



Federal Communications Commission
Washington, D.C. 20554

July 31, 2018

Donald E. Martin, Esq.
Post Office Box 8433
Falls Church, Virginia 22041

In Reply Refer to:
1800B3-AYD
Released:

In Re: **KACS(FM), Chehalis, Washington**
Facility ID Number: 10685
File No: BPED-20160314AAD

Petition for Reconsideration

Dear Counsel:

We have before us the Petition for Reconsideration (Petition) filed October 13, 2017, by Chehalis Valley Educational Foundation (CVEF), licensee of non-commercial educational (NCE) Station KACS(FM), Chehalis, Washington.¹ The Petition seeks review of a staff action² that dismissed CVEF's above captioned application (Application) that proposed to change the community of license for KACS(FM) from Channel 213A at Chehalis, Washington, to Channel 213C3 at Rainer, Washington. For the reasons discussed below, we deny the Petition.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's rules (Rules).³ The *Letter Decision* dismissed the Application pursuant to Section 73.3566(a) of the Rules,⁴ stating that it did not represent a preferential arrangement of allotments.⁵ The *Letter Decision* determined that the proposed principal community contour (60 dbu contour) would cover 53.6 percent of the Olympia-Lacey, Washington, urbanized area, and therefore, in applying the urbanized area service presumption (UASP),⁶ the proposed facility is presumed to be an additional service to the Olympia-Lacey, Washington, urbanized area under Priority (4), as opposed to a first local service at Rainer, Washington, under Priority (3).

¹ KACF(FM) is on the reserved band.

² Donald E. Martin, Esq., Letter, Ref. 1800B3-RFS (Sept. 8, 2017) (*Letter Decision*).

³ 47 C.F.R. § 73.3573(g) (permitting the modification of an FM station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest, provided, *inter alia*, the reallocation would result in a preferential arrangement of allotments); *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, 14221, para.13 (2006) (streamlined procedures adopted for reserved band NCE station proposed changes in community of license).

⁴ 47 C.F.R. § 73.3566(a).

⁵ A proposed community of license change must constitute a preferential arrangement under Section 307(b) of the Communications Act, as amended.

⁶ The urbanized area service presumption is a rebuttable presumption that presumes the proposed facility will serve an urbanized area when a station's proposed community of license is located in an urbanized area or the station's principal community contour could, through a minor modification application, cover at least 50 percent of an urbanized area. *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2772, 2575-77, paras. 30, 35, 38, and n.97. (2011) (*Rural Radio*).

In its Petition, CVEF contends that the Bureau erroneously dismissed the Application by using the 60 dBu contour, rather than the 70 dBu contour, as the principle community contour when applying the UASP. CVEF asserts that neither the *Rural Radio* proceeding⁷ nor the Rules “denote the noncommercial 60 dBu contour as a ‘principle [sic] community contour’” for NCE stations.⁸ CVEF further states that it is not in the public interest to make it more difficult for a NCE station to change its community of license than a commercial station.⁹ CVEF concludes that the Application is entitled to a Priority (3)¹⁰ preference, using the 70 dBu contour as the principle community contour, and therefore should be granted.

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.¹¹

The narrow issue before us is whether to use the 70 dBu contour or the 60 dBu contour as the principal community contour for an NCE station proposing to change its community of license, pursuant to Section 73.3573(g) of the Rules, and to qualify as a first local service, Priority (3). *Rural Radio* procedures state that a proposed facility is presumed to serve an entire urbanized area, and not just the community of license, if the principal community contour of the proposed facility covers 50 percent or more of the urbanized area.¹² Moreover, unlike commercial stations that use the 70 dBu contour as the principal community contour, the Commission has chosen to measure an NCE FM station's service to its community of license on the basis of 60 dBu signal strength.¹³ The 60 dBu coverage standard ensures that NCE stations have sufficient flexibility in siting facilities and reaching target audiences.¹⁴ Use of the 60 dBu principal community contour affords greater flexibility in most instances to NCE FM stations seeking a community of license change, pursuant Section 73.3573(g) of the Rules, as it provides for a larger contour and thus the ability for an NCE FM station to move its community of license a larger distance and still have the required mutual exclusivity.¹⁵ Finally, within the *Rural Radio* proceeding, the 60 dBu contour is referred to as the principal community contour for FM NCE stations.¹⁶

⁷ Petition at 2.

⁸ Petition at 3-4 (citing to Section 73.1690(c)(8)(i)-(ii) of the Rules).

⁹ Petition at 4.

¹⁰ The proposed facility at Rainer is not located in an urbanized area, the 70 dBu contour does not cover 50% of an urbanized area and cannot be modified to do so. Therefore, if the 70 dBu contour were used as the principal community contour, the proposed Rainer facility would be a first local service, entitled to a Priority (3) preference.

¹¹ See 47 C.F.R. § 1.106(c), (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. V. FCC*, 351 F.2d 824 (D.C.Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹² *Supra* note 6.

¹³ *Streamlining of Radio Technical Rules*, 15 FCC Rcd 21649, 21670, para. 42 (2000).

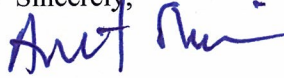
¹⁴ *Id.*

¹⁵ Section 73.3573(g) of the Rules states that “facilities specified by the applicant at the proposed community of license must be mutually exclusive ... with the applicant's current facilities” 47 C.F.R. § 73.3573(g).

¹⁶ See, e.g., *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rulemaking, 24 FCC Rcd 5239, 5258, para. 50 (“...because the 60 dBu principal community contour of an NCE FM station in the reserved band....”) (2009).

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Chehalis Valley Educational Foundation, IS DENIED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Shuldiner", written over the word "Sincerely,".

Albert Shuldiner
Chief, Audio Division
Media Bureau