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Ref. No. 1800B3-TSN

Levine/Schwab Partnership
8967 Sunset Blvd.
West Hollywood, CA 90069

Royce International Broadcasting Company
73-733 Fred Waring Drive
Suite 201
Palm Desert, CA 92260

Christyahna Broadcasting, Inc.
23 North Saddle Brook Drive
Hohokus, NJ 07423

Kermit T Stop Partnership
2360 NE Coachman Road
Clearwater, FL 33765

**Re: AM Auction No. 84
MX Group 84-31**

Culver City, California
Facility ID No. 161348
File No. BNP-2004 0130ATD

Culver City, California
Facility ID No. 160466
File No. BNP-20040130BMC

Lemon Grove, California
Facility ID No. 160821
File No. BNP-20040129ARJ

Venice, California
Facility ID No. 161454
File No. BNP-20040130BPR

**Applications for New AM Broadcast
Station Construction Permits**

Dear Applicants:

We have before us four mutually exclusive applications for AM broadcast stations.
Levine/Schwab Partnership ("LSP") and Royce International Broadcasting Company ("RIBC") both

propose new AM stations at Culver City, California,¹ Christyahna Broadcasting, Inc. ("CBI") proposes a new AM station at Lemon Grove, California,² and Kermit T Stop Partnership ("KTSP") proposes a new AM station at Venice, California.³ In a *Public Notice* released June 15, 2005,⁴ we requested amendments to the parties' applications, containing supplemental information relating to the fair, efficient, and equitable distribution of radio service under Section 307(b) of the Communications Act of 1934, as amended (the "Act").⁵ Each of the applicants timely submitted a Section 307(b) amendment, and we evaluate those submissions as part of the competitive bidding process.

Background / Applicable Law: The Commission's procedures for selecting among mutually exclusive AM auction window applicants involve a Congressionally mandated competitive bidding process.⁶ However, Congress also directed that the competitive bidding authority would not affect the operation of, *inter alia*, Section 307 of the Act.⁷ In the *Broadcast First Report and Order*, when establishing competitive bidding rules consistent with its statutory mandate under Section 307(b) to provide a "fair, efficient, and equitable" distribution of radio services, the Commission determined that the staff would undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive applications.⁸ The Commission has also determined that its FM allotment priorities fulfill its obligation under Section 307(b), and will apply in a Section 307(b) analysis of mutually exclusive AM applications before auction.⁹

At the outset, however, we must make a threshold determination as to whether Venice can be considered a "community" for broadcast licensing purposes. Although KTSP produces evidence to establish that Venice was originally founded as a separate community from Los Angeles, and still possesses attributes of a community distinct from the larger Urbanized Area, the fact remains that Venice is neither incorporated nor a Census Designated Place. Rather, it is, in fact, a neighborhood of, and wholly contained within, the incorporated City of Los Angeles. The Commission has consistently held

¹ File Nos. BNP-20040130ATD (LSP) and BNP-20040130BMC (RIBC).

² File No. BNP-20040129ARJ.

³ File No. BNP-20040130BPR.

⁴ *AM Auction No. 84 Mutually Exclusive Applicants Subject To Auction – Settlement Period Announced for Certain Mutually Exclusive Application Groups; September 16, 2005 Deadline Established for Section 307(b) Submissions*, Public Notice, 20 FCC Rcd 10563 (MB 2005) ("Auction 84 Section 307(b) Public Notice"), as extended by *Auction No. 84 Settlement Period and Section 307(B) Submission Deadline Extended to October 31, 2005*, Public Notice, 20 FCC Rcd 14492 (MB 2005).

⁵ 47 U.S.C. § 307(b) ("Section 307(b)").

⁶ See 47 U.S.C. § 309(j); *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, First Report and Order ("Broadcast First Report and Order"), 13 FCC Rcd 15920 (1998); *recon denied*, 14 FCC Rcd 8724 (1999); *modified*, 14 FCC Rcd 12541 (1999).

⁷ 47 U.S.C. § 309(j)(6)(B).

⁸ *Broadcast First Report and Order*, 13 FCC Rcd at 15964-65.

⁹ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982) ("FM Assignment Policies"). The FM allotment priorities are as follows: (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). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984). See also *Romar Communications, Inc. and KM Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128, 23129-30 (2004) ("Romar") (using FM Assignment Policies to evaluate competing applications).

that neighborhoods of larger communities are not in themselves licensable communities.¹⁰ Moreover, while there are official 2000 Census populations for both Culver City and Lemon Grove, no such official figures exist for Venice, further underscoring Venice's lack of independent community status.¹¹ Thus, we conclude that Venice is not a licensable community.¹²

Discussion: After careful consideration of the three remaining applications, we have determined that while there is no dispositive Section 307(b) difference between LSP's and RIBC's Culver City, California, proposals, each would receive a dispositive Section 307(b) preference over the community proposed by CBI. We therefore conclude that the LSP and RIBC applications should proceed to auction.

None of the three remaining applicants would provide first or second full-time aural service to its proposed community. All propose first local transmission service. Culver City is an incorporated city located in the Los Angeles Urbanized Area, while Lemon Grove is an incorporated city located in the San Diego Urbanized Area. Because both communities are located in Urbanized Areas, the staff sent the applicants letters requesting supplemental showings to establish that their proposed communities were not interdependent with the Urbanized Areas.¹³ All applicants timely responded.

We conclude that Culver City and Lemon Grove are independent of their respective Urbanized Areas. LSP and RIBC demonstrate that Culver City has its own local government and separate police and

¹⁰ See, e.g., *Penacook, New Hampshire*, Report and Order, 2 FCC Rcd 459, 460 (MMB 1987) (proposed community found not to be licensable as it lay partly within city of Concord, New Hampshire; residents of that portion paid Concord city taxes, elected and were represented by a ward representative on the Concord city council, and voted for at-large representative); *Garden City, Indiana*, Memorandum Opinion and Order, 6 FCC Rcd 3747, 3749 (MMB 1991) (proposed community was under the jurisdiction of the Columbus (Indiana) Plan Commission, one of the businesses claimed for Garden City occupied property annexed by Columbus, and Columbus Plan Commission was considering further annexations in the Garden City area, thus contradicting claim that Garden City was a separate community).

¹¹ KTSP purports to provide a "2002 estimate" of Venice's population of 39,354. However, the appropriate comparison with the other three applicants would be a year 2000 estimate. According to the Los Angeles Department of City Planning, the total population of Venice as of April 1, 2000, was 37,758. See Los Angeles Department of City Planning Website, <http://cityplanning.lacity.org/DRU/Loc/LocFrame.cfm?geo=CP&loc=Ven&sgo=CT&rpt=PnH&yxx=00> (accessed Jan. 23, 2008). Furthermore, Carol Tantau, former president of the Venice Chamber of Commerce, states that Venice has its "own ZIP code," 90291. See Attachment 3 to KTSP Section 307(b) showing. The 2000 Census population for ZIP code 90291 is 31,018. See U.S. Census Bureau American Fact Finder, http://factfinder.census.gov/servlet/SAFFacts?_event=Search&geo_id=&geoContext=&street=&county=90291&cityTown=90291&state=&zip=90291&lang=en&sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y (accessed Jan. 23, 2008). Thus, even if we were to depart from precedent and find Venice to be a licensable community, Venice would not prevail over Culver City in a Priority (3) comparison, as Culver City's 2000 population of 38,816 is greater than Venice's 2000 population estimates. See *Blanchard, Louisiana and Stephens, Arkansas*, Report and Order, 10 FCC Rcd 9828, 9829 (1995) ("*Blanchard*") (when comparing first local service proposals for two well-served communities, the Commission bases its decision on a straight population comparison between the communities, even when the population differential is as small as 38 persons).

¹² Even assuming, *arguendo*, that we would consider KTSP's proposal to be one for Los Angeles, that city has numerous local transmission services, and thus KTSP's proposal could only be considered under Priority (4), whereas the remaining applicants propose first local transmission service under Priority (3). No matter how it is or could be considered, KTSP's proposal does not merit further Section 307(b) analysis.

¹³ *Christyahna Broadcasting, Inc., Levine/Schwab Partnership, Kermit T Stop Partnership, and Royce International Broadcasting Company*, Letter (MB June 27, 2006). See *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5376 (1988) ("*Tuck*").

fire departments, as well as a separate school and bus transportation system from Los Angeles. It is home to numerous commercial establishments and health care centers, has four ZIP codes, and its own weekly newspaper. The applicants show that 17.2 percent of Culver City residents work in Culver City rather than in the larger Urbanized Area, and also establish that community residents perceive themselves as being separate from the larger Urbanized Area. In the case of Lemon Grove, CBI submits evidence that the city has an elected mayor, town clerk, and city council; its own telephone directory and two ZIP codes; its own school district, fire department, library, sewer, waste disposal, and electric utilities; a significant population that lives and works in Lemon Grove; and that Lemon Grove has many community events distinct from the remainder of the Urbanized Area, indicating that its population perceives itself as being separate from San Diego.

In a situation where competing applicants each propose first local transmission service (as is the case here), a Section 307(b) preference is given to the more populous community.¹⁴ Because we find both Lemon Grove and Culver City to be independent, licensable communities, neither of which has a local primary transmission service, and because both Lemon Grove and Culver City receive abundant radio service, we evaluate the communities under the *Blanchard* standard. As Culver City is the more populous community,¹⁵ it prevails under Section 307(b). The two applicants for Culver City, LSP and RIBC, will therefore proceed to auction.¹⁶

Conclusion / Action: Accordingly, IT IS ORDERED that the applications of Levine/Schwab Partnership¹⁷ and Royce International Broadcasting Company,¹⁸ for new AM stations at Culver City, California, SHALL PROCEED TO AUCTION, the date of which will be announced in a subsequent Public Notice. The AM Auction No. 84 Tech Box submission of Kermit T Stop Partnership¹⁹ IS DIMISSED.²⁰

Sincerely,

Lisa Scanlan

Peter H. Doyle, Chief *for*
Audio Division
Media Bureau

cc: John C. Trent, Esq.
Matthew H. McCormick, Esq.
David A. O'Connor, Esq.
Dan J. Alpert, Esq.

¹⁴ *Blanchard*, supra note 11.

¹⁵ Culver City had a 2000 Census population of 38,816; Lemon Grove's 2000 Census population was 24,918.

¹⁶ See *Romar*, supra note 9, 19 FCC Rcd at 23131-32.

¹⁷ File No. BNP-20040130ATD.

¹⁸ File No. BNP-20040130BMC.

¹⁹ File No. BNP-20040130BPR.

²⁰ Upon final action on the application of either LSP or RIBC after auction, the staff will dismiss the application filed by Christyahna Broadcasting, Inc., File No. BNP-20040129ARJ.