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Re: WMNI-FM, Worthington, Ohio
North American Broadcasting Company, Inc.
Facility Identification No. 60099
File No. BPH-20101004ACN

WMNI(AM), Columbus, Ohio
North American Broadcasting Company, Inc.
Facility Identification No. 49110
File No. BP-20111222ANT

**Applications for Minor Modification to
Licensed Broadcast Facilities**

Dear Counsel:

We have before us two applications filed by North American Broadcasting Company, Inc. (“NABC”), licensee of WMNI-FM,¹ Westerville, Ohio, and WMNI(AM), Columbus, Ohio. In the first application (the “Worthington Application”), as amended on December 22, 2011, NABC proposes to change WMNI-FM’s community of license from Westerville to Worthington, Ohio.² In the second application (the “Westerville Application”),³ concurrently filed with the latest amendment to the Worthington Application, NABC proposes to change the community of license of WMNI(AM) from Columbus to Westerville, Ohio. We also have before us Franklin Communications, Inc.’s (“Franklin”) Third Supplement to Informal Objection (“FM Objection”) filed on January 18, 2012,⁴ and Franklin’s

¹ Formerly WTDA(FM).

² See File No. BPH-20101004ACN. Originally, this application proposed to move the station from Westerville to Riverlea, Ohio. The application was amended on December 22, 2011, to specify Worthington as the proposed new community of license.

³ See File No. BP-20111222ANT.

⁴ Initially, Franklin had filed a December 22, 2010, Informal Objection against the original application proposing to move WMNI-FM from Westerville to Riverlea, Ohio. On June 30, 2011, Franklin filed a Second Supplement to

Informal Objection and Statement for the Record (“AM Objection”), filed on April 2, 2012. On February 24, 2012, NABC filed an opposition to the FM Objection (“FM Opposition”), and on April 24, 2012, NABC filed an opposition to the AM Objection (“AM Opposition”), with Franklin filing Replies on, respectively, April 2, 2012 (“FM Reply”) and May 4, 2012 (“AM Reply”). For the reasons discussed below, we grant the Worthington Application and dismiss the Westerville Application as moot. We also deny the FM Objection and grant the AM Objection to the extent indicated below.

Background. The Westerville Application and Worthington Application were filed pursuant to Sections 73.3571(j) and 73.3573(g) of the Commission’s Rules,⁵ which permit the modification of, respectively, an AM and FM station’s authorization to specify a new community of license by minor modification application without affording other interested parties an opportunity to file competing expressions of interest.⁶ In both instances, the community of license modification must result in a preferential arrangement of allotments⁷ under the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁸ The applications were also filed pursuant to Section 73.3517(e), which permits FM licensees or permittees to file up to four contingently related applications for minor modification of facilities.⁹

In support of its proposals, NABC states that both the Worthington and Westerville Applications are consistent with *Gearhart, Madras, Manzanita, and Seaside, Oregon*,¹⁰ because both applications involve intra-urbanized moves within the Columbus Urbanized Area, and because both advance Priority (4), other public interest matters.¹¹ NABC contends that these coordinated moves will result in a preferential arrangement of allotments under Priority (4) because (1) the proposed change of WMNI-FM’s community of license to Worthington (2010 U.S. Census population of 13,575 persons) would

Informal Objection, because NABC had amended its application to maintain service to Westerville instead of Riverlea, Ohio. The FM Objection opposes the proposed move to Worthington, Ohio.

⁵ 47 C.F.R. §§ 73.3571(j), 73.3573(g).

⁶ 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, 14217-21 (2006), *recon. pending*.

⁷ See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) (“*Community of License MO&O*”).

⁸ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 F.C.C.2d 88 (1982) (“*FM Assignment Policies*”). 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).

⁹ 47 C.F.R. § 73.3517(e). Such coordinated filings receive simultaneous disposition. See *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, First Report and Order, 14 FCC Rcd 5272, 5282 (1999) (“Applications will be processed together and, if grantable, will be granted simultaneously”).

¹⁰ Report and Order, 26 FCC Rcd 10259 (MB 2011) (“*Gearhart*”) (*Tuck* analysis not required for a station changing community of license within the same Urbanized Area, and absent a compelling showing to claim a Priority (3) preference, the Commission will consider the proposal under Priority (4)).

¹¹ See Technical Narrative, Attachment 35 to Worthington Application and Attachment 20 to Westerville Application (“Technical Narrative”), at 2-4.

provide an additional interference-free service to 260,486 persons; (2) the “backfill” move of WMNI(AM) to Westerville (2010 U.S. Census population of 36,120 persons) would maintain a second local transmission service to a community larger than 7,500 persons;¹² and (3) all affected listeners would continue to receive 14 or more interference-free services as a result of these applications.¹³

Pleadings. In the FM Objection, Franklin argues that: (1) because the terrain around Columbus, Ohio, does not “depart widely” from the norm, NABC is not permitted to use an alternative signal prediction methodology to show that the proposed facility will place a predicted 70 dBμ signal over at least 80 percent of Worthington, and that “at a minimum” the Commission’s Office of Engineering and Technology (“OET”) should further analyze NABC’s Longley-Rice showing;¹⁴ (2) the Worthington Application does not result in a preferential arrangement of allotments under Priority (4), under recent case precedent;¹⁵ and (3) the proposed change of WMNI-FM’s community of license is an attempt to “game” the Commission’s processing policies, because NABC is only interested in locating its transmitter closer to the central part of the Columbus Urbanized Area, rather than serving the community of Worthington.¹⁶ In the AM Objection, Franklin incorporates the FM Objection, arguing that because the Worthington Application should be dismissed, the mutually contingent Westerville Application must also be dismissed.¹⁷

In response, NABC agrees with Franklin that NABC’s Longley-Rice showing should be analyzed by OET, contending that such analysis would confirm that the relocated WMNI-FM would provide the required principal community service to the community of Worthington, and further that the supplemental coverage showing is warranted because the terrain does “depart widely” from the norm.¹⁸ NABC also argues that the Worthington Application would further the public interest under Priority (4), because the intra-urbanized area move of WMNI-FM to Worthington would result in an 18.4 percent increase in the station’s 70 dBμ coverage of the Columbus Urbanized Area.¹⁹ With regard to the Westerville Application,

¹² See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 25777-78 (2011), *recon. pending* (“*Rural 2d R&O*”) (stating that the Commission strongly disfavors the removal of a second local transmission service to communities larger than 7,500 persons).

¹³ Technical Narrative at 4.

¹⁴ FM Objection at 4-5. Franklin cites *Skytower Communications - 94.3, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13204 (2010) and *CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656 (2008).

¹⁵ FM Objection at 5-6, citing *James P. Riley, Esq.*, Letter, 27 FCC Rcd 169 (MB 2012) (“*Truth Broadcasting*”) (tentatively concluding that the public interest would be better served by retention of Station KTIA-FM as a fourth transmission service at Boone, Iowa, rather than by allowing a move to Johnston, Iowa, and adding at least the 17th local service in the Des Moines Urbanized Area; applicant directed to supplement its Section 307(b) showing).

¹⁶ FM Objection at 6-7.

¹⁷ AM Objection at 2-3. Franklin also questions whether an AM station may be used as a backfill to replace loss of service from an FM station, and contends that, in any event, the relocation of WMNI-FM would not be treated as the loss of a second transmission service at Westerville, and thus that a backfill to offset the loss of such service is not required. As discussed below, we agree that the intra-urbanized area move of WMNI-FM does not result in loss of a second transmission service at Westerville, and on that basis dismiss the Westerville Application as moot.

¹⁸ FM Opposition at 2-4.

¹⁹ *Id.* at 4-6.

NABC claims that it proposed to backfill the current WMNI(AM) city of license out of an abundance of caution, to comply with the Commission's *Rural Radio* policy against removal of a second local transmission service to communities larger than 7,500 persons.²⁰ NABC states that while it stands willing and ready for WMNI(AM) to serve Westerville, it requests that the Westerville Application be dismissed as moot should the Commission find that such a second local transmission service backfill is not required under its *Rural Radio* policies.²¹

In the FM Reply, Franklin reiterates its contentions that the Worthington Application would not provide the requisite principal community coverage to Worthington, that NABC's technical showings are unacceptable,²² and that the proposed relocation of WMNI-FM to Worthington would not result in a preferential arrangement of allotments under Priority (4).²³ In the AM Reply, Franklin restates its view that relocation of WMNI(AM) to Westerville should not be treated as a backfill proposal to offset the removal of Westerville's second local transmission service,²⁴ and attempts to distinguish NABC's cited cases regarding replacement of lost FM service with AM service.²⁵ Franklin contends that the allotment priorities were changed by the adoption of the *Rural Radio* policies, and that therefore we should examine NABC's proposals to determine whether they comply with the new Section 307(b) policies.²⁶

Discussion. Under Section 309(e) of the Communications Act of 1934, as amended (the "Act"),²⁷ informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity.²⁸

Section 73.315 Community Coverage. We disagree with Franklin's contention that NABC may not rely on a supplemental coverage showing pursuant to Section 73.313(e) of the Commission's Rules²⁹ to demonstrate that the Worthington Application complies with the community coverage requirements of

²⁰ AM Opposition at 3-4. See *Rural 2d R&O*, 26 FCC Rcd at 2577-78.

²¹ AM Opposition at 3. NABC also states that the Commission's case precedent treats full-time AM and FM stations equally for Section 307(b) purposes. *Id.* at 2 n.2, citing, *inter alia*, *Churchville and Keswick, Virginia and Marlinton, West Virginia*, Report and Order, 21 FCC Rcd 4846, 4847 (MB 2006) (reallotment of FM station to another community would not deprive community of sole local service because the community would retain local service from an AM station).

²² FM Reply at 2-5.

²³ *Id.* at 5-7.

²⁴ AM Reply at 2-3.

²⁵ *Id.* at 2.

²⁶ *Id.* at 2-3.

²⁷ 47 U.S.C. § 309(e).

²⁸ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir.), *reh'g denied* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁹ 47 C.F.R. § 73.313(e)

Section 73.315 of the Rules.³⁰ The Commission's Office of Engineering and Technology has determined that NABC meets the threshold requirements for Commission consideration of a supplemental community coverage showing and that the facilities proposed would provide predicted 70 dBμ or greater signal strength over the entire community of Worthington. Thus, we find that the Worthington Application complies with Section 73.315.

Section 307(b) analysis. We next consider whether the Worthington Application complies with our Section 307(b) processing policies. In the *Rural 2d R&O*,³¹ the Commission established a rebuttable presumption that a proposed station located within an urbanized area, or that would or could serve 50 percent or more of an urbanized area, should be treated as serving the entire urbanized area for purposes of applying our Section 307(b) FM allotment priorities. In this regard, the communities of Worthington and Westerville are both located within the Columbus Urbanized Area. Therefore, we will treat both Applications as serving the Columbus Urbanized Area, and consider both proposals under Priority (4), other public interest matters.³²

We disagree with Franklin's claim that the Worthington Application does not result in a preferential arrangement of allotments, and specifically find that Franklin's reliance on *Truth Broadcasting* is misplaced.³³ Unlike the community of license modification at issue in *Truth Broadcasting*, the Worthington Application involves an intra-urbanized area move and not a relocation into an urbanized area. We conclude that the Worthington Application results in a preferential arrangement of allotments under Priority (4) because the Columbus intra-urbanized area move of Station WMNI-FM would provide a net gain in reception service of 260,726 persons.³⁴

Removal of Second Local Service Backfill. In the *Rural 2d R&O*, the Commission stated that it strongly disfavors the removal of a second local transmission service to communities with populations greater than 7,500.³⁵ However, in this case a city of license backfill of WMNI(AM) is not required to prevent removal of Westerville's second local transmission service. WMNI-FM at Westerville is presumptively treated as a station that serves the Columbus Urbanized Area, rather than providing a second local service at Westerville, because Westerville is located within the Columbus Urbanized Area. Under these circumstances, we find that the city of license backfill of WMNI(AM) to Westerville is not required. We thus conclude that there is no public interest justification to support the city of license

³⁰ 47 C.F.R. § 73.315.

³¹ *Rural 2d R&O*, 26 FCC Rcd at 2572.

³² See *Radio One Licenses*, 26 FCC Rcd at 14327; see also *Gearhart*, 26 FCC Rcd at 10263-64 (deciding post-*Rural Radio* that relocation of a community of license within the same Urbanized Area is analyzed under Priority 4).

³³ See *supra* note <15>.

³⁴ A staff engineering analysis determined that the gain area contains 1,338,188 persons, while the loss area contains 1,077,462 persons. Both the gain and loss areas are considered well-served with five or more reception services. Additionally, the 70 dBμ contour of Station WMNI-FM at Worthington would cover 47.9 percent of the Columbus Urbanized Area. Station KJZA(FM), Pickerington, Ohio (File No. BLH-20061122ADG), restricts Station WMNI-FM from providing coverage to more than 50 percent of the Columbus Urbanized Area.

³⁵ *Rural Second R&O*, 26 FCC Rcd at 2577-78.

modification of WMNI(AM) to Westerville under Priority (4). Accordingly, and pursuant to NABC's request, we dismiss the Westerville Application as moot.³⁶

Conclusion. We have evaluated the Worthington Application and find that it complies with all pertinent statutory and regulatory requirements, and that grant would serve the public interest, convenience, and necessity. Therefore, IT IS ORDERED that the application filed by NABC (File No. BPH-20101004ACN) for a minor modification to the facilities of station WMNI-FM, changing its community of license from Westerville, Ohio, to Worthington, Ohio, IS GRANTED.

IT IS FURTHER ORDERED, that the Westerville Application (File No. BP-20111222ANT) proposing a minor modification to the facilities of station WMNI(AM), changing its community of license from Columbus, Ohio, to Westerville, Ohio, IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the FM Objection filed by Franklin IS DENIED. IT IS FURTHER ORDERED that the AM Objection filed by Franklin, IS GRANTED to the extent stated above.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

³⁶ Although not necessary to resolve this case, we note that Franklin's contention that an AM service cannot be treated as an equivalent replacement for lost FM service is meritless. AM and FM stations have long been considered to be "joint components of a single aural medium." See *Community of License MO&O*, 5 FCC Rcd at 7097. See also *FM Assignment Policies*, 90 F.C.C.2d at 92; *Anamosa and Iowa City, Iowa*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 46 F.C.C.2d 520, 525-26 (1974). For this reason, it is well established that an AM community of license backfill is sufficient to replace the removal of an existing FM service. *Columbus and Monona, Wisconsin*, Memorandum Opinion and Order, 21 FCC Rcd 10012, 10014 (MB 2006).