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FEDERAL COMMUNICATIONS COMMISSION
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IN REPLY REFER TO:
1800B3-BSH

Steven J. Stone, Esq.
Rubin, Winston, Diercks, Harris & Cooke, L.L.P.
1333 New Hampshire Ave., N.W., 10th Floor
Washington, D.C. 20036

In re: WWRL(AM), New York, NY
Major Change of Facilities
BP-960611AB

Dear Mr. Stone:

This is in reference to the above-captioned application filed by Unity Broadcasting Network-New York, Inc. ("Unity"), licensee of WWRL(AM), New York, New York, for a major change to the broadcast facilities of WWRL(AM). This construction permit application seeks consent for WWRL(AM) to increase its daytime operating power from 5 kW to 25 kW and to make changes in its directional antenna system to increase WWRL(AM)'s interference-free 0.5 mV/m daytime contour. In conjunction with this application, Unity has filed an Amended Joint Petition to Grant Applications Pursuant to Interference Reduction Agreements ("Joint Petition").[1] Additionally, Unity requests a waiver of 47 C.F.R. Section 73.37, as grant of the above-captioned application would result in de minimus contour overlap.[2] Furthermore, a petition to deny the above-captioned application was filed on November 8, 1996 by Blount Communications, Inc. ("BCI"), licensee of station WARV(AM), Warwick, Rhode Island. On December 5, 1996, BCI requested that its petition to deny be withdrawn. For the reasons stated below, we will grant the subject application, as conditioned, and the attendant waiver request, and grant BCI's request to withdraw its petition to deny and dismiss the petition.

Agreement

The parties joining Unity in the Joint Agreement are Main Street Broadcasting Company, Inc. ("Main Street"), licensee of WLNG(AM), Sag Harbor, New York; Cloud 9 Broadcasting, Inc. ("Cloud 9"), licensee of WERA(AM), Plainfield, New Jersey; and Comko, Ltd. ("Comko"), licensee of WQQW(AM), Waterbury, Connecticut. The parties request approval of an overall interference reduction plan which improves utilization of the 1600 kHz frequency in the New

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[1] The Joint Petition to Grant Applications Pursuant to Interference Reduction Agreements was filed on June 11, 1996. The Amended Joint Petition was filed on September 12, 1996. The Petitions will collectively be referred to as the "Joint Petition."

[2] Unity also requests a waiver of 47 C.F.R. Section 73.182. That request is unnecessary, and therefore, need not be addressed herein.

York metropolitan area. Specifically, the Joint Petition provides for: (1) an Asset Purchase and Interference Reduction Agreement between Unity and Main Street, calling for the transfer of certain assets and the FCC license of WLNG(AM) to Unity.[3] Upon consummation, the license of WLNG(AM) will be relinquished; (2) an Asset Purchase and Interference Reduction Agreement between Unity and Cloud 9, which provides for the transfer of certain assets and the FCC license of WERA(AM) to Unity.[4] Upon consummation, Unity will relinquish the license of WERA(AM); and (3) a Relinquishment of License and Rights Purchase Agreement between Unity and Comko, providing for the relinquishment of WQQW(AM)'s license, contingent upon the grant of Unity's application for construction permit.[5]

Discussion

The Commission has undertaken significant initiatives to improve and revitalize the AM service. Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd 6273 (1991), recon. granted in part and denied in part, 8 FCC Rcd 3250 (1993). One such initiative permits licensees to reach agreements to make facilities changes to reduce interference. Policies to Encourage Interference Reduction Between AM Broadcast Stations, 5 FCC Rcd 4492 (1990) ("Interference Reduction Proceeding"). In order to encourage such agreements, the Commission's rules were amended to provide for the acceptance of contingent applications that would facilitate a reduction in overall AM interference. Id at 4493. The amended contingent application rule, 47 C.F.R. Section 73.3517, applies to both deletions and modifications of existing interfering AM stations. In amending the rule to permit the filing of contingent applications that would "reduce interference to one or more AM stations or . . . otherwise increase the area of interference-free service," the Commission removed regulatory barriers that prevent or discourage individual AM stations from entering into private agreements that would ultimately decrease interstation interference and improve the quality of AM service. Id at 4492.

Contingent application arrangements that propose the deletion or modification of an AM station require a case by case public interest determination and the parties must demonstrate that a sufficient "local service floor" will be maintained in the community losing a local transmission service. In order to evaluate the local service floor associated with the contingent modification or deletion of AM stations facilities proposed in an interference reduction agreement, the Commission generally considers four factors: the amount of AM interference that will be eliminated in relation to the number of AM and FM services remaining available to areas that will lose service; the areas and populations that will gain service as a result of the proposed contingent facilities changes; whether the proposed contingent facilities changes will create new

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[3] On October 24, 1996, the Commission granted the application for the assignment of license of WLNG(AM) from Main Street to Unity (File No. BAL-960611HF). This transaction has not yet been consummated.

[4] On October 24, 1996, the Commission granted the application assigning WERA(AM) from Cloud 9 to Unity (File No. BAL-960830EA). This transaction has not yet been consummated.

[5] WQQW(AM) has been silent since January 1992.

"white" or "gray" areas[6]; and the availability of AM and FM service in the area that will experience a reduction in service due to the contingent facilities changes. Id at 4494.

Interference Reduction. The Joint Petition demonstrates that removing the interference caused by WLNG(AM), WERA(AM) and WQQW(AM) to WWRL(AM) would result in increased service by WWRL(AM) to 566,331 persons in an area of 689 square kilometers. Furthermore, grant will result in significant reduction in nighttime interference to, and increased nighttime coverage by, WARV(AM), Warwick, Rhode Island; WAUB(AM), Auburn, New York; WPWA(AM), Chester, Pennsylvania; and WSMN(AM), Nashua, New Hampshire.

Increased Service. Grant of an increase in power for WWRL(AM) will result in an additional increase of interference-free 0.5 mV/m service to at least 2,301,736 persons in an additional 3664 square kilometers.

Local Service Floor. Engineering exhibits demonstrate that at least five other primary aural services would remain available to the entire areas currently served by WQQW(AM), WLNG(AM) and WERA(AM). Thus, no new white or gray area will result. Moreover, Waterbury will continue to be served by two AM stations[7] and two FM stations[8] licensed to Waterbury. Furthermore, Sag Harbor will continue to be served by an existing station licensed to Sag Harbor, WLNG-FM. Plainfield will continue to be served by at least the following stations providing primary aural service: WFAN(AM), WOR(AM), WABC(AM), WCBS(AM) and WBBR(AM). Accordingly, these communities will continue to receive an ample number of aural services. See Bay City, Brenham, Cameron, etc., Texas, 10 FCC Rcd 3337, 3337 (1995) (affirming Commission policy that five receptive services is considered adequate).

Waiver of Section 73.37

Unity requests a waiver of 47 C.F.R. Section 73.37, as WWRL(AM)'s proposed 0.5 mV/m coverage contour will overlap with the 0.025 mV/m interfering contour of station WAQY(AM), East Longmeadow, Massachusetts. We have determined that a waiver of 47 C.F.R. Section 73.37, with respect to this overlap, is justified because available measurement data shows that the location of the overlap area is well outside WWRL(AM)'s primary service area. See Spann Communications, 4 FCC Rcd 617 (1989) (Commission grants waiver of Section 73.37 where overlap exists due to salt water path and does not involve primary service area of either station).

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[6] A "white" area is an area that does not receive interference-free primary service from an authorized AM station or does not receive a signal strength of at least 1 mV/m from an authorized FM service. See 47 C.F.R. Section 73.14. A "gray" area receives one full-time service. See Interference Reduction Proceeding 5 FCC Rcd at 4496, n. 14.

[7] The stations are WWCO(AM) and WATR(AM).

[8] The stations are WWYZ(FM) and WMRQ(FM).

Petition to Deny

We have examined the affidavit attached to BCI's request to withdraw its petition to deny and find that it complies with 47 C.F.R. Section 73.3588. Furthermore, we have examined the issues raised in BCI's petition and find no basis for further action in regard to those matters. Accordingly, we shall grant BCI's request to withdraw its petition to deny.

Conclusion

We find that the Joint Petition demonstrates compliance with the local service floor guidelines with respect to the Waterbury, Connecticut, Sag Harbor, New York and Plainfield, New Jersey areas after deletion of the WQQW(AM), WLNG(AM) and WERA(AM) facilities. Our staff has examined the Joint Petition and the exhibits provided therewith and finds that evidence has been provided which supports the conclusion that a net decrease in interference will result.

Based upon its showing, we believe that Unity has demonstrated that the public interest will be served by grant of the Joint Petition. Accordingly, BCI's request to withdraw its petition to deny IS GRANTED and its petition to deny IS HEREBY DISMISSED. Unity's request for a waiver of 47 C.F.R. Section 73.37 IS HEREBY GRANTED. The Amended Joint Petition to Grant Applications Pursuant to Interference Reduction Agreements IS HEREBY GRANTED and the application for a major change in the facilities of WWRL(AM), New York, New York (File No. BP-960611AB) IS HEREBY GRANTED. This action shall be conditioned as follows:

> This action shall be conditioned upon the surrender of the licenses of WLNG(AM), Sag Harbor, New York, WERA(AM), Plainfield, New Jersey and WQQW(AM), Waterbury, Connecticut to the Commission for cancellation upon commencement of Program Test Authority by the WWRL(AM) facility authorized by the subject construction permit, pursuant to the discontinuance of operation provisions in 47 C.F.R. Section 73.1750.
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> In the event that a conflicting application for facilities operating on 1610 kHz or 1620 kHz is filed pursuant to the Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd 6273 (1991), any modification necessary to resolve such conflict shall be made to the WWRL(AM) facilities.

Sincerely,

Dennis Williams

Dennis Williams, Assistant Chief
Audio Services Division
Mass Media Bureau

cc: Barry D. Wood, Esq.
Thomas DiBiasi, Esq.
Francis E. Fletcher, Jr., Esq.