

FEDERAL COMMUNICATIONS COMMISSION

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Re: WGRL(FM), Tuscarora Township, MI
Facility Identification Number: 170939
David L. Smith
File No: BMPH-20110718ABP

Dear Ms. Moline:

This letter refers to the referenced minor change application ("Application") of David L. Smith, ("Smith"), permittee of Station WGRL(FM), Channel 237A, Frederic, Michigan. The application proposes the reallocation of Station WGRL, Channel 237A at Frederic, Michigan, to Channel 237C2 at Tuscarora Township, Michigan, as its first local service and modification of Station WGRL facilities. Reynolds Communications, Inc. ("Reynolds") filed an Informal Objection ("Objection") against the Application on November 9, 2011.¹ For the reasons dismissed below, we deny the Objection and grant the Application.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,² which permits the modification of a 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. Any reallocation proposal must result in a preferential arrangement of allotments³ under the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ The Application would provide a first local service to Tuscarora Township under Priority (3).

¹ Smith filed an Opposition to the Objection and a Request for Expedited Consideration on December 2, 2011. In light of our action herein, we will dismiss the latter pleading.

² 47 C.F.R. § 73.3573(g).

³ 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).

⁴ *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

The Objection. In its Objection, Reynolds argues that Tuscarora Township is already served by Station WMKC(FM) licensed to Indian River, Michigan. It states that Indian River is a census designated place located within Tuscarora Township. It contends that the population figures for Indian River constitute two-thirds of the population figures for Tuscarora Township, and it is clear that Indian River occupies nearly half of Tuscarora Township's total population. Reynolds states that Indian River has its own Chamber of Commerce but Tuscarora Township provides police and fire protection, park and marina services, assessor services, a planning commission, and general government services through its supervisor/trustee form of township governance. Therefore, it contends that Station WGRL(FM) would not provide a first local service to Tuscarora Township because the community of Indian River is part of that community, and Station WMKC(FM) already provides its first local service.

Discussion. Under Section 309(e) of the Communications Act of 1934, as amended, (the "Act"),⁵ 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.⁶ Upon review of the record, we find that Reynolds has not raised a substantial and material question of fact calling for further inquiry.

As a preliminary matter, we conclude that Tuscarora Township is a separate, licenseable community for allotment purposes. In this regard, the test for determining whether a locality is a community is not a stringent one.⁷ The Commission has defined a community as geographically identifiable population groupings, which have common local interests.⁸ This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census.⁹ In this instance, Tuscarora Township is listed in the 2010 U.S. Census and has a population of 3,038 persons. Therefore, we find that Tuscarora Township is a community for allotment purposes. No further analysis is required. We also disagree with Reynolds' contention that Tuscarora Township does not need a local service because Station WMKC(FM) is licensed to Indian River. In this regard, we find that Station WMKC(FM) provides a reception service to Tuscarora Township but, as Tuscarora Township has an existence independent of Indian River, WKMC(FM) does not provide a first local transmission service to that community. As the Commission has stated on numerous occasions, "reception service from nearby stations is not a substitute for local service."¹⁰ We find that Tuscarora Township is a community for allotment purposes that deserves its own first local service. We therefore will deny the Objection.

(4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁵ 47 U.S.C. § 309(e).

⁶ 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) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁷ See *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 3469 (1987), *aff'd sub nom*; see also *New South Broadcasting Corp. v FCC*, 879 F. 2d 867 (D.C. Cir 1989).

⁸ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 98 (1982).

⁹ *Id* at 101 ¶ 33.

¹⁰ *Bartow, Chauncey, et al., Georgia*, Report and Order, 4 FCC Rcd 6876, 6879 (MMB 1989), *recon. dismissed*, 5 FCC Rcd 442 (MMB 1990). See also *Westover and Grafton, West Virginia*, Report and Order, 46 FR 10731 (1981); and *Joshua Tree, California*, 6 FCC Rcd 4968 (MMB 1991).

We also find that the reallocation of Station WGRL(FM) from Frederic to Tuscarora Township, Michigan would result in a preferential arrangement of allotments as required by *Community of License* under Priority 3, first local service. In this regard, under Priority (3), a first local service to the larger community of Tuscarora Township (2010 U.S. Census population of 3,038 persons) is preferred over the retention of a potential local service to the smaller community of Frederic (2010 U.S. Census population of 1,341 persons).¹¹

The Commission strongly disfavors the removal of a community's sole local service. In *Community of License*, the Commission stated that removing the sole local service from a community presumptively disservices the public interest and only in "rare circumstances" that such a removal would be warranted.¹² The Commission reasoned that the public has a legitimate expectation that existing service will continue, and this expectation is a factor, which must be weighed independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.¹³ However, Station WGRL(FM) has not commenced service at Frederic. Therefore, the removal of Frederic's sole existing service is not at issue because Station WGRL(FM) is considered an unbuilt station at the community.

The Application. We have evaluated the Application and find that it complies with all pertinent statutory and regulatory requirements and that its grant would further the public interest, convenience, and necessity. We therefore will grant the Application.

Conclusion. Accordingly, in light of the discussion above, IT IS ORDERED, That the November 9, 2011, Informal Objection filed by Reynolds Communications, Inc., IS HEREBY DENIED.

IT IS FURTHER ORDERED that the application filed by David L. Smith (File No. BMPH-20110719ABP) for minor modification of the facilities of Station WGRL(FM) IS HEREBY GRANTED.

IT IS FURTHER ORDERED that the December 2, 2011, Request for Expedited Consideration filed by David L. Smith IS DISMISSED AS MOOT.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo 2 B.", with a stylized flourish at the end.

Rodolfo Bonacci
Assistant Chief
Audio Division
Media Bureau

¹¹ 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).

¹² *Community of License Reconsideration Order*, 5 FCC Rcd at 7096.

¹³ *Community of License Reconsideration Order*, 5 FCC Rcd at 7097 ¶ 19.