

FIRST ATTACHMENT TO EXHIBIT 33

STATEMENT RE PROPOSED CHANGE IN COMMUNITY OF LICENSE

This First Attachment to Exhibit 33 is part of an FCC Form 301 application for a Minor-Change Construction Permit (the *Application*) filed by Munbilla Broadcasting Properties, Ltd. (*MBPL*) to modify the facilities of radio station KYRT(FM), Channel 249A, Mason, Texas, FCC Facility ID No. 165378 (the *Station* or *KYRT*). The Application proposes a change in transmitter site, and a shift from Channel 249A to Channel 250A. The Application also proposes to change the Station's community of license from Mason, Texas to Hunt, Texas. This First Attachment demonstrates that the proposed change in the Station's community of license constitutes a preferential arrangement of station assignments under § 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b). This First Attachment also demonstrates how the proposed change will comply with the requirements of §§ 73.203, 73.3573(a)(1), 73.3573(f)(1), and 73.3573(g) of the Commission's Rules.

I. BACKGROUND

1. Station KYRT's initial Construction Permit, FCC File No. BNPH-20060309AAT, issued on May 2, 2007. That authorization, which specified Channel 259A, was the subject of an application for minor modification, FCC File No. BMPH-20070718AAJ. The modification application proposed a shift to Channel 249A. The Commission granted the modification application on July 1, 2009.

2. On November 10, 2009, MBPL filed an FCC Form 302-FM application, FCC File No. BLH-20091110AAN, for a license to cover the Modified Construction Permit. On November 12, 2009, the Commission accepted the license application for filing. By means of Broadcast Applications, Report No. 27112 (released November 16, 2009), the Commission announced the license application's acceptance for filing. The license application remains pending.

3. As a result of the Report and Order in MB Docket No. 05-210, 71 Fed. Reg. 76208 (December 20, 2006), it became possible for broadcast radio stations to propose changes in their communities of license by means of Minor-Change Construction Permit applications, if the proposed facilities would be mutually exclusive with their licensed facilities. This Application seeks to change the Station's transmitter site, to shift it one channel – from Channel 249A to Channel 250A, and to relicense the Station to the community of Hunt, Texas. As the spacing study supplied as the Attachment to Exhibit 31 of this Application indicates, the proposed facility is mutually exclusive with the authorized Channel 249A KYRT facility by virtue of a 12-km short spacing. Hence, this Application for a Minor Change Construction Permit is a suitable vehicle for advancing the proposal.

II. ARGUMENT

A. THE PROPOSED RELICENSING OF STATION KYRT TO HUNT WILL CLEARLY REFLECT A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS

4. Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recons. granted in part, 5 FCC Rcd 7094 (1990), requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). The relicensing of station KYRT from Mason, Texas to the community of Hunt, Texas, which

presently has but a single local service, will clearly serve the interests of § 307(b) of the Communications Act of 1934, as amended, and will result in a preferential arrangement of allotments. The relicensing will bring a second local service to a deserving community, without removing the only service from Mason.

5. In addition to the service provided by the authorized facilities of KYRT, station KYRT's current community of license, Mason, Texas, currently enjoys local service from two licensed facilities:

- station KHLB(FM), Channel 273C2, FCC Facility ID No. 83109, FCC File No. BLH-20050310ADT; and
- station KOTY(FM), Channel 239C2, FCC Facility ID No. 83100, FCC File No. BLH-20040720AAS.

6. In addition, MBPL holds a Construction Permit, FCC File No. BNPH-20070430CGN, for a new commercial FM station that will serve the community of Mason on Channel 269C3. MBPL intends to construct that facility shortly. Therefore, even after grant of this Application, Mason will have three local authorized facilities. Hunt, by contrast, has only one local service, radio station KRZS, Channel 260C3, FCC Facility ID No. 165377.

7. Hunt, Texas is an unincorporated town in western Kerr County, in the heart of the Texas Hill Country, the rugged limestone hills that separate the coastal plain from the Edwards Plateau. According to the Texas Towns Database of the Texas Almanac, <http://www.texasalmanac.com/cgi-bin/townsearch.pl>, the population of Hunt is 708 persons.

8. Hunt, originally called Japonica, was renamed when one Alva Joy purchased land in the area from one Bob Hunt, and established a US Post Office there. Hunt's Post Office remains in service, and is open Monday through Friday, 7:30 to 11:30 A.M., and 12:30 to 4:00 P.M. The

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Post Office is located at 1644 Highway 39 in Hunt. http://usps.whitepages.com/post_office/78024. The Zip Code is 78024.

9. Hunt sits at the confluence of the North and South Forks of the Guadalupe River. The area is home to many summer camps, each with its own rich history. These camps include Camp Waldemar, <http://www.waldemar.com/>, Camp Stewart, <http://campstewart.com/>, Camp La Junta, <http://www.lajunta.com/>, Camp Rio Vista, <http://www.vistacamps.com/>, Camp Honey Creek, <http://www.camphoneycreek.com/>, Camp Sierra Vista, <http://www.vistacamps.com/>, Camp Mystic, <http://www.campmystic.com/>, Camp Heart of the Hills, <http://www.hohcamp.com/>, and Camp Flaming Arrow, <http://www.ymcasatx.org/campflamingarrow/>.

10. Two of the most popular attractions in the Hunt area are Crider's Rodeo on Saturday nights in the Summer on the South Fork, west of Hunt, and the replica of the Stonehenge megalithic structure on the North Fork, north of Hunt. <http://www.roadsideamerica.com/story/7819>. Local restaurants include the Hunt Store, Elaine's Table, and the Rio Rancho Cafe. The Mo-Ranch Conference Center offers many programs, including day and summer camps. <http://www.moranch.com/>.

11. In MM Docket No, 99-234, Hunt, Texas, 14 FCC Rcd 18890 (1999), the Mass Media Bureau correctly determined that Hunt is a licensable community, and allotted Channel 260A as a first local service to the community. There is no basis for modifying that determination.

12. According to the 2000 U.S. Census, <http://is.gd/adnpn>, the population of Mason, the Station's presently authority principal community to be served, is 2,134. At first blush, on a per-capita, per-station basis, Mason would appear to have the advantage. However, the permanent-population numbers do not reflect the significant transient population that Hunt and its environs experience due to:

- attendance at the above-listed summer camps;
- recreational swimming in the Guadalupe River, a very popular recreational activity that draws significant numbers of visitors during the summer months;¹ and
- hunting, another popular seasonal pastime that draws visitors to the Texas Hill Country from elsewhere during the Fall and Winter months.

13. The FCC has repeatedly recognized that such transient populations buttress even a small community's need for local service. See, e.g., Beaver Dam and Brownsville, Kentucky, 13 FCC Rcd 16268 (M. Bur., 1998); Banks et al., Oregon, 13 FC Rcd 6596 (M. Bur., 1998), recons. den., 16 FCC Rcd 2272 (M. Bur., 2001); rev. den., 19 FCC Rcd 10068 (2004), settlement approved, 19 FCC Rcd 19457 (2004); Diamond Lake, Oregon, 17 FCC Rcd 6676 (M. Bur., 2002).

14. Because two existing full-time services will remain at Mason, soon to be joined by a third, relicensing the Station from Mason to Hunt does not trigger the concerns expressed in, e.g., para. 10 of Keesville, New York, et al., 19 FCC Rcd 16106 (M. Bur. 2004).

15. As the Second Attachment to Exhibit 33 demonstrates, the gain area associated with the proposed relicensing of the Station to Hunt is 2,516 sq km. The gain area has a permanent population of 43,072 persons. The loss area associated with the proposed relicensing is also 2,516 sq km, but the loss area has a much smaller population – only 3,750 persons. The net result of the proposed relicensing will be an increase in service to 39,322 persons. This will be a substantially more efficient use of the spectrum by the Station. Spectral efficiency is of “paramount” concern under § 307(b) of the Act. Endicott, New York, 51 FCC 2d 50, 51 (1975).

16. As the Second Attachment to Exhibit 33 also demonstrates, the proposed relicensing of KYRT to Hunt will not create any white area. A small gray area will arise, containing a

¹ See http://en.wikipedia.org/wiki/Hunt,_Texas.

population of only 9 persons. This is clearly *de minimis*. See, e.g., Opal and Reliance, Wyoming, et al., 20 FCC Rcd 12994 (M. Bur. 2005).

17. The 70-dB μ service contour of the proposed relicensed and relocated Station does not encompass any Urbanized Area as defined by the U.S. Census. <<http://www.demographia.com/db-ua2000pop.htm>>. In such a situation, the Commission does not require the submission of a “Tuck Showing.”²

§ 307(B) CONCLUSION

For all of the above reasons, the relicensing of the Station as MBPL proposes herein will clearly further the goals of § 307(b) of the Act and will result in a preferential arrangement of station assignments.

ULTIMATE CONCLUSION

For all of the above reasons, the staff should grant the relicensing of Station KYRT as MBPL proposes herein.

² Faye and Richard Tuck, 3 FCC Rcd 5374, 5376 (1988)