



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

June 6, 2008

DA 08-1340

In Reply Refer to:

1800B3-TSN

Released: June 6, 2008

Mr. Richard Dean Hodson,
d/b/a Hodson Broadcasting
P.O. Box 66
Tecopa, CA 92389-0066

Shamrock Communications, Inc.
c/o Kenneth E. Satten, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 700
Washington, DC 20037

In re: FM Auction No. 68

Shamrock Communications, Inc.
New(FM), Amargosa Valley, NV
Facility ID No. 170180
File No. BNPH-20070226AER

**Application for New FM
Construction Permit**

Dear Objector and Counsel:

We have before us a “Petition to Deny” (“Petition”) filed by Richard Dean Hodson, d/b/a Hodson Broadcasting (“Hodson”) on May 7, 2007. Hodson requests we deny Shamrock Communications, Inc.’s (“Shamrock”) FM Auction No. 68 (“Auction 68”) application for a new FM broadcast station at Amargosa Valley, Nevada.¹ Shamrock was the winning bidder, in Auction 68, for the Channel 291A allotment at Tecopa, California; in its post-auction Form 301 application, Shamrock seeks a minor change in the facilities, class, and community of license of the allotment. Shamrock has concurrently filed a Petition for Rule Making (“PRM”) to replace the Tecopa allotment with a new allotment on Channel 288A at Tecopa.² For the reasons set forth below, we deny the Petition and grant the Application.

¹ File No. BNPH-20070226AER (the “Application”).

² As is now required with Petitions for Rule Making proposing new allotments, Shamrock also filed a Form 301 application, File No. BNPH-20070226AET.

Background. Shamrock filed a short-form (FCC Form 175) application on November 9, 2006, during the Auction 68 filing window.³ After the auction, Shamrock was the provisionally winning bidder with a net bid of \$728,000.⁴ Having timely made all required auction payments, Shamrock timely filed the Application, proposing a “one-step” upgrade from Channel 291A to Channel 290C1, and change of community from Tecopa to Amargosa Valley, Nevada. It concurrently filed the PRM, along with the required Form 301 application specifying the proposed facilities. In response to Hodson’s May 7, 2007, filing of the Petition, Shamrock filed an “Opposition to Objection” (“Opposition”) on May 24, 2007.

Discussion. Status of Petition. Shamrock contends that Hodson’s Petition cannot be considered a petition to deny, because it does not comply with the requirements of Section 309(d) of the Communications Act of 1934, as amended (the “Act”).⁵ Specifically, Shamrock points out that the Petition is not supported by an affidavit or declaration under penalty of perjury, as is required by the Act and the Commission’s Rules.⁶ We agree that Hodson should have submitted an affidavit to support his many factual assertions regarding population, community attributes, and technical matters. In any event, Hodson’s unsworn signature alone does not provide sufficient indicia of reliability of the assertions in the Petition. We therefore consider the Petition to be an informal objection.

Substantive Allegations. In his Petition, Hodson makes numerous assertions and accusations against Shamrock and its motives. As noted above, however, Hodson’s statements constitute bare unsworn allegations only, unsupported by technical showings, declarations of other Tecopa residents, or other evidence. Essentially, Hodson argues that Shamrock has engaged in wrongful behavior by changing the community from Tecopa to Amargosa Valley in its post-auction long-form application, and simultaneously seeking to allot a new channel at Tecopa, which Hodson characterizes as an illegal “backfill” allotment. Hodson’s primary criticism seems to be that Shamrock is abandoning the community on which it bid, thus delaying the introduction of FM service at Tecopa.

While earnestly argued, Hodson’s Petition does not point to any wrongful conduct on Shamrock’s part. It is uncontested that Shamrock was the winning bidder for the Channel 291A Tecopa allotment. In *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*,⁷ the Commission specifically allowed applicants to file minor modification community of license change applications, as long as the proposed new facility was mutually exclusive with either the applicant’s built and operating facilities or its original allotment.⁸ Moreover, the Media Bureau subsequently affirmed that a winning auction applicant could propose a community of license change in its post-auction Form 301 application.⁹ We further note that not only is

³ File No. BSFH-20061109AET.

⁴ See *Auction of FM Construction Permits Closes; Winning Bidders Announced for Auction No. 68*, Public Notice, 22 FCC Rcd 518 (MB/WTB 2007).

⁵ 47 U.S.C. § 309(d).

⁶ See *id.*; 47 C.F.R. § 73.5006(c).

⁷ Report and Order, 21 FCC Rcd 14212 (2006) (“2006 Community of License Order”).

⁸ *Id.* at 14219.

⁹ See *Media Bureau Offers Examples to Clarify the Treatment of Applications and Rulemaking Petitions Proposing Community of License Changes, Channel Substitutions, and New FM Allotments*, Public Notice, 22 FCC Rcd 6852, 6855-56 (MB 2007).

the community of license change a minor change, but Shamrock’s proposed upgrade from Channel 291A to Channel 290C1 and transmitter site location are likewise minor changes, and thus allowed in its post-auction long-form application.¹⁰

Part of the change of community application procedure involves submitting “a detailed exhibit demonstrating that the proposed change constitutes a preferential arrangement of allotments under the Section 307(b) [of the Communications Act of 1934, as amended] priorities and policies we have used since 1982.”¹¹ It appears that, in order to justify such a preferential arrangement of allotments when proposing to move the sole allotment at Tecopa to a community that already has local transmission service, Shamrock has proposed a replacement allotment. However, Hodson is in error when he accuses Shamrock of proposing a prohibited “backfill” allotment. The case Hodson cites, *Pacific Broadcasting of Missouri LLC*,¹² only prohibits so-called backfill allotments when used to preserve the existing sole local transmission service of a community being vacated. However, the Tecopa allotment is not a sole local transmission service, as it has never been constructed and has never broadcast, thus the community has not come to rely on it for service.¹³ Shamrock’s request for a new FM allotment at Tecopa, as noted above, has been proposed in order to comply with Section 307(b) requirements, not as a replacement for non-existent sole local transmission service. While it is at least premature for Shamrock to claim that its modification application plus rulemaking proceeding will create two FM facilities, it is true that if granted, Shamrock’s proposals will result in a construction permit serving a greater population, along with a replacement allotment of the same class at Tecopa. The proposals thus satisfy Section 307(b), and are fully compliant with our rules and procedures as modified by the *2006 Community of License Order*.¹⁴

Conclusion. For the foregoing reasons, we find that Hodson has failed to raise a substantial and material question of fact regarding Shamrock’s long-form application and associated PRM. We further find that Shamrock is fully qualified to be a Commission licensee, and that grant of its Form 301 application is in the public interest, convenience, and necessity. Therefore, Hodson’s Petition, which we treat as an informal objection, IS DENIED, and Shamrock’s Application IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁰ 47 C.F.R. § 73.3573(a)(1).

¹¹ *Id.* at 14218. See 47 U.S.C. § 307(b) (“Section 307(b)”; *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

¹² Memorandum Opinion and Order, 18 FCC Rcd 2291, 2296 (2003), recon. denied, 19 FCC Rcd 10950 (2004).

¹³ See, e.g., *Vernon Center and Eagle Lake, Minnesota*, Report and Order, 21 FCC Rcd 14714, 14715 (MB 2007) (reallotment of unbuilt station does not constitute removal of community’s sole local service).

¹⁴ See *supra* note 7.