

## **Supplemental 307(b) Showing**

### **INTRODUCTION**

By letter dated December 22, 2011, the Commission requested that Kona Coast amend its pending minor modification application proposing a change in city of license to Sidney, Iowa, with evidence to rebut the urbanized area service presumption. The Commission determined that such evidence was necessary since it determined that through a minor modification application Kona Coast could cover more than 50% of the Omaha urbanized area. As will be developed more fully below, Kona Coast's proposal to specify a new community of license should be granted for two reasons. First, an engineering analysis demonstrates that Kona coast could not through any amendment serve 50% or more of the Omaha urbanized area. As such, there is no presumption to rebut. Secondly, even assuming Kona Coast could serve 50% or more of the Omaha urbanized area, Sidney is an independent community deserving of its own radio station.

As set forth in *Rural Radio*<sup>1</sup>, the urbanized presumption may be rebutted by a showing (1) that the proposed community is truly independent of the Urbanized Area, (2) that the community has a specific need for an outlet for local expression, and (3) that the proposed station can provide that outlet. Sidney meets all these criteria. Sidney also satisfies a rigorous application of the eight factors of a *Tuck*<sup>2</sup> analysis demonstrating its independence. It has a substantial local government and defined geographical barriers that separates it from the urbanized area. It is 52 miles from Omaha and is separated by the Missouri River. Further underscoring its independence, is the fact that it is in a different state than Omaha. Kona Coast's proposal to provide a first transmission service to Sidney is a preferred allocation under Priority 3 of the four allotment priorities under 307(b).<sup>3</sup> This is a dispositive preference. However, the first proposed service to Sidney would also result in service to 24,594 more people than the population that is currently served as authorized. The proposal thus is also entitled to an enhancement under Priority 4 of the 307(b) analysis, albeit minor.

#### **I. THE PROPOSAL COULD NOT RESULT IN SERVICE TO 50% OR MORE OF THE URBANIZED AREA**

*Rural Radio* creates a presumption of service to the entire metropolitan area where a proposal to change a community of license could be reengineered to provide primary service to 50% or more of the urbanized area. Kona Coast's proposal to provide a first service to Sidney,

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<sup>1</sup> *Policies to Promote Rural Radio Service and to Streamline an Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011), *recon pending* ("Rural Radio").

<sup>2</sup> *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 ("Tuck")(establishing eight factors to determine whether a suburban community is independent of a nearby central city)

<sup>3</sup> *Rural Radio*, *supra*, at 2573, ¶ 30.

Iowa could not be modified in any way to serve 50% or more of the Omaha urbanized area. *Rural Radio* requires that in making this determination that, “proponents consider all existing registered towers in the Commission’s antenna structure registration database in addition to any unregistered towers currently used by licensed radio stations” *Id.* at n 97. As demonstrated in the attached Engineering Exhibit 1, Kona Coast has performed an even more rigorous analysis using theoretical best locations--locations that do not even have existing towers. The analysis demonstrates that in no circumstance could Kona Coast provide service to 50% or more of the Omaha urbanized area. Consequently, Sidney cannot be considered, for purposes of the proposed city of license change, to be part of the Omaha market. Nevertheless, as demonstrated below, Sidney is an independent community deserving of its first radio station.

## **II. INDEPENDENCE**

Pursuant to the standards set forth in *Huntington Broadcasting Co. v. F.C.C.*, 192 F.2d 33 (D.C. Cir. 1951), *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5376 (1988), and *Rural Radio* where a presumption exists that an applicant proposes a station which will provide significant service to a nearby urbanized area, that applicant must demonstrate that the proposed community is sufficiently independent from the urbanized area. In determining a community's independence and whether the community is entitled to a 307(b) preference the commission considers (1) the degree of coverage of the Urbanized Area by the proposed facility; (2) the size and proximity of the proposed community vis-à-vis the central city; and (3) the interdependence of the specified community with the larger, metropolitan area. *See, Rural Radio, at 21.*

As already demonstrated, Kona Coast will not provide city grade service to 50% or more of the Omaha urbanized area. Sidney is a separate city approximately 52 miles from Omaha. The two cities are separated by the Missouri River and are in different states. According to the U.S. Census Bureau’s 2000 Census, Omaha has a population of 390,007 and Sidney has a population of 1,300. The Omaha Metropolitan Area has a population of 626,623.

In determining the independence of the specified community with the larger, metropolitan area, the Commission considers eight factors. A proponent need not demonstrate compliance with all eight factors, but only a majority in order to show independence. *See Chillicothe, Dublin, Hillsboro, and Marion, OH*, 20 FCC Rcd 6305 (MB 2005). Each of the factors is addressed individually below.

### **Tuck Analysis**

Sidney, Iowa is an independent community. Although it is within the Urbanized Area of Omaha, Nebraska, it meets all of the eight factors required by *Tuck* to demonstrate that Sidney is an independent community.

## **A. Employment**

A large majority of Sidney residents—89%— do not work in Omaha. See Exhibit 2. A good number of residents live and work within the surrounding area around Sidney. Approximately 33% of Fremont County residents (the largest category) work within the county, and the largest single majority of Sidney residents—11.5%— live and work in Sidney. The Commission found a similar percentage to support a finding of independence in *Talladega and Munford, AL*, 20 FCC Rcd 13010 (2005) (14.6 percent is significant and justifies a favorable finding under *Tuck*).

Sidney is approximately 52 miles from Omaha. Based on the most recent complete survey, the average commute time to work for local residents in Sidney was 21.2 minutes, compared to the national average of 25.5 minutes. (<http://www.americantowns.com/ia/sidney-information>) According to Google Maps, it would take at least one hour to travel from Sidney to Omaha. Therefore, it is evident that based on the average commute time, the majority of residents do not work in Omaha but work in or close to Sidney.

Sidney is also the home to a numerous variety of businesses including legal services, veterinary services, financial services, construction businesses, automotive care services, restaurants, dental services, agricultural services, retail stores, a funeral home, florist, and many more

## **B. Media**

The second factor—whether the smaller community has its own newspaper or other media that covers the community’s needs and interests—supports a finding of independence. Sidney has a weekly newspaper the *Sidney Argus-Herald*. The paper contains local community and business news, classified sections, obituaries, and advertisements. (See Exhibit 3) Additionally, Sidney’s website provides visitors with city announcements and community events. (See: <http://www.sidneyia.net/>)

## **C. Community Perception**

The third factor, whether community leaders and residents perceive Sidney as being part of, or separate from, Omaha, favors a finding of independence. Sidney has its own strong community identity evidenced in its 80-plus-year-old community slogan, “Rodeo Town, USA!” (See <http://www.sidneyia.net/>) Taking their rodeo tradition to heart, the official mascots of Sidney schools are the Cowboys and Cowgirls. (See <http://sidneyschools.org/>) Moreover, residents of Sidney place a strong emphasis on historical preservation. The Fremont County Historical Society’s museum, located in Sidney, is dedicated solely to preserving local history and traditions in Sidney. Sidney is home to Iowa’s oldest pharmacy which has been in business for nearly 150 years. (See <http://iowabackroads.com/2008/11/10/penn-drug-co/>).

Sidney's independence is also evidenced by a series of local events with a focus on Sidney. The biggest event of the year, the Sidney Iowa Championship, is the world's largest continuous outdoor rodeo. Sidney has been the home of this historic rodeo since 1923. Every year, the downtown Sidney parade kicks off the rodeo, which features events such as bull riding competitions and barrel racing. For many years the Sidney High School Rodeo Band has participated in the performance. Community dances are held on Friday and Saturday nights after the Rodeo. (See <http://web.me.com/jnennemann/SidneyRodeo.us/History.html>) The annual Fremont County Fair in July showcases contests, exhibitions, rides, music and food. (See <http://www.sidneyia.net/diversions.php> ) Sidney also has numerous community organizations such as the Garden Club, Girl Scouts, 4-H, and the Sidney Christian Youth Group. (See <http://www.sidneyia.net/organizations.php> )

The residents of Sidney also consider Sidney to be a separate and independent community. (See Exhibit 4). As is evident from the attached declaration of Sidney residents, the residents consider themselves part of a distinct community separate and apart from Omaha or any other city. It is clear from the unique Sidney community activities, organizations, and statements made by residents that the Sidney community perceives itself as a separate community from Omaha.

#### **D. Local Representation**

The fourth factor, whether the community has its own local government and elected officials also favors independence. Sidney is the Fremont County seat, and houses both the Sidney City Council as well as the Fremont County Offices. The Sidney City Council consists of six elected representatives including the mayor. The Council meets in regular open session on the second Monday of each month in City Hall. (See [http://www.sidneyia.net/city/city\\_council.php](http://www.sidneyia.net/city/city_council.php) ) Sidney also has its own city Code of Ordinances (See [http://www.sidneyia.net/city/2010\\_Sidney\\_Iowa\\_Code\\_of\\_Ordinances.pdf](http://www.sidneyia.net/city/2010_Sidney_Iowa_Code_of_Ordinances.pdf))

#### **E. Phone Book or Zip Code**

Sidney has its own zip code—51652. While Sidney does not have its own city phone book, it is featured in the Shenandoah Red Oak, South West Iowa Regional, and Hanson Directory Service, Inc. phone books, which do not include Omaha addresses. (See Exhibit 5)

#### **F. Commercial Establishments**

The sixth factor, whether Sidney has its own commercial establishments and health facilities, supports a finding of independence. Sidney has its own Chamber of Commerce that lists local businesses including legal services, veterinary services, financial services, construction businesses, automotive care services, restaurants, dental services, agricultural services, retail stores, a funeral home, florist, and many more. Sidney also offers a variety of health care options including a Medical Clinic and the Fremont County Medical Center. Sidney is also home to 7 churches and 28 civic organizations. (See

[http://www.sidneyiowachamber.com/business\\_directory.php](http://www.sidneyiowachamber.com/business_directory.php);  
<http://www.sidneyia.net/health.php>; <http://www.sidneyia.net/churches.php>;  
<http://www.sidneyia.net/organizations.php>)

### **G. Advertising Market**

The seventh factor, the extent to which Sidney and Omaha are part of the same advertising market, favors a finding of independence. The *Sidney Argus Herald* offers advertising to local businesses and residents of Sidney. The Commission has found that the ability of local businesses to advertise in a local newspaper is sufficient for a favorable finding under this factor. See *supra Anniston and Ashland, AL, and College Park, Georgia*, 16 FCC Rcd at 3413; *Ada, Newcastle, and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996); and *Lake City, Chattanooga, Harrogate, and Halls Crossroads, Tennessee*, 20 FCC Rcd 18961 (MB 2005). (See Exhibit 3)

### **H. Municipal Services**

The eighth factor, the extent to which Sidney relies on Omaha for various municipal services such as police, fire protection, schools and libraries, supports a finding of independence. Sidney does not rely on other services from Omaha. Sidney has its own schools--one elementary school and one junior-senior high school. (See <http://sidneyschools.org/>) The community also has its own public library. (See <http://www.sidneyia.net/library.php> ) Sidney has its own well-equipped, active volunteer fire and rescue squad that serves Sidney and the surrounding area. The department has more than 30 members. Ten are emergency medical technicians. The fire department operates two fire engines, a tanker, utility truck, two brush trucks, and two ambulances. (See <http://www.sidneyia.net/fire.php>) Sidney also has its own police department, under Chief Austin Richardson, and is home to the Fremont County Sheriff's Office. (See <http://www.sidneyia.net/law.php>) Sidney's municipal independence is further underscored by its own water and sewer services. (See <http://www.sidneyia.net/utility.php> )

### **Conclusion**

Sidney exceeds the necessary showing required by *Tuck* to meet a majority of the relevant factors to demonstrate independence. Sidney exceeds this standard by meeting all eight factors. This conclusively demonstrates that Sidney is a separate community and is deserving of its own first local service.

## **III. NEED**

In addition to demonstrating independence, pursuant to *Rural Radio*, a compelling showing sufficient to rebut the urbanized area service presumption must also include evidence of the community's need for an outlet for local expression. An applicant will be afforded wide latitude in attempting to overcome this presumption and may rely on factors such as the community's rate of growth; the existence of substantial local government necessitating

coverage; and/or physical, geographical, or cultural barriers separating the community from the remainder of the urbanized area.<sup>4</sup>

As already demonstrated Sidney has its own local government. Not only does it have its own City Council but it is also the county seat of Fremont and hosts the Fremont County Offices. Moreover, since Sidney is in Iowa and Omaha is across state lines in Nebraska, Sidney maintains a geographical barrier from the Omaha urbanized area. Therefore, because Sidney not only has a substantial local government but also is separated by geographical boundaries from Omaha, the Sidney community needs a local outlet for expression.

#### **IV. OTHER FACTORS: PRIORITY 4**

KIMI currently serves 10,093 persons and an area of 2,084 sq. kilometers as currently authorized. The new proposed service area would cover 34,687 persons and an area of 2,623 sq. kilometers. Therefore, the proposed area will cover an additional 24,594 persons and gain 539 sq. kilometers in land area. This represents a 243.67% increase in coverage.

KIMI either as currently authorized or as proposed in its modification application will not provide service to any underserved areas nor does the proposal result in creating an underserved area. There are five or more services available within the service area currently authorized and in the area as proposed.

#### **V. CONCLUSION**

Sidney is an independent community. Kona Coast's proposal cannot and does not cover 50% or more of the Omaha urbanized area. Therefore the proposal cannot be presumed to be a service to the Omaha urbanized area and is entitled to a definitive priority 3 preference for providing a first service. Even assuming *arguendo* that Kona Coast must overcome the presumption against a city of license change to Sidney, Kona Coast has demonstrated that: (1) Sidney is truly independent, (2) Sidney has a specific need separate from the urbanized area for the station and (3) the station can meet that need. Sidney meets all eight Tuck criteria for independence. The residents of Sidney consider themselves part of an independent community. Sidney is geographically separated from Omaha and in fact is separated by a river and is in a separate state. Sidney has its own government, extensive businesses, schools, civic organizations, churches, fire department, police department, and is the county seat. It has its own newspaper and its own significant workforce.

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<sup>4</sup> *Id.*