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In Reply Refer to:

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In Re: KTIA-FM
Boone, Iowa
Facility ID Number: 6417
File No: BPH-20100126AGR

Dear Counsel:

This letter refers to the above-captioned minor change application (the "Application") of Truth Broadcasting Corp. ("Truth Broadcasting"), licensee of Station KTIA-FM, Channel 257A, Boone, Iowa. The application proposes a city of license modification for Station KTIA-FM from Boone, Iowa, to Johnston, Iowa. Des Moines Community Radio Foundation ("Community Radio"), licensee of Station KFMG-LP, filed an Informal Objection.¹ For the reasons discussed below, we dismiss the Application.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,² 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 to its current service.³ We make this determination using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures.⁴

In its Application, Truth Broadcasting claimed that its proposal satisfies allotment Priority 3 because it would provide a first local service to Johnston, Iowa. Johnston is adjacent to the Des Moines Urbanized Area, and Station KTIA-FM would provide service to 78.5 percent of the Des Moines Urbanized Area ("UA"). In situations such as this, where an application proposes a relocation under which the station would or could serve at least 50 percent of an urbanized area, the Commission has established a rebuttable presumption that the application should be treated as a proposal to serve the urbanized area rather the

¹ There were also numerous Informal Objections filed against the proposed Johnston city of license modification by local residents of Des Moines.

² 47 C.F.R. § 73.3573(g).

³ 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").

⁴ *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).

named community of license.⁵ Accordingly, on January 6, 2012, the staff sent Truth Broadcasting a letter requesting additional information to rebut the urbanized area presumption.⁶

On March 22, 2012, Truth Broadcasting submitted an amendment (“Amendment”) to its Application. In its Amendment, Truth Broadcasting contends that the proposed move should be approved because it constitutes a move from one urbanized area to another. Truth Broadcasting presents engineering evidence purporting to show that, although Station KTIA-FM at Boone, Iowa, does not provide service to any portion of any urbanized area, it would nonetheless be possible to relocate the station’s transmitter site to provide service to more than fifty percent of the Ames, Iowa, Urbanized Area while also satisfying community coverage requirements at Boone. Citing two recent decisions,⁷ Truth Broadcasting contends that the rebuttable presumption established by the Commission in *Rural Radio* should be applied to KTIA-FM’s current community of Boone. Applying the presumption, Truth Broadcasting states that KTIA-FM at Boone should be characterized as currently serving the Ames Urbanized Area. Truth Broadcasting thus concludes that the change of community proposed in its application would constitute a permissible move within an Urbanized Area.

Discussion. Truth Broadcasting’s reliance upon our recent decisions in *Gearhart* and *Goleta* is misplaced. Those cases are distinguishable on their facts. *Gearhart* involved a relocation from one community to another within the same Urbanized Area.⁸ *Goleta* involved both an intra-Urbanized Area move and a second relocation from one Urbanized Area to another.⁹ Each of the licensed and proposed communities is located in Urbanized Areas. The Urbanized Area service presumption is not relevant in any of these contexts.

⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures (“Rural Radio”)*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2567 (2011), pet. for recon. pending (“*Second R&O*”). 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.

⁶ See *Boone, Iowa*, Letter from Peter H. Doyle to James P. Riley, 27 FCC Rcd 169 (MB 2012) (“Deficiency Letter”).

⁷ See *Gearhart, Oregon*, Report and Order, 26 FCC Rcd 10259 (MB 2011) (“*Gearhart*”), and *Goleta, California*, Letter from Peter H. Doyle to Mark N. Lipp, 26 FCC Rcd 12496 (MB 2011) (“*Goleta*”).

⁸ In *Gearhart*, both the current and proposed community (Tualatin, Oregon, and Aloha, Oregon, respectively) are located within the Portland, Oregon, Urbanized Area, and no change in transmitter site was proposed. Historically, when a station proposes to move from one community inside an urbanized area to another community in the same urbanized area, we have not required a *Tuck* showing to demonstrate independence of the proposed community of license. See *East Los Angeles, California*, Report and Order, 10 FCC Rcd 2864 (MMB 1995) (“*East Los Angeles*”) (“first local service preference is not being used as a basis to enter the market”). See also *Fishers, Indiana*, Memorandum Opinion and Order, 24 FCC Rcd 2612 (MB 2009); *Tullahoma, Tennessee*, Report and Order, 19 FCC Rcd 11000 (MB 2004), and *Boulder, Colorado*, Report and Order, 12 FCC Rcd 583 (MMB 1997).

⁹ In *Goleta*, Station KRUFZ(FM) was moving to Goleta from Santa Barbara. Both communities are located within the Santa Barbara Urbanized Area, to which the station already provided 100 percent coverage, and no change in transmitter site was proposed. Under *East Los Angeles*, no *Tuck* showing was necessary for that intra-urbanized area move. The applicant also proposed to move Station KRUFZ(FM) from Goleta to Oak View, California, which is within the Oxnard Urbanized Area. This move from one urbanized area to another also did not require a *Tuck* showing. See *Bon Air, Virginia*, Second Report and Order, 7 FCC Rcd 6309 (MMB 1992).

Unlike the circumstances of *Gearhart* and *Goleta*, the move-out community, Boone, is located outside any urbanized area and Station KTIA-FM does not currently provide service to any portion of an urbanized area. In *Rural Radio*, the Commission emphasizes that the “would or could” showing that triggers the service presumption applies only to proposed or potential service to the new community.¹⁰ The Commission neither specifies nor suggests that the “would or could” test should be applied to the move-out community. To the contrary, the Commission explicitly states that “the applicant must demonstrate that the facility at the new community represents a preferential arrangement of allotments . . . over *the current facility* [emphasis added].”¹¹ The use of the “would or could” standard for a proposal to relocate at a new community of license is designed to prevent manipulation aimed at moving into more lucrative urban markets,¹² thereby promoting the goal of Section 307(b), “to ‘forestall’ the excessive concentration of radio service in larger cities.”¹³ That concern is not, however relevant when analyzing existing service at a move-out community. Accordingly, we decline to apply the Commission’s rebuttable presumption to Boone, Iowa, based on the showing provided by Truth Broadcasting.

Analyzing the proposed move under Priority 4, “other public interest matters,” we affirm our tentative conclusion that the public interest would be better served by retention of Station KTIA-FM as a fourth transmission service at Boone, Iowa, rather than by the addition of at least a 17th local service to the Des Moines Urbanized Area.

Conclusion. In view of the above, IT IS ORDERED that the application for change of community submitted by Truth Broadcasting Corp., File No. BPH-20100126AGR, IS DISMISSED. In addition, IT IS ORDERED that the Informal Objection filed by Des Moines Community Radio Foundation IS DISMISSED as moot.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁰ *Second R&O* at 2567 (“when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes, as proposing service to the entire urbanized area [emphasis added]”) and at 2571 (“First, the presumption will apply to all proposals in which the community of license is located within the urbanized area. Second, it applies to all proposals that could or would provide service to fifty percent of more of an urbanized area [emphasis added]”).

¹¹ *Second R&O*, 26 FCC Rcd at 2566.

¹² In proposing the “would or could” test, the Commission expresses its intention “to ensure that applicants claiming preference under Priority (3) are not using the streamlined [change of community] procedures as a way of relocating from smaller communities to large urbanized areas, under the guise of providing first local transmission service to a smaller community in or adjacent to an Urbanized Area.” *Rural Radio*, NPRM at 5247. *See also Second R&O*, 26 FCC Rcd at 2563.

¹³ *Id.* at 2568.