



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

October 30, 2007

DA 07-4454

In Reply Refer to:

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Mr. Roy E. Henderson
1110 West William Cannon Drive
Suite 402
Austin, TX 78745

In re: **AM Broadcast Auction No. 84**

Roy E. Henderson

KNUZ(AM), Bellville, Texas

Facility ID No. 48653

File No. BMJP-20050118ADC

**Application for Major Modification
to AM Broadcast Station**

Dear Mr. Henderson:

This letter refers to the above-noted application filed by Roy E. Henderson (“Henderson”) for major modification to the facilities of station KNUZ(AM), Bellville, Texas, seeking to change the community of license from Bellville to Katy, Texas. For the reasons set forth below, we dismiss the application.

Background. Henderson timely filed his FCC Form 175 application to change the KNUZ(AM) community of license during the filing window for AM Auction No. 84 (“Auction 84”).¹ Because the application was determined not to be mutually exclusive with any other proposal filed in the Auction 84 filing window, Henderson was invited to file his complete FCC Form 301 application by January 18, 2005.² Henderson timely filed his complete FCC Form 301 application on January 18, 2005. Henderson proposes a change in community of license as well as a change to the KNUZ(AM) technical facilities. In connection with the community change, Henderson was 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.³ Henderson timely filed his Section 307(b) amendment on July 15, 2005. Eight informal objections to the application were filed by six objectors

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

² See *AM Auction No. 84 Singleton Applications*, Public Notice, 19 FCC Rcd 22569 (MB 2004).

³ 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 10701 (MB 2005).

between April 7 and May 16, 2005.⁴ On May 31, 2005, Henderson filed an Opposition to the informal objections.

KNUZ(AM) is the sole local transmission service licensed at Bellville, Texas (2000 Census population 3,794). Henderson proposes to change KNUZ(AM)'s community of license to Katy, Texas (2000 Census population 11,775) as that community's first local radio transmission service. Henderson's Section 307(b) analysis indicates that Bellville will continue to receive service from fourteen stations if the application is granted.⁵

Discussion. *Section 307(b).* 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.⁶ The fourth priority is "other public interest matters," which encompasses any other factors the Commission may take into consideration.⁷ Retention of the first local service at Bellville, and the institution of first local service at Katy, 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.⁸ This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.⁹ However,

⁴ Informal objections were filed by the following individuals: Elizabeth P. Conway, Houston, Texas (April 7 and May 16, 2005); Brian Compton, no address given (April 8, 2005); Nathan Simecek, Kingwood, Texas (April 8, 2005); Illegible name, Houston, Texas (April 11, 2005); Illegible name, Humble, Texas (April 11, 2005); and Jeff Pullin, Richmond, Texas (April 12 and May 11, 2005).

⁵ Henderson lists the following stations other than KNUZ(AM) currently providing service to Bellville, Texas: KKBBQ-FM, Pasadena, Texas; KSEV(AM), Tomball, Texas; and KBXX(FM), KHJZ-FM, KHMJ(FM), KILT-FM, KLOL(FM), KODA(FM), KRBE(FM), KTBZ-FM, KHCB-FM, KMJQ(FM), KUHF(FM), and KTRH(AM), all licensed at Houston, Texas. The Commission has determined that a community receiving service from at least five stations is abundantly served. See *Family Broadcasting Group*, Decision, 93 FCC2d 771 (Rev. Bd. 1983), *review denied*, FCC 83-559 (Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (MMB 1995).

⁶ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 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.*, Decision, 99 FCC2d 1 (Rev. Bd. 1984).

⁷ *Revision of FM Assignment Policies and Procedures*, 90 FCC2d at 93.

⁸ *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 (1989) ("*New Community R & O*"), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097(1990) ("*New Community MO&O*"). The policy disfavoring removal of sole local transmission service was recently restated in *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14227-30 (2006) ("*Change of Community R&O*").

⁹ *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*").

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.”¹⁰ Rather, such a proposal “is presumptively contrary to the public interest.”¹¹ 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 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.¹²

Henderson does not request waiver of this policy, stating only that because both Bellville and Katy are well served by existing aural services, and “since Katy, Texas 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 KNUZ(AM) from Bellville, Texas to Katy, Texas should be approved.”¹³ Henderson also notes that the application, if granted, would eliminate the existing overlap between KNUZ(AM) and station KRLD(AM) at Dallas, Texas.¹⁴

While Katy is unquestionably the larger of the two communities, 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 Bellville of a radio service on which it has come to rely for programming serving its needs for over 30 years. 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.¹⁵ Further, while we recognize the value in reducing contour overlap and, therefore, interference, the elimination of already-existing contour overlap is not sufficient to offset the loss of a sole local transmission service. Henderson has not made a compelling public interest showing justifying removal of the sole local transmission service from Bellville.

Informal Objections. As noted above, eight informal objections to Henderson’s application were filed by six separate parties. In general, the objectors allege main studio and public file violations in connection with KNUZ(AM), and accuse Henderson of failing to operate the station. Henderson disputes these allegations. In light of our finding above, however, we need not consider the informal objections

¹⁰ *New Community MO&O*, 5 FCC Rcd at 7097.

¹¹ *Id.*

¹² *Id.* See also *Change of Community R&O*, 21 FCC Rcd at 14229 (“We remain unconvinced that the concept of retaining local service is obsolete or irrelevant. We agree with commenter New World that local radio transmission service retains an important role in the lives of many communities, especially smaller and more isolated communities. Thus, we stand by our traditional insistence that the sole operating local transmission service in a community should not be removed absent a compelling public interest showing.”).

¹³ Henderson Section 307(b) Analysis, third unnumbered page.

¹⁴ Exhibit 14 to Henderson application. The overlap consists of two areas totaling approximately 340 square miles. Henderson does not state the population living in the overlap area.

¹⁵ See, e.g., *Potts Camp and Saltillo, Mississippi*, Memorandum Opinion and Order, 16 FCC Rcd 16116 (2001) (denying relocation of sole local service at a town of 483 to a town of 1,782).

with regard to Henderson's major modification application. The informal objections are therefore DISMISSED AS MOOT.

Conclusion. 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 Bellville, Texas. Accordingly, we cannot find that the public interest, convenience, and necessity will be served by Henderson's proposal. Therefore, the application of Roy E. Henderson, File No. BMJP-20050118ADC, for major modification to change the community of license of station KNUZ(AM), Bellville, Texas, IS DISMISSED.¹⁶

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lauren A. Colby, Esq., Counsel for Roy E. Henderson
Elizabeth P. Conway
Nathan Simecek
Jeff Pullin

¹⁶ The corresponding AM Auction No. 84 Tech Box submission of the applicant, File No. BMJP-20040128AHL, IS ALSO DISMISSED.