



Federal Communications Commission
Washington, D.C. 20554

June 6, 2013

In Reply Refer to:
1800B3-DD/NS

James P. Riley, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Arlington, VA 22209

Gary S. Smithwick, Esq.
Smithwick & Belenddiuk, P.C.
5028 Wisconsin Avenue, N.W.
Washington, DC 20016

In Re: KTIA-FM, Boone, Iowa
Facility ID Number: 6417
File No: BPH-20121113AMW

Dear Counsel:

This letter refers to the above-captioned minor change application (the "Application") of Truth Broadcasting Corp. ("Truth Broadcasting"), licensee of Station KTIA-FM, Boone, Iowa. The Application proposes a city of license modification for Station KTIA-FM, Channel 257A from Boone, Iowa, to Huxley, Iowa.¹ Saga Communications of Iowa, LLC ("Saga"), LP filed an Informal Objection ("Objection").² Truth Broadcasting filed an Opposition to Informal Objection ("Opposition") and Saga filed a Reply to Opposition to Informal Objection ("Reply to Opposition"). For the reasons discussed below, we deny the Objection in part and direct Truth Broadcasting to amend the Application.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,³ which set 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 application for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments in comparison with its current service.⁴ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵

¹ Originally, Truth Broadcasting filed a city of license modification for Station KTIA-FM to change its community of license from Boone, Iowa to Johnston, Iowa. The application was dismissed, *see Letter to James P. Riley, Esq.*, 27 FCC Rcd 12318.

² Saga is the licensee of six commercial stations in the Des Moines, Iowa, market.

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).

In its Application, Truth Broadcasting claims that the proposed city of license modification satisfies Priority 3 and could provide a first local service to Huxley, Iowa.⁶ In support of this contention, Truth Broadcasting represents that the urbanized area service presumption (“UASP”)⁷ does not apply to the proposed change of community of license. Specifically, Truth Broadcasting certifies that there are no existing towers in the area in which the KTIA-Huxley facility ‘could be modified’ to cover 50% or more of the Ames or the Des Moines Urbanized Area (“UA”).⁸

Saga submitted an Objection against the Application. Saga states that there are tower locations available from which KTIA could serve Huxley and, at the same time, place a city-grade signal over 50 percent of either the Ames or the Des Moines Urbanized Area. Saga contends that, from Antenna Structure Registration (“ASR”) #1235167, KTIA would be able to cover more than 50 percent of the Des Moines UA, and from ASR #1207229 would be able to cover more than 50 percent of Ames, Iowa UA while maintaining 70 dBu service to Huxley.⁹

Truth Broadcasting filed an Opposition to Saga’s Objection. Truth Broadcasting explains that, as to coverage of the Des Moines UA from ASR #1235167, Saga’s claim is dependent upon use of a non-standard prediction method, Longley-Rice, which is “contrary to the Audio Division’s established method of evaluating proposals subject to the new policies and procedures established in *Rural Radio*.” Truth Broadcasting further contends that when an applicant has based its coverage certification on the standard prediction method of Section 73.313, an opponent’s suggested use of alternate prediction methods has been expressly disallowed. Regarding coverage of the Ames, Iowa UA from a transmitter located on facility ASR #1207229, Truth Broadcasting states that “the use of ASR #1207229 at the maximum elevation which might have been available to KTIA-FM at the time the Application was filed could not provide 70 dBu service to 50 percent of the Ames Urbanized Area.”¹⁰

Saga filed a Reply to Truth Broadcasting’s Opposition. Saga argues that use of an Alternate Propagation Method such as Longley-Rice is permissible to demonstrate adequate coverage of the community of license. Saga argues that “widely used techniques” include relocating other tower appurtenances to alternate elevations and substituting a different antenna could both provide service to Huxley and to more than 50 percent of the Des Moines or Ames UAs.¹¹

Discussion. Under Section 309(d) of the Communications Act of 1934, as amended,¹² informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would

⁶ In its Application, Truth Broadcasting states that Huxley is a community for allotment purposes, an incorporated community with its own government, including a mayor, city council, police department, fire department, library, local businesses, community organizations, and churches. Huxley has grown by almost fifty percent, from its 2000 US Census population of 2,315, to its 2010 US Census population of 3,317. Truth Broadcasting represents that the proposed change of community would result in a net gain of 247,399 persons (from 104,491 to 351,890), and a net loss in area of 248 square kilometers. All gain and loss areas are well-served by at least 10 reception services.

⁷ See *Policies to Promote Rural Radio Service and to Streamline Allotment and 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*”).

⁸ Application, Section 307(b) Legal Analysis at 2.

⁹ Objection at 4.

¹⁰ Opposition to Objection at 2-6.

¹¹ Reply to Opposition at 3-5.

¹² 47 U.S.C. § 309(d) (the “Act”).

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.¹³

We find that Saga has not demonstrated that the Application could be modified to serve more than 50 percent of the Ames, or Des Moines, Iowa UAs, while maintaining city grade signal to Huxley, Iowa. First, we disagree that it is permissible for Saga to use an Alternative Propagation Method, such as Longley-Rice, in attempting to establish that the Application could both provide service at Huxley and place a city-grade signal over 50 percent of the Des Moines UA from ASR # 1235167. As Truth Broadcasting points out, an opponent of an application may not use “an alternative propagation methodology, such as Longley-Rice, for the purpose of demonstrating the extent of potential coverage of a nearby urbanized area where the applicant is not using an alternative propagation methodology.”¹⁴ Saga’s argument that Station KTIA-FM, from a transmitter located at ASR #1235167, could cover 50 percent of the Des Moines UA, while also serving Huxley, is premised upon the use of Longley-Rice to establish coverage of Huxley. We therefore reject Saga’s argument that KTIA-FM could provide service to Huxley from that antenna site.

Second, we disagree with Saga to consider the possibility of relocating other tower appurtenances at ASR # 1207229 in determining the feasibility of a tower structure. In *Rural Radio*, the Commission specified to consider widely-used techniques, such as directional antennas and contour protection, when certifying that the proposal could not be modified to provide a principal community signal over 50 percent or more of an Urbanized Area.¹⁵ Truth Broadcasting claims that after relying on contour protection to enable consideration of ASR# 1207229, use of the “most robust and rule-compliant directional antenna possible” would not bring the principal community signal coverage of Ames UA to the 50 percent level.¹⁶

However, our independent engineering analysis have identified several sites including ASR # 1017090, from which Station KTIA-FM could both serve Huxley and provide a city-grade signal over more than 50 percent of the Des Moines UA.¹⁷ As but one example, a directional antenna operating as a Class C3 facility would provide a city-grade signal over 50 percent of the Des Moines UA. In this case, the extent of potential coverage of the Des Moines UA is a very persuasive factor that favors application of the UASP and the treatment of this proposed change of community as a move-in to serve the Des Moines market, rather than the specified community of Huxley.

We turn next to the size and proximity of the proposed community of license relative to the central city of the urbanized area. Huxley, the proposed community of license, has a 2010 population of 3,317 persons, while Des Moines, the central city of the urbanized area, has a 2010 population of 203,433.

¹³ 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).

¹⁴ *Evan D. Carb, Esq.* Letter, Ref. 1800B30-AJR (April 26, 2013). See also *Shaw Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 5852 (2009) (not considering a Longley Rice study in a petition to deny that sought to question the coverage of an FM station); *Lee Shubert, Esq.*, Letter, 10 FCC Rcd 3159, 3160 (MMB 1995) (rejecting an attempt to apply Longley-Rice calculations to disqualify an applicant that had demonstrated compliance with the multiple ownership rules using the Commission’s standard calculation methods).

¹⁵ *Rural Radio*, 25 FCC Rcd at 2575 and 2576.

¹⁶ Opposition to Objection at 3.

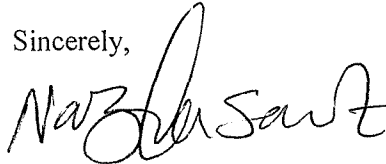
¹⁷ Antenna Structure Registration Nos: 1203508, 1230918, 1012058, 1038802, 1044672, 1012196, 1016677, 1041359, 1234274, 1246498, 1260573, and 1276124.

Huxley thus has a population that is 1.6 percent of the population of Des Moines. Huxley is located approximately 35 km (20 miles) from the center of Des Moines. Based on the extreme disparity in size and the close proximity of the two communities, we also find that the UASP should apply here.

Our preliminary analysis leads us to a tentative conclusion in favor of the rebuttable UASP that the proposed change of community to Huxley constitutes, in actuality, a move-in to the Des Moines UA. Truth Broadcasting may seek Priority 3 status by submitting evidence to rebut the UASP 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.”¹⁸ The required compelling showing may be based on the existing three-pronged *Tuck* test to demonstrate independence.¹⁹ Moreover, in addition to demonstrating independence, a compelling showing requires evidence of the community’s need for an outlet for local expression.²⁰ Truth Broadcasting has not provided information regarding the independence of Huxley from the Des Moines Urbanized Area, nor has it supplied persuasive evidence to support the proposed change of community under Priority 4.

Conclusion. Accordingly, for the reasons discussed above, we deny the Objection in part and direct Truth Broadcasting to amend the Application to rebut the urbanize area presumption within thirty (30) days of this letter. A copy of the amendment should be served on counsel to Saga, and Saga may submit a response to the amendment within fifteen (15) days. This letter constitutes the one opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3522 of the Commission’s Rules.

Sincerely,



Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

¹⁸ *Id.* at 2572, ¶ 30.

¹⁹ 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). See *Rural Radio*, *supra*, at 2573, ¶ 30.

²⁰ *Id.*