



Federal Communications Commission
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In Reply Refer to:

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In Re: KTIA-FM, Boone, Iowa

Facility ID No. 6417

File No: BPH-20121113AMW

Informal Objection

Dear Counsel:

We have before us the referenced application, as amended (the "Application"), filed by Truth Broadcasting Corp. ("Truth Broadcasting"), licensee of Station KTIA-FM, Boone, Iowa, for a minor change construction permit. We also have before us a Supplement to Informal Objection (the "Supplement") filed January 23, 2014, by Saga Communications of Iowa, LLC ("Saga"),¹ as well as various related pleadings.² For the reasons discussed below, we grant the Application and deny the Supplement.

Background. The Application proposes to modify the license of Station KTIA-FM from Channel 257A at Boone, Iowa, to Channel 257A at Huxley, Iowa, and to relocate the station's transmitter site pursuant to Section 73.3573(g) of the Commission's Rules.³ The main issue in this

¹ Saga is the licensee of six radio stations in the Des Moines, Iowa, radio market.

² These pleadings include: (1) an Opposition to Supplement to Informal Objection filed January 31, 2014, by Truth Broadcasting; and (2) a Reply to Opposition to Supplement to Informal Objection filed February 11, 2014, by Saga.

³ See 47 C.F.R. § 73.3573(g) (permitting an FM station to change its community of license without providing an opportunity for competing expressions of interest provided, *inter alia*, the reallocation would result in a preferential arrangement of allotments). To accommodate this proposal, we issued, an *Order to Show Cause* to the licensee of Station KPUL(FM), Winterset, Iowa, for an involuntary channel change from Channel 258A to Channel 269A. See *Letter to Positive Impact Media, Inc.*, Ref. 1800B3-DB, (Jan. 8, 2013) ("OSC").

case is whether the reallocation of Station KTIA-FM should be treated as a “move-in” to the Des Moines or Ames, Iowa, urbanized areas under our *Rural Radio* procedures.⁴ Truth Broadcasting certified that the proposal should not be considered as a “move-in” because there are no existing towers in the area from which Station KTIA-FM could be modified to cover 50 percent or more of these urbanized areas.⁵ On February 19, 2013, Saga filed an Informal Objection to the Application (the “Objection”), arguing that the proposal should be subject to the rebuttable presumption because it identified two towers from which KTIA-FM could serve Huxley and, at the same time, place a 70 dBu signal over 50 percent of either the Ames or Des Moines Iowa urbanized areas.⁶ By letter dated June 6, 2013, we determined that neither of the towers identified by Saga could meet both of these criteria.⁷ However, we found an additional tower from which Station KTIA-FM could place a 70 dBu signal over 50 percent or more of the Ames urbanized area and serve Huxley.⁸ Accordingly, we denied Saga’s Objection in part and provided a 30-day period for Truth Broadcasting to rebut the presumption.

Thereafter, in response to a Petition for Reconsideration filed by Truth Broadcasting, we acknowledged that a Class C3 station at Huxley as described in the *Deficiency Letter* would not be possible because there was no fully spaced allotment site available as required by the Commission’s Rules.⁹ However, we determined that the presumption still applies because, at a site previously suggested by Saga, ASR #1207229, KTIA-FM could operate on Channel 257A with a directional antenna and cover all of Huxley and 50 percent of the Ames urbanized area with a 70 dBu signal. In the absence of a rebuttal to the presumption, we concluded that Truth Broadcasting was not entitled to a first local service preference. Accordingly, we dismissed the Application and granted the Objection to the extent indicated because the Application would not result in a preferential arrangement of allotments.

Truth Broadcasting subsequently sought rescission of the *Dismissal Letter*, arguing that the staff’s hypothetical technical facility cannot be relied upon to invoke the presumption because it is not rule-compliant. We agreed.¹⁰ Accordingly, we set aside the *Dismissal Letter* pursuant to

⁴ 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, 2567 (2011) (subsequent history omitted) (“*Rural Radio*”) (establishing a rebuttable presumption “that, when the community proposed is located in an urbanized area or could through a minor modification application, cover 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license”).

⁵ See File No. BPH-20121113AMW, Attachment 36, Section 307(b) Engineering Exhibit at 2.

⁶ Saga identified Antenna Structure Registration (“ASR”) #1235167 and ASR #1207229.

⁷ See *Letter to James P. Riley, Esq., and Gary S. Smithwick, Esq.*, (MB, Jun. 6, 2013) at 3 (“*Deficiency Letter*”).

⁸ *Id.* Specifically, a staff engineering analysis determined that at ASR #1017090, a directional antenna operating as a Class C3 facility would provide a 70 dBu signal over more than 50 percent of the Des Moines urbanized area.

⁹ See *James P. Riley, Esq., and Gary S. Smithwick, Esq.*, Letter, 28 FCC Rcd 16966, 16969-70 (MB 2013) (“*Dismissal Letter*”); 47 C.F.R. § 73.203, Note.

¹⁰ Specifically, the staff’s technical facility failed to protect Station KDAO-FM, Eldora, Iowa, at maximum facilities in violation of Section 73.215(a) of the Rules. See *Frank R. Jazzo, Esq., and Gary S. Smithwick,*

Section 1.113(a) of the Rules and reinstated the Application, pending further review of the technical matters raised in this proceeding.

On January 20, 2014, Truth Broadcasting filed an amendment to its certification that the Application is not subject to the urbanized area presumption. After contacting the owner of ASR #1207229, Truth Broadcasting reduced the hypothetical height that KTIA-FM could locate its antenna on this tower from 195 feet to 190 feet. At this height and with its proposed antenna pattern, Truth Broadcasting contends that the 70 dBu signal could not cover more than 50 percent of the Ames urbanized area.¹¹ Accordingly, Truth Broadcasting concludes that the presumption should not apply.

In its Supplement, Saga argues that: (1) Truth Broadcasting should not be permitted to reduce the antenna height on ASR #1207229 as this is a hypothetical site; (2) even operating at this new lowered height of 190 feet, KTIA-FM's 70 dBu signal would cover 52.3 percent of the Ames urbanized area;¹² and (3) the staff should round Saga's predicted 49.73 percentage coverage of the Ames urbanized area to 50 percent. Accordingly, Saga believes that the Application should be dismissed.

In its Opposition, Truth Broadcasting contends that: (1) it was proper to reduce the antenna height because the staff made clear in the *Deficiency Letter* that, in determining the feasibility of hypothetical uses of alternate towers, it would consider available space on towers rather than requiring the relocation of tower appurtenances; (2) the maximum KTIA-FM antenna height on ASR #1207229 is 190 feet AGL, not 195 feet AGL; and (3) Saga provides no support for its argument that the staff should round the percentage of the Ames urbanized area covered by the hypothetical 70 dBu contour in Truth Broadcasting's analysis. Accordingly, Truth Broadcasting contends that Saga's Supplement should be denied and the Application should be granted.

In its Reply, Saga reiterates that: (1) the staff should revisit the policy set forth in the *Deficiency Letter* and permit engineering studies of alternate towers to be made from the top of such structures without any regarding to the appurtenances thereon; (2) Truth Broadcasting should not be permitted to amend its application to a more favorable study height of 190 feet AGL; and (3) rounding is appropriate in this case, especially where Saga's computation reveals that the predicted 70 dBu coverage of the Ames urbanized area exceeds 52 percent. Therefore, Saga urges the dismissal of the Application for failure to comply with the policies of *Rural Radio*.

Discussion. *Relocation of Tower Appurtenances.* As a threshold matter, we see no reason to depart from the approach taken in the *Deficiency Letter* that, in determining the feasibility of hypothetical, alternate tower structures, we will not consider the possibility of relocating other tower appurtenances on such structures.¹³ Because these are hypothetical sites to determine the

Esq., Letter, (Jan. 16, 2014) at 4 (“*Reinstatement Letter*”). See also 47 C.F.R. § 73.215(a) (allowing short-spacing only if service and interference contours of the affected stations do not overlap).

¹¹ Truth Broadcasting states that the 70 dBu signal could only cover 49.73 percent of the Ames urbanized area and, at the same time, protect Station KDAO-FM, Eldora, Iowa. For its directional antenna pattern, Truth Broadcasting used Antenna ID 114555.

¹² Saga's engineering study utilized a different directional antenna pattern (Antenna ID 117872) than Truth Broadcasting specified.

¹³ See *Deficiency Letter* at 3.

applicability of the urbanized presumption, we believe that it would be too burdensome to require applicants to contact tower owners and determine their willingness to relocate appurtenances.

Coverage of Urbanized Areas. Next, we consider whether the Application invokes the urbanized presumption. We have conflicting engineering studies submitted by Truth Broadcasting and Saga on this issue. Truth Broadcasting's study shows 70 dBu coverage of less than 50 percent of the Ames urbanized area, and Saga's study calculates coverage of more than 50 percent. We note that both of these studies use the National Elevation Dataset (NED) 3 Arc-Second Terrain Database for taking into account actual terrain. This database is not routinely used by the Media Bureau for processing FM applications. Using the Commission's 3-second terrain data and seeking to protect KDAO-FM, Eldora, Iowa, at maximum facilities, we calculate that KTIA-FM's 70 dBu contour would encompass, at most, 49.0 percent of the Ames urbanized area whether the antenna is located at 190 or 195 feet AGL.¹⁴ Under these circumstances, and given the difference in the parties' coverage figures, we believe that it is appropriate to resolve this case based upon our own engineering study.¹⁵ Accordingly, we conclude that the presumption does not apply to the Application because KTIA-FM cannot be modified to cover 50 percent or more of the Ames urbanized area with a 70 dBu signal.¹⁶

Preferential Arrangement of Allotments. We now must address whether the Application would result in a preferential arrangement of allotments under the FM Allotment Priorities.¹⁷ The reallocation of KTIA-FM to Huxley (population 3,317) would be a first local service at that community triggering Priority 3. By way of contrast, the retention of KTIA-FM at Boone (population 12,661) would maintain a fourth local service at that community, triggering lower Priority 4. There would also be a gain of service to 281,477 persons and a loss of service to 34,078, persons for a net gain of service to 247,399 persons. We also note that the entire loss area

¹⁴ Specifically, our staff engineering study reveals that with facilities of 5.5kW ERP, 57.1 meters height above average terrain (HAAT), and a radiation center above ground level (RCAGL) of 195 feet (59.4 meters), the KTIA-FM 70 dBu contour would only cover 49.0 percent of the Ames urbanized area, and there would still be some prohibited overlap with Station KDAO-FM. With facilities of 5.5 kW ERP, 55.6 meters HAAT, and an RCAGL of 190 feet (57.9 meters), the 70 dBu contour would cover only 47.2 percent of the Ames urbanized area, and there would be some prohibited overlap with KDAO-FM. Additionally, our studies reveal that even with an increase in the height of the antenna, it would not be possible to provide 50 percent or more 70 dBu coverage of the Ames urbanized area while protecting Station KDAO-FM. Our studies utilized Saga's directional antenna pattern (Antenna ID 117872) in order to obtain the most coverage of the Ames urbanized area.

¹⁵ See, e.g., *Lee G. Petro, Esq., and Stuart W. Nolan, Jr., Esq.*, Letter, 25 FCC Rcd 14362, 14365 (MB 2010) (relying upon the staff's independent calculations to resolve a conflict between the parties' engineering showings on whether a dispositive fair distribution preference was warranted).

¹⁶ We also do not need to reach the issue of whether to round the percentage of coverage of the urbanized area to 50 percent because KTIA-FM's 70 dBu contour would cover 49.0 percent or less of the urbanized area.

¹⁷ 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. See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

is well served with more than five reception services. Accordingly, we find that grant of the Application would result in a preferential arrangement of allotments.¹⁸

Involuntary Channel Change. In order to accommodate the Application, we are involuntarily modifying the license of Station KPUL(FM), Winterset, Iowa, from Channel 258A to Channel 269A. To this end, we issued an *OSC* to Positive Impact Media, Inc., the licensee of KPUL(FM), as to why its license should not be modified to specify operation on Channel 269A. Positive Impact Media filed no comments in response to the *OSC* and is, therefore, deemed to have consented to the channel change.¹⁹ In compliance with our *Circleville* policy,²⁰ Truth Broadcasting states that it will reimburse the licensee of KPUL(FM) for its reasonable expenses incurred with changing its channel. We find that the involuntary channel change will serve the public interest by facilitating the reallocation of KTIA-FM to Huxley as a first local service.

Conditions. As a final matter, Saga requests that we revisit our determination in the *Dismissal Letter* not to impose operating conditions on Station KTIA-FM if we grant its Application.²¹ We see no reason to depart from our earlier determination. Saga has again offered no precedent to support its position. Accordingly, we will not impose any operating conditions.

Conclusion. IT IS ORDERED that the application, File No. BPH-20121113AMW, filed by Truth Broadcasting Corporation IS GRANTED, and the Supplement to Informal Objection filed by Saga Communications of Iowa, LLC, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Positive Impact Media, Inc.

¹⁸ As a related matter, we find that Huxley is a community for allotment purposes because it is incorporated with its own government, police department, fire department, library, parks, local businesses, community organizations, and churches.

¹⁹ See *OSC* at 2.

²⁰ See *Circleville, Ohio*, Memorandum Opinion and Order, 8 FCC 2d 159 (1967) (“*Circleville*”).

²¹ See Saga’s Supplement at 7.