

**Section 307(b) Analysis: Preferential Allotment and Community Showing
Station WNUE-FM, Channel 251C2, Deltona, Florida**

In the instant amendment to construction permit application (the "Amended Application"), the applicant, Entravision Holdings, LLC ("Entravision"), seeks to modify the license of Station WNUE-FM, Titusville, Florida ("WNUE" or the "Station"), to change the Station's city of license from Titusville, Florida to Deltona, Florida. Under this proposal, WNUE would continue to operate from the same transmitter site and output channel (Channel 251C2) as proposed in the original Application now being amended.

This Preferential Allotment and Community Showing demonstrates that the Station's change in community of license to Deltona, Florida complies with Section 307(b) of the Communications Act, which charges the Commission with the responsibility to "provide a fair, efficient and equitable distribution of radio service..." 47 U.S.C. § 307(b).

In *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006) (the "*FM Allotment R&O*"), the Commission stated that, under its revised procedures for allotting and assigning channels, classes and communities of license for AM and FM broadcast stations, applicants seeking community of license changes must provide "a narrative showing that the proposed community of license change represents a net service benefit under the Section 307(b) priorities and policies [the Commission has] used since 1982." *FM Allotment R&O* at 14218 (citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("*FM Assignment*

Policies")). The Commission also stated that applicants must demonstrate that the proposed community "constitutes a community suitable for allotment purposes." *Id.*

As set forth below, relocating the Station's community of license to Deltona, Florida, as proposed in the Amended Application, will result in a preferential arrangement of allotments under the Commission's allotment priorities and should be granted. Moreover, Deltona qualifies as a bona fide community for allotment purposes. No showing of community independence, pursuant to *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), is required here, where a first local service is proposed for Deltona, the central community of the Deltona Urbanized Area.¹

I. The Proposed Community of License Change will Result in a Preferential Arrangement of Allotments

The Commission's FM priorities, as set forth in the *FM Assignment Policies*, are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. *See FM Assignment Policies* at 91-92. The Commission gives co-equal weight to priorities (2) and (3). *See id.*

The Station operation proposed in the Amended Application will provide Deltona, Florida with a first local transmission service, Priority Three among the Commission's allotment priorities. At the same time, the proposed change will not deprive Titusville, Florida of an existing local aural transmission service. Titusville will continue to be served by local Stations WPIO(FM) and WIXC(AM).

¹ The purpose of a *Tuck* showing is to determine whether the proposed community of license is sufficiently independent of the nearby Urbanized Area to warrant a first local service under Priority 3 of the FM Allotment Priorities. *See, e.g., Mount Pleasant and Hemlock, MI*, 20 FCC Rcd 17165 (MB 2005).. Here, Deltona is the seat of the relevant Urbanized Area. Obviously, no interdependence showing is warranted, or even possible. Deltona is in the unusual position of being an underserved urban community, a community WNUE will provide with its first local service.

Further, WNUE's proposed relocation to Deltona, Florida will result in a net land area gain of 232 sq. km and a net population gain of 144,910 persons. *See* Engineering Exhibit attached hereto.

Given a first local service and net gains in land area and population, the proposed change will result in a preferential arrangement of allotments under the Commission's allotment priorities.

II. Deltona, Florida Qualifies as a Community for Allotment Purposes

Deltona, Florida possesses the attributes of a community required by the Commission's community allotment standards.

First, as reported in the US Census Bureau, Census 2000, Deltona is a city with a population of 69,543 (**Exhibit A**). Under Commission precedent, census designation as a city (or even a Census designated place) raises the presumption that the designated location constitutes a community for FCC allotment purposes. *See FM Assignment Policies*, 90 FCC 2d at 101. The fact that Deltona is an Urbanized Area removes any issue that Entravision has proposed a community for Section 307(b) purposes.

Next, Deltona has its own local government, including a Mayor, City Commission and numerous City Departments. *See* <http://www.deltonafl.gov/>. Deltona has its own City Attorney, City Clerk, City Manager, Fire Department and Public Works Department. *See id.*

Further, Deltona is home to a number of schools, businesses, churches, restaurants and shops, many of which bear "Deltona" in their names (**Exhibit B**).

Finally, Deltona has its own Zip Codes and Post Offices (**Exhibit C**).

The presence of a strong local government and various institutions, businesses and organizations in Deltona, Florida evidence the community's status as a "'distinct geographical population grouping,' i.e., a grouping of residents with a common identity..." *Yazoo City and Benton, Mississippi*, 20 FCC Rcd 410 (2005) (citing *Semora, North Carolina*, 5 FCC Rcd 934 (1990)). The Commission has previously granted allotments to communities with much less compelling indicia of community status. *See, e.g., Semora, North Carolina, supra; Cambridge, Newark, St. Michaels, and Stockton, Maryland and Chincoteague, Virginia*, 20 FCC Rcd 19099 (2005); *Marathon and Mertzon, Texas*, 18 FCC Rcd 23986 (2003); *Encino, Texas*, 18 FCC Rcd 23984 (2003). Under Commission precedent, Deltona therefore qualifies as a community for allotment purposes.

In sum, the change in WNUE's community of license from Titusville, Florida to Deltona, Florida will result in a preferential arrangement of allotments. As set forth above, Deltona is a bona fide independent community for community allotment purposes, and, as such, warrants consideration as a first local aural transmission service under Priority Three of the Commission's *FM Assignment Policies*. The net gains in land area and population associated with the Station's proposed relocation to Deltona will also result in a preferential arrangement of allotments. The community of license change proposed in the Application is thus consistent with the Communications Act and the Commission's allotment policies, and should therefore be granted.