

Legal Exhibit
Public Interest Statement & 307(b) Showing
FCC Form 301 Question 18 Exhibit 33

Miriam Media, Inc, (“Miriam”), Auction winner for allotment MM-FM521-A at Willow Creek, California, hereby submits a Public Interest Statement in support of this “Hybrid” amendment to its pending application BPH-20070406ABY for a new construction permit at Willow Creek, California.

In its application, as previously modified, Miriam had requested a channel change and a class upgrade from the allotted Channel 253A to 254C3 at Willow Creek, and had proposed transmission facilities on Horse Mountain, the site from which various FM translator stations are currently serving that community. As part of that application Miriam had proposed the relocation of FM Stations KJNY(FM) at Ferndale, California from 256C1 to 249C1 and KPOD-FM at Crescent City, California from its unbuilt reserved channel 250C2 to 259C2.¹ Objections were filed by both of those licensees, arguing in part, based on use of a Longley Rice analysis (rather than the FCC’s prescribed method), that Miriam would not be able to cover 80% of the area or population of the mountainous Willow Creek CDP from its proposed site. Based in part on such objections, the Audio Division issued a letter on May 15, 2009, questioning whether due to terrain obstructions, Miriam could adequately cover the 80% of the area or population of the CDP within its 70 dBu contour, from the proposed Horse Mountain site.

Accordingly, to respond to the Commission’s May 15, 2009 Letter, and by way of resolution, Miriam is submitting this hybrid amendment to its pending application to propose the substitution of channel 254C1 in place of 253A at Willow Creek, California and then the reallocation of Channel 254C1 from Willow Creek, California, to Loleta, California as its first

¹ KPOD(FM) is currently operated as a Class A station on Channel 250.

local radio service.² Simultaneously with the filing of this community of license change amendment, Miriam is filing a petition for rulemaking, by which it seeks to backfill the allotment at Willow Creek with Channel 258A, as a first local service. Further, as a demonstration of its continued interest in constructing a station at Willow Creek, Miriam has expressed its intent to pursue that allotment at auction, and in accordance with current Commission policy is submitting along with such rulemaking proposal, an application on FCC form 301 for a construction permit for that new Willow Creek station, accompanied by the required filing fee.

By this amendment Miriam is seeking: 1) a change of Community of license from Willow Creek, California to Loleta, California; 2) a change of both the allotment reference site and the proposed tower site from Horse Mountain to a tower located 3 miles northeast of Trinidad, California; 3) the previously requested channel change from allotted channel 253 to channel 254; and 4) a change of station Class the originally allotted Class A to a Class C1. Additionally, while Miriam's proposal to relocate FM Station KJNY(FM) at Ferndale, California from 256C1 to 249C1 at its present site remains unchanged³, Miriam is modifying its previously requested show cause relocation of the unbuilt reserved channel for KPOD-FM at Crescent City, California from its current channel 250C2 to channel 260C2 (instead of 259C2) at KPOD-FM's present site.⁴

² A copy of this amendment to BNPH-20070406ABY is being served this 15th day of October, 2009 by EMAIL on counsel for Redwood Broadcasting, Inc. (licensee of KJNY(FM)) and counsel for Bicoastal Media Licenses II, LLC (licensee of KPOD(FM)).

³ See April 2007 Order to Show Cause; May 17, 2007 Redwood Broadcasting, Inc. (KJNY) Response and Petition to Deny; June 20, 2007 Miriam Opposition; and July 5, 2007 Redwood Reply. Miriam restates its willingness to pay the reasonable expenses related to the relocation of KJNY-FM

⁴ See September 29, 2008 Order to Show Cause; October 29, 2008 Bicoastal Media Licenses II, LLC (KPOD) Response and Informal Objection; January 15, 2009 Miriam Opposition; February 10, 2009 Bicoastal Reply; and April 17, 2009 Miriam Further Comment. This amendment may require that the Commission amend its Order to Show Cause to specify proposed future operation of KPOD(FM) on 260C2 (rather than the previously identified 259C2). Miriam restates its willingness to pay the reasonable expenses related to the relocation of KPOD-FM.

I. Miriam's Relocation Proposal Complies with Current FCC Policies

Miriam's relocation of its proposed facility from Willow Creek to Loleta is consistent with current Commission Policy. First, such relocation will not strip Willow Creek of a first local service station. As the Commission has stated on several occasions, unbuilt stations are not considered to be "existing services" under Section 307(b).⁵ As a result the Commission has not treated such community relocations as constituting the loss of a community's sole local service.⁶

Second, as noted above, Miriam's has simultaneously filed a petition for rulemaking seeking to backfill the Willow Creek allotment. Because the current Willow Creek facility is unbuilt the proposed backfill would not violate the Commission's vacant allotment backfill policy with respect to the proposed allotment of Channel 258A at Willow Creek.⁷ Miriam has stated its continued interest in building an FM station at Willow Creek, has stated its intention to participate in any future FCC auction for such station, and as an indication of its intentions has submitted an application on FCC Form 301, along with the required filing fees, for that new station on Channel 258A.

Third, Miriam's proposed community change would not violate the Commission's concern with the relocation of stations from small communities to larger well served Urbanized

⁵ See *Humboldt and Pawnee City, Nebraska and Valley Falls, Kansas*, Notice of Proposed Rulemaking, 20 FCC Rcd 17940, 17941 (MB 2005), citing *Pelham & Meigs, Georgia*, Report and Order, 18 FCC Rcd 12187 (MB 2003).

⁶ See *Beatty & Goldfield, Nevada*, Report and Order in MB Docket 08-68, DA 09-413, released February 20, 2009, at ¶2 & n.4, citing *Linden, Texas et al.*, Report and Order 16 FCC Rcd 10853 (MMB 2001); *Rio Dell, McKinleyville and Trinidad, California*, Letter Decision, DA 08-2676, released December 9, 2008, citing *Richard Dean Hodson and Shamrock Communications, Inc.*, Letter, 23 FCC Rcd 8767 (MB 2008) and *Vernon Center and Eagle Lake, Minnesota*, Report and Order, 21 FCC Rcd 14714, 14715 (MB 2007).

⁷ See *Beatty & Goldfield, Nevada*, Report and Order in MB Docket 08-68, DA 09-413, released February 20, 2009, at ¶3 & n.5, citing *Pacific Broadcasting of Missouri, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003), recon. denied, Memorandum Opinion and Order, 19 FCC Rcd 10950 (2004).

Areas. In this case, Miriam's proposal would move this station from a community with a 2000 census population of 1,743 to a community with a 2000 census population of 750. While Loleta is located about 14 miles South of the city of Eureka (2000 Census population 26,128), and the 70 dBu contour of Miriam's proposed Loleta facility would also cover the entire city of Eureka, the Eureka metropolitan area is not sufficiently populous to have been classified as an "Urbanized Area" by the US Census Bureau.⁸ Accordingly, under current Commission policy, no additional policy concerns are raised by the proposed relocation and no "Tuck" showing is required in this instance.⁹

II. Compliance with Technical requirements for Relocation

An Applicant wishing to change a station's community of license, must: 1) specify a channel and community that would be mutually exclusive with the existing allotment; 2) specify a locale that satisfies the requirements of a "Community" for allotment purposes; and 3) specify a community that will constitute a preferred allotment in accordance with specific FM allotment priorities enunciated by the Commission.¹⁰ Miriam's proposal to relocate its proposed facility from Willow Creek to Loleta satisfies all of these criteria.

⁸ The US Census Bureau classifies an Urbanized Area as consisting of a densely settled territory that contains 50,000 or more people.

⁹ *See Faye and Richard Tuck*, 3 FCC Rcd 5374 at ¶ 36 (1988) (setting forth the required analysis for determining a proposed allotment community's independence from a nearby Urbanized Area); *See also Exmore and Cheriton, Virginia, and Fruitland, Maryland*, Report and Order in MM Docket 99-347, DA 01-1242, released May 18, 2001, at ¶ 7 (the Tuck policy is only applicable in cases of overlap with an Urbanized Area as defined by the U.S. Census Bureau). Because Miriam's proposed Class C1 FM facility at Loleta, California would not be located within the defined boundaries of an Urbanized Area, nor would it place a 70 dBu contour over 50% or more of such an "Urbanized Area," the eight-factor "Tuck" analysis of the proposed community is not required. However, as seen from the Community description below, Loleta would satisfy a majority of the criteria if such a showing had been required.

¹⁰ *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

1. Miriam's Willow Creek and Loleta Proposals are Mutually Exclusive.

As discussed in the attached engineering exhibit, The proposed assignment of Channel 254C1 to Loleta, California, would be mutually exclusive with the existing assignment of Channel 253A at Willow Creek, California. Additionally, as further discussed in that engineering exhibit, the proposed assignment of Channel 254C1 to Loleta, California at the specified reference site satisfies the Commission's minimum distance separation requirements contained in 47 CFR § 73.207 and will provide the requisite community coverage set forth in 47 CFR § 73.315.¹¹

2. Loleta Qualifies as a Community for Allotment Purposes.

Loleta, California constitutes a "Community" for allotment purposes in accordance with Commission precedent. The Commission has stated that, in order to qualify as a Community for allotment purposes, a locality must have "social, economic, cultural or governmental indicia" that identify that locality as a Community.¹² An applicant may satisfy the showing of community status, by demonstrating that the locality "is commonly regarded as a distinct group," which can be shown "by objective indications of the existence of a common perception that a locality's populace constitutes a distinct geographical population."¹³ The Commission has held that objective indications of Community status include the existence of political, commercial,

¹¹ See Coverage Map at Application Attachment 24 to Exhibit 24, and Separation study in Application Exhibit 26 in Attachment 26.

¹² See *Avon, North Carolina*, 14 FCC Rcd 3939, 3940 (1990).

¹³ See *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 934 (1990).

social and religious organizations and services in the community where the residents function and conceive of themselves as residents of a community. The Community of Loleta, California has sufficient objective indicia to qualify for “Community” status.

- a. Loleta is a Geographically Distinct Place and is
Recognized by the Census Bureau and the US Postal Service.

Loleta, California, is an unincorporated town of 750 persons (2000 census), is geographically separated from other area communities, lying 15 Miles South of Eureka, 5.5 miles South of Fields Landing, 7.5 miles Northeast of Ferndale and 5.8 miles Northwest of Fortuna. The town sitting just West of Route 101, is substantially isolated from other established communities, being bounded on three sides by bodies of water. Loleta rests just North of the Eel River, four miles East of the Pacific Ocean and four miles South of Humboldt Bay. Loleta is also bordered by two separate Indian reservations, and hosts administrative offices for both. The Tablebluff Reservation of the Wiyot Tribe, an 88 acre tract of land, sits to the North of the town, while a 60 acre tract of land, held in trust by the US Government for the Bear River Band of the Rohnerville Rancheria, sits to the East of Loleta across Route 101. The Town was first populated in 1850 as a proposed railroad stop under the name Swauger’s Station, although the railroad did not reach the town until 1883. The Town’s name was officially changed in 1890 to Loleta, the local Wiyot Indian name for the town (Lo Le Tah) meaning "a pleasant place at the end of the water."

Loleta is listed as a populated place within Humboldt County, California (Census Code U6) by the US Census Bureau.¹⁴ While Loleta shares its zip code (95551) with several other

¹⁴ Not only is Loleta counted as a distinct and separate place for the purposes of the US Census, but it is significant to note that neither Loleta, nor Fields Landing some 5.5 miles to its North is counted as part of any extended classification for the Eureka metropolitan area.

small communities and towns, it has its own post office located at 338 Main Street, and residences and businesses within the town have a Loleta, California address. The Loleta Post Office serves and delivers mail to an estimated 1,200 persons living in and around Loleta.

b. Loleta has Ample Political, Social and Religious Indicia
to be Considered a Community Under the FCC Standard

While Loleta does not have a mayor or city council, it has a very active Chamber of Commerce, a women's civic organization and a number of boards that oversee services to the community. Loleta is the seat of the Loleta Union School District administrative offices, the Loleta Board of Education, the Loleta Elementary School and the Loleta Pre-School (all located on Loleta Drive). The Loleta Fire Protection District maintains a twenty two member volunteer fire department (567 Park Street), which operates: 1 rescue engine, 3 fire engines, 2 water tenders and 1 brush truck. The Loleta Lighting District is responsible for maintaining all public lighting for developed areas within the town and independently contracts with PG&E for services. An elected 5 member Loleta Community Services District, with offices located at 335 Main Street and facilities located at 298 Eel River Drive, is responsible for maintaining and operating water, sewer and waste water treatment facilities for the town.

St. Joseph Health facilities system maintains a Small Community Outreach Center (700 Loleta Drive) in Loleta and provides various mobile medical services to the community.¹⁵

While law enforcement for Loleta is handled by the Humboldt County Sheriff's department, Loleta counts as town residents at least three law enforcement officers.

Loleta has two local Churches, the Loleta Community Free Church (228 Church Street) and the North Coast Mennonite Church (2332 Cannibal Island Street).

¹⁵ The nearest full service hospital, Redwood Memorial Hospital, is located in Fortuna.

- c. Loleta has sufficient Business and Local Commercial Indicia to be Considered a Community Under the FCC's Standard.

As mentioned above, Loleta has an active chamber of commerce and is the home of a number of diverse businesses. Loleta is best known for the Loleta Cheese Factory (252 Loleta Drive), which produces 38 different kinds of cheese and ships internationally. Loleta also has a number of active Dairy and Cattle Farms. Additionally, the Bear River Band of the Rohnerville Rancheria, which is headquartered in Loleta, operates the Bear River Casino. While the Casino sits on Indian land, its address at 11 Bear Paws Way, is a Loleta, California address. Other business listings for Loleta include: the Loleta Meat Market (350 Main Street); the Loleta Grocery (352 Main Street); the Loleta Bakery (348 Main Street); Southport Landing Bed & Breakfast (444 Phelan Rd), The Victorian Dickson House B&B (229 Church Street), the Gilded Rose Tavern (512 Main Street); Blue Coach Antiques (364 Main Street); Jade Glass (119 Bay View Drive); Huber Enterprises Smoke Shop (121 Bay View Drive); B&J Electric (1092 Singley Hill Rd); Big Bang Productions recording studios (4293 Tomkins Hill Road); Hillcrest Stables (1396 Eel River Drive); Tablebluff Reservation Offices (100 Wiyot Drive); Wiyot Tribe Offices (1000 Wiyot Drive); and WMS Gaming Inc. (35 Bear River Drive).

- d. The Residents of Loleta Consider Themselves to be a Distinct Community with a Unique Identity.

Loleta has a strong community identity as evidenced by the large "Welcome to Loleta" sign that greets visitors as they approach the town after exiting Route 101. As discussed above the citizens of Loleta maintain an active chamber of commerce, which meets monthly to address

town issues and an active women's organization "Los Amigas" that meets monthly to organize town events. There is also a local Boys and Girls Club.

The town also maintains an interactive website to inform and unify its citizens, and to promote tourism. The website includes Community service, school and business information, contact links, phone numbers, and local weather. The site also hosts an interactive community bulletin board, and a community calendar providing information about upcoming community events, such as: chamber of commerce meetings, school board meetings; the annual Swauger Station Day Celebration¹⁶; the annual Loleta Flea Market; and the annual three day Loleta Antique Show. Any doubt that this town is a distinct community with a unique identity and a cohesive geographical population would readily be addressed by simply watching the slideshow on the town's website.¹⁷

Accordingly it is evident that Loleta California possesses sufficient social, economic, cultural or governmental indicia to be deemed a Community for the purpose of qualifying for an FM allotment.¹⁸

3. Relocation of Miriam's Proposed FM Facility From Willow Creek to Loleta would Constitute a Preferential Arrangement of Allotments

As discussed above, removal of the unbuilt allotted channel from Willow Creek is acceptable under the Commission's policy against removing the only locally licensed radio service from a community. As the Commission has repeatedly stated removal of unbuilt

¹⁶ An annual summer music, dance and barbeque festival, which was originated by local dairy farmers in the 1920s.

¹⁷ See www.loletaperfecta.com. A full review of the website's tabs is also instructive regarding the identity and history of Loleta.

¹⁸ It is also instructive to note that tourist websites such as Tripadvisor.com, travel.yahoo.com list Loleta as an independent tourist destination.

facilities do not present the same loss of service concerns for the Commission as would removal of a constructed facility, because there is no expectation of continued service.¹⁹ Nonetheless, through a simultaneously filed rulemaking request and related application, Miriam is proposing to backfill the allotment at Willow Creek, so that the community would not even lose its only unbuilt aural service allotment. As discussed above, because the facility being relocated is unbuilt, the proposed allotment of 258A at Willow Creek would not violate the Commission's vacant allotment backfill policy.²⁰

In considering such proposals, the Commission compares the existing with the proposed allotment to determine which would constitute a preferential arrangement of allotments in furtherance of the Commission's mandate under section 307(b) of the Communications Act to provide a "fair, efficient, and equitable" distribution of radio services across the nation. Such comparison is made using a set of FM allotment priorities applied in a specific order of significance. The FM allotment priorities are as follows: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local transmission service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).²¹ A comparison of the relocation proposal against the existing allotment clearly indicates that Miriam's new proposal results in a preferential arrangement of allotments.

Based on the attached engineering analysis (exhibit 33) and assuming a simultaneous grant of the proposed allotment of Channel 258A to Willow Creek, replacing 253A at Willow Creek with a 254C1 allotment at Loleta as proposed herein, would have the following affect on the allotment priorities. Under priority one, the Loleta allotment would result in a first service

¹⁹ See cases cited at FN 3 *supra*.

²⁰ See cases cited at FN 4 *Supra*.

²¹ See *Revision of FM Assignment Policies and Procedures*, 99 FCC 2d 88 (1988).

to 91 persons in an area of 16 square miles, while the removal of 253A from Willow Creek would create no new white area. Under priority two, the Loleta allotment would result in a second fulltime aural service to 252 persons in an area of 211 square miles, while the removal of 253A from Willow Creek would create no new grey area. Under priority three, the Loleta allotment would result in a first local service to 750 persons (2000 census) within the town of Loleta, while removal of 253A from Willow Creek would still leave one FM local service allotment on channel 258A serving that community of 1,743 persons. Finally, under priority four, the Loleta allotment would result in a third fulltime aural service to 141 persons, a fourth fulltime aural service to 612 persons, a fifth fulltime aural service to 28 persons, and an additional radio service to a total of 134,660 persons within the proposed 254C1 Loleta Station's 60 dBu service contour. Conversely, under priority four, the removal of channel 253A from Willow Creek would result in no persons losing their third, fourth or fifth fulltime aural service, and would result in the loss of an additional radio service to 5,732 total persons (based on the 60 dBu contour of a class A station at the Willow Creek allotment site).

If a determination were based on allotment priority one, 254C1 at Loleta would be the preferred allotment arrangement. If a determination were based on co-equal allotment priorities 2 and 3, again the Loleta 254C1 allotment providing both second fulltime aural service and first local service would be the preferred allotment arrangement. Finally, if a determination were based solely on priority four, the additional third, fourth and fifth fulltime aural services afforded by the Loleta 254C1 allotment, as well as the fact that such an allotment would provide an additional aural service to 128,928 more people overall than would the Willow Creek 253A allotment, would render the Loleta allotment the preferred arrangement.

CONCLUSION

The amendment proposes the following FM channel changes:

Community	Channel Number	
	Current	Proposed
Willow Creek, CA	253A	- - - -, (258A) ²²
Loleta, CA	- - - -	254C1
Ferndale CA	256C1	249C1 ²³
Crescent City CA	250C2	260C2 ²⁴

This proposal will best serve the public interest by ensuring that both Willow Creek (1,743 persons) and Loleta (750 persons) are provided with a first local service. Additionally, this proposal will result in a net benefit to the area population, by ensuring that a greater number of persons will receive their first (91 persons), second (252 persons), third (141 persons), fourth (612 persons), fifth (28 persons), or simply an additional (128,928 persons) aural service, than would receive such services if the proposal were denied. For these reasons, and those set forth in the attached Engineering Exhibit, Miriam Media respectfully requests that the Commission grant this amendment concurrently with its related rule making request to backfill the Willow Creek Allotment with Channel 258A, in furtherance of the public interest convenience and necessity.

²² Added by the simultaneous grant of Miriam's associated petition for rule making. Following a grant of the rule making request, Willow Creek will retain its first local service allotment on Channel 258A. Additionally, Willow Creek will continue to be well served by six other existing FM stations that currently place 60 dBu contours over the community.

²³ Facilitated by involuntary modification of KJNY(FM) via show cause order.

²⁴ Facilitated by involuntary modification of KPOD(FM) via show cause order.