



Federal Communications Commission
Washington, D.C. 20554

August 1, 2007

DA 07-3492

In Reply Refer to:

1800B3-TSN

Released: August 1, 2007

Radio Westfield
16 Walker Avenue
Westfield, MA 01085-1751

Re: AM Broadcast Auction No. 84

Radio Westfield

New(AM), Westfield, Massachusetts

Facility ID No. 161058

File No. BNP-20041029AFH

**Application for AM Broadcast Station
Construction Permit**

Dear Applicant:

We have before us the October 29, 2004, application ("Application") of Radio Westfield ("RW") for a new AM Broadcast Station Construction Permit at Westfield, Massachusetts.¹ Because the applicant has failed, after repeated requests, to bring the Application into technical compliance with the Commission's Rules, we dismiss the Application.

RW filed FCC Form 175 and a "tech box" submission, proposing a new AM facility at Westfield, Massachusetts, during the filing window for AM Auction No. 84. Because no other proposals filed during the Auction No. 84 filing window were mutually exclusive with RW's proposal, it was deemed a "singleton" and RW was directed to file FCC Form 301 for the proposed new facility.² The Application was filed October 29, 2004.

On April 20, 2005, the staff sent RW a letter outlining various technical deficiencies in the Application, giving RW the opportunity to amend its application within 30 days of the letter.³ RW requested and received an additional 120 days in which to file its amended Application, and subsequently filed an amendment on October 20, 2005. In its October amendment, RW requested a waiver of Section

¹ File No. BNP-20041029AFH.

² See *AM Auction No. 84 Singleton Applications*, Public Notice, 19 FCC Rcd 22569 (MB 2004).

³ *Marshall B. Sanft, Radio Westfield*, Letter (MB Apr. 20, 2005).

73.24(i) of the Commission's Rules,⁴ which requires an AM station to provide nighttime interference-free ("NIF") or nighttime 5 mV/m signal coverage to 80 percent of the community of license. In a letter to RW dated February 2, 2006, the staff found RW's waiver request to be incomplete, pointed out further deficiencies in the amended Application, and withheld further action on the Application for 30 days to allow RW to file a further amendment.⁵ RW filed a further amendment on February 24, 2006. On May 2, 2006, the staff sent RW a letter addressing RW's February amendment.⁶ In this letter the staff found, first, that the amended application increased the 25 percent root sum square ("RSS") limit to first-adjacent station WWRV(AM), New York, New York, in violation of Section 73.182 of the Commission's Rules,⁷ and second, that RW's proposed 24.1 mV/m NIF contour covered less than 25 percent of the area of the City of Westfield, and approximately 53 percent of the population. The staff therefore rejected RW's request for waiver of the Section 73.24(i) coverage requirements, providing RW 30 more days in which to file a curative amendment to the Application.

RW amended the Application again on June 1, 2006. RW proposes to reduce its nighttime power to 0.88 kW, in order to cure the increased 25 percent RSS limit to WWRV(AM). Next, RW appears to abandon its waiver request, arguing instead that RW's proposed station "will provide 5 mV/m coverage daytime to 100% of the community of Westfield, MA, and nighttime interference free coverage to 82% of the community and that, therefore, applicant's proposal complies with Section 73.24(i) of the Rules."⁸ RW bases this conclusion on its assertion that the "community" of Westfield is part of the larger township of Westfield, that the Commission has "long recognized that the boundaries of New England townships often bear little resemblance to the extent of the actual urbanized area of the township," and that therefore the Commission has "routinely" granted applications when the applicants have demonstrated the proposed facility will provide the requisite coverage to the "urbanized residential sections of a township."⁹ In support of its argument, RW submits a declaration of Lawrence B. Smith, the Principal Planner of the City of Westfield Planning Department. Mr. Smith provides a map outlining what he claims is the "urbanized area of the township of Westfield, Massachusetts, which is generally regarded as the community of Westfield."¹⁰

We find RW's showing to be unpersuasive. The principal difficulty with RW's argument stems from the varying terms used to describe Westfield, Massachusetts. RW cites case precedent in an attempt to establish that the "urbanized area" of a township is not co-terminous with the township boundaries, and thus that we may not require it to cover a specified percentage of the township boundaries.¹¹ While the Commission has, in the past, recognized that the population centers of New England townships often encompass a much smaller area than that described by the township boundaries, there are two flaws in

⁴ 47 C.F.R. § 73.24(i).

⁵ *Marshall B. Sanft, Radio Westfield*, Letter (MB Feb. 2, 2006).

⁶ *Marshall B. Sanft, Radio Westfield*, Letter (MB May 2, 2006).

⁷ 47 C.F.R. § 73.182.

⁸ Exhibit 1 to amended Application.

⁹ *Id.*

¹⁰ Declaration of Lawrence B. Smith, Figure 1A to Amended Engineering Exhibit to Application.

¹¹ Specifically, RW cites *Andy Valley Broadcasting System, Inc., Auburn, Maine*, Memorandum Opinion and Order, 12 FCC2d 3 (1968) ("*Andy Valley*"), and *Manchester Broadcasting Co.*, Decision, 24 FCC 199, 221 (1958) ("*Manchester Broadcasting*").

RW's argument as applied to the facts in this case. First, the U.S. Census Bureau lists Westfield as a city, not a township, with a 2000 Census population of 40,072. Census data indicate not only that Westfield has defined city limits, but also that there is a sizeable population within the city limits lying outside RW's proposed NIF contour. In fact, because RW must reduce nighttime power to be in technical compliance, its new NIF contour only covers 15,395 persons, or 38 percent of the city's population.

Second, the declaration of Mr. Smith is of little value, as Mr. Smith does not address city population, as calculated by the Census Bureau, but rather the "urbanized area of the township" of Westfield, which he states is "generally regarded as the community of Westfield." The term "community of Westfield," as used by Mr. Smith, is so vague as to be meaningless, all the more because his claim that it is "generally regarded" as such lacks specificity as to who so regards it. We would expect a city official to provide specific facts regarding the City of Westfield, not some vaguely defined "community of Westfield." In essence, Mr. Smith appears to assert that only a subset of the population residing within the city limits of Westfield – specifically, that lying within RW's NIF contour – is considered to comprise the "community of Westfield." If this is in fact Mr. Smith's claim, he has provided no basis for us to reject Census Bureau data in favor of his vague and unsupported claim. Likewise, Mr. Smith's reference to the "urbanized area of the township" lacks meaning in this context. The U.S. Census Bureau defines Urbanized Areas, and much of the City of Westfield lies within the Springfield, Massachusetts Urbanized Area, including substantial portions lying outside RW's proposed NIF contour. This, again, contradicts RW's claim that only a small percentage of the population of Westfield lies outside this contour.¹²

We find that, given the numerous unsuccessful attempts by RW to propose a site that complies with our technical contour protection and community coverage rules, it is impossible for RW to find a technically compliant site that will serve the proposed community of license, Westfield, Massachusetts. We conclude that further attempts to amend the Application will not avail RW. Accordingly, the Application IS DISMISSED.¹³

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: David Tillotson, Esq.

¹² Cf. *Andy Valley*, in which the Commission found an applicant to be in substantial compliance with the community coverage requirements of the Rules even though it did not, and could not, provide an appropriate signal over the entire area within the township boundaries. "[Facts provided by applicant] further show that the urbanized area of Auburn is very much smaller than the area within the designated city limits and that the 5-mV/m signal contour does in fact encompass the most distant urbanized residential sections." 12 FCC2d at 4. By way of contrast, in the instant case RW's proposed NIF contour does not even cover half of the population found within the designated city limits of Westfield. See also *Manchester Broadcasting*, 24 FCC at 221, in which the Commission recognized that, historically, New England townships were minor civil divisions of counties, often bearing little connection to the populated areas within. The communities at issue there contained "substantial rural areas surrounding the urbanized portions. The latter are fairly compact, so we are not presented with the problem of how to apply the rules to a 'town' containing numerous and scattered urban areas." Here, the urbanized portions encompassed by RW's NIF contour are surrounded by numerous additional urbanized portions, rather than just rural areas.

¹³ The corresponding AM Auction No. 84 Tech Box submission of the applicant, File No. BNP-20040129ALD, IS ALSO DISMISSED.