



Federal Communications Commission  
Washington, D.C. 20554

March 21, 2006

DA 06-631  
**In Reply Refer to:**  
1800B3-TSN

Fort Bend Broadcasting Company  
c/o Lauren A. Colby, Esq.  
Law Office of Lauren A. Colby  
10 East 4<sup>th</sup> Street  
Frederick, MD 21701

In re: **WLDR(AM), Kingsley, Michigan**  
**Facility ID No. 4599**  
Application for Major Modification  
File No. BMJP-20041028ACO

Dear Counsel:

This letter refers to the above-noted application filed by Fort Bend Broadcasting Company ("FBB") for major modification to the facilities of station WLDR(AM), Kingsley, Michigan, seeking to change the community of license from Kingsley to Garfield Township, Michigan. For the reasons set forth below, we dismiss the application.

**Background.** FBB timely filed its FCC Form 175 application to change the WLDR(AM) community of license during the filing window for AM Auction No. 84 ("Auction 84").<sup>1</sup> The application was determined not to be mutually exclusive with any other proposal filed in the Auction 84 filing window, and FBB was invited to file its complete FCC Form 301 application by October 29, 2004.<sup>2</sup> FBB timely filed its complete FCC Form 301 application on October 28, 2004. FBB proposes only a change in community of license, with no change to the WLDR(AM) technical facilities. FBB was thereafter instructed 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.<sup>3</sup> FBB timely filed its Section 307(b) amendment on July 18, 2005.

WLDR(AM) is the sole local transmission service licensed at Kingsley, Michigan (2000 Census population 1,469). FBB proposes to change WLDR(AM)'s community of license to Garfield Township, Michigan (2000 Census population 13,840) as that community's first local radio transmission service.

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<sup>1</sup> See *Public Notice*, "AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze," 18 FCC Rcd 23016 (MB/WTB 2003).

<sup>2</sup> See *Public Notice*, "AM Auction No. 84 Singleton Applications," 19 FCC Rcd 16655 (MB 2004).

<sup>3</sup> 47 U.S.C. § 307(b). See *Public Notice*, "Section 307(b) Amendment Deadline Established for Certain AM Auction No. 84 Singleton Applications," 20 FCC Rcd 10701 (MB 2005).

FBB's Section 307(b) analysis indicates that Kingsley will continue to receive protected service<sup>4</sup> from at least five stations.<sup>5</sup>

**Discussion.** Our policies on allowing broadcast stations to change their communities of license are based on Section 307(b) and the goals of fair, efficient, and equitable distribution of radio service that underlie it. Our *FM Assignment Policies* delineate three core priorities: provision of first aural reception service to a community, provision of second aural reception service to a community, and provision of first local transmission service at a community.<sup>6</sup> The fourth priority is "other public interest matters," which encompasses any other factors that the Commission may take into consideration.<sup>7</sup> Retention of the first local service at Kingsley, and the institution of first local service at Garfield Township, implicate Priority (3) – first local transmission service. However, notwithstanding that the existing and proposed arrangements of stations both trigger the same allotment priority, the Commission prohibits the removal of an existing station representing a community's sole local transmission service.<sup>8</sup> This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.<sup>9</sup> However, the Commission has emphasized that "the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver."<sup>10</sup> Rather, such a proposal "is presumptively contrary to the public interest."<sup>11</sup> In this regard, the Commission has stated that:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether

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<sup>4</sup> 5mV/m for AM stations and 3.16 mV/m (70 dB $\mu$ ) for FM stations.

<sup>5</sup> FBB lists one AM and 13 FM stations other than WLDR(AM) currently providing protected service to Kingsley, Michigan: WTCM(AM), WICA(FM), WLDR-FM, WLJN-FM, WCCW-FM, and WTCM-FM, all licensed at Traverse City, Michigan; WKVK(FM), Honor, Michigan; WLXV(FM) and WJZQ(FM), Cadillac, Michigan; WFCX(FM), Leland, Michigan; WJZJ(FM) and WGFN(FM), Glen Arbor, Michigan; WKLT(FM), Kalkaska, Michigan; and WIAA(FM), Interlochen, Michigan. The Commission has determined that a community receiving service from at least five stations is abundantly served. *See Family Broadcasting Group*, 53 R.R.2d 662 (Rev. Bd. 1983), *review denied*, FCC 83-559 (Nov. 29, 1983); *see also LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (MMB 1995).

<sup>6</sup> *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88, 91-93 (1982). Priorities (2) and (3) are co-equal. The FM allotment priorities are applied to Section 307(b) determinations for community change proposals for AM stations. *Allesandro Broadcasting Co.*, 56 R.R.2d 1568 (Rev. Bd. 1984).

<sup>7</sup> *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d at 93.

<sup>8</sup> *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("New Community R & O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094, 7097(1990) ("*New Community MO&O*").

<sup>9</sup> *Id.* On waiver standards generally, *see Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*") ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest," citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) ("*WAIT Radio*").

<sup>10</sup> *New Community MO&O*, 5 FCC Rcd at 7097.

<sup>11</sup> *Id.*

the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.<sup>12</sup>

FBB does not request waiver of this policy, stating only that “since Garfield Township, Michigan is the larger community, it is more deserving of an aural service under the provisions of Section 307(b) and the proposed relocation of Radio Station WLDR(AM) from Kingsley, Michigan to Garfield Township, Michigan should be approved.”<sup>13</sup> While Garfield Township is unquestionably the larger community, and would be preferred if this were a comparison between proposals for new service, this in and of itself does not justify a change of community of license that would deprive the community of Kingsley of a radio service on which it has come to rely for programming serving its needs. The Commission has held that the fact that a licensee proposes to remove a station to a larger community does not by itself justify the removal of a smaller community’s sole local broadcast service.<sup>14</sup> However, this is the only public interest justification proffered by FBB in support of its application.

Therefore, we cannot find, on the existing record in this case, that there are sufficient public interest factors to offset the expectation of continued local service at Kingsley, Michigan. Accordingly, we cannot find that the public interest, convenience, and necessity will be served by FBB’s proposal. Therefore, the application of Fort Bend Broadcasting Company, File No. BMJP-20041028ACO, for major modification to change the community of license of station WLDR(AM), Kingsley, Michigan, IS DISMISSED.<sup>15</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>12</sup> *Id.*

<sup>13</sup> FBB Section 307(b) Analysis, third unnumbered page.

<sup>14</sup> *See, e.g., Potts Camp and Saltillo, Mississippi*, 16 FCC Rcd 16116 (2001) (denying relocation of sole local service at a town of 483 to a town of 1,782).

<sup>15</sup> The corresponding AM Auction No. 84 Tech Box submission of the applicant, File No. BMJP-20040129ABN, IS ALSO DISMISSED.