Federal Communications Commission
Washington, D.C. 20554
January 13, 2010

In Reply Refer to: 1800B3-BSH/LAS

OMB Control No. 3060-0996

Christyahna Broadcasting, Inc.
23 North Saddle Brook Drive
Hohokus, NJ 07423

Multicultural Radio Broadcasting, Inc.
449 Broadway
New York, NY 10013

Re: **AM Broadcast Auction 84**
MX Group 84-39G

New (AM), Lemon Grove, California
Facility ID No. 160822
File No. BNP-20040129ARH

KAHZ(AM), Pomona, California
Facility ID No. 61814
File No. BMJP-20040130AAB

Dear Applicants:

On June 15, 2005, the Commission released a *Public Notice* ("*Mutually Exclusive Public Notice*") directing certain mutually exclusive AM Broadcast Auction 84 applicants for new AM stations or major modifications to AM facilities, whose applications proposed to serve different communities, to file amendments to their short form applications submitted during the AM Auction No. 84 filing window.[1] The amendments were to contain factual information for the staff to use in making its Commission-mandated analysis under Section 307(b) of the Communications Act of 1934, as amended.[2] Both of you filed the requested supplemental Section 307(b) amendment.[3] Each Section 307(b) amendment indicates that your respective AM station would provide first local transmission service to the proposed community of license, under Priority (3) of the *FM Assignment Policies*.[4]

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[1] *AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction*, Public Notice, 20 FCC Rcd 10563 (MB/WTB 2005), as extended by *Auction No. 84 Settlement Period and Section 307(b) Submission Deadline Extended to October 31, 2005*, Public Notice, 20 FCC Rcd 14492 (MB/WTB 2005).

[2] 47 U.S.C. § 307(b); *see Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses,* First Report and Order, 13 FCC Rcd 15920, 15964-65 (1998) ("*Broadcast First Report and Order*"), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724, *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

[3] The requested information included the following: (1) the area and population within the proposed 2 mV/m and 0.5 mV/m contours; (2) the number of stations licensed to the proposed community of license; (3) the number of stations providing protected service to the proposed community of license; (4) the population (according to the latest Census data) of the proposed community of license; (5) a description of the civic, cultural, religious, social and commercial attributes of the proposed community of license; and (6) other information deemed relevant.

[4] The Commission's service priorities when making a Section 307(b) determination are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters. *Revision of*

The Commission has consistently stated that it will "not blindly award a first local service preference to proposed communities located in well-served urbanized areas, or where granting the preference would lead to an anomalous result."[5] Therefore, before awarding a Priority (3) first local service preference, as part of the Section 307(b) analysis, the staff must evaluate the proposed community's relationship to the contiguous Urbanized Area, in accordance with the standards enunciated in *Huntington Broadcasting Co. v. F.C.C.*[6] and *Faye and Richard Tuck, Inc.*[7] Under a *Tuck* analysis, the Commission considers (a) the extent of encompassment of the Urbanized Area by the proposed facility; (b) the size and proximity of the proposed community vis-à-vis the central city; and (c) the interdependence of the specified community with the larger, metropolitan area. When determining whether the proposed community is independent of a metropolitan area, the Commission assesses eight criteria:

1. The extent to which community residents work in the larger metropolitan area, rather than the specified community;
2. Whether the specified community has its own newspaper or other media that cover the specified community's local 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 specified community has its own telephone book provided by the local telephone company, or ZIP code;
6. Whether the specified 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 such as police, fire protection, schools, and libraries.

Analysis of the technical proposals indicates that: (1) Christyahna Broadcasting, Inc.'s proposed community of license (Lemon Grove) is located within the San Diego, California, Urbanized Area or the proposed facility would place a daytime 5 mV/m signal over a significant portion of the San Diego, California, Urbanized Area;[8] and (2) Multicultural Radio Broadcasting, Inc.'s proposed community of

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FM Assignment Policies and Procedures, Second Report and Order, 90 F.C.C.2d 88, 90-93 (1982) ("*FM Assignment Policies*"), *recon. denied,* 56 RR 2d 448 (1984). Priorities (2) and (3) are given equal weight. These priorities were first applied in Section 307(b) determinations in the AM context by the Review Board in *Alessandro Broadcasting Co.*, Decision, 99 F.C.C.2d 1 (Rev. Bd. 1984). *See also Elijah Broadcasting Corporation*, Decision, 2 FCC Rcd 4468, 4480-4481 (ALJ Stirmer, 1987); *Radio Greenbrier, Inc.,* Decision, 80 F.C.C.2d 125, 126-135 (ALJ Lozner, 1979).

[5] *Romar Communications Inc. and KM Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128, 23130 (2004) ("*Romar*").

[6] 192 F.2d 33, 35 (D.C. Cir. 1951).

[7] 3 FCC Rcd 5374, 5376 (1988) ("*Tuck*").

[8] *See Powell Meredith Communications Co., et al.*, Memorandum Opinion and Order, 19 FCC Rcd 12672, 12673 n.9 (2004) (citing *Darien, Rincon, and Statesboro, Georgia, etc.*, Report and Order, 17 FCC Rcd 20485, 20486 (MMB 2002) (showing under *Tuck* required when station located outside of an Urbanized Area proposes to place a principal community signal over 50 percent or more of the Urbanized Area)). *See also Headland, Alabama and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352, 10354 (1995) (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 the Urbanized Area must submit *Tuck* analysis); *Chillicothe and Ashville, Ohio*, Request for Supplemental Information,

license (Yorba Linda) is located within the Los Angeles, California, Urbanized Area or the proposed facility would place a daytime 5 mV/m signal over a significant portion of the Los Angeles, California, Urbanized Area.

Accordingly, within twenty (20) days of the date of this letter, you are to file an amendment to your application demonstrating that the proposed community is eligible for a first local transmission service preference, addressing the *Tuck* factors enumerated above.[9] As previously stated in the *Mutually Exclusive Public Notice*, any data submitted must be based on the technical proposal as specified in the AM Auction No. 84 filing window application on file with the Commission.[10] Mutually exclusive AM applicants may not change the technical proposal specified in the AM Auction 84 filing window application.[11]

An original and two copies of this amendment must be filed with the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street S.W., Room TW-A325, Washington, D.C. 20054. It is requested that a courtesy copy also be filed with Shannon Hyatt, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street S.W., Room 2-B450, Washington, D.C. 20554.

Applicants that had addressed the *Tuck* criteria in their previously filed Section 307(b) amendment may, in lieu of re-filing the amendment, submit a letter requesting that the previously filed Section 307(b) amendment be considered responsive to the information requested herein. This letter request must be in writing, must contain the application number and facility identification number, and must be filed with the Office of the Secretary no later than 20 days of the date of this letter. Courtesy copies of such letter requests should also be filed with Shannon Hyatt at the above address.

Failure to file, within 20 days of the date of this letter, either an amendment addressing the Section 307(b) *Tuck* criteria, or a letter request to consider a previously filed Section 307(b) amendment,[12] yields an incomplete record for staff evaluation and may result in ineligibility for a first local transmission service preference under Priority (3) of the *FM Assignment Policies*.

Sincerely,

Lisa Scanlan

Peter H. Doyle for
Chief, Audio Division
Media Bureau

cc: Charles R. Naftalin, Esq.
Mark N. Lipp, Esq.

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18 FCC Rcd 11230 (MB 2003) (*Tuck* showing required based on potential transmitter relocation site that would serve more than 50 percent of an Urbanized Area).

[9] *See Romar*, 19 FCC Rcd at 23130 (applications for new AM stations filed in auction windows subject to *Tuck* analysis to determine eligibility for Priority (3) Section 307(b) preference).

[10] *See supra* note 1.

[11] *See Broadcast First Report and Order*, 13 FCC Rcd at 15976.

[12] *See* 47 C.F.R. § 73.3568(a)(1).

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