

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Chehalis Valley Educational Foundation)	File No. BPED-20160314AAD
)	Facility ID No. 10685
Application for Construction Permit to Modify)	
Station KACS(FM), Chehalis, Washington)	

MEMORANDUM OPINION AND ORDER

Adopted: November 6, 2019

Released: November 6, 2019

By the Commission:

I. INTRODUCTION

1. The Commission has before it an Application for Review filed on September 4, 2018, by Chehalis Valley Educational Foundation (CVEF), licensee of reserved-band non-commercial educational (NCE) Station KACS(FM), Chehalis, Washington.¹ CVEF seeks review of the Media Bureau's (Bureau) decision denying CVEF's Petition for Reconsideration of a prior *Letter Decision*.² In the *Letter Decision*, the Bureau dismissed the above captioned application (Application) proposing to change the community of license for KACS(FM) from Channel 213A at Chehalis, Washington, to Channel 213C3 at Rainier, Washington, pursuant to section 73.3573(g) of the Commission's rules (Rules).³ For the reasons set forth below, we deny the Application for Review.

II. BACKGROUND.

2. In the *Letter Decision*, the Bureau dismissed CVEF's Application after determining that it did not represent a preferential arrangement of allotments.⁴ Specifically, the Bureau concluded that the proposed principal community signal (60 dBμ contour) would cover 53.6 percent of the Olympia-Lacey, Washington, and 13 percent of the Seattle, Washington, urbanized areas. Therefore, in applying the

¹ File No. BPED-20160314AAD.

² See *Donald E. Martin, Esq.*, Letter Order, Ref. 1800B3-AYD (July 31, 2018) (*Reconsideration Decision*); *Donald E. Martin, Esq.*, Letter Order, Ref. 1800B3-RFS (Sept. 8, 2017) (*Letter Decision*); Chehalis Valley Educational Foundation, Petition for Reconsideration, File No. BPED-20160314AAD (Oct. 13, 2017) (*Petition for Reconsideration*).

³ *Letter Decision*; 47 CFR § 73.3573(g) (permitting the modification of an FM station's authorization to specify a new community of license provided, *inter alia*, the re-allotment would result in a preferential arrangement of allotments).

⁴ *Letter Decision*. A proposed community of license change must constitute a preferential arrangement under section 307(b) of the Communications Act, as amended. 47 U.S.C. § 307(b). To implement section 307(b), the Commission adopted the following allotment Priorities: (1) First fulltime aural service (the first radio signal that can be received in a community), (2) Second fulltime aural service (the second radio signal that can be received in a community), (3) First local transmission service (the first station licensed to a community), and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 F.C.C.2d 88 (1982).

urbanized area service presumption (UASP),⁵ the proposed facility was presumed to be an additional service to the Olympia-Lacey, Washington, urbanized area under Priority (4), as opposed to a first local service at Rainier, Washington, under Priority (3). On reconsideration, the Bureau examined the narrow issue of whether the 70 dBμ contour or the 60 dBμ contour should be used as the principal community contour for a reserved-band NCE FM 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 under Priority (3).⁶ The Bureau determined, consistent with prior Commission decisions, that a reserved-band NCE FM station's service to its community of license should be measured using 60 dBμ signal strength rather than the 70 dBμ principal community contour that is applicable to commercial FM stations.⁷ On this basis, the Bureau rejected CVEF's argument that its Application is entitled to a Priority (3) preference using the 70 dBμ contour as the principal community contour, and denied its Petition for Reconsideration.⁸

3. The Commission will consider an application for review when the petitioner can show that the action taken pursuant to delegated authority: (1) is in conflict with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law and policy which has not been resolved by the Commission; (3) involves application of a precedent of policy which should be overturned or revised; (4) involves an erroneous finding as to an important or material question of fact; or (5) involves a prejudicial procedural error.⁹

4. In its Application for Review, CVEF repeats its argument that the 70 dBμ contour, as opposed to the 60 dBμ contour, should be the principal community contour for a reserved-band NCE FM station when applying the UASP.¹⁰ CVEF asserts that application of the 60 dBμ contour as the UASP trigger has the perverse and unintended effect of restricting a move by a non-commercial station that a commercial station could easily effectuate under our *Rural Radio* decision.¹¹ CVEF maintains that the Bureau has not explained what public interest purpose there could be in treating commercial and non-commercial stations differently in this context.¹² CVEF further maintains that neither *Rural Radio* nor the Rules define the non-commercial 60 dBμ contour as the "principal community contour" and that, absent any guidance as to the specific signal strength values to be used to trigger the UASP, the Bureau must

⁵ The Commission adopted the UASP to forestall the movement of radio service from rural areas to more urban areas absent a compelling showing of need. The UASP is a rebuttable presumption that, when the community proposed for a radio allotment is located in an urbanized area or the station would, or could through a minor modification application, provide principal community-strength coverage to more than 50 percent of an urbanized area, the Commission will treat the application, for section 307(b) purposes, as proposing service to the entire urbanized area rather than service to the less urban named community of license. The UASP is designed to prevent applicants from claiming to provide the first local transmission service to a smaller community when in fact the station will focus on service to an adjacent urbanized area. See *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, 2575-77, 2772, paras. 30, 35, 38, and n.97 (2011) (*Rural Radio*).

⁶ *Reconsideration Decision* at 2.

⁷ *Id.* See also *Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 21649, 21670, para. 41 (2000) (*Second Report and Order*).

⁸ *Reconsideration Decision* at 2. If the Station's 70 dBμ contour were the correct test, which it is not, the proposed facility would not cover the Olympia-Lacey, Washington urbanized area and would cover only 0.2 percent of the Seattle, Washington, urbanized area. Under this scenario, the UASP would not be triggered and the proposed modification would be permissible.

⁹ 47 CFR § 1.115(b).

¹⁰ AFR at 3-4.

¹¹ *Id.* at 7-8.

¹² *Id.* at 8.

employ the values established by rule and precedent.¹³ According to CVEF, it is well established that the principal community contour for non-commercial FM stations is the 70 dBμ contour.¹⁴ CVEF claims that when evaluating CVEF's Application using the 70 dBμ contour, it does not trigger the UASP and the proposal to relocate KACS to Rainier is therefore entitled to the Priority (3) preference that CVEF originally claimed.¹⁵

III. DISCUSSION.

5. After careful consideration of the underlying record, we deny the Application for Review. The issue presented here is whether the principal community contour or signal¹⁶ of a reserved-band NCE FM station is the station's 60 dBμ contour or 70 dBμ contour. We acknowledge that *Rural Radio* does not explicitly define what the "principal community signal" should be for these stations. However, notwithstanding CVEF's claim that it is well-established that the principal community contour for reserved-band NCE FM stations is the 70 dBμ contour, when the Commission used this phrase in *Rural Radio*, it was referring to the station's 60 dBμ contour. In the *Second Report and Order*, released in November 2000, the Commission established "an NCE FM principal community coverage standard" as part of its wide-ranging radio technical streamlining initiative.¹⁷ This standard requires an NCE FM station operating on reserved channels to provide a predicted 60 dBμ signal to at least 50 percent of its community of license or reach 50 percent of the population within the community.¹⁸ The Commission chose to measure a reserved-band NCE FM station's service to its community of license on the basis of 60 dBμ signal strength because (1) that signal strength would ensure a substantial portion of the population within the community would receive a listenable signal; (2) at least half of the community

¹³ *Id.* at 4, 8.

¹⁴ *Id.* at 5-7, citing 47 CFR § 73.315(a) (requiring commercial FM stations to provide a minimum field strength of 70 dBμ over the entire principal community to be served); 47 CFR § 73.1690(c)(8)(ii) (stating that for both commercial and non-commercial educational FM stations, the location of the main studio remains within the 70 dBμ principal community contour); *In the Matter of Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules*, Report and Order, 2 FCC Rcd 3215, 3218, para. 33, n.10 (1987) (*Main Studio Order*) (stating that, with regard to the main studio rule, the contour found in 73.315(a) [i.e., the 70 dBμ contour] will be applicable to non-commercial educational FM stations). *See also* Petition for Reconsideration at 3. CVEF acknowledges that section 73.1690(c)(8)(ii) of the Rules was deleted upon elimination of the main studio rule in 2017 but argues that it clearly shows the Commission's intention to identify the 70 dBμ contour as the principal community contour for non-commercial FM stations. AFR at 6-7.

¹⁵ AFR at 9.

¹⁶ CVEF and the Bureau in its decisions addressing this matter use the phrase "principal community contour," whereas the Commission in *Rural Radio* uses the phrase "principal community signal." *See Rural Radio*, 26 FCC Rcd 2556, 2572-73, 2577, paras. 30, 38 (stating that a proposal for a community that would place a "principal community signal" over 50 percent or more of an urbanized area will be presumed to be a proposal to serve the urbanized area rather than the proposed community). We note that these phrases are synonymous and interchangeable. *Compare In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, Headland, Alabama*, Report and Order, 10 FCC Rcd 10352 (MB 1995) (showing required when move results in "city-grade (70 dBμ) signal" over 50 percent or more of the urbanized area) with *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, Churchville and Keswick, Virginia and Marlinton, West Virginia*, Report and Order, 21 FCC Rcd 4846, n.6 (MB 2006) (showing required when move results in "70 dBμ contour" over 50 percent or more of urbanized area) (emphasis added).

¹⁷ *Second Report and Order*, 15 FCC Rcd at 21649, para. 1 ("we adopt several changes in our rules governing noncommercial educational FM ("NCE FM") stations, [including] establishing an NCE principal community coverage standard.").

¹⁸ *Id.* at 21670, para. 42; 47 CFR § 73.515 (requiring a non-commercial FM station to provide a minimum field strength of 60 dBμ over at least 50 percent of its community of license or reach 50 percent of the population within the community).

would receive protected service on a permanent basis; (3) the Commission's technical rules protect all reserved-band NCE FM stations to their 60 dBμ contour; (4) reserved-band NCE FM stations are generally dependent on listener support, and may not have the financial resources to construct facilities that serve the entire community of license; and (5) many reserved-band NCE FM stations operate at lower power levels and may not be able to comply with the 70 dBμ commercial FM station principal community coverage requirement.¹⁹ The Commission and Bureau staff have consistently applied this standard to reserved-band NCE FM stations since it was adopted in 2000.²⁰ We therefore reject CVEF's argument that the principal community contour for reserved-band NCE FM stations is the 70 dBμ contour.²¹

6. We also are not persuaded by CVEF's argument that the former "main studio" rule indicated the Commission intended to designate the 70 dBμ contour as the principal community contour

¹⁹ *Second Report and Order*, 15 FCC Rcd at 21670, para. 42; *Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Notice of Proposed Rulemaking and Order, 13 FCC Rcd 14849, 14875-76, para. 57 (1998) (*Streamlining of Radio Technical Rules Notice*).

²⁰ See, e.g., *Secret Communications II, LLC, et al*, Memorandum Opinion and Order, 18 FCC Rcd 9139, 9140, n.6 (2003) ("Each of the four commercial stations licensed to Chillicothe provides the requisite principle community contour over Chillicothe, while the three noncommercial FM stations provide the requisite 60 dBμ coverage to at least 50 percent of Chillicothe."); *Christopher D. Imlay, Esq.*, Letter Order, 20 FCC Rcd 11977, Ref. 1800B3-HM (MMB 2005) ("Licensed NCE FM Stations operating on reserved channels, such as KAJC(FM), are required 'to provide a predicted 60 dBμ signal to at least 50 percent of its community of license or reach 50 percent of the population within the community' in proposed modifications of their facilities."); *In the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rulemaking, 24 FCC Rcd 5239, 5259, para. 50 (2009) (observing that "the 60 dBμ principal community contour of an NCE FM station in the reserved band is the same as its protected contour"); Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340 (May 2017) (requiring NCE-FM applicants intending operation in the reserved band to certify that the proposed facility provides a 1.0 mV/m contour (i.e., a 60 dBμ contour) covering at least 50 percent of the principal community or reaching 50 percent of the population within the community); *Edward Czelada*, Letter Order, Ref. 1800B3-RFS (MB Apr. 19, 2013) (applying the 60 dBμ principal community standard to an NCE FM station seeking a change in its community of license).

²¹ We also reject CVEF's argument regarding Section 73.1690(c)(8)(i) pertaining to stations that reduce power, which states: "Commercial FM stations must continue to provide a 70 dBμ principal community contour over the community of license, as required by § 73.315(a). Non-commercial educational FM stations must continue to provide a 60 dBμ contour over at least a portion of the community of license." AFR at 3-4 (citing 47 CFR § 73.1690(c)(8)(i)). CVEF notes that the first sentence refers to the commercial 70 dBμ contour as the "principal community contour," but the second sentence does not describe the non-commercial 60 dBμ contour this way and argues that this suggests the latter is not the NCE station's "principal community contour." This rule was adopted in 1997, before the Commission in 2000 adopted a specific principal community contour requirement for reserved-band NCE FM stations. See *Amendments of Parts 73 and 74, Report and Order*, 12 FCC Rcd 12371 (1997). The Commission's rules now define the principal community contour for commercial FM stations and reserved-band NCE FM stations using essentially identical language, other than the technical details of the specific coverage requirement. There is no basis to characterize this requirement as the "principal community contour" for commercial stations but not for reserved-band NCE FM stations. Compare 47 CFR § 73.515 (stating that for reserved-band NCE FM stations "[t]he transmitter location shall be chosen so that, on the basis of effective radiated power and antenna height above average terrain employed, a minimum field strength of 1 mV/m (60 dBμ) will be provided over at least 50 percent of its community of license or reach 50 percent of the population within the community") with 47 CFR § 73.315(a) (stating that for commercial FM stations "[t]he transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, a minimum field strength of 70 dB above one μV/m (dBμ), or 3.16 mV/m, will be provided over the entire principal community to be served").

for reserved-band NCE FM stations.²² The former main studio rule simply reflected the main studio obligation at that time, which was for every broadcast station to maintain its main studio in its community of license.²³ In 1987, the Commission relaxed the rule to permit a station to locate its main studio outside of its principal community at any point within the station's principal community contour.²⁴ Because the Commission did not have a rule defining a reserved-band NCE FM station's principal community contour at that time, it applied the contour applicable to commercial FM stations.²⁵ The Commission explained that this reference was specifically "for the purpose of th[e] [main studio] rule"²⁶ and "was made solely to indicate the applicable main studio location standard for the stations."²⁷ Thus, the main studio rule merely reflected the requirement that a main studio be located within the station's 70 dBμ contour; it does not support the argument that a reserved-band NCE FM station's principal community contour is the 70 dBμ contour.

7. We now turn to CVEF's argument that the Bureau has not explained how the public interest is served by treating commercial and reserved-band NCE FM stations differently when applying the UASP.²⁸ Since 2000, when the Commission adopted a separate principal community contour requirement for reserved-band NCE FM stations, the trigger for the required showing in connection with community of license changes has been different for commercial and reserved-band NCE FM stations.²⁹ CVEF's interpretation of when the UASP is triggered for NCE FM stations would require a change in Commission policy, and there is no basis in Commission precedent for adopting its interpretation at this time. Any suggested revisions to the principal community contour for NCE stations are more appropriately considered in the context of a notice and comment rulemaking proceeding rather than in a fact-specific adjudicatory proceeding such as this.³⁰ We therefore find no reason to disturb the Bureau's dismissal of the Application.

²² See 47 CFR § 73.1690(c)(8)(ii). Although this rule was deleted when the main studio requirement was eliminated in 2017, the rule existed when *Rural Radio* was adopted and thus is relevant in interpreting that decision. See *Elimination of Main Studio Rule*, Report and Order, 32 FCC Rcd 8158 (2017) (eliminating rule requiring each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license).

²³ See *Main Studio Order*, 2 FCC Rcd 3125.

²⁴ *Id.*

²⁵ *Id.* at 3218, n.10 ("The principal community contours for AM, FM and television broadcast stations are found in Sections 73.24(i), 73.315(a) and 73.685(a), respectively. *For the purpose of this rule*, the daytime contour requirement (5 mV/m) of Section 73.24(i) will be applicable to AM stations, and the contour found in Section 73.315(a) will be applicable to noncommercial education FM stations. Our main studio requirements have applied, and will continue to apply, absent waiver, to noncommercial educational stations.") (emphasis added).

²⁶ *Id.*

²⁷ *In the Matter of Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 F.C.C.R. 5024, n.51 (1988).

²⁸ See *supra* n.20. In the UASP, the Commission codified long-standing policy with respect to community of license changes by commercial and non-commercial FM stations and adopted the existing practice for when a proposed change in community warrants a showing into whether the station will in fact be serving the larger urbanized area.

²⁹ In adopting the UASP in *Rural Radio*, the Commission did not purport to change when this showing is triggered, nor did it consider differences between commercial and reserved-band NCE FM stations in this regard.

³⁰ See, e.g., *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1984) (citation omitted) ("rulemaking is generally a 'better, fairer and more effective' method of implementing a new industry-wide policy"); *Sunburst Media L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368, para. 6 (2001) (stating "it has long been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rulemaking proceedings, not adjudications").

IV. ORDERING CLAUSE

8. Accordingly, **IT IS ORDERED** that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended,³¹ and section 1.115(g) of the Commission's Rules,³² the Application for Review filed by Chehalis Valley Educational Foundation **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³¹ 47 U.S.C. § 155(c).

³² 47 CFR § 1.115(g).