



Federal Communications Commission
Washington, D.C. 20554

November 28, 2011

In Reply Refer to:
1800B3-RFS

Mark A. Mueller, Technical Consultant
c/o Ether Mining Corporation
Mueller Broadcast Design
613 S. LA Grange Road
La Grange, Illinois 60525

Re: KPSF(AM), Desert Hot Springs, California
Facility Identification Number: 161373
File No: BMP-20110519AAA

Dear Mr. Mueller:

This letter refers to the above-captioned minor change application of Ether Mining Corporation, permittee of Station KPSF(AM), Desert Hot Springs, California. The application proposes a city of license modification for Station KPSF(AM) from Desert Hot Springs, California, to Cathedral City, California. For the reasons discussed below, we request amendment of the application to provide additional evidence in support of the proposed modification.

Background. This application was filed pursuant to Section 73.3571(j) of the Commission's Rules, which set forth the requirements for modification of an AM Station license to specify a new community of license without providing an opportunity for competing expressions of interest. Among other requirements, an application for such a minor modification must demonstrate that the proposed change of community constitutes 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 Your client asserts that its application satisfies Priority 3 of the four allotment priorities because the change of community would provide a first local service to the community of Cathedral City.

Discussion. In the *Rural Radio* proceeding,³ the Commission established a rebuttable presumption applicable when a station's proposed community is located in an urbanized area or the station could, through a minor modification application, cover at least 50 percent of an urbanized area. In such cases, we will treat the application as a proposal to serve the entire urbanized area, rather than as a proposal for local service to the named community of license. Pursuant to the Commission's decision in *Rural Radio*, your client's proposed change of community to Cathedral City is considered a proposal to serve the Indio-Cathedral City-Palm Springs Urbanized Area ("UA"). Because the Indio-Cathedral City-Palm Springs

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).

³ See *Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011) ("*Rural Radio*").

UA already has numerous local FM and AM stations, the proposed change of community does not satisfy Priority 3 of the Commission's allotment priorities, first local service.

Our independent engineering analysis indicates that the proposed facility at Cathedral City would cover 52 percent of the Indio-Cathedral City-Palm Springs UA, whereas the existing site only covers about 6 percent of that urbanized area. In this regard, your client states that the proposed contour at Cathedral City would cover 50.7 percent of the Indio-Cathedral City-Palm Springs UA while the existing contour covers 5.6 percent of the urbanized area. It argues that if Station KPSF's long form application was filed "today" using the station's existing contour at Desert Hot Springs, a minor change modification to an existing rule-complaint transmitter site would provide 50 percent or more coverage to the UA, negating any claim of first local service at Desert Hot Springs because pursuant to *Rural Radio*, Station KPSF would be considered as serving the Indio-Cathedral City-Palm Springs UA instead of its existing community of Desert Hot Springs. Thus, your client asserts that the urbanized area presumption should not apply in this instance. We disagree. In *Rural Radio*, the Commission limited the determination of whether the facility could be modified to cover over 50 percent of the urbanized area to the "proposed" facility instead of both the "existing" and "proposed" facilities. Therefore, we find that since the existing facility does not cover at least 50 percent of the Indio-Cathedral City-Palm Springs UA, and the proposed facility does cover at least 50 percent of that urbanized area, the urbanized area presumption applies to this community of license proposal consistent with *Rural Radio*.

In order to satisfy the requirement of Priority 3 of the Commission's allotment priorities, your client may seek Priority 3 status by submitting evidence to rebut the urbanized area presumption established in *Rural Radio*. Such evidence must constitute "a compelling showing (1) that the proposed community is truly independent of the urbanized area, (2) of the community's 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."⁴ The required compelling showing may be based on the existing three-pronged *Tuck* test to demonstrate independence,⁵ but "the *Tuck* factors, especially the eight-part test of independence, will be more rigorously scrutinized than has sometimes been the case in the past."⁶ Moreover, in addition to demonstrating independence, a compelling showing requires evidence of the community's need for an outlet for local expression.⁷

Alternatively, you may file a Priority (4) public interest showing, providing a more detailed explanation of the claimed public interest benefits of the proposed reallocation to Cathedral City in compliance with the *Rural Radio*.

Accordingly, for the reasons discussed above, we request that your client amend its application to provide additional evidence sufficient to establish that the proposed change of community of license constitutes a preferential arrangement of allotments, as set forth in *Revision of FM Assignment Policies and Procedures*, and further clarified in *Rural Radio*.

⁴ *Id.* at 2572, ¶ 30.

⁵ See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1978) ("*Tuck*") (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

⁶ *Rural Radio, supra*, at 2573, ¶ 30.

⁷ *Id.*

Further action on the subject application will be withheld for thirty (30) days from the date of this letter in order to provide an opportunity to file a curative electronic amendment. Failure to respond or file an amendment within this time period will result in the dismissal of the application pursuant to Section 73.3568 of the Rules.

Sincerely,


Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

cc: Ether Mining Corporation
Anthony T. Lepore, Esq., P.A.