



Federal Communications Commission  
Washington, D.C. 20554

January 4, 2024

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*In Reply Refer to:*  
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In re: **KLLM(FM), Wheatland, Wyoming**  
Facility ID No. 762455  
Application File No. 205045  
**Informal Objection**

Dear Applicant and Objector:

We have before us the above-referenced application (Modification Application) for a minor modification to KLLM(FM), Wheatland, Wyoming, (KLLM or Station) filed on December 12, 2022, by Michael Radio Company, LLC (Michael).<sup>1</sup> Michael seeks to relocate the KLLM transmitter to a new site and change its community of license from Wheatland, Wyoming, to Horse Creek, Wyoming.<sup>2</sup> We also have an informal objection (Objection) to the Modification Application filed by White Park Broadcasting, Inc. (White Park) on September 12, 2023.<sup>3</sup> For the reasons stated below, we grant the Objection and dismiss the Modification Application for failure to specify a licensable community, with no further opportunity for corrective amendment.

**Background.** When Michael originally filed the Modification Application on December 12, 2022, it proposed West Laramie, Wyoming, as the Station's community of license. On May 2, 2023, Bureau staff sent a deficiency letter providing Michael 30 days to demonstrate that West Laramie was a community for allotment purposes.<sup>4</sup> In the *Deficiency Letter*, the Bureau warned that failure to correct all

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<sup>1</sup> See *Broadcast Applications*, Public Notice, Report No. PN-1-221215-01 (Dec. 12, 2022).

<sup>2</sup> See 47 CFR § 73.3573(g); *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 (2006) (authorizing community of license changes through the minor modification application process).

<sup>3</sup> Pleading File No. 220892. On October 26, 2023, Michael filed an opposition to the Objection (Opposition). Pleading File No. 224021.

<sup>4</sup> Email from Rolanda Faye Smith, Paralegal Specialist, Audio Division, FCC Media Bureau, to Vic Michael, Sole Member, Michael Radio Company (May 2, 2023, 2:58pm EDT) (*Deficiency Letter*) (citing 47 CFR § 73.3522(c)(2) ("... an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter

defects within the given time period would result in the dismissal of the Modification Application with no further opportunity for corrective amendment.<sup>5</sup> On May 11, 2023, Michael amended the Modification Application to change the proposed community of license to Laramie, Wyoming. On August 17, 2023, the Bureau notified Michael that its proposal was not a preferential arrangement of allotments, as retaining a fourth local service at Wheatland would be preferred over an eleventh local service for Laramie.<sup>6</sup> On August 20, 2023, Michael again amended the Modification Application, this time to specify Horse Creek, Wyoming, as the proposed community of license.

Michael claims that the Horse Creek is a licensable community and that its proposed allotment would be a preferential arrangement of allotments because it will provide a first local service to Horse Creek.<sup>7</sup> Michael provides the following materials in support of its claim: (1) a screenshot of the Wikipedia web page for Horse Creek; (2) an uncredited topographical map marked “Horse Creek”; (3) a photo of Clawson Elementary School and screenshot of the school’s website;<sup>8</sup> (4) several screenshots of unidentified websites containing demographic information for Horse Creek zip code 82061; (5) screenshots of an unidentified website setting out the location and hours of the Horse Creek Post Office;<sup>9</sup> (7) an uncredited, undated photo titled “Horse Creek Post Office and Store”;<sup>10</sup> (8) several screenshots of a Facebook page titled “Horse Creek, Wyoming;” (9) a Google Maps photo of the Horse Creek Fire Station; (10) an uncredited, undated photo of a sign for the Horse Creek Campground (part of Shoshone National Forest); (11) a screenshot of a Facebook page for Horse Creek Honey (a food stand located in Cheyenne, Wyoming); and (12) Facebook and Google Maps photos of Horse Creek Cattle Company Stone House and Ranch (described as a rental venue for weddings, business retreats, and family vacations).

In the Objection, White Park argues that Horse Creek does not constitute a community for allotment purposes. Specifically, it alleges that Clawson Elementary School is not operated by the Horse Creek community per se but is part of a regional school system serving all of Laramie County,<sup>11</sup> that the Horse Creek fire station is not a local organization but a station operated by the Laramie County Fire Authority,<sup>12</sup> and that the businesses bearing the “Horse Creek” name do not have physical locations in Horse Creek. White Park also compares Horse Creek to West Laramie which, in 2010, the Bureau found

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to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff”).

<sup>5</sup> *Id.*

<sup>6</sup> The FM Allotment Priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC.2d 88, 91-92, paras. 7-13 (1982). *See generally*, 47 U.S.C. § 307(b) (Section 307(b)) (“In considering applications for licenses, and modifications and renewals thereof . . . the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”).

<sup>7</sup> Modification Application, Attachment entitled “307(b) Study” (307(b) Statement) at 1.

<sup>8</sup> Clawson Elementary School, <https://clawson.laramie1.org/en-US> (last visited Oct. 24, 2023).

<sup>9</sup> The website is possibly PostOfficeLocations.net. The location given is 2854 Horse Creek Rd, Horse Creek, Wyoming 82061. 307(b) Statement at 17.

<sup>10</sup> 307(b) Statement at 19.

<sup>11</sup> Objection at 2.

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

not to be a licensable community.<sup>13</sup> According to White Park, “there are absolutely no civic, cultural, religious, social or commercial entities in Horse Creek that serve to create any form of community”<sup>14</sup> and that if Horse Creek is granted status as a community then “the Commission will have eviscerated the allotment standards of Section 307(b) and opened itself up to an unlimited number of allotment modification submissions.”<sup>15</sup>

In the Opposition, Michael reiterates that incorporation is not a prerequisite for community status, that Horse Creek is a geographic location used by various mapping, weather, and real estate services, and that although Horse Creek provides no government services, the fire station and school are “located within the community of Horse Creek, WY, they are intended for use by the residents and businesses of Horse Creek, and both have Horse Creek, WY, addresses.”<sup>16</sup>

**Discussion.** We find that Horse Creek is not a licensable community for allotment purposes. If a locale is not either incorporated or listed in the U.S. Census, the proponent of an allotment must show that it is a “geographically identifiable population grouping.”<sup>17</sup> The principal test for this is whether the location’s “residents function as and conceive of themselves as a community around which their interests coalesce.”<sup>18</sup> This may be proven by direct testimony of residents of the locality and/or other “indicia of community”—i.e., objective circumstances giving indication of a common perception that a locality’s populace constitutes a distinct “population grouping,”<sup>19</sup> such as political, social, economic, commercial, cultural, public service, or religious organizations and services in the community.<sup>20</sup> Potentially relevant circumstances are many and various.<sup>21</sup> Frequently considered factors are whether the community is

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<sup>13</sup> *Id.* at 3-4 (citing *Wheatland, Wyoming*, Letter Decision, Application File No. BPH-20100104AAK, Ref. No. 1800B3-BG (MB July 12, 2010)).

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Opposition at 1-2. Michael also argues, procedurally, that White Park lacks standing to file an informal objection. Since standing is not necessary to file an informal objection, we do not consider this argument further here.

<sup>17</sup> See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC.2d 88, 101, para. 34 (1982) (“[I]f a petitioner desires the assignment of a channel to a place that is neither incorporated nor listed in the census reports, it will be required to supply the Commission with information adequate to establish that such a place is a geographically identifiable population grouping and may therefore be considered a community for these purposes.”); *Spring Valley, Arizona*, Letter Decision, 28 FCC Rcd 148, 150 (MB 2013) (“We have consistently held that a Census Designated Place listed in the U.S. Census is a licensable community”); *Matagorda, Texas*, Report and Order, 21 FCC Rcd 1736, 1736, paras. 1-3 (MB 2006) (finding that a community that is not incorporated or listed in the U.S. Census is licensable where it: (1) has more than 650 residents; (2) has its own post office and zip code; (3) has its own library, volunteer fire department, school district, and provides water and sewer services; (4) has its own justice of the peace and “numerous businesses, churches, and social organizations”; (5) is an “identifiable population grouping separate and apart from all others, and the geographic boundaries of the location do not enclose or contain areas or populations more logically identified as or associated with some other location”; (6) has a well-known history; (7) has an independent school district, businesses, churches, and civic organizations such as the Masonic Lodge and Chamber of Commerce.

<sup>18</sup> *Fortuna Foothills and Wellton, Arizona*, Memorandum Opinion and Order, 19 FCC Rcd 4619, 4620-21, para. 6 (MB 2004).

<sup>19</sup> *Central Florida Educational Foundation, Inc.*, Letter Decision, 23 FCC Rcd 1695, 1699 (MB 2008); *Bridgeport, Kansas, and Hutchinson, Kansas*, Letter Decision, 25 FCC Rcd 14357, 14360-61 (MB 2010); *Mighty-Mac Broadcasting Co.*, Rev. Bd. Decision, 101 FCC 2d 303, 307-308 (Rev. Bd. 1985).

<sup>20</sup> See, e.g., *Big Coppitt Key, Florida*, Notice of Proposed Rulemaking, 37 FCC Rcd 6207, 6207, para. 4 (MB 2022).

<sup>21</sup> *Semora*, 5 FCC Rcd at 935, para. 6 (citing *Teche Broadcasting Corp.*, 52 FCC.2d 970, 973, para. 11 (Rev. Bd. 1975) (stating that test for community status encompasses consideration of the totality of the circumstances).

marked on a published map,<sup>22</sup> whether it has a United States Postal Service (USPS) post office that offers residential service to the community,<sup>23</sup> whether it provides municipal services such as education, police, and fire protection,<sup>24</sup> whether it would more logically be considered part of another, more established, community,<sup>25</sup> whether it supports commercial activity,<sup>26</sup> and whether its name is used on businesses and other organizations.<sup>27</sup> The test to determine whether a specific location qualifies as a community under Section 307(b) is a liberal one and takes into account the totality of the circumstances.<sup>28</sup>

In this case, Horse Creek is neither incorporated nor listed with the U.S. Census. Michael has not provided any statements from residents that they “conceive of themselves as a community around which their interests coalesce.”<sup>29</sup> Therefore, we must consider objective indicia of community status to determine whether Horse Creek is a “geographically identifiable population grouping” for Section 307(b) purposes. In this case, we examine map data, post office and zip code information, governmental services and functions, alternative/competing community identities, and commercial activity.

*Map data.* Horse Creek is marked as a location on Google Maps, Wikipedia, United States Geological Survey maps, and the Laramie County Fire Authority website.<sup>30</sup> Moreover, it is the name of a river, a road, and a campground. Therefore, Horse Creek satisfies the threshold test of being a physical place. As such, it may be used by location-based services such as weather and real estate listings. Nonetheless, it is well established that a mere geographic location is insufficient to establish community

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<sup>22</sup> See, e.g., *Willow*, 10 FCC Rcd at 11523, para. 8; *Semora*, 5 FCC Rcd at 934, para. 6.

<sup>23</sup> *Willow*, 10 FCC Rcd at 11523, para. 8; *Semora*, 5 FCC Rcd at 934, para. 6; *Mighty-Mac Broadcasting Co.*, 101 FCC 2d 303, 307, para. 6 (R.B.1985).

<sup>24</sup> *Kearsarge*, 23 FCC Rcd at 12704 (holding that a political sub-division does not have community status where it has “no mayor or legislative body . . . [or] a fire department or schools under its direction).

<sup>25</sup> See, e.g., *Beacon Broadcasting*, Letter Decision, 104 FCC 2d 808 (Rev. Bd. 1986), modified, 2 FCC Rcd 3469 (1987), *aff’d sub nom. New South Broadcasting Corp. v. FCC*, 879 F.2d 867 (D.C. Cir. 1989) (holding that a specified location must be an identifiable population grouping, separate and apart from all others, and the geographic boundaries of the location must not enclose or contain areas or populations more logically identified or associated with some other location); see also *Hannibal, Ohio*, Report and Order, 6 FCC Rcd 2144 (MMB 1991).

<sup>26</sup> See, e.g., *Kearsarge*, 23 FCC Rcd at 12704 (no “banks, restaurants, gas stations, or hospitals” within community); *Semora*, 5 FCC Rcd at 934, para. 6 (stating that “[w]hile the amount of commercial activity in the town is limited, the Commission has never established a minimum amount of commercial activity necessary to qualify an area as a community” and noting that the town supports several stores, two restaurants, and a night club). *Semora*, 5 FCC Rcd at 935, para. 8; *Bridgeport, Kansas, and Hutchinson, Kansas*, Letter Decision, 25 FCC Rcd 14357, 14369-60 (MB 2010) (finding that there was no verifiable commercial activity in the community at issue).

<sup>27</sup> See *Willow*, 10 FCC Rcd at 11523, para. 8; *Semora*, 5 FCC Rcd at 934, para. 6 (noting that the fire department, Ruritan Club, and two churches bear the name of the town); *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 7562, 7562, para. 5 (1987).

<sup>28</sup> See, e.g., *Kearsarge, New Hampshire*, Letter Decision, 23 FCC Rcd 12701, 12702 (MB 2008) (citing *Willows and Dunnigan, California*, Report and Order, 10 FCC Rcd 11522, (Allocations Branch 1995); *Teche Broadcasting Corp.*, 52 FCC.2d 970, 973, para. 11 (Rev. Bd. 1975); *Kenansville, Florida*, Memorandum Opinion and Order, 5 FCC Rcd 2663 (MMB 1990); *Semora, North Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 934 (1990).

<sup>29</sup> See, e.g., *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 7562, 7562, para. 4 (1987); *Mighty Mac Broadcasting Co.*, Decision, 58 RR 2d 599, 601 (1985).

<sup>30</sup> <https://www.lcfawy.com/blank-page>

status.<sup>31</sup> Therefore, we must examine additional factors to determine whether there is a population grouping at that geographic location that conceive of themselves as a community.

*Post office and/or zip code.* In its 307(b) Statement, Michael claims that there is a federal post office serving Horse Creek.<sup>32</sup> This is not the case—the USPS website states that the Horse Creek Post Office closed on September 12, 2017,<sup>33</sup> and, in response to a telephone inquiry, USPS staff confirmed that residents of Horse Creek do not have a dedicated post office but receive their mail at a cluster box unit serviced daily by vehicle from Cheyenne. Although the 82061 zip code area is designated as “Horse Creek,” this fact is of minimal value as an indicator of community status. As a routing tool used by the federal mail delivery system, a zip code area may straddle towns, counties, and even states. It is well established that the existence of a zip code area, without more, does not establish a geographically identifiable population grouping for allotment purposes.<sup>34</sup>

*Governmental services and functions.* The elementary school and fire protection services in Horse Creek are not provided by the community but by Laramie County, to a service area much larger than the area marked as “Horse Creek” on the map. Specifically, the Horse Creek Fire Department is part of Laramie County Fire Protection District 2 (Station 3), and Clawson Elementary is part of Laramie County School District #1. Although the Commission “does not require a municipality to provide every public service on its own in order to merit community status,”<sup>35</sup> here it appears that Horse Creek provides no governmental services at all. Therefore, this factor weighs against a finding of community status.

*Alternative/competing identities.* The Commission has found that a named neighborhood, precinct, village, or other area may not have community status if it is wholly located within a more identifiable community, such as a city or town.<sup>36</sup> Here, Horse Creek is not encompassed or intersected by an alternative community with a more dominant identification. Therefore, this factor does not weigh against a finding of community status.

*Commercial activity.* The Commission has never established a minimum amount of commercial activity necessary to qualify an area as a community.<sup>37</sup> Here, Michael identifies only one business that operates at the geographic location of Horse Creek—namely, Horse Creek Cattle Company Stone House

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<sup>31</sup> *Bridgeport, Kansas, and Hutchinson, Kansas*, Letter Decision, 25 FCC Rcd 14357, 14358-59 (MB 2010) (“[T]he mere appearance of a place name on a map is not alone sufficient to establish that location as a licensable community.”).

<sup>32</sup> 307(b) Statement at 17-19.

<sup>33</sup> USPS, “Postal history—Postmaster Finder,” <https://about.usps.com/who/profile/history/postmaster-finder/post-offices-by-zip.htm> (last visited Oct. 24, 2023).

<sup>34</sup> See *Gaviota, California*, Report and Order, 16 FCC Rcd 1518 (MB 2000); *Crestview and Westbay, Florida*, 7 FCC Rcd 3059 (MMB 1992) (stating that the presence of a post office and a zip code is not sufficient to establish community status for allotment purposes).

<sup>35</sup> *Semora*, 5 FCC Rcd at 934, para. 8. See also *Willow*, 10 FCC Rcd at 11523, para. 9 (finding a licensable community where some municipal services were provided by the county); *Teche Broadcasting Corp.*, 52 FCC.2d 970, 973, para. 11 (Rev. Bd. 1975) (“While Bayou Vista may rely on its neighboring communities for routine government services, this factor has not in past cases precluded a finding of community status.”).

<sup>36</sup> *Kearsarge*, 23 FCC Rcd at 12704 (finding that a lighting precinct is merely a political sub-division located wholly within two adjacent incorporated towns); *Willow*, 10 FCC Rcd at 11523, para. 8 (“Dunnigan is not a small municipality on the fringe of an urban area and, therefore, this proceeding is distinguishable from other cases in which a petitioner attempts to establish the community status of a municipality on the fringe of an urban area.”); *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 7562, 7562, para. 5 (1987).

<sup>37</sup> *Semora*, 5 FCC Rcd at 934, para. 6.

and Ranch. We conclude that this minimal level of commercial activity does not support a finding of community status.<sup>38</sup>

Taking all of the above factors into consideration, we conclude that Horse Creek does not constitute a licensable community for Section 307(b) allotment purposes. Michael has neither submitted the testimony of residents nor established the existence of a population grouping evidenced by political, social, economic, commercial, cultural, public service, or religious organizations and services in the community. Because the Application is dismissed on this basis, we need not conduct any further Section 307(b) analysis of the allotment priority of Horse Creek.

However, we take this opportunity to caution applicants regarding the use of materials obtained exclusively from online sources. If an applicant wishes to use a website or information obtained online (such as photographs), it should make every reasonable effort to verify or authenticate the information provided, including, for example, making a site visit to the community it proposes to serve, obtaining a statement from an individual with personal knowledge of the facts alleged, or at the very least corroborating the information using another reliable online source. Importantly, any website used to support an application must be clearly identified with the site owner or publisher, title of the page, URL address, last date visited, and any other relevant information. If reviewing staff cannot identify or verify a submission, it will be excluded from our community status determination.

We also remind applicants that effective April 1, 2023, petitioners and applicants submitting filings to the Audio Division must employ the most recent 2020 U.S. Census data available when determining a particular community's population in addition to the population served and overlap of service areas to communities and Urbanized Areas.<sup>39</sup>

**Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED that the informal objection filed by White Park, Inc. on September 12, 2023, IS GRANTED and the modification application for KLLM(FM), Wheatland, Wyoming, Application File No. 205045, IS DISMISSED for failure to specify a licensable community, with no further opportunity for corrective amendment.<sup>40</sup>

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>38</sup> See *Winona, Arizona*, Report and Order, 15 FCC Rcd. 4331 (MMB 2000)(denying community status where there was no indication that the locality contains any political, social, economic, commercial, cultural or religious organizations or other services that identify themselves with that locality, nor any testimony of local residents attesting to community status).

<sup>39</sup> See *Audio Division Announces Availability of 2020 Decennial Census Data*, Public Notice, DA No. 23-74 (rel. January 26, 2023).

<sup>40</sup> See 47 CFR § 73.3564 ("Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment").