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In re: **KBPA(FM), San Marcos, TX**
Facility ID No. 41213
File No. BPH-20190206AAK

KXAI(FM), Refugio, TX
Facility ID No. 7084
File No. BPED-20190206AAJ

KMJR(FM), Odem, TX
Facility ID No. 12170
File No. BPED-20190206AAL

**Minor Change Applications
Informal Objection**

Dear Counsel:

We have before us the referenced mutually contingent and concurrently filed minor modification applications filed by Emmis Austin Radio Broadcasting Company, L.P. (Emmis) licensee of Station KBPA(FM), San Marcos, TX, and Educational Media Foundation (EMF), licensee of Stations KXAI(FM),

Refugio, TX, and KMJR(FM), Odem, TX. In the first application (Austin Application),¹ Emmis proposes to change the community of license of Station KBPA(FM) from San Marcos² to Austin, Texas. In the second application (Balcones Heights Application),³ EMF proposes to change the community of license of Station KXAI(FM) from Refugio to Balcones Heights, Texas. In the third application (Odem Application),⁴ EMF proposes a channel substitution for Station KMJR(FM) from Channel 252C1 to Channel 279C1, Odem, Texas. Also before us are: 1) a Consolidated Informal Objection filed on July 8, 2019 by San Antonio Radio Works, LLC (SARW Objection) and two related responsive pleadings.⁵ For the reasons below, we deny the Objection and grant the Applications.

Background. The Austin and Balcones Heights Applications were filed pursuant to section 73.3573(g) of the Commission's rules (Rules),⁶ which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁷ The Austin, Balcones Heights, and Odem Applications (Applications) were also filed pursuant to section 73.3517(e), which permits FM licensees or permittees to file up to four contingently related applications for minor modification of facilities.⁸

In support of their Applications, Emmis and EMF contend that these coordinated moves would result in a preferential arrangement under Priority (4) of the FM allotment priorities⁹ because: 1) the proposed Austin and Balcones Height Applications are mutually exclusive with their licensed facilities;¹⁰ 2) any loss of local transmission service to a community of license is not recognized for section 307(b) comparisons where, as here, the applicable station's current community signal (70 dBu contour) covers more than 50% of the Urbanized Area (UA) or the current community of license is located within the UA;¹¹ and 3) the proposal satisfies Priority (4) public interest benefit based on the overall "substantial net gain"¹² of 537,059 in population resulting from grant of the proposed change of community of license

¹ See File No. BPH-20190206AAK. The Austin application proposes an FM class change from Channel 278C0 to Channel 278C1, community of license change, and transmitter site change for Station KBPA(FM).

² The community of San Marcos is not contiguous with the larger San Marcos Urbanized Area (SMUA). The community of San Marcos is located within the SMUA.

³ See File No. BPED-20190206AAJ. The Balcones Heights Application proposes an FM class change from Channel 279C1 to Channel 279A, a community of license change, and a transmitter site change for Station KXAI(FM).

⁴ See File No. BPED-20190206AAL. The Odem Application proposes a frequency change from Channel 252C1 to Channel 279C1, as well as a change in effective radiated power and antenna center of radiation height for Station KMJR(FM).

⁵ Emmis and EMF filed a Consolidated Joint Opposition on July 26, 2019 (Emmis Opposition); and SARW filed a Reply to the Consolidated Opposition on August 30, 2019 (SARW Reply).

⁶ 47 CFR § 73.3573(g).

⁷ *Id.*

⁸ See 47 CFR § 73.3517(e). The Applications are mutually contingent because: 1) the Balcones Heights Application's proposed operation on Channel 279A cannot be effectuated until KBPA(FM) changes class from Channel 278C0 to 278C1; and 2) the Odem Application proposing operation on Channel 279C1 cannot be effectuated until KXAI(FM) vacates 279C1 and changes class from 279C1 to 279A.

⁹ 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). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 90-93 (1982).

applications.¹³ Emmis and EMF also contend that a *Tuck*¹⁴ showing is not required because both the stations' current and proposed communities of license are part of a UA.¹⁵

Referencing the Austin Application, Emmis further asserts there is a greater need for additional radio service in the Austin UA than in the SMUA due to the Austin UA's significantly larger population, and notes that KBPA(FM) is the number one rated radio station in the Austin market.¹⁶

The SARW Objection. SARW objects primarily to the Austin Application and alleges that 1) grant of the Austin Application violates *Rural Radio*¹⁷ because the Commission disfavors removal of a second local transmission service from a community [or UA] when considering preferential arrangements of allotments for a change in community of license, and KBPA(FM) is one of only two stations licensed to the SMUA;¹⁸ 2) grant of the Application violates Priority (4), "Other Public Interest Matters," set forth in *Revision of FM Assignment Policies and Procedures* (Second Report and Order)¹⁹ because there would be an estimated net 3,676,704 listeners who would lose service from FM translators, including SARW's station K279AB;²⁰ 3) Applicant misapplies Commission precedent because the Applications propose inter-UA moves and *Repp*²¹ is distinguishable because it dealt with an intra-UA move;²² and 4) the referenced loss of KBPA(FM)'s current tower site and KBPA(FM)'s popularity in the Austin market should not be considered under Priority (4) because they are business considerations that have no impact on the public interest analysis.²³

In a joint Opposition with EMF, Emmis counters that: 1) KBPA(FM) is licensed to San Marcos, which under *Rural Radio* is presumptively considered to serve the entire SMUA and not just the community of San Marcos, so Commission policy and precedent regarding removal of a community's second local service does not apply;²⁴ 2) SARW misinterprets *Repp*, where the backfill application was dismissed because the station's move out community was located in a UA, not because it was an intra-UA move;²⁵ 3) KBPA(FM) is actually the SMUA's eleventh service, so even with the proposed reallocation,

¹⁰ Austin Application, Attach. 36 Section 307(b) Community of License Change at 1 and Attach. 27 Technical Narrative at 1; and Balcones Heights Application, Attach. 25, Section 307(b) Community of License Change at 1 and Attach. 16, Technical Narrative at 2.

¹¹ Applicants cite *Letter to Marissa G. Repp, Esq. and Gary S. Smithwick, Esq.*, 27 FCC Rcd 13090 (2012) (*Repp*), holding that a backfill was not required to a community located in a UA because the service was presumed to serve the UA rather than the individual community. See Austin Application, Attach. 36 Section 307(b) Community of License Change at 2-3 and 7, and Maps 1 and 2, and Balcones Heights Application, Attach. 16, at 3; Balcones Heights Application, Attach. 25, Section 307(b) Community of License Change at 3 and Map 1. San Marcos is located in the SMUA. Additionally, although Refugio is not geographically located in the Corpus Christi UA, our engineering analysis determined that the 70 dBu contour of Station KXAI(FM) covers 95.45% of the Corpus Christi UA.

¹² Net gain is calculated by finding the difference between the net gain and the net loss in persons for both the Austin and Balcones Heights Applications.

¹³ Austin Application, Attach. 36 Section 307(b) Community of License Change at 2, 4, Maps 4-5 and Tables 4a-5a; and Balcones Heights Application, Attach. 25, Section 307(b) Community of License Change at 2-4, and Map 4 and Attach. 16, Technical Narrative at 2. According to the Applicants, the Austin Application proposes a gain area encompassing a population of 39,693 persons and a loss area encompassing 575,761 persons, a net loss of 536,068 persons. The Balcones Heights Application proposes a gain area encompassing 1,582,132 persons and a loss area encompassing 509,005 persons, a net gain of 1,073,127 persons. Taken together, according to the Applicants, the proposal results in a net gain of 537,059 persons.

¹⁴ See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1978) (*Tuck*) (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

¹⁵ *Id.*

there will still be ten full power stations providing service to 50% or more of the SMUA;²⁶ 4) FM translators are secondary services, so the Commission should not consider potential loss of FM translator service in considering primary FM station allotments;²⁷ and 5) Emmis has provided valid public interest considerations including loss of the station site, popularity in the Austin radio market, and a net increase of service.²⁸

In its Reply, SARW asserts that: 1) grant of the Austin Application violates *Rural Radio* because KBPA(FM) is one of only two stations licensed to the SMUA, while the Austin UA has 29 stations;²⁹ 2) Applicant misunderstands Commission precedent regarding the *Repp, Cumulus, and Gearhart* change in community of license decisions because the proposed Austin and Balcones Heights Applications concern inter, not intra, UA moves;³⁰ and 3) potential loss of FM translator service to over four million persons should be considered under the Priority (4) preferences.³¹

Discussion. We find that the proposed change in community of license modifications of Stations KBPA(FM) and KXAI(FM) result in a preferential arrangement of allotments that serves the public interest. A station may change its community of license without subjecting the license to other expressions of interest if: (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service³²; and (3) the proposed arrangement of allotment is preferred under the Commission's FM allotment priorities.³³ Additionally, when the proposed community is located inside an Urbanized Area or if the proposed facilities could cover 50 percent or more of an Urbanized Area, the Commission has required an applicant to file a *Tuck* showing that the proposed community is independent of the Urbanized Area in cases in which the applicant claims a first local service preference.³⁴

¹⁶ Austin Application Attach. 36 Section 307(b) Community of License Change at 8-9.

¹⁷ SARW Objection at 3-4.

¹⁸ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011) (Rural 2d R&O).

¹⁹ See *In the Matter of Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

²⁰ SARW Objection at 5-6.

²¹ See *Repp*, 27 FCC Rcd 13090.

²² SARW Objection at 4.

²³ *Id.* at 7.

²⁴ Emmis Opposition at 3-4.

²⁵ *Id.* at 3. *Repp* involved two contingent applications for change in communities of license. The first application proposed moving a station out of Westerville, Ohio, and the second application proposed relocating a different station into Westerville, Ohio, to backfill, or replace the second local transmission service lost on grant of the first application. Commission staff granted the first application and dismissed the second application as unnecessary

Austin Application. The Austin Application, considered separately, satisfies the first two criteria for changing its community of license without subjecting the license to other expressions of interest. First, we find that the proposed Channel 278C1 at Austin is mutually exclusive with the current use of Channel 278C0 at San Marcos. Second, because the community of San Marcos is part of the SMUA and KBPA(FM)'s signal covers more than 50% of the Austin UA, pursuant to the Commission's decision in *Rural Radio*, KBPA(FM), at its current location in the community of San Marcos, is presumed to provide service to both the SM and Austin UAs. Therefore, the reallocation of Station KBPA(FM) to Austin will not violate the Commission's policy prohibiting the removal of a community's sole local aural service.

We also find that a *Tuck* showing is not required for the Austin Application³⁵ because the proposed KBPA(FM) move is both an inter-UA move from the community of San Marcos in the SMUA to the community of Austin in the Austin UA, and an intra-UA move within the Austin UA.³⁶ In *Cumulus*, an inter-UA move, the Staff relied on *Gearhart* to apply new policies set forth in *Rural Radio 2d R&O*,³⁷ and established "there [was] no need for a *Tuck* showing where both the station's current and proposed communities of license are located within a UA."³⁸ The Staff in *Cumulus* also confirmed that the same policy should apply to inter-UA moves from one UA to a different UA.³⁹ Moreover, the Commission has historically treated moves from one UA to another UA in the same manner as intra-UA moves.⁴⁰

because the first application's station was presumed to provide service to the UA, therefore, evaluating loss of a second local transmission service was unnecessary.

²⁶ *Id.* at 4-5.

²⁷ *Id.* at 5.

²⁸ *Id.* at 5-6.

²⁹ SARW Reply at 2, 4 and Technical Statement.

³⁰ SARW Reply at 3-4; *Repp*, 27 FCC Rcd 13090 (2012); *Cumulus Licensing LLC*, Letter Order, 26 FCC Rcd 12496, 12498 (2011) (*Cumulus*); and *Gearhart, Oregon*, Report and Order, 26 FCC Rcd 10259, 10263, para. 9 (2011) (*Gearhart*).

³¹ SARW Reply at 4 and Technical Statement.

³² See *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), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³³ See 47 CFR §§ 1.420(i) and 73.3573(g)(1).

³⁴ See, e.g., *Headland, Alabama, and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352, 10354 (1995) (requiring proponents seeking to relocate to a community adjacent to an Urbanized Area that would place a city grade signal over 50 percent or more of an Urbanized Area to submit a *Tuck* showing; *Powell Meredith Communications, Co., et al.*, Memorandum Opinion and Order, 19 FCC Rcd 12672, 12673 n.9 (2004).

³⁵ See *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, Virginia*, Second Report and Order, 7 FCC Rcd 6309 (1992) (*Bon Air*).

³⁶ KBPA(FM)'s signal currently covers 83.79% of the Austin UA and 100% of SMUA.

³⁷ See *Rural Radio 2d R&O*. Therein, the Commission established ". . . a rebuttable presumption that, 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 rather than the named community of license." *Rural Radio*, 26 FCC Rcd at 2567, para.

Balcones Heights Application. Similarly, we find that the Balcones Heights Application, considered separately, satisfies the first two criteria for changing its community of license without subjecting the license to other expressions of interest. Channel 279A at Balcones Heights is mutually exclusive with the current Channel 279C1 at Refugio. KXAI(FM) is licensed to the community of Refugio. Although not located in a UA, KXAI(FM)'s signal covers 95.45% of the Corpus Christi UA and is therefore considered to be a Corpus Christi UA station. Pursuant to the Commission's decision in *Rural Radio*, KXAI(FM), at its current location at Refugio, provides service to the Corpus Christi UA, which receives multiple local audio services. Because the community of Refugio is part of the Corpus Christi UA, the reallocation of Station KXAI(FM) to Balcones Heights will not violate the Commission's policy prohibiting the removal of a community's sole local aural service.

A *Tuck* showing is also not required for the Balcones Heights Application.⁴¹ The proposed KXAI(FM) move is an *inter-UA* move from the Corpus Christi UA where KXAI(FM)'s signal covers more than 50% of the Corpus Christi UA, to the San Antonio UA where Balcones Heights is located within the San Antonio UA.

Preferential Arrangement of Allotments. The proposed allotment arrangements for the Austin and Balcones Heights Applications are preferential arrangements of allotments under Priority (4) of the Commission's FM allotment priorities, "other public interest matters."⁴² To make a Priority (4) public interest determination, we consider the number of transmission and reception services in the existing and proposed service areas, the size of the populations gaining and losing service under the proposal, and other information relevant to the public interest.⁴³ When applications are contingently filed, as in this case, they are evaluated together rather than individually for purposes of determining whether or not they propose a preferential arrangement of allotments.⁴⁴ For purposes of determining whether or not they propose preferential arrangements of allotments, we calculate the overall gain or loss in service based on the total net gain or loss from the applications combined. Considered together, we find that grant of the Applications will result in a net gain of service. Specifically, our engineering analysis has determined that the proposed change of community of license Applications, if granted, would result in a total net gain

20. 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.

³⁸ See *Gearhart*, 26 FCC Rcd at 10263, para. 9.

³⁹ See *Cumulus*, 26 FCC Rcd at 12498.

⁴⁰ *Id.* See also *Gearhart*, 26 FCC Rcd 10259, 10263; *Bon Air*, 7 FCC Rcd 6309.

⁴¹ *Id.*

⁴² See *Rural Radio 2d R&O*, 26 FCC Rcd at 2577-2578, para. 39.

⁴³ *Id.* at 2577, para. 39.

⁴⁴ The applications were filed as a coordinated effort and processing policy is to dispose of coordinated filings simultaneously. See *1998 Biennial Regulatory Review — Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, First Report and Order, 14 FCC Rcd 5272, 5282, ¶ 14 (1999) ("Applications will be processed together and, if grantable, will be granted simultaneously"). See also *Sunnylands Broad. LLC*, Letter Order, 27 FCC Rcd 4209, 4211 (2012) ("[w]here there are contingent change of community applications, our Section 307(b) analysis is based upon considering the applications together to determine whether they would result in a preferential arrangement of allotments.").

in reception service (60 dBu) to 547,911 persons.⁴⁵ A net gain in the reception service serves the public interest.

Moreover, since we are applying Priority (4), “a first local service preference is not being used as a basis to enter the market.”⁴⁶ In addition, the Commission has determined that an area with five or more reception services is well-served⁴⁷ and, if the Applications are granted, there will be at least five or more services remaining in both the San Marcos and Corpus Christi UAs.⁴⁸

Odem Application. EMF seeks modification of station KMJR(FM), proposing a frequency change from Channel 252C1 to Channel 279C1, Odem, Texas.⁴⁹ The proposed modification will result in KMJR(FM) being “short-spaced” to KXAI(FM) and KBQQ(FM).⁵⁰ Short spacing is allowed only when the licensee ensures that services of other licensees and its own service are protected from new or increased interference so that the affected stations do not overlap, and where the move otherwise serves the public interest.⁵¹ Applicant seeks authorization for contour protection limiting its service area in accordance with section 73.215 of the Rules.⁵² Our engineering review of the channel substitution for Station KMJR(FM) from Channel 252C1 to Channel 279C1 finds that the modification otherwise complies with sections 73.207, 73.315, and 73.215 of the Rules and will not cause interference to other stations.⁵³ We therefore will authorize the requested contour protection for KMJR(FM).⁵⁴

SARW Objection. Pursuant to section 309(d)(1), informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.⁵⁵ Objector has not met this burden.

⁴⁵ Our engineering analysis determined that the Austin Application proposes a loss area encompassing 527,876 persons, and the Balcones Heights Application proposes a gain area encompassing 1,075,787 persons, resulting in an overall net gain of 547,911 persons.

⁴⁶ See *Cumulus*, 26 FCC Rcd at 12498 (deciding post-*Rural 2d R&O* that relocation of a station from one UA to another UA is analyzed under Priority (4)); and *Gearhart*, 26 FCC Rcd at 10263, para. 9.

⁴⁷ The Commission deems five or more reception services “abundant.” See *Family Broad. Group*, Decision, 93 FCC 2d 771 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Nov. 29, 1995).

⁴⁸ See *LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995); *Louisburg and Hillsborough North Carolina*, Report and Order, 21 FCC Rcd 5062, 5063 (2006) (area “well-served with 5 or more full-time reception services”); *Minnesota Christian Broads., Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 614, 618 (2003) (Commission considers NCE stations in determining the level of service provided to a community in order to implement section 307(b)).

⁴⁹ Odem Application Attach. 15 Technical Narrative at 2.

⁵⁰ Short spacing occurs when stations are separated by less than the minimum distance specified in section 73.207(b)(1) of the Rules. See *Calvary Chapel of Costa Mesa*, Letter Order, 27 FCC Rcd 7626, 7627 n. 5, (2012).

⁵¹ 47 CFR § 73.215; see also *Greater Media Radio Co., Inc.*, 15 FCC Rcd 7090 (1999).

⁵² Odem Application, Attach. 15 Technical Narrative at 2-3 and Attach. 17, Application Site Channel Study; 47 CFR § 73.215.

⁵³ See 47 CFR §§ 73.207, 73.215, and 73.315.

⁵⁴ The Austin and Balcones Heights Applications also request protection under 47 CFR § 73.215. The requested protection means protecting only the actual contours of the proposed facilities, rather than the maximum use of the facilities allowed for their class under 47 CFR § 73.207. For this reason, upgrading the facilities at a later date is dependent on the spacing and facilities of subsequently authorized stations. Applicants are also required to protect the facilities of other licensees and are required to meet co-channel and adjacent channel spacings applicable to the

Initially, we disagree that the SMUA will lose one of only two FM stations. Although there are two stations specifically licensed to the community of San Marcos, there are at least ten full power FM and AM stations providing service to SMUA.

We also find that the Application complies with section 307(b) processing policies. In *Rural 2nd R&O*,⁵⁶ the Commission established a rebuttable presumption that a proposed station located within a UA, or one that would or could serve 50 percent or more of an UA, should be treated as serving the entire UA for purposes of applying our section 307(b) FM allotment priorities. In this regard, the community of San Marcos is located within the SMUA, and KBPA(FM)'s current 70 dBu contour covers 100 percent of the SMUA and 83.79% of the Austin UA, while the proposed 70 dBu contour would cover 98.39% of the Austin UA. The Austin Application thus proposes both an inter-UA and intra-UA station move, which, as observed above, are treated the same for section 307(b) purposes. SARW has not attempted to rebut the presumption that we should treat KBPA(FM) as serving the entire Austin UA. Therefore, we will not examine the loss of second local service from the community of San Marcos.

Finally, since FM translators are secondary to full-service FM stations, we do not accept SARW's argument that potential substantial loss of FM translator service and interference should be considered as a Priority (4) public interest concern. The Commission is subject to a Congressional directive to ensure that FM translators remain secondary to full-service FM stations.⁵⁷

Conclusion and Ordering Clauses. In view of the above, SARW has not established that grant of the Application is inconsistent with the Commission's allotment priorities or otherwise is not in the public interest.⁵⁸ We conclude that the proposed change in community of license modifications of

next lower class of station. *See In the Matter of Amendment of Part 73*, 4 FCC Rcd 1681, paras. 26, 32, and 33 (1989). Grant of the Austin Application will result in KBPA(FM) being short-spaced with two full-power FM Stations, KBEY(FM) and KXAI(FM). Grant of the Balcones Heights Application will result in KXAI(FM) being short-spaced with full-power FM Stations KBPA(FM), KAXA(FM), and KMJR(FM). *See Austin Application*, Attach. 27 Technical Narrative at 2; and *Balcones Heights Application*, and Attach. 16, Technical Narrative at 2.

⁵⁵ 47 U.S.C. § 309(d)(1). *See e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n. 10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986).

⁵⁶ *Rural 2d R&O*, 26 FCC Rcd 2556.

⁵⁷ *Fort Walton Beach, Florida*, Report and Order, 32 FCC Rcd 5837 (2017). *See also Rural 2d R&O*, 26 FCC Rcd 2556, 2571-72, n.77, recon. granted in part, 27 FCC Rcd 12829 (2012). *See also Willows and Dunnigan, California*, 15 FCC Rcd 23852, 23856-57 (2000).

⁵⁸ Emmis currently exceeds the local radio ownership rules of 47 CFR § 73.3555(a)(1)(ii) restricting ownership of more than four commercial stations of the same service. Emmis' ownership of those stations is grandfathered pursuant to Note 4 of section 73.3555, permitting existing over-limit ownership to continue until certain events occur that would terminate the licensee's grandfathered status. We agree with Emmis that filing of a minor modification Application is not a triggering event that would revoke its grandfathered status. *See 2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd 9864, para. 110 (2016); 47 CFR § 73.3555, Note 4. The Third Circuit vacated the 2017 Order on Reconsideration and the Incubator Order in their entirety and vacated the "eligible entity" definition from the 2016 Second Report and Order, but did not vacate the remainder of the 2016 Report and Order. *See Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir, 2019); *Order on Reconsideration and Notice of Proposed Rulemaking*, 32 FCC Rcd 9802 (2017); and *In the Matter of Rules and Policies to Promote New Entry and Ownership Diversity in the Broad. Services*, Report and Order, 33 FCC Rcd 7911 (2018).

Stations KBPA(FM) and KXAI(FM) result in a preferential arrangement of allotments under Priority (4), other public interest considerations. Accordingly, IT IS ORDERED, that the July 8, 2019 Informal Objection filed by San Antonio Radio Works, LLC, IS DENIED.

IT IS FURTHER ORDERED, that the Application for consent to minor change to a licensed facility filed by Emmis Austin Radio Broadcasting, L.P., to change the community of license of Station KBPA(FM), San Marcos, Texas, Facility ID No. 41213, from San Marcos to Austin, Texas, File No. BPH-20190206AAK, IS GRANTED, subject to the following conditions:

1. Upon commencement of program tests in accordance with section 73.1620, the licensee must cease use of the auxiliary facility authorized by BXLH-20060913ACN due to a violation of section 73.1675(a)(1). The licensee may seek modification of license for the auxiliary in accordance with section 73.1675(c)(1) to bring the auxiliary into compliance with section 73.1675(a)(1).
2. Before program tests commence, sufficient measurements shall be made to establish that the operation authorized in this construction permit is in compliance with the spurious emissions requirements of 47 CFR sections 73.317(b) through 73.317(d). All measurements must be made with all stations simultaneously utilizing the shared antenna. These measurements shall be submitted to the Commission along with the FCC Form 302-FM application for license.
3. The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.
4. This is a section 73.215 contour protection grant as requested by this applicant.
5. Pursuant to the grant of this construction permit and the authority found in sections 4(i), 5(c)(1), 303 and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b), 0.283, 1.420, 73.203(b), and 73.3573 of the Commission's Rules, the FM assignment, the Table of Allotments is modified by changing the community of license from San Marcos, TX, to Austin, TX and changing the channel by adding 278C1 and deleting 278C0.
6. Pursuant to section 316(a) of the Communication Act of 1934, as amended, license BMLH-20110913ABR is modified to specify operation on Channel 278C1 at Austin, TX in lieu of Channel 278C0 at San Marcos, TX.

IT IS FURTHER ORDERED, that the Application for consent to minor change to a licensed facility filed by Educational Media Foundation, to change the community of license of Station KXAI(FM), Refugio, Texas, Facility ID No. 7084, from Refugio to Balcones Heights, Texas, File No. BPED-20190206AAJ, IS GRANTED, subject to the following conditions:

1. The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.
2. This is a section 73.215 contour protection grant as requested by this applicant.
3. Program tests for KXAI(FM) (Facility ID No. 7084) will not commence on Channel 279A with the facilities specified herein until program tests for KBPA(FM) (Facility ID No. 41213) commence on Channel 278C1 with the facilities specified in BPH-20190206AAK and a license will not be granted for KXAI(FM) on Channel 279A with the facilities specified herein until a license is granted for KBPA(FM) on Channel 278C1 with the facilities specified in BPH-20190206AAK.
4. Pursuant to the grant of this construction permit and the authority found in sections 4(i), 5(c)(1), 303 and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b), 0.283, 1.420, 73.203(b), and 73.3573 of the Commission's Rules, the FM assignment, the Table of Allotments is modified by changing the community of license from

Refugio, TX, to Balcones Heights, TX, and changing the channel by adding 279A and deleting 279C1.

5. Pursuant to section 316(a) of the Communication Act of 1934, as amended, license BMLED-20130417AAP is modified to specify operation on Channel 279A at Balcones Heights, TX in lieu of Channel 279C1 at Refugio, TX.

IT IS FURTHER ORDERED, that the Application for consent to minor change to a licensed facility filed by Educational Media Foundation, to change the frequency of Station KMJR(FM), Odem, Texas, Facility ID No. 12170, from 252C1 to 279C1, File No. BPED-20190206AAL, IS GRANTED, subject to the following conditions:

1. This is a section 73.215 contour protection grant as requested by this applicant.
2. The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.
3. Permittee has specified use of the antenna listed below to demonstrate compliance with the FCC radiofrequency electromagnetic field exposure guidelines. If any other type or size of antenna is to be used with the facilities authorized herein, the automatic program test provisions of 47 CFR 73.1620 will not apply. In this case, a formal request for program test authority must be filed in conjunction with FCC Form 302-FM, application for license, before program tests will be authorized. The request must include a revised RF field showing to demonstrate continued compliance with the FCC guidelines.
4. Program tests for KMJR(FM) (Facility ID No. 12170) will not commence on Channel 279C1 with the facilities specified herein until program tests for KXAI(FM) (Facility ID No. 7084) commence on Channel 279A with the facilities specified in BPED-20190206AAJ and a license will not be granted for KMJR(FM) on Channel 279C1 with the facilities specified herein until a license is granted for KXAI(FM) on Channel 279A with the facilities specified in BPED-20190206AAJ.
5. Pursuant to the grant of this construction permit and the authority found in sections 4(i), 5(c)(1), 303 and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b), 0.283, 1.420, 73.203(b), and 73.3573 of the Commission's Rules, the FM assignment, the Table of Allotments is modified by changing the channel by adding 279C1 and deleting 252C1.
6. Pursuant to section 316(a) of the Communication Act of 1934, as amended, license BMLED-20190215AA3 is modified to specify operation on Channel 279C1 in lieu of Channel 252C1.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau