



Federal Communications Commission
Washington, D.C. 20554

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DA 23-667
In Reply Refer to:
1800B3-RFS/TSN

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Re: WCYZ(FM), Silver Springs Shore, FL
Facility ID No. 191546
File No. 0000204932

Dear Counsel:

This letter refers to the minor change application (Application) filed on behalf of Central Florida Educational Foundation, Inc. (CFEF), licensee of Station WCYZ(FM), Channel 259A, Silver Springs Shore, Florida (WCYZ). The Application proposes a community of license modification for WCYZ to relocate the sole local transmission service from Silver Springs Shore, Florida, to Ocala, Florida, as Ocala's sixth local service. For the reasons discussed below, we request that you amend the Application.

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

¹ See 47 CFR § 73.3573(g). See also *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).

² 47 CFR § 73.3573(g)(1).

Applicant states that both the current community of Silver Springs Shore (2020 U.S. Census population of 24,846 persons) and proposed community of Ocala (2020 U.S. Census population of 63,591 persons) are located within the Ocala, Florida, Urbanized Area (Ocala UA). Applicant claims that pursuant to *Rural Radio*,⁴ the proposed WCYZ community of license change is considered an intra-urbanized move within the Ocala UA that represents a preferential arrangement of allotments over the current WCYZ facility. Applicant argues that although there are no technical changes, the proposal represents a preferred arrangement of allotments under Priority (4) of the four allotment priorities because, under *Rural Radio*, WCYZ is already presumed to service the Ocala UA and it would moreover provide an additional local service to Ocala, a community over 2.5 times the population of its current community of license of Silver Springs Shore.⁵

Discussion. Under Priority (4), we may take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters relevant to the public interest such as the relative size of the proposed communities and their growth rate.⁶ Here, there is no change in WCYZ's transmitter site and both the move-in and move-out communities are located within the Ocala UA. A staff engineering analysis confirms that the WCYZ facilities, whether under the current or the proposed community of license, cover 72.5% of the Ocala UA. We disagree with applicant's claim that its community of license proposal represents a preferential arrangement of allotments under Priority (4) merely because the identical facilities would be labeled as a local transmission service to the larger community of Ocala, which already has five local services. CFEF argues that, under *Rural Radio*, "the applicant proposing an urban-to-urban move must demonstrate from which of the two communities the station would provide service to a greater area and population within the Urbanized Area."⁷ It then makes the unwarranted logical leap to state that "[t]his proposal presents a preferred arrangement of allotments under FM Allotment Priority (4) because WCYZ(FM) [already presumed to be radio service to the Ocala Urbanized Area pursuant to *Rural Radio*] would provide a local service to a community over 2.5 times the population of its current community of license."⁸ This misreads *Rural Radio* by confusing the Priority (3) standard (population of the community of license)

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 *Citing 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 Rulemaking, 26 FCC Rcd. 2556, 2567, para. 20 (2011) (*Rural Radio*) (establishing "a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license").

⁵ Statement of William J. Getz, attached to Application (Getz Statement) at 2-3. CFEF cites in support of its claim *Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259, 10263 (MB 2011); see also *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12841 (*Rural Radio Second Order on Reconsideration*) (stating that an applicant proposing an urban-to-urban move must demonstrate from which of the two communities the station would provide service to a greater area and population within the Urbanized Area).

⁶ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 92 n.8.

⁷ Getz Statement at 2.

⁸ *Id.* at 2-3.

with the Priority (4) standard (area and population receiving service from the station), and we reject this argument on that basis.

Moreover, CFEF's position is self-contradictory. It argues that removing the sole local transmission service from Silver Springs Shore is allowed, because under *Rural Radio* WCYZ is presumed to serve the entire Ocala UA and thus the community change from Silver Springs Shore to Ocala is an "intra-urban" move.⁹ Having correctly stated this principle, however, CFEF then attempts to flip the coin to contend that re-labeling WCYZ as an Ocala station is preferred because Ocala is the larger community. CFEF cannot have it both ways: either WCYZ serves the entire Ocala UA, no matter what the community of license, or it serves an individual community within the UA, in which case Commission policy favors retention of the sole local transmission service at Silver Springs Shore.¹⁰ In neither case can it be said that a move to Ocala represents a preferential arrangement of allotments based solely on the relative sizes of two communities in the same Urbanized Area being served.

Finally, it bears repeating that the Application proposes no technical change in WCYZ's facilities. CFEF contends that "the proposed 'intraurban' change in the WCYZ(FM) community of license represents a preferential arrangement of allotments over the current WCYZ(FM) facility."¹¹ CFEF thus argues, nonsensically, that its current facility represent a preferential arrangement of allotments over itself. While a novel argument, it is not a convincing one. In intra-urbanized area cases where we have found such a preferential arrangement of allotments, there has been some actual service improvement under Priority (4), principally greater population coverage.¹² The mere desire to concentrate a station's programming on one community in an urbanized area over another, without more, does not satisfy this criterion.¹³

Conclusion. CFEF's Application, as submitted, seeking nothing more than to place a new label on an FM facility that would serve exactly the same area and population as it does currently. The mere re-designation of a facility as representing a different community of license, without more, does not present us with a preferential arrangement of allotments. We therefore find that the Application as submitted fails to comply with section 73.3573(g)(1) of our rules.

⁹ *Id.* at 2.

¹⁰ *Rural Radio*, 26 FCC Rcd at 2578 n.106.

¹¹ Getz Statement at 2.

¹² See, e.g., *Call Commc'ns Group, Inc.*, Letter Decision, DA 23-112, at 1 n.1 (MB rel. Feb. 8, 2023) (net service gain of 374,131 represented a preferential arrangement of allotments); *Repp*, 27 FCC Rcd at 13094 (application proposed a preferential arrangement of allotments under Priority (4) because the intra-urbanized area move would provide a net gain in reception service of 260,726 persons); *Emmis Austin Radio Broadcasting, L.P.*; *Educational Media Foundation*; *San Antonio Radio Works, LLC*, Letter Decision, 35 FCC Rcd 556, 562 (MB 2020) (stating net gain in the reception service serves the public interest); *Lawrence N. Cohn, Esq., James A. Koerner, Esq.*, Letter Decision, 29 FCC Rcd 4799, 4803 (MB 2014) (stating that the benefits of providing an additional service to more than 1.3 million listeners outweigh the identified service losses)..

¹³ See, *Southwest FM Broadcasting Co. Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7692, 7693, para. 3 (2015) (noting that the Commission explicitly stated in the *Rural Radio* proceeding that a station proposing to move within the same urbanized area is required to make a showing under Priority 4 "by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area.").

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 in the 30-day period specified in the FCC staff’s deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff.”¹⁴ Additionally, section 73.3564 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.”¹⁵ This letter constitutes your opportunity for corrective amendment pursuant to section 73.3522.

Further action on the subject application will be withheld for a period of thirty days from the date of this letter to provide the applicant an opportunity to respond. Failure to correct all tender and acceptance defects within thirty 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).¹⁶ Furthermore, failure to respond within 30 days will result in the dismissal of the application pursuant to section 73.3568.¹⁷

Sincerely,

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

¹⁴ 47 CFR § 73.3522(c)(2).

¹⁵ *Id.* § 73.3564. See Appendix B in the Report and Order in MM Docket No. 91-347.

¹⁶ 47 CFR § 73.3564(a)(3).

¹⁷ *Id.* § 73.3568.