

**Section 307(b) Analysis: Preferential Allotment and Community Showing
Station KHNA(FM), Channel 277C2, Warren Air Force Base, Wyoming**

In the instant minor modification application (the "Application"), the applicant, White Park Broadcasting, Inc. ("White Park"), seeks to modify the license of KHNA(FM), Hanna, Wyoming ("KHNA or the "Station"), to change the Station's city of license from Hanna to Warren Air Force Base, Wyoming. White Park also seeks to change KHNA's transmitter location and the Station's class of operation from Class A to Class C2. Under this proposal, KHNA would continue to operate on Channel 277.

Together with the Section 307(b) Engineering Exhibit attached hereto as Exhibit A ("Engineering Exhibit"), this Preferential Allotment and Community Showing demonstrates that the Station's proposed move to Warren Air Force Base 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 Warren Air Force as proposed in the Application will result in a preferential arrangement of allotments under the Commission's allotment priorities. Moreover, Warren Air Force Base, Wyoming, a recognized Census Designated Place, has already been deemed a bona fide community for allotment purposes. *Newcastle, Pine Haven, Warren AFB, et al.*, 19 FCC Rcd 10976 (2004).

I. The Proposed Community of License Change complies with Commission Requirements

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 Application will provide Warren Air Force Base with a second licensed, full-time, and first competitive, local aural transmission service. At the same time, the proposed change will not deprive Hanna of an existing local aural transmission service. White Park holds a construction permit for KHNA and has not yet built the Station. *See File No. BNPH-20060310AAL*. As such, KHNA does not constitute an existing service to Hanna. The Commission's prohibition on removing the sole local transmission service from a community is therefore not implicated here. *See Farmington and Gallup, New Mexico*, 11 FCC Rcd 2357, 2361 (1996), *aff'd Farmington and Gallup, New Mexico*, 14 FCC Rcd 18983 (1999). Further, *Wagonwheel*

Communications Corporation holds a construction permit to construct a new station, KBDY, on Channel 271, at Hanna, Wyoming, providing Hanna's residents with assurance that the community will have its first local transmission service. This "backfill" arrangement serves to avoid any issues related to KHNA's proposed relocation. *Meeteetse, et al., Wyoming*, 23 FCC Rcd 447, 452-453 (MB 2008).

While the relocation of KHNA will result in a white area being created, the Commission has specifically held that where the creator is an unbuilt station, such as KHNA, the use of "backfill" will "continue to apply...for unbuilt stations because existing on-air service is not being lost." *Sells, Willcox, and Davis-Monthan Air Force Base, Arizona*, 23 FCC Rcd 1242, 1246-1247 (MB 2008).

Further, as demonstrated in the Engineering Exhibit, the proposed operation will increase KHNA's population coverage by 76,994 persons, and will increase the area covered by 1,978 sq. km, triggering Priority Four under the Commission's *FM Assignment Policies*. See Engineering Exhibit at 1.

II. Warren Air Force Base, Wyoming Has Already Been Designated a Community for Allotment Purposes and Would Result in a Preferential Arrangement of Allotments

Warren Air Force Base, Wyoming already has been designated a community for allotment purposes. This action was taken in *Newcastle, Pine Haven, Warren AFB, et al., supra*. Currently, Station KOLT-FM, on FM Channel 225, is currently licensed to Warren Air Force Base, Wyoming. Accordingly, Warren Air Force Base satisfies Section 307(b)'s community requirement.

While Warren Air Force Base lies within the Cheyenne, Wyoming Urbanized Area, the Commission has already considered the implications of relocating a station

from outside to inside an urbanized area under the policies established in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998). In *Newcastle, Pine Haven, Warren AFB, et al., supra*, the Commission undertook a *Tuck* analysis and returned a conclusion that Warren Air Force Base was sufficiently independent of Cheyenne so as to entitle Warren Air Force Base to an FM allotment, even though it was within an urbanized area. That conclusion should carry over to this proceeding.

As demonstrated above, the change in KHNA's community of license from Hanna to Warren Air Force Base, Wyoming will result in a preferential arrangement of allotments. First, Warren Air Force Base qualifies as a community of allotment purposes and its location within an urbanized area is not disqualifying under the *Tuck* analysis. Second, the relocation will involve an unbuilt station and any loss of service from the unbuilt station will be made whole by the existence of a construction permit for a new FM radio station at Hanna, Wyoming. Third, KHNA will increase its service upon relocation to Warren Air Force Base. Fourth, Warren Air Force Base has a 2000 Census population of 4,400 persons¹ while Hanna has a 2000 Census population of just 873 persons. Accordingly, the relocation of KHNA from Hanna to Warren Air Force Base, Wyoming results in a preferential arrangement of allotments under the terms of the Commission's allotment policies. 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.

¹ *Newcastle, Pine Haven, Warren AFB, et al., supra*.