

FEDERAL COMMUNICATIONS COMMISSION
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Darby Advertising, Inc.
P.O. Box 1766
Gaylord, MI 49734

Re: WGRL(FM), Wolverine, MI
Facility ID #170939
Darby Advertising, Inc. ("Darby")
BMPH-20091202ACC

Dear Applicant:

This letter refers to: (1) the above-captioned minor change application, as amended on April 26, 2010, to modify the antenna height, antenna location, effective radiated power, and the community of license from Frederic, MI to Wolverine, MI; and (2) the March 30, 2010 Commission letter indicating a 73.3573(g)(1) violation. For the reasons stated below, the application will be dismissed..

Background. This Application was filed pursuant to Section 73.3573(g) of the Commission's rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. Any reallocation proposal must result in 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 This Application would provide a first local service to Wolverine under Priority (3).

Darby states in its amendment that Frederic is a small unincorporated community located within Frederic Township, Michigan. Moreover, it states that Frederic is located on the middle branch of the Au Sable River, about 10 miles northwest of Grayling, Michigan via county roads. Darby contends that the U.S. Census Bureau does not collect population information for Frederic, and no

¹ 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).

² *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). 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).

other official record of Frederic's population is available. However, Darby states that according to a Frederic Township official, the community of Frederic consists of approximately 230 households to which many of these households are vacation and weekend homes without permanent residents. In contrast, Darby argues that Frederic Township is a civil township of Crawford County, MI with a 2000 U.S. Census population of 1,401 persons. Additionally, Darby argues that Frederic and Frederic Township are distinct from one another. It asserts that Frederic has its own zip code and post office, and other local facilities such as churches and preschools. In addition, Darby states that highway signs reference Frederic separately from Frederic Township. Thus, Darby requests that we find that a first local service at Wolverine is preferred over Frederic under Priority 3 because Wolverine has a larger population than Frederic.

Discussion. We cannot make the requisite finding that the reallocation of FM Station WGRL to Wolverine constitutes a preferential arrangement of allotments as required by *Community of License*. One must compare the existing arrangement of allotments versus the proposed arrangement of allotments. When comparing two first local services under Priority 3, the community with the larger population is preferred.³ The Commission traditionally relies on the most current U.S. Census figures for community population statistics, absent compelling information to the contrary.⁴ In this instance, the 2000 U.S. Census does not have population statistic data available for the community of Frederic. Specifically, the 2000 U.S. Census attributes 1,401 persons to Frederic Township in lieu of Frederic. However, the 2008 Rand McNally Commercial Atlas and Marketing Guide list a distinction between the two communities of Frederic and Frederic Township. It estimates the community of Frederic with a population of 570 persons, and the community of Frederic Township with a final U.S. Census population of 1,401 persons. Hence, we will rely on the population statistic data for the community of Frederic from this alternative authoritative source. As such, Wolverine has a 2000 U.S. Census population of 359 persons while Frederic has a population of 570 persons. Accordingly, we conclude that under Priority 3, a first local service at Frederic is preferred over a first local service at Wolverine because Frederic has a larger population than Wolverine. The amendment, therefore, fails to eliminate the problem specified in the March 30, 2010 letter. This constitutes an acceptance defect.

The March 30, 2010 Commission letter to Darby stated that "the applicant must file an amendment to demonstrate compliance with Section 73.3573(g)(1). In addition, it stated that pursuant to 47 C.F.R. § 73.3522, "...an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not

³ See *West Liberty and Richwood, Ohio*, Report and Order, 6 FCC Rcd 6084 (MMB 1991); *Three Oaks and Bridgman, Michigan*, Report and Order, 5 FCC Rcd 1004 (MMB 1990); *Clarksville and Lanesville, Indiana*, Report and Order, 4 FCC Rcd 4968 (MMB 1989).

⁴ See *Blanchard, Louisiana and Stephens, Arkansas*, Report and Order, 8 FCC Rcd 7083 (MMB 1993), *recon. denied*, Memorandum Opinion and Order, 10 FCC Rcd 9828 n. 12 (1995) (absent an alternative authoritative source of population data, we have traditionally relied and will continue to rely on Census figures in the implementation of our rules); see also, *Sparta and Buckhead, Georgia*, Report and Order, 15 FCC Rcd 21536 (MMB 2000).

specifically identified by the staff." Additionally, 47 C.F.R. § 73.3564 states that, "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment." See Appendix B in the Report and Order in MM Docket No. 91-347. The March 30 2010 letter provided Darby its 30 day period to submit a corrective amendment pursuant to 47 C.F.R. § 73.3522. Application BMPH-20091202ACC remains in violation of 47 C.F.R. Section 73.3573(g)(1), is unacceptable for filing after the one opportunity for corrective amendment, and will be dismissed.

Conclusion. In light of the above, application BMPH-20091202ACC, as amended on April 26, 2010, IS HERBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo J. Bonacci".

Rodolfo Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Howard Liberman, Esq.