



Federal Communications Commission
Washington, D.C. 20554

December 6, 2012

In Reply Refer to:
1800B3-VM

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In re: **WRUP(FM), Palmer, MI**
Great Lakes Radio, Inc.
Facility ID No. 41825
File No. BPH-20070619AAN

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration ("Petition") filed by Northern Star Broadcasting, LLC and Taconite Broadcasting, Inc. ("Joint Petitioners"), seeking reconsideration of the staff's October 8, 2008, decision¹ granting the referenced minor change application ("Application") of Great Lakes Radio, Inc. ("GLR"). The Application proposed the class downgrade of Channel 252C2 to Channel 252C3 at Munising, Michigan, the reallocation of Channel 252C3 from Munising to Palmer, Michigan, as the community's first local service, and the modification of the WRUP(FM) station facilities to reflect these changes.² For the reasons stated below, we deny the Petition.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,³ which permits the modification of an FM 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 such as this must result in a preferential arrangement of allotments⁴ under the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵

¹ *Great Lakes Radio, Inc.*, Letter, Ref. 1800B3 (MB October 8, 2008) ("*Staff Decision*").

² Joint Petitioners filed the Petition for Reconsideration on October 27, 2008. GLR filed an Opposition to Petition for Reconsideration ("*Opposition*") on October 28, 2008. Joint Petitioners filed a Reply to Opposition to Petition for Reconsideration ("*Reply*") on November 7, 2008.

³ 47 C.F.R. § 73.3573(g).

⁴ 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).

⁵ *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).

GLR contends that the proposed station relocation from Munising, Michigan (2000 U.S. Census population 2539 persons), to Palmer, Michigan (2000 U.S. Census population 449 persons) would advance Priority (3) by providing a first local transmission service in Palmer. This channel substitution requires the modification of the Station WGLI(FM), Hancock, Michigan, license from Channel 253C1 to Channel 254C1. To effectuate this modification, the staff issued an order to Keweenaw Bay Indian Community (“KBIC”), licensee of Station WGLI(FM), to show cause why its license should not be modified to specify Channel 254C1 in lieu of Channel 253C1.⁶ KBIC, through counsel, accepted this change.⁷

Joint Petitioners filed a petition to deny the Application,⁸ arguing that the change of community was contrary to the objectives of Section 307(b) of the Communications Act as amended (“Act”) because (1) Palmer is not a licensable community,⁹ and (2) the “deletion” of Channel 253C1 would deprive the larger community of Hancock (U.S. Census population 4,323 persons) of its only allotment, in violation of Section 307(b) of Act. The staff denied the petition to deny and granted the Application, finding that the proposal would result in a preferential arrangement of allotments under Priority (3), since the channel would provide a first local service to Palmer, while Munising would continue to receive local service from AM Station WQXQ.¹⁰ In so finding, the staff held that Palmer, as a Census Designated Place, was presumptively a licensable community, and that this presumption was not rebutted by the record in the proceeding.¹¹

In the subject Petition, Joint Petitioners repeat their argument that Palmer is not a licensable community, maintaining that the *Staff Decision* ignored controlling precedent to the contrary.¹² They

⁶ *Keweenaw Bay Indian Community*, Letter, Ref. 1800B3 (MB Sept. 15, 2008).

⁷ Letter from Harry C. Martin, Esq., to Marlene H. Dortch, Secretary, FCC, dated Sept. 25, 2008.

⁸ Filed on July 23, 2007.

⁹ In support of this argument, Joint Petitioners pointed to the fact that that Palmer has no local government of its own, that the government services received by the residents of Palmer are provided by the governments of Richmond Township or Marquette County, Michigan, and that Palmer does not have its own telephone exchange. Joint Petitioners cited several cases in which the Commission found that areas lacking such indicia of community status were not “communities” for allotment purposes. *See* Petition to Deny at 3 (citing *Gaviota, CA*, Report and Order, 16 FCC Rcd 1518,1522 (MB 2000) (denying community status to Gaviota, CA because it lacked presumptive community status conferred by incorporation or inclusion in the U.S. Census, and indicia of community lacked nexus to the community); *Malone and Owls Head, New York*, Report and Order, 3 FCC Rcd 5243 (MMB 1988) (denying community status to Owls Head, NY, because it lacked presumptive community status conferred by incorporation or inclusion in the U.S. Census and insufficient indicia of community); *Oak Beach and Bay Shore, NY*, Report and Order, 57 RR2d 1275, 1278 (MMB 1985)(denying community status to Oak Beach, NY, because it lacked presumptive community status conferred by incorporation or inclusion in the U.S. Census and insufficient indicia of community); *Vimville, MS*, Report and Order, 55 RR2d 256, 258 (MMB 1983) (denying community status to Vimville, MS, because it lacked presumptive community status conferred by incorporation or inclusion in the U.S. Census and had insufficient indicia of community); *Naples, North Naples, and Immolakee, FL*, Report and Order, 41 RR2d 1549, 1551 (BB 1977) (denying community status to North Naples, FL, despite its inclusion in the U.S. Census because its boundaries and indicia of community status were in dispute)).

¹⁰ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988).

¹¹ The *Staff Decision* stated: “Even though Palmer is not incorporated, it is defined as a Census Designated Place by the U.S. Census Bureau. The record in this proceeding does not rebut the presumption that, as a Census Designated Place, Palmer qualifies as a licensable community. Palmer does have a geographical identifiable population which supports a conclusion that it is a community. In addition to a local library, volunteer fire department and police department office being located in Palmer, the applicant has also identified local businesses, churches and community organizations also located in Palmer. Finally, the applicant has submitted letters from local residents attesting to the fact that Palmer is perceived as a community.” *Staff Decision* at 2.

¹² Petition at 4.

further argue that the *Staff Decision* ignored its argument that the “deletion” of “vacant” Channel 253C1 contravenes the objectives of Section 307(b) of the Act.

In its Opposition, GLR argues that the *Staff Decision* correctly determined that Palmer, as a Census Designated Place with numerous municipal services, businesses and organizations, is a licensable community. It argues that the Petition relies on outdated precedent regarding the definition of community,¹³ and that the Petition ignored specific facts submitted by GLR, including numerous citizen letters submitted in support of Palmer’s community status. GLR further argues that the Joint Petitioners have incorrectly characterized Channel 253C1 at Hancock as a vacant allotment.¹⁴ GLR states that the history of Channel 253C1 at Hancock shows that Channel 253C1 was not allotted to Hancock as a new allotment for general application, but was allotted to Hancock by construction permit application filed by the licensee of Station WGLI(FM), for its use in lieu of Channel 254C1 pursuant to Section 73.3573(a)(ii) of the Commission’s Rules.¹⁵ It maintains that, because Station WGLI(FM) never implemented Channel 253C1 at Hancock, and allowed its construction permit to expire, the modification of the allotment from Channel 253C1 to 254C1 is merely a Commission “housekeeping” measure.

In Reply, Joint Petitioners argue that the GLR has failed to show a nexus between the “political, social and commercial organizations” that GLR claims are associated with Palmer and “the wide spot in the road in Richmond Township, Michigan, which is called ‘Palmer.’”¹⁶ In addition, they allege that the citizen letters submitted by GLR should not be given any weight because they are unsworn and fail to establish that the citizens “consider themselves as residents of a community around which their interests coalesce.”¹⁷

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.¹⁸ A Petition for Reconsideration that reiterates arguments that were previously considered and rejected will be denied.¹⁹ Joint Petitioners have failed to demonstrate a material error or omission in the *Staff Decision*, and thus reconsideration is not warranted.

The test for determining whether a locality is a community for allotment purposes is not a stringent one.²⁰ This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census.²¹ Here, the *Staff Decision* correctly concluded that Palmer was a licensable

¹³ *Opposition* at 6.

¹⁴ *Opposition* at 2-3.

¹⁵ See 47 C.F.R. § 73.3573(a)(ii); File No. BPH-20021008ABP, granted on September 11, 2003, expired on September 11, 2006.

¹⁶ *Reply* at 2.

¹⁷ *Reply* at 5.

¹⁸ See 47 C.F.R. § 1.106(c) and (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹⁹ *WWIZ, Inc.*, 37 FCC at 686; see also *Alan Bishop and Saga Communications of New England*, Letter, 25 FCC Rcd 4691 (MB 2010) (denying a petition for reconsideration when the petitioner did not demonstrate a material error or omission in the staff's underlying decision).

²⁰ See *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 3469 (1987), *aff'd sub nom. New South Broadcasting Corp. v FCC*, 879 F. 2d 867 (D.C. Cir 1989)(stating that a specified location must be an identifiable population grouping, separate and apart from all others, and the geographic boundaries of the location must not enclose or contain areas or populations more logically identified or associated with some other location).

²¹ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 ¶ 34 (1982) (holding that any place listed in the U.S. Census would be considered a community for allotment purposes).

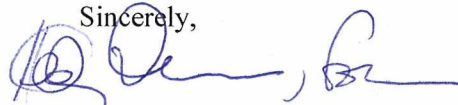
community because it was listed in the U.S. Census as a Census Designated Place. The cases cited by the Joint Petitioners are inapposite because they either involved communities that were not included in the U.S. Census,²² or predated the release of our decision in *Revision of FM Assignment Policies and Procedures*, where we held that communities listed in the census would presumptively be licensable for allotment purposes.²³

Moreover, we disagree with Joint Petitioners' argument that Palmer is not a community because some of its municipal services are provided by Richmond Township or Marquette County. The Commission does not require a municipality to provide every public service on its own to merit community status.²⁴ The existence of local businesses, churches and community organizations that identify themselves as part of Palmer, as well as the citizen letters from Palmer residents expressing a unified interest in having a radio station are sufficient, when viewed together with Palmer's inclusion in the U.S. Census, to establish Palmer's status as a licensable community.²⁵

We do, however, acknowledge that the *Staff Decision* failed to consider Joint Petitioners' argument that Channel 253C1 was improperly "deleted" at Hancock. However, this omission is harmless. The challenged action is a modification of KBIC's assignment, not a deletion of a vacant Hancock allotment. WGLI(FM) will continue to broadcast on Channel 254C1 at Hancock. Thus, contrary to Joint Petitioners' assertion, grant of GLR's application did not result in the "deletion of the only FM channel at Hancock, Michigan."²⁶

Conclusion/Actions. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Northern Star Broadcasting, LLC and Taconite Broadcasting, Inc., on October 27, 2008, IS DENIED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

²² See *Gaviota, CA*, 16 FCC Rcd at 1522; *Malone and Owls Head, New York* Report and Order, 3 FCC Rcd 5243; *Oak Beach and Bay Shore, NY*, Report and Order, 57 RR2d at 1278; *Vimville, MS*, 55 RR2d at 258.

²³ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 ¶ 34 (1982).

²⁴ See *Semora, NC*, Memorandum Opinion and Order, 5 FCC Rcd 934, 935 (1990) (Commission confers community status on unincorporated community of 150 persons that is also not in U.S. Census, based on the relevant factors when viewed together).

²⁵ *Id.*

²⁶ Petition at 3.