

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

In the Matter of)	
)	
Applications of 1090 Investments, LLC)	
)	
For Modification of Facilities for Stations)	
WCAR(AM), Livonia, Michigan)	Facility ID No. 73387
)	File No. BP-20050128AMO
and)	
)	
WOAP(AM),)	Facility ID No. 41682
Waverly, Michigan)	File No. BMP-20070620ADM
)	
Modification of the License of)	
Station WTIC(AM),)	Facility ID No. 66464
Hartford, Connecticut)	BL-19820929BM

MEMORANDUM OPINION AND ORDER

Adopted: November 4, 2008

Released: November 5, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the captioned minor change applications (collectively, the “Applications”), filed by 1090 Investments L.L.C. (“1090”) licensee of stations WCAR(AM), Livonia, Michigan and WOAP(AM), Waverly, Michigan. The applications are accompanied by an Interference Reduction Agreement (“IRA”). The Division also has before it the April 22, 2008, *Order to Show Cause*¹ directed to Station WTIC(AM), Hartford, Connecticut, owned by CBS Radio Stations Inc. (“CBS”), regarding the WOAP(AM) Application’s indirect modification of the WTIC(AM) license.² For the reasons set forth below, we approve the IRA, grant the Applications, and modify the WTIC(AM) license by protecting only the groundwave signal of that station’s extended daytime operation.

II. BACKGROUND

2. WCAR(AM) is licensed³ for full-time operation on 1090 kHz at Livonia, Michigan, with daytime power of 250 watts and nighttime power of 500 watts, with different directional antenna patterns

¹ *Modification of the License of Station WTIC(AM), Hartford, Connecticut, Order to Show Cause* (Chief, Audio Division, Media Bureau, Apr. 22, 2008).

² CBS filed a “Statement in Response” to the *Order to Show Cause* on May 22, 2008, to which 1090 filed an Opposition on June 2, 2008.

³ BL-19930309MB.

for daytime and nighttime operation. In the WCAR Application, 1090 proposes to increase daytime power to 1.0 kW and nighttime power 800 watts and to modify both antenna patterns.⁴

3. WOAP(AM) is licensed⁵ to operate during daytime hours only on 1080 kHz at Owasso, Michigan, using 1.0 kilowatt (kW) power and a nondirectional antenna.⁶ In 2007, the Commission issued a construction permit (“CP”),⁷ which authorizes WOAP(AM) operation during daytime hours only on 1080 kHz at Waverly, Michigan, using 50 kW power and a directional antenna system. In the WOAP Application, 1090 requests modification of the Waverly CP to permit operation during nighttime hours using 4.5 kW power and a directional antenna system. Implementation of nighttime facilities proposed in the Application may result in the modification of the license⁸ of co-channel Class A Station WTIC(AM), Hartford, Connecticut.⁹

4. Station WTIC(AM) is an unlimited-time, Class A station authorized by the Commission to operate on 1080 kHz at Hartford, Connecticut, using 50 kilowatts (kW) power and a nondirectional antenna during daytime hours, and 50 kW power and a directional antenna during nighttime hours. AM broadcast stations are permitted to operate daytime facilities during the period between local sunrise and local sunset, and nighttime facilities, if authorized, during the period between local sunset and local sunrise. However, since WTIC commenced operation on 1080 kHz in 1941, the station’s authorization has contained a special condition permitting WTIC to continue operating using its licensed daytime nondirectional facilities until sunset at Dallas, Texas, the location of co-channel Class A AM Station KRLD(AM).¹⁰ Depending upon the month of the year, the period of extended WTIC(AM) daytime operation is between 45 minutes and one hour and 15 minutes beyond sunset in Hartford, Connecticut. All other AM stations on 1080 kHz with authorized nighttime facilities are required to begin operation using their nighttime facilities at local sunset.

III DISCUSSION

5. *WCAR/WOAP IRA*. Certain Commission rules are intended to help revitalize and improve the AM service.¹¹ Licensees may enter into agreements to reduce power or cancel their licenses in order to permit other licensees to improve service and/or reduce overall interference.¹² In amending

⁴ The staff dismissed the WCAR Application on May 22, 2007, because it created prohibited overlap with WOAP(AM) and, though it referenced an IRA with that station, the WCAR Application did not include a copy of the IRA. *Letter to 1090 Investments LLC*, Reference 1800B3-JSK (Audio Division, Media Bureau May 22, 2007). 1090 filed a timely Petition for Reconsideration and curative amendment on June 14, 2007. The staff granted the Petition for Reconsideration and reinstated the WCAR Application on November 15, 2007. *See Broadcast Actions*, Public Notice, Report No. 26616 p. 8 (Nov. 20, 2007).

⁵ *See* BL-19970124AG.

⁶ Class D AM stations operate either daytime, limited time or unlimited time with nighttime power less than 0.25 kilowatts. The nighttime facilities of Class D AM stations are not afforded protection and must protect all Class A and Class B AM stations during nighttime hours. *See* 47 C.F.R. § 73.21(a)(3).

⁷ File No. BMJP-20020102AAQ.

⁸ BL-19820929BM.

⁹ Facility ID No. 66464.

¹⁰ Facility ID Number 59820.

¹¹ *See, e.g., Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993).

¹² *Policies to Encourage Interference Reduction between AM Broadcast Stations*, Report and Order, 5 FCC Rcd 4492 (1990) (“*Interference Reduction*”).

Section 73.3517 of the Rules¹³ 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 prevent or discourage individual AM licensees from entering into private agreements to decrease inter-station interference and improve the overall quality of AM service.¹⁴

6. 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” will remain in the community losing a local transmission service as a result of the proposed agreement.¹⁵ 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 a 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.¹⁶

7. When undertaking the case-by-case analysis, we generally consider four factors: the amount of AM interference that will be eliminated in relation to the number of AM and FM services remaining available to the areas that will lose service; the areas and populations that will gain service as a result of the proposed change; whether the proposal will 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.¹⁷ We will therefore examine the parties’ IRA here in light of these four factors.

- Reduction in Interference. 1090 indicates that grant of the Applications will result in a “dramatic” reduction of WCAR(AM)’s contour overlap with the 0.025 mV/m contour of WOAP; the reduction in overlap encompasses an area of 2,489 square kilometers and a population of 920,921.¹⁸
- Increased Service. 1090 indicates that WCAR(AM) will enlarge its service area by 4,209 square kilometers and 739,032 persons. This gain would be slightly offset by WOAP(AM)’s reduction in population of 133,120 persons. Thus, the net population gain would be 605,912 persons, and WOAP(AM) would itself provide new service to an area of 16,800 square kilometers.¹⁹
- Creation of Gray/White Area; Local Service Floor. 1090 demonstrates that WCAR(AM)’s modification application will not cause any white or gray area; neither will it result in any receiving fewer than five aural services.²⁰ Our analysis corroborates these claims. Thus, there is a sufficient local service floor to warrant grant of the applications.

8. *Modification of the WTIC(AM) License.* During daytime hours, AM station protection is based on groundwave signal propagation, and during nighttime hours, AM station protection is based on

¹³ 47 C.F.R. § 73.3517.

¹⁴ *Interference Reduction*, 5 FCC Rcd at 4492.

¹⁵ *Interference Reduction*, 5 FCC Rcd at 4494.

¹⁶ *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.

¹⁷ *Interference Reduction*, 5 FCC Rcd at 4494.

¹⁸ See June 14, 2007, Amendment to the WCAR Application, Engineering Statement, at 3.

¹⁹ *Id.* at 2.

²⁰ See June 14, 2007, Amendment to the WCAR Application, Engineering Statement, at 3 and Figure 3.

skywave signal propagation.²¹ The license condition permitting the extended WTIC(AM) daytime operation is not specific with respect to the type of protection that must be afforded to the extended WTIC(AM) daytime operation by co-channel and adjacent channel stations. Our review of pertinent AM assignments that existed in 1941, when WTIC(AM) began its extended daytime operation on 1080 kHz, and current AM assignments shows that unlimited time, co-channel Stations WKJK(AM), Louisville, Kentucky,²² which began operation in 1948, and WWNL(AM), Pittsburgh, Pennsylvania,²³ which began operation in 1947, among others, are predicted to currently cause interference within the protected contour of the extended WTIC(AM) daytime operation if the nighttime protection requirements of the Commission's rules are applied to the extended WTIC(AM) daytime operation. Therefore, as explained below, we conclude that the extended WTIC(AM) daytime operation is entitled only to groundwave protection and, accordingly, we will modify the WTIC(AM) license to the extent of permitting predicted interference to its skywave signal from WOAP(AM) during its period of extended operation with daytime facilities.

9. Section 316 of the Communications Act of 1934 (the "Act") permits the Commission to modify a broadcast station authorization if such action is in the public interest.²⁴ Implementation of the nighttime facilities proposed in the WOAP Application could result in the modification of the WTIC(AM) license, as they would not fully protect WTIC(AM)'s skywave signal during that station's period of extended operation with daytime facilities.²⁵ In accordance with Section 316 procedures, the staff issued the *Order to Show Cause* in this proceeding.

10. In response to the *Order to Show Cause*, CBS argues that the WTIC(AM) license should not be modified to remove protection to its nighttime secondary service area, because there is no "compelling public interest" reason to support such modification. CBS contends that, in fact, modification of WTIC(AM)'s license would be detrimental to the public interest. CBS claims that Waverly is an unincorporated community within Eaton county, well within the urbanized area of Lansing, Michigan, and is already well-served by up to 16 other radio stations, including several AM stations, providing primary nighttime service.²⁶ It claims that WOAP(AM)'s proposed nighttime 0.025 mV/m –

²¹ See 47 C.F.R. § 73.182(q).

²² Facility ID No. 55497.

²³ Facility ID No. 18517.

²⁴ 47 U.S.C. § 316(a). The procedure for modifying an authorization in such manner is set forth in Section 1.87 of the Commission's Rules, and it requires that the Commission notify the licensee of the affected station, in writing, of the proposed action and the public interest reasons for it, and afford the licensee at least 30 days to respond. See 47 C.F.R. § 1.87.

²⁵ Indirect modifications include factual circumstances where it is alleged that a new grant may create objectionable electrical interference to an existing licensee and the existing licensee is protected by Commission policy or regulation from such interference. *Western Broadcasting Company v. FCC*, 674 F.2d 44, 49 (D.C. Cir. 1982); see also *AMSC Subsidiary Corporation*, 216 F.3d 1154, 1160 (2000) (finding that Section 316 does not apply when the increased likelihood of interference is too speculative).

²⁶ CBS May 22, 2008, Statement in Response to Order to Show Cause at 4 and Engineering Statement at 4. CBS also indicates that: (1) relocating WOAP(AM) from Owosso to Waverly will deprive Owosso of its only local AM service; (2) it has been unable to locate any demonstration by 1090 that Waverly, Michigan is a "community" deserving of a local radio service and is not simply part of the Lansing urbanized area, citing *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988). Absent such a showing, CBS argues, the relocation should not have been approved. *Id.* at 5-6. Neither of these facetious arguments warrants further consideration. Owosso remains the community of license for an existing broadcast station, WRSR(FM) (Facility ID No. 41681). AM and FM stations have long been considered to be "joint components of a single aural medium." See, e.g., *Letter to Broadcast Communications, Inc.*, 23 FCC Rcd 11005 (MB 2008), citing *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097 (1990). Thus, the fact that WOAP(AM) is an AM station

10 % interfering contour overlaps a portion of WTIC(AM)'s extended daytime operations which contains a population of over 16 million persons.²⁷ This figure is especially important, argues CBS, because WTIC(AM) was one of only 37 stations nationwide to serve as a Primary Entry Point ("PEP") station as part of the post-Hurricane Katrina initiatives of the Primary Entry Point Advisory Committee and the Federal Emergency Management Agency. WTIC's role as a PEP station is to deliver a Presidential message sent directly to the station by the White House's communications link to its significant daytime and nighttime service area in a time of national emergency.²⁸ As the only 50 kW AM station in Connecticut, WTIC(AM) also serves as the LP-1 primary emergency alert station for the entire state as part of the Commission's EAS program. Any proposal to limit WTIC(AM)'s protected nighttime service area, CBS argues, must be judged in the context of the station's "critical role" in the relay of emergency messages.²⁹

11. With respect to the observation in the *Order to Show Cause* that co-channel stations WKJK(AM) and WWNL(AM) are predicted to cause interference within the protected contour of the extended WTIC(AM) daytime operation if the nighttime protection requirements are applied to the WTIC(AM)'s extended daytime operations, CBS argues that precedent dictates that the Commission does not consider interference from other stations in determining whether to allow new interference from a proposed new or modified facility.³⁰

12. CBS concludes by arguing that WTIC(AM) has operated with its current licensed facility for over 65 years, and, throughout this period, the secondary service area of the station has been, and should continue to be, protected, including skywave protection during WTIC(AM)'s extended daytime operation, as has been the case since 1941.³¹

13. In its opposition to CBS' comments, 1090 argues that WTIC(AM) is not and has never been entitled to skywave protection during its extended daytime operation, *i.e.*, the period between sunset at Hartford, Connecticut, and sunset at Dallas, Texas, because "skywave" is a nighttime phenomenon and there is no skywave signal to protect during daytime operations. It states that there is no evidence that,

has absolutely no relevance to the propriety of its relocation to Waverly. Additionally, as observed by 1090, the unopposed application (File No. BMJP-20020102AJP) to remove WOAP(AM) from Owosso to Waverly was granted in March of 2007 and is now a final action and cannot be collaterally challenged in the context of the WOAP Application. CBS has not submitted a detailed "*Tuck* analysis" for WOAP(AM)'s relocation to Waverly, Michigan. It simply states that it undertook to investigate whether Waverly meets Commission requirements, but was unable to locate any business or entity using "Waverly, Michigan" as its business address. We find no reason to revisit our 2007 action based upon CBS' allegation the it could not find a "*Tuck* showing" by 1090 to support the relocation of WOAP(AM) to Waverly. *Moreover*, Waverly is a Census Designated Place ("CDP") with a 2000 Census population of 16,194 persons; CDP status is sufficient to establish community status. *See, e.g., Pierce, Bloomington, Markham, San Pedro, and Bishop, Texas*, Report and Order, 8 FCC Rcd 3528, 3530 (MMB 1993), cited in 1090 Opposition to Statement in Response to Order to Show Cause at 7 n. 17.

²⁷ WOAP(AM), on the other hand, will provide a service during WTIC(AM)'s period of extended daytime operation to only 285,487 persons. In order fully to protect WTIC(AM) during this operational period, WOAP(AM) would have to reduce nighttime power to 25 watts, at which power WOAP(AM) would serve only 50,979 people. CBS May 22, 2008, Statement in Response to Order to Show Cause, Engineering Statement, at 4.

²⁸ CBS May 22, 2008, Statement in Response to Order to Show Cause at 8.

²⁹ *Id.*

³⁰ *Id.* at 4.

³¹ *Id.* at 9. CBS indicates that WTIC(AM), a "clear channel" AM station, first went on the air in 1925, operating since 1929 at 50 kW with a nondirectional antenna during daytime hours and 50 kW with a directional antenna during nighttime hours. Since the station began operating on 1080 KHz in 1941, CBS states, its authorization has contained a special condition permitting WTIC(AM) to continue using daytime non-directional facilities until sunset at Dallas Texas, the location of co-channel clear channel station KRLD(AM).

when the Commission authorized WTIC(AM) to operate with extended daytime facilities until sunset at Dallas, the agency intended to allow WTIC(AM) to keep its daytime nondirectional operation *and* receive protection of the incidental skywave produced as a result of those post-sunset daytime operations. Observing that WKJK(AM) and WWNL(AM) are predicted to cause interference within the protected contour of the extended WTIC(AM) daytime operation if nighttime protection requirements are applied to that operation, 1090 indicates that “it is clear that the Commission does not afford extended skywave contour protection to WTIC(AM) during the station’s extended post-sunset daytime operations. A modification of WTIC’s license to reflect this fact would merely be a formal acknowledgement of prior Commission practice.”³²

14. 1090 also states that grant of the WOAP Application will allow it to implement the first local radio service to Waverly, noting that the Commission has held that the provision of a first full-time local radio facility “is an important matter, warranting favorable action, unless there are significant countervailing considerations.”³³ There are no such considerations here, states 1090. Although CBS proffers certain laudable public services offered at WTIC(AM), such services have not overcome the significant advantage enjoyed by proponents of a first local service. 1090 also argues that the WTIC(AM)’s status as the LP-1 primary emergency alert station within the state of Connecticut is irrelevant, because WOAP(AM)’s proposed nighttime facilities would not interfere with WTIC(AM)’s operations in Connecticut.³⁴ Finally, 1090 argues that CBS has had ample opportunity to challenge WOAP(AM)’s nighttime operation and has not done so, even though it was clear that CBS knew about the issues presented by WOAP(AM)’s proposed nighttime operations because the stations’ engineers “have had conversations concerning these issues.”³⁵ 1090 claims that, because it failed to challenge WOAP(AM)’s nighttime operation previously, CBS is now “procedurally barred” from doing so.³⁶

15. We believe that WTIC(AM)’s extended daytime facilities should receive protection from WOAP(AM) only to the extent of its groundwave signal. As observed above, co-channel AM Stations WKJK(AM), Louisville, Kentucky, and WWNL(AM), Pittsburgh, Pennsylvania, among others, currently are predicted to cause interference within the protected contour of the extended WTIC(AM) daytime operation if the nighttime protection requirements of the Commission’s rules are applied to the extended WTIC(AM) daytime operation. Thus, practically speaking, there is marginal, if any, WTIC(AM) skywave service during its extended daytime operation in the ostensibly protected service area now, and this situation will not be exacerbated by WOAP(AM)’s modified facilities.³⁷ On this point, CBS argues that precedent dictates that the Commission does not consider interference from other stations in determining whether to allow new interference from a proposed new or modified facility. CBS is absolutely correct, and we will continue to reject such arguments. However, the fact that the Commission has expressly authorized WKJK(AM) and WWNL(AM) to operate with nighttime facilities which are predicted to cause interference to WTIC(AM)’s extended daytime operation’s skywave signal during the extended daytime operating period is indicative that the Commission did not intend to protect

³² 1090 June 2, 2008, Opposition to Statement in Response to Order to Show Cause at 4.

³³ *Id.* at 5, citing *Wisconsin Dells, Wisconsin; Ocean City, Maryland; Fulton, Kentucky; Cabo Rojo, Puerto Rico; Lobelville, Tennessee; Jacksonville, Florida; and Steamboat Springs, Colorado*, First Report and Order, 35 FCC 2d 473 ¶ 4 (1972).

³⁴ CBS May 22, 2008, Statement in Response to Order to Show Cause at 6.

³⁵ 1090 June 2, 2008, Opposition to Statement in Response to Order to Show Cause at 9. 1090 states that CBS did not object when it first proposed nighttime service for WOAP(AM) as part of its 2002 major modification application, nor did it oppose 1090’s successful petition for reconsideration of the dismissal of that application, and it did not oppose the WOAP Application here.

³⁶ *Id.* at 9.

³⁷ WTIC(AM) will, of course, continue to receive protection of its groundwave signal during its extended daytime operation. Thus, its role as a PEP station will be unaffected by our actions here.

fully WTIC(AM)'s skywave signal during a portion of that period. Our action here is consistent with this theory. We therefore will modify WTIC(AM)'s license by granting the WOAP(AM) application. Our action will enable 1090 to bring the first full-time local broadcast service to residents of Waverly, Michigan.

IV. CONCLUSION/ACTIONS

16. We have examined the captioned Applications and find that, except as described above *vis-à-vis* Station WTIC(AM), they fully comply with all pertinent statutory and regulatory requirements and that grant of the Applications would further the public interest, convenience, and necessity.

17. ACCORDINGLY, IT IS ORDERED, that the applications of 1090 Investments, LLC, for modification of facilities for Stations WCAR(AM), Livonia, Michigan (File No. BP-20050128AMO), and WOAP(AM), Waverly, Michigan (File No. BMP-20070620ADM), ARE GRANTED.

18. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Station WTIC(AM), Hartford, Connecticut, held by CBS Radio Stations, Inc., IS MODIFIED as described in this Order.

19. IT IS FURTHER ORDERED, that a copy of this Memorandum Opinion and Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to:

David A. O'Connor, Esq.
Wilkinson Barker Knauer, Esq.
Suite 700
2300 N Street, N.W.
Washington, DC 20037

Nancy L. Wolf, Esq.
Christopher J. Sova, Esq.
Leventhal, Senter & Lerman PLLC
Suite 600
2000 K Street, NW
Washington, DC 20006

1090 Investments L.L.C.
4546 Kiftsgate Bend
Bloomfield Hills, MI 48302

CBS Radio Stations Inc.
Suite 350
2175 K Street, N.W.
Washington, DC 20037

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau