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

In Reply Refer to:
1800B3-LAS/JP

Valley Broadcasters
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First Broadcasting of Nevada, Inc.
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PO Box 91426
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Eastern Sierra Broadcasting
PO Box 1254
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Re: **AM Broadcast Auction 84**
MX Group 84-122

Olivehurst, California
Facility ID No. 160999
File No. BNP-20040130ASO

Sparks, Nevada
Facility ID No. 160638
File No. BNP-20040129 AMV

Reno, Nevada
Facility ID No. 161155
File No. BNP-20040130AAM

Chico, California
Facility ID No. 160362
File No. BNP-20040127AAO

Applications for New AM Station Construction Permits

Dear Applicants:

We have before us four mutually exclusive AM applications.[1] Valley Broadcasters ("Valley") proposes a new AM station at Olivehurst, California; First Broadcasting of Nevada, Inc. ("FBN") proposes a new AM station at Sparks, Nevada; and Eastern Sierra Broadcasting ("ESB") proposes a new AM station at both Reno, Nevada, and Chico, California. As discussed below, we find a dispositive preference for Valley under Section 307(b) of the Communications Act of 1934, as amended[2] (the "Act"), and therefore direct Valley 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 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.[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 all four applications, we have determined that the Valley 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 Olivehurst, California. There are currently five radio stations licensed to Sparks, Nevada, FBN's proposed community of license, thirteen radio stations licensed to Reno, Nevada, and seven radio stations licensed to Chico, California, ESB's proposed communities of license. Therefore, these proposals would be considered under priority (4), other public interest matters. Under well-settled policy, the establishment of a first local service at Olivehurst, California under priority (3) is preferred to priority (4) proposals.

In awarding Valley's proposal a preference for providing a first local transmission service, we recognize that Olivehurst, California is located in the Yuba City, California, Urbanized Area. Where, as in this instance, the proposed new AM station's 5 mV/m contour will cover a significant portion of an

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[1] A fifth mutually exclusive AM application filed by Scott Powell (File No. BNP-20040127AMB) and a sixth mutually exclusive AM application filed by Calaveras Inspirational Station, Inc. (File No. BNP-20040129ALH) were 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)

[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).

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

[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 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).

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 to the Urbanized Area, utilizing the eight *Tuck* factors.[7] By letter dated July 11, 2006, the staff requested that Valley 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 July 31, 2006, Valley provided the requested information, acknowledging that the proposed station at Olivehurst will place a daytime 5 mV/m contour over much, if not all, of the Yuba City Urbanized Area. The record reflects that the population of Olivehurst (11,061 persons) is 30 percent of the population of Yuba City (36,758 persons), and Olivehurst is approximately five miles away from the center of the Yuba City Urbanized Area. Olivehurst and Yuba City are separated by the Yuba and Feather Rivers, and are located in different counties. However, these facts do not necessarily preclude a finding that Olivehurst warrants a first local service preference.[8] While these two factors are pertinent, they are less significant than evidence substantiating the independence of Olivehurst from Yuba City.

Valley contends that, based on the *Tuck* factors, Olivehurst is independent from Yuba City. In support, Valley submits that a large percentage of Olivehurst's residents work in Olivehurst and the community maintains a website and its interests are covered by a daily regional newspaper, the *Appeal-Democrat* (factors 1 and 2). Valley states that based upon phone interviews with residents, the effort to incorporate Olivehurst indicates that Olivehurst's community leaders and residents perceive their community as being separate from the larger area of Yuba City. Olivehurst is due to be successfully incorporated in 2007 (factor 3). Olivehurst does not have its own local government because it is not yet incorporated. However, its residents currently elect five members of the Olivehurst Public Utilities Board and once incorporated, the city will utilize a City Manager and Council form of government (factor 4).[9] Olivehurst has its own zip code and post office (factor 5). Numerous commercial establishments exist within Olivehurst, including gas stations, grocery stores, car dealerships and other retail establishments.

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[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.

[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).

[9] *See* Valley Section 307(b) Showing, October 31, 2005, Exhibit III, *Final Report: Initial Fiscal Analysis of the Proposed Incorporation of Olivehurst.*

In addition, Olivehurst is home to a number of medical facilities serving the residents (factor 6). Valley submits that Olivehurst is not part of the same advertising market as Yuba City because a majority of Olivehurst businesses advertise in the *Appeal-Democrat* instead of Yuba City media outlets (factor 7). Olivehurst provides fire protection, water and sewer service, street maintenance, and waste removal service to its residents. Once incorporated, Olivehurst plans to add further services such as police protection and animal control services. Additionally, Olivehurst has five independent schools (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Olivehurst is independent of Yuba City. Accordingly, Valley's proposal qualifies for a first local transmission service preference under priority (3) of the applicable allotment priorities[10] and Valley will be directed to continue the application process by filing a complete FCC Form 301 application.[11]

Conclusion. Accordingly, IT IS ORDERED that Valley, 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 new AM broadcast station at Olivehurst, California (File No. BNP-20040130ASO), pursuant to the procedures set forth in the Commission's Rules.[12] With its application, Valley must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. Valley 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

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[10] Furthermore, we find that Olivehurst, California constitutes a community suitable for licensing 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 applications filed by FBN (File No. BNP-20040129AMV) and ESB (File Nos. BNP-20040130AAM and BNP-20040127AAO) upon action taken on the application filed by Valley.

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

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

[14] *Id.* § 73.3571.

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: Nathaniel J. Hardy, Esq.
Dan J. Alpert, Esq.

[15] *Id.* § 73.3568.