



Federal Communications Commission  
Washington, D.C. 20554

January 13, 2010

**OMB Control No. 3060-0996**

Arthur V. Belendiuk, Esq.  
Smithwick & Belendiuk, PC  
5028 Wisconsin Avenue NW  
Suite 301  
Washington, D.C. 20016

Jerold L. Jacobs, Esq.  
Cohn and Marks LLP  
1920 N Street NW  
Washington, D.C. 20037

Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street NW  
Suite 240  
Washington, D.C. 20036

Jeffrey L. Timmons, Esq.  
1400 Buford Highway  
Suite G-5  
Sugar Hill, GA 30518-8727

Harry C. Martin, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209-3801

Mark N. Lipp, Esq.  
Wiley Rein LLP  
1776 K Street NW  
Washington, D.C. 20006

**Re: Applications for New AM Station  
Construction Permits (AM Station  
Formerly Licensed to Contemporary  
Media, Inc.)  
MX Group AM 1230**

New (AM), West Terre Haute, Indiana  
Facility ID No. 136123  
File No. BNP-20010724ADV

New (AM), Terre Haute, Indiana  
Facility ID No. 136114  
File No. BNP-20010724ADQ

New (AM), Terre Haute, Indiana  
Facility ID No. 136110  
File No. BNP-20010724ADN

New (AM), Shelburn, Indiana  
Facility ID No. 136108  
File No. BNP-20010724ADL

New (AM), Terre Haute, Indiana  
Facility ID No. 136105  
File No. BNP-20010724ADH

New (AM), Terre Haute, Indiana  
Facility ID No. 136102  
File No. BNP-20010724ADG

Dear Applicants:

By Public Notice released July 3, 2001, the Media Bureau and the Wireless Telecommunications Bureau announced, *inter alia*, a supplemental AM Auction 32 filing window for permits for two AM stations formerly licensed to entities controlled by Michael Rice (the "Rice Station(s)").<sup>1</sup> Attachment B to a recent Public Notice<sup>2</sup> lists the seven entities that timely filed applications for the AM facility at 640 KHz, Terre Haute, Indiana, and the six entities that timely filed applications for the AM facility at 1230 KHz, Terre Haute, Indiana. This letter concerns the further processing requirements regarding the six above-referenced mutually exclusive applications for the AM facility at 1230 KHz, Terre Haute, Indiana ("MX Group AM 1230").

In the *Broadcast First Report and Order*, the Commission determined that its competitive bidding authority should be harmonized with its statutory duty under Section 307(b) of the Communications Act of 1934, as amended<sup>3</sup> (the "Act"), to effect an equitable distribution of radio stations throughout the United States.<sup>4</sup> Thus, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications proposing to serve

---

<sup>1</sup> *Permanent and Interim Authority Procedures Announced for Applications for Stations Formerly Licensed to Entities Controlled by Michael Rice*, Public Notice, 16 FCC Rcd 12832 (MB/WTB 2001) ("*Supplemental Window Notice*"). The Commission previously revoked the licenses for these stations upon determining that the controlling shareholder of the licensee entities did not possess the basic character qualifications to hold a Commission license.

<sup>2</sup> *Window Opened to October 30, 2009, to Permit Amendment of Applications for Noncommercial Educational Stations in Pending, Closed Mixed Groups*, Public Notice, 24 FCC Rcd 12188 (MB 2009).

<sup>3</sup> 47 U.S.C. § 307(b).

<sup>4</sup> *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).

different communities.<sup>5</sup> Accordingly, because the six above-referenced entities that timely filed mutually exclusive applications for the AM facility at 1230 KHz propose to serve different communities, a Section 307(b) analysis is required.<sup>6</sup>

Therefore, in order to evaluate Section 307(b) considerations, each applicant in closed MX Group AM 1230 must submit, within 30 days of the date of this letter, an amendment to its previously filed tech box application that includes the following: (1) the area and population within the proposed 2 mV/m and 0.5 mV/m daytime contours, and the nighttime interference-free contour (if fulltime operation is proposed); (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) where relevant to establish the precondition of a licensable community, a description of the civic, cultural, religious, social and commercial attributes of the proposed community of license; and (6) any other information determined relevant by the applicant.<sup>7</sup> Submitted Section 307(b) data must be based on the technical proposal as specified in the *Supplemental Window* tech box application. Applicants in MX Group AM 1230 may not change the technical proposal specified in its *Supplemental Window* tech box application. The staff will dismiss without further processing the previously filed Form 175 application (and Section I and Section II-A Tech Box of the Form 301 submission) of any applicant that fails to file a Section 307(b) amendment by February 16, 2010.

While the *Supplemental Window Notice* solicited applications for replacement facilities for the former AM station at 1230 KHz, Terre Haute, Indiana, two entities proposed a community of license other than Terre Haute, Indiana.<sup>8</sup> With regard to each of these two applications, either the proposed community of license is located within the Terre Haute, Indiana, Urbanized Area, or the proposed facility would or could place a daytime 5 mV/m signal over a significant portion of the Terre Haute, Indiana, Urbanized Area.<sup>9</sup> To the extent applicable therefore, those applicants in MX Group AM 1230 claiming

---

<sup>5</sup> *Id.*, 13 FCC Rcd at 15964.

<sup>6</sup> Pursuant to 47 C.F.R. § 73.5002(d), mutually exclusive groups consisting of only new commercial AM station applications are not permitted to resolve their mutual exclusivities through settlement or engineering solutions. Therefore, a settlement opportunity is not being provided at this time.

<sup>7</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). This request for Section 307(b) information offers each applicant the flexibility to advance its application based upon its distinct circumstances. The relevance of each applicant's submission will be assessed during the staff's Section 307(b) review. It may be the case that certain of this information may not be material to the staff's Section 307(b) determination.

<sup>8</sup> Fort Bend Broadcasting Company, Inc. proposed West Terre Haute, Indiana; KM Communications, Inc. proposed Shelburn, Indiana.

<sup>9</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*, Report and Order, 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,

priority (3) consideration must provide the additional information discussed below as part of their Section 307(b) submissions.

The Commission has consistently stated that it will “not blindly award a first local service preference to proposed communities located in well-served urbanized areas, or where granting the preference would lead to an anomalous result.”<sup>10</sup> Consequently, before awarding a priority (3) first local transmission 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>11</sup> and *Faye and Richard Tuck, Inc.*<sup>12</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.

In order to determine whether the proposal warrants a first local transmission service preference, all applicants in MX Group AM 1230 claiming a first local transmission service preference under priority (3) must include with their Section 307(b) amendment information demonstrating that their proposed community is eligible for a first local transmission service preference, addressing the *Tuck* factors enumerated above.<sup>13</sup>

An original and two copies of Section 307(b) submissions must be filed **on or before February 16, 2010**, with the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W. Room TW-A325, Washington, D.C. 20054. In

---

18 FCC Rcd 11230 (MB 2003) (*Tuck* showing required because applicant could select transmitter site that both meets community of license coverage requirements and provides service to more than 50 percent of an Urbanized Area).

<sup>10</sup> *Romar Communications Inc. and KM Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128, 23130 (2004) (“*Romar*”).

<sup>11</sup> 192 F.2d 33, 35 (D.C. Cir. 1951).

<sup>12</sup> 3 FCC Rcd 5374, 5376 (1988) (“*Tuck*”).


<sup>13</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).

addition, it is requested that a courtesy copy of all such Section 307(b) filings be delivered to James Bradshaw, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A267, Washington, D.C. 20554.

Applicants are reminded that Sections 1.2105(c) and 73.5002(d) of the Commission's rules prohibit applicants for any of the same construction permits from communicating with each other about bids, bidding strategies, or settlements, which may include communications regarding the post-auction market structure, unless they have identified each other on their Form 175 applications as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>14</sup> When providing any additional information in support of a Section 307(b) amendment, applicants must avoid any statements or disclosures that may violate the prohibition on communications of Sections 1.2105(c) or 73.5002(d). For MX Group AM 1230, this prohibition became effective at the Form 175 application filing deadline on July 24, 2001, and will end at the post-auction down payment deadline. Furthermore, under our *ex parte* rules, auction filing window applicants are not deemed to be parties with respect to each other's applications merely because their applications are mutually exclusive. Accordingly, absent other factors, e.g., the filing of an objection or waiver, an applicant in an MX group may make *ex parte* presentations about its own application.<sup>15</sup>

Sincerely,



Peter H. Doyle   
Chief, Audio Division  
Media Bureau

cc:

Fort Bend Broadcasting Company, Inc.  
Contemporary Media, Inc.  
Powell Meredith Communications Company  
KM Communications, Inc.  
Bott Broadcasting Company  
Word Power, Inc.

---

<sup>14</sup> See 47 C.F.R. § 1.2105(c), 73.5002(d).

<sup>15</sup> See 47 C.F.R. § 1.1202(d)(1) and Note 1. See also *Commission Announces that Mutually Exclusive 'Short Form' Applications (Form 175) to Participate in the Competitive Bidding Process ('Auctions') Are Treated as Exempt for Ex Parte Purposes*, Public Notice, 9 FCC Rcd 6760 (1994).

**FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT**

The public reporting for this collection of information is estimated to range from 0.5 to 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on these burden estimates, or on how we can improve the collection and reduce the burden they cause you, please write to Cathy Williams, Federal Communications Commission, AMD-PERM, Room 1-C823, 445 12<sup>th</sup> Street S.W., Washington, D.C. 20554, Paperwork Reduction Project (3060-0996). We will also accept your comments regarding the Paperwork Reduction Act aspects of the collection via the Internet if sent to Cathy.Williams@fcc.gov.

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection unless it displays a currently valid OMB Control Number or if we fail to provide you with this notice. This collection has been assigned OMB Control Number 3060-0996.

**THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. Section 3507.**