



Federal Communications Commission
Washington, D.C. 20554

October 2, 2014

In Reply Refer to:
1800B3-RFS

David Oxenford, Esq.
Wilkinson, Barker, Knauer, LLP
2300 N Street, N.W.
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Washington, D.C. 20037

Re: KIDN-FM, Burns, Colorado
Facility ID No. 57339
File No: BPH-20140311ACI

Dear Mr. Oxenford:

This letter refers to the referenced minor change application (the "Application") filed by NRC Broadcasting Mountain Group, LLC, ("NRC Broadcasting"), licensee of Station KIDN-FM. The Application proposes a city of license modification for Station KIDN-FM, Channel 240C3, from Hayden, Colorado, to Milner, Colorado, as the community's first local service.¹ For the reasons discussed below, we request NRC Broadcasting to amend the Application.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules, which sets forth the requirements for modification of an FM Station license to specify a new community of license without providing an opportunity for competing expressions of interest. Among other requirements, an applicant for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments.² We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

In support of the Application, NRC Broadcasting states that it has no intent to move the station to Burns, and claims that the proposed community of Milner represents an opportunity for Station KIDN-FM

¹ Station KIDN-FM's license was modified from Hayden, Colorado, to Burns, Colorado to provide a first local service at Burns, with no change in the transmitter site. See File No. BPH-20091026ACE. The authorization was expired on December 2, 2013. Station KIDN-FM operates at Hayden on an implied STA and Burns is considered Station KIDN-FM's present community of license consistent with Commission policies and procedures. See *Southern Stone Broadcasting, Inc.* Letter, 25 FCC Rcd. 3902 (MB 2010); see also *1988 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17540 n.55 (1999) (licensee has at best an 'implied STA' to operate formerly licensed facilities following final order in rulemaking proceeding modifying facilities).

² See 47 C.F.R. § 73.3573(g). See also *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 (1990).

³ *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).

to maintain its current facilities, and provide a first local service to Milner, Colorado. To support Milner's community status, NRC Broadcasting states that Milner is an unincorporated populated place located in Routt County, Colorado with an estimated population of approximately 200 persons according to the 2008 Rand McNally, and is considered a geographically identifiable population grouping. It further states that Milner is primarily residential and recognized by Routt County as a distinct community for purposes of waste water services. NRC Broadcasting claims that this is another indication that Milner is a licensable community. NRC Broadcasting contends that Milner is home to three businesses that have Milner mailing addresses, *i.e.*, (i) Overlook Ranch at 22220 W. US Highway 40, Milner, CO (ii) Aloha's MMC at 21600 W Highway 40, Milner, CO and (iii) Daddio's Bar & Grill at 21495 W. Highway 40, Milner, CO, noting that Aloha's MMC is now closed. Additionally, NRC Broadcasting contends that Milner is home to a business called Grizzle T Dog & Sled Works although the mailing address for this business is in Steamboat Springs, Colorado. It claims also that many organizations and businesses in the country area between Milner and Steamboat Springs have "Milner" in their names, *e.g.*, Milner General Store, Milner Mini Storage, and Milner Mobile Home Park. Thus, NRC Broadcasting contends that Milner, Colorado is a community for allotment purposes, and the proposed Station KIDN-FM community of license would not result in the removal of Burns' sole local service because the station is unbuilt in Burns.

Discussion. Based on the record, we find that Milner, Colorado is not a community for allotment purposes. In this regard, NRC Broadcasting has not presented enough evidence demonstrating that Milner is a licensable community for FM allotment purposes. The Commission has defined a community as geographically identifiable population groupings, which have common local interests.⁴ The test for determining whether a locality is a community for allotment purposes is not a stringent one.⁵ This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census but incorporation is not a prerequisite to community status. Milner is not incorporated or listed in the U.S. Census. Milner has an estimated population of 200 persons according to the 2008 Rand McNally Commercial and Atlas Marketing Guide, and is located along US Highway 40 within the close vicinity of Steamboat Springs, Colorado. A mere geographical location is not enough.⁶ There must be a clearly established, separate and distinct community with palpable political, economic and social needs that a radio station can address. The key factor in determining the existence of a community is the presence of a community of interest associated with an identifiable population grouping separate and distinct from all others and that the boundaries of the location do not enclose areas or populations more logically associated with some other location.⁷ The principal test is whether the residents function as and conceive themselves as a community around which their interests coalesce. This may be proven by direct testimony of residents of the locality and by various community indicia. These could include separate municipal services and institutions, or significant political, commercial, social and/or religious organizations and services serving the residents.

⁴ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 98 (1982).

⁵ See *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 3469 (1987) *aff'd sub nom*; see also *New South Broadcasting Corp. v FCC*, 879 F. 2d 867 (D.C. Cir 1989)(stating that a specified location must be an identifiable population grouping, separate and apart from all others, and the geographic boundaries of the location must not enclose or contain areas or populations more logically identified or associated with some other location).


⁶ *Dan J. Alpert, Esq.* 25 FCC Rcd 14357, 14359 (MB 2010)(finding that Bridgeport, Kansas is not a licensable community).

⁷ *Id* note 5

We conclude that NRC Broadcasting has failed to satisfy its obligation to provide the Commission with sufficient evidence to establish that Milner possesses ample indicia of a community sufficient to reach a determination that it is a community for allotment purposes.⁸ Specifically, Milner does not have a local government or post office, and its zip code (80487) is that of Steamboat Springs, Colorado. Moreover, Milner has three businesses that are located along US highway 40, one of which is now closed, in addition to the another business, Grizzle T Dog & Sled Works, of which mailing address is Steamboat Springs, but NRC Broadcasting claims that it is considered a Milner home business.⁹ Additionally, two of the three businesses that have “Milner” within their names, their addresses are listed under Steamboat Springs instead of Milner,¹⁰ while the address for Milner General Store is not given. It is Commission’s policy to reject assertions of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question.¹¹ Based on the foregoing, we determine that NRC Broadcasting has not demonstrated that Milner is a community for allotment purposes. Accordingly, we deny community status for Milner, Colorado.¹²

Conclusion. For all of the reasons discussed above, we request that your client amend the Application. Further action on the subject application will be withheld for a period of thirty days from the date of this letter to provide an opportunity to respond. Failure to respond within this time period will result in the dismissal of the application pursuant to 47 C.F.R. § 73.3568(b).

Sincerely,



Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

⁸ *Gaviota, California*, 16 FCC Rcd 1518, 1522 (2000)(stating that “petitioner has failed to satisfy his obligation to provide the Commission with sufficient evidence to establish that Gaviota possesses ample indicia of a community sufficient to reach a determination that it is a community for allotment purposes”).

⁹ Overlook Ranch at 22220 W. US Highway 40, Milner, CO and Daddio’s Bar & Grill at 21495 W. Highway 40, Milner, CO. Threshold states that Aloha’s MMC, 21600 W Highway 40, Milner, Colorado has closed since the filing of the instant Application.

¹⁰ Milner Mobile Home Park, 21365 West US Highway 40, Steamboat Springs CO 80487 and Milner Mini Storage, 21485 W Highway 40, Steamboat Springs, CO 80487.

¹¹ *Gaviota, California*, 16 FCC Rcd 1518, 1522 (2000)(stating that “petitioner has failed to satisfy his obligation to provide the Commission with sufficient evidence to establish that Gaviota possesses ample indicia of a community sufficient to reach a determination that it is a community for allotment purposes”); *see also Gretna, Marianna, Quincy and Tallahassee, Florida*, Report and Order, 6 FCC Rcd 633 (MMB 1991) and *Semora, North Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 934 (1990)(rejecting the community status in question because it was not shown that the community had other indicia of community status such as political, social, or business organizations, or testimony of local residents).

¹² *See Stock Island, Florida*, Report and Order, 8 FCC Rcd 343 (MMB 1993) and *East Hemet et al.*, Report and Order, 4 FCC Rcd 7895 (MMB 1989)(denying community status because petitioner failed to identify any other businesses or political, social and commercial organizations which identify themselves with the community in question).