

FEDERAL COMMUNICATIONS COMMISSION

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Re: WNVE(FM), Ceiba, Puerto Rico
Facility ID No. 3250
Western New Life, Inc.
BPH-20140717ACI

WEVI(FM), Frederiksted, Virgin Islands
Facility ID No. 86811
Lifeline, LLC
BLH-20131018ABA

WWKS(FM), Cruz Bay, Virgin Islands
Facility ID No. 31084
GARK, LLC
BLH-19970310KC

Orders to Show Cause

Dear Counsel:

We have before us the above-referenced application (Application) filed by Western New Life, Inc. (WNL) on July 17, 2014, for a minor change to its license for Station WNVE(FM), Ceiba, Puerto Rico (WNVE or the Station). We also have an opposition to the Application filed by Lifeline, LLC (Lifeline)¹, the licensee of WEVI(FM), Frederiksted, Virgin Islands (WEVI), on January 12, 2015 (Lifeline Opposition), as well as a statement by GARK, LLC (GARK), the licensee of WWKS(FM), Cruz Bay, Virgin Islands (WWKS), filed on January 14, 2015 (GARK Statement).²

Background. In the Application, WNL requests to change the Station's transmitter site and substitute Channel 268A for Channel 269A at Ceiba, Puerto Rico. To accommodate this change, WNL proposes an involuntary channel substitution under which WEVI would substitute Channel 267A for Channel 271A at Frederiksted, Virgin Islands, and WWKS would substitute Channel

¹ Lifeline acquired WEVI from Frontline Missions International, Inc., on October 24, 2013. See File No. BALH-20130822ADO.

² On January 28, 2015, WNL responded to the Lifeline Opposition and GARK Statement (WNL Response).

271B for Channel 267B at Cruz Bay, Virgin Islands. Both licenses can be modified to specify operation on the new channels at their currently authorized transmitter site.³ On December 15, 2014, the Commission issued Orders to Show Cause to GARK and Lifeline, directing each to show cause within 30 days why their respective licenses should not be modified as proposed by WNL.⁴

In response, Lifeline argues that because it was required to change channels in 2013, resulting in “inconvenience and confusion to its listeners,” and because WNL’s proposal would affect two other stations, the proposal would be justified only if “substantial public interest benefits would result.”⁵ Lifeline also notes that WNL’s expanded service area claim is unsupported by technical data.⁶ GARK neither opposes nor supports the Application but states that the proposed changes may require the replacement of WWKS’s aged antenna and transmitter.⁷

In the WNL Response, WNL argues that Lifeline cites to no case precedent or Commission policy for its claim that a heightened public interest showing should be used where the proposal involves two other stations or a second channel change. Rather, WNL states, “each channel change must be judged on its own set of facts.”⁸ WNL includes a technical analysis supporting its statement that the population served after the proposed channel and site changes will be over two times the population served by WNVE at its currently licensed site.⁹ WNL also states that the loss area will be *de minimis* at 8.86 square miles of unpopulated national forest.¹⁰ Finally, WNL commits to reimbursing GARK and Lifeline for their “reasonable, necessary, and prudent” expenses associated with the involuntary channel changes, noting that the Commission has held that it not necessary to delay action on an application pending the development of a workable reimbursement plan, since the parties are responsible for negotiating the details and logistics of reimbursement.¹¹

Discussion. Lifeline fails to raise any substantial or material question of fact that the Application should not be granted. Section 316(a) of the Communications Act of 1934, as amended, permits us to modify a license if such action is in the public interest.¹² WNL’s proposal comports with the Commission’s policy against involuntary channel changes involving more than two other stations.¹³

³ Application, Exhibit 30, “Petition for Rule Making” at 1.

⁴ Letter from Darrell E. Bauguess to Jerrold Miller, Esq., Letter Order, Ref. No. 1800B3 (Dec. 15, 2014); Letter from Darrell E. Bauguess to John F. Garziglia, Esq., Letter Order, Ref. No. 1800B3 (Dec. 15, 2014).

⁵ Lifeline Opposition at 1-2.

⁶ Lifeline Opposition at 2 (explaining that “[a]bsent definitive service area and population coverage comparisons, the Commission is unable to determine if WNVE’s proposal serves the goals of [Section 307(b) of the Communications Act of 1934, 47 U.S.C. § 307(b)]”).

⁷ The GARK Statement incorporates a letter from R.J. Watkins Group, LLC (at that time the proposed assignee of WWKS) that GARK “endorses, adopts, and advances as the position of GARK.” See File No. BALH-20131021AAV. On March 10, 2015, the parties filed a notice of non-consummation.

⁸ WNL Response at 3.

⁹ WNL Response at 3 (“Station WNVE currently serves 121,929 persons in an area of 2,590.51 square kilometers. The WNVE proposal will serve 287,423 persons in an area of 4,999.01 square kilometers.”)

¹⁰ WNL Response at 3.

¹¹ WNL Response at 3-4 (citing *Pike Road, Alabama*, Report and Order, 29 FCC Rcd 13947, 13950, para. 9 (MB 2014)).

¹² 47 U.S.C. § 316(a).

¹³ See, e.g., *Milford, Utah*, Report and Order, 19 FCC Rcd 10335, 10337, para. 7 (MB 2004); *Castle Rock, Colorado*, et

Furthermore, grant of WNL's proposal will result in a considerable net gain in WNVE's service area and population covered, with only a *de minimis* corresponding loss area. While the Commission has recognized that changing the channels of existing stations creates a potential for a temporary disruption to the stations' listeners, we have also consistently held that this disruption of service does not outweigh the public interest benefit of providing service to additional population.¹⁴ Therefore we find that the public interest will be served by the substitution of Channel 268A for Channel 269A at Ceiba, Puerto Rico.

Under *Circleville* and subsequent cases, determination of what constitutes legitimate and prudent expenses for reimbursement is left to the expeditious good faith negotiation of the parties, subject to Commission adjudication if the parties are unable to reach agreement or to enter into binding arbitration.¹⁵ In this case, WNL has committed to reimburse Lifeline and GARK for any reasonable and prudent expenses incurred in the proposed channel changes. Therefore, we will grant the Application and require WNL to enter into negotiations to reimburse Lifeline and GARK for reasonable and prudent expenses incurred in implementing the proposed channel changes.

Conclusion/Actions. For these reasons, the Opposition filed by Lifeline, LLC on January 12, 2015, IS DENIED and the minor change application filed on July 17, 2014, by Western New Life, Inc. (File No. BPH-20140717ACI) IS GRANTED, pursuant to Section 0.283 of the Commission's Rules.¹⁶

IT IS FURTHER ORDERED that, pursuant to Section 316 of the Communications Act of 1934, as amended,¹⁷ the license for Station WEVI(FM), Frederiksted, Virgin Islands (File No. BLH-20030421AAA), is modified to specify operation on Channel 267A, subject to the following conditions:

- (a) Within 30 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize changes in transmitter location or to avoid the necessity of filing environmental assessments pursuant to 47 C.F.R. § 1.1307.

IT IS FURTHER ORDERED that the license for Station WWKS(FM), Cruz Bay, Virgin Islands (File No. BLH-19970310KC), is modified to specify operation on Channel 271B, subject to the following conditions:

- (a) Within 30 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities;

al., Report and Order, 7 FCC Rcd 7668, 7669, para. 7 (MMB 1992) ("*Castle Rock*").

¹⁴ See, e.g., *Castle Rock*, 7 FCC Rcd at 7669.

¹⁵ See, e.g., *Peter Wayne Lechman*, Memorandum Opinion and Order, 8 FCC Rcd 3058, 3058 (MMB 1993); *Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159, 164 (1967).

¹⁶ 47 CFR § 0.283.

¹⁷ 47 U.S.C. § 316.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize changes in transmitter location or to avoid the necessity of filing environmental assessments pursuant to 47 C.F.R. § 1.1307.

IT IS FURTHER ORDERED that Western New Life, Inc. shall reimburse Lifeline, LLC and GARK, LLC for their reasonable and prudent costs associated with the channel changes ordered herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo F. Bonacci".

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Jerrold Miller, Esq.
John Garziglia, Esq.