



**Federal Communications Commission  
Washington, D.C. 20554**

October 26, 2007

**DA 07-4386**

*In Reply Refer to:*

1800B3-TSN

Released: October 26, 2007

Broadcast Communications, Inc.  
P.O. Box 990  
Greensburg, PA 15601

In re: **AM Broadcast Auction No. 84**

**Broadcast Communications, Inc.**  
WKHB(AM), Irwin, Pennsylvania  
Facility ID No. 72297  
File No. BMJP-20041027ADY

**Application for Major Modification  
to AM Broadcast Station**

Dear Applicant:

This letter refers to the above-referenced application filed by Broadcast Communications, Inc. ("BCI") for major modification to the facilities of station WKHB(AM), Irwin, Pennsylvania, seeking to change the community of license from Irwin to Brentwood, Pennsylvania. For the reasons set forth below, we return the application as inadvertently accepted for filing.

**Background.** BCI timely filed its FCC Form 175 application to change the WKHB(AM) community of license during the filing window for AM Auction No. 84 ("Auction 84").<sup>1</sup> The application was determined not to be mutually exclusive with any other proposal filed in the Auction 84 filing window, and BCI was invited to file its complete FCC Form 301 application by October 29, 2004.<sup>2</sup> BCI timely filed its complete FCC Form 301 application on October 27, 2004. BCI proposes only a change in community of license, with no change to the WKHB(AM) technical facilities. BCI was thereafter instructed to submit an amendment addressing the implications of the proposed community change under Section 307(b) of the Communications Act of 1934, as amended ("Section 307(b)"),<sup>3</sup> which directs the Commission to make a "fair, efficient, and equitable" distribution of radio service among communities in the United States.<sup>4</sup> BCI timely filed its Section 307(b) amendment on August 4, 2005.

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<sup>1</sup> See *AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze*, Public Notice, 18 FCC Rcd 23016 (MB/WTB 2003).

<sup>2</sup> See *AM Auction No. 84 Singleton Applications*, Public Notice, 19 FCC Rcd 16655 (MB 2004).

<sup>3</sup> 47 U.S.C. § 307(b).

<sup>4</sup> See *Section 307(b) Amendment Deadline Established for Certain AM Auction No. 84 Singleton Applications*, Public Notice, 20 FCC Rcd 10701 (MB 2005).

WKHB(AM) is the sole local transmission service licensed at Irwin, Pennsylvania (2000 Census population 4,366). BCI proposes to change WKHB(AM)'s community of license to Brentwood, Pennsylvania (2000 Census population 10,466) as that community's first local radio transmission service. BCI's Section 307(b) amendment indicates that Irwin will continue to receive protected service<sup>5</sup> from at least five stations.<sup>6</sup>

**Discussion.** Our policies on allowing broadcast stations to change their communities of license are based on Section 307(b) and the goals of fair, efficient, and equitable distribution of radio service that underlie it. Our *FM Assignment Policies* delineate three core priorities: provision of first aural reception service to a community, provision of second aural reception service to a community, and provision of first local transmission service at a community.<sup>7</sup> The fourth priority is "other public interest matters," which encompasses any other factors that the Commission may take into consideration.<sup>8</sup> Retention of the sole local service at Irwin, and the institution of first local service at Brentwood, implicate Priority (3) – first local transmission service. However, notwithstanding that the existing and proposed arrangements of stations both trigger the same allotment priority, the Commission prohibits the removal of an existing station representing a community's sole local transmission service.<sup>9</sup> This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.<sup>10</sup> The Commission has emphasized, however, that "the fact that a proposal would create a new local service (at the expense of an existing

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<sup>5</sup> 5mV/m for AM stations and 3.16 mV/m (70 dB $\mu$ ) for FM stations.

<sup>6</sup> BCI lists five AM stations currently providing protected service to both Irwin and Brentwood, Pennsylvania: WEAE(AM), WBG(AM), and KDKA(AM), Pittsburgh, Pennsylvania; WAMO(AM), Millvale, Pennsylvania; and WMBS(AM), Uniontown, Pennsylvania. BCI does not list any FM broadcast stations, relying solely on the Commission's determination that a community receiving service from at least five stations is abundantly served. See *Family Broadcasting Group*, 53 R.R.2d 662 (Rev. Bd. 1983), *review denied*, FCC 83-559 (Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (MMB 1995).

<sup>7</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88, 91-93 (1982). Priorities (2) and (3) are co-equal. The FM allotment priorities are applied to Section 307(b) determinations for community change proposals for AM stations. *Allesandro Broadcasting Co.*, Decision, 99 FCC2d 1 (Rev. Bd. 1984).

<sup>8</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC2d at 93.

<sup>9</sup> *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("*New Community R & O*"), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097(1990) ("*New Community MO&O*"). The Commission recently re-affirmed this policy in *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, 14227-30 (2006) ("*Community of License Report and Order*").

<sup>10</sup> *Id.* On waiver standards generally, see *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest," citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

service) is not sufficient, by itself, to warrant a waiver.”<sup>11</sup> Rather, such a proposal “is presumptively contrary to the public interest.”<sup>12</sup> In this regard, the Commission has stated that:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.<sup>13</sup>

BCI acknowledges this policy but requests it be waived in this instance, citing what it terms “substantial public interest considerations” favoring such a waiver.<sup>14</sup> According to BCI, “given Brentwood’s substantially more population [sic] and its importance in the past and present, it deserves a station more than does Irwin.”<sup>15</sup> BCI further contends that the Commission policy prohibiting removal of a sole local service “is contrary to the intent of Section 307(b) and does not maximize service to the public,” noting that the interest of Irwin in retaining its local service “should not outweigh the interest of the greater number of listeners in a second community in obtaining their first local transmission service, especially when the first community is served by multiple aural services and when other public interest factors are present.”<sup>16</sup> However, the Commission clearly disagreed with BCI’s claim that the sole local service prohibition “is contrary to the intent of Section 307(b)”<sup>17</sup> when it reaffirmed that policy in the *Community of License Report and Order*.<sup>18</sup> Moreover, BCI does not adequately explain what other public interest factors are present.<sup>19</sup> In fact, BCI makes the contradictory claims that Irwin will continue to receive service from WKHB(AM), as the station’s technical facilities will not change, but that change of the community of license will result in a “net service benefit to the public.”<sup>20</sup> In this instance, there is no net service benefit, as the same number of listeners would continue to receive service.

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<sup>11</sup> *New Community MO&O*, 5 FCC Rcd at 7097.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> BCI Section 307(b) Amendment, second unnumbered page.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at third unnumbered page.

<sup>17</sup> *Id.*

<sup>18</sup> *See supra* note 8.

<sup>19</sup> BCI claims that Brentwood has “more important civic, religious, social, and commercial attributes than does Irwin.” BCI Section 307(b) Amendment, third unnumbered page. However, while BCI does provide a summary of those attributes for Brentwood, perhaps sufficient to establish Brentwood as a licensable community, it does not provide any such facts regarding Irwin, WKHB(AM)’s current community of license. Thus, we have no factual basis on which to evaluate BCI’s claim that Brentwood’s community attributes are “more important” than Irwin’s, even if there were an appropriate metric by which we could determine the relative “importance” of institutions and other attributes of different communities.

<sup>20</sup> BCI Section 307(b) Amendment, third unnumbered page.

Granting this application would fundamentally change WKHB(AM)'s service obligations. BCI is in error when it states that, because WKHB(AM) would continue to provide protected service to Irwin, "the station will have a continuing obligation to provide service to that community."<sup>21</sup> In fact, were we to grant the application, WKHB(AM)'s primary service would shift to an obligation to provide service to Brentwood.<sup>22</sup> Moreover, the Commission has previously stated that it will not accept continued reception service coverage by the station as a factor in favor of a licensee seeking to change its community of license.<sup>23</sup>

While Brentwood is unquestionably the larger community, and would be preferred if this were a comparison between proposals for new service, this in and of itself does not justify a change of community of license that would deprive the community of Irwin of a radio service on which it has come to rely for programming serving its needs. The Commission has held that the fact that a licensee proposes to remove a station to a larger community does not by itself justify the removal of a smaller community's sole local broadcast service.<sup>24</sup> However, this is essentially the only public interest justification proffered by BCI in support of its application.<sup>25</sup>

Therefore, we cannot find, on the existing record in this case, that there are sufficient public interest factors to offset the expectation of continued local service at Irwin, Pennsylvania. Accordingly, we cannot find that the public interest, convenience, and necessity will be served by BCI's proposal. Therefore, Broadcast Communications, Inc.'s waiver request IS DENIED, and the application of Broadcast Communications, Inc., File No. BMJP-20041027ADY, for major modification to change the community of license of station WKHB(AM), Irwin, Pennsylvania, IS RETURNED AS INADVERTENTLY ACCEPTED FOR FILING.<sup>26</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Lee J. Peltzman, Esq., Counsel for Broadcast Communications, Inc.

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<sup>21</sup> *Id.*

<sup>22</sup> Provision of city-grade service to the community of license is only one component of a station's service obligation; the station must also provide programming that will serve the designated community of license. *See, e.g., Roberts Communications, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 1138, 1139 (1996).

<sup>23</sup> *See New Community R & O*, 4 FCC Rcd at 4873.

<sup>24</sup> *See, e.g., Potts Camp and Saltillo, Mississippi*, Memorandum Opinion and Order, 16 FCC Rcd 16116 (2001) (denying relocation of sole local service at a town of 483 to a town of 1,782).

<sup>25</sup> *See also Broadcast Communications, Inc.*, Letter, 21 FCC Rcd 2959 (MB 2006), in which BCI similarly sought to change the community of license, but not the facilities, of its station WKFB(AM), Jeannette, Pennsylvania.

<sup>26</sup> The corresponding AM Auction No. 84 Tech Box submission filed by BCI, File No. BMJP-20040129AOU, IS DISMISSED.