

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Reclassification of License
of Station WUGN(FM)
Midland, Michigan

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RM-11689

ORDER TO SHOW CAUSE

Adopted: January 9, 2013

Released: January 10, 2013

Comment Date: February 25, 2013

By the Assistant Chief, Audio Division; Media Bureau:

1. Before the Audio Division is a Petition for Rule Making, part of a hybrid proposal filed by Roy E. Henderson (“Petitioner”), licensee of FM Station WCUZ, Bear Lake, Michigan. Petitioner proposes a channel substitution and upgrade for WCUZ, from Channel 261A to Channel 264C3 at Bear Lake.¹ To accommodate that proposed modification, Petitioner requests the substitution of Channel 260A for vacant Channel 263A at Custer, Michigan. Petitioner further proposes the reclassification of Station WUGN(FM), Channel 259C, Midland, Michigan, to specify operation on Channel 259C0. Station WUGN(FM) currently operates on Channel 259C with an effective radiated power (“ERP”) of 100 kilowatts at 304 meters height above average terrain (“HAAT”). Because Station WUGN(FM) is operating below minimum Class C standards, it is subject to reclassification as a Class C0 facility.² Petitioner requests that we issue to Family Life Broadcasting System, licensee of Station WUGN(FM), an Order to Show Cause why that station should not be reclassified as a C0 facility.

2. Section 316(a) of the Communications Act, as amended, permits the Commission to modify an authorization if such action is in the public interest. Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and to afford the licensee at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission’s Rules.³

¹ See File No. BPH-20120301ADL.

² See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules, Second Report and Order, 15 FCC Rcd 21649, 21656-64 (2000) (“Second Report and Order”). See also Section 1.420, Note (directing the staff to issue an order to show cause where triggering petition proposes “an amendment . . . to the FM Table of Allotments”), and Section 73.3573, Note 4, of the Commission’s Rules.

³ 47 C.F.R. § 1.87. See also Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act, Order, 2 FCC Rcd 3327 (1987).

3. The reclassification of a Class C FM station to a Class C0 station may be initiated through the filing of a petition for rule making to amend the FM Table of Allotments.⁴ In instances where an initiating petition proposes both to amend the FM Table of Allotments and to reclassify a Class C FM station, the Commission must issue an order to show cause, as set forth in Section 73.3573, note 4, of the Commission's rules. In such circumstances, a notice of proposed rule making will be issued only after the reclassification issue has been resolved.

4. A petitioner proposing both amendment of the FM Table of Allotments and reclassification of a Class C FM station must certify that no alternative channel is available for the proposed service.⁵ Petitioner has provided the requisite certification regarding both the upgrade to Channel 264C3 at Bear Lake, Michigan, as well as the proposed substitution of Channel 260A for vacant Channel 263A at Custer, Michigan.

5. A Class C0 reclassification of Station WUGN(FM) at Midland, Michigan, appears necessary to accommodate Petitioner's request for a channel substitution and upgrade for FM Station WCUZ(FM), Bear Lake, Michigan, from Channel 261A to Channel 264C3. Petitioner's request for reclassification therefore has sufficient public interest benefit to warrant the issuance of an order to show cause. Accordingly, we shall issue this *Order to Show Cause* directed to Family Life Broadcasting System ("Family Life"), licensee of Station WUGN(FM), Midland, Michigan. Family Life is required to show cause why its authorization should not be modified to specify operation on Channel 259C0 in lieu of Channel 259C at Midland, Michigan.

6. The license for Station WUGN(FM) at Midland, Michigan, can be modified to Channel 259C0 at its current authorized transmitter site, located at coordinates 43-30-56 NL and 84-32-49 WL. Pursuant to Section 1.87 of the Commission's Rules, Family Life may not later than February 25, 2013, file a written statement showing with particularity why its license should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Family Life to furnish additional information. If Family Life raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referenced above, Family Life will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

7. If Family Life chooses to seek authority to modify its license to increase antenna height to at least 451 meters HAAT, it must express its intention to file the necessary application by the comment date specified in this *Order*. It also must file an acceptable application for a construction permit for Station WUGN(FM) with the Commission within 180 days subsequent to the show cause comment due date (August 26, 2013). Upon the filing of an acceptable construction permit application, the proposal for a channel substitution and upgrade for Station WCUZ(FM), Bear Lake, Michigan, will be dismissed.

⁴ *Second Report and Order, supra*, and 47 C.F.R. § 1.420, Note 2.

⁵ See 47 C.F.R. §§ 73.3573, Note 4 and 1.420 Note 2. See also *Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

The present three-year construction period will be applicable if a construction permit is obtained by Family Life for Channel 259C as specified herein, under this procedure. If the construction is not completed as authorized, Station WUGN(FM) is subject to automatic reclassification as a Class C0 station, and, in that event, Petitioner may refile the hybrid proposal described herein.

8. IT IS THEREFORE ORDERED, That, on or before February 25, 2013, Family Life Broadcasting System show cause why its authorization for Station WUGN(FM), File No. BMLH-20050728AOB, should not be modified to specify operation on Channel 259C0 in lieu of Channel 259C at Midland, Michigan.

9. Any protest to this proposed reclassification may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Protests should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on:

John C. Trent, Esq.
Putbrese Hunsaker & Trent, P.C.
200 S. Church Street
Woodstock, Virginia 22664

10. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Pennsylvania Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

11. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau