



Federal Communications Commission  
Washington, D.C. 20554

May 2, 2023

*In Reply Refer to:*  
1800B3-TSN

**EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

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**Re: WLXA(FM), Loretto, Tennessee**  
Facility ID No. 53875  
Application File No. BPH-20161012AAD

Dear Counsel:

We have before us the above-referenced application (Application) of Radio7Media, LLC (Radio7), to modify the license of station WLXA(FM), Loretto, Tennessee (WLXA), to change WLXA's community of license from Loretto to Florence, Alabama. We also have before us a Petition to Deny the Application (Petition) filed by Big River Broadcasting Corp. (Big River).<sup>1</sup> As discussed below, we grant the Application.

**Background.** As noted above, in the Application Radio7 seeks a minor modification of the WLXA license to change its community of license. Because WLXA's current 70 dBμ principal community contour covers more than 50% of the nearby Florence-Muscle Shoals, Alabama, Urbanized Area (Florence UA), it is presumed to serve the Florence UA under the Urbanized Area Service Presumption (UASP) established in the Commission's Rural Radio proceeding.<sup>2</sup> Radio7 thus requested that we consider the community of license change application from Loretto, Tennessee, to Florence,

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<sup>1</sup> Because a Petition to Deny does not lie against an application for a minor modification to a station's facilities, we consider Big River's Petition as an Informal Objection. 47 U.S.C. § 309(c)(2)(A), (d)(1).

<sup>2</sup> 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, 2572-73, para. 30 (2011) (*Rural Radio Second Report and Order*), on reconsideration, Second Order on Reconsideration, 27 FCC Rcd 17642 (2012) (*Rural Radio Second Order on Reconsideration*) (collectively, *Rural Radio*).

Alabama, under Priority (4) of the four allotment priorities applying section 307(b) of the Communications Act.<sup>3</sup> Big River filed its initial Petition, contending that a move of an FM station from a community outside the geographic boundaries of an Urbanized Area to the central community in an Urbanized Area does not constitute an intra-Urbanized Area change of community of license, nor is it supported by precedent; that the Application proposed to remove the sole local service from Loretto, Tennessee; and that while the Application proposed to serve a greater population within WLXA's 70 dBμ contour and eliminated a short spacing, it would result in a decrease in population served within WLXA's 60 dBμ service contour.

Staff engineering analysis confirmed that the Application as originally filed would, as Big River asserted, result in a reduction in population served within WLXA's 60 dBμ contour. The staff accordingly sent Radio7 a deficiency letter pursuant to section 73.3522(c)(2) of the rules,<sup>4</sup> giving Radio7 the opportunity to file an amendment to the Application specifying a preferential arrangement of allotments, and holding the Petition in abeyance. Radio7 then filed an amended Application on September 29, 2022, proposing a site change from the original Application. Radio7 stated that from the new site WLXA would yield an increase in the covered population within the 60 dBμ contour of 5,370 persons, and the site change would eliminate any population loss area.

On October 21, 2022, Big River filed a Supplement to the Petition (Supplement), reiterating its belief that WLXA's coverage of more than 50% of the Florence-Muscle Shoals UA is "merely a rebuttable presumption."<sup>5</sup> To rebut the presumption, Big River argues that Loretto is "an active and vibrant community, independent of the Florence-Muscle Shoals, Alabama Urbanized Area."<sup>6</sup> Big River further attaches WLXA's issues and programs lists, which it asserts demonstrate that WLXA primarily covers issues surrounding Lawrence County, Tennessee (in which Loretto is located) and not the Florence UA. In alleging that Loretto is independent of the Florence UA, Big River argues that the UASP is rebutted and, accordingly, that WLXA should be considered to be the sole local radio service at Loretto and not merely an additional service to the Florence UA. As the Commission generally prohibits removing the sole local transmission service from a community,<sup>7</sup> Big River contends that the Application must be denied.

On February 28, 2023, Radio7 advised the Media Bureau (Bureau) that daytime-only AM station WWLX(AM) (WWLX) was granted a construction permit to change its community of license to Loretto, Tennessee.<sup>8</sup> Radio7 thus contends that the WLXA move would in any event not remove the sole local

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<sup>3</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 F.C.C.2d88, 91-93 (1982); 47 U.S.C. § 307(b).

<sup>4</sup> 47 CFR § 73.3522(c)(2). See Letter from Rodolfo Bonacci, Assistant Chief, Audio Division, Media Bureau, FCC, to Radio7Media, LLC, and Big River Broadcasting Corp. (Aug. 31, 2022) (Deficiency Letter).

<sup>5</sup> Supplement at 2.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> See *Rural Radio Second Report and Order*, 26 FCC Rcd at 2578 n.106 (citing *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, 14228-30 (2006), recon. pending).

<sup>8</sup> File No. BP-20221026AAE (granted Feb. 22, 2023). See Letter from Scott Woodworth, Esq., to Rodolfo Bonacci, Assistant Chief, Audio Division, Media Bureau (Feb. 28, 2023).

transmission service at Loretto. Big River responded on March 14, 2023,<sup>9</sup> largely reiterating its earlier arguments, and contending that a daytime-only AM service cannot qualify as a sole local transmission service, as is fulltime WLXA.

**Discussion.** We deny the Petition. While it is true that the Commission generally prohibits removal of a community’s sole service, we have long recognized an exception for intra-Urbanized Area moves.<sup>10</sup> As Radio7 correctly points out, this exception permits an intra-Urbanized Area community of license change if the proponent seeks a move either when both the move-out and move-in communities are located within the geographic boundaries of an Urbanized Area or when the station places a principal community signal over more than 50% of an Urbanized Area.<sup>11</sup> Big River is incorrect when it claims that this exception to the UASP only applies to a station licensed to a community that is itself located within the Urbanized Area. In *Rural Radio* the Commission clearly stated that “applicants will not be required to submit *Tuck* showings where both the current and proposed communities are located in the same urbanized area, *or* the current facilities cover . . . more than 50 percent of the same urbanized area with a daytime principal community signal.”<sup>12</sup> Thus, the fact that WLXA already covers over 50% of the Florence-Muscle Shoals UA makes this an intra-urbanized area move, meaning that the proponent of the move cannot claim to be providing a first local transmission service under Priority (3), merely an additional service to the urbanized area. Accordingly, the proponent of the station move, Radio7 in this case, must demonstrate under Priority (4) of the allotment priorities that the community change represents a preferential arrangement of allotments.<sup>13</sup> Originally, Radio7 did not demonstrate such a preferential arrangement, as its proposed community move would have resulted in a reduction in covered population. Radio7’s September 29, 2022, post-Deficiency Letter amendment, however, does show an increase in covered population, and therefore a preferential arrangement of allotments under Priority (4).<sup>14</sup>

Once Radio7 triggered the UASP by covering more than 50% of the urbanized area, the burden shifted to Big River to rebut the presumption. Big River attempts to rebut the presumption by demonstrating that Loretto is independent of the Florence-Muscle Shoals UA, and should therefore not be considered part of or servicing the UA. It therefore argues that the Radio7 proposal is not really an intra-urbanized area move, and thus that Radio7 does not qualify for the intra-urbanized area exception to the Commission’s prohibition against removal of a community’s sole local service. Big River therefore attempts to rebut the UASP by showing that Loretto is independent of the Florence UA, citing the

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<sup>9</sup> Response to Letter (filed Mar. 14, 2023).

<sup>10</sup> See, e.g., *Cumulus Licensing LLC*, Letter Decision, 26 FCC Rcd 12496, 12498 (MB 2011).

<sup>11</sup> See *Rural Radio Second Order on Reconsideration*, 27 FCC Rcd at 17654, para. 19.

<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> Because the moving station is considered to be serving the Urbanized Area at both the move-out (Loretto) and move-in (Florence) communities, it cannot claim a preference under Priority (3), first local transmission service. See *id.*

<sup>14</sup> We reject Big River’s accusation of “unseemliness,” in that it contends that Radio7 laid the groundwork for the WLXA move to Florence by first moving to a tower from which WLXA could cover over 50% of the Florence-Muscle Shoals UA, then shortly thereafter applying to move the station to Florence. Petition at 6-7. Radio7 responded by stating that the initial move, to a site closer to Loretto than WLXA’s previous site, was designed to cure a technically inadequate signal due to terrain problems at the former site. Reply Comments of Radio7 (filed Jan. 9, 2017) at 2-3 and attached Declaration of Roger Wright. We find Radio7’s explanation to be reasonable, and thus find no merit in this argument.

*Threshold Communications* case.<sup>15</sup> Using the analysis in *Threshold* as a guide, however, we arrive at the same conclusion the Commission did in that case, namely, that Big River fails to rebut the UASP.<sup>16</sup>

Even if we assume that Big River has met its burden of production under factor one of the *Rural Radio* rebuttal evidence (“whether the community at issue is truly independent of the urbanized area”),<sup>17</sup> we find that it has failed to meet its burden of production under factor two of the *Rural Radio* rebuttal evidence (“whether the community has a specific need for an outlet for local expression separate from the urbanized area”).<sup>18</sup> To establish this factor, a party must produce evidence such as the community’s rate of growth, the existence of substantial local government necessitating radio coverage, and/or the presence of physical, geographical, or cultural barriers separating the community from the remainder of the urbanized area.<sup>19</sup> Big River offers insufficient evidence as to Loretto’s rate of growth. In the Petition Big River states merely that Loretto’s 2010 Census population of 1,714 “showed an increase from the community’s 2000 Census population,” without quantifying the rate of increase.<sup>20</sup> Loretto’s 2020 Census population was 1,739, an increase of 25 persons over the 2010 population, or 1.46%. The record reflects that Loretto has a local government, although Big River tends to overstate how “substantial” its government is and the need for local government coverage.<sup>21</sup> Finally, in the issues and programs lists for WLXA that Big River attaches to its Supplement, there are no issues or programs specific to the City of Loretto. All issues are area-, county-, or statewide. We conclude that Loretto’s city government is not substantial enough to warrant radio coverage.

Big River has also failed to provide evidence of “physical, geographical, or cultural barriers” separating Loretto from Florence, apart from noting that Loretto is in a different state and that it is closer

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<sup>15</sup> *Threshold Communications*, Order on Reconsideration, 34 FCC Rcd 4201 (2019) (*Threshold*).

<sup>16</sup> Consistent with the *Rural Radio* procedures (see *Rural Radio Second Report and Order*, 26 FCC Rcd at 2572-73, para. 30), the opponent must come forward with evidence on each of the following factors in order to rebut the presumption as applied to the move-out community: (1) whether the move-out community is truly independent of the urbanized area; (2) whether the move-out community has a specific need for an outlet for local expression separate from the urbanized area; and (3) the ability of the proposed station to provide that outlet. See *Rural Radio Second Order on Reconsideration*, 27 FCC Rcd at 12836, para. 12.

<sup>17</sup> As discussed in further detail below, factor one of the *Rural Radio* rebuttal evidence relies on the existing three-pronged *Tuck* test. We find that Big River met its burden of production by offering evidence under the second and third prongs of the *Tuck* test.

<sup>18</sup> *Rural Radio Second Report and Order*, 26 FCC Rcd at 2572, para. 30.

<sup>19</sup> *Id.*, 26 FCC Rcd at 2573, para. 30 (“[A] compelling showing sufficient to rebut the urbanized area service presumption must also include evidence of the community’s need for an outlet for local expression. For example, an applicant may rely on factors such as the community’s rate of growth; the existence of substantial local government necessitating coverage; and/or physical, geographical, or cultural barriers separating the community from the remainder of the urbanized area.”).

<sup>20</sup> Petition at 9.

<sup>21</sup> According to the city’s website, Loretto has a Mayor, Vice Mayor, and one alderman (as opposed to aldermen, plural, as stated by Big River). Petition at 9; <http://www.cityoflorettotn.gov>. Loretto also has a City Administrator, City Recorder, and Directors of Utilities and Parks and Recreation. Although Loretto has a police department with four officers, we cannot confirm the composition of the fire department beyond the Fire Chief, as Big River’s evidence consists solely of the fire department website for Loretto, *Minnesota*, rather than for Loretto, Tennessee. See <http://www.lorettofire.org>, cited by Big River. Petition at 10. The city court appears to sit one afternoon each month. Notably, the city calendar posted on its website shows no events from July 2022 through March 2023.

to the county seat of Lawrence County than it is to Florence.<sup>22</sup> Mere distance, however, is not a barrier preventing WLXA from covering the Florence-Muscle Shoals UA, and Big River produces no evidence indicating that the culture of south-central Tennessee is substantially different from that of northwest Alabama. As Big River has not provided evidence that Loretto is appreciably growing, that there are physical, geographic, or cultural barriers separating Loretto from the Florence UA, or that Loretto has substantial government that needs radio coverage, it has failed to meet its burden of production under factor two of the *Rural Radio* rebuttal evidence. Because the UASP has not been rebutted at Loretto, we cannot regard WLXA as a sole local service to the community of Loretto. We thus conclude that the move of WLXA to Florence, serving a larger population under Priority (4), represents a preferential arrangement of allotments.<sup>23</sup>

**Conclusion / Action.** Accordingly, IT IS ORDERED that the Petition to Deny the Application of Radio7Media, LLC, for a minor modification to the license of WLXA(FM), Loretto, Tennessee, filed by Big River Broadcasting Corp., IS DENIED, and that the Application IS GRANTED.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>22</sup> Petition at 15; Supplement at 3-6.

<sup>23</sup> See *Emmis Austin Radio Broadcasting, L.P.; Educational Media Foundation; and San Antonio Radio Works, LLC*, Letter Decision, 35 FCC Rcd 556, 560-61 (MB 2020) (intra-Urbanized Area change of community of license does not violate Commission prohibition against removing sole local service).