

SECTION 307(b) ANALYSIS

By this Form 301 application, WKVF(FM) seeks to relocate its transmitter site and change its community of license. WKVF's license currently specifies Byhalia, Mississippi as its city of license but it holds a construction permit to modify its city of license to Germantown. This application proposes a relocation to Bartlett, Tennessee which, as detailed further in the attached Exhibit 32 - Engineering Statement, will result in a preferential arrangements of allotments and complies with the Commission's policies governing community of license changes.

Section 307(b) of the Communications Act of 1934, as amended, states that the Commission must distribute broadcast licenses to states and communities so "as to provide a fair, efficient, and equitable distribution of radio service." 47 U.S.C. § 307. Pursuant to the rules promulgated as a result of Section 307(b), the Commission's allotment priorities are as follows: (1) first full-time aural reception service; (2) second full-time aural reception service; (3) first local aural transmission service; and (4) other public interest factors. Co-equal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 2d 88 (1982). In this situation, moving WKVF(FM) to Bartlett, Tennessee will result in the addition of a second FM local aural transmission service to that growing community, and is governed by the fourth criteria, as none of the first three criteria apply. Byhalia, Mississippi will continue to be served by WMSB(FM), and a plethora of other reception services. Germantown, too, has two local transmission services and numerous reception services.

Bartlett, located in Shelby County, is an incorporated city of over 40,000 people.¹

Incorporated in 1866, the community has a mayor-council form of government, its own police department, a fire department, library, both public and private schools, multiple churches and parks, and numerous local businesses and community organizations. Thus, the addition of WKVF(FM) to this growing community is consistent with the Commission's Rules and would serve the public interest.

Consistent with the instructions to the FCC form 301, the following information is provided below and in the attached Engineering Statement:

- 1) If new technical facilities are proposed, the area and population within the proposed 60 dbu contour of the station: The population and area for the new facility are as follows: the 70 dBu contour will contain 705,570 persons and 1412.80 sq. km. and the 60 dBu contour will contain 1,061,060 persons and 4061.75 sq. km. area.
- 2) The number of stations licensed to the proposed new community of license: There is presently one FM radio station (WMFS) and one AM station (WMPS) licensed to Bartlett.
- 3) The number of stations providing protected service to the proposed community of license: There are 35 stations that provide protected service to the proposed community of license. See Exhibit 32-A of the Engineering Statement.
- 4) The population, according to the latest Census Data, of the proposed community of license: The population of the community of Bartlett is 40,543 persons according to the 2000 U.S. Census data.

¹ More recent estimates place the number at close to 50,000. See http://factfinder.census.gov/servlet/SAFFacts?_event=&geo_id=16000US4703440&_geoContext=01000US|04000US47|16000US4703440&_street=&_county=bartlett&_cityTown=bartlett&_state=04000US47&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=160&_submenuId=factsheet_1&ds_name=ACS_2007_3YR_SAFF&_ci_nbr=null&qtr_name=null®=null%3Anull&_keyword=&_industry=

Other Relevant Information

A. Service Area

In order to show that the entire area that is currently served by the licensed facility of WKVF continues to be served when the proposed move is granted, several exhibits have been attached.

- Exhibit 32-A shows all facilities that serve any portion of the current WKVF licensed facility's coverage area, not covered by the proposed WKVF facility.
- Exhibit 32-B is similar to Exhibit 32-A, however in order to make abundantly clear that the area is well served, contours that combine to provide at least 5 services have been colored green.
- Exhibit 32-C is a map with the extraneous contours removed and a color coded showing of the number of stations that provide service within the current licensed contour of WKVF. As can be seen the entire area is served by 5 or more stations, not including WKVF.
- Exhibit 32-D is a population report that corresponds to the map at Exhibit 32-C. This further shows that 100% of the area and population that are within the current licensed contour of WKVF continue to be well served, should the proposed move be granted.

B. Gain/Loss

The proposed move to WKVF will make more efficient use of the FM spectrum and increase service to the public, as it will result in a vast increase in population served as illustrated by the exhibits below:

- Exhibit 32-E is a population report of the originally licensed facility for WKVF. As can be seen, the current facility serves an area of 2286.35 sq. km and a population of 313,795 persons.
- Exhibit 32-F is a population report of the proposed WKVF facility. As can be seen, the proposed facility serves an area of 4061.75 sq. km and a population of 1,061,060 persons.
- Exhibit 32-G is a population report of the area in common between the proposed and licensed WKVF facility. As can be seen, the two facilities share an area of 1045.18 sq. km and a population of 284,285 persons.

Therefore, there is an overall gain of 77.65% (1,775.4 sq. km) of the area served, and an overall gain of 238.14% (747,265 persons) to the population served.

Tuck Analysis

I. Bartlett is Independent from the Memphis Urbanized Area

Bartlett, Tennessee, grew from a lone stagecoach stop in the 1830s to Tennessee's ninth largest city today, a city that is independent from neighboring Memphis.² In *Faye and Richard Tuck*, the Commission set forth eight factors for determining the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether 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

² See www.cityofbartlett.org.

local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, 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. The FCC considers a community independent when a majority of these factors demonstrate that a community is distinct from an urbanized area.³

A. A significant number of Bartlett's residents live and work in Bartlett.

Bartlett is home to a myriad of businesses, offering significant employment opportunities for Bartlett's residents. Bartlett's business community is anchored by its Town Square, its historic downtown neighborhoods where approximately 573 businesses are located. The Town Square region's largest industry in terms of employment is the services sector, which employed approximately 1,831 people in 2008. The retail sector followed services as the Town Square's second largest employer, with 1,156 total daytime employees. In total, the one-mile area surrounding the Town Square employed 5,174 individuals.⁴ Approximately eighteen percent of Bartlett's residents travel beyond Bartlett for work.⁵

B. Bartlett has a media outlet that specifically covers its needs and interests.

Bartlett residents' needs and interests are specifically covered by local media. In addition to the two radio stations already licensed to Bartlett, The Bartlett Express is a weekly newspaper

³ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lincoln and Sherman, Illinois)*, Memorandum Opinion and Order, 23 FCC Rcd 15835, fn 15 (2008) (citing *Parker and St. Joe, Florida*, Report and Order, 11 FCC Rcd 1095 (MMB 1996) and *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (MMB 1997)).

⁴ See Clay Banks, *Bartlett Station Demographics*, Bartlett Chamber of Commerce, 10/31/2008, available at: <http://www.cityofbartlett.org/DocumentView.asp?DID=663>.

⁵ <http://www.city-data.com/city/Bartlett-Tennessee.html>.

that covers local events in Bartlett, reporting on local news including sports, business, obituaries, miscellaneous community interest stories, classified advertisements, and opinion pieces.⁶ The Bartlett Express provides an outlet for local business to target advertising for their products and services to Bartlett residents. The city also maintains its own webpage, which allows city residents to access a variety of information regarding city officials, public services, committee meetings, economic development, job opportunities, and community events.⁷ The city's website and the Bartlett Express demonstrate the demand for coverage of local Bartlett issues and Bartlett's independence from the larger urbanized area.

C. Bartlett's community leaders and residents perceive Bartlett as being separate from Memphis.

Business owners, residents, and community leaders in Bartlett, through active organization and participation in the community and its events, perceive their community as being separate from Memphis. Bartlett's business community formed its own Chamber of Commerce and has been actively involved in the community promoting Bartlett's businesses since 1980.⁸ The Bartlett Chamber of Commerce sponsors numerous community programs, grants, and scholarships, including "LEADERSHIP BARTLETT," "a leadership development program designed to identify and build a core group of citizens committed to being involved in the planning and implementation of community development programs for the betterment of the Bartlett area."⁹

⁶ The Bartlett Express is viewable online at: http://suburbancommunitynews.com/bartlett_express/.

⁷ <http://www.cityofbartlett.org/>.

⁸ See <http://www.bartlettchamber.org/content/history.shtml>.

⁹ For a more detailed description of LEADERSHIP BARTLETT, see http://www.bartlettchamber.org/content/leadership_bartlett.shtml.

Additionally, citizens of Bartlett serve on numerous boards focused on Bartlett-specific projects and issues.¹⁰ The citizen boards include: the Animal Shelter Committee; the Bartlett Arts Council; BPACC Advisory Board; Board of Zoning and Appeals; City Beautiful Commission; Design & Review Board; Family Assistance Commission; Historic Preservation Commission; Industrial Development Board; Parks & Recreation Advisory Board; and the Planning Commission. Bartlett's residents' dedication to their community was noted in CNN and Money Magazine's rankings of "Top 100 Places to Live," due in part to its "real sense of community."¹¹ Given Bartlett's many resources and businesses, its residents can meet nearly all of their needs without having to leave Bartlett.

Local Businesses' involvement in the Chamber of Commerce's many activities as well as Bartlett's numerous citizen boards support a finding by the Commission that Bartlett is independent from the Memphis urbanized area.

D. Bartlett is governed by its own Mayor and other elected officials.

The City of Bartlett has its own government and elected officials independent from Memphis. The City's chief executive is Mayor Keith McDonald, who governs with six Aldermen.¹² The Mayor and Aldermen are elected to four-year staggered terms.¹³ In addition to its elected positions, the city government employs numerous administrators and staff who operate Bartlett's various city departments, including, among others, Animal Services, Engineering, the Bartlett City Court, Planning & Economic Development, Parks & Recreation,

¹⁰ See http://www.bartlettchamber.org/content/bartlett_government.shtml.

¹¹ <http://www.cityofbartlett.org/index.asp?NID=748>

¹²

¹³ See *Charter of the City of Bartlett*, Ch. 55, H.B. 1601, art. III (Passed May 17, 2007; Approved by Governor June 5, 2007).

and the Police and Fire Departments.¹⁴ These governmental bodies, elected or appointed to serve the residents of Bartlett, further demonstrate Bartlett's separateness and independence from Memphis.

E. Bartlett has its own phone book and is covered by three zip codes.

The local phone company publishes a phone book specifically for Bartlett, further demonstrating its independence from the larger Memphis urbanized area. Bartlett spans three zip codes.¹⁵ Although each of the three zip codes is characterized as a Memphis zip code, the U.S. Postal Service recognizes mail addressed to "Bartlett" in all three of those zip codes. Bartlett does not have its own Post Office but many are located on the outskirts of the city, some in communities smaller than Bartlett.¹⁶

F. Bartlett has its own commercial establishments and health facilities.

Bartlett's residents are served by a wide range of commercial establishments and health facilities, including Bartlett's own hospital, Saint Francis Hospital-Bartlett, a 90-bed hospital opened in 2004.¹⁷ Bartlett also has numerous chiropractors,' dentists,' and physicians,' offices, offering a wide range of general and specialized care. The largest employers in Bartlett include the City of Bartlett, Brother International Corporation, Youth Villages, the USDA Cotton Classing Division, and Wal-Mart.¹⁸ Bartlett is also home to at least 9 business parks,¹⁹ and a wide range of retailers, grocery stores, restaurants, and banks.²⁰ Indeed, Bartlett's commercial establishments and health facilities are sufficiently diverse that Bartlett's residents can take care of the vast majority of their needs without leaving the city.

¹⁴ For a complete list of Bartlett City Departments, see <http://www.cityofbartlett.org/index.asp?NID=8>.

¹⁵ The three zip codes are 38133, 38134, and 38135.

¹⁶ E.g., Ellendale, Tennessee.

¹⁷ *See Id.*

¹⁸ http://www.bartlettchamber.org/content/major_employers.shtml

¹⁹ <http://www.bartlettchamber.org/content/businessparks.shtml>

²⁰ *See* <http://www.city-data.com/city/Bartlett-Tennessee.html>; <http://www.bartlettchamber.org/>

F. Bartlett's businesses do not need to rely on the Memphis advertising market to advertise their services.

Local businesses in Bartlett can advertise in the local phone book, the local Bartlett Express newspaper, and on the Bartlett Chamber of Commerce website, which allows them to reach the residents of Bartlett; businesses do not need to utilize the Memphis advertising market.

G. Bartlett provides nearly all of its own municipal services independent from Memphis, and has its own library.

Bartlett City supplies its own Police, Fire, and Public Works services. Bartlett's police department consists of 141 employees, including ninety-two patrolmen and sixty-five cars, an award winning Tactical Unit, a motorcycle unit, a bicycle patrol, two canine teams, eleven reserve officers, and a D.A.R.E. (Drug Awareness Resistance Education) Program.²¹ The Bartlett Fire Department is well-equipped to meet the needs of the city, independent from Memphis, with its 81 personnel, five stations, three pumpers, one seventy-five foot aerial, one ninety-five foot platform, three ambulances, and over thirty volunteers.²² Bartlett's Public Works Department provides animal control services; maintenance of right-of-ways and litter collection; solid waste removal, including recycling services; and public sewer and water systems maintenance. Bartlett is home to its own High School, nine elementary and middle schools, and three private schools. Bartlett's public schools are part of the Shelby County school district.²³

In addition, Bartlett offers its citizens access to a library fully funded by the City of Bartlett, a fitness center, tennis courts, several community parks, as well as youth and adult recreational sports opportunities in baseball, softball, basketball, and volleyball. Bartlett's

²¹ See <http://www.cityofbartlett.org/index.asp?nid=68;>
http://www.bartlettchamber.org/content/bartlett_government.shtml.

²² See <http://www.cityofbartlett.org/index.asp?nid=64;>
http://www.bartlettchamber.org/content/bartlett_government.shtml.

²³ See <http://www.scsk12.org/>.

library offers access to approximately 110,000 items from its own collection and has twenty computers available for residents' use.²⁴ The city of Bartlett also offers residents the use of the Bartlett Station Municipal Center for special events and community meetings.²⁵ Regular users of the Municipal Center currently include the American Legion, Bartlett Community Theatre, and Bartlett Community Chorus, among others. Bartlett residents also enjoy performances at Bartlett's Performing Arts and Conference Center, which is also available for business meetings and other events.²⁶

Bartlett's independence is underscored by its ability to provide its own municipal services independent from Memphis.

Conclusion

As set forth above, Bartlett is a dynamic growing, community with many business and civic organizations. The myriad of activities and level of civic involvement clearly demonstrate the independence of Bartlett from the surrounding area, and its need for an additional broadcast outlet.

²⁴ See <http://www.cityofbartlett.org/index.asp?nid=605>.

²⁵ See <http://www.cityofbartlett.org/index.asp?nid=286>.

²⁶ See <http://www.cityofbartlett.org/index.asp?NID=261>.