



Federal Communications Commission
Washington, D.C. 20554
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In Reply Refer to:
1800B3-LAS/JP

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USK Broadcasting, Inc.
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Multicultural Radio Broadcasting, Inc.
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Re: **AM Broadcast Auction 84
MX Group 84-129**

WDGR(AM), Dahlonega, Georgia
Facility ID No. 24459
File No. BMJP-20040130ART

WGFS(AM), Covington, Georgia
Facility ID No. 54551
File No. BMJP-20040129AXZ

**Applications for Major Change in
Licensed AM Station**

Edenton, North Carolina
Facility ID No. 160529
File No. BNP-20040130BKT

**Application for New AM Station
Construction Permits**

Dear Applicants:

We have before us three mutually exclusive AM applications.¹ USK Broadcasting, Inc. (“USK”) proposes to change the community of license of Station WDGR(AM) from Dahlonga, Georgia, to Lawrenceville, Georgia; Multicultural Radio Broadcasting, Inc. (“Multicultural”) proposes to change the frequency of Station WGFS(AM) from 1430 kHz to 1220 kHz; and Lawrence F. Loesch (“Loesch”) proposes a new AM station at Edenton, North Carolina. As discussed below, we find a dispositive preference for USK under Section 307(b) of the Communications Act of 1934, as amended² (the “Act”), and therefore direct USK to file its long-form application within 60 days of the date of this letter for a construction permit in that community.

Background. In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.³ However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedures should be consistent with its statutory mandate under Section 307(b) of the Act to provide a “fair, efficient, and equitable” distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.⁴ The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.⁵

Discussion. After careful consideration of both applications, we have determined that the USK proposal is entitled to a dispositive Section 307(b) preference under priority (3) of the applicable allotment priorities as a first local transmission service to Lawrenceville, Georgia. Multicultural is not proposing a change in Station WGFS(AM)’s community of license, and there are currently two radio stations licensed to Edenton, North Carolina, Loesch’s proposed community of license. Therefore, both the Multicultural and Loesch proposals would be considered under priority (4), other public interest matters. Under well-settled policy, the establishment of a first local service at Lawrenceville, Georgia, under priority (3) is preferred to a priority (4) proposal.

¹ A fourth mutually exclusive AM application filed by Williams Communications, Inc.. (File No. BNP-20040128BFD), a fifth mutually exclusive AM application filed by DR Group (File No. BNP-20040127ABS), and a sixth mutually exclusive AM application filed by Nova Broadcasting Company (File No. BMJP-20040129AFZ) were dismissed on March 21, 2006. See *AM Auction No. 84 Mutually Exclusive Applications Dismissed for Either Failing to File or Untimely Filing of Section 307(b) Showing*, Public Notice, 21 FCC Rcd 2912 (MB 2006).

² 47 U.S.C. § 307(b).

³ See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses (“Broadcast First Report and Order”)*, First Report and Order, 13 FCC Rcd 15920 (1998), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

⁴ *Broadcast First Report and Order* at 15964-65.

⁵ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

In awarding USK's proposal a preference for providing a first local transmission service, we recognize that Lawrenceville, Georgia, is located in the Atlanta, Georgia, Urbanized Area. Where, as in this instance, the proposed new AM station is located in an Urbanized Area or the proposed new AM station's 5 mV/m contour could cover a significant portion of an Urbanized Area, we do not automatically award a first local service preference. Rather, we have used the criteria set forth in *Faye and Richard Tuck* ("*Tuck*")⁶ as a guideline in determining whether the proposed community has an identity distinct from the Urbanized Area, and is therefore entitled to consideration for a first local service. These criteria are: (1) the degree to which the proposed station will provide coverage to the Urbanized Area; (2) the size and proximity of the proposed community of license relative to the central city of the Urbanized Area; and (3) the interdependence of the proposed community of license to the Urbanized Area, utilizing the eight *Tuck* factors.⁷ By letter dated November 13, 2007, the staff requested that USK supplement its Section 307(b) showing with information addressing the *Tuck* criteria in order to determine whether its proposal warrants a first local service preference.⁸

On December 26, 2007, USK provided the requested information, acknowledging that the proposed station at Lawrenceville is located within the Atlanta Urbanized Area, but states that the proposed station will place a daytime 5 mV/m contour over approximately only 7.5 percent of the Atlanta Urbanized Area. The record reflects that the population of Lawrenceville (22,397 persons) is 5.4 percent of the population of Atlanta (416,474 persons), and Lawrenceville is approximately twenty-seven miles away from the center of the Atlanta Urbanized Area. However, these facts do not necessarily preclude a finding that Lawrenceville warrants a first local service preference.⁹ While these two factors are pertinent, they are less significant than evidence substantiating the independence of Lawrenceville from Atlanta.

USK contends that, based on the *Tuck* factors, Lawrenceville is independent from Atlanta. In support, USK states that Lawrenceville is the largest city and the county seat of Gwinnett County, and that approximately 54 percent of Gwinnett County residents work in Gwinnett County, not DeKalb or Fulton Counties, where the city of Atlanta is located (factor 1). USK notes that Lawrenceville has its own daily newspaper, the *Gwinnett Daily Post*, which is published in Lawrenceville (factor 2). Further, USK submits materials from the Lawrenceville Heritage Project demonstrating that Lawrenceville's

⁶ *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

⁷ The eight factors set forth in *Tuck* are: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services.

⁸ On December 3, 2007, the staff granted USK an extension of time to reply to the November 13, 2007, letter.

⁹ See *Bay St. Louis and Poplarville, Mississippi*, Report and Order, 10 FCC Rcd 13144 (MMB 1995) (first local service preference awarded when population difference was only 4.48 percent); *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (first local service preference awarded when contour coverage of 85-95 percent of Urbanized Area and population difference of less than 1 percent); *Oraibi, Arizona*, Report and Order, 14 FCC Rcd 13547 (MMB 1999) (first local service preference awarded when contour coverage of 90 percent of Urbanized Area).

community leaders and residents perceive their community as being separate from the larger area of Atlanta and have since incorporation of the city in 1821 (factor 3). Lawrenceville is incorporated and has its own local government consisting of an elected mayor and city council. Lawrenceville also has its own police department, municipal court, and other city departments providing services to residents (factor 4). Lawrenceville has six unique zip codes and is served by three post offices (factor 5). USK submits data from the United States Census Bureau indicating that over 4,000 businesses are located in Lawrenceville. In addition, Lawrenceville is served by its own hospital and multiple medical facilities. Lawrenceville residents are also served by a local, public use airport, as well as public bus service throughout Gwinnett County (factor 6). USK states that Lawrenceville is in a different advertising market from Atlanta because Lawrenceville businesses may advertise in the *Gwinnett Daily Post* and on the local cable television systems franchised to Lawrenceville and Gwinnett County (factor 7). Lawrenceville provides its residents with most municipal services, including police, street, and utilities services. All other municipal services are administered by Gwinnett County, not Atlanta (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Lawrenceville is independent of Atlanta. Accordingly, USK's proposal qualifies for a first local transmission service preference under priority (3) of the applicable allotment priorities.¹⁰

Additionally, USK has demonstrated that changing Station WDGR(AM)'s community of license from Dahlonega to Lawrenceville results in a preferential arrangement of assignments. USK's proposed major change to Station WDGR(AM) meets the criteria for a preference under priority (3) of the applicable allotment priorities as a first local transmission service to Lawrenceville, Georgia. Retaining a third local service at Dahlonega, the current community of license, would be evaluated under Priority (4), other public interest matters. Under well-settled policy, the establishment of a first local service at Lawrenceville, under priority (3) is preferred to retaining a third local service under priority (4).¹¹ For these reasons, USK will be directed to continue the application process by filing a complete FCC Form 301 application.¹²

Conclusion. Accordingly, IT IS ORDERED that USK, within 60 days of the date of this letter, is to file a complete FCC Form 301 in connection with its application for a construction permit for a major change to Station WDGR(AM) (File No. BNP-20040130ART), pursuant to the procedures set forth in the Commission's Rules.¹³ With its application, USK must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

¹⁰ Furthermore, we find that Lawrenceville, Georgia constitutes a community suitable for licensing purposes. See *Arnold and Columbia, California*, Memorandum Opinion and Order, 7 FCC Rcd 6302, 6303 (MMB 1992).

¹¹ See *Dundee and Odessa, New York*, Report and Order, 22 FCC Rcd 13734 (MB 2007) (preferential arrangement of allotments found when community of license change provided first local transmission service to community versus retaining second local transmission service at current community of license). Furthermore, there will not be removal of the sole local service at Dahlonega.

¹² After the FCC Form 301 is filed, the staff will conduct a complete legal and technical analysis. We will issue Public Notices entitled "Broadcast Applications," announcing AM auction applications determined to be acceptable for filing. These notices will be generated by the Consolidated Database System ("CDBS"). Petitions to deny an FCC Form 301 application must be filed within 10 days following release of the Broadcast Applications Public Notice announcing acceptance of the application at issue. *Broadcast First Report and Order*, 13 FCC Rcd at 15985. The staff will dismiss the application filed by Multicultural (File No. BMJP-20040129AXZ) and Loesch (File No. BNP-20040130BKT) upon action taken on the application filed by USK.

¹³ See 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. USK must demonstrate that the proposed facility protects existing stations and earlier filed applications, and that the daytime and nighttime facilities comply with principal city coverage requirements.¹⁴ Any differences between the tech box proposal filed during the AM Auction No. 84 filing window and the complete FCC Form 301 must be minor changes, as defined by the applicable AM service rules,¹⁵ and must not create new application conflicts.

The complete FCC Form 301 application must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. For information regarding electronic application filing, refer to the April 28, 2000, Public Notice, *Mass Media Bureau Implements Consolidated Database System (CDBS) Electronic Filing of FCC Forms 301, 302, 314, 315, 316, and 347*. When filing the complete FCC Form 301, an applicant must select "Long Form Application for AM Auction No. 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the tech box submission filed in the AM Auction No. 84 filing window must be entered on the Pre-form in the field "Eng. Proposal File Number." Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing website at <http://www.fcc.gov/mb/elecfile.html>. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

The staff will return applications not submitted in accordance with the procedures described above. Failure to timely file the complete FCC Form 301 application, **on or before March 25, 2008**, will result in dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute, pursuant to Section 73.3568 of the Commission's Rules.¹⁶

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Jeffrey L. Timmons, Esq.
Mark N. Lipp, Esq.
J. Benjamin Davis, Esq.

¹⁴ See *id.* §§ 73.24, 73.37, and 73.182.

¹⁵ *Id.* § 73.3571.

¹⁶ *Id.* § 73.3568.