

Section 307(b) Analysis

Atlantic Coast Radio, LLC, the licensee of WLOB-FM, Rumford, Maine (FCC ID No. 9180), operating on channel 242C1, has filed this application for a construction permit to change its community of license to Gray, Maine without changing its transmitter site or station class. On November 29, 2006, the Commission released new rules allowing community of license changes by application. Under these new rules, the applicant must include a showing under Section 307(b) of the Act.¹ This Section 307(b) analysis is submitted in accordance with those rules and is offered to demonstrate that the proposed change constitutes a preferential arrangement under the FM Priorities established in *Revision of FM Assignment Policies and Procedures*, 99 FCC2d 88. As demonstrated in this analysis, the proposed change serves the public interest in that it provides first local service to the community of Gray without depriving the residents of Rumford of their sole local transmission service, WTME-AM.² Accordingly, the proposed change results in a preferential arrangement under FM priorities and satisfies priority three because it would provide Gray with its first, local broadcast service. The proposed allotment also serves the Commission's allotment priority four, "other public interest matters". Gray, Maine is an independent community and is deserving of its own broadcast station. *See: Franklin, Addis, and Eunice, Louisiana*, 21 FCC Rcd 2933 (2006); *LaGrange, Greenville and Waverly Hall, Georgia*, 20 FCC Rcd 20007 (2006); *Memphis and Arlington, Tennessee*, 21 FCC Rcd 1144 (2006); *Athens and Doraville, Georgia*, 19 FCC Rcd 18746 (2004). Gray, Maine is located beyond the boundaries of the Portland, Maine urbanized area and its 70 dBu signal only covers approximately one percent of the Portland Urbanized Area.³ The 70 dBu signal of WLOB-FM currently covers 100% of the Lewiston, Maine urbanized area and, since the applicant proposes no change to its transmitter site or station class, the coverage of the Lewiston urbanized area would remain unchanged. Pursuant to Commission precedent, the applicant also provides

¹ This application is filed pursuant to 47 CFR 73.203(b) adopted in MB Docket No. 05-210, R&O Released on 11/29/06. This application proposes a change in authorized community of license and complies with the requirements of Section 73.3573(g) as follows:

- a) Legal and technical exhibits are provided demonstrating the preferential arrangement of allotments or assignments under section 307(b) of the Rules.
- b) The current license and proposed modified facilities are mutually exclusive as defined under section 73.207.
- c) Applicant certifies that it will comply with the local public notice provisions of Section 73.3580 and applicable subsections with respect to notification of the proposed community of license change to both the presently authorized and proposed communities of license.
- d) The proposed site complies fully with Sections 73.207 and 73.315 of the Rules.

² At present, Rumford, Maine is served by 6 FM stations and one, local AM station. This does not change.

³ *See* Engineering Exhibit Figure 3. *See also Headland, Alabama and Chattahoochee, Florida* 10 FCC Rcd 10,352 (MM 1995) requires a *Tuck* showing when reallocation proposed to a community outside an urbanized area would provide a 70 dBu signal to more than 50% of the urbanized area.

a Tuck Analysis addressing the issue of its Lewiston coverage in light of the proposed change to Gray as the city of license.⁴

I. Technical Considerations

Channel 242C1 at Rumford, Maine is mutually exclusive with proposed channel 242C1 at Gray, Maine. The applicant proposes no change to its transmitter site or station class. Engineering Figure 1 is a channel study from the proposed allotment reference coordinates for Gray, Maine demonstrating that these proposed coordinates are fully spaced with all existing or proposed facilities. It shows that these coordinates comply with Section 73.207 of the Commission's Rules. Engineering Figure 2 is a channel study from the existing/proposed transmitter site demonstrating that existing short-spacing to WCME will be maintained. Both locations are short-spaced or mutually exclusive with the licensed facility of WLOB-FM and are located close enough to Gray to place the class C1 allotment circle over the entire city limits of Gray. The proposed/existing transmitter site, and the allotment reference point for Gray, Maine, are short-spaced by at least 240 KM to the WLOB-FM licensed site currently allotted to Rumford. Therefore, the Gray, Maine proposal is clearly mutually exclusive as required by the rules. Engineering Figure 1-A contains a topographic map demonstrating that the proposed allotment reference point is suitable. The application will not create any underserved areas because WLOB-FM is not proposing any change its facilities and Gray, Maine will be provided with its first local broadcast service.

II. Public Interest Considerations

As noted, the change in city of license from Rumford to Gray results in a preferential arrangement

⁴ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (Allocations Branch, 1995) (adopting requirement that stations seeking to move from rural communities to communities near Urbanized Areas must provide a Tuck showing if the allotment would place a 70 dBu signal over 50% or more of Urbanized Area); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) (delineating eight-factor analysis for determining a proposed community's independence from a nearby Urbanized Area); *Huntington Broadcasting Co.*, 192 F. 2d 33 (D. C. Cir. 1951).

under the FM Priorities and, accordingly, serves the public interest. This proposed change provides a first local service to Gray, Maine. According to the 2000, US Census, Rumford, Maine's population is 4,795. The Population of Gray, Maine is 6,820. Rumford would continue to have a local broadcast station (WTME-AM) should this proposal be adopted and Gray, Maine, a much larger community, will have a first, local service. According to the established FM Priorities, a change in the city of license from Rumford to Gray would be a preferred allocation because it would result in a first local service and a wide-area service. First local service is considered as the third (3) priority under the FM priority criteria while the retention of service at Rumford would constitute only priority four (4). Accordingly, the proposed change from Rumford to Gray is in the public interest, satisfying FM priority criteria four.

III. Community Considerations

Gray is a community for allotment purposes. To qualify as a "community" for allotment purposes, the Commission has held that a locality must have "social, economic, cultural or government indicia" that indicate that it is a community.⁵ It must be shown that the community is a distinct group through objective indications of the existence of a common perception that a locality's populace constitutes a distinct geographical population."⁶ Indicators of community status may include the presence of political, commercial, social and religious organizations. As indicated below, Gray has sufficient indicia of community status. Gray is located beyond the boundaries of the Portland, Maine urbanized area and the 70 dBu signal of WLOB-FM only covers approximately one percent of the Portland Urbanized Area.

Gray is sufficiently independent of Portland to receive consideration as a first local service based upon the criteria established in *Tuck* and *Huntington*⁷. Gray is also located beyond the boundaries of the Lewiston, Maine urbanized area although 100% of the 70 dBu signal covers the Lewiston urbanized area. As indicated, WLOB-FM presently serves 100% of the Lewiston urbanized area and this will not change if this application is granted. Gray is completely independent of Lewiston and is deserving of first local service based upon the same *Tuck* and *Huntington* criteria, as demonstrated, below.

⁵ See Avon, North Carolina, 14 FCC Rcd 3939 (1990)

⁶ See Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments 5 FCC Rcd 934 (1990)

Gray is an incorporated town in Cumberland County, Maine. The town was settled in 1750 and incorporated in 1788. Gray is home to regional headquarters for the Maine Department of Inland Fisheries & Wildlife, which maintains a fish hatchery and wildlife park. It is also home to a NOAA National Weather Service Forecast Office which issues forecasts and severe weather warnings for New Hampshire and Maine. According to the United States Census Bureau, the town has a total area of 119.1 km². As of the census of 2000, there were 6,820 people, 2,637 households, and 1,890 families residing in the town. Gray has 243 commercial establishments, employing 1,702 people according to the 2000 U. S. Census. Gray is viewed as outside the Portland trade area, because of its distance from Portland, and its independent status.

Gray offers all regular Town administrative services from a complex of buildings in the Village Center. The Town Council, School Committee, and Water Board are all elected positions. The Town Manager is an appointed official. Gray shares a high school with neighboring New Gloucester, but has resisted combining services with adjacent communities, according to Town Manager Deborah Cabana. Gray does not rely upon Portland for any services. Gray has its own fire department, elementary and middle school and its own library. The Cumberland County Sheriff's office has full-time staff at the Gray Public Safety Building. In addition, the Maine State Police is housed in Gray. It is eleven miles north of the nearest Portland turnpike exit. Gray has its own turnpike exit and has recently built a bypass off of that exit to relieve traffic congestion through its lively Village center. Gray has its own post office and zip code, 04039. Gray is also served by a local phone company, Pine Tree Phone Services. Gray has two weekly independent newspapers, the Gray/New Gloucester Independent, and the Monument.

As discussed, the town of Gray is physically, legally, administratively and culturally separate and distinct from Portland and qualifies for a first local broadcast service. Gray, Maine is located beyond the boundaries of the Portland, Maine urbanized area and the 70dBu signal of WLOB-FM only covers approximately one percent of the Portland Urbanized Area. Gray, Maine's population is 6,820 and the town has no broadcast service licensed to it. Rumford, Maine has a population of 4,795 and, after this application is granted, will continue to receive local service from WTME-AM, Rumford. Rumford

⁷ See *Huntington Broadcasting Co.* 192 F.2d 33 (D.C. Cir 1951)

presently receives service from 6 FM stations and 1 local AM station and this will not change as a result of a grant of this application. The applicant proposes no change in its station class or transmitter site and, accordingly, there will be no loss of service to any community.

Conclusion

This application proposes the amendment to the FM Table of Allotments, as follows:

| <u>Community</u> | <u>Current</u> | <u>Proposed</u> |
|-------------------------|-----------------------|------------------------|
| Rumford, ME | 242C1 | --- |
| Gray, ME | --- | 242C1 |

This proposal will serve the public interest by providing first local service to Gray, Maine. For the reasons specified herein, Atlantic Coast radio, LLC respectfully requests that the Federal Communications Commission grant this application to provide first, local broadcast service to Gray, Maine, which will be of greater benefit to the public.

APPLICATION OF EIGHT FACTOR TUCK ANALYSIS

The proposed allotment to Gray, Maine is located outside the boundaries of the Lewiston, Maine urbanized area but 100% of the 70dBu signal of WLOB-FM currently serves Lewiston. Although this will not change as a result of a grant of this application, the applicant is required to provide a showing that Gray is independent from the Lewiston urbanized area. In prior decisions, the Commission has affirmed that where the *Huntington* doctrine applies, the most important consideration in determining whether a community is entitled to a preference as a first local service is the proposed community's independence from the nearby central city.⁸ The Commission considers eight indicia of community status in assessing a community's independence from the central city: (1) the extent to which the community's residents work

⁸ See *Huntington Broadcasting Co.* 192 F.2d 33 (D.C. Cir 1951)

in the larger metropolitan area, rather than in the specified community; (2) whether the community has its own newspaper or other media that cover the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as an integral part of, or separate from, the larger community; (4) whether the specified community has a local government and elected officials; (5) whether the specified 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 upon the larger metropolitan area for various municipal services, such as police, fire protection, schools and libraries. Applicants must demonstrate that a majority of these factors support a purported community's independence. This is the case with the instant application which demonstrates Gray's complete independence from Lewiston and its entitlement to a first local service.

1. Gray Offers Residents Significant Employment Opportunities (Factor One)

The population of Gray, Maine is 6,820. There are 2,637 households, and 1,890 families residing in the town. Gray has 243 commercial establishments, employing 1,702 people according to the 2000 U. S. Census. According to that same census, only 101 people commute from Gray to Lewiston and only 83 people commute from Gray to Auburn, a town which is included in the Lewiston urbanized area. Clearly, Gray provides significant employment opportunities to its residents and offers significant employment opportunities separate from Lewiston. Gray is seventeen (17) miles from Lewiston. Gray lies between Lewiston and Portland.

2. Gray Has Its Own Media Which Cover The Community's Local Needs and Interests (Factor Two)

The residents of Gray have access to local publications, both in print and online, that provide information addressing the local needs and interests of the community. Print media includes two weekly, independent newspapers: the Gray/New Gloucester Independent and the Monument. Local residents can also obtain local news from Topix.net, Graymaine.org and Graynews.com.

3. Gray Residents and Community Leaders Clearly Consider Gray as Separate From Lewiston. (Factor Three).

Gray is seventeen miles from Lewiston and is located in Cumberland County, Maine. Lewiston is located in Androscoggin County. Lewiston has its own elected officials and receives all of its services from either Lewiston or from Androscoggin County. Lewiston residents pay taxes to Lewiston and to Androscoggin County. Gray residents have their own elected officials, pay taxes to Cumberland County and receive all of their services from either Gray or from Cumberland County. Politically and legally, each town is as separate and distinct as can be. Given the large distance between Lewiston and Gray, social and cultural opportunities are also distinct. Economically, Lewiston and Gray are separate and, as indicated above, only 184 people commute to Lewiston from Gray for employment purposes. According to Switchboard.com, there are eight churches in Gray, Maine representing all major denominations. In the applicant's interview with the Town Manager, Deborah Cabana, it is apparent that Gray residents want to remain a separate town. They have resisted efforts to combine other services with other communities, beyond the existing law enforcement arrangement with the state and county, and the high school relationship with New Gloucester. Gray has its own exit from the Maine Turnpike and has recently built a bypass off of that exit to relieve traffic congestion through its lively Village Center. Gray features compact development, historic buildings, narrow streets, and mixture of land uses" (Gray Comprehensive Plan). Gray does not rely upon Lewiston for services. Gray has its own fire department, elementary and middle school and its own library. It shares Gray/New Gloucester High School. The Cumberland County Sheriffs office has full-time staff at the Gray Public Safety Building. In addition, the Maine State Police is housed in Gray.

4. Gray Has Local Representation Separate From Lewiston (Factor Four)

Gray offers all regular Town administrative services in a complex of buildings in the Village Center. The Town Council, School Committee, and Water Board are all elected officials. The Town Manager is an appointed official. Gray, Maine has had its own firefighting services since the 1880's. Gray Rescue was formed in 1969. Gray Fire-Rescue (GFR) is a combination department providing twenty-four hour fire and medical emergency services to the Town of Gray. The Cumberland County

Sheriffs office has full-time staff at the Gray Public Safety Building. In addition, the Maine State Police is housed in Gray. Gray relies upon its local and county government to provide vital services to the community and is completely separate from the Lewiston urbanized area.

5. Gray, Maine Has Its Own Zip Code

Gray, Maine has its own Post Office located at 8 Shaker Road. Its zip code is 04039.

6. Gray, Maine Has Its Own Commercial Businesses.

Gray has 243 commercial establishments, employing 1,702 people according to the 2000 U. S. Census. Gray provides significant employment opportunities to its residents and offers significant employment opportunities separate from Lewiston.

7. Gray, Maine and Lewiston, Maine are distinct Advertising Markets

Gray is located in Cumberland County which is within the Portland, Maine radio metropolitan area. It is, however, at the northern fringe of Cumberland County, midway between Portland and Lewiston. Statistically, Gray falls within the Portland advertising market, but practically it is viewed as outside the Portland Trade area because of its distance from Portland, and its independent status. Lewiston is located in Androscoggin County and served by its own, distinct media. The Lewiston Sun-Journal is a daily newspaper. Lewiston-Auburn is considered by Arbitron to be a condensed radio market and Gray is not part of that market. Lewiston has five radio stations and one television station licensed to it. Gray has no broadcast media of any kind but is served by two local, weekly newspapers and one online newspaper.

8. Gray, Maine Does Not Rely On Lewiston For The Provision of Municipal Services.

Gray does not rely upon Lewiston for the provision of municipal services. As discussed above, Gray has a local municipal and county government that provides a host of services to local residents, including police, fire, health and safety.

Additional Considerations

Gray, Maine satisfies all of the Commission's eight-point *Tuck* criteria and is entitled to preference as a first local service. The Commission also considers two additional *Huntington* considerations in its analysis: the extent to which the proposed station will provide service to the entire nearby urbanized area and, the relative populations of the suburban and central city.

As noted, the proposed Gray, Maine assignment is located outside of the boundary of the Lewiston urbanized area. The signal of WLOB-FM now provides 70 dBu coverage to 100% of Lewiston and this will not change should the Commission grant this application for change in city of license from Rumford to Gray. However, with regard to relative size and proximity, Gray's 2000 population of 6,820 constitutes zero percent of the Lewiston urbanized area. Gray, Maine is seventeen miles from Lewiston.

Conclusion

This proposal will serve the public interest by providing the community of Gray, Maine with a first local service while not depriving Rumford of any services. According to the 2000 US Census, Rumford, Maine's population is 4,795. The Population of Gray, Maine is 6,820. Rumford would continue to have a local broadcast station (WTME-AM) should this proposal be adopted and Gray, Maine, a much larger community, will have a first, local service. Rumford presently receives service from 6 FM stations and 1 local AM station and this will not change as a result of a grant of this application. The

applicant proposes no change in its station class or transmitter site and, accordingly, there will be no loss of service to any community.

Affidavit of Joseph Jeffrey

I, Joseph Jeffrey hereby state, under penalty of perjury, that I have reviewed the attached application for minor modification and the exhibits thereto and state that the representations made therein are true, complete and correct to the best of my information, knowledge and belief.

Joseph Jeffrey, Managing Member

Date: September 5, 2007