



Federal Communications Commission
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In Reply Refer to:
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In re: **KLVA(FM), Maricopa, Arizona**
Facility ID No. 2749
File No. BPED-20170111ABK

KLVK(FM), Fountain Hills, Arizona
Facility ID No. 76329
File No. BPED-20170111ABJ

KPNG(FM), Chandler, Arizona
Facility ID No. 173984
File No. BPED-20170111ABI

Dear Ms. O'Connor and Mr. Grosz:

We have before us three contingent minor change applications (Applications) filed concurrently by Educational Media Foundation (EMF), licensee of Stations KLVA(FM), Maricopa, Arizona, and KLVK(FM), Fountain Hills, Arizona; and by East Valley Institute of Technology, District #401 (EVIT), licensee of Station KPNG(FM), Chandler, Arizona (collectively, Applicants). The Applications propose to change the community of license of Station KLVA(FM) from Maricopa to Avondale, Arizona; Station KLVK(FM) from Fountain Hills to Maricopa, Arizona; and Station KPNG(FM) from Chandler to Maricopa, Arizona. For the reasons set forth below, we dismiss the Applications.

Background. The Applications were filed pursuant to Section 73.3573(g) of the Commission's rules,¹ which permits the modification of a FM Station license to specify a new community of license, without affording other interested parties an opportunity to file competing expressions of interest.² The

¹ 47 C.F.R. § 73.3573(g).

² See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006), *recon pending*.

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.³

In support of their applications, Applicants contend that these coordinated moves will result in a preferential arrangement of allotments under the FM allotment priorities⁴ because (1) the proposed allotment of Station KLVA(FM) from Maricopa (population of 43,482) to Avondale, Arizona (population of 76,238), with a transmitter site change would result in a net gain of 1,434,116 persons, and it would provide a first local service to Avondale, Arizona under Priority (3); and (2) the proposed community of license change for Station KLVK(FM) from Fountain Hills (population of 22,489) to Maricopa, Arizona, and for Station KPNG(FM) from Chandler (population of 236,123) to Maricopa, Arizona, without respective changes of transmitter sites or the facilities, would prevent the removal of a sole local service, and would, in fact, “maintain two local transmission services to Maricopa, AZ.”⁵

Discussion. As a threshold matter, we note that all three 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.⁶ 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.⁷

As to the merits, Applicants contention that the coordinated moves will result in a preferential arrangement of allotments are predicated upon the false claim that the allotment of Station KLVA(FM) qualifies as a first local service at Avondale under Priority (3). This proposal is a move from the Casa Grande, Arizona, Urbanized Area to Phoenix-Mesa, Arizona, Urbanized Area. Urbanized area to urbanized area moves qualify as Priority (4), absent a *Tuck* showing or attempt to rebut the urbanized area service presumption established in *Rural Radio*.⁸ Applicants did not present a *Tuck* showing or attempt to rebut the urbanized area service presumption.

³ See 47 C.F.R. § 73.3517(e).

⁴ 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).

⁵ File No. KVLA Application, Exhibit 25 at 3.

⁶ 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, para. 14 (1999) (“Applications will be processed together and, if grantable, will be granted simultaneously”).

⁷ 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, would advance our allotment priorities...”).

⁸ *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, para. 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 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, para. 30. See also *Goleta, California*, Letter, 26 FCC Rcd 12496, 12498 (MB 2011) (deciding post-*Rural Radio* that relocation of a station from one urbanized to another urbanized area is analyzed under Priority (4)).

Next, Applicants proposal to reallocate Stations KLVK(FM) and KPNG(FM) as “back fill”⁹ at Maricopa to prevent the removal of sole local under Priority (3) are intra-urbanized moves.¹⁰ In a related case, the staff applied the policies established in *Rural Radio* to intra-urbanized area moves where both the station’s current and proposed communities of license are located within the same Urbanized Area or where the station’s principal community signals are already and will continue to place a principal community signal over 50% or more over the same Urbanized Area.¹¹ Therein, the staff held that “there is no need for a *Tuck* showing and claiming first local service (Priority (3) . . . because such intra-urbanized area moves do not present the same concerns as rural to urban moves.”¹² 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 (4), as opposed to a first local service under Priority (3).¹³

In the absence of a compelling showing to rebut the presumption, we will address whether the Applications will result in a preferential arrangement of allotments under Priority (4), other public interest matters. In that regard, Applicants have demonstrated that the proposed relocation of Station KLVA(FM) from Maricopa to Avondale, Arizona, will result in a substantial net gain in 60 dBu service to 1,434,116 persons and will result in a preferential arrangement of allotments under Priority (4). However, the change in community of license for Stations KLVK(FM) and KPNG(FM) does not result in any gain areas because the stations are not changing their facilities. Therefore, we believe that the proposed relocations of Stations KLVK(FM) and KPNG(FM) will not result in a preferential arrangement of allotments and are not in the public interest under Priority (4). Finally, as we are unable to grant the applications for Stations KLVK(FM) and KPNG(FM), we dismiss the application for Station KLVA(FM) consistent with our processing policy that contingent applications will be processed together.¹⁴

Conclusion. Based on the foregoing, the Applications, File Nos. BPED-20170111ABK, BPED-20170111ABJ and BPED-21170111ABI are unacceptable for filing pursuant to 47 C.F.R. § 73.3566(a) and are HEREBY DISMISSED.

Sincerely,



Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

⁹ 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 Maricopa may not be necessary to prevent the removal of a sole local service.

¹⁰ The existing and proposed community signals for Stations KLVK(FM) would cover more than 50% of Phoenix, Mesa, Arizona, Urbanized Area, and the existing and proposed community signals for Station KPNG(FM) would cover 100% of Casa Grande, Arizona, Urbanized Area.

¹¹ *Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259 (MB 2011).

¹² *Id.* at 10262, para. 9.

¹³ *Id.* at 10263, para. 10.

¹⁴ *Supra* note 5.