

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, DC 20554

July 7, 2005

DA 05-1943

In Reply Refer to:
1800B3

James P. Riley, Esq.
Fletcher, Heald & Hildreth PLC
1300 North 17th Street
Arlington, VA 22209

In re: NEW(AM), Baldwin, FL
Permit No. BNP-20010817AAF
Northeast Florida Radio, LLC
Facility ID No. 136128
File No. BMAP-20050110AAY

Dear Mr. Riley:

This letter refers to the captioned major change application filed on behalf of Northeast Florida Radio, LLC (“Northeast”), proposing to relocate an unbuilt construction permit for a new AM station¹ from Nassau Village-Ratliff to Baldwin, Florida. For the reasons set forth below, the application is dismissed.

Pursuant to Section 307(b) of the Communications Act, we are required to determine whether the relocation of a facility to another community will “provide a fair, efficient, and equitable distribution of radio service” Thus, whenever an applicant seeks to change its community of license, the Commission compares the relative needs of the existing and proposed communities for radio service.² The Commission’s service priorities when making a Section 307(b) determination are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given equal weight.³

In support of its application, Northeast submits the following Section 307(b) showing:

The existing construction permit authorizes a first local service to the CDP of Nassau Village-Ratliff, Florida, which the 2000 Census reflects has a population of 4,667. This application proposed modification of the construction permit to authorize a second local service to the town

¹ Permit No. BNP-20010817AAF.

² See *Ark-Valley Broadcasting Company, Inc.*, 15 FCC 818, 820 (1951).

³ *Second Report and Order, FM Channel Policies/Procedures*, 90 F.C.C.2d 88, 90-93 (1982); *recon. denied*, 56 R.R.2d 448 (1984). These priorities were first applied in Section 307(b) determinations in the AM context by the Review Board in *Alessandro Broadcasting Co.*, 56 R.R.2d 1569 (Rev. Bd. 1984).

of Baldwin, Florida, which the 2000 Census reflects has a population of 1,634.⁴ Grant of the modification would leave Nassau Village-Ratliff without a local transmission service. However, loss of local transmission service to Nassau Village-Ratliff is not relevant as the facility authorized by the construction permit at Nassau Village-Ratliff has never been constructed and no first local service yet exists at Nassau Village-Ratliff.⁵

We have reviewed Northeast's Section 307(b) showing and find it insufficient to support a determination that the proposed relocation from Nassau Village-Ratliff to Baldwin would further the public interest, convenience, and necessity. We agree with Northeast that the removal of an unbuilt new station does not raise the same concerns as would the removal of an operating station.⁶ Nevertheless, it is not the case, as Northeast contends, that the loss of an unbuilt station is not "relevant" for our Section 307(b) analysis. In every city of license modification proposed through either rulemaking or application, we compare the relative needs of the two communities for radio service. Thus, each AM "singleton" applicant is required to submit a Section 307(b) showing with its application.⁷ In this case, grant of the Northeast proposal would impermissibly result in the loss of Nassau Village-Ratliff's sole local service (Priority 3) and would provide only a second local service at Baldwin (Priority 4). Priority 3 is implicated where the lost local service is "merely" an unbuilt construction permit.⁸

Accordingly, we cannot find that Northeast's application will provide for a "fair, efficient, and equitable" distribution of AM radio service, nor can we find that grant of the proposal will further the public interest, convenience, and necessity.⁹ Accordingly, the application (File No. BMAP-20050110AAY) of Northeast Florida Radio, LLC for major modification of unbuilt construction permit BNP-20010817AAF IS DISMISSED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Northeast Florida Radio, LLC

⁴ Class C3 station WHJX(FM) is currently licensed to Baldwin, Florida.

⁵ Application No. BMAP-20050110AAY, Exhibit 11.

⁶ *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (MMB 1993).

⁷ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920, 15964 (1998); *North Texas Radio, Inc.*, 11 FCC Rcd 8531, 8536 (1996); *Ark Valley*, 15 F.C.C. at 820.

⁸ E.g., *Dos Palos, Chualar, and Big Sur, California*, 19 FCC Rcd 1826, 1831 (MB 2004).

⁹ See 47 C.F. R. § 307(b), 309(a).