



Federal Communications Commission
Washington, D.C. 20554

March 9, 2012

DA 12-376
In Reply Refer to:
1800B3-DD/AJR

Mr. Karl Lieber
Midnation Media, LLC
Post Office Box 123
Windsor, Colorado 80550

In Re: KNDH(FM)
Hettinger, North Dakota
Facility ID Number: 165977
File No: BPH-20110301ACN

Dear Mr. Lieber:

This letter refers to the captioned minor change application (the "Application") of Midnation Media, LLC ("Midnation"), licensee of Station KNDH(FM), Channel 272C1, Hettinger, North Dakota. The Application proposes a city of license modification for Station KNDH(FM) from Hettinger, North Dakota, to New Salem, North Dakota. For the reasons discussed below, we dismiss the Application.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,¹ which sets forth the requirements for modification of an FM station license to specify a new community of license without providing an opportunity for competing expressions of interest. Among other requirements, an application for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments in comparison to the station's current service.² We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

In the Application, Midnation claims that its proposal advances Priority 3 of the FM allotment priorities because the proposed city of license modification could provide a first local service to New Salem, North Dakota, a community with a population of 938 persons. It states that Station KNDC(AM) would remain licensed to Hettinger. It notes that KNDH(FM), at its current community, serves 3,205 persons in an area of 4,084 square kilometers; the change of community to New Salem would enable KNDH(FM) to serve 93,535 persons in an area of 9,025 square kilometers. Midnation also alleges that, under the proposed reallocation, Hettinger will continue to receive protected aural service from at least five stations.⁴

¹ 47 C.F.R. § 73.3573(g).

² See *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). 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).

⁴ See File No. BPH-20110301ACN, Attachment 35, Exhibit E-3, 307(b) Analysis, at 1.

As a result of the proposed change of community, Station KNDH(FM) would provide service to 100 percent of the Bismarck Urbanized Area (“UA”); currently, the station’s signal does not cover any part of any urbanized area. In situations such as this, when a station’s proposed community is located in an urbanized area or the station could, through a minor modification application, cover at least 50 percent of an urbanized area, the Commission has established a rebuttable presumption that the application should be treated, for Section 307(b) purposes, as a proposal to serve the urbanized area rather than the named community of license.⁵

On September 12, 2011, the staff sent Midnation a letter, requesting additional information to rebut the urbanized area presumption.⁶ On October 12, 2011, Midnation submitted a responsive amendment. It presents additional evidence regarding the independence of New Salem. Midnation also argues that New Salem has a specific need for an outlet for local expression that is separate from the Bismarck UA, focusing on three purported needs for local programming coverage: a need for severe weather updates, a need for information regarding New Salem’s government, and a need for local housing information to assist new residents.

Discussion. Although the *Deficiency Letter* requested additional information to rebut the urbanized area presumption under FM allotment Priority 3, we now recognize Priority 1 (first fulltime aural reception service) considerations are dispositive in this case. Initially, we note that Midnation has not submitted documentation that establishes that at least five stations would continue to serve areas now within KNDH(FM)’s 1.0 mV/m contour, i.e., the loss area.⁷ Our engineering analysis reveals that the proposed change of community would create a “white” loss area⁸ of 7,146 square kilometers, containing 1,586 persons. The proposed reallocation would also create a “white” gain area in which 1,267 persons would receive their first fulltime aural reception service.⁹ Previously, when we compared gain and loss of

⁵ 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 (2011), *petitions for recon. pending* (“*Rural Radio*”). The Commission further provided that this presumption may be rebutted by a compelling showing of the independence of the community from the urbanized area, the community’s specific need for an outlet for local expression, and the ability of the proposed station to provide that outlet. *Id.* at 2572, ¶ 30.

⁶ See *Letter to Karl Lieber*, Reference 1800B3 (MB Sept. 12, 2011) (“*Deficiency Letter*”).

⁷ See *supra* note 4. Midnation has not identified the aural services received in Hettinger and has not indicated whether they are full-time stations. Likewise, Midnation has not provided information regarding the area and population that would lose service from Station KNDH(FM) and the number of full-time reception services available in the loss and gain areas.

⁸ A “white” area is an area in which there are no full-time aural reception services. See, *Cheyenne, Wyoming, and Gerring, Nebraska*, Report and Order, 15 FCC Rcd 7528, 7530 n.8 (MMB 2000) (“*Cheyenne*”).

⁹ Pursuant to established policy, the staff conducted its gain and loss study using the methodology set forth in *Greenup, Kentucky, and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493 (1991) and *Sells, Wilcox, and Davis-Monthan Air Force Base, Arizona*, Memorandum Opinion and Order, 23 FCC Rcd 1242 (MB 2008), *app. for rev. pending*. For purposes of calculating “white” and “gray” areas and populations under Priorities 1 and 2, we included all FM station providing at least a 1.0 mV/m strength signal to any portion of the loss area and all AM stations providing nighttime interference free service to any portion of the loss area. See, e.g., *Silverton and Bayfield, Colorado*, Notice of Proposed Rule Making, 14 FCC Rcd 4071, 4072 n.5 (1999) (defining reception services for AM and FM stations used in gain and loss studies).

reception service, the decision had been based upon population differences.¹⁰ Under this approach, the Application would be denied because the population in the “white” loss area exceeds the population in the “white” gain area by 319 persons. Recently, however, in *Rural Radio*, the Commission went further and provided that “. . . we will impose an absolute bar to any facility modification that would create white or gray area.”¹¹ In this regard, the proposed reallocation also would create a “gray” loss area¹² of 5,065 square kilometers, containing 3,381 persons, who would be reduced from two fulltime reception services to one fulltime reception service. Accordingly, we conclude that grant of the Application would not be in the public interest.

Conclusion. For the reasons discussed above, IT IS ORDERED that the application for change of community submitted by Midnation Media, LLC, File No. BPH-20110301ACN, IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁰ See, e.g., *Cheyenne*, 15 FCC Rcd at 7529-30, ¶ 5 (reducing population gaining second fulltime reception service by the population losing a second fulltime reception service for purposes of implementing priority two).

¹¹ See *Rural Radio*, 26 FCC Rcd at 2577, ¶ 39.

¹² A “gray” area is an area in which there is only one full-time aural reception service. See *Cheyenne*, 15 FCC Rcd at 7530.