



Federal Communications Commission  
Washington, D.C. 20554  
November 18, 2009

*In Reply Refer to:*  
1800B3-BSH/LAS

OMB Control No. 3060-0996

Advanced Modulation Broadcasting, LLC  
6807 Foxglove Drive  
Cheyenne, WY 82009

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

New (AM), Golden, Colorado  
Facility ID No. 161314  
File No. BNP-20040130AWM

Dear Applicant:

On June 15, 2005, the Commission released a *Public Notice* (“*Mutually Exclusive Public Notice*”) directing certain mutually exclusive AM Broadcast Auction No. 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.<sup>1</sup> 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.<sup>2</sup> You filed the requested supplemental Section 307(b) amendment.<sup>3</sup> Your Section 307(b) amendment indicates that your AM station would provide first local transmission service to the proposed community of license, under Priority (3) of the *FM Assignment Policies*.<sup>4</sup>

The Commission has consistently stated that it will “not blindly award a first local service

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<sup>1</sup> *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).

<sup>2</sup> 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).

<sup>3</sup> 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.

<sup>4</sup> 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 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).

preference to proposed communities located in well-served urbanized areas, or where granting the preference would lead to an anomalous result.”<sup>5</sup> 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.*<sup>6</sup> and *Faye and Richard Tuck, Inc.*<sup>7</sup> 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 your technical proposal indicates that the proposed community of license is located within the Denver, Colorado, Urbanized Area or the proposed facility would place a daytime 5 mV/m signal over a significant portion of the Denver, Colorado, Urbanized Area.<sup>8</sup> 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 service preference, addressing the *Tuck* factors enumerated above.<sup>9</sup> 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

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<sup>5</sup> *Romar Communications Inc. and KM Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128, 23130 (2004) (“*Romar*”).

<sup>6</sup> 192 F.2d 33, 35 (D.C. Cir. 1951).

<sup>7</sup> 3 FCC Rcd 5374, 5376 (1988) (“*Tuck*”).

<sup>8</sup> 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*, 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, 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).

<sup>9</sup> 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).

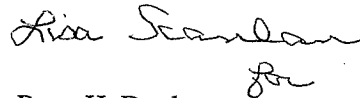
on file with the Commission.<sup>10</sup> Mutually exclusive AM applicants may not change the technical proposal specified in the AM Auction No. 84 filing window application.<sup>11</sup>

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 12<sup>th</sup> Street S.W., Room TW-A325, Washington, D.C. 20554. It is requested that a courtesy copy also be filed with Shannon Hyatt, Audio Division, Media Bureau, Federal Communications Commission, 445 12<sup>th</sup> 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 15 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,<sup>12</sup> yields an incomplete record for staff evaluation and may result in ineligibility for a first local service preference under Priority (3) of the *FM Assignment Policies*.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: A. Wray Fitch III, Esq.  
Lauren A. Colby, Esq.  
John D. Poutasse, Esq.  
Allan G. Moskowitz, Esq.

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<sup>10</sup> See *supra* note 1.

<sup>11</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 15976.

<sup>12</sup> See 47 C.F.R. § 73.3568(a)(1).