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Washington, D.C. 20554

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In Re: **KVNW(FM), Napavine, WA**
Facility ID Number: 189494
File No: BNPH-20110630AHJ

Application for New Station

Dear Counsel:

We have before us the referenced application, as amended, (the "Amended Application") of Threshold Communications ("Threshold") for a new FM station at Napavine, Washington. On December 18, 2014, we rescinded the grant of the Amended Application and returned it to pending status until such time as Threshold has properly completed its post-filing local notice.[1] Threshold has now completed public notice,[2] which generated additional public comments.[3] For the reasons discussed below, we grant the Amended Application.

Background: Threshold was the winning bidder in Auction 91 for a new FM allotment at Clatskanie, Oregon. Threshold filed a long-form application to implement its winning bid on Channel

[1] *See Donald E. Martin, Esq., and Meredith S. Senter, Esq.,* Letter, 29 FCC Rcd 15300 (MB 2014) ("*Rescission Letter*").

[2] *See* Threshold Supplement filed on February 27, 2015.

[3] Premier filed a Response to Bureau's Section 307(b) Analysis on March 4, 2015. Additional comments were filed by: (1) Mayor Diane Pohl, City of Clatskanie on February 18, 2005; (2) Marvin Hoover, Police Chief of Clatskanie on February 18, 2015; (3) Clatskanie Library District on February 24, 2015; (4) Quincy Water Association, Inc., on February 24, 2015; (5) Doris Gresho on February 24, 2015; (6) Clatskanie Rural Fire Protection District on March 2, 2015; (7) Kris Lillich on March 2, 2015; (8) Clatskanie School District on March 3, 2015; (9) Clatskanie People's Utility District on February 9, 2015; (10) Betsy Johnson, State Senator on February 10, 1015; (11) Eric Stephenson on February 10, 2015; (12) Clatskanie Senior Citizens, Inc., on March 30, 2015; (13) Clatskanie Garden Club on April 6, 2015; (14) Clatskanie Forward on April 8, 2015; (15) Clatskanie Chamber of Commerce on February 8, 2015; (16) Brad Witt, State Representative on March 26, 2015; (17) The Honorable Suzanne Bonamici, U.S. House of Representatives (collectively, "Clatskanie Commenters").

225C3 at Napavine, Washington, pursuant to Section 73.3573(a)(i) and (ii) of the Commission's Rules ("Rules").[4] On August 27, 2012, Premier Broadcasters, Inc., licensee of Station KITI(AM), Centralia-Chehalis, Washington, filed an Informal Objection ("Objection") against the Amended Application, arguing, *inter alia*, that Clatskanie has a greater need for a new radio station than Napavine. On March 11, 2013, we denied the Objection, granted the Amended Application,[5] and found that the Amended Application would result in a preferential arrangement of allotments under the FM Allotment Priorities.[6] On April 15, 2013, Premier filed a Petition for Reconsideration of the *Letter Decision*, arguing that Threshold had improperly certified in the Amended Application that it had complied with the post-filing local public notice requirements set forth in Section 73.3580(c) of the Commission's Rules ("Rules").[7] On reconsideration, we rescinded the grant of the Amended Application and returned it to pending status because Threshold had not complied with Section 73.3580(c) in several respects. We also withheld final resolution of the Section 307(b) issues until additional comments could be filed. .

In order to facilitate the development of a complete record, we sought in the *Rescission Letter* to clarify our initial Section 307(b) analysis. Previously, in the *Letter Decision*, we compared the existing and proposed arrangement of allotments under Priority 3 as first local services at Clatskanie and Napavine. Because Napavine (population 1,766) is larger than Clatskanie (population 1,737), we preferred Napavine.[8] Thereafter, Threshold submitted a new engineering study in response to Premier's contention, in its Petition for Reconsideration, that Clatskanie is, in fact, a rural community while Napavine is an urban community. Threshold submitted its new study which purported to show that a station operating from the Clatskanie reference coordinates would provide 70 dBu coverage to more than 50 percent of the Longview, Washington urbanized area and, therefore, that the allotment should be treated as serving the entire urbanized area. In the *Rescission Letter,* we stated that a staff engineering analysis confirmed that, using the allotment reference coordinates for Channel 225C3 at Clatskanie, a station would provide a 70 dBu signal to 100 percent of Clatskanie and 50 percent or more of the Longview urbanized areas. Accordingly, we revised our Section 307(b) analysis and offered our tentative view that the Amended Application would provide a preferential arrangement of allotments as argued by Threshold.[9]

In its Comments, Premier contends that our "tentative view" is incorrect because we compared the hypothetical reference coordinates for Clatskanie to an existing tower site for Napavine. Premier believes

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[4] 47 C.F.R. § 73.3573(g) (permitting the modification of an FM station's authorization or a winning bidder's FM assignment to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest, provided, *inter alia,* the reallotment would result in a preferential arrangement of allotments).

[5] *See Donald E. Martin, Esq., and Meredith S. Senter, Esq.,* Letter, Ref. 1800B3-DD (Mar. 11, 2013) ("*Letter Decision*").

[6] 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). *Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 FCC 2d 88 (1982).

[7] 47 U.S.C. § 73.3580(c).

[8] *See Letter Decision* at 3.

[9] In support of this position, a staff engineering study confirmed that there are no existing towers to which a Napavine station could be relocated that would provide a 70 dBu signal to 50 percent or more of the Longview urbanized area,

that *Rural Radio* requires the comparison of existing tower sites.[10] Premier submits an engineering study of existing towers and contends that neither an otherwise rule-compliant Clatskanie nor a Napavine station operating from any existing tower would provide 70 dBu coverage to 50 percent or more of the Longview urbanized area.[11] Alternatively, Premier alleges that, if hypothetical sites may be compared, both a Clatskanie and a Napavine station could provide 70 dBu service to over 50 percent of the Longview urbanized area. Premier asserts that, regardless whether existing towers or hypothetical sites are compared, Threshold has not met its burden to demonstrate that grant of the Amended Application would result in a preferential arrangement of allotments.

Discussion. The narrow issue before us is whether an auction winner, in determining whether a proposed community of license change constitutes a preferential arrangement of allotments, must consider any transmission facilities other than the maximum class facilities at its specified reference coordinates at the "move-out" allotment community. We conclude that it does not. Under *Rural Radio* procedures, a licensee proposing to change its community of license uses its existing facilities to calculate its current signal coverage. In calculating urbanized area coverage at the proposed new community it must use its proposed facilities, and must also consider all existing towers that provide requisite community coverage to assess proposed "move-in" service.[12] This asymmetrical treatment is based on the Commission's concern that while authorized service is the best measure of existing service, an applicant could first claim a Priority 3 preference by specifying a transmitter site for the "move-in" community that would not provide a 70 dBu signal over 50 percent or more of an urbanized area. Once authorized, the applicant could increase service to the urbanized area – perhaps negating the Priority 3 preference under the Urbanized Area Service Presumption[13] – by filing a same-community minor change application, thereby avoiding a second Section 307(b) analysis. In contrast, no concern about manipulation arises when licensed facilities are used to assess service at the move-out community; it is axiomatic that licensed facilities prove the most accurate measure of existing service.

Similarly, there is only limited opportunity for manipulation when an auction winner's allotment coordinates are used. First, these coordinates establish core rights for an auction participant. Reference coordinates can be chosen to facilitate class upgrades at the long-form application filing stage. Moreover, these coordinates are used to determine whether a proposed community of license modification satisfies mutual exclusivity requirements.[14] More importantly, applying a "could be modified" standard for allotted stations based on existing towers could *only* make it easier for an applicant to establish that the community of license modification would result in a preferential arrangement of allotments, i.e., to establish that only Priority 4 considerations apply to the move-out community. Where an applicant has no flexibility "to

[10] *See Rural Radio,* 26 FCC Rcd at 2575 (¶ 35 and n.97) ("The determination of whether a proposed facility "could be modified" to cover 50 percent or more of an urbanized area will be made based on an applicant's certification that there are no existing towers in the area to which, at the time of filing, the applicant's antenna could be relocated pursuant to a minor modification application to serve 50 percent or more of an Urbanized Area.")

[11] *See* Premier Response to Bureau's Section 307(b) Analysis, Engineering Statement.

[12] *Rural Radio*, 26 FCC Rcd at 2572-77 and n.97).

[13] *See Rural Radio*, 26 FCC Rcd at 2572.

[14] 47 C.F.R. § 73.3573(g)(2).

provide a favorable Section 307(b) outcome" with regard to the move-out community,[15] we conclude that it is unnecessary to expand the service analysis to include existing towers.[16]

Finally, we received numerous comments from government officials, civic organizations, and residents of Clatskanie. Although the Clatskanie Commenters urge the Commission to retain the allotment at Clatskanie, it is well established that a winning bidder in an FM auction or the holder of an FM authorization cannot be forced to build a new station or retain an existing station at a particular community community.[17] Rather, a winning bidder may implement its winning bid at a different community of license provided that the requirements of Section 73.3573(g) are met.[18] These requirements have been satisfied because the allotments of Channel 225C3 at Clatskanie and Napavine are mutually exclusive and the Amended Application will result in a preferential arrangement of allotments. Accordingly, it is permissible to reallot Channel 225C3 to Napavine in spite of the comments for its retention at Clatskanie.

Local Public Notice. In response to the *Rescission Letter,* Threshold has submitted an Affidavit of Publication of a public notice of the Amended Application in the *Clatskanie Chief* for three successive weeks and in the *Chronicle* in Centralia, Washington twice a week for two successive weeks in January 2015. We find that Threshold has satisfied the post-filing local public notice requirements of Section 73.3580.

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[15] *See Rural Radio*, 26 FCC Rcd at 2576 ¶ 36.

[16] *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, 14219 (2006) ("[A]ny application proposing a community of license change filed by a permittee that has not built its current permitted facilities and that is not mutually exclusive with either the applicant's built and operating facilities *or its original allotment* shall be returned as unacceptable for filing.") (emphasis added).

[17] *See Parker, Arizona,* Report and Order, 17 FCC Rcd 9578 (MB 2002) (dismissing a counterproposal because it proposes a change community of license without the licensee's consent).

[18] *See* 47 C.F.R. § 73.3573(g).

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Amended Application of Threshold Communications (File No. BNPH-20110630AHJ) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Diane Pohl, Mayor
Marvin Hoover, Chief of Police
Clatskanie Library District
Quincy Water Association, Inc.
Doris Gresho
Clatskanie Rural Fire Protection District
Kris Lillich
Clatskanie School District
Clatskanie People's Utility District
Betsy Johnson, State Senator
Eric Stephenson
Clatskanie Senior Citizens Inc.
Clatskanie Garden Club
Clatskanie Forward
Clatskanie Chamber of Commerce
Brad Witt, State Representative
The Honorable Suzanne Bonamici, U.S House of Representatives