

Community of License Change – Section 307(b)

Clear Channel Broadcasting Licenses, Inc., the licensee of KWYY(FM), Casper, Wyoming, Facility ID No. 26300 (“KWYY”) and KRVK(FM), Midwest, Wyoming, Facility ID No. 88406 (“KRVK,” and, together with KWYY, the “Stations”), submits contingent applications for (1) a construction permit for the minor modification of KWYY to specify operation on Channel 238C at Midwest, Wyoming, in lieu of operation on Channel 238C at Casper, Wyoming (the “Midwest Application”) and (2) the minor modification of the construction permit for KRVK (File No. BPH-20030602ACU) to specify operation on Channel 300C1 at Bar Nunn, Wyoming, in lieu of operation at Midwest, Wyoming (the “Bar Nunn Application,” and, together with the Midwest Application, the “Applications”).

This exhibit (which is being filed in the same form with both Applications), together with the Technical Exhibits to each of the Applications, demonstrate that the proposed community of license changes constitute a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. Section 307(b)). Furthermore, as set forth in the respective Technical Exhibits, the facilities specified in each of the Applications are mutually exclusive, as defined in Section 73.207 of the Commission’s Rules, with the current assignment of the subject Station. As confirmed in the Technical Exhibit to each of the Applications, there is an assignment or allotment site for the facility at the proposed community of license that fully complies with Sections 73.207 and 73.315 of the Commission’s Rules without resort to Sections 73.213 or 73.215 of the Commission’s Rules. The applicant will comply with the local public notice provisions of

Sections 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f) of the Commission's Rules, and understands that the exception contained in Section 73.3580(e) of the Commission's Rules does not apply to an application proposing to change the community of license of an FM station. Consequently, the proposed community of license changes qualify for submission as minor modification applications pursuant to Section 73.3573(g) of the Commission's Rules.

In determining whether a proposed community of license change constitutes a preferential arrangement of allotments under Section 307(b) of the Act, the Commission considers whether the proposal would serve one or more of the Commission's four priorities. ^{1/} Here, grant of the Applications would further the third priority by authorizing a first local aural transmission service at Bar Nunn, Wyoming. In addition, there would be a slight increase in the number of persons receiving protected service. The communities of Midwest and Casper will continue to have local aural transmission service as well as multiple received aural transmission services. ^{2/} Thus the Applications constitute a preferential arrangement of allotments under Section 307(b) as compared to the existing allotments/assignments.

The Commission has previously determined that Midwest, Wyoming is a community suitable for allotment purposes. ^{3/} Midwest continues to be a community suitable

^{1/} See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) (“*FM Assignment Policies*”). The four priorities are: (i) one full-time aural reception service to a community; (ii) a second full-time aural reception service to a community; (iii) one local transmission service to a community; or (iv) other public interest factors. The second and third criteria have equal priority. *Id.* at 91. See also *Report and Order, In the Matter of Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, FCC 06-163 at ¶ 10 (released Nov. 29, 2006) (Section 307(b) priorities and policies used by Commission since 1982 continue to apply under new application procedures).

^{2/} See Technical Exhibits.

^{3/} See *Midwest, Wyoming Notice of Proposed Rulemaking*, 12 FCC Rcd 1770 (Allocations Br. 1997); *Midwest, Wyoming R&O*, 12 FCC 8289 (Allocations Br. 1997).

for allotment purposes. Midwest, which was incorporated in 1975, has a population of 408. 4/ Midwest has its own post office and zip code (82643). 5/ The town is governed by an elected mayor and four council members; council meetings are held once per month. 6/ Midwest provides many municipal services to its residents, including animal control, park and street maintenance, and water and sewage. 7/ There is a Midwest Fire Department and a Midwest Police Department. 8/ Midwest School, which is located in the town, is known as “the one school for the whole family” because it serves children from pre-school through twelfth grade. 9/ There are also a number of businesses in Midwest, which meet the needs of Midwest’s residents. 10/ Furthermore, Midwest residents clearly are proud of their community, as evidenced, for example, by the issuance of a commemorative plate, which is sold at the Midwest Town Hall for \$25, and attributes Midwest with the “First Electrified Oilfield” and the “First Lighted Football Game.” 11/

4/ See Profile of General Demographic Characteristics for Midwest town, Wyoming, U.S. Census Bureau, Census 2000, at <http://censtats.census.gov/data/WY/1605652445.pdf> (copy at Attachment 1). See also website of Midwest, Wyoming, at <http://midwest.govoffice.com> (copy at Attachment 2) (“Midwest Website”).

5/ See United States Postal Service website at <http://zip4.usps.com> (copy at Attachment 3).

6/ See website of Midwest, Wyoming, at <http://midwest.govoffice.com> (copy at Attachment 2).

7/ *Id.*

8/ See “Midwest” search results on Yahoo! Local Yellow Pages at <http://yp.yahoo.com> (copy at Attachment 4).

9/ Midwest School is part of the Natrona County School District. See the Natrona County School District website at <http://ncsdweb.ncsd.k12.wy.us/schools/midwest/index.html>; the Midwest School description at <http://www.natronaschools.org/about/choice/midwest.pdf> (copies at Attachment 5).

10/ See list of local businesses on the website of Midwest, Wyoming (copy at Attachment 2). See also listings in the Yellowbook phone directory at <http://www.yellowbook.com> (copies of a representative sampling of listings at Attachment 6).

11/ See website of Midwest, Wyoming, at <http://midwest.govoffice.com> (copy at Attachment 2).

Bar Nunn also clearly constitutes a community suitable for allotment purposes. Commission precedent holds that a community that is either incorporated or a Census-Designated Place presumptively qualifies as a community for allotment purposes and thereby merits its own local transmission service. 12/ Bar Nunn meets this qualification on either basis: the town of Bar Nunn was incorporated in 1982; 13/ and the 2000 Census lists Bar Nunn as an incorporated place. 14/

Bar Nunn's other characteristics likewise demonstrate that it deserves its own local transmission service. Bar Nunn is an independent community located in Natrona County, Wyoming. 15/ Bar Nunn is governed by an elected mayor and four elected town council members; council meetings are held twice per month. 16/ There is also a Parks and Recreation Committee and a Zoning and Planning Commission, whose members are appointed and who assist in the planning and beautification of the community, including the town's three parks. 17/

12/ See e.g., *Cleveland and Ebenezer, Mississippi R&O*, 10 FCC Rcd 8807, 8808 [¶ 6] (Allocations Br. 1995) ("The Commission's long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the community is either incorporated or listed in the U.S. Census."). See also *Reydon, Oklahoma R&O*, 18 FCC Rcd 3222, 3222 [¶ 2] (Ass't Chief, Audio Div., released Mar. 4, 2003).

13/ See description of Bar Nunn on the Casper Area Chamber of Commerce website, at <http://www.casperwyoming.org/towns.php> (copy at Attachment 7) (hereinafter referred to as the "Chamber of Commerce Description").

14/ See Profile of General Demographic Characteristics for Bar Nunn town, Wyoming, U.S. Census Bureau, Census 2000 at <http://censtats.census.gov/data/WY/1605605245.pdf> (copy at Attachment 8).

15/ See the "Municipalities" map on the Wyoming Department of Revenue website, at http://revenue.state.wy.us/PortalVBVS/MAPS_GIS/Stamun06.pdf (copy at Attachment 9); photo of Bar Nunn highway exit sign (copy at Attachment 10); and street map of Bar Nunn from Yahoo! Local Maps (copy at Attachment 11).

16/ See Chamber of Commerce Description (copy at Attachment 7). See also Kathleen Whitney, Barr Nunn Clerk Treasurer-CMC-Court Clerk, "History of the Town of Bar Nunn," dated Oct. 6, 2006 (copy at Attachment 12) (hereinafter referred to as the "Town History"); Ann Franscell, "A Short History Accompanies the Would-Be Town of Bar Nunn," *Casper Star-Tribune* (copy at Attachment 13).

17/ *Id.*

Bar Nunn has its own town hall and four full-time employees, including one who serves as Court Clerk and holds court once a month for persons who have received citations in Bar Nunn. 18/ The town provides, either directly or indirectly, municipal services to its residents. For example, Bar Nunn provides trash collection through a contractor and the town collects payments from residents for such services. 19/ Law enforcement for the town is provided by a resident deputy through contact with the Natrona County Sheriff's Department. Bar Nunn also has its own volunteer fire department with over twenty active members. 20/ The town of Bar Nunn also publishes a monthly newsletter to keep Bar Nunn residents up-to-date on community news. 21/ Bar Nunn Elementary School is located in the town. 22/ The town has been designated by the National Arbor Day Foundation as a "Tree City USA" community. 23/

18/ See Chamber of Commerce Description and Town History (copies at Attachments 7 and 12, respectively).

19/ *Id.*

20/ *Id.* See also listing for Bar Nunn Fire Department at <http://www.firedepartments.net/Wyoming/BarNunn/BarNunnFireDept.html> (copy at Attachment 14).

21/ See Town History (copy at Attachment 12).

22/ Bar Nunn Elementary School is part of the Natrona County School District. See the Natrona County School District website at <http://ncsdweb.ncsd.k12.wy.us/schools/barnunn/index.html>; the Bar Nunn Elementary School website at <http://ncsdweb.ncsd.k12.wy.us/schools/barnunn/website/>, and; the Bar Nunn Elementary School description at <http://www.natronaschools.org/about/choice/barnunn.pdf> (copies at Attachment 15).

23/ *Id.* See also the Tree City USA program description on the National Arbor Day Foundation website at <http://www.arborday.org/programs/treeCityUSA.cfm> (copy at Attachment 16). A community must apply for Tree City USA status. To be designated as a Tree City USA, the community must meet certain standards including (i) the designation of someone "legally responsible for the care and management of the community's trees;" (ii) the adoption of a tree ordinance that designates the establishment of a tree board or forestry department that has responsibility for writing and implementing an annual community forestry work plan; (iii) the establishment of a community forestry program that is supported by an annual budget of at least \$2 per capita; and (iv) the observation of Arbor Day.

The Casper Area Chamber of Commerce describes Bar Nunn as a “growing” community. 24/ New residential neighborhoods are being built. 25/ While the 2000 Census reported a population of 936, the town’s Clerk recently estimated that the current population of Bar Nunn is actually approximately 2000. 26/ Bar Nunn has a number of local businesses that serve its residents’ needs, including a popular local bar and grill restaurant called Chatters. 27/ A KOA Campground located in Bar Nunn operates a miniature golf course and an indoor pool, which are available to town residents as well as KOA visitors. 28/ In addition, the Bar Nunn Baptist Church is located in the town. 29/

Bar Nunn’s citizens take pride in their community and the town’s name, as well as the town’s seal (which portrays airport runways) 30/, are odes to the town’s past. In 1954 a local businessman, Romie Nunn, purchased Wardwell Field, which had served as Natrona County’s airport until 1952. 31/ Mr. Nunn subdivided the airport’s 640 acres, setting aside land for parks, a school, churches, and businesses. As a trademark for the community, Mr. Nunn

24/ See Chamber of Commerce Description (copy at Attachment 7).

25/ See Chamber of Commerce Description and Town History (copies at Attachments 7 and 12, respectively). See also real estate listing for the “Vista Hills” development, at http://www.caprihomes.com/plat_barnunn.html (copy at Attachment 17).

26/ See Town History (copy at Attachment 12).

27/ See listings in the Yahoo! Local phone directory at <http://yp.yahoo.com> (copies of a representative sampling of listings at Attachment 18). See also Super Pages directory listing for Chatters Bar & Grill at <http://www.superpages.com> (copy at Attachment 19); Tom Morton, “Bar Nunn Bar Boosts Team Spirit,” *Star Tribune*, Feb. 7, 2005; Holly Strother, “A Star Is Born,” *Star Tribune*, Apr. 8, 2005 (copies at Attachment 20).

28/ See Town History (copy at Attachment 12).

29/ See “Bar Nunn” search results on Yahoo! Local Yellow Pages at <http://yp.yahoo.com> (copy at Attachment 21).

30/ See Town of Bar Nunn letterhead (copy at Attachment 22).

31/ See Town History (copy at Attachment 12).

designed, applied for, and received a brand from the Wyoming Livestock and Sanitary Board in May 1958. The design on the brand is a symbol of a bar and a capital “N” (---N), thus the name Bar Nunn. 32/ The streets of Bar Nunn were built upon the old runways of the airport 33/ and the former airport hanger is now a boating supplies store. 34/ Bar Nunn was listed as having the most unusual name of a town/village/city in the state of Wyoming in a book titled “Odd & Peculiar,” which was published in 1996. 35/

Under Commission precedent, these indicia of community confirm that Bar Nunn is a place deserving of its own local aural transmission service and that grant of the Applications would further the public interest in the fair, efficient, and equitable distribution of radio services.

Finally, while the principal community contour of the Stations operating on the proposed allotments at maximum facilities from the proposed reference coordinates would encompass 100 percent the Casper Urbanized Area with a 70 dBu contour, 36/ Commission precedent holds that a “*Tuck*” analysis is not required here because, as set forth in the Technical Exhibit, the Stations’ contours pursuant to their current authorizations also encompass the Casper Urbanized Area. 37/

32/ *Id.*

33/ *Id.* See also “Wardwell Field, Bar Nunn, WY” portion of “Abandoned & Little-Known Airfields” published by Paul Freeman at http://www.airfields-freeman.com/WY/Airfields_WY.htm (copy at Attachment 23).

34/ *Id.* See also Bundy’s Marine website at <http://www.bundysmarine.com/map.htm> (copy at Attachment 24).

35/ See Town History (copy at Attachment 12).

36/ See Technical Exhibit.

37/ See, e.g., *Greeley and Broomfield, Colorado*, 15 FCC Rcd at 9419, 9419 [¶ 2] (Chief, Allocations Br. 2000) (no *Tuck* analysis required for community of license change when 70 dBu contour already placed over majority of urbanized area).