

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON DC 20554

DEC 22 2011

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio

FCC Contact Person: Rolanda Smith
TELEPHONE: (202) 418-2700
MAIL STOP: 1800B3-RFS
E-MAIL ADDRESS: Rolanda-Faye.Smith@fcc.gov

Victor A. Michael, Jr.
Kona Coast Radio, LLC
87 Jasper Lake Road
Loveland, CO 80537

Re: KIMI(FM), Humboldt, Nebraska
Facility Identification Number: 189501
File No: BPH-20110926AEC

Dear Mr. Michael:

This letter refers to the above-captioned minor change application (the "Application") of Kona Coast Radio, LLC ("Kona Coast"), licensee of Station KIMI(FM), Channel 300C3, Humboldt, Nebraska.¹ The Application proposes a city of license modification for Station KIMI(FM) from Channel 300C3 at Humboldt, Nebraska, to Channel 299C3 at Sidney, Iowa. For the reasons discussed below, we request amendment of the Application to provide additional evidence in support of the proposed modification.

Background. The 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.² We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ Kona Coast asserts that its Application satisfies Priority 3 of the four allotment priorities because the change of community would provide a first local service at Sidney.

Discussion. In the *Rural Radio* proceeding,⁴ the Commission established a rebuttable presumption

¹ On October 11, 2011, the Audio Division granted the Station KIMI license application to specify operation at Humboldt, Nebraska. See File No. BLH-20110902ACF.

² See 47 C.F.R. § 73.3573(g). 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).

³ *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).

⁴ 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), *recon pending* ("Rural Radio").

applicable when a station's proposed community is located in an urbanized area or the station could, through a minor modification application, cover fifty percent or more 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 proposed named community of license.

Sidney is located approximately 52 miles away from Omaha, Nebraska. A staff engineering analysis determines that there are available rule-compliant sites where the proposed allotment at Sidney could be upgraded to Class C2 facilities, through minor modification application, to cover at least fifty percent of the Omaha Urbanized Area ("UA"), while providing the necessary city-grade coverage to the community of Sidney. In applying the Commission's allotment priorities, as clarified in the *Rural Radio* decision, it is significant that the Omaha UA already has numerous local FM and AM stations. Absent a compelling showing, the proposed change of community to Sidney is considered a proposal to serve the Omaha UA. As such, it does not satisfy Priority 3 of the Commission's allotment priorities, first local service.

Kona Coast may seek Priority 3 status by submitting evidence to rebut the urbanized area service 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."⁵ The required compelling showing may be based on the existing three-pronged *Tuck* test to demonstrate independence,⁶ 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."⁷ Moreover, in addition to demonstrating independence, a compelling showing requires evidence of the community's need for an outlet for local expression separate from the urbanized area.⁸

Absent a compelling showing of need, the proposal 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, Kona Coast needs to submit an explanation as to how the proposal advances the revised Section 307(b) priorities.⁹ In addition to the required information, Kona Coast's Section 307(b) showing may include any information that it believes to be pertinent to the public interest.

Conclusion. Accordingly, for the reasons discussed above, we request that Kona Coast 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*. Failure to file an amendment within 30 days will result in the dismissal of your application.

⁵ *Id.* at 2572, ¶ 30.

⁶ 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).

⁷ *Rural Radio, supra*, at 2573, ¶ 30.

⁸ *Id.*

⁹ *Id.* at 2577, ¶ 39.

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 corrective 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.

Further action on the subject application will be withheld for a period of thirty days from the date of this letter to provide Kona Coast an opportunity to respond. Failure to correct all tender and acceptance defects within the thirty days from the date of this letter will result in the dismissal of the application with no further opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3564.

Sincerely,

A handwritten signature in black ink that reads "Nazifa Sawez". The signature is written in a cursive style with a large, looping initial "N".

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau