

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Pacific Junction, Iowa))
)
KGGG(FM), Pacific Junction, Iowa (Facility)
ID No. 164101) Construction Permit FCC)
File No. BNPH-20041228AAI, as modified)
by BMPH-20061019AAM)
)

MB Docket No. 10-108

FILED/ACCEPTED

JAN - 7 2011

To: The Commission, Office of the Secretary
Attn: Media Bureau, Audio Division

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

Connoisseur Media, LLC (“Connoisseur”) by its counsel and pursuant to Section 1.429 of the Commission’s Rules,¹ hereby seeks reconsideration of the Media Bureau’s decision in the above-captioned proceeding. By its Report and Order released November 24, 2010, the Media Bureau amended the Table of Allotments for FM Broadcast Stations contained in Section 73.202(b) of the Commission’s Rules to delete the allocation for Channel 299C2 at Pacific Junction, Iowa.² In addition, the Media Bureau cancelled the construction permit held by Connoisseur for the new commercial FM broadcast station on Channel 299C2 at Pacific Junction

¹ 47 C.F.R. § 1.429.

² *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Pacific Junction, Iowa)*, Report and Order, MB Docket No. 10-108, 75 FR 76294, DA 10-2236 (rel. Nov. 24, 2010). Publication of this Report and Order in the Federal Register occurred on December 8, 2010, thus this Petition is timely filed consistent with Section 1.4 of the Commission’s Rules.

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and deleted the previously assigned call letters “KGGG(FM)”. As detailed below, the Media Bureau has erred in its decision to delete this channel without any related action by the Commission to grant Connoisseur a refund of the winning bid payment it made in purchasing this unusable channel from the Commission in FCC Auction No. 37.

Currently, Connoisseur has a petition pending before the Commission seeking a refund of the payment it made to the FCC in connection with the award of Channel 299 at Pacific Junction in FCC Auction No. 37.³ As set forth in detail in that Petition and its related Supplements, the construction permit awarded to Connoisseur as a result of the auction authorized it to build a new commercial FM radio station on Channel 299 to serve the community of Pacific Junction, Iowa. However, the Channel proved to be unusable for FM broadcast operations as the use of that frequency conflicts with a number of communications frequencies used by the Federal Aviation Administration (“FAA”) for air navigation purposes. Collectively, Connoisseur spent several years and many millions of dollars in preparation for the construction and operation of a radio station consistent with the authorization awarded by the Commission – a station that the FAA issues have rendered unbuildable on the authorized frequency.

Connoisseur remains willing to construct the station, but is not able to do so because of these FAA issues. Connoisseur supported the proposed deletion of this channel as proposed by the Media Bureau,⁴ but its support was specifically contingent on the refund of the auction payment made by Connoisseur for the Pacific Junction allocation in FCC Auction No. 37. Should the FCC not refund that payment, it must honor its end of the bargain made in the contract that resulted from the auction and supply Connoisseur with a usable FM radio channel at

³ Connoisseur Petition for Refund of Winning Bid Payment filed March 27, 2009.

⁴ *Pacific Junction, Iowa*, Notice of Proposed Rule Making, 25 FCC Rcd 4983 (MB 2010).

Pacific Junction. The FCC simply cannot both delete the channel and keep the money it was paid by Connoisseur for the right to broadcast at Pacific Junction.

While the Media Bureau's recent Report and Order discusses the background of Channel 299 at Pacific Junction and Connoisseur's lengthy and costly efforts to resolve the FAA issues, it mischaracterizes Connoisseur's support for the proposed deletion of the channel, implying that its support was unconditional. In fact, Connoisseur's comments make clear that its support of the proposal was specifically contingent on the grant of the request for refund.

Connoisseur clearly did not receive the benefit of the bargain for which it contracted with the FCC in the auction, as the Commission failed to grant an authorization capable of being used for its intended purpose – FM radio operations on Channel 299 at Pacific Junction, Iowa. Now, however, without a related action to grant the requested refund, Connoisseur is in an even worse position than before as the Media Bureau has now stripped the construction permit and deleted the underlying allocation. The Media Bureau's action in this case is inequitable and must be reconsidered.

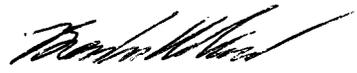
Conclusion

As set forth in the pending Petition for Refund, Connoisseur paid approximately \$4.4 million dollars to the FCC for an FM frequency that simply cannot be used for FM radio. It then spent millions of dollars more in reliance on the FCC's promise to make available a channel that could be used for FM broadcasting. As demonstrated by the Media Bureau's deletion of the allocation for Pacific Junction, the Commission agrees that the channel cannot be used for FM radio as long as the FAA uses its current interference programs. Thus, Connoisseur did not receive the benefit of the bargain made in the auction. Given the unique situation presented by this case, and the unique equities involved here, Connoisseur should receive a refund of the

auction payments that it made, with interest. The Media Bureau's deletion of the Pacific Junction allocation and cancellation of Connoisseur's construction permit the requested refund is inequitable and must be reconsidered.

Respectfully submitted,

CONNOISSEUR MEDIA, LLC

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Dated: January 7, 2011

CERTIFICATE OF SERVICE

I, Rhea Lytle, a Secretary in the law firm of Davis Wright Tremaine LLP, hereby certify that on this 7th day of January 2011, I caused a copy of the foregoing “**PETITION FOR RECONSIDERATION**” to be served by Hand Delivery upon the following:

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