



Federal Communications Commission  
Washington, D.C. 20554  
August 24, 2018

DA 18-881  
Released: August 24, 2018

Ref. No. 1800B3-TSN

Mark Lipp, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209

**Re:** KTAE(AM), Elgin, Texas  
Facility ID No. 35647  
File No. BP-20140722AAQ

**Application for Modification of  
AM Broadcast Facilities**

Dear Counsel:

We have before us the application (Application) of Total Austin Sports Radio LLC (TASR) to modify the facilities of broadcast station KTAE(AM) (KTAE or the Station), licensed at Elgin, Texas.<sup>1</sup> Specifically, TASR seeks to move the nighttime service of KTAE—and only the nighttime service—by establishing a new nighttime antenna and transmitter at a different tower from its present site co-located with the KTAE daytime transmitter in Taylor, Texas. The proposed nighttime service would originate from a site within the city limits of Austin, Texas, almost 48 kilometers away from KTAE's daytime transmitter in Taylor.

To our knowledge, this is the first time we have been presented with such a proposed modification, essentially splitting the (secondary, unprotected) nighttime service of a Class D AM station from its daytime service, and proposing to move only the nighttime transmitter to a location well outside of the station's predicted principal community contour, and approximately five kilometers farther from the community of license than the current nighttime transmitter site. For the reasons set forth below, we conclude that the Application must be dismissed.

**Background.** KTAE is a Class D AM station with 1 kW of daytime power, and 0.144 kW of nighttime power, both signals originating from its transmitter site in Taylor, Texas, approximately 29 kilometers from Elgin. Pursuant to Section 73.21(a)(3) of the Commission's rules,<sup>2</sup> KTAE's nighttime service is secondary, is not protected from interference from other AM stations, and its nighttime interference-free (NIF) contour does not currently cover any part of the community of Elgin.

---

<sup>1</sup> TASR assigned the KTAE license to Genuine Austin Radio, L.P., in 2016. File No. BAL-20160909AAV, granted Nov. 2, 2016, transaction consummated Nov. 14, 2016. As previous owner TASR filed the Application, we will continue to refer to it as the applicant.

<sup>2</sup> 47 CFR § 73.21(a)(3).

In 2009, KTAE's then-licensee, BMP Austin License Company, L.P. (BMP), filed two contingent applications. The first proposed to relocate Elgin, Texas's then-sole local transmission service, KVLR(FM), also licensed to BMP, to Sunset Valley, Texas, in the Austin Urbanized Area (Austin UA).<sup>3</sup> The second proposed to change KTAE's community of license from Taylor, Texas, to Elgin, Texas, without changing the Station's transmitter site,<sup>4</sup> to "backfill" the community of Elgin's loss of KVLR(FM) and its sole local transmission service.<sup>5</sup> The staff granted the contingent applications, finding that provision of first local transmission service at Sunset Valley represented a preferential arrangement of allotments over retention of a second transmission service at Taylor.<sup>6</sup>

TASR now seeks to relocate the Station's nighttime service from its current location at the KTAE transmitter in Taylor to an existing tower used for station KTSN(AM) in Austin, Texas, slightly increasing the power to 0.2 kW nighttime, with a decrease in antenna efficiency. The Station's daytime antenna and coverage would remain unchanged. TASR states that this proposal will "maximize the service to Elgin and the surrounding market area," and "will provide an improved service to the community of Elgin and its market area."<sup>7</sup>

**Discussion.** We find that TASR fails to support its proposal to move the nighttime coverage of KTAE. When KVLR(FM) relocated from Elgin to Sunset Valley, removing Elgin's sole fulltime local transmission service, the loss was "backfilled" by the daytime-only service from KTAE, while the co-located secondary nighttime KTAE service continued to serve parts of Taylor, Texas, and provided no NIF service to Elgin. Now, TASR proposes to move the nighttime component of KTAE's service from its present daytime transmitter location 28.76 kilometers from Elgin, to a new location, inside the City of Austin, 34.05 kilometers from Elgin. The new proposed location for KTAE's nighttime operation is well outside of KTAE's predicted 5 mV/m daytime principal community contour. Furthermore, approximately 40 percent of the predicted NIF contour at the new location lies outside of KTAE's predicted daytime 2 mV/m contour.

TASR does not provide any rationale for its belief that it is free to relocate KTAE's Class D nighttime service wherever it deems appropriate. TASR does, however, have the burden of demonstrating that grant of the Application would be in the public interest, convenience, and necessity. For a variety of reasons, both general and specific to this Station, we find that it would not.

First, while KTAE's Class D nighttime service is secondary and unprotected, it is nonetheless service—a fact implicitly recognized by TASR in its attempt to relocate that service to a more populous area. Moreover, while under our rules TASR has no technical obligation to cover any of its community of license with an NIF signal, it retains its "bedrock obligation" to provide the community of license with

---

<sup>3</sup> File No. BPH-20090811ACJ.

<sup>4</sup> File No. BP-20090819AHB.

<sup>5</sup> See *BMP Austin License Company, L.P. and M&M Broadcasters, Ltd.*, Letter Decision, 27 FCC Rcd 10973, 10974 (MB 2012) (*BMP Letter Decision*).

<sup>6</sup> *Id.* at 10976-77.

<sup>7</sup> See Engineering Statement of Timothy C. Cutforth P.E., attached to the Application.

programming serving its needs and interests.<sup>8</sup> While a proposal to move the nighttime service closer to Elgin might indicate a commitment to this obligation, the proposed move to Austin, slightly farther from Elgin than is the current nighttime transmitter, offers no such indication and implies the opposite. Moreover, we know of no precedent, nor has TASR cited any, suggesting that a radio station may move its nighttime service to another community while leaving behind its daytime service, and we can envision no public interest benefits from such a separation of service.

Additionally, with regard to KTAE specifically, this proposal runs counter to the interests and expectations of the residents of Elgin, the community of license. Prior to 2012, Elgin had fulltime (day and night) local transmission service from KVLK(FM), until the then-licensee moved that station to the Austin UA, leaving behind Class D KTAE and its primarily daytime service. Now, TASR seeks to take what little local nighttime service KTAE has and move it into the Austin UA as well.<sup>9</sup> The end result is that the Austin UA gained not only an additional fulltime service in KVLK(FM), but would also gain an additional nighttime AM service, while Elgin would remain without a local nighttime transmission service it previously enjoyed.<sup>10</sup> Considering that the change of KTAE's community of license to Elgin was specifically intended to "backfill" the loss of KVLK(FM)'s fulltime local transmission service,<sup>11</sup> it would be entirely inconsonant with that intent to allow KTAE's nighttime facilities to move even farther from Elgin than they are now.

---

<sup>8</sup> *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15692, para. 1, and n.3 (1998). See also, e.g., *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215, 3215, para. 5 (1987) (pursuant to mandate of 47 U.S.C. § 307(b), "the Commission established a scheme for distributing radio service in which every broadcast station is assigned to a community of license with a primary obligation to serve that community."); *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rule Making, 23 FCC Rcd 1324, 1327, para. 6 (2007); *Revision of Radio Rules and Policies*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 7 FCC Rcd 6387, 6401, para. 65 (1992) (reaffirming that both brokered and non-brokered radio stations have the responsibility to assess community needs and problems and provide issue-responsive programming).

<sup>9</sup> We note that, in the *BMP Letter Decision*, BMP was granted a waiver of the urbanized area service presumption (UASP) established in the *Rural Radio* proceeding (*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, 2570-71, para. 28 (2011) (*Rural Radio Second R&O*)), because BMP's contingent applications were filed before the UASP was established. Accordingly, BMP was allowed to claim that new service at Sunset Valley, Texas, constituted first local transmission service at that community, merely by filing a showing that Sunset Valley was independent of the Austin UA. See *BMP Letter Decision*, 27 FCC Rcd at 10976-77. As the Application was filed after the *Rural Radio Second R&O* became effective, under the UASP we consider that TASR's proposed new nighttime service located within the Austin UA would be an additional service to the urbanized area, absent rebuttal of the UASP that TASR has not provided.

<sup>10</sup> See generally *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, 14230, para. 34 (2006) (*Community of License R&O*) ("Our rules and policies impose ongoing community service obligations on broadcasters. Moreover, we have concluded that our Section 307(b) policies must take into account the public's legitimate expectation that existing broadcast services will be maintained. These considerations will necessarily limit the ability of licensees to move to larger or more lucrative markets. Thus, a broadcaster that sought to locate in a community is expected to serve that community, as is a broadcaster that purchased the sole local transmission service in a particular community.").

<sup>11</sup> *BMP Letter Decision*, 27 FCC Rcd at 10974.

Finally, the proposed move of KTAE's nighttime service to a location outside of the Station's predicted daytime principal community contour, into the City of Austin, appears to be little more than a partial community of license change of the Station. A community of license change, however, requires that the proponent demonstrate that the change represents a preferential arrangement of allotments.<sup>12</sup> Moreover, the Commission has also stated that the sole operating local transmission service in a community "should not be removed absent a compelling public interest showing."<sup>13</sup> TASR's conclusory statements that the proposed modification will "maximize" or "provide an improved service" to Elgin fall far short of satisfying these requirements, even if we were to concede—which we do not—that a Class D AM station's secondary nighttime service can be separated from its daytime principal community service contour and moved to another community.

**Conclusion.** While this novel proposal offers little to nothing by way of precedent to indicate the proper result, we conclude that it likewise offers little to nothing by way of public interest benefit to the residents of the community of license, Elgin, Texas, other than a continuation of the abandonment of fulltime local radio transmission service at that community. Accordingly, the Application of TASR to relocate the nighttime service of station KTAE(AM), Elgin, Texas, IS DISMISSED.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

---

<sup>12</sup> *Community of License R&O*, 21 FCC Rcd at 14218, para. 10.

<sup>13</sup> *Id.* at 14229, para. 32.