



Federal Communications Commission  
Washington, D.C. 20554

August 21, 2008

**DA 08-1946**

*In Reply Refer to:*

1800B3-MW/TC

Released: August 21, 2008

Kovas Communications, Inc.  
6439 Constitution Drive  
Fort Wayne, IN 46804

Kovas Communications of Indiana, Inc.  
6439 Constitution Drive  
Fort Wayne, IN 46804

In re: **WONX(AM), Evanston, IL**  
**Facility ID No. 35447**  
BP-20070404ABB

Application for Minor Modification  
of Facilities

**WMCW(AM), Harvard, IL**  
**Facility ID No. 43241**  
BMJP-20050114ADY (dismissed March  
2, 2006)

Application for Major Modification  
of Facilities

Dear Applicants:

We have before us: (1) the captioned minor change application (the "WONX Application"), filed by Kovas Communications, Inc. ("KCI"), licensee of station WONX(AM), Evanston, Illinois; (2) a "Petition to Deny" the WONX Application (the "Petition"), filed on April 16, 2007, by Mark Heller ("Heller");<sup>1</sup> and (3) the April 3, 2006, Petition for Reconsideration ("WMCW Petition") filed by Kovas Communications of Indiana, Inc. ("KCII"), seeking reconsideration of the dismissal of its application for modification of facilities for station WMCW(AM), Harvard, Illinois. The applications are accompanied by an Interference Reduction Agreement ("IRA") showing. For the reasons set forth below, we: (1) approve the IRA; (2) treat the Heller Petition as an Informal Objection and deny it; (3) grant the WONX(AM) Application as amended, subject to surrender of the WMCW(AM) license; and (4) dismiss the WMCW Petition as moot because, with the surrender of the WMCW(AM) license, there are no longer any facilities to modify.

**Background.** Station WONX(AM) is licensed to operate on 1590 kHz with a power of 3.5 kW daytime and 2.5 kW nighttime, employing a four-tower directional antenna system. Station

---

<sup>1</sup> Heller is President of WTRW, Incorporated, licensee of Station WGBW(AM), Two Rivers, Wisconsin. KCI filed an Opposition to the Petition (the "Opposition") on May 1, 2007, to which Heller filed a Reply to the Opposition (the "Reply") on May 14, 2007.

WMCW(AM) is licensed on 1600 KHz with a daytime power of 0.5 kW and a nighttime power of 0.018 kW, employing a non-directional antenna system. In the IRA, the parties propose: (1) grant of the WONX(AM) Application, which would increase WONX(AM)'s daytime power to 7 kW; and (2) surrender of the WMCW(AM) license. In the IRA, the applicants contend that grant of the proposals will increase service from WONX(AM), eliminate existing prohibited overlap to a substantial area and population, and will leave no area receiving fewer than five aural broadcast services.

KCI and KCII were owned by Mr. Frank S. Kovas, who functioned as President, sole director, and 100-percent shareholder of both entities. In January of 2004, desiring to improve the facilities of WONX(AM), KCII filed applications during the filing window for AM No. 84 ("Auction 84")<sup>2</sup> to relocate WMCW(AM),<sup>3</sup> WCGO(AM),<sup>4</sup> and WKKD(AM).<sup>5</sup> At that time, KCI also filed an application to relocate WONX(AM) to Carol Stream, Illinois, and upgrade that station's technical facilities.<sup>6</sup> Mr. Kovas died in January 2005, but his widow and her son, Joseph Walburn (who is also the court-appointed personal representative for Mr. Kovas' estate), sought to follow through on the plan for improvement of the WONX(AM) facility. Ultimately, the WCGO(AM) Application was granted on December 19, 2007,<sup>7</sup> and the WKKD(AM) application was granted on January 9, 2008.<sup>8</sup> However, the WMCW(AM) Application was dismissed by the staff on March 2, 2006, because it proposed to remove the sole local transmission service from Harvard, Illinois.<sup>9</sup> KCI subsequently voluntarily sought the dismissal of the 2005 WONX Application.<sup>10</sup>

KCII timely sought reconsideration of the dismissal of the WMCW Application and, concurrently with requesting dismissal of the 2005 WONX Application, KCI filed the subject Application, proposing to retain WONX(AM) in Evanston, Illinois, but increasing the station's daytime power to 7 kW. Ultimately concluding that, "given the present economic environment," it could not continue to prosecute

---

<sup>2</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>3</sup> File No. BMJP-20050114ADY (the "WMCW Application"), which proposed relocating WMCW(AM) from Harvard, Illinois to Weston, Wisconsin, and changing the station's technical facilities.

<sup>4</sup> File No. BMJP-20051007ACM (the "WCGO Application"), which proposed relocating WCGO(AM) from Chicago Heights, Illinois to Jenison, Michigan, and changing the station's technical facilities.

<sup>5</sup> File No. BMJP-20051028ABQ (the "WKKD Application"), which proposed relocating WKKD(AM) from Aurora, Illinois to Silvis, Illinois, and changing the station's technical facilities.

<sup>6</sup> File No. BMJP-20051031ACF. (the "2005 WONX Application"). KCI and KCII indicate that, because Mr. Kovas was the sole principal of both entities, there was no written IRA between KCI and KCII, "since Mr. Kovas would basically have been entering into a written agreement with himself." See WCGO(AM) application, April 2007 Amendment, Attachment 1 at 2. The parties later reduced the terms of the intended IRA at the time to writing. *Id.*

<sup>7</sup> See *Broadcast Actions*, Public Notice, Report No. 46639 (Dec. 26, 2007) at 3.

<sup>8</sup> See *Letter to Dr. George S. Flinn, Jr. and Kovas Communications of Indian, Inc.*, Reference 1800B3-LAS/JP (MB Jan. 9, 2008).

<sup>9</sup> See *Kovas Communications of Indiana, Inc.*, Letter, 21 FCC Rcd 2196 (MB 2006).

<sup>10</sup> See *Broadcast Actions*, Public Notice, Report No. 46470 (Apr. 23, 2007) at 2.

the dismissed WMCW(AM) application, KCII represented in July of 2008 that it was surrendering the WMCW(AM) license in accordance with the AM interference reduction policies established by the Commission in 1993.<sup>11</sup> It also proffers the overall public interest benefits which will be realized from grant of the Application, notwithstanding the cessation of WMCW(AM) operations.<sup>12</sup>

On April 16, 2007, Heller filed a “Petition to Deny” the WONX Application,<sup>13</sup> arguing, among other things, that the application was an unlawful “contingent application”<sup>14</sup> and that the WONX Application does not demonstrate that existing interference to his co-channel Station WGBW(AM), Two Rivers, Wisconsin, would be reduced.

**Discussion. Interference Reduction.** In recent years the Commission has acted to revitalize and improve the AM service.<sup>15</sup> As part of this effort, we permit licensees to reach agreements to reduce power or cancel their licenses in order to permit other licensees to improve service, and to reduce overall interference.<sup>16</sup> In amending Section 73.3517 of the Rules<sup>17</sup> to permit contingent applications that would “reduce interference to one or more AM stations or . . . otherwise decrease the area of interference,” the Commission removed regulatory barriers that had previously prevented or discouraged individual AM licensees from entering into private agreements to decrease inter-station interference and improve the overall quality of AM service.<sup>18</sup>

When such contingent agreements are proposed that would involve the deletion or modification of existing AM stations, we must engage in a case-by-case public interest determination. In particular, the parties must demonstrate that a “local service floor” would remain in the community losing a local transmission service as a result of the proposed agreement.<sup>19</sup> The Commission did not choose to “establish a quantifiable service floor that can uniformly be applied with respect to the replacement of deleted facilities,” opting instead for the case-by-case approach. However, the Commission did determine that, at a minimum, an agreement that resulted in the deletion of a station could not create a “white” or “gray” area.<sup>20</sup>

---

<sup>11</sup> See July 2008 Amendment to the dismissed WMCW Application, Attachment 1, at 1.

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

<sup>13</sup> Petitions to deny do not lie against minor change applications. See 47 U.S.C. § 309(d)(1); 47 C.F.R. § 73.3580(a). Accordingly, the Heller Petition will be treated herein as an Informal Objection pursuant to 47 C.F.R. § 73.3587.

<sup>14</sup> See 47 C.F.R. § 73.3517.

<sup>15</sup> See, e.g., *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993).

<sup>16</sup> *Policies to Encourage Interference Reduction between AM Broadcast Stations*, 5 FCC Rcd 4492 (1990) (“*Interference Reduction*”).

<sup>17</sup> 47 C.F.R. § 73.3517.

<sup>18</sup> *Interference Reduction*, 5 FCC Rcd at 4492.

<sup>19</sup> *Id.* at 4494.

<sup>20</sup> *Id.* A “white” area is one that receives no full-time aural service; a “gray” area receives only one full-time aural service. 47 C.F.R. § 73.14; *Interference Reduction*, 5 FCC Rcd at 4494 n.14.

When undertaking the case-by-case analysis, we generally consider four factors: the amount of AM interference that would be eliminated in relation to the number of AM and FM services remaining available to the areas that would lose service; the areas and populations that would gain service as a result of the proposed change; whether the proposal would create any white or gray areas; and the availability of AM and FM service in the area that will experience a reduction in service due to the proposed contingent facilities changes.<sup>21</sup> We will therefore examine the parties' IRA here in light of these four factors.

Reduction in Interference. The IRA states that WMCW(AM)'s licensed operations do not comply with the Commission's current AM interference protection requirements, and it demonstrates that a total of 4,215,678 persons are subject to interference from WMCW(AM)'s currently licensed facilities. Surrender of the WMCW(AM) license will completely eliminate this interference.

Increased Service. The IRA indicates that WONX(AM)'s daytime power increase will permit that station to serve 1,986,644 more people than are within the station's licensed 2 mV/m contour.

Local Service Floor/White or Gray Area. The parties indicated that, even after surrender of the WMCW(AM) license, Harvard, Illinois, will continue to receive primary service from 24 stations, and that this action would not create any white or gray areas.<sup>22</sup> Our analysis corroborates these claims. Thus, there is a sufficient local service floor, notwithstanding removal of the WMCW(AM) signal, to warrant grant of the application.

*Heller Petition.* In the Petition, Heller seeks to deny the WONX Application because: (1) the WONX Application is subject to the grant of unapproved construction permits for other KCI-owned stations; (2) KCI never states whether the grant of the WONX Application would displace KCI's application to move WONX(AM) from Evanston to Carol Stream (the "Carol Stream Application");<sup>23</sup> (3) even if KCI had the Carol Stream Application dismissed to facilitate the grant of the WONX Application, no explanation is given for how it would impact KCI's settlement agreement with Mentor Partners of Big Rapids, Michigan ("Mentor Partners") ("KCI-Mentor Partners Settlement Agreement"), which relies on the Carol Stream Application's approval;<sup>24</sup> and (4) KCI does not provide a quantitative analysis to show

---

<sup>21</sup> *Interference Reduction*, 5 FCC Rcd at 4494.

<sup>22</sup> Amended Interference Reduction Agreement at 2 and Figures 2-5.

<sup>23</sup> See FCC File No. BMJP-20051031ACF.

<sup>24</sup> Petition at 2. KCI (File No. BMJP-20040127AJF, removing WONX(FM) to Carol Stream), Mentor Partners (File No. BNP-20040126AJM, for a new AM station in Big Rapids, Michigan), and Heller's company, WTRW, Inc. (File No. BMJP20040130AEZ, removing WGBW(AM) to Denmark, Wisconsin), were the only three applicants in AM MX Group 84-53. On October 28, 2005, Mentor and Kovas filed a Joint Request for Approval of Settlement Agreement under which the Mentor Partners application would be dismissed in return for reimbursement of expenses, and the KCI application for Carol Stream would be granted. However, on July 24, 2007, the parties filed a Motion to Withdraw that request, which the staff granted on April 1, 2008. See *Letter to Mentor Partners, Inc.*, Reference 1800B3-LAS/JP (MB Apr. 1, 2008). Kovas requested dismissal of the Carol Stream application, and WTRW proposed a technical solution which resolved any mutual exclusivity with the Mentor Partners application. *Id.* at 2. Both Mentor Partners and WTRW Inc. have filed "long form" applications for their proposals, which remain pending.

the amount of prohibited contour overlap with Heller's co-channel Station WGBW(AM), Two Rivers, Wisconsin, which allegedly would be reduced if the Commission granted the WONX Application.<sup>25</sup>

In its Opposition, KCI first states that it explicitly acknowledges in the WONX Application that grant of the minor modification to WONX(AM) facilities is contingent upon the approval of those permit applications referred to in the Petition.<sup>26</sup> Second, KCI contends that Heller's argument regarding the Carol Stream Application is meritless because KCI requested its dismissal on the same day KCI filed the WONX Application, which the staff then granted on April 18, 2007.<sup>27</sup> Third, KCI argues that Heller has not demonstrated a necessary connection between the WONX Application and KCI-Mentor Partners Settlement.<sup>28</sup> Fourth, KCI notes that Heller's Petition is devoid of any engineering study showing a prohibited overlap between WONX(AM) and WGBW-AM.<sup>29</sup> KCI cites to its technical study as evidence that the modification would result in a "slight decrease in radiation toward" WGBW(AM).<sup>30</sup>

In the Reply, Heller claims that if KCI were to breach the KCI-Mentor Partners Settlement Agreement, it would not only "harm" Heller's company, WTRW Incorporated, but also reflect on KCI's character as an applicant.<sup>31</sup> Accordingly, Heller contends that it provides the necessary connection between the KCI-Mentor Partners Settlement Agreement and our consideration of the WONX Application.<sup>32</sup> Heller also argues that KCI wrongly asserted that granting the WONX Application would result in a "slight decrease in radiation" toward WGBW(AM).<sup>33</sup> Heller supports this conclusion by alleging that KCI never defines what constitutes a "slight decrease," and as the applicant, KCI had the burden of proof to make such a showing.<sup>34</sup>

Contingent Application. Initially, we find that Heller's argument that the WONX Application should not be granted because it is contingent upon other KCI applications is meritless. As indicated above, the Commission amended Section 73.3517 in the *Interference Reduction* proceeding specifically to permit interference reduction arrangements such as that proposed here.

---

<sup>25</sup> *Id.* at 1-2.

<sup>26</sup> Opposition at 3.

<sup>27</sup> *Id.* at 1.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 2-3.

<sup>32</sup> *See id.* at 3.

<sup>33</sup> *Id.* at 3-4.

<sup>34</sup> *Id.* at 4. Heller makes other arguments in the Reply regarding the status of KCI's WMCW(AM) application in relation to the WONX Application, and KCI's character as an applicant. *See id.* at 1-2. However, these issues were not raised in the Opposition. Therefore, pursuant to Section 1.45 of the Rules, we will not address these additional arguments. 47 C.F.R. § 1.45 ("the reply shall be limited to matters raised in the oppositions").

Carol Stream Application. Heller claims that KCI never addresses whether the WONX Application will supplant the Carol Stream Application. However, KCI requested dismissal of the Carol Stream Application when it filed the WONX Application; the staff granted that request dismissing the Carol Stream Application on April 18, 2007. Further consideration of this allegation is unwarranted.

KCI-Mentor Partners Settlement Agreement. With regard to the KCI-Mentor Partners Settlement Agreement, on July 24, 2007, the parties filed a Motion to Withdraw that request, which the staff granted on April 1, 2008.<sup>35</sup> Kovas requested dismissal of the Carol Stream application, and WTRW proposed a technical solution which resolved any mutual exclusivity with the Mentor Partners application.<sup>36</sup> As noted above, both Mentor Partners and WTRW Inc. have filed “long form” applications for their proposals, which remain pending. Accordingly, Heller’s argument that the grant of the WONX Application here will somehow affect the settlement of AM MX Group 84-53 is no longer accurate and requires no further discussion.

Prohibited Contour Overlap. Pursuant to Section 73.37 of the Rules,<sup>37</sup> the Commission does not regulate with respect to contour overlap where “the area of overlap lies entirely over sea water.”<sup>38</sup> KCI indicates in the Engineering Statement attached to the WONX Application that the overlap caused to WGBW(AM) would be “slightly reduced” by the proposal,<sup>39</sup> and our analysis reveals that any remaining overlap between WONX(AM) and WGBW(AM) would only occur over water. Heller’s allegation that KCI insufficiently accounted for prohibited overlap which would result from granting the WONX Application is without merit.

**Conclusions/Actions.** For the reasons set forth above, we find that the facts and circumstances presented to us here establish that grant of the WONX(AM) Application and surrender of the WMCW(AM) license will further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, that the April 16, 2007, Petition to Deny filed by Mark Heller, treated herein as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BP-20070404ABB) of Kovas Communications, Inc. for modification of the facilities of station WONX(AM), Evanston, Illinois, IS GRANTED, conditioned as follows:

This action shall be conditioned upon the surrender of the license of WMCW(AM), Harvard, Illinois to the Commission for cancellation prior to the commencement of program test authority by the WONX(AM) facility authorized by the subject construction permit, pursuant to the discontinuance of operation provisions of 47 C.F.R. Section 73.1750.

---

<sup>35</sup> See *Letter to Mentor Partners, Inc.*, Reference 1800B3-LAS/JP (MB Apr. 1, 2008).

<sup>36</sup> *Id.* at 2.

<sup>37</sup> 47 C.F.R. §73.37.

<sup>38</sup> 47 C.F.R. § 73.37(Note 2)(1).

<sup>39</sup> WONX Application, Attachment 11, Engineering Statement, at 3.

IT IS FURTHER ORDERED, that the April 3, 2006, Petition for Reconsideration filed by Kovas Communications of Indiana, Inc. IS DISMISSED AS MOOT.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

cc: John M. Pelkey, Esq.  
Mr. Mark Heller