

307(b) ANALYSIS

On November 29, 2006, the Commission adopted new rules allowing community of license changes by minor change applications.¹ According to these new rules an application seeking a change to a facility's community of license must include a showing under 307(b) of the Act. The instant application seeks to modify the construction permit for KEZZ (facility ID 165959, BNPH-20060310ADJ) to specify a new community of license, Masonville, Colorado instead of Walden Colorado.

Masonville is a community for allotment purposes. It is an unincorporated town with a population of 500 people. Although small, a community of as little as 350 people is sufficient to demonstrate community status. *See Belfry and Harold, Kentucky*, 6 FCC Rcd 6019 (1991). Masonville has its own post office and zip code. There are numerous local businesses that serve the Masonville community: Buckhorn Llama Co., an animal specialties farm; Carter Lake Enterprises, a sandstone quarry; Edge Custom Concrete; Fitness for Women, a physical fitness facility; Front Range Hang Gliders; Jenkins Tool Company; Nostalgic West Leather, a retail leather store; Koretko Inc., a wholesale veterinary supplier; Trail Ridge Timber Frames, manufacturer of wood buildings and components; Masonville Mercantile, a retail gifts and clothing store; Michael Pavsek, a veterinary doctor; RV Stone Work, a masonry company; Shorty's Landscape Service,

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

- 1) Legal and technical exhibits are provided demonstrating the preferential arrangement of allotments or assignments under section 307(b) of the Rules.
- 2) The current license and proposed modified facilities are mutually exclusive as defined under section 73.207.
- 3) 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.
- 4) The proposed site complies fully with Sections 73.207 and 73.315 of the Rules.

lawn and garden services; Taslitz Photography; Mountain Breeze Ballooning; Masonville Electric; DC Hardwood Flooring;. There is one local church, Buckhorn Presbyterian.

A 307(b) analysis favors grant of the requested change in city of license to Masonville according to the Commission's allotment priorities. The allotment priorities are as follows: (1) provision of first aural reception service to a community; (2) provision of second aural reception service to a community; (3) provision of first local television service to a community, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88, 91-93 (1982).

The proposed move from Walden to Masonville satisfies priority three as it would provide Masonville with its first local transmission service. Since Masonville is an independent community, it is deserving of its own local service. *See Memphis and Arlington, Tennessee*, 21 FCC Rcd 1144 (2006); *La Grange, Greenville and Waverly Hall, Georgia*, 20 FCC Rcd 20007 (2006); *Athens and Doraville, Georgia*, 19 FCC Rcd 18746 (2004); *Franklin, Addis and Eunice, Louisiana*, 21 FCC Rcd 2933 (2006). There are no radio or television stations currently licensed to Masonville.

Reallotment of KEZZ from Walden to Masonville also serves the Commission's allotment priority four, other public interest matters. The new technical facilities as proposed would increase the population coverage from 14,634 people to 256,534 people within the 60 dbu contour, and from 1,500 to 207,388 people in the 70 dbu contour (a 1,652% and 13,725% increase respectively). This represents a significant increase in population receiving service from this station.

Walden will continue to receive protected aural service under the proposed reallocation. It receives protected aural service from at least nine stations, and is considered well served. See *Potts Camp and Saltillo, Mississippi*, 16 FCC Rcd 16116 (2001); *Norfolk and Windsor, Virginia*, 21 FCC Rcd 6888 (2006); *Loretto, Tennessee and Killen, Alabama*, 21 FCC Rcd 5834 (2006).

Additionally, the change of community of license from Walden to Masonville would not deprive Walden of a radio station upon which it had come to rely. See *Kingsley, Michigan*, 21 FCC Rcd 2953 (2006). The Walden station has not been built, and has never been operational. According to the Commission, removal of an unbuilt new station does not raise the same concerns as would the removal of a fully operational station. See *Vernon Center and Eagle Lake, Minnesota*, 2006 FCC Lexis 6633 (2006) (removal of license for first local service permitted when station not built); *Loretto, Tennessee and Killen, Alabama*, 21 FCC Rcd 5834 (2006) (removal of license for first local service permitted when station not built). Since the new FM CP has never been operational, the public has no expectation of its continued operation. As such, the removal to Masonville would not undermine the public's interest in retaining the station at Walden.

In conclusion, Masonville is an independent community, and is deserving of its first local transmission service. Walden will continue to receive protected aural reception from nine other primary signals. Allowing this community of license change will enable hundreds of thousands more people to receive service. Grant of the modification application will increase service within the 60 dbu contour by over 1,600%. The

demonstration of advancing priorities three and four favors the Commission's change of city of license of KEZZ from Walden to Masonville.

TUCK ANALYSIS

Although providing first local service to Masonville will provide first local service to an independent community, it will also provide city-grade coverage over a majority of the Fort Collins Urbanized Area. This is permitted under a *Tuck* analysis because Masonville is sufficiently independent to warrant its own service.² Masonville is independent of Fort Collins as one local resident stated "to the point of being rebellious." Masonville is located in the foothills of the Rocky Mountains, fifteen miles from Fort Collins, and up approximately 4,000 feet in elevation. Masonville meets all eight factors of a Tuck analysis demonstrating that it is an independent community. A proponent need not demonstrate compliance with all eight factors, but only a majority. See, *e.g.*, *Chillicothe, Dublin, Hillsboro, and Marion, Ohio*, 20 FCC Rcd 6305 (MB 2005). Masonville exceeds this standard.

Employment

The first factor, the extent to which the community residents work in the larger metropolitan area rather than the specified community demonstrates that Masonville is independent of Fort Collins for employment. Many of Masonville's working residents operate businesses from their homes. Additionally, approximately five stone quarries located in Masonville employ a significant number of people. These quarries even import labor from the Loveland and Fort Collins. It is difficult to assess the total number of employees serving Masonville because this type of data is not available, but it is

² *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

apparent from the commercial activity taking place in Masonville that it is not dependent on Fort Collins for its employment.

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. Masonville is served by the *Rocky Mountain Fence Post*, a 200-220 page weekly paper that serves rural communities in eastern Colorado. This paper contains local news, community events, classified sections, and advertisements.

Community Perception

The residents of Masonville view themselves as separate and distinct from Fort Collins. Masonville is not located within Fort Collins Urbanized Area, and in fact, many local residents choose to live in Masonville precisely because it not part of Fort Collins. They chose to forgo many of the comforts of urban living for the quiet solace of a rural town. Masonville is not located between the other larger surrounding communities of Loveland and Fort Collins, but is itself a destination where many make their homes and livelihoods. The distinctness of Masonville from Fort Collins is evidenced by the use of Masonville in the names of local businesses. Some of these are Masonville Electric and Masonville Mercantile.

Local Representation

Masonville residents elect county officials, and do not rely upon Fort Collins for political representation. Although it is unincorporated, Masonville is politically active at the county level, frequently forming taxpayer associations to oppose county measures that negatively impact its community character.

Phone Book or Zip Code

The fifth factor, whether Masonville has its own local phone book or zip code, is met. Masonville has its own zip code, 80451.

Commercial Establishments

The sixth factor, whether Masonville has its own commercial establishments supports a finding of independence. Masonville is home to a variety of businesses. There is a llama farm, Buckhorn Llama Company; a number of stonemasons including Edge Custom Concrete, Rv Stonework, and Carter Lake Enterprises; recreational companies including Front Range Hang-gliding and Mountain Breeze Ballooning; home building services including Timber Ridge Frames, DC Hardwood Flooring, and Shorty's Landscape Service; retail shops, Masonville Mercantile and Nostalgic West Leather; veterinary services provided by Dr. Michael Pavsek, and veterinary products distributed by Koretko Inc.; local professional photography from Taslitz photography; repair services by Jenkins' Tool Company; electrical services by Masonville Electric; and fitness facilities operated by Fitness for Women. It is evident that Masonville has a significant number of local businesses which are independent of the Fort Collins metropolitan area.

Advertising Market

The *Rocky Mountain Fence Post* serves Masonville and other nearby rural communities. It offers advertising space to the residents of Masonville. 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 *Anniston and Ashland, Alabama, and College Park, Georgia*, 16 FCC Rcd at 3413; *Ada, Newcastle,*

and Watonga, Oklahoma, 11 FCC Rcd 16896; and *supra Lake City, Chattanooga, Harrogate, and Halls Crossroads, Tennessee* at 18965. The presence of this advertising option favors a finding of independence.

Municipal Services

The eight factor, the extent to which Masonville relies on Fort Collins for various municipal services supports a finding of independence. The Pooter Valley Rural Electric Association provides electric power to Masonville. The Big Thompson Water District provides water to Masonville residents. Masonville does not rely on Fort Collins for its police protection or schools, but receives these services from the Larimer County government of which it is a part. Fire protection is provided by the Pooter Valley Fire Department.

Conclusion

Overall, Masonville exceeds the showing required by *Tuck*. A majority of demonstrable factors demonstrate independence. This is sufficient to find that Masonville is not interdependent on Fort Collins and is deserving of its own first local service.