

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

|  |   |                      |
|--|---|----------------------|
| In the Matter of                               | ) |                      |
|  | ) |                      |
| Amendment of Section 73.202(b),                | ) | MB Docket No. 02-136 |
| Table of Allotments,                           | ) | RM-10458             |
| FM Broadcast Stations                          | ) | RM-10663             |
| (Arlington, The Dalles, Moro, Fossil, Astoria, | ) | RM-10667             |
| Gladstone, Portland, Tillamook, Coos Bay,      | ) | RM-10668             |
| Springfield-Eugene, Manzanita and Hermiston,   | ) |                      |
| Oregon, and Covington, Trout Lake, Shoreline,  | ) |                      |
| Bellingham, Forks, Hoquiam, Aberdeen,          | ) |                      |
| Walla Walla, Kent, College Place, Long Beach   | ) |                      |
| and Ilwaco, Washington)                        | ) |                      |

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 25, 2006**

**Released: October 31, 2006**

By the Commission:

1. The Commission has before it an Application for Review filed jointly by Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition (collectively, “Triple Bogey”), directed to the *Report and Order* in this proceeding.<sup>1</sup> Mid-Columbia Broadcasting, Inc. and First Broadcasting Company, L.P. (“Joint Petitioners”), and Saga Broadcasting, LLC each filed an Opposition to Application for Review. Triple Bogey filed a Reply to the Joint Petitioners’ Opposition to Application for Review and to Saga Broadcasting’s Opposition. For the reasons discussed below, we deny the Application for Review.

**I. BACKGROUND**

2. In response to a Petition for Rule Making filed by the Joint Petitioners, the *Notice of Proposed Rule Making* in this proceeding proposed the substitution of Channel 283C3 for Channel 283C at The Dalles, Oregon, reallocation of Channel 283C3 from The Dalles to Covington, Washington, and modification of the Station KMCQ license to specify operation on Channel 283C3 at Covington.<sup>2</sup> In order to provide service to unserved and underserved areas resulting from the proposed reallocation to Covington, the Joint Petitioners

<sup>1</sup> *Arlington, The Dalles, Moro, Fossil, Astoria, Gladstone, Portland, Tillamook, Coos Bay, Springfield-Eugene, Manzanita and Hermiston, Oregon, and Covington, Trout Lake, Shoreline, Bellingham, Forks, Hoquiam, Aberdeen, Walla Walla, Kent, College Place, Long Beach and Ilwaco, Washington*, Report and Order, 19 FCC Rcd 12803 (MB 2002).

<sup>2</sup> *Arlington, The Dalles and Moro, Oregon, and Covington and Trout Lake, Washington*, Notice of Proposed Rule Making, 17 FCC Rcd 10678 (MB 2002) (the “Notice”). Mid-Columbia Broadcasting, Inc. is the licensee of Station KMCQ.

proposed channel allotments at Moro and Arlington, Oregon, and Trout Lake, Washington. In response to the *Notice*, the Joint Petitioners timely submitted an Amended Proposal. In the Amended Proposal, the Joint Petitioners proposed the substitution of Channel 283C2 for Channel 283C3 at The Dalles, reallocation of Channel 283C2 to Kent, Washington, and modification of the Station KMCQ license to specify operation on Channel 283C2 at Kent rather than Channel 283C3 at Covington. In order to accommodate the Channel 283C2 reallocation at Kent, the Joint Petitioners proposed the substitution of Channel 281C for Channel 282C at Bellingham, Washington, and modification of the Station KAFE license to specify operation on Channel 281C. Saga Broadcasting LLC (“Saga”), licensee of Station KAFE, agreed to the channel substitution and, in the event that a Channel 281C allotment could not be coordinated with Canada at full Class C facilities, agreed to utilize a directional antenna pattern that would protect all Canadian allotments. As discussed below, the Joint Petitioners subsequently withdrew the Amended Proposal and requested that the staff consider the originally proposed reallocation to Covington in this proceeding.

3. In response to the *Notice*, Triple Bogey filed a Counterproposal.<sup>3</sup> In its Counterproposal, Triple Bogey proposed the substitution of Channel 283C2 for Channel 284C2 at Aberdeen, Washington, reallocation of Channel 283C2 to Shoreline, Oregon, and modification of the Station KDUX license to specify operation on Channel 283C2 at Shoreline. Triple Bogey also proposed the substitution of Channel 284C2 for Channel 237C3 at Hoquiam, Washington, and modification of the Station KXXX license to specify operation on Channel 284C2. To accommodate these proposals, Triple Bogey proposed a series of allotment actions involving eight communities. One of these proposals was the Channel 281C substitution at Bellingham originally proposed by the Joint Petitioners in their Amended Proposal. Like the Joint Petitioners’ Amended Proposal, the Triple Bogey Counterproposal would have required Station KAFE to operate with a directional antenna protecting Canadian allotments at Powell River and Bralone, British Columbia in the event the Canadian Government objected to unlimited Class C operation on Channel 281C at the existing Station KAFE transmitter site. Unlike the Joint Petitioners, Triple Bogey did not obtain Saga’s consent to specify KAFE directional facilities. For this reason, the staff issued an *Order to Show Cause* directed to Saga to show cause why its license should not be similarly modified to specify operation on Channel 281C to accommodate the Triple Bogey Counterproposal.<sup>4</sup> The staff also requested Triple Bogey to state whether it would pay the same consideration specified in the agreement between the Joint Petitioners and Saga.

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<sup>3</sup> The staff also received Counterproposals from New Northwest Broadcasters, LLC (“New Northwest”) and Two Hearts Communications, LLC (“Two Hearts”). The New Northwest Counterproposal proposing a Channel 226C3 reallocation to Gladstone, Oregon, and related channel substitutions was granted and is not subject to the Application for Review. For this reason, New Northwest filed a Motion to Sever. In view of our actions denying the Application for Review, we will dismiss the Motion to Sever as moot. The Two Hearts Counterproposal proposing a Channel 264C2 upgrade at Walla Walla, Washington, was dismissed and Two Hearts did not seek reconsideration of that action.

<sup>4</sup> *Arlington, The Dalles, Moro, Fossil, Astoria, Gladstone, Portland, Tillamook, Coos Bay, Springfield-Eugene, Manazita and Hermiston, Oregon, and Covington, Trout Lake, Shoreline, Bellingham, Forks, Hoquiam, Aberdeen, Walla Walla, Kent, College Place, Long Beach and Ilwaco, Washington, Order to Show Cause*, 19 FCC Rcd 4336 (MB 2004).

4. In response to the *Order to Show Cause*, Saga withdrew its consent and stated that it would no longer agree to utilize a directional antenna to protect Canadian allotments. As a result, the Joint Petitioners withdrew their Amended Proposal and requested that the staff consider their original proposal, including the reallocation of Channel 283C3 from The Dalles, Oregon, to Covington, Washington.

5. The *Report and Order* reallocated Channel 283C3 from The Dalles to Covington, Washington, and modified the Station KMCQ license to specify operation on Channel 283C3 at Covington. This provided Covington with a first local service and resulted in a net gain of service to 802,176 persons. The *Report and Order* also allotted Channel 261C2 to Arlington, Oregon, and Channel 283C2 to Moro, Oregon, each as a first local service. In taking these actions, the staff dismissed the Triple Bogey Counterproposal because it relied on the withdrawn Saga consent to utilize a directional antenna to protect Canadian allotments. In this regard, the staff stated that consistent with existing policy, it would not require a licensee to involuntarily install a directional antenna.<sup>5</sup>

6. In support of its Application for Review, Triple Bogey argues that, under the policy set forth in *Taccoa, Sugar Hill and Lawrenceville, Georgia*,<sup>6</sup> the Joint Petitioners should not have been permitted to file a Counterproposal to their own proposal substituting a reallocation of Channel 283C2 to Kent, Washington, in lieu of the originally proposed reallocation of Channel 283C3 to Covington, Washington. Moreover, Triple Bogey contends that there was no basis to resurrect the Covington reallocation proposal abandoned nearly two years earlier because the Joint Petitioners did not file a required continuing expression of interest in pursuing the Covington reallocation by the comment date in this proceeding. Triple Bogey also argues that an involuntary use of a directional antenna should not be fatal to its proposal because Saga had previously consented to use of a directional antenna and the proposed directional antenna would not reduce service in the United States. Triple Bogey also contends that the reallocation of Channel 283C3 to Covington results in approximately 2,000 persons losing their only fulltime aural service and approximately 1,800 persons losing their second reception service. Finally, Triple Bogey argues that, because Covington is located within the Seattle Urbanized Area, the reallocation proposal is not entitled to consideration as a first local service.

## II. DISCUSSION

7. We deny the Application for Review filed by Triple Bogey. At the outset, we concur with the staff determination that the reallocation of Channel 283C3 to Covington is entitled to consideration as a first local service and would result in a preferential arrangement of allotments as required by *Modification of FM and TV Authorizations to Specify a New Community of License*.<sup>7</sup> In reaching this determination, we

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<sup>5</sup> *Wasilla, Anchorage and Sterling, Alaska*, Report and Order, 14 FCC Rcd 6263 (MMB 1999).

<sup>6</sup> *Taccoa, Sugar Hill and Lawrenceville, Georgia*, Memorandum Opinion and Order, 16 FCC Rcd 21191 (MMB 2001) (“*Taccoa*”). In *Taccoa*, the staff announced that it would carefully review any counterproposal filed by the initial rule making proponent and require an explanation as to why the counterproposal could not have been advanced in the original petition for rule making. In the absence of such an explanation, the counterproposal would be processed as a new petition for rule making.

<sup>7</sup> *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*, 5 FCC Rcd 7094 (1990).

compared the existing and proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>8</sup> We recognize that Covington is located within the Seattle Urbanized Area. We are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we do not automatically apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban community and central city, and, most important of all, the independence of the suburban community.<sup>9</sup> In *Faye and Richard Tuck, Inc.*, we set forth eight factors to assess the independence of a suburban community.<sup>10</sup> In this instance, a majority of these factors support a finding that Covington is independent of Seattle.

8. We concur with the staff that Covington, with a population of 13,801 persons, is entitled to consideration as a first local service. Although less than 2.5 percent of the 563,374 population of Seattle, Covington has a substantial population and supports consideration as a first local service.<sup>11</sup> Station KMCQ will, on the basis of our own engineering study, provide a 70 dBu signal to only 15.4 percent of the Seattle Urbanized Area.<sup>12</sup> Furthermore, a majority of the eight factors demonstrates that Covington is not dependent

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<sup>8</sup> *Revision of FM Assignment Policies and Procedures*, Report and Order, 90 FCC 2d 88 (1988). 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>9</sup> See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, Memorandum Opinion and Order, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

<sup>10</sup> These factors are: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the Urbanized Area. *Parker and St. Joe, Florida*, Report and Order, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (MMB 1997).

<sup>11</sup> See *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (granted a first local service preference to a community with a population of less than 1 percent of the larger community); *Scotland Neck and Pinetops, North Carolina*, Report and Order, 7 FCC Rcd 5113 (MMB 1992) (granted a first local service preference to a community with a population of 3 percent of the larger community).

<sup>12</sup> If Covington were not located within the Seattle Urbanized Area, we would not have required a *Tuck* showing. See *Headland, Alabama, and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352 (MMB 1995).

upon the Seattle Urbanized Area. Covington is an incorporated community located 15 kilometers from Seattle and has its own local government and elected officials. In addition to the favorable finding under factor (4) concerning local government, we concur with the favorable finding under factor (1) because 35 percent of the Covington labor force, 18 percent of the city's total population, works in Covington. This represents a significant employment base and a favorable finding on this factor would be consistent with prior actions.<sup>13</sup> Under factor (3), the Mayor of Covington specifically refers to the "family oriented, small-town character" of Covington with a "strong sense of peace and community" on the Covington web site. Finally, under factors (6) and (8), Covington has its own fire and police departments, water and sanitation services, health services, civic organizations and local businesses. In addition to its own recreation facilities, Covington has its own post office and ZIP code. Local schools are provided by the Kent School District, not the city of Seattle.

9. Contrary to the argument raised by Triple Bogey, we find that a rulemaking proposal must have the consent of any station required to use a directional antenna. As stated above, a Channel 283C2 reallocation to Kent requires the substitution of Channel 281C for Channel 282C at Bellingham, Washington, modification of the Station KAFE license to specify operation on Channel 281C, and, if necessary, use of a directional antenna by Station KAFE. Saga's consent to the specification of a directional antenna for Station KAFE is essential to the Counterproposal. There is nothing in the record in this proceeding which would suggest that the Joint Petitioners reached agreement with Saga prior to the filing of its original Petition for Rule Making to reallocate Channel 283C3 to Covington. As discussed below, we would not favorably entertain a rule making proposal requiring another station to use a directional antenna without the consent of that station.

10. In light of the circumstances of this proceeding, we also find that the staff properly considered the original proposal to reallocate Channel 283C3 to Covington. This was necessitated by Saga withdrawing its consent and not by independent actions of the Joint Petitioners. *Taccoa* does not mandate the dismissal of the initial rule making petition. Rather, *Taccoa* requires that an amended proposal be processed as a new rulemaking petition and in turn subjected to the filing of counterproposals. Where, as here, the Joint Petitioners were forced to abandon the Amended Proposal as a result of Saga's decision to withdraw its consent, we believe the Joint Petitioners should be afforded the opportunity to revive their initial proposal. The Joint Petitioners' Covington reallocation proposal was set forth in the *Notice of Proposed Rule Making* in this proceeding, and all interested parties have been afforded a full opportunity to comment on this proposal.

11. We concur with the Bureau's finding that the failure of Triple Bogey to obtain Saga's consent is fatal to its Counterproposal. It is well established that we will not require a licensee to involuntarily install a

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<sup>13</sup> See *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, Memorandum Opinion and Order, 16 FCC Rcd 3411 (MMB 2001), *aff'd* 19 FCC Rcd 1603 (1994) (16 percent of the residents worked in the specified community sufficient to support a favorable finding); *Albermarle and Indian Trail, North Carolina*, Report and Order, 16 FCC Rcd 13876 (MMB 2001), *aff'd* 19 FCC Rcd 9098 (2004) (11.3 percent of the workforce worked in the specified community sufficient to support a favorable finding); *Coolidge and Gilbert, Arizona*, Report and Order, 11 FCC Rcd 3610 (MMB 1996) (13 percent of the workforce worked in the specified community sufficient to support a favorable finding).

directional antenna.<sup>14</sup> Requiring a station to involuntarily install a directional antenna to protect certain allotments poses significant administrative difficulties for the licensee, the initiating party, and the Commission staff.

12. In reallocating Channel 283C3 to Covington, the *Report and Order* recognized that there would be areas and populations losing service. In order to provide service to unserved and underserved areas resulting from this reallocation, the *Report and Order* allotted Channel 283C2 to Moro, Oregon, Channel 261C2 to Arlington, Oregon, and Channel 236A to Trout Lake, Washington. In its Application for Review, Triple Bogey states that 1,799 persons will lose their only reception service and 1,836 persons will lose their second reception service until these “backfill” allotments initiate broadcast operation. Triple Bogey contends that, consistent with a recent staff decision, the allotment of three “backfill” channels is not sufficient to cure this disruption in service.<sup>15</sup>

13. In *Sells, Arizona*, the staff denied a reallocation proposal because it would have resulted in 2,846 persons losing their only reception service and 1,022 persons losing their second reception service even though the rule making proponent had proposed new allotments to serve these populations. In doing so, the staff relied on *Pacific Broadcasting of Missouri, LLC*, in which we announced that we would no longer entertain petitions for rule making proposing vacant backfill allotments to “preserve” a community’s sole local service (Priority 3).<sup>16</sup> The staff extended this processing policy to protect other higher and equal allotment priorities, barring the use of vacant allotments to protect populations losing a sole (Priority 1) or second (Priority 2) reception service. Triple Bogey contends the staff’s action is inconsistent with *Sells, Arizona*.

14. The policy announced in *Sells, Arizona* promotes the public interest by ensuring continued service to underserved areas. Nevertheless, we decline to follow this policy in this proceeding. The *Report and Order* in this proceeding preceded the release of *Sells, Arizona* and was in full compliance with existing Commission policy regarding the allotment of vacant channels to serve white and gray areas.<sup>17</sup> The *Sells, Arizona, Report and Order* was released four months later. In *Pacific Broadcasters of Missouri, LLC*, we specifically stated that the new policy regarding allotment of vacant channels to replace the loss of a sole local service would be applied prospectively to only pending rule making petitions, notices of proposed rule making, and counterproposals, but not to previously adopted but not yet final allotments.<sup>18</sup> We conclude that

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<sup>14</sup> *Wasilla, Anchorage and Sterling, Alaska, supra*.

<sup>15</sup> *Sells, Arizona*, Report and Order, 19 FCC Rcd 22459 (MB 2004), *recon. pending*. A backfill allotment is one specifically made to replace an allotment that is being modified to permit a change in community of license of an authorized station.

<sup>16</sup> *Pacific Broadcasting of Missouri, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003), *recon. denied*, 19 FCC Rcd 10950 (2004).

<sup>17</sup> An area not served by any fulltime aural service is referred to as “white” area while an area served by only one fulltime aural service is referred to as “gray” area. See *Greenup, Kentucky, and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493 (1991).

<sup>18</sup> On June 9, 2005, the staff granted the application filed by NT Radio, LLC for a Channel 228C1 allotment at

the same policy should apply here.

### III. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, that the aforementioned Application for Review filed by Triple Bogey, LLC, MCC Radio, LLC and KDUK Acquisition IS DENIED.

16. IT IS FURTHER ORDERED, that the aforementioned Motion to Sever filed by New Northwest Broadcasters, LLC IS DISMISSED.

17. The Commission will not send a copy of this *Memorandum Opinion and Order* to Congress or to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A), because the aforementioned Application for Review is denied.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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Condon, Oregon (File No. BNPH-20041214AFN). This authorized facility will also serve the populations losing service as a result of the reallocation of Channel 283C3 to Covington. Unlike allotting a backfill channel which could provide service at some future date from a yet to be determined actual transmitter site, we now have an outstanding construction permit specifying facilities that when licensed will provide service to the area and population.