

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

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James D. McDaniel
33692 N. Santiam Highway
Lebanon, OR 97355

Re: KLMD(FM), Talent, OR
Facility ID No. 166023
James D. McDaniel
File No. BPH-20120210AAH

Dear Applicant:

This letter refers to the above-captioned minor change application to specify operations on Channel 266C3 in lieu of Channel 225A

An engineering review of the application reveals that the referenced proposal is for a non-adjacent channel upgrade. While Sections 73.3573(a)(i) and (ii) allows an application to change the proposed community of license or to upgrade to an adjacent channel, it does not permit an upgrade in channel class on a non-adjacent channel. On the contrary, Section 73.3573(a) provides that all other changes in a station's assignment not enumerated in subsections (a)(i) through (iv) are considered as major changes in facilities. An FM permittee or licensee can only modify its current assignment to specify a non-adjacent channel class upgrade or downgrade in the same community of license by using notice and comment procedures.¹ Because the application before us proposes to upgrade the Talent assignment from Channel 225A to higher class, non-adjacent Channel 266C3, this proposal is a major change and cannot be accomplished as a minor change application.² Furthermore, the application does not contain a petition for non-adjacent channel upgrade nor has any petition been filed separately via the Secretary of the Commission on behalf of KLMD.

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.

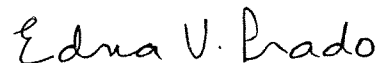
¹ See *Report and Order* in MB Docket 05-210

² See *Media Bureau Offers Examples to Clarify the Treatment of Applications and Rulemaking Petitions Proposing Community of License Changes, Channel Substitutions, and New FM Allotments*, Public Notice, 22 FCC Rcd 6852, Example 5 (MB 2007) (explaining that a proposal to substitute Channel 277C3 for 221A at the same community by a licensed station requires the filing of a rule making petition and is not a minor change)

§ 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 KLMD 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. Please note, any amendment must be submitted in the same manner as the original application.

Sincerely,



Edna V. Prado
Supervisory Engineer
Audio Division
Media Bureau

cc: Brendan Holland, Esq.
David Velasquez, Technical Consultant