



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

In Reply Refer to:
1800B3-BSH/LAS

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

Birach Broadcasting Corporation
21700 Northwestern Hwy Suite 1190, Tower 14
Southfield, MI 48075-4923

Hill & Glover Broadcasting, LLC
4515 King George Court
Perry Hall, MD 21128

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

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

New (AM), Parker, Colorado
Facility ID No. 160508
File No. BNP-20040127ACM

New (AM), Englewood, Colorado
Facility ID No. 161338
File No. BNP-20040130ATM

**Application for New AM Station
Construction Permits**

Dear Applicants:

We have before us three mutually exclusive AM applications. Advanced Modulation Broadcasting, LLC ("Advanced") proposes a new AM station at Golden, Colorado. Birach Broadcasting Corporation ("Birach") proposes a new AM station at Parker, Colorado. Hill & Glover Broadcasting, LLC ("Hill & Glover") proposes a new AM station at Englewood, Colorado. As discussed below, we find a dispositive preference for Advanced under Section 307(b) of the Communications Act of 1934, as amended¹ (the "Act"), and therefore direct Advanced 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 procedures 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. After careful consideration of the three applications, we have determined that the Advanced 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 Golden, Colorado. Although Birach claimed a priority (3) preference as a first local transmission service for Parker, Colorado, Commission records reflect that a construction permit has been issued for one radio station in Parker.⁵ There is currently one radio station licensed to Engelwood, Colorado, Hill & Glover’s proposed community of license. Therefore, both the Birach and Hill & Glover proposals would be considered under priority (4), other public interest matters. Under well-settled policy, the establishment of a first local service at Golden, Colorado, under priority (3) is preferred to a priority (4) proposal.

In awarding Advanced’s proposal a preference for providing a first local transmission service, we recognize that Golden, Colorado, is located in the Denver, Colorado, Urbanized Area. Where, as in this instance, the proposed new AM station is located in an Urbanized Area or the proposed new AM station’s 5 mV/m contour could 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 to the Urbanized Area, utilizing the eight *Tuck*

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* 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 File No. BPH-20070314ACY. See also *Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations* (*McCook, Alliance, Imperial Nebraska, and Limon, Parker, Aspen, Avon, and Westcliffe, Colorado*, Report and Order, 16 FCC Rcd 8910 (MMB 2001) (modifying authorization for Station KAVD(FM) to specify Parker, Colorado, as its community of license).

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

factors.⁷ By letter dated November 18, 2009, the staff requested that Advanced 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 December 8, 2009, Advanced provided the requested information, acknowledging that the proposed station at Golden is located within the Denver Urbanized Area. On December 15, 2009, Advanced supplemented its response to the *Tuck Letter*, clarifying that the proposed station will place a daytime 5 mV/m contour over approximately 83 percent of the Denver Urbanized Area. The record reflects that the population of Golden (17,159 persons) is 3.1 percent of the population of Denver (554,636 persons), and Golden is approximately twelve miles away from the center of the Denver Urbanized Area. However, these facts do not necessarily preclude a finding that Golden warrants a first local service preference.⁸ While these two factors are pertinent, they are less significant than evidence substantiating the independence of Golden from Denver.

Advanced contends that, based on the *Tuck* factors, Golden is independent from Denver. In support, Advanced states that 30.4 percent of Golden residents work in Golden, not in Denver (factor 1). Advanced notes that Golden has its own weekly newspaper, the *Golden Transcript*. The City of Golden also publishes a monthly newsletter titled the *Golden Informer*, and the City of Golden's Channel 8 programming features city council meetings, public service announcements and job listings for Golden. (factor 2). Further, Advanced provides evidence demonstrating that Golden's community leaders and residents perceive their community as being independent from Denver. This sense of independence is fostered, *inter alia*, by several museums in Golden dedicated solely to preserving local history and traditions, three historic districts in Golden's downtown area, and Golden's Chamber of Commerce's declared goal of maintaining Golden's small town identity and historical heritage in the face of nearby metropolitan Denver (factor 3). Golden has been a Home Rule city since January 1968, operating under a council/manager form of government. The Golden City Council, consisting of seven elected representatives including the mayor, decides all city policy matters and also appoints the municipal attorney, the municipal judge, and the city manager (factor 4). Golden has two unique zip codes (factor 5). Advanced submits that Golden has its own Chamber of Commerce that lists local businesses in a multitude of areas, including legal services, manufacturing businesses, shopping and specialty retail stores, and insurance companies. In addition, Golden is served by a variety of health care options including general medicine offices, as well as physical therapy, pediatricians, orthopedic and spine specialists, and also a naturopathic center (factor 6). Advanced states that Golden is in a different

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).

advertising market from Denver because Golden businesses and individuals may advertise in the *Golden Transcript* (factor 7). Golden provides its residents with most municipal services, including police, fire protection, schools, libraries, a Parks and Recreation Department, a Public Works Department, and a Water Treatment Department (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Golden is independent of Denver. Accordingly, Advanced's proposal qualifies for a first local transmission service preference under priority (3) of the applicable allotment priorities.⁹ Therefore, in light of the above determinations, Advanced will be directed to continue the application process by filing a complete FCC Form 301 application.¹⁰

Conclusion / Action. Accordingly, for the above reasons, IT IS ORDERED that Advanced, 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 Golden, Colorado (File No. BNP-20040130AWM), pursuant to the procedures set forth in the Commission's Rules.¹¹ With its application, Advanced 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. Advanced 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.¹² 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,¹³ 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.

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

¹⁰ 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 Birach (File No. BNP-20040127ACM) and Hill & Glover (File No. BNP-20040130ATM) upon action taken on the application filed by Advanced.

¹¹ See 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

¹² See *id.* §§ 73.24, 73.37, and 73.182.

¹³ *Id.* § 73.3571.

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 February 16, 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.¹⁴

Sincerely,

Lisa Scanlon
for

Peter H. Doyle
Chief, Audio Division
Media Bureau

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

¹⁴ *Id.* § 73.3568.