

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

In the Matter of	)	
	)	
Chehalis Valley Educational Foundation	)	File No. BPED-20160314AAD
	)	Facility ID No. 10685
Application for Construction Permit to Modify	)	
Station KACS(FM), Chehalis, Washington	)	

**ORDER ON RECONSIDERATION**

**Adopted: March 17, 2020**

**Released: March 18, 2020**

By the Commission:

1. The Commission has before it a Petition for Reconsideration<sup>1</sup> filed by Chehalis Valley Educational Foundation (CVEF), licensee of reserved-band non-commercial educational (NCE) Station KACS(FM), Chehalis, Washington. The Petition seeks reconsideration of the Commission's Memorandum Opinion and Order denying CVEF's Application for Review.<sup>2</sup> In this order, we dismiss the Petition in part as repetitious and in part because it fails to identify any material error, omission, or reason warranting reconsideration.

2. *Background.* On September 8, 2017, the Bureau dismissed the above captioned application (Application) proposing to change the community of license for KACS(FM) from Channel 213A at Chehalis, Washington, to Channel 213C3 at Rainier, Washington, because it did not represent a preferential arrangement of allotments.<sup>3</sup> Specifically, the Bureau determined that the proposed principal community signal (60 dBμ contour) for NCE station KACS(FM) would cover 53.6 percent of the Olympia-Lacey, Washington, and 13 percent of the Seattle, Washington, urbanized areas. Therefore, applying the urbanized area service presumption (UASP) applicable to community-change proposals,<sup>4</sup> the proposed facility was presumed to be an additional service to the Olympia-Lacey, Washington, urbanized

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<sup>1</sup> Chehalis Valley Educational Foundation, Petition for Reconsideration, File No. BPED-20160314AAD (filed Dec. 6, 2019) (Petition).

<sup>2</sup> Chehalis Valley Educational Foundation, Application for Review, File No. BPED-20160314AAD (Sep. 4, 2018) (Application for Review); *Chehalis Valley Educational Foundation, Application for Construction Permit to Modify Station KACS(FM), Chehalis, Washington*, File No. BPED-20160314AAD, Memorandum Opinion and Order, 34 FCC Rcd 10996 (2019) (*Chehalis Order*).

<sup>3</sup> See *Donald E. Martin, Esq.*, Letter Order, Ref. 1800B3-RFS (Sept. 8, 2017) (*Letter Decision*). See also 47 CFR § 73.3573(g) (permitting the modification of an FM station's authorization to specify a new community of license provided, *inter alia*, the re-allotment would result in a preferential arrangement of allotments).

<sup>4</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011) (*Rural Radio*) (adopting the UASP to forestall the movement of radio service from rural areas to more urban areas absent a compelling showing of need. The UASP is a rebuttable presumption that, when the community proposed for a radio allotment is located in an urbanized area or the station would, or could through a minor modification application, provide principal community-strength coverage to more than 50 percent of an urbanized area, the Commission will treat the application, for purposes of section 307(b) of the Communications Act of 1934, as amended, as proposing service to the entire urbanized area rather than service to the less urban named community of license.).

area under Allotment Priority (4), other public interest factors, as opposed to a first local service at Rainier, Washington, under Allotment Priority (3), first local transmission service.<sup>5</sup>

3. On reconsideration, the Bureau examined the narrow issue of whether the 70 dB $\mu$  contour or the 60 dB $\mu$  contour should be used as the principal community contour for a reserved-band NCE FM station proposing to change its community of license.<sup>6</sup> In doing so, the Bureau considered and rejected CVEF's argument that it is not in the public interest to make it more difficult for an NCE FM station to change its community of license than a commercial station.<sup>7</sup> The Bureau denied CVEF's petition for reconsideration, finding that a reserved-band NCE FM station's service to its community of license should be measured using 60 dB $\mu$  signal strength rather than the 70 dB $\mu$  principal community contour that is applicable to commercial FM stations.<sup>8</sup> The Bureau stated that the 60 dB $\mu$  contour actually affords greater flexibility to an NCE FM station seeking to change its community of license.<sup>9</sup> In its Application for Review, CVEF argued for a third time that the 70 dB $\mu$  contour should be used for noncommercial stations rather than the 60 dB $\mu$  contour and that to do otherwise would unfairly disadvantage noncommercial stations.<sup>10</sup> The Commission rejected these arguments and upheld the *Reconsideration Decision*, stating that it established the 60 dB $\mu$  contour as the "principal community contour" for NCE stations in 2000 and that Commission and Bureau staff have consistently applied this standard to reserved-band NCE FM stations since its adoption.<sup>11</sup> Finally, the Commission held that implementing CVEF's interpretation of which contour should be used to trigger the UASP would require a change in Commission policy and such a revision is best raised in a notice and comment rulemaking proceeding.<sup>12</sup>

4. CVEF now seeks reconsideration of the *Chehalis Order*. In its Petition, CVEF again references its argument that the principal community contour for NCE FM stations is the 70 dB $\mu$  contour<sup>13</sup> and repeats its argument that the use of the 60 dB $\mu$  contour makes it more difficult for an NCE FM station to relocate to a new community of license than is the case for a commercial station.<sup>14</sup> CVEF

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<sup>5</sup> See *Revision of FM Assignment Policies and Procedures*, BC Docket No. 80-130, Second Report and Order, 90 F.C.C.2d 88 (1982) (adopting the following allotment Priorities to implement section 307(b): (1) First fulltime aural service (the first radio signal that can be received in a community), (2) Second fulltime aural service (the second radio signal that can be received in a community), (3) First local transmission service (the first station licensed to a community), and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). See also 47 U.S.C. § 307(b).

<sup>6</sup> See *Donald E. Martin, Esq.*, Letter Order, Ref. 1800B3-AYD (July 31, 2018) (*Reconsideration Decision*).

<sup>7</sup> See Chehalis Valley Educational Foundation, Petition for Reconsideration, File No. BPED-20160314AAD (filed Oct. 13, 2017).

<sup>8</sup> *Id.* at 2. See also *Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, MM Docket No. 98-93, 15 FCC Rcd 21649, 21670, para. 41 (2000) (*Second Report and Order*).

<sup>9</sup> See *Reconsideration Decision* at 2.

<sup>10</sup> Application for Review at 7-8 ("Thus, the inappropriate imposition of the 60 dBu contour as the UAP trigger has the perverse effect of substantially restricting a move by a noncommercial station that a commercial station could easily effectuate with the blessings of Rural Radio and the Bureau.")

<sup>11</sup> *Chehalis Order*, 34 FCC Rcd at 10998-99, para. 5, citing, *inter alia*, *Second Report and Order*, 15 FCC Rcd 21649, para. 1 ("[W]e adopt several changes in our rules governing noncommercial educational FM ("NCE FM") stations, [including] establishing an NCE FM principal community coverage standard.")

<sup>12</sup> *Chehalis Order*, 34 FCC Rcd at 11000, para. 7.

<sup>13</sup> See Petition at 2-3.

<sup>14</sup> *Id.* at 4.

also maintains that the agency had the discretion to clarify this issue in the instant adjudication versus a rulemaking.<sup>15</sup>

5. *Discussion.* We dismiss the Petition in part as repetitious to the extent it raises no new facts or relies on arguments the Commission fully addressed in the *Chehalis Order*. The Commission's Rules prescribe limited circumstances under which a party may seek reconsideration of a Commission denial of an application for review. Section 1.106(b)(2) of the Rules provides that, where the Commission has denied an application for review, a petition for reconsideration will be entertained only if: (i) the petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (ii) the petition relies on facts or arguments unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.<sup>16</sup>

6. Upon consideration of CVEF's Petition and the entire record, we dismiss the Petition in part as repetitious. Both the Bureau and the Commission fully considered and rejected within this proceeding CVEF's arguments concerning the 70 dB $\mu$  contour and the difference in treatment of commercial and noncommercial stations. Moreover, CVEF does not meet the requirements of Section 1.106(b)(2) because it does not offer facts that relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, nor does it rely on facts unknown to it until its last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.<sup>17</sup>

7. We also dismiss the Petition in part because it fails to identify any material error, omission, or reason warranting reconsideration. Specifically, CVEF contends that the Commission can simply "clarify" in this adjudication that the UASP trigger is the 70 dB $\mu$  contour for reserved-band NCE stations without conducting a rulemaking proceeding.<sup>18</sup> CVEF misunderstands the holding in the *Chehalis Order* that this matter is best addressed in a rulemaking proceeding and in the process fails to identify any material error, omission, or reason warranting reconsideration.<sup>19</sup> In *Rural Radio*, the Commission established a station's "principal community contour" as the trigger for application of the UASP.<sup>20</sup> In the context of the present adjudication, the Commission interpreted the phrase "principal community contour" as used in *Rural Radio* and concluded that "when the Commission used this phrase in *Rural Radio*, it was referring to the [reserved-band NCE] station's 60 dB $\mu$  contour."<sup>21</sup> As the Commission explained, there is no basis for interpreting *Rural Radio* to mean that a reserved-band NCE station's "principal community contour" for purposes of the UASP is the 70 dB $\mu$  contour rather than the 60 dB $\mu$  contour.<sup>22</sup> Accordingly, as the Commission explained, changing the principal community contour of reserved-band NCE stations for purposes of the UASP to be the 70 dB $\mu$  contour rather than the 60 dB $\mu$

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<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> 47 CFR § 1.106(b)(2).

<sup>17</sup> *Id.*

<sup>18</sup> *See* Petition at 3-6.

<sup>19</sup> 47 CFR § 1.106(p)(1).

<sup>20</sup> *See Rural Radio*, 26 FCC Rcd at 2572-73, 2577, paras. 30, 38. *See also Chehalis Order*, 34 FCC Rcd at 10998, para. 5, n.16.

<sup>21</sup> *Chehalis Order*, 34 FCC Rcd at 10998, para. 5.

<sup>22</sup> *Id.* at 10998-11000, paras. 5-7 (explaining that "[s]ince 2000, when the Commission adopted a separate principal community contour requirement for reserved-band NCE FM stations, the trigger for the required showing in connection with community of license changes has been different for commercial and reserved-band NCE FM stations" and that "[i]n adopting the UASP in *Rural Radio*, the Commission did not purport to change when this showing is triggered").

contour is more appropriately considered in the context of a notice and comment rulemaking in which a wide range of interested parties would be afforded an opportunity to be heard.<sup>23</sup>

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 1.106(b)(2) of the Commission's Rules, 47 CFR § 1.106(b)(2), the Petition for Reconsideration filed by Chehalis Valley Educational Foundation, **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>23</sup> *Id.* at 11000, para. 7.