



**Federal Communications Commission
Washington, D.C. 20554**

August 26, 2011

DA 11- 1460
In Reply Refer to:
1800B3-AJR
Released: August 26, 2011

Cumulus Licensing LLC
c/o Mark N. Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

In re: **KRRF(FM), Goleta, CA**
Facility ID No. 10329
File No. BPH-20110218ABV

KRUZ(FM), Santa Barbara, CA
Facility ID No. 3159
File No. BPH-20110218ABW

**Applications to Change Communities
of License**

Dear Mr. Lipp:

We have before us two mutually contingent and concurrently filed applications of Cumulus Licensing LLC ("Cumulus"), licensee of Stations KRRF(FM), Goleta, California, and KRUZ(FM), Santa Barbara, California. In the first application (the "Oak View Application"),¹ Cumulus proposes to change the community of license of Station KRRF(FM) from Goleta to Oak View, California. In the second application (the "Goleta Application"),² Cumulus requests to change the community of license of Station KRUZ(FM) from Santa Barbara to Goleta, California. No oppositions or informal objections were filed.³ For the reasons set forth below, we grant the Oak View and Goleta Applications subject to Mexican concurrence on the Oak View Application.

Background. The Oak View and Goleta Applications were filed pursuant to Section 73.3573 of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁴ The Oak View and Goleta Applications were also filed pursuant to Section 73.3517(e) which permits FM licensees or permittees to file up to four contingently related applications

¹ See File No. BPH-20110218ABV.

² See File No. BPH-20110218ABW.

³ The Goleta and Santa Barbara Applications were placed on Public Notice, and a 60-day period was provided for filing comments. See *Public Notice*, 76 FR 14394 (March 16, 2011).

⁴ 47 C.F.R. § 73.3573.

for minor modification of facilities.⁵ The Oak View Application requests the change of community of license for Station KRRF(FM) from Channel 292A at Goleta, California, to Channel 292A at Oak View, California, with a change of transmitter site, and the modification of Cumulus's license to reflect these changes. To prevent the removal of Goleta's sole, local service, the Goleta Application proposes the change of community of license for Station KRUZ(FM) from Channel 248B at Santa Barbara to Channel 248B at Goleta, without a transmitter site change, as a "back-fill" station.

In support of its Applications, Cumulus alleges that the reallocations of Stations KRRF(FM) and KRUZ(FM) satisfy the requirements for changing a station's community of license because: (1) the proposed use of Channel 292A at Oak View is mutually exclusive with the current use of Channel 292A at Goleta, and the proposed use of Channel 248B at Goleta is mutually exclusive with the current use of Channel 248B at Santa Barbara; (2) Goleta will not be deprived of its only local service because KRUZ(FM) is concurrently changing its community of license to Goleta; and (3) the provision of a first local service at Oak View (population 4,199) under FM Priority 3⁶ will result in a preferential arrangement of allotments over the retention of a 13th local service at Santa Barbara under Priority 4.⁷ Cumulus further contends that a *Tuck*⁸ showing is not required to demonstrate that Oak View is sufficiently independent of the Oxnard Urbanized Area because Station KRRF(FM) is moving from one Urbanized Area to another;⁹ however, in the event that the Commission is concerned about the independence of Oak View, Cumulus has submitted a *Tuck* showing which purports to demonstrate the independence of Oak View.

Discussion. We must examine the Oak View and Goleta Applications to determine if they meet the requirements for stations to change their communities of license. A station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service¹⁰; and (3) the proposed arrangement of allotment is preferred under the Commission's FM allotment priorities.¹¹ Additionally, when the proposed community is located inside an Urbanized Area or if the proposed facilities could cover 50 percent or more of an Urbanized

⁵ See 47 C.F.R. § 73.3517(e).

⁶ The FM allotment priorities are (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). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988).

⁷ Cumulus alleges that "[t]he proper comparison is between Oak View and Santa Barbara because it is Santa Barbara which will be losing a local service (due to the move of KRUZ) and Oak View is gaining a local service (due to the move of KRRF). The community of Goleta will retain its local service." See Cumulus's Application, Section 307(b) Exhibit and *Tuck* Showing at 2 n.1.

⁸ See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1978) ("*Tuck*") (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

⁹ Goleta and Santa Barbara are located in the Santa Barbara Urbanized Area, while Oak View is located in the Oxnard Urbanized Area.

¹⁰ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) ("*Community of License MO&O*").

¹¹ See 47 C.F.R. §§ 1.420(i) and 73.3573(g)(1).

Area, the Commission has required an applicant to file a *Tuck* showing that the proposed community is independent of the Urbanized Area in cases in which the applicant claims a first local service preference.¹²

First, the proposed use of Channel 292A at Oak View is mutually exclusive with the current use of Channel 292A at Goleta, and the proposed use of Channel 248B at Goleta is mutually exclusive with the current use of Channel 248B at Santa Barbara. Thus, the first requirement for that proposed change of community is met. Second, the reallocation of Station KRRF(FM) to Oak View will not violate the Commission's policy prohibiting the removal of a community's sole local aural service. Pursuant to the Commission's decision in *Rural Radio*, KRRF(FM), at its current location at Goleta, is presumed to provide service to the Santa Barbara Urbanized Area, which receives multiple local audio services.¹³

The next issue is whether a *Tuck* showing is needed in this case. In a related case, *Gearhart, Madras, Manzanita, and Seaside, Oregon* ("*Gearhart*"),¹⁴ the staff took the opportunity to apply the new policies established policies set forth in *Rural Radio*,¹⁵ In that case, the staff stated, "there is no need for a *Tuck* showing where both the station's current and proposed communities of license are located within an Urbanized Area because such intra-urbanized moves do not present the same concerns as rural to urban moves."¹⁶ In this case, we find that the same policy should apply to moves from one urbanized area to another urbanized area. As in *Gearhart*, "a first local service preference is not being used as a basis to enter the market."¹⁷ Historically, the Commission has treated moves from one urbanized area to another urbanized area in the same manner as intra-urbanized area moves.¹⁸ Accordingly, there is no need to examine the *Tuck* showing submitted by Cumulus for a first local service at Oak View, California.

¹² See, e.g., *Headland, Alabama, and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352, 10354 (1995) (requiring 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 an Urbanized Area to submit a *Tuck* showing; *Powell Meredith Communications, Co., et al.*, Memorandum Opinion and Order, 19 FCC Rcd 12672, 12673 n.9 (2004). The Commission recently adopted stricter standards regarding *Tuck* showings, which are discussed *infra* at n.13.

¹³ At its proposed new location (Oak View), KRRF(FM) is presumed to provide service to the Oxnard Urbanized Area. Similarly, at both its current location (Santa Barbara) and its proposed new location (Goleta), KRUZ(FM) is presumed to provide service to the Santa Barbara Urbanized Area.

¹⁴ *Gearhart, Madras, Manzanita, and Seaside, Oregon*, DA 11-1209, rel. July 19, 2011.

¹⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 25 FCC Rcd 2556 (2011). Therein, the Commission established "... a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license." *Rural Radio*, 25 FCC Rcd at 2567, ¶ 20. The Commission further provided that this presumption may be rebutted by a compelling showing of the independence of the community from the urbanized area, the community's specific need for an outlet for local expression, and the ability of the proposed station to provide that outlet. *Id.* at 2572, ¶ 30.

¹⁶ See *Gearhart*, at ¶ 9.

¹⁷ *Id.*

¹⁸ See, e.g., *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, Virginia*, Second Report and Order, 7 FCC Rcd 6309 (MMB 1992).

In the absence of a compelling showing to rebut the presumption, we will address whether the Oak View and Goleta Applications will result in a preferential arrangement of allotments under Priority 4, other public interest matters. In that regard, Cumulus has demonstrated that the proposed relocation of Station KRRF(FM) from Goleta to Oak View will result in a substantial net gain in 60 dBu service to 225,855 persons in a 435 sq. km. area. There will be at least 16 aural services providing protected service to Goleta. There will remain at least ten aural services throughout the KRRF(FM) loss area, which covers the Santa Barbara Urbanized Area but extends mostly over water. The change in community of license for Station KRUZ(FM) does not result in any loss or gain areas because the station is not changing its facility and is remaining in the Santa Barbara Urbanized Area.¹⁹ Therefore, we believe that the proposed relocations of Station KRRF(FM) and KRUZ(FM) will result in a preferential arrangement of allotments.

Conclusion and Ordering Clauses. In view of the above, we conclude that the public interest is served by grant of the Oak View and Goleta Applications. Accordingly, IT IS ORDERED that the applications (File Nos. BPH-20110218ABV and BPH-20110218 ABW) filed by Cumulus Licensing LLC ARE GRANTED, subject to Mexican concurrence with respect to File No. BPH-20110218ABV, because the proposed transmitter site is located within 320 kilometers of the United States-Mexico border.²⁰

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ See *Gearhart*, at ¶ 10 (approving reallocation of an FM station within the same Urbanized Area without changing its transmitter site).

²⁰ The reference coordinates for Channel 292A at Oak View, California, are 34-17-47 NL and 119-16-21 WL. The reference coordinates for Channel 248B at Goleta, California, are 34-31-32 NL and 119-57-28 WL.