



Federal Communications Commission
Washington, D.C. 20554

July 17, 2008

DA 08-1675

In Reply Refer to:

1800B3-TSN

Released: July 17, 2008

Broadcast Communications, Inc.
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In re: **AM Broadcast Auction No. 84**

Broadcast Communications, Inc.
WKFB(AM), Jeannette, Pennsylvania
Facility ID No. 10026
File No. BMJP-20050113AAF

Petition for Reconsideration

Dear Applicant:

This letter refers to the above-referenced Petition for Reconsideration ("Petition"), filed April 21, 2006, by Broadcast Communications, Inc. ("BCI"). In the Petition, BCI seeks reconsideration of the Audio Division's March 21, 2006, letter decision dismissing its application for major modification to the facilities of station WKFB(AM), Jeannette, Pennsylvania, seeking to change the community of license from Jeannette to North Huntingdon, Pennsylvania.¹ For the reasons set forth below, we deny the Petition.

Background. BCI timely filed its FCC Form 175 application to change the WKFB(AM) community of license during the filing window for AM Auction No. 84 ("Auction 84").² The application was determined not to be mutually exclusive with any other proposal filed in the Auction 84 filing window, and BCI was invited to file its complete FCC Form 301 application by January 18, 2005.³ BCI timely filed its complete FCC Form 301 application on January 13, 2005 (the "Application"), proposing only a change in community of license to North Huntingdon township, Pennsylvania (2000 Census population 29,123), with no change to the WKFB(AM) technical facilities. BCI was thereafter instructed

¹ *Broadcast Communications, Inc.*, Letter, 21 FCC Rcd 2959 (MB 2006) ("Staff Decision").

² *See AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze*, Public Notice, 18 FCC Rcd 23016 (MB/WTB 2003).

³ *See AM Auction No. 84 Singleton Applications*, Public Notice, 19 FCC Rcd 22569 (MB 2004).

to submit an amendment addressing the implications of the proposed community change under Section 307(b) of the Communications Act of 1934, as amended, which directs the Commission to make a “fair, efficient, and equitable” distribution of radio service among communities in the United States.⁴ BCI timely filed its Section 307(b) amendment on August 4, 2005.

WKFB(AM) is the sole local transmission service licensed at Jeannette, Pennsylvania (2000 Census population 10,654). Because the Commission prohibits the removal of a community’s sole local transmission service absent an appropriate waiver showing, the staff dismissed the Application in the *Staff Decision*. BCI timely filed the Petition.

Discussion. BCI challenges the staff’s dismissal of the Application, arguing that the dismissal “is out of line with its traditional manner of handling AM community change applications.”⁵ As discussed below, however, the dismissal fully conformed with both traditional and current Commission practice, and we deny the Petition.

BCI contends that the policy prohibiting removal of sole local transmission service was not specifically stated as applying to AM major modification applications, and thus cannot be applied to its Application.⁶ However, nothing in the *New Community MO&O*, in which the sole local service removal prohibition was definitively described, limits that policy to removal of sole local FM and TV services. Indeed, the heading to that section of the order labels it an “*Absolute Restriction on Removal of Sole Existing Local Transmission Service.*”⁷ Moreover, the Commission states that the policy barring removal of sole local transmission service “furthers our statutory mandate” under Section 307(b) of the Act. Section 307(b) requires the Commission to provide for the fair, efficient, and equitable distribution of “licenses, frequencies, hours of operation, and of power,” without limiting same to a particular service.⁸

Further, as we recently observed, BCI’s interpretation of the prohibition is untenable.⁹ As the Commission noted in the *New Community MO&O*, AM and FM stations have long been considered to be “joint components of a single aural medium.”¹⁰ BCI’s contention – that the prohibition against removal of sole local service does not apply to AM stations – urges a significant departure from this policy, allowing sole local AM stations to abandon their communities of license for any reason or none. Moreover, as we stated in *Prieto*, such an interpretation is inconsistent with FM allocations policy, which permits an FM station to change communities when a sole AM station remains in its former community

⁴ 47 U.S.C. § 307(b). *See Section 307(b) Amendment Deadline Established for Certain AM Auction No. 84 Singleton Applications*, Public Notice, 20 FCC Rcd 10710 (MB 2005).

⁵ Petition at 2.

⁶ *Id.*, citing *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, *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097 and n.16 (1990) (“*New Community MO&O*”).

⁷ *Id.* at 7096 (emphasis added).

⁸ 47 U.S.C. § 307(b).

⁹ *See Ms. Teresa Prieto*, Letter, 23 FCC Rcd 5100, 5102 (MB 2008) (“*Prieto*”).

¹⁰ *New Community MO&O*, 5 FCC Rcd at 7097. *See also Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88, 92 (1982) (“*FM Assignment Policies*”).

of license.¹¹ If AM stations may change communities with impunity, as BCI suggests, an AM station could never be considered the “sole local service” for purposes of such a re-allotment.

We note that BCI’s filing of the Petition antedated the Commission’s Report and Order in *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*.¹² The Commission’s subsequent adoption of that order moots BCI’s argument that we delay this decision pending the Commission’s re-consideration of the prohibition on removing sole local services.¹³ In the *Community of License R&O*, the Commission re-emphasized the importance of local transmission service, and retained the presumption against removal of sole local service.¹⁴

Finally, BCI states that, “consistent with how [we have] handled [this] issue previously,” we must designate the application for hearing to determine whether grant of the Application comports with Section 307(b), citing *Americom*.¹⁵ We note that, in *Prieto*, we disapproved the *Americom* decision to the extent that *Americom* contradicted precedent holding that a hearing is not required on undisputed facts, such as in the instant case.¹⁶ Moreover, as discussed above, precedent existing prior to BCI’s filing the Petition gave BCI ample notice that the Commission would not approve removal of the sole local aural transmission service at Jeannette, Pennsylvania. We therefore reject BCI’s argument that our dismissing the Application, without hearing, in the *Staff Decision* denied its due process rights.

Conclusion. For the reasons discussed above, we find the matter was correctly decided in the *Staff Decision*. Accordingly, BCI’s Petition for Reconsideration IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹¹ See, e.g., *Saltville, Virginia and Jefferson, North Carolina*, Report and Order, 10 FCC Rcd 7578 (MMB 1995); *Kindred and Oakes, North Dakota*, Report and Order, 7 FCC Rcd 1996 (MMB 1992). See also *New Community MO&O*, 5 FCC Rcd at 7097 (both AM and FM stations considered in a proceeding to change an FM community of license).

¹² 21 FCC Rcd 14212 (2006) (“*Community of License R&O*”).

¹³ Petition at 3-4.

¹⁴ *Id.* at 14227-30.

¹⁵ Hearing Designation Order, 8 FCC Rcd 2499 (MMB 1993). See Petition at 3 and n.4.

¹⁶ *Prieto*, 23 FCC Rcd at 5104 n.23 (citing *Marsh v. FCC*, 436 F.2d 132, 136 (D.C. Cir. 1970)). See also *AT&T Co. v. FCC*, 539 F.2d 767, 774 (D.C. Cir. 1976) (rejecting argument that Section 309(e) of the Act mandates hearing in all cases where there is a substantial and material question of fact, citing, *inter alia*, *Southwestern Operating Co. v. FCC*, 351 F.2d 834, 835 (D.C. Cir. 1965), and *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956)).