



Federal Communications Commission
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In Reply Refer to:
1800B3-AJR

Peter Gutmann, Esq.
Womble Carlyle Sandridge & Rice, PLLC
1200 19th Street, N.W.
Fifth Floor
Washington, DC 20036

J. Dominic Monahan, Esq.
Luvaas Cobb
777 High Street
Suite 300
Eugene, Oregon 97401

In re: **KOMO-FM, Oakville, Washington**
Facility ID No. 51167
File No. BMPH-20110630AGT

New FM Station, Ilwaco, Washington
Facility ID No. 189496
File No. BNPH-20110630AGJ

Dear Counsel:

We have before us two mutually contingent applications, as amended, concurrently filed by South Sound Broadcasting, LLC ("SSB"), licensee of Station KOMO-FM, Oakville, Washington, and Sunnylands Broadcasting LLC ("Sunnylands"), winning bidder in Auction 91 for Channel 253A at Ilwaco, Washington. In the first application (the "Belfair Application"),¹ SSB proposes to change the community of license of Station KOMO-FM from Oakville to Belfair, Washington. In the second application (the "Oakville Application"),² Sunnylands proposes to implement its winning bid for FM Channel 253A at Ilwaco on upgraded Channel 253C3 at Oakville, Washington. For the reasons set forth below, we request additional information regarding the Belfair and Oakville Applications in light of the *Second Order* in our *Rural Radio* rule making proceeding.³

Background. Before the release of the *Second Order*, the staff had asked Sunnylands and SSB to provide additional information.⁴ As explained in *Deficiency Letter 2*, the applicants' contention that the

¹ See File No. BMPH-20110630AGT.

² See File No. BNPH-20110630AGJ.

³ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, FCC 12-127 (rel. Oct. 12, 2012) ("*Second Order*").

⁴ See *Letter to Peter Gutmann, Esq.*, Reference 1800B3 (MB Sept. 12, 2011) ("*Deficiency Letter 1*"); Sunnylands Broadcasting LLC, *Letter*, 27 FCC Rcd 4209 (MB 2012) ("*Deficiency Letter 2*").

coordinated moves would result in a preferential arrangement of allotments was predicated upon the reallocation of Station KOMO-FM qualifying under FM Priority 3⁵ as a first local service at Belfair⁶ without the need for a *Tuck* showing.⁷ Although Station KOMO-FM would continue to provide a 70 dBu signal to 100 percent of the Olympia-Lacey, Washington, Urbanized Area, we stated that Sunnylands and SSB must rebut the urbanized area service presumption established in *Rural Radio*⁸ if they want to rely upon Priority 3. Absent such a rebuttal, the Belfair Application would be treated as an intra-urbanized area move under Priority 4, and the coordinated moves would not result in a preferential arrangement of allotments because retention of Channel 253A at Ilwaco, as a second local transmission service, would be preferred to at least a ninth transmission service to Olympia-Lacey, Washington, Urbanized Area.⁹

On November 18, 2011 and July 23, 2012, Sunnylands and SSB, submitted, respectively, amendments to the Oakville and Belfair Applications, seeking to respond to the *Deficiency Letters*, and SSB sought to rebut the urbanized area service presumption with respect to Belfair. On October 12, 2012, the Commission released the *Second Order* in which, *inter alia*, it clarified the technical standards for calculating gain and loss areas of service and the number of reception services in gain and loss areas in change of community cases.¹⁰ Additionally, the Commission provided guidance on the weight to be given to the *Tuck* factors used to evaluate the interdependence of the specified community with the larger urbanized area and afforded applicants wide latitude in presenting facts to rebut the presumption¹¹ The Commission allowed parties with pending change of community applications as of the release date of the *Second Order* the option of amending their applications to conform to the clarified procedures or to rely upon the reception service counts in their previously filed technical showings.¹²

Discussion. Oakville Application. Sunnylands proposes a change of transmitter site of approximately 101 kilometers (63 miles) and states that there would be a gain of 276,342 persons in an area of 4,592 square kilometers, a loss of service to 29,767 persons in an area of 800 square kilometers,

⁵ 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). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

⁶ See *Deficiency Letter 2*, 27 FCC Rcd at 4211.

⁷ 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).

⁸ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 25 FCC Rcd 2556, 2567, ¶ 20 (2011) (“*Second R&O*”). Specifically, when the community proposed is located in an urbanized area or could, through a minor modification application cover more than 50 percent of an urbanized area, the Commission will treat the application, for Section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license. The Commission further provided that this presumption may be rebutted by a “compelling showing” of the independence of the community from the urbanized area, the community’s specific need for an outlet for local expression, and the ability of the proposed station to provide that outlet. *Id.* at 2572, ¶ 30.

⁹ See *Deficiency Letter 2*, 27 FCC Rcd at 4211-12, citing *Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259 (MB 2011).

¹⁰ *Second Order*, at 8-12, ¶¶ 14-17.

¹¹ *Id.*, at 7-8, ¶ 12.

¹² *Id.*, at 12 n.70.

and net gain of 246,575 persons in 3,792 square kilometers.¹³ Additionally, Sunnylands notes that 50 persons would lose a fifth potential service.¹⁴ Consistent with the *Second Order*, we are giving Sunnylands the opportunity to amend its Section 307(b) showing to conform to the clarified procedures for calculating gain and loss of service or to provide any other facts under Priorities 3 or 4 of the FM allotment priorities pursuant to the *Second Order*. Specifically, Sunnylands used the nighttime-interference free contour for AM reception services whereas the *Second Order* specifies the 2.0 mV/m groundwave contour as the basis for calculating AM reception services.¹⁵

Belfair Application. The *Second R&O* states that a change of community applicant needs to certify "that there could be no rule-compliant minor modification on the proposed channel to provide a principal community signal over 50 percent or more of an Urbanized Area, in addition to covering the proposed community of license."¹⁶ Although SBS acknowledges that the proposed 70 dBu contour of Station KOMO-FM would continue to encompass 100 percent of the Olympia-Lacey Urbanized Area, 35 percent of the Bremerton Urbanized Area, and 11 percent of the Seattle Urbanized Area,¹⁷ it did not certify whether Station KOMO-FM could provide a 70 dBu signal to 50 percent or more of the Bremerton or Seattle Urbanized Areas. A staff engineering analysis reveals that Station KOMO-FM would cover approximately 64% of the Bremerton Urbanized Area.¹⁸ Under these circumstances, SSB is required to make a "compelling showing," pursuant to the *Second Order*, to rebut the urbanized area service presumption with respect to both the Bremerton and Olympia-Lacey Urbanized Areas in order to receive credit under Priority 3 as a first local service at Belfair.

Accordingly, for the reasons discussed above, we request that Sunnylands and SSB amend their Section 307(b) showings in the Oakville and Belfair Applications. Further action on the captioned applications will be withheld for a period of thirty (30) days from the date of this letter to provide an opportunity to respond.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹³ See File No. BNPH-20110630AGJ, Attachment 36, at 2-3.

¹⁴ *Id.*, 4.

¹⁵ *Second Order*, at 10, ¶ 16.

¹⁶ *Second R&O*, 26 FCC Rcd at 2575 n.97.

¹⁷ See *Deficiency Letter 2*, 27 FCC Rcd at 4210.

¹⁸ By way of contrast, our staff engineering analysis shows that, due to adjacent channel spacing requirements, Station KOMO-FM will not be able to increase its 70 dBu coverage over the Seattle Urbanized Area.