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Washington, D.C. 20554

December 29, 2009

DA 09-2637

In Reply Refer to:

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In re: **WCJL(FM), Morgantown, Indiana**
Facility ID No. 91951
File No. BPED-20090422AAD

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (“Petition”) filed June 19, 2009, by Calvary Chapel of Costa Mesa, Inc. (“Calvary Chapel”), licensee of Station WCJL(FM), Morgantown, Indiana. Calvary Chapel seeks reconsideration of the June 18, 2009, staff letter that dismissed its community of license application (the “Application”), as unacceptable for filing.¹ For the reasons set forth below, we deny the Petition.

Background. The Application requests a change in Station WCJL(FM)’s community of license from Morgantown, Indiana, to Paragon, Indiana, and to modify its license to reflect this change. The proposed allotment would provide Paragon with its first local service. The Application was filed pursuant to Section 73.3573(g) of the Commission’s Rules (the “Rules”), which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. A determination is based on the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² The existing arrangement of allotments is compared to the proposed arrangement of allotments. A reallocation proposal must result in a preferential arrangement of allotments.³

The *Division Letter* found that the proposed Station WCJL(FM) reallocation to Paragon would not result in a preferential arrangement of allotments as required by *Community of License*. Specifically, the *Division Letter* stated that a first local service at Morgantown (Priority 3) was preferred over a first local

¹ *Letter to Calvary Chapel of Costa Mesa, Inc.* (MB rel. June 18, 2009) (“*Division Letter*”).

² *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) (“*Community of License*”), *recon. granted in part*, Memorandum Opinion and Order (“*Community of License MO&O*”), 5 FCC Rcd 7094(1990) (“*Community of License Reconsideration Order*”).

service at Paragon (Priority 3) because Morgantown is the *larger* community. In this regard, Morgantown has a 2000 U.S. Census population of 964 persons while Paragon has a 2000 U.S. Census population of 663 persons.

In addition, the *Division Letter* stated that the proposed Paragon reallocation would remove the sole local operating service assigned to Morgantown. It concluded that Calvary Chapel had failed to demonstrate that the facts of this case constitute the rare situation in which a presumptively disfavored removal of a sole local service would be in the public interest. Accordingly, the *Division Letter* dismissed the Application pursuant to Sections 73.3566(a) and 0.283 of the Rules.⁴

In its Petition, Calvary Chapel requests that we reconsider and set aside as erroneous the *Division Letter*. In support of this position, Calvary Chapel alleges that no service is being removed from Morgantown because Station WCJL never provided a local service to the community. It states that the original construction permit for Station WCJL was issued along with a number of other construction permits in order to resolve conflicts among mutually exclusive applications for new noncommercial educational (“NCE”) stations. In this regard, the Commission waived for certain settling applicants the requirement that a proposed facility provide fifty percent of its community of license with a 60 dBu city-grade signal.⁵ Calvary Chapel argues that the Station WCJL transmitter site is located 23 miles away from Morgantown, and cannot be changed to provide coverage to Morgantown without violating the Commission’s NCE FM contour protection requirements.⁶ It claims that although Station WCJL is licensed to Morgantown, it has never provided a city-grade signal or any listenable signal to the community.

Discussion. We find no error in the *Division Letter* and, accordingly, deny the Petition. We disagree with Calvary Chapel’s claim that Station WCJL does not provide coverage to Morgantown. In this regard, a staff engineering analysis reveals that Station WCJL covers fifty percent of Morgantown with a signal strength of at least 54 dBu. As such, we consider Station WCJL as providing a local service to Morgantown. The Section 73.515 waiver was based on the fact that this rule became effective only after the Application was filed and to promote the expeditious introduction of new NCE service. The waiver did not in any way relieve Station WCJL of its foundational Section 307(b) obligation to provide locally responsive programming that meets the needs and interests of the residents of Morgantown.⁷

In these circumstances, the proposed relocation is contrary to established precedent in two distinct ways. First, in a comparison between two outcomes which each implicate Priority 3, the proposed

⁴ 47 C.F.R. §§ 73.3566 and 0.283.

⁵ See *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5085 n. 25 (2001)(permitting NCE applicants to file a waiver of Section 73.515 of the Rules to resolve conflicts among the many mutually exclusive NCE applications filed prior to the adoption of the Rule); see also, 47 C.F.R. § 73.515.

⁶ See 47 C.F.R. § Section 73.509.

⁷ Although there is not sufficient evidence in this case to refer this matter to the Enforcement Bureau, we note that the Petitioner has stated in its Petition that no community is being deprived of a local service because Station WCJL never provided a local service or any service whatsoever to its licensed community of Morgantown, Indiana. The Petitioner is advised that WCJL(FM) has an issue-responsive service obligation to provide programming responsive to its community of license and that its programming record will be a relevant factor in the evaluation of the Station’s license renewal application.

reallotment would provide a first local service to the *smaller* community of Paragon.⁸ Moreover and independently, the Commission strongly disfavors the removal of a community's sole local existing service. This policy is subject, as are all Commission policies, to waiver in appropriate circumstances.⁹ However, the Commission emphasized in *Community of License Reconsideration Order* that a proposal that would create a new local service at the expense of an existing service is not sufficient, by itself, to warrant a waiver, and concluded that such a proposal would be presumptively contrary to the public interest.¹⁰ To this end, the public has a legitimate expectation that existing service will continue, and this expectation is a factor weighed independently against the service benefits that may result from reallotting of a channel from one community to another. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service. In this case, we find that Calvary Chapel has not persuaded us that we should create a new exception to this policy for those stations that fail to satisfy NCE community coverage requirements.

Conclusion. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Calvary Chapel of Costa Mesa, Inc., IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁸ *Blanchard, Louisiana and Stephens, Arkansas*, Memorandum Opinion and Order, 10 FCC Rcd 9828 (1995) (when comparing two first local service proposals under Priority 3, proposal providing service to larger community is preferred).

⁹ *See Northeast Cellular Telephone Co. v. F.C.C.*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990)(stating that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest).

¹⁰ *Community of License Reconsideration Order*, 5 FCC Rcd at 7097.