



Federal Communications Commission
Washington, D.C. 20554

April 20, 2015

In Reply Refer to:
1800B3-MFW

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In re: **WGLB(AM), Elm Grove, WI**
Facility ID No. 73050
File No. BP-20141110AAS

Minor Change Application

WZRK(AM), Lake Geneva, WI
Facility ID No. 61389
BL-19981001AA (Proposed surrender of License)

Dear Counsel:

We have before us: (1) the referenced application, as amended, filed by Joel J. Kinlow (“Kinlow”), for minor change to the facilities of Station WGLB(AM), Elm Grove, Wisconsin (the “WGLB Application”); and (2) the request, filed by WGLB, LLC (“WL”) on January 26, 2015, to surrender the license of Station WZRK(AM), Lake Geneva, Wisconsin.¹ On December 5, 2014, Mr. Lyndon Wieseman (“Wieseman”) sent by e-mail to the Audio Division and Commissioner Pai an Informal Objection (“Objection”) to the WGLB Application, which he supplemented by letters received April 3, 2014, and April 6, 2014 (collectively, “April Supplements”). That application is accompanied by an Interference Reduction Agreement (“IRA”) regarding the two stations, submitted as an amendment to the WGLB Application on February 10, 2015. For the reasons set forth below, we: (1) approve the IRA; (2) deny the Objection; and (3) grant the WGLB Application as amended, subject to surrender of WZRK(AM)’s license.

Background. WGLB(AM) is a Class B facility licensed to operate on 1560 kHz with a power of 0.185 kW daytime and 0.25 kW nighttime, employing a four-tower daytime and nighttime directional antenna system. Station WZRK(AM) is a Class D facility licensed on 1550 kHz with a daytime power of 1 kW, and a nighttime power of 0.001 kW, using a two-tower directional antenna array. In the Application, Kinlow proposes an increase of operating power to 2.5 kW daytime using a four-tower directional antenna array and nighttime power of 0.25 kW using a different four-tower directional antenna array. In the IRA, the parties propose grant of the WGLB Application and surrender of the WZRK(AM) license. They contend that grant of the proposals will increase service from WGLB(AM), eliminate existing prohibited overlap to a substantial area and population, and will leave no area receiving fewer than five aural broadcast services.

Discussion. *Interference Reduction.* The Commission encourages AM licensees and permittees to reach agreements to reduce power or cancel their licenses to permit other licensees to improve service

¹ Mr. Kinlow is the sole owner of WL.

and/or to reduce overall interference levels.² In amending Section 73.3517 of the Rules³ in 1990 to permit contingent applications that would “reduce interference to one or more AM stations or . . . otherwise decrease the area of interference,” the Commission removed regulatory barriers that had previously prevented AM licensees from entering into coordinated facility modifications to decrease inter-station interference and improve the overall quality of AM service.⁴

When such contingent agreements are proposed that would involve the deletion or modification of existing AM stations, we engage in a case-by-case public interest determination. In particular, the parties must demonstrate that a “local service floor” would remain in the community losing a local transmission service as a result of the proposed agreement.⁵ The Commission did not choose to “establish a quantifiable service floor that can uniformly be applied with respect to the replacement of deleted facilities,” opting instead for the case-by-case approach. However, the Commission did determine that, at a minimum, an agreement that resulted in the deletion of a station could not create any “white” or “gray” area.⁶

When undertaking the case-by-case analysis, we generally consider four factors: the amount of AM interference that would be eliminated in relation to the number of AM and FM services remaining available to the areas that would lose service; the areas and populations that would gain service as a result of the proposed change; whether the proposal would create any white or gray areas; and the availability of AM and FM service in the area that will experience a reduction in service due to the proposed contingent facilities changes.⁷ We will therefore examine the parties’ IRA here in light of these four factors.

Reduction in Interference. The IRA indicates that the instant proposal will result in the elimination of a 3,123-square kilometer prohibited contour overlap between the WZRK 0.025 mV/m contour and the 0.5 mV/m service contour of Station WHIT(AM), Madison, Wisconsin. 492,365 persons reside within this overlap area.

Increased Service. The IRA indicates that the grant of the WGLB Application will result in 0.5 mV/m service to an additional 1,089,423 persons and 2mV/m service to an additional 577,899 persons.⁸

² *Policies to Encourage Interference Reduction between AM Broadcast Stations*, Report and Order, 5 FCC Rcd 4492 (1990) (“*Interference Reduction*”).

³ 47 C.F.R. § 73.3517.

⁴ *Interference Reduction*, 5 FCC Rcd at 4492.

⁵ *Id.* at 4494.

⁶ *Id.* A “white” area is one that receives no full-time aural service; a “gray” area receives only one full-time aural service. 47 C.F.R. § 73.14; *Interference Reduction*, 5 FCC Rcd at 4494 n.14.

⁷ *Interference Reduction*, 5 FCC Rcd at 4494.

⁹ See WGLB Application, as amended, at Attachment 13, IRA at p.2. The IRA also indicates that the WZRK 0.5 mV/m contour covers 6,470 square kilometers and includes 1,108,671 persons, all but 152,270 of which are outside the Station’s 2 mV/m contour. Grant of the WGLB Application would replace this service for 4,265 square kilometers and 621,130 persons losing WZRK(AM)’s 0.5 mV/m service. There is thus a net loss of WZRK(AM) service to 2,205 square kilometers and 397,540 persons.

Creation of “White” or “Gray” Areas. The IRA indicates that the proposal will not create any white or gray areas.

Local Service Floor. The IRA indicates that the areas subject to experience a loss of the WZRK(AM) signal will continue to receive 0.5 mV/m primary service from at least eight other AM services. It also indicates that Lake Geneva, Wisconsin, will continue to be the community of license Class A commercial FM station WLKG(FM). Additionally, the community will continue to receive 2 mV/m service or better from seven AM stations, and it will continue to receive 60 dBμ or better service from at least six FM stations.⁹ Our independent analysis confirms these claims.

Wieseman Objection. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (“Act”),¹⁰ provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the WGLB Application would be *prima facie* inconsistent with Section 309(a) of the Act.¹¹ This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.

Wieseman objects to the proposal here not, as he says, “to squelch the improvement of WGLB but to preserve WZRK” as the only local AM radio station in Lake Geneva. He indicates that he met with Kinlow and “made him aware of my interest in owning WZRK” and suggested that Kinlow thus could maintain his desired signal coverage at WGLB(AM) and receive compensation for selling WZRK(AM) to Wieseman rather than incurring the expense of taking down the latter station’s tower and technical facilities.¹² In his April Supplements, Wieseman reiterates that he offered to purchase WZRK(AM) and questions whether the stations providing service to Lake Geneva will actually serve the “local public interest.” He argues that there is nothing local to Lake Geneva aired on any of the AM stations listed in the IRA and therefore all of these stations fail to demonstrate a “local service floor” for Lake Geneva.¹³ He states that all but one of the listed stations are 50,000-watt stations licensed either to Chicago or Milwaukee and focus on urban and suburban areas; these stations, he claims, will not substitute for the “local, rural listenership” of WZRK(AM).¹⁴ He also claims that “only one” of the

¹⁰ See WGLB Application, as amended, at Attachment 13, IRA at p. 2.

¹⁰ 47 U.S.C. § 309(e).

¹¹ 47 U.S.C. § 309(a). 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), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹² December 5, 2014, Objection.

¹³ April 3 Supplement at 2 (emphasis in original). Mr. Wieseman states that the IRA’s engineering exhibit defines “local” only in “engineering and economically profit-driven terms” not in terms of “hometown radio station” serving the local public interest. *Id.*

¹⁴ April 6 Supplement.

stations referenced in the IRA is a local Lake Geneva FM station (WGLK(FM)) and notes that WZRK(AM) has operated serving the local area for almost 50 years.¹⁵

The Commission specifically has addressed the issue whether an applicant implementing the Commission's AM interference reduction procedures may propose the surrender of an operating AM station license. For instance, in *Interference Reduction*, the Commission stated:

We emphasize that a significant factor underlying our decision to grant or deny a contingent application arrangement involving deletion or reduction in AM facilities would be whether it satisfies the public interest requirement of a local service floor -- a level of broadcast service that must be maintained subsequent to any deletion or reduction in AM facilities We believe that the availability of two or more primary services coupled with a reduction in AM interference would justify our not permitting a party to restore a deleted AM station that would not comply with current technical requirements.¹⁶

Here, Lake Geneva, Wisconsin, will retain a local broadcast voice, Station WKLK(FM), and will continue to receive primary service from seven AM and five commercial FM stations. Although Wieseman apparently attempts to discount WKLK(FM)'s service by noting that WZRK(AM) has been on the air for 50 years, there is no question that Lake Geneva will retain a local broadcast outlet.

The gravamen of Wieseman's objection is that the Commission should not permit the surrender of WZRK(AM) when there may be a viable alternative which would allow the station to remain on the air. However, the Commission has no authority to require any party to hold a license and to accept the duties of remaining a licensee.¹⁷ Moreover, the Commission has determined that, if certain service conditions are met, the public interest could be served by an overall reduction in interference in the AM band, even if that reduction is accomplished by the surrender of an operating AM station license. For the reasons stated above, we find that WL's proposal to surrender the WZRK(AM) license is well within the Commission's *Interference Reduction* guidelines and therefore that this IRA is in the public interest. Accordingly, upon review of all the pleadings in this case, we find that Wieseman has failed to raise a substantial and material question of fact requiring further inquiry into this matter.

Conclusions/Actions. For the reasons set forth above, we find that the facts and circumstances presented to us here establish that grant of the WGLB Application and surrender of the WZRK(AM) license will further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, that the Informal Objection filed by Lyndon Wieseman, as supplemented, IS DENIED.

¹⁵ April 3 Supplement at 2.

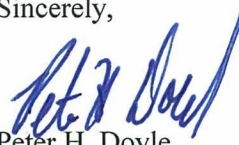
¹⁶ *Interference Reduction*, 5 FCC Rcd at 4494.. See also *Kovas Communications, Inc.*, Letter, 23 FCC Rcd 12706 (MB 2008) (application granted where surrender of license does not impact sufficient local service floor).

¹⁷ See *Lewis J. Paper, Esq.*, Letter, 29 FCC Rcd 1905, 1909 (MB 2014) citing *Scott R. Flick, Esq.* Letter, 24 FCC Rcd 9064, 9065 (MB 2009) *recon. denied*, 25 FCC Rcd 13725 (MB 2010).

IT IS FURTHER ORDERED that the applications of Joel J. Kinlow for modification of the facilities of stations WGLB(AM), Elm Grove, Wisconsin (File No. BP-20141110AAS) IS GRANTED, subject to the following condition:

This action shall be conditioned upon the surrender of the license of WZRK(AM), Lake Geneva, Wisconsin to the Commission for cancellation prior to the commencement of program test authority by the WGLB(AM) facility authorized by the subject construction permit, pursuant to the discontinuance of operation provisions of 47 C.F.R. Section 73.1750.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Lyndon Wieseman (via e-mail)
Mr. Joel J. Kinlow
WGLB, LLC