

Community of License Change – Section 307(b) Statement

Radioactive, LLC (“Radioactive”), licensee of WTRW(FM), Channel 246A, Two Rivers, Wisconsin, Facility ID No. 164253 (the “Station”), submits this application for a construction permit for the minor modification of the Station to specify operations on Channel 248A at Glenmore, Wisconsin, in lieu of operation on Channel 246A at Two Rivers, Wisconsin (the “Application” or the “Proposal”). This Application is contingent with an application being filed concurrently for the minor modification of WHDG(FM), Rhinelander, Wisconsin, Facility ID No. 55211, to change from Channel 248C1 to Channel 247C1.

This exhibit, together with the Technical Exhibit to the Application, demonstrates that the proposed community of license change constitutes 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 Technical Exhibit, the facilities specified in the Application are mutually exclusive, as defined in Section 73.207 of the Commission’s Rules, with the current assignment of the Station. As confirmed in the Technical Exhibit to this application, there is an assignment or allotment site for this 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, this proposed

community of license change qualifies for submission as a minor modification application 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 Proposal would further the third priority by authorizing a first local aural transmission service for the community of Glenmore, Wisconsin, and the community of Two Rivers, Wisconsin will continue to have local aural transmission services. ^{2/} Thus, the Proposal constitutes a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment.

Glenmore is 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. ^{3/} Glenmore meets both criteria. Glenmore (2000 Census population 1,187) is a

^{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*, 21 FCC Rcd 14212, 14218 [¶ 10] (2006) (Section 307(b) priorities and policies used by Commission since 1982 continue to apply under new application procedures).

^{2/} See Technical Exhibit.

^{3/} See, e.g., *Cleveland and Ebenezer, Mississippi*, 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*, 18 FCC Rcd 3222, 3222 [¶ 2] (Ass't Chief, Audio Div. 2003).

community in Brown County, Wisconsin that is listed in the 2000 Census 4/ and it was established in 1856. 5/

Commission precedent holds that a “*Tuck*” analysis 6/ is not required when the 70 dBu contour of the Station would not encompass the majority of any Urbanized Area, nor would the community of license be located within an Urbanized Area. 7/ Here, as set forth in the Technical Exhibit, the 70 dBu contour of the Station from the allotment reference coordinates would not encompass any Urbanized Area, and Glenmore is not located geographically within an Urbanized Area. However, from the transmitter site designated in the Application for the operation of the Station, the Station would place a 70 dBu contour over the majority (95 percent) of the area of the Green Bay Urbanized Area. 8/ Consequently, in an abundance of caution, it is shown that the Proposal also qualifies pursuant to a “*Tuck*” review.

In a *Tuck* analysis, the Commission considers the following three criteria: (1) the extent to which the station will provide service to the entire urbanized area; (2) the relative populations and proximity of the suburban and central city of the urbanized area; and (3) the independence of the proposed community to the Urbanized Area. 9/ The latter criterion, which is the most important consideration and the most relevant to demonstrating that the proposed

4/ See Profile of General Demographic Characteristics for Glenmore town, Brown County, Wisconsin, U.S. Census Bureau, Census 2000, at <http://censtats.census.gov/data/WI/0605500929550.pdf> (copy at Attachment 1).

5/ Confirmed by Town of Glenmore Clerk via written response on June 26, 2008.

6/ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) (“*Tuck*”).

7/ See, e.g., *Southwest City, Missouri, and Gravette, Arkansas*, 21 FCC Rcd 6279, 6280 [¶ 4] (Ass’t Chief, Audio Div. 2006).

8/ See Technical Exhibit. Cf. *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 22410, 22411-12 [¶ 5] (Ass’t Chief, Audio Div. 2006) (requesting *Tuck* showing when, subsequent to reallocation, station could relocate transmitter site to a location that would serve more than 50% of an Urbanized Area), *application for review pending*.

community of license is independent of the Urbanized Area, is further refined to eight factors: (1) the extent to which the community residents work in the larger metropolitan area, rather than the proposed community; (2) whether the smaller community has its own newspaper or other media coverage; (3) whether community leaders and residents perceive the proposed community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the proposed community has its own local government and elected officials; (5) whether the smaller community has its zip code and its own telephone book provided by a local telephone company; (6) whether the community has its own commercial establishments, health care facilities and transportation systems; (7) the extent to which the proposed community and the central city are part of the same advertising market; and (8) the extent to which the proposed community relies on the larger metropolitan area for various municipal services. 10/

Here, the 70 dBu signal of the Station does not encompass the majority of any Urbanized Area from the proposed reference coordinates; however, it would encompass 95 percent of the Green Bay Urbanized Area from the transmitter site designated in the Application for the operation of the Station. 11/ Such service does not preclude favorable consideration as a first local service. 12/ Glenmore is not situated next to or located within any Urbanized Area. Approximately 12 miles separate Glenmore from the city center of Green Bay,

9/ See, e.g., *Saluda and Irmo, South Carolina*, 19 FCC Rcd at 1078-79 [¶ 3] (MB 2004).

10/ *Tuck*, 3 FCC Rcd at 5378 [¶ 36].

11/ See Technical Exhibit.

12/ See, e.g., *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia*, 11 FCC Rcd 5758, 5760 [¶ 11] (MMB 1996) (“*Bon Air*”) (finding community independent; station would place a city grade signal over 100% of the Urbanized Area).

Wisconsin, a distance greater than those found for other independent communities. 13/ Moreover, Glenmore's population (2000 U.S. Census population 1,187) is over one percent of the population of Green Bay, Wisconsin (2000 U.S. Census population 102,313). 14/ These facts and figures demonstrate independence and are similar to or exceed those of other communities granted a first local preference under a *Tuck* analysis.

The following factors further demonstrate the independence of Glenmore from Green Bay, Wisconsin.

(1) Extent to which community residents work in the larger metropolitan area.

Various business ventures located within Glenmore (described below), including agriculture, construction, and food service, provide employment opportunities within the community. As indicated by the Town of Glenmore Comprehensive Plan, approximately 15 percent of Glenmore's residents work within the Town. 15/ This percentage compares favorably with other

13/ Attached as Attachment 2 is a map from the Census Bureau showing the boundaries of Glenmore and Green Bay, as well as a map with distances calculated from Internet map provider Google Maps. *See Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516, 10517 [¶ 3] (MMB 1999) (finding community independent with a four-mile separation from Urbanized Area); *Bon Air*, 11 FCC Rcd 5758, 5760 [¶ 11] (finding community independent with a three-mile separation from central city of Urbanized Area).

14/ *See* Census 2000 Demographic Profile Highlights Green Bay city, Wisconsin, at http://factfinder.census.gov/servlet/SAFFacts?_event=&geo_id=16000US5531000&_geoContext=01000US%7C04000US55%7C16000US5531000&_street=&_county=green+bay&_cityTown=green+bay&_state=04000US55&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=160&_submenId=factsheet_1&ds_name=ACS_2006_SAFF&_ci_nbr=null&qr_name=null®=null%3Anull&_keyword=&_industry= (copy at Attachment 3); *Park City, Montana*, 19 FCC Rcd 2092, 2094 [¶ 12] (MB 2004) (*Tuck* met; proposed community population of 870 is less than one percent of that of central city of Urbanized Area).

15/ *See* the Town of Glenmore Comprehensive Plan at 55 (May 2, 2005) ("*Glenmore Comprehensive Plan*"), available at http://www.co.brown.wi.us/planning_and_land_services/planning/county_web//forms/glenmore_comp_5_2_2005.pdf (copy at Attachment 4).

communities deemed independent under a *Tuck* analysis. 16/

(2) Whether the community has its own newspaper or other media coverage.

Glenmore residents can access local news coverage from nearby print newspapers, the *De Pere Journal*, the *Denmark Press*, and the *Post Gazette*. 17/ While these news sources do not exclusively cover the Glenmore community, the Commission has found that a newspaper's coverage of a community's local needs and interests is sufficient for a favorable finding on the issue. 18/ In addition to these nearby news publications, Glenmore residents may stay abreast of local news by visiting the Town's Web site where information of interest to the community is listed. 19/ Moreover, Glenmore residents may access headlines, job listings, the classifieds, and real estate, event, and traffic information at two additional Web sites that serve as a resource for residents and promote traveling to the Town. 20/

(3) Whether community leaders and residents perceive the proposed community as being an integral part of, or separate from, the larger metropolitan area. To preserve the identity and integrity of its community, Glenmore adopted a comprehensive town plan in May 2005 (the "*Glenmore Comprehensive Plan*"). 21/ Through its comprehensive planning process, Glenmore identified a community mission statement, as well as near- and long-term

16/ See, e.g., *Charles Town, West Virginia and Stephens City, Virginia*, 21 FCC Rcd 1521 [¶ 5] (MB 2006) (11 percent of employed residents working in proposed community, along with the presence of local businesses, supports a favorable *Tuck* finding); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610, 3610 [¶ 4] (MMB 1996) (13 percent of the workforce working in specified community sufficient to support a favorable *Tuck* finding).

17/ Confirmed by the Town of Glenmore Clerk via written response on June 26, 2008.

18/ See *Lake City, Chattanooga, Harrogate, and Halls Crossroads, Tennessee*, 20 FCC Rcd 18961, 18964 [¶ 14] (MB 2005) ("*Lake City*").

19/ See Town of Glenmore Web site, at <http://glenmorewisconsin.com/> (temporarily unavailable); confirmed by Town of Glenmore Clerk via written response on June 26, 2008.

land use, transportation, economic development, housing, agriculture, utility, and intergovernmental cooperation goals. 22/ Specifically, the Town wants to ensure that agricultural production is not hindered as development increases because residents prize Glenmore's rural characteristics and its agricultural history. 23/ Glenmore not only has passed zoning ordinances to maintain the Town's agricultural activity, which accounts for a minimum of \$8.7 million in products sold from Glenmore farms 24/, but it also has recognized that numerous untapped opportunities exist for small-scale farms. In the *Glenmore Comprehensive Plan*, the Town states that it wants to encourage "entrepreneurial agriculture," where resident farmers provide local, friendly service through truck farming, direct farm-to-market sales, and farm-based value-added manufacturing, as a means to maintain the character of the Town. 25/

Additionally, Glenmore's commitment to preserving the Town's culture and history is further evidenced by the fact that a stated goal of the *Glenmore Comprehensive Plan* is to inventory and preserve the Town's historic structures, such as the ten sites identified by the Wisconsin Historical Society, which include residences, a dairy, two old school buildings, and a windmill. 26/

(4) Whether the proposed community has its own local government and elected officials. Glenmore is governed by an elected Town Board, which includes a Chairperson, two

20/ See Glenmore, Wisconsin Web site, at <http://www.glenmorewisconsin.travel/>; The Bubbler Web site, at <http://www.thebubbler.com/communities/Glenmore> (copies at Attachment 5).

21/ See generally *Glenmore Comprehensive Plan* (copy at Attachment 4).

22/ See *id.* at 3-7 (copy at Attachment 4).

23/ See *id.* at 14 (copy at Attachment 4).

24/ See *id.* at 58, 63 (copy at Attachment 4).

25/ See *id.* at 59 (copy at Attachment 4).

26/ See *id.* at 106, 112 (copy at Attachment 4).

Supervisors, a Clerk, Treasurer, Assessor, and Constable. 27/ The Town of Glenmore also is served by the following appointed officials: Zoning Administrator, Building Inspector, Board of Appeals Members, Plan Commission Members, Election Workers, Community Center Cleaner, and Road Inspector. 28/ The Town Board meets at the Glenmore Community Center, which serves as the town hall. 29/

(5) Whether the community has its own zip code and its own telephone book provided by a local telephone company. Glenmore does not have its own zip code or telephone book; however, such facts are not dispositive with respect to demonstrating a community's independence. 30/

(6) Whether the community has its own commercial establishments, health care facilities and transportation systems. There are a variety of commercial establishments within Glenmore, which include B&B Construction, Stencil Farms, JB Custom Sawing LLC, Farmstead Bar, Baugnet Custom Homes, Rent-A-Tent, Kane Maintenance, Van Oss Electric, Becks Wrecker & Salvage, Inc., Schroeder Roofing, A&J Veal Supply Inc., Yesterday's Trees, Ashley Septic Service, UW Telecommunications, Dobberpuhl Farms, Custom Plastering, Inc., E&H Repair and Welding, Tower Pallet Company, Inc., BelGioioso Cheese, and Shirley Feed Mill. 31/

27/ See Brown County Wisconsin 2007 General Election, at http://www.co.brown.wi.us/County_clerk/Results/April2007/EL45.htm (copy at Attachment 6); confirmed by Town of Glenmore Clerk via written response on June 26, 2008.

28/ Confirmed by Town of Glenmore Clerk via written response on June 26, 2008.

29/ See generally *Glenmore Comprehensive Plan* (copy at Attachment 4).

30/ See, e.g., *Bon Air*, 11 FCC Rcd at 5760 [¶ 11] (community that qualifies under *Tuck* does not have its own telephone book provided by the local telephone company or zip code)

31/ Confirmed by the Town of Glenmore Clerk via written response on June 26, 2008; see also *Town of Glenmore Businesses* (copy at Attachment 7).

The Town of Glenmore primarily relies on private health care providers located in Green Bay, De Pere, and Denmark, as well as the public services provided by the Brown County Health Department. 32/ There are also two churches in the Glenmore community, a factor which the Commission has considered favorably under *Tuck*. 33/

(7) Extent to which the proposed community and the central city are part of the same advertising market. Glenmore, being located in Brown County, is part of the Green Bay Designated Market Area; there is no separate Arbitron Metro market. 34/ Advertisers may reach Glenmore residents through the various newspapers that cover the Town of Glenmore, among others. 35/

(8) Extent to which the proposed community relies on the larger metropolitan area for various municipal services. The Town of Glenmore provides municipal services to its residents with its waste disposal and recycling drop-off site. 36/ Glenmore also has entered into intergovernmental agreements with the Town of Ledgeview for sewer and water service near the towns' borders. 37/ The Town's appointed officials handle building inspections and road inspections, signage, and repairs. 38/ Glenmore undertakes its own zoning and planning matters, supervised by a Zoning Administrator and involving Plan Commission Members and Board of

32/ See *Glenmore Comprehensive Plan* at 81 (copy at Attachment 4).

33/ Confirmed by the Town of Glenmore Clerk via written response on June 26, 2008; see also Town of Glenmore Businesses; Lutherans Online, Shirley Immanuel Lutheran Church, at http://www.lutheransonline.com/servlet/lo_ProcServ/dbpage=page&mode=display&gid=01179001360988472247861580; Diocese of Green Bay, Glenmore Parishes – Immaculate Conception of Mary Parish, at <http://www.gbdioc.org/og/city.tpl?citysku=88> (copies at Attachment 8); see, e.g., *Talladega and Munford, Alabama*, 20 FCC Rcd 13010, 13011 [¶ 3], 13012 [¶ 6] (MB 2005).

34/ See Arbitron, *Radio Stations*, at http://www.arbitron.com/downloads/Arb_US_Metro_Map_08.pdf (copy at Attachment 9).

35/ See *supra* note 17.

36/ See *Glenmore Comprehensive Plan* at 77 (copy at Attachment 4).

Appeals Members. 39/ Glenmore has addressed fire protection by developing a 69,000-gallon cistern next to the community center, which is available to the Morrison, Denmark, and Ledgeview Volunteer Fire Departments that serve Glenmore. 40/ Ambulance and paramedic service is provided to Glenmore by contract made by the Town with County Rescue Services. 41/ The Town Constable provides pet rescue services to the community. 42/

Electricity is provided in the Town of Glenmore by the Wisconsin Public Service Corporation (“WPS”), which serves all of Brown County. 43/ Additionally, Glenmore has erected wind turbines in cooperation with WPS, Wisconsin Power and Light, WE Energies, Madison Gas and Electric, and the U.S. Department of Energy in an effort to provide alternative energy sources. 44/ The Glenmore Wind Farms provide clean, renewable electricity to serve approximately 450 homes per year. 45/

Glenmore students may attend public school in the Unified School District of De Pere and the Denmark School District, 46/ or they may enroll in the private Immanuel Lutheran School, which is located within the boundaries of Glenmore. 47/ Glenmore relies upon the Brown County Public Library for its reading needs. Specifically, Town residents enjoy the

37/ See *id.* at 116.

38/ Confirmed by the Town of Glenmore Clerk via teleconference on July 9, 2008.

39/ *Id.*

40/ See *Glenmore Comprehensive Plan* at 82 (copy at Attachment 4).

41/ See *id.* The Town relies on the Brown County Sheriff’s Department for routine police and patrol service, which is provided to all municipalities within the county that do not have a police department. *Id.*

42/ Confirmed by the Town of Glenmore Clerk via teleconference on July 9, 2008.

43/ See *id.* at 80.

44/ See *id.* at 81.

45/ See *id.*; Renew Wisconsin, *Wind Farms Town of Glenmore*, at <http://www.renewwisconsin.org/windfarm/glenmore.html> (copy at Attachment 10).

46/ See *Glenmore Comprehensive Plan* at 83 (copy at Attachment 4).

bookmobile that brings books and other library services to Glenmore by stopping at the Immanuel Church and School. 48/ Glenmore also supports the further development of agriculture and the Town's character through the civic organization the Glenmore 4-H Club. 49/ Moreover, Glenmore promotes residents' civic engagement by training appointed election workers to monitor and facilitate voting. 50/ Because Glenmore provides services of its own and is not dependent on Green Bay, Wisconsin for these municipal services, credit should be awarded under this *Tuck* factor. 51/

The Commission has found that an applicant only has to meet a majority of the eight sub-factors to make a successful *Tuck* showing. 52/ Here, the indicia establishing Glenmore as a community also serve to qualify it under the *Tuck* factors. Thus, Glenmore is a place deserving of its own local aural transmission service and grant of the Application would further the public interest in the fair, efficient, and equitable distribution of radio services.

47/ Lutherans Online, Shirley Immanuel Lutheran Church, at http://www.lutheransonline.com/servlet/lo_ProcServ/dbpage=page&mode=display&gid=01179001360988472247861580 (copy at Attachment 8).

48/ See *Glenmore Comprehensive Plan* at 82 (copy at Attachment 4).

49/ Confirmed by Town of Glenmore Clerk via written response on June 26, 2008.

50/ Confirmed by the Town of Glenmore Clerk via teleconference on July 9, 2008.

51/ See *Talladega and Munford*, 20 FCC Rcd at 13012 [¶ 5].

52/ See *Lake City*, 20 FCC Rcd at 18966 [¶ 21] (finding that a showing of five of the eight *Tuck* factors supports a finding of independence); *Chillicothe, Dublin, Hillsboro, and Marion, Ohio*, 20 FCC Rcd 6305, 6308 [¶ 9] (MB 2005) (stating all of the *Tuck* factors need not favor a reallocation proponent; rather, a majority of the factors must be present).