



Federal Communications Commission  
Washington, D.C. 20554

August 25, 2011

*In Reply Refer to:*  
1800B3-RFS

Karen A. Ross  
c/o Educational Media Foundation  
Davis Wright Tremaine LLP  
1919 Pennsylvania Ave., N.W., Suite 800  
Washington, DC 20006

Re: KXPC-FM, Lebanon, Oregon  
Facility Identification Number: 61987  
File No: BMPED-20110302ACD

Dear Ms. Ross:

This letter refers to the above-captioned minor change application of Educational Media Foundation ("EMF"), licensee of Station KXPC-FM, Channel 279C0, Lebanon, Oregon. The application proposes a city of license modification for Station KXPC-FM from Lebanon, to Harrisburg, Oregon, as the community's first local service. 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 73.3573(g) of the Commission's rules, which sets forth the requirements for modification of an FM Station license to specify a new community of license without providing an opportunity for competing expressions 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 allotments.<sup>1</sup> We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>2</sup> 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 for Harrisburg, Oregon.

**Discussion.** In the *Rural Radio* proceeding,<sup>3</sup> 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 more than 50 percent of an urbanized area. In such

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<sup>1</sup> 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).

<sup>2</sup> *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).

<sup>3</sup> 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").

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.

A staff engineering analysis shows that both the existing and proposed sites of Station KXPC-FM cover one hundred percent of the Eugene, Oregon Urbanized Area ("UA"). Pursuant to the Commission's decision in *Rural Radio*, EMF's proposed change of community to Harrisburg is considered a proposal to serve the Eugene UA.

In applying the Commission's allotment priorities, as clarified in the *Rural Radio* decision, it is significant that the Eugene UA already has numerous local FM and AM stations. Because the proposed change of community is considered a proposal to serve the Eugene UA, it does not satisfy Priority 3 of the Commission's allotment priorities, first local service; the proposal therefore would be evaluated pursuant to Priority 4, other public interest matters. Under Priority 4, we take into account, transmission services, reception services, population gains, and other information relevant to the public interest.

In order to satisfy the requirements of Priority 4 of the Commission's allotment priorities, further information regarding the public interest must be submitted. Specifically, EMF needs to set forth "the size of the populations gaining and losing service under the proposal, ... the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal advances the revised Section 307(b) priorities."<sup>4</sup> In addition to the required information, EMF's Section 307(b) showing may include any information that it believes to be pertinent to the public interest.

In the alternative, EMF 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."<sup>5</sup> The required compelling showing may be based on the existing three-pronged *Tuck* test to demonstrate independence,<sup>6</sup> 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."<sup>7</sup> Moreover, in addition to demonstrating independence, a compelling showing requires evidence of the community's need for an outlet for local expression.<sup>8</sup>

**Conclusion.** EMF has not presented a compelling showing sufficient to rebut the urbanized area presumption established in *Rural Radio*. For that reason, the application, as submitted, does not satisfy the requirements of Priority 3 of the Commission's allotment priorities. Likewise, the application does not satisfy the requirements of Priority 4, other public interest matters, absent further, more specific information, including evidence of the actual effect on the public interest of the proposed move.<sup>9</sup>

Accordingly, for all of the reasons discussed above, we request that Educational Media Foundation amend its application to provide additional evidence sufficient to establish that the proposed change of

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<sup>4</sup> *Id.* at 2577, ¶ 39.

<sup>5</sup> *Id.* at 2572, ¶ 30.

<sup>6</sup> 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).

<sup>7</sup> *Rural Radio*, *supra*, at 2573, ¶ 30.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2577-78, ¶¶ 38-39.

community of license constitutes a preferential arrangement of allotments, as set forth in *Revision of FM Assignment Policies and Procedures*, and further clarified in *clarified in Rural Radio*.

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 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 amendment." See Appendix B in the Report and Order in MM Docket No. 91-347. This letter constitutes your opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3522.

Sincerely,

A handwritten signature in black ink, appearing to read "Nazifa Sawez", written in a cursive style.

Nazifa Sawez  
Assistant Chief  
Audio Division  
Media Bureau