Federal Communications Commission
Washington, D.C. 20554
March 5, 2010

In Reply Refer to:
1800B3-BSH/LAS

Christyahna Broadcasting, Inc.
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Re: **AM Broadcast Auction 84**
MX Group 84-39G

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

Application for New AM Station Construction Permits

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

Application for Major Change in Licensed AM Station

Dear Applicants:

We have before us two mutually exclusive AM applications. Christyahna Broadcasting, Inc. ("CBI") proposes a new AM station at Lemon Grove, California, and Multicultural Radio Broadcasting, Inc. ("MRBI") proposes a major change in the licensed facility of Station KAHZ(AM), Pomona, California, to change the community of license from Pomona to Yorba Linda, California. As discussed below, we find a dispositive preference for MRBI under Section 307(b) of the Communications Act of 1934, as amended[1] (the "Act"), and therefore direct MRBI to file its long-form application within 60 days of the date of this letter for a construction permit in that community.

[1] 47 U.S.C. § 307(b).

Background. In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.[2] However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedure should be consistent with its statutory mandate under Section 307(b) of the Act to provide a "fair, efficient, and equitable" distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.[3] The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.[4]

Discussion. The CBI and MRBI applications propose a first local transmission service to their respective communities and claim priority (3) under the applicable allotment priorities. Where, as in this instance, CBI's and MRBI's proposed community of license either is located within an Urbanized Area, or the proposed facility would place a daytime 5 mV/m signal over a significant portion of an Urbanized Area, we do not automatically award a first local service preference. Rather, we have used the criteria set forth in *Faye and Richard Tuck* ("*Tuck*")[5] as a guideline in determining whether the proposed community has an identity distinct from the Urbanized Area, and is therefore entitled to consideration for a first local service. These criteria 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, utilizing the eight *Tuck* factors.[6] By letter dated January 13, 2010, the staff requested that each applicant claiming priority (3) supplement its Section 307(b) showing with information addressing the *Tuck* criteria, or submit a letter requesting that its previously filed Section 307(b) amendment be considered responsive to the information requested, in order to determine whether its proposal warrants a first local service preference.[7]

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[2] *See Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses* ("*Broadcast First Report and Order*"), First Report and Order, 13 FCC Rcd 15920 (1998), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

[3] *Broadcast First Report and Order*, 13 FCC Rcd at 15964-65.

[4] *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

[5] *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

[6] The eight factors set forth in *Tuck* 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.

[7] *Christyahna Broadcasting, Inc. and Multicultural Radio Broadcasting, Inc.*, Letter, Ref. No. 1800B3-BSH/LAS (MB Jan. 13, 2010) ("*Tuck Letter*").

Lemon Grove proposal: On February 2, 2010, CBI provided the requested information, acknowledging that the proposed station at Lemon Grove is located within the San Diego Urbanized Area. The record reflects that the population of Lemon Grove (24,918 persons) is 2.0 percent of the population of San Diego (1,223,400 persons), and Lemon Grove is approximately nine miles away from the center of the San Diego Urbanized Area. However, these facts do not necessarily preclude a finding that Lemon Grove warrants a first local service preference.[8] While these two factors are pertinent, they are less significant than evidence substantiating the independence of Lemon Grove from San Diego.

CBI contends that, based on the *Tuck* factors, Lemon Grove is independent from San Diego. In support, CBI submits that many of Lemon Grove's residents work at the more than 50 businesses that are located in Lemon Grove. (CBI, however, provides no data on the exact percentage of community residents working in either the Urbanized Area or Lemon Grove) (factor 1). CBI states that, although there are no newspapers or other media that are based in, or licensed to, Lemon Grove, the *San Diego Source*, a local newspaper, has an online section specifically devoted to the Lemon Grove area. Additionally, the *East County Gazette*, covers the east side of San Diego County, which includes Lemon Grove, and the *San Diego Union Tribune's* East County edition includes Lemon Grove-specific news (factor 2). CBI provides evidence demonstrating that Lemon Grove's community leaders and residents perceive their community as being independent from San Diego. This perception is evidenced by, *inter alia*, the Lemon Grove Historical Society, which runs two local museums, numerous activities conducted by Lemon Grove's own Recreation Services Department, and various annual events, such as the Annual Lemon Grove Community Celebration (factor 3). The City of Lemon Grove has its own government, including an elected mayor and City Council, which appoints a City Manager, City Attorney, and many other officials. Additionally, Lemon Grove has created the Lemon Grove Community Development Agency, which has certain powers (*i.e.,* issuing bonds, buying property, providing financial assistance) to encourage and support revitalization activities in Lemon Grove (factor 4). Lemon Grove has multiple white page directories for the city, such as SBC Pacific Bell, and two zip codes are assigned to the area (factor 5). CBI submits that Lemon Grove has a substantial business presence, which is reflected in the significant membership in the San Diego East County Chamber of Commerce. Moreover, Lemon Grove has its own transportation system, the Lemon Grove Shuttle, as well as the Lemon Grove Community Recreation Center Health Facility (factor 6). CBI states that Lemon Grove may be reached by advertisers as a discrete advertising market through the *San Diego Source, East County Gazette,* and *San Diego Union Tribune*, each of which either specifically markets to Lemon Grove or the eastern section of the County of San Diego (factor 7). Lemon Grove does not rely on San Diego for most of its municipal services. As stated by CBI, Lemon Grove has its own fire department, branch of the San Diego County library system, and sewer, electricity, medical, and waste disposal facilities. In addition, Lemon Grove has five city parks and its own school district (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Lemon Grove is independent of San Diego. Accordingly, CBI's

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[8] *See Bay St. Louis and Poplarville, Mississippi*, Report and Order, 10 FCC Rcd 13144 (MMB 1995) (first local service preference awarded when population difference was only 4.48 percent); *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (first local service preference awarded when contour coverage of 85-95 percent of Urbanized Area and population difference of less than 1 percent); *Oraibi, Arizona*, Report and Order, 14 FCC Rcd 13547 (MMB 1999) (first local service preference awarded when contour coverage of 90 percent of Urbanized Area).

proposal qualifies for a first local transmission service preference under priority (3) of the applicable allotment priorities.[9]

Yorba Linda proposal: On January 29, 2010, MRBI provided the requested information, acknowledging that the proposed community of Yorba Linda is located within the Los Angeles Urbanized Area. The record reflects that the population of Yorba Linda (58,918 persons) is 1.6 percent of the population of Los Angeles (3,694,820 persons), and Yorba Linda is within the Los Angeles Urbanized Area. However, these facts do not necessarily preclude a finding that Yorba Linda warrants a first local service preference.[10] While these two factors are pertinent, they are less significant than evidence substantiating the independence of Yorba Linda from Los Angeles.

MRBI contends that, based on the *Tuck* factors, Yorba Linda is independent from Los Angeles. In support, MRBI states that 26 percent of Yorba Linda residents work in Yorba Linda, not in Los Angeles (factor 1). MRBI notes that Yorba Linda has its own local newspaper, the *Yorba Linda Star* (factor 2). MRBI states that Yorba Linda's community leaders and residents perceive their community as being independent from Los Angeles. In support, MRBI notes that the Yorba Linda Library contains the Local History Collection, which was established to collect, preserve, and make available to the public, materials relating to the history of Yorba Linda (factor 3). The City of Yorba Linda has its own government, including an elected City Council, which annually elects one of its members to serve as mayor. Yorba Linda also has its own City Attorney, City Manager, City Clerk, and numerous commissions and departments, including a planning commission, finance department, and public works department (factor 4). Three zip codes are assigned to Yorba Linda, and the U.S. Postal Service operates two post offices in Yorba Linda (factor 5). MRBI submits that Yorba Linda has a substantial business presence, which is reflected in the Yorba Linda Chamber of Commerce's listing of 388 member businesses that operate in Yorba Linda. Yorba Linda is also home to numerous medical facilities (factor 6). MRBI asserts that Yorba Linda is a distinct advertising market because Yorba Linda businesses can advertise in the *Yorba Linda Star* (factor 7). Yorba Linda does not rely on Los Angeles for most of its municipal services. As stated by MRBI, the Placentia-Yorba Linda Unified District administers the schools in Yorba Linda, which include seven elementary and three middle schools in Yorba Linda. The Yorba Linda Public Library provides service to the city, and the Yorba Linda Water District provides water to the community. Yorba Linda has a police department, and fire protection is provided by Orange County, which operates two stations in Yorba Linda (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Yorba Linda is independent of Los Angeles. Accordingly, MRBI's proposal qualifies for a first local transmission service preference under priority (3) of the applicable allotment priorities.[11]

After careful consideration of the CBI and MRBI applications, we have determined that the MRBI proposal is entitled to a dispositive Section 307(b) preference. As noted, both CBI and MRBI propose a first local transmission service and claim priority (3) under the applicable allotment priorities.

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[9] Furthermore, we find that Lemon Grove, California, constitutes a community suitable for licensing purposes. *See Arnold and Columbia, California*, Memorandum Opinion and Order, 7 FCC Rcd 6302, 6303 (MMB 1992) ("*Arnold and Columbia*").

[10] *See supra* note 8.

[11] Furthermore, we find that Yorba Linda, California, constitutes a community suitable for licensing purposes. *See Arnold and Columbia,* 7 FCC Rcd at 6303.

Where, as in this instance, listeners in each of the communities receive five or more aural services,[12] the Commission has consistently based its decision on a straight population comparison and preferred the community with the larger population.[13] We therefore find it in the public interest to give preference to a first local transmission service to the larger community of Yorba Linda (with a 2000 U.S. Census population of 58,918 persons) over a first local service to the smaller community of Lemon Grove (with a 2000 U.S. Census population of 24,918).

Additionally, MRBI has demonstrated that changing Station KAHZ(AM)'s community of license from Pomona to Yorba Linda results in a preferential arrangement of assignments. MRBI's proposed major change to Station KAHZ(AM) meets the criteria for a preference under priority (3) of the applicable allotment priorities as a first local transmission service to Yorba Linda, California. Retaining a second local service at Pomona, the current community of license, would be evaluated under Priority (4), other public interest matters.[14] Under well-settled policy, the establishment of a first local service at Yorba Linda, under priority (3) is preferred to retaining a second local service under priority (4).[15] For these reasons, MRBI will continue in the application process by filing a complete FCC Form 301 application.[16]

Conclusion / Action. Accordingly, for the above reasons, IT IS ORDERED that MRBI, within 60 days of the date of this letter, is to file a complete FCC Form 301 in connection with its application for a construction permit for a major change in the licensed facility of Station KAHZ(AM), Pomona, California, to change community of license to Yorba Linda, California (File No. BMJP-20040130AAB), pursuant to the procedures set forth in the Commission's Rules.[17] With its application, MRBI must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

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[12] Both Lemon Grove and Yorba Linda are well-served by at least five full-time aural services. *See Family Broadcasting Group*, Decision, 93 FCC2d 771 (Rev. Bd.), *rev. denied*, Order, FCC 83-559 (1983) (Commission considers areas that receive five or more services to be abundantly served).

[13] *See, e.g., Cameron and Hackberry, Louisiana,* Report and Order, 20 FCC Rcd 16267 (MB 2005) (decision based on population difference of 266 people); *Rose Hill, North Carolina,* Memorandum Opinion and Order, 15 FCC Rcd 10739 (MMB 2000) (decision based on population difference of 370 people); *Blanchard, Louisiana and Stephens, Arkansas,* Memorandum Opinion and Order, 10 FCC Rcd 9828 (1995) (decision based on population difference of 38 people).

[14] Station KWKU(AM), Facility ID No. 1925, is licensed to Pomona.

[15] *See Dundee and Odessa, New York*, Report and Order, 22 FCC Rcd 13734 (MB 2007) (preferential arrangement of allotments found when community of license change provided first local transmission service to community versus retaining second local transmission service at current community of license). Furthermore, there will not be removal of the sole local service at Pomona. *See also supra* note 12.

[16] After the FCC Form 301 is filed, the staff will conduct a complete legal and technical analysis. We will issue Public Notices entitled "Broadcast Applications," announcing AM auction applications determined to be acceptable for filing. These notices will be generated by the Consolidated Database System ("CDBS"). Petitions to deny an FCC Form 301 application, must be filed within 10 days following release of the Broadcast Applications Public Notice announcing acceptance of the application at issue. *Broadcast First Report and Order* at 15985. The staff will dismiss the application filed by CBI (File No. BNP-20040129ARH) upon action taken on the application filed by MRBI.

[17] *See* 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. MRBI must demonstrate that the proposed facility protects existing stations and earlier filed applications, and that the daytime and nighttime facilities comply with principal city coverage requirements.[18] Any differences between the tech box proposal filed during the AM Auction No. 84 filing window and the complete FCC Form 301 must be minor changes, as defined by the applicable AM service rules,[19] and must not create new application conflicts.

The complete FCC Form 301 application must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. For information regarding electronic application filing, refer to the April 28, 2000, Public Notice, *Mass Media Bureau Implements Consolidated Database System (CDBS) Electronic Filing of FCC Forms 301, 302, 314, 315, 316, and 347*. When filing the complete FCC Form 301, an applicant must select "Long Form Application for AM Auction No. 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the tech box submission filed in the AM Auction No. 84 filing window must be entered on the Pre-form in the field "Eng. Proposal File Number." Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing website at **http://www.fcc.gov/mb/elecfile.html.** For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

The staff will return applications not submitted in accordance with the procedures described above. Failure to timely file the complete FCC Form 301 application, **on or before May 6, 2010,** will result in dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute, pursuant to Section 73.3568 of the Commission's Rules.[20]

Sincerely,

Lisa Scanlan
for

Peter H. Doyle
Chief, Audio Division
Media Bureau

[18] *See id.* §§ 73.24, 73.37, and 73.182.

[19] *Id.* § 73.3571.

[20] *Id.* § 73.3568.