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In re: **K271BF, Kodiak, AK**
Facility ID No. 142573
File No. BPFT-20170206AAL

K282AU, Kodiak, AK
Facility ID No. 142580
File No. BPFT-20170206AAM

Informal Objection

Dear Applicant and Counsel:

We have before us the above-referenced applications (Modification Applications) for minor modification of the licensed facilities of FM translator stations K271BF, Kodiak, Alaska, and K282AU, Kodiak, Alaska (Stations) filed by Turquoise Broadcasting Company, LLC (Turquoise) on February 6, 2017.¹ Turquoise seeks to relocate the Stations from their present communities of license to Unalaska, Alaska, where they would rebroadcast primary stations KPEN-FM, Soldotna, Alaska (K271BF) and KWVV-FM, Homer, Alaska (K282AU). We also have before us a “petition to deny” the Modification Applications filed on January 17, 2018, by Unalaska Community Broadcasting (Unalaska).² Petitions to deny do not lie against minor modification applications; therefore, we will treat Unalaska’s pleading as an informal objection (Informal Objection).³ Because an informal objection may be filed at any time prior to grant of the subject application, the Informal Objection is procedurally acceptable and will be considered on the merits.⁴ On February 5, 2018, Turquoise filed an Opposition to the Informal Objection (Opposition). For the reasons set forth below, we deny the Informal Objection and grant the Modification Applications.

¹ See *Broadcast Applications*, Public Notice, Report No. 28918 (MB Feb. 8, 2017).

² Unalaska is the licensee of station KUCB(FM), Unalaska, Alaska.

³ See, e.g., *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14220, para. 12 (2006).

⁴ 47 CFR § 73.3587.

Background. In the Modification Applications, Turquoise requests waivers of the major change rule, Section 74.1233(a), which limits changes in antenna location by minor change application to those where the station would continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area.⁵ Turquoise also requests waivers of the signal delivery rule, Section 74.1231(b), which provides that commercial other area translators—i.e., translators whose 60 dB μ signal contour extends beyond that of the primary station—may only retransmit signals that are received directly off-air.⁶ Turquoise justifies both waiver requests by stating that the Stations would provide service to a “commercial white area”—i.e., an area lacking any full service commercial radio coverage.⁷ In the Informal Objection, Unalaska argues that Turquoise’s waiver request should be denied because Unalaska, Alaska, is already served by full service noncommercial educational (NCE) station KUCB(FM).⁸ In the Opposition, Turquoise reiterates that grant of the Modification Applications will enable service to a commercial white area.⁹

Discussion. Informal objections, like petitions to deny, must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.¹⁰ The Commission’s rules may be waived for good cause shown.¹¹ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.¹² The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”¹³ and must support its waiver request with a compelling showing.¹⁴ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.¹⁵

In the 1990 *Translator Order*, the Commission stated that it would be “favorably disposed” toward various waiver requests that would enable translator service to white areas.¹⁶ Here, the proposed waivers would enable commercial radio service to an area that currently is served only by one full service noncommercial station. We have long recognized that NCE and commercial licensees participate in

⁵ 47 CFR § 74.1233(a) (Section 74.1233(a) or major change rule).

⁶ 47 CFR § 74.1231(b) (Section 74.1231(b) or signal delivery rule).

⁷ Modification Applications, Exh. 1; Opposition at 2.

⁸ Informal Objection at 2-3.

⁹ Opposition at 2-3.

¹⁰ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990).

¹¹ 47 CFR § 1.3.

¹² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*).

¹³ *WAIT Radio*, 418 F.2d at 1157.

¹⁴ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

¹⁵ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

¹⁶ *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212 (1990) (*Translator Order*) (setting out “white area” guidance for waivers of rules relating to translator/primary station co-ownership, financial support from primary stations, translator power restrictions, and signal delivery).

fundamentally different broadcast services.¹⁷ Commercial stations, in addition to providing programming responsive to local interests, also provide local businesses with an advertising outlet, whereas NCE stations serve their communities with “significant alternative programming designed to satisfy the interests of the public not served by commercial broadcast stations” and are prohibited from advertising.¹⁸ In the translator context, we have relied on this fundamental distinction to grant waivers for both NCE translators proposing to serve NCE white areas¹⁹ and to commercial translators proposing to serve commercial white areas.²⁰ Therefore, in accordance with the policies and precedents described above, we find that it is in the public interest to waive the major change and signal delivery rules to permit Turquoise to bring commercial service to a commercial white area.²¹

Conclusion/Actions. For the reasons stated above, we find that grant of the requested waivers would be in the public interest. Accordingly, Turquoise’s request for waivers of Sections 74.1233(a) and 74.1231(b) IS HEREBY GRANTED.

IT IS FURTHER ORDERED that the modification applications for stations K271BF, Kodiak, Alaska (File No. BPFT-20170206AAL) and K282AU, Kodiak, Alaska (File No. BPFT-20170206AAM) ARE GRANTED.

IT IS FURTHER ORDERED that the Informal Objection filed on January 17, 2018, by Unalaska Community Broadcasting IS DENIED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁷ *Amendment of Part 74 of the Rules Concerning FM Translator Stations*, Memorandum Opinion and Order, 8 FCC Rcd 5093, 5098, para. 31 (1993).

¹⁸ *Revision of Program Policies and Reporting Requirements for Public Broadcasting Licensees*, Report and Order, 98 FCC 2d 746, 751-53, paras. 13, 17 (1984).

¹⁹ *Translator Order*, 5 FCC Rcd at 7227, para. 7 (“For purposes of applying the [power limit] waiver standard to NCE-FM translators, the Commission will construe any area that is not served by a full-service public radio station as a ‘white area.’”); *Sacred Heart University*, Memorandum Opinion and Order, 8 FCC Rcd 672 (1993) (waiving power limitations for NCE translators proposing to serve “NCE white areas”).

²⁰ *See Turquoise Broadcasting Company, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 2507, 2509 n.9 (2008) (citing to a signal delivery rule waiver for a commercial translator proposing to serve a commercial white area).

²¹ We emphasize that this finding is based on the “white area” waiver policy set out the 1990 *Translator Order* and not on the discredited Alaska-specific waiver policy applied in *Wrangell* and progeny. *See, e.g., Peninsula Communications, Inc.*, Letter, 32 FCC Rcd 6786, 6793-94 (MB 2017).