



Federal Communications Commission
Washington, D.C. 20554

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DA 14-551
In Reply Refer to:
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Re: WUGN(FM), Midland, Michigan
File No. BLED-20130702ABR
Facility ID No. 20639

Reclassification of License

Dear Counsel:

We have before us an *Order to Show Cause* directed to Family Life Broadcasting System ("Family Life"), licensee of FM Station WUGN(FM), Midland, Michigan,¹ why Station WUGN(FM) should not be reclassified to specify operation on Channel 259C0, rather than 259C. We also have before us the following: (1) a Petition for Rule Making ("Petition") and a hybrid application (the "Application") filed on March 1, 2012², by Roy E. Henderson ("Henderson"), which triggered issuance of the *Order to Show Cause*; (2) an "Opposition to Petition for Rulemaking and Petition to Deny Application," filed on February 8, 2013, by Family Life ("Opposition to Reclassification");³ and (3) various related pleadings.⁴ For the reasons set forth below, we deny Family Life's Opposition to Reclassification, and we order that the license of Station WUGN(FM), Midland, Michigan, be modified to specify operation on Channel

¹ *Reclassification of License of Station WUGN(FM) Midland, Michigan*, Order to Show Cause, 28 FCC Rcd 119 (MB 2013) ("Order to Show Cause").

² See File No. BPH-20120301ADL. On May 11, 2012, Henderson filed a Supplement ("Supplement") to the Petition.

³ Although Family Life captions its pleading, "Opposition to Petition for Rulemaking and Petition to Deny Application," it addresses only the reclassification proposed in the *Order to Show Cause*. We therefore shall treat that filing as a response objecting to the *Order to Show Cause*. See *Order to Show Cause*, 28 FCC Rcd at 120, ¶ 6.

⁴ Those pleadings include the following: (1) "Opposition to Petition to Deny and Reply to Opposition for Rule Making," filed by Henderson (February 19, 2013) ("Opposition"); (2) "Reply to Opposition to Petition to Deny," filed by Family Life (February 28, 2013) ("Reply to Opposition"); and (3) "Statement of Intention in Response to *Order to Show Cause*," filed by Family Life (February 22, 2013) ("Statement of Intention").

259C0, as proposed in the *Order to Show Cause*. We defer decision on the Petition and the Application, pending further proceedings.⁵

Background. The Application proposes to upgrade Station WCUZ(FM) from Channel 261A to Channel 264C3 at Bear Lake, Michigan. To accommodate the proposed upgrade, Henderson filed the Petition requesting the substitution of Channel 260A for vacant Channel 263A at Custer, Michigan.⁶ In order to facilitate the channel substitution at Custer, Henderson further requests the reclassification of Station WUGN(FM), Channel 259C, Midland, Michigan, to specify operation on Channel 259C0.⁷

In response to Henderson's request, we issued to Family Life an *Order to Show Cause* why Station WUGN(FM) should not be reclassified as a C0 facility. Because Station WUGN(FM) is operating below minimum Class C antenna height of 451 meters above average terrain, it is subject to reclassification as a Class C0 facility.⁸

Pursuant to Sections 1.405(a) and 73.3584 of the Commission's Rules,⁹ Family Life seeks denial and dismissal of the Petition and the Application, alleging that the *Order to Show Cause* was improperly issued. Family Life claims; (1) that Henderson failed to certify that there are no other available alternative channel;¹⁰ (2) the *Revised Allotment Procedure* applies only to changes of city of license, and it does not appear to be relevant to the upgrade facilities and vacant allotment channel substitution as proposed by Henderson; and (3) Henderson failed to comply with Note 4 to Section 73.3573 of the Commission's Rules, because the Application is not directly short-spaced to Station WUGN(FM). Family Life submitted a statement of its intention to file a minor modification application to upgrade Station WUGN(FM), in order "to preserve Class C facilities,"¹¹ but failed to file such an application.¹²

⁵ See *Custer, Michigan*, Notice of Proposed Rule Making, MB Docket No. 14-66, DA 14-550 (rel. April. 25, 2014).

⁶ See n.2, *supra*. See also *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 (2006) ("*Revised Allotment Procedure*").

⁷ See Petition at 2. See also *1988 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 21649, 21664 (2000) (holding that the [C to C0] reclassification procedure ... may be initiated through the filing of an original rule making petition to amend the FM Table of Allotments") ("*Radio Streamlining Order*"). See also 47 C.F.R. § 1.420, Note (directing the staff to issue an order to show cause where triggering petition proposes "an amendment ... to the FM Table of Allotments").

⁸ See 47 C.F.R. § 73.3573, n.4; and *Radio Streamlining Order*, 15 FCC Rcd at 21662-63, ¶ 26.

⁹ See 47 C.F.R. §§ 1.405(a) and 73.3584.

¹⁰ See *Opposition to Reclassification* at 2-3.

¹¹ Statement of Intention at 1.

¹² The *Order to Show Cause* specified that an application for a construction permit must be filed by August 26, 2013. See *Order to Show Cause*, 28 FCC Rcd at 120, ¶7. Although Family Life filed a minor modification application to correct the reference coordinates for WUGN's existing facilities, see File No. BPED-20130520ACY, it did not file an application for a construction permit to increase the antenna height to satisfy the Class C minimum of 451 meters HAAT.

Discussion. We issued the *Order to Show Cause* to Family Life, pursuant to Section 316(a) of the Communications Act of 1934, as amended.¹³ Section 316 “grants the Commission broad power to modify licenses” upon a finding that the proposed modification serves the public interest, convenience and necessity. As discussed below, we find that Station WUGN(FM) is subject to automatic reclassification to specify operation on Channel 259C0 Midland, Michigan.

When the Commission created the C0 intermediate class and established a reclassification procedure for Class C stations, it determined that such reclassification would be triggered “only where a specific, *bona fide* demand for the spectrum is expressed.”¹⁴ The Commission did not limit reclassification proceedings to change of community of license requests. On the contrary, the Commission anticipated that a C0 reclassification could be proposed to permit “substantial service improvements by existing stations.”¹⁵ In addition, we find no evidence that the Commission intended to limit C0 reclassifications to situations involving direct mutual exclusivity. In accordance with that policy goal, in a prior proceeding we ordered a C0 reclassification to facilitate an upgrade for another station.¹⁶ Family Life’s contentions thus are inconsistent with the Commission’s stated policy and precedent.

Family Life’s contention that Henderson should have considered the possibility of upgrading on a non-adjacent channel is without merit. Under the Commission’s Rules, only minor change applications may be filed outside a designated filing period or “window.”¹⁷ Minor change applications for channel changes are limited to adjacent channels, intermediate frequencies, or co-channels of a station’s existing FM broadcast station authorization.¹⁸ Should Henderson file an application to upgrade on any other channel, the application would be considered one for a major change, and therefore subject to dismissal.¹⁹ Henderson was correct to exclude non-adjacent channels from consideration, and he provided the requisite certification that there is only one channel available for the proposed upgrade, FM Channel 264C3.²⁰

In the *Radio Streamlining Order*, the Commission stated that a Class C licensee whose station is subject to potential reclassification as a Class C0 facility “may successfully challenge reclassification by demonstrating that the triggering application violates the Commission’s technical rules or that there is another frequency available for the proposed new or improved service.”²¹ Family Life has demonstrated neither a technical violation of the Commission’s rules nor the availability of another frequency. We

¹³ 47 U.S.C. § 316(a). See also 47 C.F.R. § 1.87.

¹⁴ See *Radio Streamlining Order*, 15 FCC Rcd at 21662, ¶ 26.

¹⁵ *Radio Streamlining Order*, 15 FCC Rcd at 21665, ¶ 30.

¹⁶ See, e.g., *Reclassification of License of Stations KMXV(FM), Kansas City, Missouri and KSRC(FM), Kansas City, Missouri*, Order to Show Cause, 20 FCC Rcd 12182, ¶ 1 and n.2 (MB 2005); *Boonville and Wheatland, Missouri*, Notice of Proposed Rule Making, 21 FCC Rcd 6420 (MB 2006), and Report and Order, 21 FCC Rcd 11477 (MB 2006).

¹⁷ See 47 C.F.R. § 73.3573.

¹⁸ *Id.* at subsection (a)(1).

¹⁹ *Id.* at subsections (a)(2), (b)(1) and (2), and (f)(2)(i).

²⁰ See Supplement; see also Opposition at 2.

²¹ *Radio Streamlining Order*, 15 FCC Rcd at 21664, ¶ 29.

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therefore deny Family Life's Opposition to Reclassification. Because Family Life did not timely file an application for a construction permit to upgrade WUGN's facilities to minimum Class C antenna height, the station's license is subject to automatic reclassification.²²

Conclusion/Action. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 1544(i), 155(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective the date of this letter, the FM assignment IS MODIFIED as follows:

<u>Community</u>	<u>Channel Number</u>
Midland, Michigan	Delete 259C
Midland, Michigan	Add 259C0

IT IS FURTHER ORDERED, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WUGN(FM), File No. BLED-20130702ABR, IS MODIFIED to specify operation on Channel 259C0 in lieu of Channel 259C, at Midland, Michigan.

IT IS FURTHER ORDERED, that the "Opposition to Petition for Rule Making and Petition to Deny the Application," submitted in this proceeding by Family Life Broadcasting System, is hereby DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² *Id.*, 15 FCC Rcd at 21665, ¶ 30 ("[a] station will be downgraded automatically . . . after 180 days if it fails to file an acceptable construction permit application"). See also *Order to Show Cause*, 28 FCC Rcd at 120, ¶ 7.