



Federal Communications Commission
Washington, D.C. 20554

August 18, 2009

DA 09-1827

In Reply Refer to:

1800B3-LD

Released: August 18, 2009

Mr. Charles F. Gross
Chicago Newsweb Corporation/WNDZ, Inc.
1645 West Fullerton Avenue
Chicago, IL 60614

In re: Chicago Newsweb Corporation
WCPT(AM), Crystal Lake, Illinois
Facility ID: 53504
File No. BMJP-20041230ACB

WNDZ, Inc.
WNDZ(AM), Portage, Indiana
Facility ID: 73316
File No. BMJP-20041230ACC

Petition for Reconsideration

Dear Mr. Gross:

We have before us a Petition for Reconsideration ("Petition") filed jointly by Chicago Newsweb Corporation ("CNC") and WNDZ, Inc.,¹ on December 5, 2005. CNC is the licensee of WCPT(AM), Crystal Lake, Illinois, and WNDZ, Inc., is the licensee of WNDZ(AM), Portage, Indiana. The Petition asks for reconsideration of a November 3, 2005, staff decision dismissing CNC's and WNDZ's applications to modify WCPT(AM) and WNDZ(AM), respectively.² For the reasons discussed below, we deny the Petition.

Background. CNC and WNDZ, Inc., timely filed their FCC Form 175 applications to change the communities of license for WCPT(AM) and WNDZ(AM) during the filing window for AM Auction No. 84.³ The applications were determined to be not mutually exclusive with any other proposal filed in the filing window, and the applicants were invited to file their complete FCC Form 301 applications by

¹ CNC and WNDZ, Inc., are commonly owned. See Ownership Report No. BOA-20050725ABT.

² Letter to David A. O'Connor, Esq., 20 FCC Rcd 17175 (MB 2005) ("Staff Decision").

³ See *AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze*, Public Notice, 18 FCC Rcd 23016 (MB/WTB 2003).

January 18, 2005.⁴ CNC and WNDZ, Inc., timely filed their FCC Form 301 proposals on December 30, 2004. The applications proposed only a change in community of license; they proposed no change to either the WCPT(AM) or WNDZ(AM) technical facilities. The applicants were thereafter directed to submit an amendment addressing the implications of the proposed community change under Section 307(b) of the Communications Act of 1934, as amended (the “Act”), which directs the Commission to make a “fair, efficient, and equitable” distribution of radio service among communities in the United States.⁵

The applicants timely filed their Section 307(b) amendments on July 7, 2005. The CNC application proposed to remove WCPT(AM), the only station licensed to Crystal Lake, Illinois (2000 Census population 38,000), to the slightly smaller community of Addison, Illinois (2000 Census population 35,914), as that community’s first local broadcast transmission service. CNC’s Section 307(b) amendment indicated that Crystal Lake would continue to receive a principal community signal from six stations.⁶ The WNDZ, Inc., application proposed to remove WNDZ(AM), the only station licensed to Portage, Indiana (2000 Census population 33,496), to the slightly larger community of Calumet City, Illinois (2000 Census population 39,071), as that community’s first local broadcast transmission service. WNDZ, Inc.’s, Section 307(b) amendment indicated that Portage would continue to receive a principal community signal from seven stations.⁷ The amended applications were dismissed in the *Staff Decision* because there was no sufficient public interest justification for depriving Crystal Lake and Portage of their sole local transmission services.

Discussion. The Commission will consider a Petition for Reconsideration only when petitioner shows either a material error in the Commission’s original order or raises additional facts not known or existing at the time of petitioner’s last opportunity to present such matters.⁸

In the Petition, CNC and WNDZ, Inc., initially present the same argument made in their original major modification applications: that there will be no change to the technical facilities of either station so that Crystal Lake and Portage will continue to be served by WCPT(AM) and WNDZ(AM) as Addison and Calumet are today. It is well established that reconsideration will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken.⁹

⁴ See *AM Auction No. 84 Singleton Applications*, Public Notice, 19 FCC Rcd 22569 (MB 2004).

⁵ See *Section 307(b) Amendment Deadline Established for Certain AM Auction No. 84 Singleton Applications*, Public Notice, 20 FCC Rcd 10701 (MB 2005).

⁶ Chicago stations WSCR(AM), WGN(AM), WYLL(AM), WBBM(AM), as well as WNVR(AM), Vernon Hill, Illinois, and WZSR(FM), Woodstock, Illinois.

⁷ Chicago stations WLS(AM), WSCR(AM), and WMVP(AM), as well as WLTH(AM), Gary, Indiana; WIMS(AM), Michigan City, Indiana; WPWX(FM), Hammond, Indiana; and WLJE(FM), Valparaiso, Indiana.

⁸ See 47 C.F.R § 1.106, *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966), and *In re National Association of Broadcasters*, 18 FCC Rcd 24414, 24415 (2003).

⁹ See *WWIZ, Inc.*, 37 FCC at 686; *In the Matter of Application of Broadwave Albany, L.L.C. et al.*, 17 FCC Rcd 4545, 4546 (2002); *In re Applications of Religious Broadcasting Network*, 3 FCC Rcd 6216, 6216 (1988).

Furthermore, as stated in the *Staff Decision*, the fact that both Crystal Lake and Portage would still receive a signal from WCPT(AM) and WNDZ(AM), respectively, is not sufficient to justify the proposed community of license changes.¹⁰ When a station changes communities, its primary obligation shifts to the new community of license. Thus, the fact that Crystal Lake and Portage would still receive a signal from WCPT(AM) and WNDZ(AM), respectively, does not mean that their residents' "legitimate expectation that existing service will continue" has been satisfied.¹¹

In the Petition, CNC and WNDZ, Inc., also claim for the first time that (1) the motivation for filing the applications was to consolidate CNC's main studios into one location for all of its stations; and (2) the staff should not have applied the FM allotment rules to this case since there would be no change in the technical facilities of either station and the change in communities of license would be made for "legitimate main studio rule reasons." Additionally, CNC and WNDZ, Inc., submit that they support the then-pending rulemaking proceeding that examines whether to allow a change in a station's community of license as a minor change application not subject to competing applications,¹² claiming the applications would be grantable under the proposed new rules.

We find these arguments unpersuasive. The desire to save money by consolidating studios is not a sufficient reason to deny local service to Crystal Lake and Portage.¹³ We also reject CNC and WNDZ, Inc.'s, claim that the staff erred by applying the FM allotment rules here because an exception should have been made where an "AM auction applicant seeks to change its community of license for legitimate main studio rule reasons, provided no change of technical facilities is proposed."¹⁴ The removal of a community's sole local service, whether or not any change in technical facilities is proposed, must satisfy statutory Section 307(b) requirements. The Commission has clearly affirmed the propriety of using FM allotment standards in community of license changes for AM stations.¹⁵

Finally, we reject CNC and WNDZ, Inc.'s, argument that the then pendency of the Commission's *Revision of Allotment Procedures* rulemaking supports reconsideration. The Commission has established that, until such time as a policy has been modified or changed, it should be applied according to its terms.¹⁶ Moreover, this rulemaking did not modify our Section 307(b) policies, including the general

¹⁰ *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, 4873 (1989), *recon. denied*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) ("*Community of License MO&O*").

¹¹ *Community of License MO&O*, 5 FCC Rcd at 7097.

¹² *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Notice of Proposed Rule Making, 20 FCC Rcd 11169 (2005).

¹³ See, e.g., *Maines Broadcasting, Inc.*, 8 FCC Rcd 5501, 5502 (1993) and *Radio Redentor, Inc.*, 14 FCC Rcd 17754, 17755 (1999) (Insofar as requested waiver will not enhance the public interest but is intended to principally benefit the licensee financially, there is no good cause showing for a waiver).

¹⁴ See Petition at 4, note 9.

¹⁵ *Alvin Lou Media, Inc.*, 19 FCC Rcd 806 (2004); *Kidd Communications*, 15 FCC Rcd 22 (2000); *Alessandro Broadcasting Co.*, 56 R.R. 2d 1568 (Rev. Bd. 1984).

¹⁶ *In re Application of Catoctin Broadcasting Corp.*, FCC 86-335 (July 31, 1986); *Palm Beach Cable Television Co.*, 78 FCC 2d 1180, 1183 (1980); *Metromedia, Inc. (WNEW-TV)*, 66 FCC 2d 566, 568 (1977).

prohibition on the removal of a community's sole local radio service.¹⁷ Accordingly, the proposed station modifications also would be subject to dismissal under the rules adopted in that proceeding.

Conclusion/Actions. We find that CNC and WNDZ, Inc., failed to show that the November 3, 2005, staff decision contained a material error or omission. For the reasons discussed above, IT IS ORDERED that CNC's and WNDZ, Inc.'s, December 5, 2005, Petition for Reconsideration IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: David A. O'Connor, Esq.

¹⁷ See *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, 14228-29 (2006).