



Federal Communications Commission  
Washington, D.C. 20554

August 8, 2023

DA 23-668  
*In Reply Refer to:*  
1800B3-RFS/TSN

Central Florida Educational Foundation, Inc.  
c/o Davina S. Sashkin, Esq.  
Baker & Hostetler LLP  
1050 Connecticut Avenue, NW  
Suite 1100  
Washington, DC 20036  
Email: [dsashkin@bakerlaw.com](mailto:dsashkin@bakerlaw.com)

Re: WHGV(FM), La Crosse, FL  
Facility ID No. 76433  
File No. 0000206026

Dear Counsel:

This letter refers to the minor change application (Application) filed on behalf of Central Florida Educational Foundation, Inc. (CFEF), licensee of Station WHGV(FM), Channel 258A, La Crosse, Florida (WHGV). The Application proposes a community of license modification for WHGV to relocate the sole local transmission service from La Crosse, Florida, to Gainesville, Florida, as Gainesville's twelfth 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.<sup>1</sup> Among other requirements, an applicant for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments.<sup>2</sup> We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>3</sup>

Applicant states that (1) the proposed city of license change is mutually exclusive with the current allotment; (2) the proposed arrangement of allotments is preferred under the Commission's allotment priorities;<sup>4</sup> and (3) the current community of license will not be deprived of its only local service because

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<sup>1</sup> See 47 CFR § 73.3573(g). See also *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) (*Community of License*), recon. granted in part, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

<sup>2</sup> 47 CFR § 73.3573(g)(1).

<sup>3</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 F.C.C.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).

<sup>4</sup> CFEF Section 307(b) Showing, attached to Application, at 1-2. CFEF cites *Emmis Austin Radio Broadcasting, L.P., et al.*, Letter Order, 35 FCC Rcd. 556, 559 (MB 2020) (*Emmis Austin*) (citing *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and

WHGV is presumed to currently serve the Gainesville, Florida, Urbanized Area (Gainesville UA) instead of La Crosse, Florida, pursuant to the Commission's *Rural Radio* policy.<sup>5</sup> Applicant claims that although the proposal constitutes the loss of the sole transmission service to La Crosse, a backfill is not required because WHGV is presumed to currently serve the Gainesville UA instead of the community of La Crosse.<sup>6</sup>

Applicant claims that the proposal serves the public interest under Priority (4) because it would incentivize the station to serve the larger community of Gainesville while continuing to serve La Crosse.<sup>7</sup> CFEF argues that the Commission observed in *Rural Radio* that it does not serve the public interest to limit broadcasters to service geared toward their communities of license to the exclusion of the rest of their service area, and that it is therefore unrealistic to limit our analysis under section 307(b) of the Communications Act<sup>8</sup> to that service provided to WHGV's current community of license, while ignoring the station's incentives to serve the larger coverage area.<sup>9</sup> CFEF maintains that La Crosse comprises only 0.13% of the total population currently served by the station while Gainesville comprises 51.5% of the total population.<sup>10</sup> Gainesville has a 2020 U.S. Census population of 141,085 persons that increased 13.5% over the past decade.<sup>11</sup> Applicant contends that, although there are no technical changes, the proposal represents a preferential arrangement of allotments under Priority (4) of the four allotment priorities, because WHGV is already presumed to serve the entire Gainesville UA pursuant to *Rural Radio* policy, and under CFEF's proposal it would provide a local transmission service to a community that

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Order, 4 FCC Rcd. 4870 (1989), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd. 7094 (1990); and 47 CFR §§ 1.420(i) and 73.3573(g)(1)).

<sup>5</sup> See *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 an urbanized area service presumption (UASP), defined as "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"); see also *Emmis Austin*, 35 FCC Rcd. at 561 (stating, pursuant to the Commission's decision in *Rural Radio*, that station KXAI(FM) at its current location at Refugio, Texas, provided service to the Corpus Christi Urbanized Area, which received multiple local audio services; thus, because Refugio was part of the Corpus Christi Urbanized Area, the reallocation of KXAI(FM) to Balcones Heights, Texas, did not violate the Commission's policy prohibiting the removal of a community's sole local aural service).

<sup>6</sup> CFEF Section 307(b) Showing at 4. See *Emmis Austin*, 35 FCC Rcd. at 558 n.11 & 560 (community of license change granted without backfill after removal of sole local transmission service); see also *Marissa G. Repp, Esq., et al.*, Letter Order, 27 FCC Rcd. 13090, 13094 (MB 2012) (*Repp*) (community of license change granted without backfill after removal of second local transmission service) (*citing Rural Radio*, 26 FCC Rcd. at 2577-78).

<sup>7</sup> CFEF Section 307(b) Showing at 3.

<sup>8</sup> 47 U.S.C. § 307(b) (Section 307(b)).

<sup>9</sup> See *Rural Radio*, 26 FCC Rcd. at 2570, para. 26 and 2570, para. 27 (stating that the Commission believes it is unrealistic to limit our Section 307(b) evaluation of an applicant's proposal to that service provided to its proposed community of license and ignore its incentives to serve the larger coverage area).

<sup>10</sup> CFEF Section 307(b) Showing at 3.

<sup>11</sup> *Id.* at 4.

comprises over half the population currently served by the station's signal, vs. less than one percent as is the case now.<sup>12</sup> Applicant concludes that the proposed change in WGHV's community of license to Gainesville, Florida, is in the public interest and would be conducive to a "fair, efficient, and equitable distribution of service" under Section 307(b).<sup>13</sup>

**Discussion.** We are not convinced by CFEF's argument. Here, there is no change in WGHV's transmitter site and both the move-in and move-out communities are located within and are presumed to serve the entire Gainesville UA. 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.<sup>14</sup> However, given that CFEF proposes an intra-urbanized area move with no change in technical facilities, comparisons between the current and proposed WGHV facility become meaningless.

We disagree with CFEF's claim that its community of license proposal serves the public interest under Priority (4) because it would "incentivize WGHV to serve the larger service area already reached by its signal."<sup>15</sup> First, CFEF attempts to have it both ways with regard to the UASP, which among other things allows an applicant like CFEF to propose removing the sole local service from a community such as La Crosse, because a station licensed at La Crosse, in the Gainesville UA, is presumed to serve the entire Gainesville UA.<sup>16</sup> Having correctly noted the application of the UASP to WGHV, CFEF then contends that the move represents a preferential arrangement of allotments because it would "incentivize" CFEF to serve Gainesville over La Crosse. CFEF cannot have it both ways. Either WGHV—whether licensed at La Crosse or Gainesville—serves the entire Gainesville UA, in which case the station's community of license is irrelevant to its service, or the proposed change treats Gainesville and La Crosse as separate communities, in which case Commission policy favors retaining the sole local service at La Crosse.<sup>17</sup>

Second, CFEF cites to no precedent, nor do we know of any, standing for the proposition that "incentivizing" the coverage of a different community in an urbanized area equals a preferential arrangement of allotments, especially where, as here, the station's technical facilities would not change.<sup>18</sup>

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<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 92 n.8.

<sup>15</sup> CFEF Section 307(b) Showing at 3.

<sup>16</sup> See *supra* note <5>; see also CFEF Section 307(b) Showing at 2-3.

<sup>17</sup> *Rural Radio*, 26 FCC Rcd at 2578 n.106.

<sup>18</sup> To support its "incentivization" argument, CFEF reads out of context language from paragraphs 26 and 27 of *Rural Radio*, in which the Commission stated that "it is unrealistic to limit our Section 307(b) evaluation of an applicant's proposal to that service provided to its proposed community of license and ignore its incentives to serve the larger coverage area." *Rural Radio*, 26 FCC Rcd at 2570, para. 27. This language merely recognizes that because a radio station's signal does not stop at the borders of its community of license, its service incentives likewise will extend to the larger area covered by its signal. It does not state or imply that a station located in an urbanized area must re-designate its community of license in order to serve the urbanized area it is already presumed

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.<sup>19</sup> 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.<sup>20</sup>

**Conclusion.** CFEF's Application, as submitted, seeks 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.<sup>21</sup>

Pursuant to section 73.3522(c)(2) of our 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."<sup>22</sup> 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

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to serve. In making this argument, CFEF apparently skipped over paragraph 21 of *Rural Radio*, in which the Commission made clear that "[t]he courts have long recognized that the principal goals of Section 307(b) are to 'forestall' the excessive concentration of radio service in larger cities, and to check the predictable interest of broadcasters to congregate in major markets," and further that, "[v]iewed from this perspective, it is difficult to credit commenters' arguments that Section 307(b)'s objectives are best served merely by ensuring service to urbanized areas, where populations are most concentrated." *Rural Radio*, 26 FCC Rcd at 2568, para. 21 (citing *Common's Investment Corp. v. F.C.C.*, 641 F.2d 954, 963-64 (D.C. Cir. 1981), and *Pasadena Broadcasting*, 555 F.2d 1046, 1049-50 (D.C. Cir. 1977)). In other words, the Commission in *Rural Radio* recognized that broadcasters need no "incentives" to serve the largest possible community, and that Section 307(b) was passed by Congress to check that predictable impulse. While the migration of a station to an urbanized area from a rural area is not implicated in an intra-urbanized area community of license change such as CFEF proposes, as discussed below such a move from a smaller to a larger community within an urbanized area requires more than just a desire to associate the station with the larger community.

<sup>19</sup> 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).

<sup>20</sup> 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.").

<sup>21</sup> 47 CFR § 73.3573(g)(1).

<sup>22</sup> 47 CFR § 73.3522(c)(2).

with no further opportunity for amendment.”<sup>23</sup> 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).<sup>24</sup> Furthermore, failure to respond within 30 days will result in the dismissal of the application pursuant to section 73.3568.<sup>25</sup>

Sincerely,

Nazifa Sawez  
Assistant Chief  
Audio Division  
Media Bureau

cc: William J. Getz, Carl T. Jones Corp.

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<sup>23</sup> 47 CFR § 73.3564. *See* Appendix B in the Report and Order in MM Docket No. 91-347.

<sup>24</sup> 47 CFR § 73.3564(a)(3).

<sup>25</sup> 47 CFR § 73.3568.