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In Reply Refer to:

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In Re: Station KWBT(FM)
Mexia, Texas
Facility ID Number: 21494
File No: BPH-20091211AFR

Dear Ms. Crump:

This letter refers to the minor change application (the "Application") of M & M Broadcasters, Ltd. ("M & M"), licensee of Station KWBT(FM), Channel 285A, Mexia, Texas. The Application proposes a city of license modification for Station KWBT(FM) from Mexia, Texas, to Bellmead, Texas. For the reasons discussed below, we request additional information from M & M regarding the proposed modification of Station KWBT-FM to Bellmead, Texas.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,¹ which sets forth the requirements for modification of an FM Station license to specify a new community of license without providing an opportunity for competing expressions of interest. Among other requirements, an application for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments in comparison with its current service.² We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

In the Application, M & M claims that its proposal satisfies Priority 3 of the FM allotment priorities, because the proposed city of license modification could provide a first local service to Bellmead, Texas, a community with a 2008 U.S. Census population of 9,579 persons. It states that Station KLRK(AM) would continue to provide local service to Mexia.

¹ 47 C.F.R. § 73.3573(g).

² See *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) ("*Community of License Reconsideration Order*").

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). 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).

M & M proposes to relocate Station KWBT(FM) within the Waco Urbanized Area (“UA”). The proposed facilities would substantially expand service in the UA and cover 84 percent of the UA with its predicted 70 dBu signal. The station is not located within any urbanized area, nor does its 70dBu signal contour cover any part of any urbanized area.⁴ In situations such as this, when a station’s proposed community is located in an urbanized area or the station could, through a minor modification application, cover at least 50 percent of an urbanized area, the Commission has established a rebuttable presumption that the application should be treated, for Section 307(b) purposes, as a proposal to serve the urbanized area rather than the named community of license.⁵

On August 30, 2011, following release of *Rural Radio*, M & M submitted an “Updated Section 307(b) Showing Regarding Bellmead, Texas” (“Updated Showing”). In its supplement, M & M argues that Bellmead is culturally divided from the rest of the Waco UA, because the residents of Bellmead are predominantly non-Caucasian. M& M therefore contends that it is essential for Station KWBT(FM), the top-rated station in the Waco market providing programming oriented to African-Americans, to better serve its listeners by moving closer to Bellmead. M & M further argues that the proposed relocation would advance the public interest by enhancing the financial support for the station so that it can continue its sole service to the African-American community in the Waco market.

Discussion. Because Priorities 1 and 2 of our allotment priorities do not apply to the present circumstances, we proceed to evaluate the Application under Priorities 3 and 4. In applying the three-prong *Tuck* test for independence (Priority 3 status), we look first at the degree to which the station can provide coverage to the urbanized area. In this case, the extent of coverage (84 percent) of the Waco UA is a very persuasive factor that favors application of the presumption and the treatment of this move-in as one to serve the Waco market, rather than the specified community of Bellmead.

We turn next to the size and proximity of the proposed community of license relative to the central city of the urbanized area. Bellmead, the proposed community of license, has a 2010 population of 9,901 persons, while Waco, the central city of the urbanized area, has a 2010 population of 124,805. Bellmead thus has a population that is 7.9 percent of the population of Waco. Bellmead is located approximately 4.4 miles from Waco. Based on the extreme disparity in size and the close proximity of the two communities, we also find that the presumption should apply here.

The third prong of the *Tuck* test, the interdependence of the proposed community of license and the urbanized area, is based on examination of the eight factors set forth in that decision.⁶ Although Bellmead

⁴ Although KWBT(FM) is not treated as serving the Waco UA for the purpose of applying the urbanized area service presumption, it is a rated station in the Waco market. See M & M Updated Section 307(b) Showing Regarding Bellmead, Texas (submitted August 30, 2011).

⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011), *petitions for recon. pending* (“*Rural Radio*”). The Commission further provided that this presumption may be rebutted by a compelling showing of the independence of the community from the urbanized area, the community’s specific need for an outlet for local expression, and the ability of the proposed station to provide that outlet. *Id.* at 2572, ¶ 30.

⁶ In its *Rural Radio* decision, the Commission stated that factor five, pertaining to zip codes and telephone directories, is one that has “become increasingly anachronistic, and accordingly will not be given as much weight.” *Rural Radio*, 26 FCC Rcd at 2572, ¶30. M & M states that Bellmead has two zip codes, 76704 and 76705, but does not indicate whether it has its own local telephone directory.

has its own local government and provides its own municipal services, bus service is provided by the Waco Transit System. In addition, a large majority of Bellmead residents work in the larger metropolitan area, rather than in Bellmead itself.⁷ Perhaps most significant, we find that Bellmead and Waco are part of the same advertising market.⁸ Although the evidence is mixed under the third *Tuck* prong, we conclude that the record is insufficient to overcome our findings under prongs one and two, and therefore that M&M has failed to demonstrate that Bellmead is independent of the Waco UA.

An applicant seeking to rebut the *Rural Radio* urbanized area service presumption must show both that the specified community is both independent and has a need for an outlet of local expression.⁹ With regard to the latter criterion, M & M argues that Bellmead is “culturally divided from the overall Waco metropolitan area”¹⁰ Using MSA data, it notes that the Caucasian population of Bellmead is 34.5 percent while the Caucasian population of the Waco MSA is 69.8 percent. M & M fails to explain why these data are evidence of “cultural barriers”¹¹ and especially why non-Caucasian population data are relevant to establishing the need for an outlet whose programming is targeted to an African-American audience. Accordingly, we find this argument unpersuasive. Moreover, to the extent that demographic differences might evidence the presence of “cultural barriers,” the data here undermine M & M’s claim. According to 2010 US Census data, the number of African-Americans living in Bellmead is 17.5 percent and in Waco is 21.5 percent. That is, M & M’s self-avowed target audience is larger as a percentage of population and vastly larger in absolute numbers in the Waco UA when compared to the African-American population of Bellmead; thus, to the extent these data are relevant, they support application of the presumption here. Accordingly, the proposed change of community will be treated as a proposal to serve the Waco UA, rendering Priority 3 inapplicable. We therefore will examine the proposal under Priority 4, other public interest considerations.

Under Priority 4, we take into account transmission services, reception services, population gains, and other information relevant to the public interest. M & M asserts that the Bellmead has experienced a growth in population of 7.5 percent from 2000 to 2010, but that is less than the rate of growth for Waco, the principal city of the urbanized area, which increased its population by 9.7 percent during the same time period. M & M asserts that, although “KWBT is not currently located within the Waco urbanized area, it is already a part of the Waco radio market.” M & M further argues that the public interest would be served

⁷ M & M reports that 39.1 percent of Bellmead residents work in that community.

⁸ M & M states that Bellmead has (unnamed) online publications and a monthly newsletter, the *Bellmead Bulletin*. However, we find it significant that the *Waco Tribune-Herald* both covers news and community events in Bellmead and has a large circulation in the two zip codes assigned to Bellmead. Under these circumstances, we find that Bellmead is part of the Waco advertising market, despite having some minor local media outlets. See *Charles Town, West Virginia*, Memorandum Opinion and Order, 21 FCC Rcd 1521, 1523 (MB 2006) (“Insofar as Tuck factor (7) is concerned, we cannot make a favorable finding even though Stephens City has some local media under Tuck factor (2)”).

⁹ See *Rural Radio*, 26 FCC Rcd at 2573 (“In addition to demonstrating independence, a compelling showing sufficient to rebut the urbanized area service presumption must also include evidence of the community’s need for an outlet of local expressing. . . . For example, an applicant may rely on factors such as . . . physical, geographical, or cultural barriers separating the community from the remainder of the urbanized area.”).

¹⁰ Updated Showing at 4.

¹¹ *Rural Radio*, 26 FCC Rcd at 2537.

by the proposed relocation, because it would “enhanc[e] the financial support for the station so that it can continue its sole service to the African-American community in the market.”

M & M’s emphasis on KWBT’s programming, purportedly directed to the African-American segment of the Waco market, is misplaced. It is well-settled that a determination under Section 307(b) of the Communications Act must focus on comparing the needs of competing communities for an additional service.¹² Moreover, the Commission has rejected public interest showings premised on the argument that specific types of programming are uniquely appealing to certain population segments of a station’s potential audience,¹³ or that minority segments of a community should be considered independently of the interests of the community as a whole.¹⁴ Finally, to the extent that M&M argues that KWBT fills a unique programming need for the Waco market, we note that the station is free to change its format and programming at any time.¹⁵

We therefore do not find that the relocation is supported by the alleged need for KWBT’s current programming. Consistent with the Commission’s stated goal of protecting listeners in smaller communities and rural areas from the loss of needed transmission and reception services, we conclude that the public interest would be better served by retention of Station KWBT as a second local transmission service at Mexia,¹⁶ rather than by the addition of an eighth local transmission service at Waco.¹⁷

Conclusion. For the reasons discussed above, we find that M & M’s 307(b) showing is deficient. Accordingly, pursuant to 47 C.F.R. § 73.3522(c)(2), M & M Broadcasters, Ltd., shall have a period of thirty (30) days from the date of this letter to correct all deficiencies in the tenderability and acceptability of the underlying application, File No. BPH-20091211AFR, including any deficiency not specifically identified by the staff. Upon the expiration of thirty (30) days from the date of this letter, any remaining uncorrected tender and/or acceptance defects in the application will be grounds for dismissal of the application, with no further opportunity for corrective amendment.

¹² *Suburbanaire, Inc.*, Decision, 104 FCC2d 909 (Rev.Bd. 1986) (“Suburbanaire”) (“Section 307(b) addresses the needs and entitlements of competing ‘communities’ for new or improved broadcast services, not on indigenous applicant (or audience) characteristics,” citing *Debra D. Carrigan*, Decision, 100 FCC2d 721 (Rev.Bd. 1985)).

¹³ *Suburbanaire, supra*.

¹⁴ See *WHW Enterprises, Inc.*, Decision, 89 FCC2d 799 (Rev.Bd. 1982), *aff’d in pertinent part*, 753 F.2d 1132 (D.C.Cir. 1985), and cases cited therein. See also *Riverside Amusement Park Company, Inc.*, Memorandum Opinion and Order, 69 FCC2d 1040, 1042 (1978) (“On two separate occasions, we have rejected the contention that a particular racial or ethnic group should constitute a ‘community’ for allocation purposes”), citing *Grantell Broadcasting*, Memorandum Opinion and Order, 23 FCC2d 74 (1970); and *1360 Broadcasting Co., Inc.*, Decision, 36 FCC 1478 (Rev.Bd. 1964).

¹⁵ See *FCC v. WNCN Listeners Guild*, 450 US 582 (1981) (upholding Commission reliance on market forces, rather than licensing procedures, to influence licensee format and programming decisions). See also *Mr. Rod Kovel and John W. Zucker, Esq.*, Letter, 23 FCC Rcd 1884 (MB 2008) (rejecting license renewal objections based on format and programming issues); and *Tri-State “Like It Is” Support Coalition*, Letter, 26 FCC Rcd 362 (MB 2011) (declining to consider lack of programming responsive to the needs of African-American community in license renewal application proceeding), and cases cited therein.

¹⁶ The other local transmission service in Mexia is provided by Station KLRK(AM).

¹⁷ Waco currently has five local FM stations (WACO-FM, KBCT(FM), KBGO(FM), KWTX-FM, and KWBU-FM) and three local AM stations (KBBW(AM), KWTX(AM), and KRZI(AM)).

For further information concerning this case, contact Deborah A. Dupont or Rolanda Faye Smith, Media Bureau, (202)418-2700.

Sincerely,

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