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In re: **Combined Communications, Inc.**
KTWS(FM), Bend, Oregon
Facility ID No. 13579
File No. BPH-20081103ADP

Informal Objections

Dear Counsel:

We have before us the referenced application (“Application”) filed by Combined Communications, Inc. (“Combined”), which seeks to modify the facilities of KTWS(FM), Bend, Oregon (“Station”). We also have before us objections to the Application filed by Andrew C. Shooks (“Shooks”), James E. Swarm (“Swarm”), Deborah J. Curl (“Curl”), and Thomas L. Daniels (“Daniels”).¹ For the reasons discussed below, we deny the objections and grant the Application.

Background. The Station currently operates from a tower located within the Awbrey Butte antenna farm. On November 3, 2008, Combined filed the Application, which seeks Commission authorization to upgrade the Station from a Class C3 to a Class C1 facility by increasing the Station’s power to 50 kW. Shooks, Swarm, Curl and Daniels oppose the Application, expressing concerns about compliance with the Commission’s radiofrequency (“RF”) radiation exposure limits.² In addition, Curl questions whether Combined has reasonable assurance of the availability of the site specified in the Application³ and Shooks questions whether the owner of the tower on which the Station is operating – and will continue to operate – completed coordination with tribal and historic preservation officers.⁴

Discussion. *RF Radiation Exposure Limits.* In the Application, Combined included information about the predicted power density of the Station’s proposed operations. Combined indicated that the highest calculated ground level power density – 44.6 $\mu\text{W}/\text{cm}^2$ – will occur at a distance of 27 meters from the base of the antenna support structure.⁵ Combined notes that the nearest point on the fence

¹ See Letter from Andrew C. Shooks (rec’d Jan. 16, 2009) (“Shooks Letter”); Letter from James E. Swarm (rec’d Jan. 16, 2009) (“Swarm Letter”); Letter from Deborah J. Curl (rec’d Jan. 16, 2009) (“Curl Letter”); Letter from Thomas L. Daniels (rec’d Feb. 17, 2009) (“2009 Daniels Letter”); Letter from Thomas L. Daniels (dated Dec. 31, 2008) (“2008 Daniels Letter”). Combined filed a Reply (“Reply”) to the Informal Objections on November 10, 2011, and later filed a Request for Expedited Approval (“Request”) on August 14, 2013.

² Shooks Letter at 3-9; Swarm Letter at 1-3; Curl Letter at 8-9; Daniels Letter at 1-3.

³ Curl Letter at 2-8.

⁴ Shooks Letter at 2-3.

⁵ File No. BPH-20081103ADP, Attach. 35.

surrounding the tower is approximately 36 meters away.⁶ It states that the maximum calculated power density produced by the Station's proposed operations amounts to "no more than 4.5% (*i.e.* less than 5%) of 1000 μ W/cm (the FCC standard for controlled environments)."⁷ Combined offers to take RF field measurements at the site when it has completed construction of the proposed facility.⁸ It states that these measurements "would be used to identify any specific locations where the operation of KTWS causes ground-level radiation levels to exceed the applicable FCC standard, so that remediation efforts (such as additional fencing and/or signage) can be undertaken, if necessary."⁹

Daniels and Shooks question the designation of the area around the tower as "controlled."¹⁰ Specifically, Daniels alleges that it is common for "non-tower related individuals" to be in that area.¹¹ Shooks notes that a number of people have access to the site, including employees of the U.S. Forestry Service and Deschutes County, Oregon, who have easements through the property, and adjacent westerly property owners who have easements through the property and must travel within feet of the towers' north and east guy anchors.¹²

Section 1.1310 of the Commission's rules ("Rules") specifies that the occupational/controlled limits for RF radiation exposure apply where "persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure."¹³ It also provides that these limits apply "where an individual is transient through a location where occupational/controlled limits apply provided he or she is made aware of the potential for exposure."¹⁴ Section 1.1310 specifies that, for a transient person to be aware of the potential for exposure, that person must receive written and/or verbal information and notification concerning their exposure potential and appropriate means available to mitigate that exposure.¹⁵

The persons discussed by Daniels and Shooks appear to be transient through the area. As Combined notes in the Application, "the tower site is fenced and the antenna tower is posted with warning signs."¹⁶ Neither Daniels nor Shooks alleges a failure to make individuals transient through the location aware of the potential for RF radiation exposure. Accordingly, we conclude that Combined appropriately utilized the controlled exposure limit when analyzing the Station's proposed operations. We also note that Commission engineers have examined the Application and predicted that, even under the worst case scenario, the Station's operations will not exceed the occupational/controlled exposure limit set forth in

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Swarm also questions this designation. He alleges that a portion of the fence surrounding the towers at the Awbrey Butte antenna farm is located on his property. Swarm Letter at 1. According to Swarm, he could remove those portions of the fence. If he did so, Swarm argues the area within the fence would no longer qualify as "controlled." We are not persuaded by Swarm's argument. Swarm has failed to offer any evidence in support of his allegation that a portion of the fence is located on his property. Moreover, Swarm has not indicated any intent to remove the fence. Finally, even if Swarm were to remove the portions of the fence allegedly located on his property, he has offered no evidence that the fence would not be reconstructed.

¹¹ 2009 Daniels Letter at 2.

¹² Shooks Letter at 4.

¹³ 47 C.F.R. § 1.1310(e)(1).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ File No. BPH-20081103ADP, Attach. 35.

Section 1.310.¹⁷ Finally, we note that Combined has volunteered to take measurements at the site when it completes construction of the Station's new facility¹⁸ and to add additional fencing or signage as needed at that time.¹⁹ We will require Combined to take these steps.²⁰

Blanketing Interference. Blanketing interference occurs when the signal strength of a radio or TV station is of such magnitude that it prevents broadcast receivers from receiving other signals. Section 73.318 of the Rules states that licensees "must satisfy all complaints of blanketing interference which are received by the station during a one year period."²¹ For covered devices, an FM station is obligated to eliminate at its own expense all blanketing interference to TV and radio reception experienced by complainants who are located within the 115 dBu blanketing contour and filed a complaint within one year of the station's commencement of program tests. If a complainant is located outside the blanketing contour, filed his complaint after the one-year period expired, or both, a licensee may satisfy its obligation to the complainant by providing technical information or assistance on how to eliminate the blanketing interference.²²

Daniels and Swarm both allege that they already experience blanketing interference from the Station.²³ Both allege that Combined has been unable to correct this interference problem and express the fear that the Station's proposed power increase will exacerbate the blanketing interference issues they face.²⁴ Daniels includes a copy of a blanketing interference complaint he lodged with Combined on September 12, 2005. Swarm does not include a copy of any blanketing interference complaint that he lodged with Combined nor does he state the date on which he lodged his complaint.

While neither Daniels' nor Swarm's complaints about existing interference relate to the Application, we note that Daniels appears to have filed his complaint within the Stations' first year of operations from its current tower.²⁵ We note that, if Daniels resides within the Station's blanketing contour, Combined should have resolved Daniels' complaint. Daniels alleges that Combined failed to do so. Combined has not offered any evidence to rebut this allegation or to demonstrate that Daniels lives

¹⁷ We note that Daniels and Shooks reference – and are critical of – RF radiation level measurements taken prior to the filing of the Application. 2009 Daniels Letter at 1-2; Shooks Letter at 6-9. We find these measurements are irrelevant. As Combined notes, they document the RF radiation environment at those times not at the present time. Reply, Engineering Statement at 2.

¹⁸ File No. BPH-20081103ADP, Attach. 35. We anticipate that these measurements will determine whether the Station's power increase will create new "hot spots" or impact the existing "hot spots" identified in prior measurements of the RF radiation environment at the site. As noted, Combined has committed to install additional fencing or signs if its measurements indicate a need for them. Accordingly, we decline to require Combined "to perform a composite modeling study of all radiation sources on its tower as well as those emitted from the [Oregon Public Broadcasting] tower," Swarm Letter at 2, or to require Combined "to provide a comprehensive RF measurement report of, and around, the approximate 12 acre perimeter fenced multi-transmitter area of which the KTWS transmitter is a part." Shooks Letter at 4.

¹⁹ File No. BPH-20081103ADP, Attach. 35. We note that Curl asks about a sign that was posted on a fence associated with the tower, which she asserts is no longer is posted. Curl Letter at 8. We expect Combined to ensure that the sign will be reposted if its measurements indicate the sign is needed.

²⁰ Because we are requiring Combined to take these measurements, we decline to visit the site ourselves to take RF radiation level measurements. See Daniels Letter at 1; Shooks letter at 4.

²¹ 47 C.F.R. § 73.318(d).

²² *Id.*

²³ 2008 Daniels Letter at 2; Swarm Letter at 2.

²⁴ 2008 Daniels Letter at 2; Swarm Letter at 2.

²⁵ Combined filed its application for a license to cover on December 13, 2004. See File No. BLH-20041213ACC. As noted, Daniels lodged his complaint with Combined on September 12, 2005.

outside the Station's blanketing contour. Without further information, we are unable to determine whether Combined failed to meet its obligations under Section 73.318. While we will not delay processing of the Application, we instruct Combined to follow up with Daniels regarding his blanketing interference complaint. We also direct Combined to report to us on the steps it has taken in response to Daniels' complaint within 60 days from the date of this letter.²⁶ Because Swarm does not indicate when he filed his complaint, we cannot determine whether Combined was obligated to resolve Swarm's complaint or simply provide technical information and assistance. We will not further consider Swarm's allegations regarding existing blanketing interference.

Finally, in terms of the concerns Daniels and Swarm express about increased or exacerbated blanketing interference, we find that it would be premature to address any blanketing interference caused by the upgrade. However, we remind Combined that it must resolve any complaints of blanketing interference that it receives from complainants living within the Station's blanketing contour during the Station's first year operating with its upgraded facilities.

Site Availability. An applicant must, in good faith, possess "reasonable assurance" of its proposed transmitter site at the time it files its application. The Commission generally assumes that applicants will be able to obtain local land use permits and has not typically required applicants to obtain, or apply for, advance approval from local land use authorities in order to certify, in their applications, that they have reasonable assurance of site availability.²⁷ The Commission generally has designated site availability issues only where it has been shown that permits already had been, or likely would be, denied by local land use authorities.²⁸

Curl and Daniels both assert that the tower on which the Station's antenna is mounted lacks local land use approval.²⁹ Given this, Curl argues that Combined lacks reasonable assurance of the availability of the site specified in the Application. Neither Curl nor Daniels, however, offers any evidence regarding the likelihood that the City of Bend will deny the tower owner land use approval. Accordingly, we find they have not presented a substantial and material question of fact concerning the availability of the site specified by Combined. Indeed, Curl and Daniels would be hard pressed to produce such evidence at this

²⁶ We expect this report to include a statement as to whether Daniels' home is located inside or outside of the Station's current 115 dBu contour. If Daniels lives within this contour, Combined should report on how it resolved any blanketing interference caused by the Station. If Daniels lives outside of this contour, Combined should indicate what information and assistance it offered to Daniels. The Report should be sent by mail to the Attention of Michael Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554; Combined may also provide a courtesy copy by electronic mail to Michael.Wagner@fcc.gov.

²⁷ See, e.g., *Artichoke Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC Rcd 12631, 12633 (1995) (rejecting "supposition or opinion" about whether zoning approval would be granted (*citing San Francisco Wireless Talking Machine Co., Inc.*, 47 RR2d 889, 893-94 (1980) (site issue not added where applicant had not sought land use approval from various government agencies and may have difficulty in obtaining such approval); *W. Gordon Allen*, 13 RR 1120, 1122-23 (1956) (site issue not added where site was zoned residential and applicant had not sought variance); *Chronicle Publishing Co.*, 45 FCC 1545 1546 (Rev. Bd. 1964) (site issue not added where applicant had not applied for zoning change).

²⁸ See *Teton Broadcasting, L.P.*, Memorandum Opinion and Order, 1 FCC Rcd 518 (1986) (site issue added where petitioner showed that local zoning board had previously refused to approved the proposed site, that the board's composition had not changed, and that the board's chairman had provided an affidavit stating that the board would not reverse its decision); *El Camino Broadcasting Corp.*, Memorandum Opinion and Order, 14 FCC 2d 361, 352-353 (1968) (site issue added where petitioner showed it had filed a similar permit request which had been denied by the local land use authority).

²⁹ Curl Letter at 1; 2008 Daniels Letter at 2.

point. The City of Bend issued conditional approval for the tower on November 23, 2011, and final approval for the tower on May 31, 2013.³⁰

Tribal and Historic Sites. Shooks cites an application (“Horizon Application”) filed in 2005 by Horizon Broadcasting Group LLC (“Horizon”), the licensee of another station proposing to operate from the Awbrey Butte antenna farm. Based on statements made in that application, Shooks questions whether the tower owner adequately vetted the tower with Tribal and historic preservation officials.³¹ The Horizon Application, however, specifies a different tower.³² Whether the owner of the tower specified in the Horizon Application adequately coordinated it with historical preservation and Tribal officials has no bearing on whether the tower owner of the tower specified in the Application did the same. Accordingly, we find that Shooks has failed to raise a substantial and material question of fact regarding coordination of the tower with historic preservation and Tribal authorities.

Conclusion/Actions. Based on the evidence before us, we find no substantial and material questions of fact that warrant further inquiry. We have examined the Application and find that it complies with all pertinent statutory and regulatory requirements. Accordingly, IT IS ORDERED, that the Informal Objections filed by Andrew C. Shooks, James E. Swarm, Deborah J. Curl and Thomas L. Daniels ARE DENIED, and the application (File No. BPH-20081103ADP) of Combined Communications, Inc. to upgrade KWTS(FM), Bend, Oregon, from a Class C3 to a Class C1 facility IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Andrew C. Shooks
James E. Swarm
Deborah J. Curl
Thomas L. Daniels

³⁰ Request at 3-23, 25. In its Request, Combined indicates that, on November 23, 2011, the City of Bend issued conditional approval for the tower and attaches a copy of that approval. Combined goes on to state that it satisfied all of the conditions and that the City of Bend issued it a Land Use Permit. Combined attaches copies of the land use approvals issued by the City of Bend.

³¹ Shooks Letter at 2-3, *citing* File No. BPH-20050721ADU at Exh. 35.

³² The Horizon Application, File No. BPH-20050721ADU, lists the proposed antenna location coordinates as 44-4-40 North and 121-38-27 West. The Application lists the Station’s proposed antenna location coordinates as 44-4-39 North and 121-19-57 West. Indeed, in an application filed after the Commission dismissed the Horizon Application for failure to prosecute, Horizon listed the same proposed antenna location coordinates and indicated that it proposed to operate from “the KTVZ-TV tower.” *See* BPH-2009080ABW, Attach. 35. The tower specified in the Application is owned by The Chackel Family, LLC.