



Federal Communications Commission
Washington, D.C. 20554

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DA 12-640
In Reply Refer to:
1800B3-AJR

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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 and concurrently filed applications of 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. We also have before us a staff letter to Sunnylands, requesting additional information regarding the Oakville Application³ and an amendment filed by Sunnylands on November 18, 2011. For the reasons set forth below, we request additional information regarding the Belfair Application.

Background. The Belfair and Oakville Applications were filed pursuant to Section 73.3573 of the Commission’s Rules, which permits the modification of a station’s authorization or a winning bidder’s FM assignment to specify a new community of license, without affording other interested parties

¹ See File No. BMPH-20110630AGT.

² See File No. BNPH-20110630AGJ.

³ See *Letter to Peter Gutmann, Esq.*, Reference 1800B3 (MB Sept. 12, 2011) (“*Deficiency Letter*”).

an opportunity to file competing expressions of interest.⁴ The Belfair and Oakville Applications were also filed pursuant to Section 73.3517(e), which permits FM licensees or permittees to file up to four contingently related applications for minor modification of facilities.⁵ The Belfair Application requests a minor modification to change the community of license for Station KOMO-FM from Channel 249C at Oakville to Channel 249C at Belfair, without a change of transmitter site or existing facilities. To prevent the removal of Oakville's sole local service, the Oakville Application proposes to upgrade and reallocate Sunnylands' FM assignment from Channel 253A at Ilwaco to Channel 253C3 at Oakville, with a transmitter site change, as a "back-fill" station.

In support of their applications, SSB and Sunnylands contend that these coordinated moves will result in a preferential arrangement of allotments under the FM allotment priorities⁶ because (1) the proposed reallocation of Station KOMO-FM to Belfair (population 3,931) will provide a first local service at that community under Priority Three; (2) the "backfill" reallocation and upgrade of the Ilwaco FM assignment to Oakville will maintain a first local service at Oakville (population 675) and provide a net gain in service to 246,575 persons; and (3) Ilwaco would continue to have a local aural service as Station KVAS(FM) is licensed to that community.⁷ By way of comparison, they allege that retention of the present allotment scheme would result in maintaining a first local service at Oakville and a second local service at Ilwaco (population 936) under lesser Priority Four. Because under either allotment scheme, Oakville retains a first local service, SSB and Sunnylands contend that the proposed allotment scheme is preferred under the FM priorities as a first local service at Belfair under Priority Three is favored over retaining a second local service at Ilwaco under Priority Four. SSB also acknowledges that the 70 dBu contour of Station KOMO-FM encompasses 100% of the Olympia-Lacey Urbanized Area, 35% of the Bemerton Urbanized Area, and 11% of the Seattle Urbanized Area. Because no change in transmitter site is involved, SSB contends that it is not required to submit a *Tuck*⁸ showing that Belfair is independent of these urbanized areas to qualify for a first local service at Belfair under Priority Three.

On September 12, 2011, the staff sent the *Deficiency Letter* to Sunnylands. Noting that the upgrade and reallocation of Channel 253A from Ilwaco to Channel 253C3 Oakville would result in that new station providing a 70 dBu signal over 54 percent of the Olympia-Lacey Urbanized Area, the staff requested that Sunnylands rebut the urbanized area service presumption established in *Rural Radio* ". . . that, 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, we will treat the application, for Section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license."⁹ The *Deficiency Letter* explained that the presumption needs to be rebutted in

⁴ 47 C.F.R. § 73.3573.

⁵ See 47 C.F.R. § 73.3517(e).

⁶ 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 (1988).

⁷ See File No. BNPH-20110630AGJ, Exhibit 35 and Attachment 35. See also File No. BMPH-20110630AGT, Attachment 35.

⁸ 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).

⁹ 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), *petitions for reconsideration pending* ("*Rural Radio*"). The Commission further provided that this presumption may be rebutted by a compelling showing of the independence of the community from the

order for the “back-fill” allotment to qualify for a first local service under Priority Three. Alternatively, the *Deficiency Letter* stated that Sunnylands “may file a Priority (4) public interest showing, providing a more detailed explanation of the claimed public interest benefits of the proposed move.”¹⁰

On November 18, 2011, Sunnylands submitted an amendment to the Oakville Application (the “Amendment”), seeking to respond to the *Deficiency Letter*. In the Amendment, Sunnylands alleges that it is inappropriate to view the Oakville Application in isolation as it is part of two coordinated moves. Nevertheless, Sunnylands submits evidence, seeking to rebut the presumption.

Discussion. As a threshold matter, we agree with Sunnylands that the Oakville and Belfair Applications should be considered together. They are coordinated moves filed pursuant to Section 73.3517(e), and our processing policy is to dispose of coordinated filings simultaneously.¹¹ Moreover, where there are contingent change of community applications, our Section 307(b) analysis is based upon considering the applications together to determine whether they would result in a preferential arrangement of allotments.¹² As a result, we are giving SSB an opportunity to amend the Section 307(b) showing in the Belfair Application and have the supplementary information considered with the Oakville Application, as amended.

As to the merits, SSB’s contention that the coordinated moves will result in a preferential arrangement of allotments is predicated upon the reallocation of Station KOMO-FM qualifying as a first local service at Belfair under Priority Three without the need for a *Tuck* showing because this proposal is essentially an “intra-urbanized area move.” In a related case, the staff applied the new policies established in *Rural Radio* to cases such as the instant one where both the station’s current and proposed communities of license are located within an Urbanized Area or where the station’s 70 dBu signals are already and will continue to place a 70 dBu signal over 50% or more of an Urbanized Area.¹³ Therein, the staff held that “there is no need for a *Tuck* showing . . . because such intra-urbanized area moves do not present the same concerns as rural to urban moves.”¹⁴ However, in that case, the staff further provided that “[i]n the absence of a compelling showing to rebut the presumption,” it would consider the proposed intra-urbanized area move under Priority Four, as opposed to a first local service under Priority Three.¹⁵ In light of *Gearhart*, if SSB is relying upon Priority Three in the Belfair Application, it needs to

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.

¹⁰ *Deficiency Letter* at 2.

¹¹ See 47 C.F.R. § 73.3517(e). See also *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, First Report and Order, 14 FCC Rcd 5272, 5282, ¶ 14 (1999) (“Applications will be processed together and, if grantable, will be granted simultaneously”).

¹² See, e.g., *Cumulus Licensing LLC*, Letter, 26 FCC Rcd 12496 (MB 2011) (considering the combined benefits of coordinated change of community applications and finding that they would result in a preferential arrangement of allotments). See also *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4874 and 4876 n.26 (1989), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) (“we will decide the proposal on a case by case basis, based on whether or not the proposed changes, taken as a whole, would advance our allotment priorities”).

¹³ See *Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259 (MB 2011) (“*Gearhart*”).

¹⁴ *Id.* at 10262, ¶ 9.

¹⁵ *Id.* at 10263, ¶ 10.

demonstrate that Belfair qualifies as a first local service by submitting a compelling showing to rebut the presumption that Belfair is dependent upon the Olympia-Lacey Urbanized Area. Alternatively, the parties should submit a showing under Priority Four that the coordinated moves will better serve the public interest than the present arrangement of allotments.¹⁶ Finally, in the event that we are unable to grant both the Belfair and Oakville Applications, we would give Sunnylands the opportunity to amend its long-form application to specify Ilwaco or some other community that would constitute a minor amendment because the Commission has established, with respect to auction winners, a “more lenient approach toward the processing of defective broadcast applications . . . permitting multiple corrective amendments if necessary.”¹⁷

Accordingly, for the reasons discussed above, we request that SSB amend its Section 307(b) showing in the Belfair Application. 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

¹⁶ In view of the new *Rural Radio* policies that do not recognize a first local service to a suburban community without rebutting the urbanized area service presumption, a “back-fill” at Oakville may not be necessary to prevent the removal of a sole local service..

¹⁷ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services*, First Report and Order, 13 FCC Rcd 15920, 15986 (1998), *recon. denied*, 14 FCC Rcd 8724 (1999), *aff’d sub nom. Orion Communications, Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000). See also, *Able Radio Corporation and Entravision Holdings, LLC*, Letter, 26 FCC Rcd 16161 (MB 2011) (permitting an FM auction winner to amend its long-form application to specify a different transmitter site).