

FEDERAL COMMUNICATIONS COMMISSION

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WASHINGTON DC 20554**

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**MEDIA BUREAU
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APPLICATION STATUS: (202) 418-2730
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**PROCESSING ENGINEER: Khoa Tran
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: khoa.tran@fcc.gov**

Cumulus Licensing LLC
3535 Piedmont Road
Suite 1400
Atlanta, GA 30305

In re: KNRQ-FM, Tualatin, OR
Facility ID# 12501
Cumulus Licensing LLC
BPH-20070119AFH

Dear Applicant:

This letter is in reference to: (1) the above captioned construction permit, as amended March 19, 2008, to modify the effective radiated power, class, antenna height and location; (2) the April 13, 2007 Informal Objection filed by Portland Broadcasting, LLC ("PB"); (3) the April 16, 2007 Informal Objection filed by Western Oregon Radio Club ("WORC"); and (4) all other related pleadings. For the reasons set forth herein, we deny the informal objections, and grant the application.

PB's Informal Objection. On April 13, 2007, PB filed an objection against KNRQ's application. PB requests that the Commission deny or suspend its review of the KNRQ application pending a final decision in MB Docket 05-10.¹ Specifically, PB has filed a Petition for Reconsideration of the dismissal of its counterproposal which would have required Station KNRQ to change its frequency to Channel 300C at Eugene, OR.

Discussion. In FM rulemaking proceedings, when reconsideration of the staff's decision is pending, the staff's decision is considered effective but not final.² Therefore, the subject modification application will contain a condition that the grant is subject to the final disposition of MB Docket 05-10, and that any construction undertaken pursuant to this permit is at the permittee's sole risk. Therefore, the informal objection will be denied.

WORC's Informal Objection. On April 16, 2007, WORC filed an objection stating that KNRQ's application will consume the last available open channel for Low Power FM ("LPFM") stations (KPCN/KPVN-LP, KKJC-LP, KKJC-LP, KQSO-LP, KQRZ-LP) to use within a 35 mile radius of downtown Portland. WORC also claims that KNRQ's proposal would displace Class D FM station KRRF-FM, Portland, OR. Furthermore, WORC requests that the FCC review and investigate the detriment that has resulted to the LPFM service by allowing changes to the

¹ See *Ione, Oregon et al.*, Report and Order, 21 FCC Rcd 10017 (MB 2006)

² See *Auburn et al.*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003)

community of license. Moreover, WORC believes that the proposed reference site is not valid for use as a full power FM facility. In addition, WORC objects to KNRQ using inconsistent contour prediction methodologies in their community coverage and interference exhibits. Finally, WORC contends that the reallocation from Eugene, OR to Tualatin, OR would not be a first local service to Tualatin, but rather an additional station in the Portland Urbanized Area. In support of this contention, WORC notes that only 25 percent of the Tualatin workforce works in Tualatin. Accordingly, WORC requests that the Commission dismiss KNRQ's application.

Discussion. KNRQ's application does not conflict with any of the above-listed LPFM stations. Therefore, grant of this permit will not result in the displacement of any LPFM station. In addition, Class D stations are secondary services and by definition are not protected by full power FM stations. The Commission did review the impact of community of license changes to the LPFM service in the Third Report and Order in MM Docket No. 99-25. Furthermore, KNRQ's application complies with the rules and policies established in that item. The proposed allocation reference site is not intended for actual use, but merely serves as a theoretical transmitter site from which an applicant must demonstrate that it can provide a signal that meets the minimum spacing and city grade coverage requirements. KNRQ's proposed reference site complies with the Commission's allotment standards. Finally, the Commission regularly allows applicants to use alternate propagation models to show city grade coverage compliance. Moreover, supplemental prediction methodologies are not allowed for interference showings. Thus, KNRQ correctly used the supplemental showing for community coverage and the standard prediction methodology for interference analysis.

With respect to WORC's reallocation objections, this application was filed pursuant to Section 73.3573(g) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. Any reallocation proposal must result in a preferential arrangement of allotments.³ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ This application will provide a first local service to Tualatin under Priority (3).

Tualatin is located within the Portland Urbanized Area. In awarding Priority (3) preference to Tualatin as a first local service, the Commission is concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, the Commission will not blindly apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In such circumstances, the Commission requires the city of license modification proponent to submit a *Tuck* showing.⁵ In

³ See *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

⁴ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). 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).

⁵ See *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*"); see also *Huntington Broadcasting Co., v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951) ("*Huntington*"); *RKO General, Inc. (KFRC)*, Memorandum Opinion and Order, 5 FCC Rcd 3222 (1990) ("*RKO*").

evaluating these showings, the Commission considers the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and most important, the extent to which the suburban community is independent of the Urbanized Area. In considering a reallocation proposal, the Commission takes into account the well established *Huntington* doctrine which operates as a limited exception to the normal Section 307(b)⁶ presumption that every separate community is deserving of at least one local transmission service.⁷

Under the *Tuck* criteria, Tualatin is entitled to consideration as a first local service. Tualatin is an incorporated community located 12 miles from Portland, and Station KNRQ-FM will invariably serve a significant portion of the Portland Urbanized Area. This coverage would not warrant denial of this application. The Tualatin population of 22,791 persons is significant and 4.3 percent of the population of Portland (529,121 persons according to the 2000 U.S. Census). This percentage is consistent with previous actions in which we considered a reallocation proposal as a first local service.⁸ Tualatin is also sufficiently independent of the Portland Urbanized Area to justify consideration as a first local service. Tualatin is not dependent upon the Portland Urbanized Area for employment. As noted by WORC, according to the 2000 U.S. Census, 25 percent of the Tualatin workforce work in Tualatin and the applicant has identified local businesses providing additional employment opportunities. This is one of the eight factors set forth in *Tuck* to be used in determining the independence of a suburban community.⁹ The Tualatin Times is the local newspaper. In addition to the Tualatin Historical Advisory Board, the applicant has identified eight local Citizen Advisory Committees advising the Tualatin City Council. A majority of these factors support a determination that Tualatin is independent of the Portland Urbanized Area. Tualatin is governed by a City Council and City Manager. Tualatin has its own zip code and two post offices. The applicant has also identified local businesses, local churches and health facilities. Tualatin has its own police department as well as the Tualatin Valley Fire Department. Finally, the Tigard-Tualatin School District has five schools located in Tualatin.

⁶ 47 U.S.C. § 307(b).

⁷ See *Tuck* at 5376 .

⁸ See e.g., *Park City, Montana*, Report and Order, 19 FCC Rcd 2092 (MB 2004) (Park City with a population of less than 1 percent of Billings and located 21 miles from Billings); *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (Newcastle with a population of less than 1 percent of Oklahoma City and located 15 miles from Oklahoma City).

⁹ The eight factors 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 local newspaper or other media that covers the community's needs and interests; (3) whether the 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 city and 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 such as police, fire protection, schools and libraries. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the Urbanized Area. *Parker and St. Joe, Florida*, Report and Order, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (MMB 1997).

Conclusion. In light of the above, (1) the Informal Objection filed by PB on April 13, 2007; (2) the Informal Objection filed by WORC on April 16, 2007; and (3) all other related pleadings ARE HEREBY DENIED. In addition, Application File No. BPH-20070119AFH, as amended March 19, 2008, IS HEREBY GRANTED. The authorization is enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodolfo F. Bonacci". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Alan C. Campbell, Esq.
Lee J. Peltzman, Esq.
Ken Seymour
Portland Broadcasting, LLC
Western Oregon Radio Club