

Community of License Change – Section 307(b)

Radioactive, LLC (“Radioactive”), the holder, pursuant to the winning bid in Auction No. 62 of a construction permit to build a new FM station on Channel 268C0, Drummond, Montana, FCC File No. BNPH-20060310AFH, Facility ID No. 166027 (the “Permit”), submits this application for a construction permit for the minor modification of the Permit to specify operation on Channel 268C1 at Frenchtown, Montana, in lieu of operation on Channel 268C0 at Drummond, Montana (the “Application”). Expedited action on this request, which involves an unconstructed permit issued on December 29, 2006, pursuant to Auction No. 62, is requested, so that new service to Frenchtown may be promptly instituted.

This exhibit, together with the Technical Exhibit to this Application, demonstrates that the proposed community of license change constitutes a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. Section 307(b)). Furthermore, as set forth in the Technical Exhibit, the facilities specified in the Application are mutually exclusive, as defined in Section 73.207 of the Commission’s Rules, with the current assignment of the Permit awarded pursuant to auction. As confirmed in the Technical Exhibit to this application, there is an assignment or allotment site for this facility at the proposed community of license that fully complies with Sections 73.207 and 73.315 of the Commission’s Rules without resort to Sections 73.213 or 73.215 of the Commission’s Rules. The applicant will comply with the local public notice provisions of Sections 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f) of the Commission’s Rules, and understands that the exception contained in Section 73.3580(e) of the Commission’s Rules does not apply to an application proposing to change the community of license of an FM station.

Consequently, this proposed community of license change qualifies for submission as a minor modification application pursuant to Section 73.3573(g) of the Commission's Rules.

In determining whether a proposed community of license change constitutes a preferential arrangement of allotments under Section 307(b) of the Act, the Commission considers whether the proposal would serve one or more of the Commission's four priorities. <sup>1/</sup> Here, grant of the Application would satisfy the third priority by authorizing a first local aural transmission service at Frenchtown, Montana. The Application constitutes a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment/assignment. Frenchtown has a population (2000 Census) of 883 persons, exceeding the population (2000 Census) of Drummond, which is 318. <sup>2/</sup> Furthermore, grant of the Application would not result in a loss of existing local aural transmission service or aural reception services to Drummond since the Permit is not constructed. <sup>3/</sup>

Frenchtown clearly constitutes a community suitable for allotment purposes.

Commission precedent holds that a community that is either incorporated or a Census-

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<sup>1/</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("FM Assignment Policies"). The four priorities are: (i) one full-time aural reception service to a community; (ii) a second full-time aural reception service to a community; (iii) one local transmission service to a community; or (iv) other public interest factors. The second and third criteria have equal priority. *Id.* at 91. See also *Report and Order, In the Matter of Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, FCC 06-163 at ¶ 10 (released Nov. 29, 2006) (Section 307(b) priorities and policies used by Commission since 1982 continue to apply under new application procedures).

<sup>2/</sup> See Profile of General Demographic Characteristics for Frenchtown CDP, Montana, U.S. Census Bureau, Census 2000, at <http://censtats.census.gov/data/MT/1603029350.pdf>; Profile of General Demographic Characteristics for Drummond CDP, Montana, U.S. Census Bureau, Census 2000, at <http://censtats.census.gov/data/MT/1603021850.pdf> (copies at Attachment 1)

<sup>3/</sup> See, e.g. *Chatom and Grove Hill, Alabama R&O*, 12 FCC Rcd 7664, 7665 [¶ 4] (Chief, Allocations Br. 1997) (the relocation of an unconstructed station does not present the concerns with loss of service represented by the removal of an operating station as it does not constitute a service that the public has become reliant upon). See also *Bagdad and Chino Valley, Arizona R&O*, 11 FCC Rcd 523,

Designated Place presumptively qualifies as a community for allotment purposes and thereby merits its own local transmission service. 4/ Frenchtown meets this qualification: the city of Frenchtown was recognized as a Census-Designated Place in the 2000 Census. 5/

Frenchtown's other characteristics likewise demonstrate that it deserves its own local transmission service. The community of Frenchtown is a geographically identifiable population grouping in Missoula County with numerous indicia of community. 6/ Frenchtown has its own zip code (59834) and post office. 7/ Frenchtown has its own fire station which is maintained by the Frenchtown Rural Fire District. 8/ Also, Frenchtown Elementary School, Frenchtown Junior High, and Frenchtown High School are all located within the community. 9/

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523 [¶ 4] (Chief, Allocations Br. 1995) (permitting a change of community of license for an unconstructed permit, without taking into consideration loss of service in Bagdad).

4/ See e.g., *Cleveland and Ebenezer, Mississippi R&O*, 10 FCC Rcd 8807, 8808 [¶ 6] (Allocations Br. 1995) ("The Commission's long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the community is either incorporated or listed in the U.S. Census."). See also *Reydon, Oklahoma R&O*, 18 FCC Rcd 3222, 3222 [¶ 2] (Ass't Chief, Audio Div., released Mar. 4, 2003).

5/ See Profile of General Demographic Characteristics for Frenchtown CDP, Montana, U.S. Census Bureau, Census 2000, at <http://censtats.census.gov/data/MT/1603029350.pdf> (copy at Attachment 1). The U.S. Census Bureau defines "Census Designated Place" as "closely settled, named, unincorporated communities that generally contain a mixture of residential, commercial, and retail areas similar to those found in incorporated places of similar sizes." See the U.S. Census Bureau website at <http://www.census.gov/geo/www/psapage.html#CDP> (copy of relevant section at Attachment 2).

6/ See U.S. Census 2000 Block Map of the Frenchtown CDP at [http://www2.census.gov/geo/maps/blk2000/st30\\_Montana/Place/3029350\\_Frenchtown/CBP3029350\\_001.pdf](http://www2.census.gov/geo/maps/blk2000/st30_Montana/Place/3029350_Frenchtown/CBP3029350_001.pdf) (copy at Attachment 3). See also photographs of the community of Frenchtown (copies at Attachment 4).

7/ See United States Postal Service website at <http://zip4.usps.com>; Post Offices at <http://www.switchboard.com> (copies at Attachment 5). See also a photo of the Frenchtown post office included in Attachment 4.

8/ See Frenchtown Rural Fire District website, at <http://www.frenchtownfire.org> (copy at Attachment 6). The Frenchtown Rural Fire District provides services to several communities in Missoula County, including Frenchtown. Frenchtown Rural Fire District Station #1 is located in Frenchtown.

9/ Frenchtown Elementary School, Frenchtown Junior High, and Frenchtown High School comprise the Frenchtown School District. See Frenchtown School District website at <http://www.frenchtown.k12.mt.us/default.asp> (copy at Attachment 7). See also the school district's

In fact, population growth in the Frenchtown area recently led to the designation of the Frenchtown School District as a “first-class” school district and the addition of two newly-created school board positions. 10/

In addition to these services, Frenchtown has a number of local businesses that serve its residents’ needs, including a bank, a grocery store, a convenience store, a chiropractic clinic, a beauty salon, a medical practice, a physical therapist, a preschool and day care center, and several restaurants. 11/ A number of these local businesses include “Frenchtown” in their names such as the Frenchtown Dental Clinic, Frenchtown Physical Therapy, Frenchtown Fitness Center, Frenchtown Family Practice, and Frenchtown Club. 12/ The most recent addition to the Frenchtown business district is the “Corner Hub,” which celebrated a grand opening in December 2006, and provides Frenchtown with new commercial and retail space. 13/ Wanting to do something to “add” to Frenchtown, two entrepreneurs (a husband and a wife) started

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monthly newsletter for parents, teachers, and students, at <http://www.frenchtown.k12.mt.us/newsletters.asp> (copies of recent newsletters at Attachment 8). The December 2006 newsletter reports that in November 2006, local voters approved two school building bonds, totaling almost \$19 million dollars, which will be used to build a new junior high school building, add on to the high school building, build a vocational building, and for remodeling work on the elementary school.

10/ See John Murray, “4 of 7 Frenchtown School Board Positions Up for Election,” *The Clark Fork Chronicle*, January 11, 2007, available at <http://www.clarkforkchronicle.com/article.php/20070111084502183>. See also “Frenchtown Fundraisers Add Another \$49,000,” *The Clark Fork Chronicle*, January 18, 2007, available at <http://www.clarkforkchronicle.com/article.php/20060920114537124> (copies at Attachment 9).

11/ See listings in the Yahoo! Local phone directory at <http://yp.yahoo.com> (copies of a representative sampling of listings at Attachment 10); see also photographs of Frenchtown (copies at Attachment 4).

12/ See Frenchtown search results on Yahoo! Local Yellow Pages at <http://yp.yahoo.com> (copy at Attachment 11).

13/ See “Corner Hub Set for Grand Opening,” *The Clark Fork Chronicle*, December 14, 2006, at <http://www.clarkforkchronicle.com/article.php/20061214074833665> (copy at Attachment 12). See also a photograph of the Corner Hub at Attachment 4.

sketching out plans for the Corner Hub five years ago. <sup>14/</sup> In a newspaper article announcing the grand opening, the owners explained that the name “Corner Hub” fit well with Frenchtown because it suggested a “nice, relaxed environment.” <sup>15/</sup> The Corner Hub’s first occupants included a cafe, a realtor, an auctioneer, and a preschool and day care center. <sup>16/</sup> In addition, there are several places of worship in Frenchtown, including the Frenchtown Community Church, which recently celebrated 50 years of service to the community with a “reunion” party featuring a pig roast, ladies luncheon, and musical guests. <sup>17/</sup>

Frenchtown’s citizens clearly take pride in their community: one of Frenchtown’s hills features a large white letter “F” that has been etched into the earth, welcoming residents and visitors to the community. <sup>18/</sup> Also, community pride is evidenced by the Frenchtown Historical Society’s publication of a book titled “Frenchtown Valley Footprints” about how the Frenchtown community arose. <sup>19/</sup> The book, which is filled with historical information and photographs, states that Frenchtown was “established” in 1864. <sup>20/</sup> Early inhabitants were mainly French Canadian, hence the name of the community. <sup>21/</sup>

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<sup>14/</sup> *Id.*

<sup>15/</sup> *Id.*

<sup>16/</sup> *Id.*

<sup>17/</sup> See “All Churches” search results on Yahoo! Local Yellow Pages at <http://yp.yahoo.com> (copy at Attachment 13). See also Richard Werst, “Frenchtown Community Church to Celebrate 50 Years this Weekend” *The Clark Fork Chronicle*, January 18, 2007, available at <http://www.clarkforkchronicle.com/article.php/20060727101053382> (copy at Attachment 14).

<sup>18/</sup> See photograph entitled “Frenchtown Hillside” at Attachment 4.

<sup>19/</sup> See The Frenchtown Historical Society, *Frenchtown Valley Footprints* (1st ed. 1976) (copies of excerpted pages at Attachment 15).

<sup>20/</sup> *Id.*

<sup>21/</sup> See the description of Frenchtown on the Glacier Country Montana tourism website, at <http://glacier.visitmt.com/categories/city.asp?City=Frenchtown&SiteID=3> (copy at Attachment 16).

Finally, while the principal community contour of a station operating on the proposed allotment at maximum facilities from the proposed reference coordinates would encompass 100 percent the Missoula Urbanized Area with a 70 dBu contour, 22/ a “*Tuck*” analysis is not required here because, as set forth in the Technical Exhibit, the current Permit for Drummond on Channel 268C0 already places a 70 dBu contour over 100 percent of the Missoula Urbanized Area. 23/ Furthermore, the Proposal would not result in a loss of existing local aural transmission service or aural reception services to Drummond, the current community to which the construction permit for the Permit is assigned, since the Permit is not constructed. 24/

Although no *Tuck* showing is required here, in any event, the record before the Commission which establishes that Frenchtown is a community deserving of a first local transmission service also is responsive to the *Tuck* factors.

In a *Tuck* analysis, the Commission considers three criteria: (1) the signal population coverage, (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area. 25/ The interdependence factor is the most important criterion considered in making an

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22/ See Technical Exhibit.

23/ See, e.g., *Greeley and Broomfield, Colorado*, 15 FCC Rcd at 9419 [¶ 2] (Chief, Allocations Br. 2000) (no *Tuck* analysis required for community of license change when 70 dBu contour already placed over majority of urbanized area).

24/ See, e.g., *Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664 (Chief, Allocations Br. 1997) (the relocation of an unconstructed station does not present the concerns with loss of service represented by the removal of an operating station as it does not constitute a service that the public has become reliant upon); see also *Bagdad and Chino Valley, Arizona*, 11 FCC Rcd 523 (Chief, Allocations Br. 1995) (permitting a change of community of license for an unconstructed permit, without taking into consideration loss of service in Bagdad). In any event, as set forth in the Technical Exhibit, Drummond would continue to be well served by other aural reception services.

25/ See, e.g., *Saluda and Irmo, South Carolina*, 19 FCC Rcd 1078, 1079 [¶ 3] (Ass’t Chief, Audio Div., released Mar. 4, 2003).

allotment decision involving the proposed reallocation of a station to an urbanized area. 26/ In *Tuck*, the Commission set forth eight factors in assessing the interdependence of a specified community. 27/ The Commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. 28/

Regarding criterion one, signal population coverage, the Commission reviews “the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis.” 29/ Here, one hundred percent of the Missoula Urbanized Area would be served, as would be the case under the existing Permit. Even where such service would be provided for the first time, it would not preclude favorable consideration as a first local service. 30/ As to the size and proximity of the proposed community to the central city of the urbanized area, the center of Frenchtown is over sixteen miles from the center

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26/ *Id.*

27/ The eight independence factors are: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own weekly newspaper or other media that cover the community’s local needs and interests; (3) whether the 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 telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility 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. *Tuck*, 3 FCC Rcd at 5378.

28/ *See Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (MMB 1996).

29/ *See Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia*, 11 FCC Rcd 5758, 5759-60 [¶ 10] (Chief, Policy and Rules Division 1996).

30/ *See e.g., Ashland, Coaling, Cordova, Decatur, Dora, Hackleburg, Hobson City, Holly Pond, Killen, Midfield, Scottsboro, Sylacauga, and Tuscaloosa, North Carolina, Atlanta, Georgia, and Pulaski, Tennessee*, 19 FCC Rcd 6943, 6945 [¶ 6] (MB 2004) (“*Ashland et al.*”); *Cameron, First Mesa, Flagstaff, Dewey-Humboldt, Parker, Bagdad, Globe, Safford, Grand Canyon Village, Gilbert, and Chino Valley, Arizona*, 19 FCC Rcd 6846, 6849 [¶ 7] (MB 2004).

of Missoula. <sup>31/</sup> Furthermore, Frenchtown's population of 883 persons is significant. In any event, the Commission has stated that the first two criteria have less significance than evidence of independence. <sup>32/</sup>

Turning to the first of the eight independence factors, there are no precise statistics as the number of Frenchtown residents who work in Frenchtown; however, as previously noted, there are a multitude of local businesses in Frenchtown that provide ample employment opportunities for the residents of Frenchtown. <sup>33/</sup> Furthermore, the Smurfit-Stone Container Corporation paper and pulp mill in Frenchtown is one of the top fifty employers in Montana and a top twenty employer in Missoula County. <sup>34/</sup>

As to independence factor two – whether the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests – residents of Frenchtown read the *Clark Fork Chronicle*. <sup>35/</sup> The Montana-owned and operated *Clark Fork Chronicle* is a weekly newspaper that is published in Huson, Montana, and has won awards for its community service through the coverage of local news and events. The *Clark Fork Chronicle* has a designated reporter whose beat is Frenchtown. <sup>36/</sup> Also, as noted above,

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<sup>31/</sup> MapQuest calculates the driving distance between Frenchtown and Missoula as 16.76 miles. See <http://www.mapquest.com/> (copy at Attachment 17). See also *Saluda and Irmo, South Carolina* at 1079 [¶ 3] (independent community is located about 10 miles from central community); *Ashland et al.* at 6945 [¶ 7] (independent community is located about 9 miles from central community).

<sup>32/</sup> See e.g., *Ashland et al.* at 6945 [¶ 6].

<sup>33/</sup> See listings in the Yahoo! Local phone directory at <http://yp.yahoo.com> (copies of a representative sampling of listings at Attachment 10).

<sup>34/</sup> See “Sure Fit—Smurfit-Stone Container Ensuring Entry-Level Employees Are Adequately Trained Even Before They're Hired,” by Tyler Christensen, *Western Montana In Business Monthly*, April 2006, Vol. 4, No. 4, at <http://www.mtinbusiness.com/inbiz-0604/bus06.php> (copy at Attachment 18).

<sup>35/</sup> See Clark Fork Chronicle “Contact Us” page at <http://www.clarkforkchronicle.com/staticpages/index.php/20060811222528947> (copy at Attachment 19).

<sup>36/</sup> *Id.*



the Frenchtown School District publishes a monthly newsletter that, in addition to reporting on what is happening inside the schools' classrooms, covers school board meeting agendas, provides sports schedules, and informs readers about adult education offerings. 37/

Factor three – whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area – is clearly demonstrated the Frenchtown “F” proudly displayed on a Frenchtown hillside. 38/ Furthermore, the publication of the “Frenchtown Valley Footprints” book indicates that the community has a long history separate from that of Missoula. 39/

With respect to factor four – whether the specified community has its own local government and elected officials – Frenchtown is part of Missoula County, which is governed by a Board of County Commissioners, consisting of three elected members who serve six-year staggered terms. 40/ There have been community discussions as to whether Frenchtown residents should also establish their own community council. 41/

As to the fifth factor – whether the smaller community has its own telephone book provided by the local telephone company or its own zip code – Frenchtown does have its own zip code (59834). 42/ Frenchtown also has its own post office. 43/

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37/ See, e.g., links to recent newsletters at <http://www.frenchtown.k12.mt.us/newsletters.asp> (copies of recent newsletters at Attachment 8).

38/ See photograph entitled “Frenchtown Hillside” at Attachment 4.

39/ See The Frenchtown Historical Society, *Frenchtown Valley Footprints* (1st ed. 1976) (copy of excerpted pages at Attachment 14).

40/ See Missoula County website at <http://www.co.missoula.mt.us/mcbcc/> (copy at Attachment 20).

41/ See “Meet the Candidates Forum Set for Frenchtown Monday Night,” *Clark Fork Chronicle*, October 11, 2005, at <http://www.clarkforkchronicle.com/article.php/20061011155107433> (copy at Attachment 21).

42/ See United States Postal Service website at <http://zip4.usps.com> (copy at Attachment 5).

Frenchtown also meets the sixth indicator of independence – whether the community has its own commercial establishments, health facility, and transportation systems. As previously described, Frenchtown has a number of commercial establishments. <sup>44/</sup> The U.S. Census Bureau reports that there are a total of 55 business establishments in Frenchtown community’s zip code. <sup>45/</sup> Frenchtown is home to a number of healthcare facilities, including the Frenchtown Dental Clinic, a Frenchtown Family Practice, a Frenchtown Physical Therapy and a Frenchtown Fitness Center. <sup>46/</sup>

Regarding factor seven – the extent to which the specified community and the central city are part of the same advertising market, neither Frenchtown nor Missoula are part of any Arbitron market. Advertisers can target Frenchtown’s residents by advertising in the *Clark Fork Chronicle*, which, as previously described, covers Frenchtown community news. <sup>47/</sup>

With respect to factor eight – 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. As noted above, Frenchtown is served by its own fire station that is part

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<sup>43/</sup> *Id.*

<sup>44/</sup> *Id.*

<sup>45/</sup> See U.S. Census Bureau, Zip Code Business Patterns 2004 Industry Code Summary for ZipCode 59834, at <http://censtats.census.gov/cgi-bin/zbpnaic/zbpssect.pl> (copy at Attachment 22).

<sup>46/</sup> See listings in the Yahoo! Local phone directory at <http://yp.yahoo.com> (copies of a representative sampling of listings at Attachment 10).

<sup>47/</sup> See Clark Fork Chronicle “Contact Us” page at <http://www.clarkforkchronicle.com/staticpages/index.php/20060811222528947> (copy at Attachment 19).

of the Frenchtown Rural Fire District, 48/ and Frenchtown Elementary School, Frenchtown Junior High, and Frenchtown High School are all located within Frenchtown. 49/

In sum, analysis under the *Tuck* criteria confirms the independence of Frenchtown. Under Commission precedent, there are sufficient indicia of community to confirm that Frenchtown is a place deserving of its own aural transmission service and that grant of the application would further the public interest in the fair, efficient, and equitable distribution of radio services.

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48/ See Frenchtown Rural Fire District website, at <http://www.frenchtownfire.org> (copy at Attachment 6).

49/ See Frenchtown School District website at <http://www.frenchtown.k12.mt.us/default.asp> (copy at Attachment 7).