. In this regard, Alex Media states that Guaranty Broadcasting did not rebut the certification, nor did it provide any engineering evidence that Belle Rose is located within the Baton Rouge UA or that the new FM station could move to any existing tower from which it could cover fifty percent or more of that urbanized area.

Discussion. Under Section 309(e) of the Communications Act of 1934, as amended, (the “Act”),¹⁰ informal objections, like petitions to deny, must 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 the public interest, convenience and necessity.¹¹ Upon review of the record, we conclude that Guaranty Broadcasting has not raised a substantial and material question of fact calling for further inquiry.

Application of USAP. We disagree with Guaranty Broadcasting’s claim that the urbanized area service presumption (USAP) should apply to Alex Media’s proposal. In compliance with the *Rural 2d R&O*, Alex Media certified that there were no rule-compliant transmitter sites available from which the new FM station could be modified to cover fifty percent or more of the Baton Rouge UA, and the community of Belle Rose, Louisiana.¹² Moreover, a staff engineering analysis confirms that there are no towers available where the proposal could modify to provide at least fifty percent coverage to any urbanized areas while maintaining the required city-grade coverage at Belle Rose.

307(b) analysis. We examine Alex Media’s proposal under Priority (3).¹³ First, we must compare the existing allotment versus the proposed allotment to determine if the proposal is a preferential arrangement of allotments and results in public interest. We agree with Alex Media that the community of license modification for the new FM station to Belle Rose, Louisiana results in a preferential arrangement of allotments under Priority (3) because a first local service to Belle Rose is preferred over the retention of a potential second local service at Franklin, Louisiana.¹⁴ Additionally, we find that the proposal does not remove an “existing” second local service from Franklin, a community larger than 7,500 persons¹⁵ because the new FM station is unconstructed, and it is not considered an “existing” second local service to the community of Franklin.

Conclusion. We have evaluated Alex Media’s application and find that it complies with all pertinent statutory and regulatory requirements and that its grant would further the public interest,

¹⁰ 47 U.S.C. § 309(e).

¹¹ 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), *reh’g denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (stating that an informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹² *Id.* note 7.

¹³ *Id.* note 5.

¹⁴ Additionally, the staff engineering analysis determines that the relocation would provide a new reception service to 151,534 persons, a net gain of 86,536 persons. The loss area contains 64,998 persons. Both the gain and loss areas are considered well-served with more than five reception services. 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, FCC 12-127 ¶¶ 14-17 (rel. Oct. 12, 2012).

¹⁵ *Rural 2d R&O* at 2578.

convenience, and necessity. Therefore, IT IS ORDERED, that the application filed by Alex Media (File No. BNPH-20120515ABA) for minor modification to the facilities of the new FM station, from Channel 295C3 at Franklin, Louisiana, to Channel 295A at Belle Rose, Louisiana IS HEREBY GRANTED.

IT IS FURTHER ORDERED, that the Informal Objection filed by Guaranty Broadcasting, IS HEREBY DENIED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nazifa Sawez", with a stylized flourish at the end.

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau