

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

In re Application of	)	
	)	
PEOPLES NETWORK, INC.	)	File No. BNP-20000128ABJ
	)	Facility ID No. 122416
For a New AM Broadcast Station	)	
At Bunnell, Florida	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 17, 2004**

**Released: June 21, 2004**

By the Commission:

1. The Commission has before it the July 29, 2002, Application for Review filed by Peoples Network, Inc. (“Peoples”), applicant for a new AM broadcast station at Bunnell, Florida.<sup>1</sup> Peoples’s application was determined to be mutually exclusive (“MX”) with eight other applications filed during the window for AM Broadcast Auction No. 32, the nine applications being designated MX Group AM 14.<sup>2</sup> Peoples requests review of the Media Bureau’s (“Bureau”) June 25, 2002, staff decision (“Staff Decision”)<sup>3</sup> in which the Bureau announced that it would continue to process the application of Frank McCoy (“McCoy”) for a new station at Sandy Springs, Georgia; dismissed three applications; dismissed Peoples’s August 30, 2001, petition for reconsideration; and announced that the four remaining mutually exclusive applications, including Peoples’s, would be dismissed upon grant of a construction permit to McCoy.<sup>4</sup> For the reasons discussed below, we deny the Application for Review.

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<sup>1</sup> File No. BNP-20000128ABJ.

<sup>2</sup> In addition to Peoples’s application, MX Group AM 14 consisted of applications filed by the following individuals or entities: Dale Hendrix (“Hendrix”), for a new AM station at Norcross, Georgia (File No. BNP-20000201ACJ); Frank McCoy (“McCoy”), for a new AM station at Sandy Springs, Georgia (File No. BNP-20000201ACV); Garner Ministries, Inc. (“Garner”), for a new AM station at Bremen, Georgia (File No. BNP-20000127AAW); Jeffrey N. Eustis (“Eustis”), for a new AM station at Dunwoody, Georgia (File No. BNP-20000127ACA); The MacDonald Broadcasting Company (“MacDonald”) for new AM stations at Charleston, South Carolina (File No. BNP-20000128ABW) and Orange Park, Florida (File No. BNP-20000128ABX); Three Sisters Minority Communication, Inc. (“Three Sisters”), for a new AM station at Union City, Georgia (File No. BNP-20000127ABS); and William B. McCarter (“McCarter”) for a new AM station at Suwanee, Georgia (File No. BNP-20000128ADJ). *Public Notice*, “AM Auction No. 32 Mutually Exclusive Applicants Subject to Auction,” 15 FCC Rcd 20449 (MMB 2000) (“*Mutually Exclusive Public Notice*”).

<sup>3</sup> *Letter to Mr. Frank McCoy, et al.*, Ref. No. 1800B3-TSN (MB June 25, 2002).

<sup>4</sup> Staff Decision at 7. The Hendrix, Garner, and Three Sisters applications were dismissed, with the Peoples, MacDonald, Eustis, and McCarter applications to be dismissed upon grant of a construction permit to McCoy. McCoy subsequently filed a complete Form 301 application for a new AM broadcast station at Sandy Springs, Georgia, File No. BPH-20010904AAP.

2. **Background.** Grant of a broadcast application for a new AM facility generally is determined by competitive bidding procedures.<sup>5</sup> However, in the *Broadcast First Report and Order*, the Commission held that these procedures must take into account the mandate under Section 307(b) of the Communications Act of 1934<sup>6</sup> (“Section 307(b)”) to provide a “fair, efficient, and equitable” distribution of radio services across the nation. Pursuant to our AM broadcast auction procedures, the Bureau requested that applicants in MX Group AM 14 file amendments addressing the respective merits of their applications under Section 307(b).<sup>7</sup> At that time, the Bureau stated it would dismiss the applications of parties not filing Section 307(b) amendments.<sup>8</sup> In the Staff Decision, the Bureau dismissed Garner, Three Sisters, and Hendrix’s applications for failure to file amendments responsive to the October Section 307(b) Request.<sup>9</sup> The Bureau also concluded that MacDonald’s applications could not prevail, as neither proposed first local service to its respective community of license.<sup>10</sup> Of the remaining four mutually exclusive applications, all proposing first local service, McCoy’s Sandy Springs proposal received a dispositive Section 307(b) preference, because Sandy Springs was the most populous of the four proposed communities.<sup>11</sup>

3. **Discussion.** The Application for Review is premised on Peoples’s assumption that its Bunnell proposal and McCoy’s Sandy Springs proposal “were not mutually exclusive and could both be granted.”<sup>12</sup> Peoples also contends that the Bureau engaged in a novel treatment of the “daisy chain” of applications in MX Group AM 14, and that in allegedly failing to view the applications as a group, it did not consider which combination of proposals would best promote a fair, efficient, and equitable

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<sup>5</sup> See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses* (“*Broadcast First Report and Order*”), 13 FCC Rcd 15920 (1998); *recon denied*, 14 FCC Rcd 8724 (1999); *modified*, 14 FCC Rcd 12541 (1999).

<sup>6</sup> 47 U.S.C. § 307(b).

<sup>7</sup> *Id.* See also *Broadcast First Report and Order*, 13 FCC Rcd at 15964-65; *Letter to Mr. Frank McCoy, et al.*, Ref. No. 1800B3-TSN (MMB Oct. 22, 2001) (“October Section 307(b) Request”). The October Section 307(b) Request bore OMB Control No. 3060-0996.

<sup>8</sup> See October Section 307(b) Request at 3.

<sup>9</sup> Staff Decision at 2 n.1.

<sup>10</sup> See *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982) (“*FM Assignment Policies*”). The FM allotment priorities are as follows: (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). The priorities set forth in *FM Assignment Policies* are also used in evaluating applicants for new AM stations. *Alessandro Broadcasting Co.*, 99 F.C.C.2d 1 (1984).

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> Application for Review at 4.

distribution of radio services.<sup>13</sup> Peoples thus alleges that the Bureau failed to conduct a “traditional Section 307(b) analysis” under the *Broadcast First Report and Order*.<sup>14</sup>

4. However, Peoples cites no authority in conflict with the manner in which the Bureau determined mutual exclusivity, and we find no error in the determination that Peoples’s Bunnell and McCoy’s Sandy Springs applications are mutually exclusive.<sup>15</sup> The Bureau’s technical analysis of the two applications shows that McCoy’s proposed Sandy Springs nighttime facility would increase the 50 percent exclusion limit of Peoples’s nighttime proposal for the new AM station at Bunnell, *i.e.*, would cause prohibited nighttime interference, in violation of Section 73.182 of our rules.<sup>16</sup> As we previously held in *Nelson Enterprises*,<sup>17</sup> two applications for new AM broadcast stations are considered mutually exclusive if either application enters the 25 percent root-sum-square (“RSS”) nighttime interference limit of the other.<sup>18</sup> Because McCoy’s proposed facility would increase Peoples’s 50 percent exclusion limit, it would necessarily exceed the 25 percent threshold. The two proposals cannot both be granted, and thus by definition are mutually exclusive.<sup>19</sup>

5. We also reject Peoples’s suggestion that the Staff Decision constituted prejudicial error, based on its assertion that the staff failed to conduct a “traditional 307(b) analysis” and failed “to give Peoples notice of an entirely new procedure.”<sup>20</sup> As discussed above, the staff’s Section 307(b) analysis was in keeping with Commission rules and procedures, as announced in both the *Broadcast First Report and Order* and the *Mutually Exclusive Public Notice* for AM Auction No. 32.<sup>21</sup> MX Group AM 14 consisted of nine applications.<sup>22</sup> Three of these were dismissed by the Bureau for failing to respond to a

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<sup>13</sup> *Id.* at 5. In support of this contention, Peoples cites *Don Werlinger*, 4 FCC Rcd 623 (MMB 1989), *KDUN Radio, Inc.*, 1 FCC Rcd 852 (MMB 1986), and *Jesus Is Lord Ministries International*, M.M. Docket No. 86-432, 1986 WL 291149 (MMB Nov. 12, 1986). These cases, however, are hearing designation orders, each of which merely specifies an issue as to “which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.” *Don Werlinger*, 4 FCC Rcd at 623. The cases do not, as Peoples suggests, hold that a “combination of proposals” must invariably be awarded after a Section 307(b) analysis involving several applications. These hearing designation orders thus do not support Peoples’s contention in this regard.

<sup>14</sup> *Id.* at 6. See also *Broadcast First Report and Order*, 13 FCC Rcd at 15964-65.

<sup>15</sup> See, e.g., *Mutually Exclusive Public Notice*, 15 FCC Rcd at 20449 n.3 (in determining mutual exclusivity among AM applications, staff employed technical standards consistent with the Commission proceeding undertaken to revitalize and improve the AM service, as well as 47 C.F.R. §§ 73.37, 73.182, and 73.183(b)(1)). See also *Nelson Enterprises, Inc.*, 18 FCC Rcd 3414 (2003) (“*Nelson Enterprises*”).

<sup>16</sup> 47 C.F.R. § 73.182. Peoples’s 50 percent nighttime limit is 11.26 mV/m, resulting from the single contribution of WTRU(AM), Kernersville, North Carolina. The computation of Peoples’s nighttime limit excludes a contribution of 12.7 mV/m from a proposed new Class A station in Belize City, Belize. It is the Commission’s practice to exclude contributions from Region 2 stations on International Frequency Registration Board (“IFRB”) list B, such as the Belize proposal, from RSS computations.

<sup>17</sup> 18 FCC Rcd at 3417-18.

<sup>18</sup> See 47 C.F.R. § 73.182(k).

<sup>19</sup> *Ashbacker v. F.C.C.*, 326 U.S. 327 (1945).

<sup>20</sup> Application for Review at 6.

<sup>21</sup> See *supra* notes 7, 14.

<sup>22</sup> *Mutually Exclusive Public Notice*, 15 FCC Rcd at 20454.

Bureau request for Section 307(b) information.<sup>23</sup> Two others were not preferred under our *FM Assignment Policies* because they did not propose first local service.<sup>24</sup> The remaining four applications, including Peoples's and McCoy's, proposed first local service to their respective communities and were all mutually exclusive with each other. The Bureau correctly awarded the dispositive Section 307(b) preference to McCoy, based on the greater population of Sandy Springs.<sup>25</sup> We therefore find no prejudice.

6. **Conclusion.** For the foregoing reasons, Peoples's Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>23</sup> Staff Decision at 2 n.1.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *See, e.g., Blanchard, Louisiana and Stephens, Arkansas*, 10 FCC Rcd 9828, 9829 (1995) (when comparing first local service proposals for two well-served communities, the Commission bases its decision on a straight population comparison between the communities, even when the population differential is as small as 38 persons).