

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

In re Application of	)	
	)	
<b>Michael Radio Group</b>	)	
	)	
for Minor Modification	)	File No. BMPH-980522IC
of the Construction Permit of Station	)	
KRVK(FM), Midwest, Wyoming	)	Facility ID No. 88406

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 4, 2000**

**Released: January 6, 2000**

By the Commission:

1. The Commission has before it an Application for Review filed on April 26, 1999 by Mount Rushmore Broadcasting, Inc. ("MRB").<sup>1</sup> MRB, the licensee of three Casper, Wyoming stations,<sup>2</sup> requests review of a March 24, 1999 letter by the Chief, Audio Services Division, Mass Media Bureau dismissing MRB's petition for reconsideration of the staff's grant of the application (File No. BMPH-980522IC) of Michael Radio Group ("Michael") for minor modification of the facilities of Station KRVK(FM), Midwest, Wyoming.<sup>3</sup> The application proposes a "one-step" upgrade from Channel 300A to Channel 299C as well as a transmitter site change to co-locate KRVK(FM) with three other Michael stations.

2. The staff dismissed MRB's petition for reconsideration without considering its merits pursuant to 47 C.F.R. § 1.106(b)(1) because MRB had not filed an objection to the KRVK(FM) application prior to its grant and did not show good cause for its failure to participate at the earlier stages of the proceeding. The staff's dismissal was proper. There was a three-month period between the June 16, 1998 *Public Notice* announcing the acceptance of the modification application and the staff grant of the application. This time period constitutes sufficient opportunity for MRB to object to the proposal. *Compare Aspen FM, Inc.* 12 FCC Rcd 17,852, 17,854 (1997) (five-day period between notice of acceptance and grant "effectively precludes" participation during initial consideration of application); *accord, Rainbow Broadcasting Company*, 9 FCC Rcd 2839, 2844 (1994) (petition permitted in light of 11-day period between filing and grant of extension application). We reject MRB's contention that the Commission's *Public Notice* did not describe the KRVK(FM) application adequately to give parties satisfactory notice of the proposed modification. The information the *Public Notice* provided about the KRVK(FM) application was consistent with information the Commission routinely provides on pending modification applications and included the applicant's name, community of license, frequency, and an identification of the permit being modified, as well as a description of the application ("One-step application to upgrade from 300A to 299C").

<sup>1</sup> Michael Radio Group filed an opposition to the application for review on May 6, 1999.

<sup>2</sup> MRB owns Casper stations KVOC(FM), KQLT(FM), and KASS(FM).

<sup>3</sup> *Letter to Thomas H. Hutton, Esq. (KRVK(FM))*, Reference 1800B3-JR (Chief, Audio Services Division, Mass Media Bureau, March 24, 1999).

3. Even were we to reach the merits of MRB's application for review, we would not overturn the staff's grant of the KRVK(FM) modification application. MRB essentially argues that Michael's application effectively constitutes an unlawful *de facto* reallocation of KWVK(FM) from Midwest (population 495) to Casper, Wyoming (population 46,979); MRB claims that Michael has abused Commission processes by: (1) successfully seeking the allocation of a Class A FM station to Midwest, for which no one else applied; (2) immediately after being awarded the permit, seeking to upgrade the station to Class C status; and (3) moving the KRVK(FM) transmitter 50 miles from its current location, closer to Casper and to the same site as three Casper FM stations Michael already owns.<sup>4</sup>

4. Michael's actions were at every step consistent with Commission rules. Moreover, we have previously specifically considered and rejected an argument similar to that raised by MRB here. The Commission will presume that an applicant intends to serve its designated community of license so long as (1) the applicant provides a city grade (3.16 mV/m in the case of FM stations) signal to the designated community of license; (2) the applicant's main studio location complies with 47 C.F.R. § 73.1125; and (3) the applicant proposes programming that will serve the designated community of license. *Roberts Communications, Inc.*, 11 FCC Rcd 1138, 1139 (1996), citing *Suburban Community Policy*, the *Berwick Doctrine*, and the *De Facto Reallocation Policy*, 93 FCC 2d 436 (1983), *recon. denied*, 56 RR 2d 835 (1984). MRB does not challenge the instant proposal's conformity with the first two criteria. Regarding the third criterion, while a minor change application such as that involved here does not require submission of a programming statement, Michael affirms that, despite the expanded service now possible for KRVK(FM), "its primary obligation remains to serve the needs of [Midwest]" and also affirms its commitment to Midwest, Wyoming as its community of license. See Michael's October 14, 1998 "Opposition to Petition for Reconsideration," at 6-7. MRB has failed to show otherwise.

5. Finally, we reject MRB's claims based on the fact that Michael's principal, Victor A. Michaels, Jr., has filed numerous requests for new and modified FM allotments. MRB argues that the Commission should "question Michael's financial ability to construct and operate dozens of [FM] stations, [and it should examine] whether Michael intends to do in those cases what he has done in this case, which is to apply for a channel in a small town with no allotments and then modify it into a *de facto* allocation to a larger community with numerous existing allotments." Application for Review, at 2. These claims are unsupported and speculative and, in any event, for the reasons discussed above, not relevant to this proceeding.

6. Accordingly, in light of the above discussion, IT IS ORDERED that the Application for Review filed on April 26, 1999 by Mount Rushmore Broadcasting, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Román Salas

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<sup>4</sup> Stations KRTS-FM, KYOD(FM), and KMLD(FM).

Secretary