Federal Communications Commission
Washington, D.C. 20554
October 22, 2007

In reply refer to:
1800B3-LAS/JP

Fjarli Broadcasting
670 Mason Way
Medford, OR 97501

Scott Powell
110 Green Meadows
Abilene, TX 79605

Re: **AM Broadcast Auction 84**
MX Group 84-76

Central Point, Oregon
Facility ID No. 160256
File No. BNP-20040130BDD

Yreka, California
Facility ID No. 161215
File No. BNP-20040130ABN

Applications for New AM Station Construction Permits

Dear Applicants:

We have before us two mutually exclusive AM applications.[1] Fjarli Broadcasting ("Fjarli") proposes a new AM station at Central Point, Oregon, and Scott Powell ("Powell") proposes a new AM station at Yreka, California. As discussed below, we find a dispositive preference for Fjarli under Section 307(b) of the Communications Act of 1934, as amended[2] (the "Act"), and therefore direct Fjarli to file its long-form application within 60 days of the date of this letter for a construction permit in that community.

Background. In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.[3] However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedures should be consistent with its statutory

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[1] A third mutually exclusive AM application filed by Wynne Broadcasting Company, Inc., (File No. BNP-20040129AUM) was dismissed on March 21, 2006. *See AM Auction No. 84 Mutually Exclusive Applications Dismissed for Either Failing to File or Untimely Filing of Section 307(b) Showing*, Public Notice, 21 FCC Rcd 2912 (MB 2006). A fourth application, filed by IHR Educational Broadcasting (File No. BNP-20040130ACR) was dismissed on November 3, 2005, at the applicant's request.

[2] 47 U.S.C. § 307(b).

[3] *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).

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.[4] 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.[5]

Discussion. After careful consideration of both applications, we have determined that the Fjarli proposal is entitled to a dispositive Section 307(b) preference under priority (3) of the applicable allotment priorities as a first local transmission service to Central Point, Oregon. There are currently three radio stations licensed to Yreka, California, Powell's proposed community of license, and therefore, its proposal would be considered under priority (4), other public interest matters. Under well-settled policy, the establishment of a first local service at Central Point under priority (3) is preferred to a priority (4) proposal.

In awarding Fjarli's proposal a preference for providing a first local transmission service, we recognize that Central Point is located in the Medford, Oregon, Urbanized Area. Where, as in this instance, the proposed new AM station's 5 mV/m contour will cover 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*")[6] 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.[7] By letter dated July 7, 2006, the staff requested that Fjarli supplement its Section 307(b) showing with information addressing the *Tuck* criteria in order to determine whether its proposal warrants a first local service preference.

On August 29, 2006, Fjarli provided the requested information, acknowledging that the proposed station at Central Point will place a daytime 5 mV/m contour over a significant portion of the Medford Urbanized Area. The record reflects that the population of Central Point (12,493 persons) is 17 percent of

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[4] *Broadcast First Report and Order* at 15964-65, ¶ 120.

[5] *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 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).

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

[7] 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.

the population of Medford (73,782 persons), and Central Point is approximately five miles away from the center of the Medford Urbanized Area. However, these facts do not necessarily preclude a finding that Central Point warrants a first local service preference.[8] While these two factors are pertinent, they are less significant than evidence substantiating the independence of Central Point from Medford.

Fjarli contends that, based on the *Tuck* factors, Central Point is independent from Medford. In support, Fjarli submits that a substantial portion of Central Point's residents work in Central Point and the community has its own newspaper, the *Central Point Sun*, which is published in Central Point (factors 1 and 2). The Mission Statement of Central Point's City Council indicates that community leaders and residents perceive Central Point as being separate from the larger area of Medford, having as one of its goals to "create a unique identity for Central Point" (factor 3). Central Point has its own local government, consisting of an elected mayor and city council, and employs a number of other functionaries, including a City Administrator (factor 4). Central Point has its own zip code (factor 5). Numerous commercial establishments exist within Central Point, including banks, real estate brokers, and retail establishments. In addition, Central Point is home to a number of medical facilities serving the residents (factor 6). Central Point provides police and fire protection to its residents, has an independent school district, and public library (factor 8).[9] We find that the preponderance of the evidence submitted supports the conclusion that Central Point is independent of Medford. Accordingly, Fjarli's proposal qualifies for a first local transmission service preference under priority (3) of the applicable allotment priorities[10] and Fjarli will continue in the application process by filing a complete FCC Form 301 application.[11]

Conclusion. Accordingly, IT IS ORDERED that Fjarli Broadcasting, within 60 days of the date of this letter, is to file a complete FCC Form 301 in connection with its application for a new AM broadcast station at Central Point, Oregon (File No. BNP-20040130BDD), pursuant to the procedures set forth in the Commission's Rules.[12] With its application, Fjarli 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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[8] *See Bay St. Louis and Poplarville, Mississippi*, Report and Order, 10 FCC Rcd 13144 (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 (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 (1999) (first local service preference awarded when contour coverage of 90 percent of Urbanized Area).

[9] Fjarli admits that Central Point and Medford are considered part of the same advertising market (factor 7). However, we have considered a community independent when evidence supporting a majority of these factors demonstrates that the proposed community of license is distinct from the Urbanized Area. Thus, not every factor must weigh in favor of a finding of independence. *See, e.g., Parker and St. Joe, Florida*, Report and Order, 11 FCC Rcd 1095 (1996); *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (1997).

[10] Furthermore, we find that Central Point, Oregon constitutes a community suitable for allotment purposes. *See Arnold and Columbia, California*, Memorandum Opinion and Order, 7 FCC Rcd 6302, 6303 (MMB 1992).

[11] 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*, 13 FCC Rcd at 15985. The staff will dismiss the application filed by Powell (File No. BNP-20040130ABN) upon action taken on the application filed by Fjarli.

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

The facilities proposed in FCC Form 301 must comply with all applicable AM rules. Fjarli 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.[13] 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,[14] 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 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.[15]

Sincerely,

Lisa Scanlan
for

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Donald E. Martin, Esq.

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

[14] *Id.* § 73.3571.

[15] *Id.* § 73.3568.