



Federal Communications Commission  
Washington, D.C. 20554

March 30, 2015

*In Reply Refer To:*  
1800B3-DD/NS

Ms. Martha Whitman  
809 Wellesley, NE  
Albuquerque, New Mexico 87106

In Re: KQNM-AM, Milan, New Mexico  
File No: BP-20140715ABR  
Facility Identification Number: 22391

**Minor Change Application**

Dear Ms. Whitman:

This letter refers to the minor change application (the "Application") of Isleta Radio Company ("Isleta"), licensee of Station KQNM-AM ("KQNM"), Milan, New Mexico. The Application proposes a city of license modification for KQNM from Milan to Sandia Pueblo, New Mexico. For the reasons discussed below, we direct Isleta to amend the Application within thirty (30) days of this letter.

**Background.** The Application was filed pursuant to Section 73.3571(j) of the Commission's Rules,<sup>1</sup> which sets forth the requirements for modification of an AM Station license to specify a new community of license without providing an opportunity for competing expressions of interest. Among other requirements, an application for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of assignments in comparison with its current service.<sup>2</sup> We make this determination using the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>3</sup>

In support of the Application, Isleta states that its proposal would provide a first local service to Sandia Pueblo, New Mexico, a Tribal reservation where 4,414 persons reside. Isleta represents that the population of Sandia Pueblo is concentrated in two areas: the Pueblo of Sandia Village,<sup>4</sup> and the southern portion of the town of Bernalillo.<sup>5</sup> In addition, Isleta contends that the Application is not a proposal to

<sup>1</sup> 47 C.F.R. § 73.3571(j).

<sup>2</sup> *Id.* See also *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2576 (2011) (subsequent history omitted) ("*Rural 2d R&O*") (¶ 36). We shall refer to the proceeding generally as "*Rural Radio*."

<sup>3</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982) 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) ("Allotment Priorities"). Note that under *Alessandro Broadcasting Co.*, Decision, 99 FCC 2d 1 (1984), these four priorities may also be applied to § 307(b) determinations involving AM stations; see also *Kidd Communications*, Letter, 15 FCC Rcd 22901, 22903 (MB 2000).

<sup>4</sup> The 2010 United States Census shows that the village has a population of 369 persons.

<sup>5</sup> The town of Bernalillo has a total population of 8,320 persons. See 2010 U.S. Census. Isleta maintains that 3,235 of Bernalillo residents also are under the concurrent jurisdiction of the reservation.

serve the Albuquerque urbanized area (“UA”), and submits a *Tuck* analysis<sup>6</sup> to demonstrate Sandia Pueblo’s independence. Isleta states that a majority of Sandia Pueblo residents work inside the community, and that Sandia Pueblo has its own government, providing a wide range of municipal services, and has its own zip code (87004). Isleta further represents that Sandia Pueblo has several commercial establishments, and that it operates its own Health Center, dental clinic, and pharmacy. Finally, Isleta states that the residents of Sandia Pueblo have an independent cultural tradition that differs from that of Albuquerque UA and its conventional suburbs, and there is no local audio or print media, so the Sandia Pueblo tribe advertises its businesses through central New Mexico radio and television stations, and newspapers.

**Discussion.** *Section 307(b) analysis.* In considering the Application, we must determine whether the Application complies with our Section 307(b) processing policies. Because the proposed new community is a Tribal reservation, we will consider whether Isleta’s proposed change of community should be treated as a request for a reserved Tribal Allotment at Sandia Pueblo. In *Rural Radio*, the Commission concluded that it would serve the public interest to establish a Section 307(b) priority in favor of Tribal entities proposing the allotment of FM radio channels to serve Tribal lands.<sup>7</sup> The Commission instituted several requirements for a Tribal Allotment. Among those requirements, there is a threshold prerequisite that “[t]he applicant is either a federally recognized Tribe or Tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes.”<sup>8</sup> Isleta presents no evidence that it meets the prerequisite, so this proposal does not qualify as a request for a Tribal Allotment. We therefore will evaluate the proposed change of community under the Commission’s general Allotment Priorities.

The Commission established a rebuttable presumption that a proposed station located within an urbanized area (“UA”), or could through a minor application serve 50 percent or more of a UA, should be treated as serving the entire UA rather than the named community of license.<sup>9</sup> Isleta has attempted to rebut this presumption, claiming that the relocation of Station KQNM would result in a first local service at Sandia Pueblo rather than an additional station in the Albuquerque UA. We disagree. The two primary prongs of the *Tuck* test – (1) the degree to which the proposed station will provide coverage to the urbanized area and (2) the size and proximity of the proposed community relative to the central city of the urbanized area -- support application of the presumption. Specifically, under prong (1), Station KQNM would cover 99.5 percent of the Albuquerque UA with the predicted five millivolts per meter (“5 mV/m”) signal. Likewise, under prong (2), Sandia Pueblo’s population (4,414) is relatively small in relation to the Albuquerque and Sandia Pueblo is 13.8 miles from the center of Albuquerque. While there is a mixed

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<sup>6</sup> *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1978) (“*Tuck*”) (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

<sup>7</sup> The rationale for this determination was that “the establishment of an allocation priority for the provision of radio service to tribal lands by Indian tribal government-owned stations will advance our Section 307(b) goals and serve the public interest by enabling Indian tribal governments to provide radio service tailored to the needs and interests of their local communities that they are uniquely capable of providing.” *Rural Radio*, First Report and Order, 25 FCC Rcd 1583, 1588 (2010) (“First R&O”); and Third Report and Order, 26 FCC Rcd 17642, 17647 (2011). n.32.

<sup>8</sup> *Rural Radio*, Third R&O, 26 FCC Rcd at 17646-47. See also First R&O, 25 FCC Rcd at 1596-97; and Second R&O, 26 FCC Rcd at 2585-87.

<sup>9</sup> 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, 2567 (subsequent history omitted) (“*Rural Radio*”). 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.

showing on the third prong, the interdependence of the proposed community and the urbanized area, we find that this is insufficient to rebut the presumption given that primary emphasis is now placed on the first two prongs.<sup>10</sup> Accordingly, we conclude that Isleta has not made a “compelling” showing to rebut the presumption that the reallocation of KQNM would be an additional station in the Albuquerque UA rather than a first local service at Sandia Pueblo under Priority 3. We therefore will examine the Application under Priority 4, other public interest considerations.

Under Priority 4, we take into account the number of aural reception services received in the proposed service area, the number of local transmission services, the relative sizes of the proposed communities, their growth rates, and other factors relevant to the public interest. In order to demonstrate that a proposal would serve the public interest, a proponent may set forth “the size of the populations gaining and losing service under the proposal, ... the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal advances the revised Section 307(b) priorities.”<sup>11</sup>

We find that retention of KQNM as a fifth local transmission service at Milan<sup>12</sup> is preferred over providing a 26th local transmission service to the Albuquerque UA. In addition, Milan experienced a growth rate of 71.6 percent since 2000, whereas Albuquerque demonstrated a 21.1 percent growth rate during the same period.<sup>13</sup> Both the gain and loss areas are and would remain well-served with five or more aural services, with the exception of a small unpopulated portion of the loss area, which would be left with four services. Milan receives at least 13 aural services, and the Albuquerque UA receives at least 33 services. In addition, our engineering calculations show that, if the Application were granted, 18,047 persons would lose a reception service and 850,974 persons would gain a reception service, for a net gain of 832,927 potential listeners. Despite this large increase in the number of persons served by KQNM, we do not find that the proposed change of community of license would serve the public interest.

In *Rural Radio*, the Commission’s goal was to protect listeners in smaller communities and rural areas from losing transmission and reception services provided by broadcasters seeking to move to more abundantly served urban areas.<sup>14</sup> In advancing that goal, the Commission elected to de-emphasize differences in population coverage in awarding Section 307(b) preferences.<sup>15</sup> Even prior to *Rural Radio*, we held that a large net increase of more than 100,000 persons did not establish a preferred arrangement of allotments, where all the gain area was well-served and other factors favored the existing community.<sup>16</sup> Moreover, the Commission has stated that the public has a legitimate expectation that existing service will

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<sup>10</sup> See *Rural Radio*, 26 FCC Rcd at 2572 (¶ 30).

<sup>11</sup> See *Rural 2d R&O*, 26 FCC Rcd at 2577 (¶ 39).

<sup>12</sup> In addition to KQNM, Milan has three operating FM stations and one FM construction permit.

<sup>13</sup> Milan’s population was 1,891 in 2000, and its 2010 population was 3,245. Albuquerque’s 2000 and 2010 populations were 450,557 and 545,852, respectively. See U.S. Census Bureau, “Census 2000,” Table DP-1: Profile of General Demographic Characteristics: 2000; and 2010 U.S. Census.

<sup>14</sup> See *Rural 2d R&O*, 26 FCC Rcd at 2567 (¶ 19).

<sup>15</sup> *Id.* (¶ 20).

<sup>16</sup> See *Royston and Commerce, Georgia*, Report and Order, 15 FCC Rcd 5676, 5678 (MMB 2000).

continue, and that removal of an existing service requires sufficient public interest benefits to offset that expectation.<sup>17</sup>

**Conclusion.** Accordingly, for the reasons discussed above, we direct Isleta Radio Company to amend the Application within thirty (30) days of this letter. Failure to correct all tender and acceptance defects within thirty (30) days from the date of this letter will result in the dismissal of the application with no further opportunity for corrective amendment pursuant to 47 C.F.R. §§ 73.3564(a)(3) and 73.3522(c)(2).

Sincerely,

A handwritten signature in blue ink, appearing to read "Nazifa Sawez". The signature is fluid and cursive, with the first name being more prominent.

Nazifa Sawez  
Assistant Chief  
Audio Division  
Media Bureau

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<sup>17</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License* (“*Community of License*”), Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097 (1990) (¶ 19).