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In Reply Refer To:
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Ricky Pfeil
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In re: KIJN-FM, Umbarger, TX
Facility ID No. 65458
Application File No. 0000190783

Minor Change Application

Dear Mr. Pfeil,

We have before us the referenced application (Application) of Top O'Texas Educational Broadcasting Foundation, Inc. (TOTEBF), licensee of Station KIJN-FM (Station), Channel 222C2, Farwell, Texas, for a minor modification of facilities and a change of community of license.¹ The Application proposes to relocate Station KIJN-FM's transmitter site to a new tower location, height and effective radiated power and to change the Station's city of license from Farwell, Texas, to Umbarger, Texas, as the community's second local service.² For the reasons discussed below, we request that TOTEBF amend the Application to provide additional evidence in support of the proposed modification.

Background. The Application was filed pursuant to section 73.3573(g) of the Commission's rules (Rules),³ 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 with

¹ Application File No. 0000190783 (filed May 16, 2022).

² Application, Comprehensive Exh. Upon grant of the Application, Station KIJN-FM would continue to operate on Channel 222C2 at Umbarger, Texas.

³ 47 CFR § 73.3573(g). *See also* 47 U.S.C. § 307(b) (Section 307(b)) ("Allocation of facilities. In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.").

its current service.⁴ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵

In support of its Application, TOTEBF claims that the proposed city of license modification from Farwell, Texas (2020 U.S. Census population of 1,425 persons), to Umbarger, Texas (2020 U.S. Census population of 123 persons), would result in a preferential arrangement of allotments under Priority (2), second full-time aural service.⁶ TOTEBF states that Farwell is currently the city of license for three broadcast stations, Stations KIJN-FM, KIJN-AM and KICA-FM, and if the Application is granted, Farwell will continue to receive 100 percent primary community contour service from the remaining signals licensed there as well as primary community contour service from at least ten other stations.⁷ TOTEBF maintains that with the abundance of coverage in the community, there would be no gray or white areas left behind.⁸ TOTEBF states that, by comparison, Umbarger currently has only one authorized aural service and coverage by other signals is significantly less than that of Farwell.⁹ TOTEBF further claims that the proposed facility does not, and cannot be modified in such a way as to, cover any significant portion of the Amarillo Urbanized Area.¹⁰ Finally, TOTEBF states that the public interest supports the proposed city of license modification from Farwell to Umbarger, which would benefit from a second local aural service.¹¹

Discussion. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. As explained below, we consider this proposal under Priority (4) of the allotment priorities rather than Priority (2) as TOTEBF asserts, and evaluate it as providing a second local service to the community of Umbarger.¹² Under Priority (4), we take into account the number of aural reception services received in the proposed service area, the number of local services, the relative size of the proposed communities and their growth rate.¹³ Additionally, in order to satisfy the requirements of

⁴ 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).

⁵ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982) (*Revision of FM Assignment Policies and Procedures*). The FM allotment priorities are: (1) First full-time aural service, (2) Second full-time aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁶ Application, Comprehensive Exh.

⁷ Stations KIJN-AM and KICA-FM are licensed to Farwell, Texas. Farwell is also serviced by KENW-FM (89.5 MHz); KELU(FM) (90.3 MHz); KAQF(FM) (91.1 MHz); KCLV-FM (99.1 MHz); KTQM-FM (99.9 MHz); KRMQ-FM (101.5 MHz); KSEL-FM (105.9 MHz); KSMX-FM (107.5 MHz); KCLV(AM) (1240 MHz); and KWKA(AM) (680 MHz), all located in Portales, New Mexico. See Application, Comprehensive Exh.

⁸ *Id.*

⁹ Application, Comprehensive Exh. Umbarger is currently serviced by KJRT(FM) (88.3 MHz); KACV-FM (89.9 MHz); KGNC-FM (97.9 MHz); KPRF(FM) (98.7 MHz); and KXGL(FM) (100.9 MHz), all located in Amarillo, Texas; and KZRK-FM (107.5 MHz), Canyon, Texas.

¹⁰ Application, Comprehensive Exh.

¹¹ *Id.*

¹² See *supra* note 5. “A ‘transmission facility’ for a community is a station licensed to the community. Such a station provides a ‘transmission service’ for that community.” 47 CFR § 73.37, Note 4.

¹³ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 92 n.8.

Priority (4), a proposal may set forth “the size of the populations gaining and losing service under the proposal, ... the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal advances the revised Section 307(b) priorities.”¹⁴

A staff engineering analysis reveals that the reallocation of Station KIJN-FM to Umberger would result in a second local service and seventh reception service to 123 persons, whereas the removal of Station KIJN-FM from Farwell would produce a net loss of service to 16,234 persons. While both the loss and gain areas are well served with at least five aural reception services¹⁵ and there would be no gray or white areas created by the adoption of the proposal, we do not believe the proposed reallocation of Station KIJN-FM and the modification of the Station’s authorization would result in a preferential arrangement of allotments under Priority (4), other public interest matters.¹⁶ Rather, we believe the retention of Station KIJN-FM at Farwell as the community’s third local service with a population of 1425 persons would better serve the public interest and is preferred over the addition of a second local transmission service to a community with a population of 123 persons that is already well served with one local transmission service and more than 5 reception services.¹⁷ We therefore tentatively conclude that the proposal would not result in a preferential arrangement of allotments and request that TOTEBF submit additional information as to the overall public interest benefits that would be advanced by the grant of its proposal.

Conclusion. The Application, as submitted, does not satisfy the requirements of Priority (2) of the Commission’s allotment priorities, because it does not propose a second full-time aural service at the move-in community. Likewise, the Application does not satisfy the requirements of Priority (4), other public interest matters, absent further, more detailed information, including evidence of the actual effect on the public interest of the proposed move. Pursuant to section 73.3522(c)(2) of the Rules, “... an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff.”¹⁸ Additionally, section 73.3564 of the Rules states that “[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment.”¹⁹ This letter constitutes your opportunity for corrective amendment pursuant to section 73.3522 of the Rules.

¹⁴ See *Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2577, para. 39 (2011) (*Rural Radio*).

¹⁵ See *supra* notes 7 and 8. The Commission deems five or more reception services as “abundant.” See *Family Broad. Group*, Decision, 93 FCC 2d 771 (Rev. Bd. 1983), *rev. denied*, FCC 83-559 (Nov. 29, 1995).

¹⁶ See *supra* note 5.

¹⁷ As discussed in *Rural Radio*, “[u]nder Priority (4) applicants may offer any other information they believe to be pertinent to a public interest showing, including the need for further transmission service at the new community, a drop in population justifying the removal of transmission service at the old community, population growth in areas surrounding the proposed new community that can best be met by a centrally located service, or any other changes in circumstance believed relevant to our consideration.” *Rural Radio*, 26 FCC Rcd at 2577-78, para. 39.

¹⁸ 47 CFR § 73.3522(c)(2).

¹⁹ 47 CFR § 73.3564.

Further action on the subject Application will be withheld for a period of thirty (30) days from the date of this letter to provide TOTEBF an opportunity to respond. Failure to correct all tender and acceptance defects within thirty (30) days from the date of this letter will result in the dismissal of the Application with no further opportunity for corrective amendment pursuant to section 73.3564(a)(3) of the Rules.²⁰ Furthermore, failure to respond within thirty (30) days will result in the dismissal of the Application pursuant to section 73.3568 of the Rules.²¹

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁰ 47 CFR § 73.3564(a)(3).

²¹ 47 CFR § 73.3568.