



Federal Communications Commission
Washington, D.C. 20554

March 21, 2006

DA 06-633
In Reply Refer to:
1800B3-TSN

Broadcast Communications, Inc.
c/o Lee J. Peltzman, Esq.
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, DC 20036

In re: **WKFB(AM), Jeannette, Pennsylvania**
Facility ID No. 10026
Application for Major Modification
File No. BMJP-20050113AAF

Dear Counsel:

This letter refers to the above-noted application filed by Broadcast Communications, Inc. ("BCI") for major modification to the facilities of station WKFB(AM), Jeannette, Pennsylvania, seeking to change the community of license from Jeannette to North Huntingdon, Pennsylvania. For the reasons set forth below, we dismiss the application.

Background. BCI timely filed its FCC Form 175 application to change the WKFB(AM) community of license during the filing window for AM Auction No. 84 ("Auction 84").¹ The application was determined not to be mutually exclusive with any other proposal filed in the Auction 84 filing window, and BCI was invited to file its complete FCC Form 301 application by January 18, 2005.² BCI timely filed its complete FCC Form 301 application on January 13, 2005. BCI proposes only a change in community of license, with no change to the WKFB(AM) technical facilities. BCI was thereafter instructed to submit an amendment addressing the implications of the proposed community change under Section 307(b) of the Communications Act of 1934, as amended, which directs the Commission to make a "fair, efficient, and equitable" distribution of radio service among communities in the United States.³ BCI timely filed its Section 307(b) amendment on August 4, 2005.

WKFB(AM) is the sole local transmission service licensed at Jeannette, Pennsylvania (2000 Census population 10,654). BCI proposes to change WKFB(AM)'s community of license to North Huntingdon, Pennsylvania (2000 Census population 29,123) as that community's first local radio

¹ See *Public Notice*, "AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze," 18 FCC Rcd 23016 (MB/WTB 2003).

² See *Public Notice*, "AM Auction No. 84 Singleton Applications," 19 FCC Rcd 22569 (MB 2004).

³ See *Public Notice*, "Section 307(b) Amendment Deadline Established for Certain AM Auction No. 84 Singleton Applications," 20 FCC Rcd 10701 (MB 2005).

transmission service. BCI's Section 307(b) amendment indicates that Jeannette will continue to receive protected service⁴ from at least five stations.⁵

Discussion. Our policies on allowing broadcast stations to change their communities of license are based on Section 307(b) and the goals of fair, efficient, and equitable distribution of radio service that underlie it. Our *FM Assignment Policies* delineate three core priorities: provision of first aural reception service to a community, provision of second aural reception service to a community, and provision of first local transmission service at a community.⁶ The fourth priority is "other public interest matters," which encompasses any other factors that the Commission may take into consideration.⁷ Retention of the first local service at Jeannette, and the institution of first local service at North Huntingdon, implicate Priority (3) – first local transmission service. However, notwithstanding that the existing and proposed arrangements of stations both trigger the same allotment priority, the Commission prohibits the removal of an existing station representing a community's sole local transmission service.⁸ This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.⁹ But the Commission has emphasized that "the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver."¹⁰ Rather, such a proposal "is presumptively contrary to the public interest."¹¹ In this regard, the Commission has stated that:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.

⁴ 5mV/m for AM stations and 3.16 mV/m (70 dBμ) for FM stations.

⁵ BCI lists five AM stations currently providing protected service to both Jeannette and North Huntingdon, Pennsylvania: WEAE(AM), WBGG(AM), and KDKA(AM), Pittsburgh, Pennsylvania; WAMO(AM), Millvale, Pennsylvania; and WMBS(AM), Uniontown, Pennsylvania. BCI does not list any FM broadcast stations, relying solely on the Commission's determination that a community receiving service from at least five stations is abundantly served. See *Family Broadcasting Group*, 53 R.R.2d 662 (Rev. Bd. 1983), *review denied*, FCC 83-559 (Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (MMB 1995).

⁶ *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88, 91-93 (1982). Priorities (2) and (3) are co-equal. The FM allotment priorities are applied to Section 307(b) determinations for community change proposals for AM stations. *Allesandro Broadcasting Co.*, 56 R.R.2d 1568 (Rev. Bd. 1984).

⁷ *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d at 93.

⁸ *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("New Community R & O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094, 7097(1990) ("New Community MO&O").

⁹ *Id.* On waiver standards generally, see *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*") ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest," citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) ("*WAIT Radio*").

¹⁰ *New Community MO&O*, 5 FCC Rcd at 7097.

¹¹ *Id.*

Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.¹²

BCI acknowledges this policy but requests it be waived in this instance, citing what it terms “substantial public interest considerations” favoring such a waiver.¹³ BCI contends that the Commission policy prohibiting removal of a sole local service “is contrary to the intent of Section 307(b) and does not maximize service to the public,” noting that the interest of Jeannette in retaining its local service “should not outweigh the interest of the greater number of listeners in a second community in obtaining their first local transmission service, especially when the first community is served by multiple aural services and when other public interest factors are present.”¹⁴ However, BCI does not adequately explain what other public interest factors are present. In fact, BCI makes the contradictory claims that Jeannette will continue to receive service from WKFB(AM), as the station’s technical facilities will not change, but that change of the community of license will result in a “net service benefit to the public.” In this instance, there is no net service benefit, as the same number of listeners would continue to receive service.

Granting this application would fundamentally change WKFB(AM)’s service obligations. BCI is in error when it states that, because WKFB(AM) would continue to provide protected service to Jeannette, “the station will continue to have an obligation to provide service to that community.”¹⁵ In fact, were we to grant the application, WKFB(AM)’s primary service would shift to an obligation to provide service to North Huntingdon.¹⁶ Moreover, the Commission has previously stated that it will not accept continued reception service coverage by the station as a factor in favor of a licensee seeking to change its community of license.¹⁷ While North Huntingdon is unquestionably the larger community, and would be preferred if this were a comparison between proposals for new service, this in and of itself does not justify a change of community of license that would deprive the community of Jeannette of a radio service on which it has come to rely for programming serving its needs. The Commission has held that the fact that a licensee proposes to remove a station to a larger community does not by itself justify the removal of a smaller community’s sole local broadcast service.¹⁸ However, this is the only public interest justification proffered by BCI in support of its application.

Therefore, we cannot find, on the existing record in this case, that there are sufficient public interest factors to offset the expectation of continued local service at Jeannette, Pennsylvania.

¹² *Id.*

¹³ BCI Section 307(b) Amendment, third unnumbered page.

¹⁴ *Id.* at third-fourth unnumbered pages.

¹⁵ *Id.* at fourth unnumbered page.

¹⁶ Provision of city-grade service to the community of license is only one component of a station’s service obligation; the station must also provide programming that will serve the designated community of license. *See, e.g., Roberts Communications, Inc.*, 11 FCC Rcd 1138, 1139 (1996).

¹⁷ *See New Community R & O*, 4 FCC Rcd at 4873. Accepting continued reception of the station at the previous community would require ensuring that the coverage was provided to the original community in perpetuity, lest the licensee avoid one of the terms of its promise that allowed the move. *Id.*

¹⁸ *See, e.g., Potts Camp and Slatillo, Mississippi*, 16 FCC Rcd 16116 (2001) (denying relocation of sole local service at a town of 483 to a town of 1,782).

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Accordingly, we cannot find that the public interest, convenience, and necessity will be served by BCI's proposal. Therefore, the application of Broadcast Communications, Inc., File No. BMJP-20050113AAF, for major modification to change the community of license of station WKFB(AM), Jeannette, Pennsylvania, IS DISMISSED.¹⁹

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ The corresponding AM Auction No. 84 Tech Box submission of the applicant, File No. BMJP-20040129AOP, IS ALSO DISMISSED.