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Re: WCOO(FM), Kiawah Island, South Carolina
L.M. Communications II of South Carolina, Inc.
Facility ID No. 50729
File No. BPH-20160125AAF

WTUA(FM), Pinopolis, South Carolina
Praise Communications, Inc.
Facility ID No. 23895
File No. BPH-20160502ABB

Dear Counsel:

This letter concerns minor change application BPH-20160125AAF (WCOO(FM) Application), submitted by L.M. Communications II of South Carolina, Inc. (LMC), licensee of commercial FM station WCOO(FM), Kiawah Island, South Carolina, requesting modification of the licensed WCOO(FM) facilities;¹ an Informal Objection to the Application (Praise Objection) submitted by Praise Communications, Inc. (Praise), licensee of commercial FM station WTUA(FM), Pinopolis, South Carolina;² related responsive pleadings to the Praise

¹ File No. BLH-20011012AAX. Station WCOO(FM) is licensed to operate on channel 288C2 (105.5 megahertz (MHz)) at Kiawah Island, South Carolina, using 50 kilowatts (kW) effective radiated power (ERP), 133 meters antenna radiation center height above average terrain (HAAT), and a circularly polarized, nondirectional, FM antenna at a transmitter site described by geographic coordinates 32° 39' 57" North Latitude, 80° 03' 11" West Longitude, referenced to 1927 North American Datum (NAD 27).

² WTUA(FM), Facility ID No. 23895, was formerly licensed, File No. BLH-19900606KC, to operate on channel 291A (106.1 MHz) at St. Stephen, South Carolina, using 6.0 kW ERP, 100 meters antenna radiation center HAAT, and a circularly polarized, nondirectional antenna at a transmitter site described by geographic coordinates 33° 29' 36" North Latitude, 79° 53' 21" West Longitude, referenced to NAD 27. Commission grant of Construction Permit (CP) BPH-20090421ABK modified the WTUA(FM) assignment and license BLH-19900606KC to specify operation on channel 290A at Pinopolis, South Carolina, in place of channel 291A at St. Stephen, South Carolina.

Objection,³ and minor change application BPH-20160502ABB (WTUA(FM) Application) requesting modification of the licensed WTUA(FM) facilities that was submitted by Praise and is in queue behind the WCOO(FM) Application.⁴ For the reasons discussed below, we deny the LMC request that the Commission order modification of the WTUA(FM) assignment and license, grant the LMC request to modify the reference site coordinates for the channel 290A assignment at Pinopolis, South Carolina, reserved for WTUA(FM) use, grant the WCOO(FM) Application, and dismiss the WTUA(FM) Application.

Background. In the WCOO(FM) Application, LMC proposes to relocate the WCOO(FM) transmitting facilities to a new site, decrease ERP, and increase antenna radiation center HAAT. Our initial review of the WCOO(FM) Application revealed that the proposed facilities violated the minimum distance separation requirements of Section 73.207 of the Commission's rules⁵ with respect to the second-adjacent channel 290A assignment at Pinopolis, South Carolina, reserved for use by WTUA(FM) (WTUA(FM) Assignment). Commission staff sent LMC's counsel a letter on February 11, 2016, identifying this application defect, and giving LMC 30 days to submit an amendment proposing facilities that meet all pertinent Commission rules governing FM broadcast stations.⁶

LMC submitted an amendment to the WCOO(FM) Application on March 4, 2016. However, instead of modifying the proposed WCOO(FM) facilities to protect the WTUA(FM) Assignment, LMC requested that the Commission issue an Order to Show Cause (OSC) to Praise ordering the return of WTUA(FM) to its former channel 291A facilities at St. Stephen, South Carolina. LMC argued that such a change is justified due to Praise's failure to construct channel 290A facilities at Pinopolis, South Carolina, despite having had two CPs and six years to do so.⁷

In the Praise Objection, Praise requests dismissal of the WCOO(FM) Application for failure to protect the WTUA(FM) Assignment. Praise argues that the proposed change in the WTUA(FM) Assignment must be accomplished by the filing and grant of a petition for rule making requesting modification of the assignment, not by another licensee's request in a modification application. Additionally, Praise discusses the difficulties it has encountered that prevented timely construction of the authorized WTUA(FM) channel 290A facilities at Pinopolis, South Carolina, and its intentions to complete construction of channel 290A facilities at Pinopolis in the near future.

In the LMC Reply, LMC argues that WTUA(FM) is not operating in accordance with its license, and that WTUA(FM)'s only current authority to broadcast on channel 291A at St. Stephen, South Carolina, is an unprotected, implied Special Temporary Authority. LMC contends that Praise's six year failure to construct the authorized channel 290A facilities at Pinopolis, South Carolina, is precluding WCOO(FM)'s proposed facility improvement, as well as future improvements by other stations, and that modification of the WTUA(FM) Assignment and license to reflect WTUA(FM)'s actual operation would be in the public interest. Additionally, as an alternative to its request seeking the return of WTUA(FM) to channel 291A at St. Stephen, South Carolina, LMC specifies modified assignment reference site coordinates for the WTUA(FM) Assignment that are fully

³A Reply to Informal Objection (LMC Reply) was submitted by LMC on March 18, 2016; a Reply to Reply to Informal Objection (Praise Reply) was submitted by Praise on March 30, 2016, and a Supplement to Reply to Reply to Informal Objection (Praise Supplement) was submitted by Praise on May 9, 2016.

⁴ As defined in 47 CFR § 73.3564(e) (Section 73.3564(e)).

⁵ 47 CFR § 73.207 (Section 73.207).

⁶ Letter from Susan N. Crawford, Audio Division, FCC Media Bureau, to Sally A. Buckman, Esq. (February 11, 2016).

⁷ WTUA(FM) CP BPH-20090421ABK expired as a matter of law on September 22, 2012, without construction of the authorized facilities. Praise was granted a second CP for the same facilities, BPH-20120921AEU, and it expired as a matter of law on January 22, 2016, without construction of the authorized facilities. Despite the expiration of these CPs, the modifications of the WTUA(FM) Assignment and the WTUA(FM) license effectuated by CP BPH-20090421ABK remain in force and must be protected.

spaced to the proposed WCOO(FM) site,⁸ and asks that the Commission modify the WTUA(FM) Assignment accordingly. LMC asserts that the proposed change in the WTUA(FM) Assignment reference site coordinates would permit grant of the WCOO(FM) Application.

In the Praise Reply, Praise states that it has diligently tried to construct the authorized WTUA(FM) channel 290A facilities at Pinopolis, South Carolina, but was thwarted in its efforts by the filing of a Petition for Rescission of Grant of WTUA(FM) CP BPH-20090421ABK in 2009 that was still pending before the Commission when the CP expired in 2012,⁹ and a Federal Aviation Administration (FAA) objection to the WTUA(FM) transmitting facilities authorized by WTUA(FM) CP BPH-20120921AEU.

On May 2, 2016, Praise submitted the WTUA(FM) Application requesting a third CP to authorize construction of WTUA(FM) channel 290A facilities at Pinopolis, South Carolina, followed shortly by the filing of the Praise Supplement in which Praise reports receipt of FAA approval of the facilities proposed in the WTUA(FM) Application and filing of the WTUA(FM) Application.

Discussion. It is well established policy that the Commission will not force an existing station to change its community of license.¹⁰ Praise opposes LMC's request that the Commission order WTUA(FM) to return to its former channel and community of license. As a result, we will deny LMC's request that the Commission modify the WTUA(FM) Assignment to substitute channel 291A at St. Stephen, South Carolina, for channel 290A at Pinopolis, South Carolina, and WTUA(FM)'s license to specify operation on channel 291A at St. Stephen, South Carolina.

Our review of LMC's request to modify the geographic coordinates of the WTUA(FM) Assignment reference site shows that the reference site coordinates for the WTUA(FM) Assignment specified by LMC¹¹ meet the minimum distance separation requirements of Section 73.207 of the Commission's rules toward all existing and known pending FM assignments and allotments, and that assumed maximum permissible Class A facilities located at that site are predicted to provide 70 dBu or greater signal strength over 100 percent of Pinopolis, South Carolina. Additionally, the WTUA(FM) Assignment reference site specified by LMC is not located offshore, in a National or state park or forest, on or near an airport, or in any otherwise unsuitable area. Therefore, we will grant LMC's request to modify the WTUA(FM) Assignment reference coordinates

The facilities proposed in the WTUA(FM) Application are short-spaced to the WCOO(FM) facilities proposed in the WCOO(FM) Application.¹² Praise requested processing of the WTUA(FM) Application pursuant to Section 73.215 of the Commission's rules¹³ which would allow this short-spacing between proposed WTUA(FM) and proposed WCOO(FM), provided that the proposed WTUA(FM) facilities meet the minimum distance separation requirements and contour protection requirements of Section 73.215 with respect to the

⁸ The geographic coordinates for the channel 290A assignment at Pinopolis, South Carolina, proposed by LMC are 33° 15' 51" North Latitude, 80° 06' 45" West Longitude, referenced to NAD 27.

⁹ WTUA(FM) CP BPH-20090421ABK was part of a two station contingent application group with station WEA(AM) minor change application BP-20090421ABJ which proposed relocation of WEA(AM) to St. Stephen, South Carolina, from Camden, South Carolina. A "Petition for Rescission of Construction Permits" (Petition) requesting that the Commission rescind the grant of WTUA(FM) CP BPH-20090421ABK and WEA(AM) CP BP-20090421ABJ because the authorized WEA(AM) facilities violate Section 106 of the National Programmatic Agreement was filed by Thomas B. Daniels, Jr., on October 26, 2009. Commission staff treated the Petition as a Petition for Reconsideration of grant of the WTUA(FM) and WEA(AM) CPs, and dismissed the Petition as procedurally deficient by letter from Peter Doyle, Chief, Audio Division, Media Bureau, to Dan J. Alpert, Esq. and Stephen T. Yelverton, Esq. on April 27, 2016.

¹⁰ See, e.g., *Fishers, Lawrence, Indianapolis and Clinton, Indiana*, Report and Order, 22 FCC Rcd 11660, 11662, para. 4 (MB 2004), and *Parker, Arizona*, Report and Order, 17 FCC Rcd 9578, 9579, para. 3 (MB 2002).

¹¹ 33° 15' 51" North Latitude, 80° 06' 45" West Longitude, referenced to NAD 27.

¹² Section 73.207 requires that proposed WCOO(FM) and proposed WTUA(FM) be separated by 55 kilometers.

¹³ 47 CFR § 73.215 (Section 73.215).

proposed WCOO(FM) facilities. Although the proposed WTUA(FM) facilities meet the minimum distance separation requirements for short-spaced stations set forth in Section 73.215(e),¹⁴ they create prohibited contour overlap with the proposed WCOO(FM) facilities, in violation of Section 73.215(a).¹⁵ As a result, the WTUA(FM) Application conflicts with the WCOO(FM) Application.

The WCOO(FM) Application was filed on January 25, 2016. The WTUA(FM) Application was filed on May 2, 2016. Section 73.3564(e) states “[A]pplications for minor modification of facilities may be tendered at any time, unless restricted by the FCC. These applications will be processed on a “first come/first served” basis and will be treated as simultaneously tendered if filed on the same day. Any applications received after the filing of a lead application will be grouped according to filing date, and placed in a queue behind the lead applicant.” Thus, since the WTUA(FM) Application conflicts with the WCOO(FM) Application, and the WCOO(FM) Application was filed first, the WTUA(FM) Application is in queue behind the WCOO(FM) Application. Section 73.3573(f) of the Commission’s rules¹⁶ states “[T]he rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable.” In this case, we have determined that the lead applicant is acceptable and the lead application grantable. Therefore, upon grant of the WCOO(FM) Application, the queue dissolves, and the WTUA(FM) Application will be dismissed.

Actions. Accordingly, it IS ORDERED that the LMC request for the Commission to order modification of the WTUA(FM) Assignment and license BLH-19900606KC IS DENIED; the LMC request to modify the geographic coordinates of the WTUA(FM) Assignment reference site IS GRANTED; WCOO(FM) minor change application BPH-20160125AAF IS GRANTED, and WTUA(FM) minor change application BPH-20160502ABB IS DISMISSED.

These actions are taken pursuant to Section 0.283 of the Commission’s rules.¹⁷

Sincerely,



Susan N. Crawford
Audio Division
Media Bureau

cc: L.M. Communications II of South Carolina, Inc.
Praise Communications, Inc.
Clyde Scott, Jr. (via email)
William A. Culpepper (via email)

¹⁴ Section 73.215(e) requires that the proposed WTUA(FM) and proposed WCOO(FM) transmitter sites be separated by 49 kilometers. The actual distance between the proposed WTUA(FM) and proposed WCOO(FM) sites is 50.1 kilometers.

¹⁵ The proposed WTUA(FM) interfering 100 dBμ F(50,10) contour overlaps the proposed WCOO(FM) protected 60 dBμ F(50,50) contour.

¹⁶ 47 CFR § 73.3573(f).

¹⁷ 47 CFR § 0.283.