



Federal Communications Commission
Washington, D.C. 20554

January 6, 2012

DA 12-20
In Reply Refer to:
1800B3-RFS/DD
Released: January 6, 2012

James P. Riley, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Arlington, VA 22209

In Re: Truth Broadcasting Corp.
Boone, Iowa
Facility ID Number: 6417
File No: BPH-20100126AGR

Dear Mr. Riley:

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, Channel 257A 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 request additional information from Truth Broadcasting regarding the proposed modification of Station KTIA-FM to Johnston, Iowa.

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

Truth Broadcasting claims that its proposal satisfies Priority 3 of the four allotment priorities, because the proposed city of license modification could provide a first local service to Johnston, Iowa. It states that

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).

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).

Boone would continue to maintain three local services.⁵ Truth Broadcasting also contends that the proposed city of license change to Johnston should be favored under Priority 4, because modified Station KTIA-FM operations would result in a net coverage gain of 312,451 persons. It states that both the gain and loss areas are considered well-served.⁶ As a result of the proposed change of community, Station KTIA-FM would provide service to 78.5 percent of the Des Moines Urbanized Area (“UA”); currently, the station’s signal does not cover any part of any urbanized area.

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, special conditions must be met for Priority 3, first local service, to apply. Pursuant to the Commission’s decision in *Faye and Richard Tuck, Inc.*,⁷ we apply a three-prong test to determine whether such a community is independent of the UA’s central city.. The three factors are: (1) the degree to which the proposed station will provide coverage to the urbanized area; (2) the size and proximity of the proposed community of license relative to the central city of the urbanized area; and (3) the interdependence of the proposed community of license and the urbanized area.⁸ Recently, the Commission determined to increase its scrutiny of stations moving into urbanized areas, establishing a rebuttable presumption that the application constitutes a proposal to serve the entire urbanized area, rather than a proposal for local service to the named community of license.⁹

An applicant subject to the urbanized area presumption may present evidence to overcome the presumption, in order to claim allocation priority as a first local service. In order to rebut the presumption, the evidence must constitute “a compelling showing (1) that the proposed community is truly independent of the urbanized area, (2) of the community’s specific need for an outlet for local expression separate from the urbanized area and (3) the ability of the proposed station to provide that outlet.”¹⁰ The compelling showing may be based on the existing three-pronged *Tuck* test to demonstrate

⁵ Stations KDLF(AM), KWBG(AM), and KWQW(FM) are licensed to Boone.

⁶ Truth Broadcast states that Johnston currently has nineteen reception services, whereas Boone currently has thirteen reception services.

⁷ *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1978) (“*Tuck*”)

⁸ *Id.* The eight factors for determining independence of a community from the urbanized area are: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community’s needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services.

⁹ See *Policies to Promote Rural Radio Service and to Streamline Allotment an 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*”).

¹⁰ *Rural Radio*, 26 FCC Rcd at 2572, ¶ 30.

independence,¹¹ but “the Tuck factors, especially the eight-part test of independence, will be more rigorously scrutinized than has sometimes been the case in the past.”¹² Moreover, in addition to demonstrating independence, a compelling showing requires evidence of the community’s need for an outlet for local expression.¹³

Truth Broadcasting submitted a *Tuck* showing to demonstrate that Johnston is independent of the Des Moines UA. Truth Broadcasting also filed an amendment to rebut the urbanized area presumption established in *Rural Radio*. It contends that Johnston is a growing community that has distinctive features, needs, and interests that set it apart from the Des Moines UA. Truth Broadcasting states that Station KTIA-FM is well-suited and ready to provide the local outlet for expression that Johnston needs. It states that the population of Johnston has grown between April 1, 2000 and July 1, 2009 from 8,935 persons to 15,918 persons, whereas the population of Boone has declined from 12,813 persons to 12,479 persons.

Discussion. 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 (78.5 percent) of the Des Moines UA is a very persuasive factor that favors application of the presumption and the treatment of this move-in as one to serve the Des Moines market, rather than the specified community of Johnston.

We turn next to the size and proximity of the proposed community of license relative to the central city of the urbanized area. Johnston, the proposed community of license, has a 2010 population of 17,278 persons, while Des Moines, the central city of the urbanized area, has a 2010 population of 203,433. Johnston thus has a population that is 8.5 percent of the population of Des Moines. Johnston is located approximately 13.5 miles from the center of Des Moines, and less than 8 miles from the outer boundary of the city of Des Moines. Based on the extreme disparity in size and the close proximity of the two communities, we also find that the presumption should apply here.

Des Moines, ranked #90 by Arbitron, is a significant media market. Prongs 1 and 2 of *Tuck* provide the most objective basis for determining whether a Priority 3 preference should be awarded. Far from rebutting the presumption, our analysis of these two factors show that this proposed change of community is exactly the sort of situation in which the presumption should apply. The factors that could rebut the presumption are simply not present here. Johnston cannot be treated as a major, distinct population center from the Des Moines UA. It is not geographically isolated from Des Moines. Although we will consider Prong 3 factors briefly, the evidence fails to demonstrate the necessary level of economic and governmental independence to rebut the presumption.

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. Although Johnston has its own local government and provides its own municipal services, bus service is provided by the Des Moines Area Regional Transit Authority. In addition, we find that Johnston and Des Moines are part of the same advertising market.¹⁴ Perhaps most significant, a large majority of Johnston residents work in the

¹¹ See *Tuck*, 3 FCC Rcd at 5378.

¹² *Rural Radio*, *supra*, at 2573, ¶ 30.

¹³ *Id.*

¹⁴ Truth Broadcasting states in its amendment that Johnston commercial establishments “can target the Johnston market in the *Johnston Register* segment of the *Des Moines Register*.” Far from establishing Johnston as a separate advertising market, we believe that this statement indicates that Johnston is part of the Des Moines advertising

larger metropolitan area, rather than in Johnston itself.¹⁵ Moreover, the Johnston telephone directory is included in a directory that covers the entire county, including Des Moines. In short, there is significant evidence that Johnston is interdependent with the larger Des Moines UA. Although Johnston has its own zip code (50131), this factor, which typically is not highly probative in establishing the independence of a community, is insufficient to offset the numerous and substantial countervailing factors.

Although there is some support for the position that Johnston is an independent community, we do not find the evidence compelling on that point. Our finding that Johnston is interdependent with the Des Moines UA precludes rebuttal of the urbanized area presumption based on a specific need for an outlet of separate local expression, because the first requirement for such rebuttal is that the proposed community must be truly independent of the urbanized area.¹⁶ For that reason, the proposed change of community will be treated as a proposal to serve the Des Moines UA. 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. Truth Broadcasting asserts that the public interest would be served by the proposed change in community because there would be a net gain in potential listeners of 312,591 persons;¹⁷ we do not agree, however, that this net gain constitutes a preferential arrangement of allotments under Priority 4. In *Rural Radio*, the Commission stated that “large service population differentials ... should not suffice, in and of themselves, for a dispositive Section 307(b) preference under Priority (4), especially when the proposed new population is already abundantly served.”¹⁸ We therefore find that the increase in population coverage does not establish that the proposed change of community would serve the public interest. 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 tentatively conclude 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 the 17th local service to the Des Moines Urbanized Area.

Conclusion. For the reasons discussed above, we find that Truth Broadcasting’s 307(b) showing is deficient. Accordingly, pursuant to 47 C.F.R. § 73.3522(c)(2), Truth Broadcasting Corp. shall have a

market. The other two publications cited by Truth Broadcasting, *Johnston Living* and the *Bull’s Eye News*, are published infrequently (monthly for the former and bi-weekly for the latter), and the *Bull’s Eye News* (whose mailing address is in Polk, Iowa) also covers two other small communities near Johnston. Under these circumstances, we believe that Johnston is part of the Des Moines advertising market, despite having some 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)”).

¹⁵ Truth Broadcasting reports that 21.4 percent of Johnston residents work in that community; by extrapolation, most Johnston residents work elsewhere in the Des Moines UA. Applying the more stringent standards of *Rural Radio*, we find that these percentages do not support Truth Broadcasting’s claim that Johnston is independent of the larger metropolitan area. Cf., *Lahaina and Waianae, Hawaii*, Report and Order, 20 FCC Rcd 7605, 7606 (MB 2005) (under pre-*Rural Radio* standard, 17 percent of employed residents working within community was found to be “significant” and justification for a favorable finding).

¹⁶ See *Rural Radio*, 26 FCC Rcd at 2572, 2577.

¹⁷ The gain area contains 407,267 persons, and the loss area contains 94,676 persons.

¹⁸ *Id.* at 2577, ¶ 39.

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-20100126AGR, 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. At this time, we make no determination regarding the objection filed against Truth Broadcasting's application.

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

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau