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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Ankeny and West Des Moines, Iowa))
_____)

MM Docket No. 95-108
RM-8631

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To: The Chief,
Allocations Branch,
Policy and Rules Division,
Mass Media Bureau
Stop Code 1800D5

SUPPLEMENT TO COMMENTS

Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines ("Fuller-Jeffrey"), by its undersigned attorneys, hereby supplements its Comments filed on September 5, 1995 in response to the Notice of Proposed Rulemaking in the above-captioned proceeding, 10 FCC Rcd 7671 (Chief, Allocations Branch, Policy & Rules Division, Mass Media Bureau, 1995) (the "Notice"). This Supplement is being submitted pursuant to an informal request by the Commission's staff in the Allocations Branch of the Policy and Rules Division of the Commission's Mass Media Bureau.

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SUMMARY

In response to a request from the Commission's staff, Fuller-Jeffrey hereby supplements its Comments in this proceeding that were filed September 5, 1995. The purpose of this Supplement to Comments is to apply to the community of West Des Moines, Iowa -- the community to which the Notice proposes to allot the channel upon which Fuller-Jeffrey's FM radio broadcast station KJJY operates -- the analysis developed in Commission case law to determine whether a specified suburban community's needs for local self-expression can be presumed to be satisfied by the complement of AM radio broadcast stations and FM radio broadcast stations licensed to serve communities in the Urbanized Area within which the specified suburban community is located.

In this Supplement to Comments, Fuller-Jeffrey demonstrates that West Des Moines's needs for an additional local aural transmission service can be presumed to be satisfied by the aural transmission services currently authorized to communities within the Des Moines, Iowa Urbanized Area. In Fuller-Jeffrey's earlier Comments, Fuller-Jeffrey demonstrated that the needs of Ankeny, Iowa

-- the community to which the channel in question is currently allotted -- may likewise be deemed to be fulfilled by the AM radio broadcast stations and the FM radio broadcast stations authorized to the communities comprising the Des Moines Urbanized Area.

Therefore, this proceeding comes down to a proposal to re-allot a channel from one community (Ankeny) to another (West Des Moines), both of which are presumed to enjoy equivalent local aural transmission services. Under those circumstances, as demonstrated in the Comments filed on September 5, 1995, Commission precedent favors allotting the channel to the community with the larger population, in this case West Des Moines. Accordingly, the proposal set forth in the Notice should be adopted by the Commission.

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SUPPLEMENT TO COMMENTS

1. Fuller-Jeffrey holds a license from the Commission that authorizes Fuller-Jeffrey to operate Class C2 commercial FM radio broadcast station KJJY on Channel 223C2, currently allotted to Ankeny, Iowa. In this proceeding, the Commission is considering Fuller-Jeffrey's proposal to amend the Table of Allotments for FM Broadcast Stations, Section 73.202(b) of the Commission's Rules and Regulations, 47 C.F.R. § 73.202(b) (1995), in order to remove the allotment of Channel 223C2 from Ankeny to West Des Moines, Iowa, and to modify Fuller-Jeffrey's license from the Commission for KJJY in order to change KJJY's city of license from Ankeny to West Des Moines.

2. The Notice requested comments on, inter alia, whether the removal of Channel 223C2 to West Des Moines from Ankeny would constitute a preferential arrangement of allotments. Fuller-Jeffrey's Comments responded to that aspect of the Notice by demonstrating that, under applicable Commission precedent, the AM radio broadcast stations and FM radio broadcast stations licensed to communities within the Des Moines Urbanized Area serve Ankeny's needs for local

aural transmission service. Comments at pp. 10-20. In part, Fuller-Jeffrey's showing in that respect was based upon such Commission precedents as Faye & Richard Tuck, Inc. (KBEC), 3 FCC Rcd 5374 (1988), RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990), and Table of Allotments, FM Broadcast Stations (Elizabeth City, North Carolina and Chesapeake, Virginia), 9 FCC Rcd 3586 (Acting Chief, Allocations Branch, Policy & Rules Division, Mass Media Bureau, 1994), as applied to the community of Ankeny.

3. The Commission's staff has now requested that Fuller-Jeffrey apply the analytical framework developed in Tuck, RKO, and Elizabeth City to the community of West Des Moines. This Supplement to Comments is responsive to that request.

4. As in Ankeny's case, West Des Moines's needs for its own aural transmission service may be deemed to be satisfied by the AM radio broadcast stations and by the FM radio broadcast stations that are currently authorized to serve communities that make up the Des Moines Urbanized Area, under Tuck, RKO, and Elizabeth City, supra. The criteria used in those cases, applied to the facts germane

to West Des Moines, are set forth in the following paragraphs:

a. Size and Proximity of the Suburb and the Central City. One of the three principal criteria developed in Tuck and followed in subsequent cases is the examination of the relative size and proximity of the suburb (in this case, West Des Moines) and the nearby central city (in this case, Des Moines, Iowa, the largest community within the Des Moines Urbanized Area). West Des Moines is wholly within the Des Moines Urbanized Area. ^{1/} The population of West Des Moines is 39,387. ^{2/} The population of Des Moines is 193,187. ^{3/} The population of West Des Moines thus is approximately one-fifth the size of Des Moines's population. In RKO, the Commission found that Richmond, California did not have a need for a local aural transmission service separate and independent from the services provided by the stations in the San Francisco-Oakland, California Urbanized

^{1/} See Appendix 1 to this Supplement to Comments. Appendix 1 is a map of community boundaries, prepared by Suffa and Cavell, Inc., Fuller-Jeffrey's consulting broadcast engineers. The green shaded area on the map denotes the Des Moines Urbanized Area.

^{2/} Source: July 1, 1995 preliminary estimate based on 1995 Special Census.

^{3/} Source: 1990 U.S. Census.

Area. Notably, in examining the factor of relative size and proximity of Richmond and San Francisco, the Commission in RKO stated that the size of Richmond (one-ninth the size of San Francisco) and its location within the San Francisco-Oakland Urbanized Area were "compelling indications of interdependence." 5 FCC Rcd at 3223, Paras. 12, 13.

b. Signal Population Coverage. The second principal criterion developed in Tuck and followed in subsequent cases is the degree to which the signal of the radio station at issue provides coverage of the larger, nearby metropolitan area in addition to coverage of the specified suburban community. The Engineering Statement of Suffa and Cavell, Inc. appended to Fuller-Jeffrey's September 5, 1995 Comments as Appendix 1, establishes that there are a total of 24 aural facilities (nine AM radio broadcast stations and 15 FM radio broadcast stations) that provide service to the general area that includes both West Des Moines and the Des Moines Urbanized Area. Of those 24 stations, 15 (including KJJY) cover all of both West Des Moines and the Des Moines Urbanized Area with a signal having a predicted field intensity of at least 5 mV/m (for AM radio broadcast stations) or 3.16 mV/m (for FM radio broadcast stations), i.e., a so-called "city-grade" or

"principal-community" signal. ^{4/} Another eight stations cover some part of both West Des Moines and the Des Moines Urbanized Area with their city-grade signals. ^{5/} One other station covers a part of the Des Moines Urbanized Area, but no part of West Des Moines, with its city-grade signal. ^{6/} If the predicted 1.0 mV/m field-intensity signal coverage contours of FM radio broadcast stations are considered, 20 of the 24 stations cover all of both West Des Moines and the Des Moines Urbanized Area, three stations cover some portion of both West Des Moines and the Des Moines Urbanized Area, and one station covers some part of the Des Moines Urbanized Area but no part of West Des Moines. ^{7/}

It is therefore clear that for the vast majority of aural services licensed to communities in the general area, coverage of both West Des Moines and the Des Moines Urbanized Area in their entirety is obtained, and there is a single, undifferentiated radio service "market" consisting

^{4/} Comments, Appendix 1, Figures 1 and 2.

^{5/} Id.

^{6/} Comments, Appendix 1, Figure 2.

^{7/} Comments, Appendix 1, Figures 1A and 2.

of both West Des Moines and the Des Moines Urbanized Area.

8/

c. Interdependence Between the Smaller Community and the Central City of the Metropolitan Area.

The third major criterion developed in Tuck and followed in its progeny is the matter of the interdependence between the specified community and the larger, nearby metropolitan area. The Commission examines eight discrete factors in assessing the question of interdependence, as follows:

(i) The Extent to Which Community Residents Work in the Larger Metropolitan Area, Rather than the Specified Community. Of West Des Moines's population of 39,387, approximately 47% (18,046 residents) participate in the work force. ^{9/} Of this work force, approximately 32% (5,853) are estimated to work within the boundaries of West Des Moines, and approximately 68% (12,193) work outside of

8/ Fuller-Jeffrey does not propose to change KJJY's antenna site or facilities in connection with this proceeding. Accordingly, both West Des Moines and the Des Moines Urbanized Area -- all parts of which currently receive service of city-grade quality or better from KJJY -- will continue to do so in the event that the proposal in the Notice is adopted by the Commission. That is to say, there will be no change in KJJY's signal population coverage.

9/ Source: 1990 U.S. Census.

West Des Moines. ^{10/} Of those residents working outside of West Des Moines, 9,189 work in the central city of Des Moines. ^{11/} All but 3% (505) of the workers who reside in West Des Moines work within the Des Moines Urbanized Area. ^{12/}

(ii) Whether the Smaller Community Has Its Own Newspaper or Other Media that Cover the Community's Local Needs and Interests. There is no daily newspaper in West Des Moines. The predominant daily newspaper in the region is the Des Moines Register. In RKO, the Commission found it significant that Richmond was without its own daily newspaper. 5 FCC Rcd at 3224, Para. 17. There are no television stations licensed to serve West Des Moines. Four television stations are licensed to serve Des Moines: KCCI-TV, Channel 8 (affiliated with CBS, Inc.); KDSM-TV, Channel 17 (affiliated with Fox Broadcasting Company); WHO-TV, Channel 13 (affiliated with National Broadcasting Company); and KDIN-TV, Channel 11 (a noncommercial, educational television station). A fifth station, WOI-TV, Channel 5

^{10/} Source: Des Moines Area Transportation Planning Committee, 1990 Census of Transportation Package.

^{11/} Id. Thus, 51% of the West Des Moines work force works in Des Moines.

^{12/} Id.

(affiliated with Capital Cities/ABC, Inc.), licensed to Ames, Iowa (some 20 miles north of the Des Moines Urbanized Area) is generally regarded as competitive in the Des Moines market. There is a single cable television system serving the Des Moines Urbanized Area and other surrounding communities, and it is operated by an affiliate of Tele-Communications, Inc. There is one low-power, noncommercial, educational FM radio broadcast station (KWDM) licensed to serve West Des Moines. KWDM is licensed to the West Des Moines School Board and operates only during the regular school year, from 6:30 a.m. to 4:30 p.m. There are no AM radio broadcast stations licensed to serve West Des Moines.

(iii) Whether the Community Leaders and Residents Perceive the Specified Community as Being an Integral Part of, or Separate from, the Larger Metropolitan Area. Appendix 2 to this Supplement to Comments includes Statements from West Des Moines community leaders and residents: Clyde E. Evans, Community Development Director for the City of West Des Moines; Gary Glanzer, Operations Manager of Health & Fitness Management Corp. in West Des Moines; John Schleppehorst of Communications Services of Iowa, Inc. in West Des Moines; and Michelle Garlock of Sun

Prairie Apartments in West Des Moines. Their Statements are as follows:

Evans: "West Des Moines is definitely an integral part of the Greater Des Moines Metropolitan area. Based on commuting patterns and work patterns, many West Des Moines residents work in Des Moines ... and Des Moines residents work in West Des Moines as well. Many of the Metro facilities used by West Des Moines residents are Downtown. In addition, West Des Moines provides funding for many of those facilities such as the Convention and Visitors Center, the Botanical Center, Science Center, Art Center, and Living History Farms. That funding is not mandatory ... we choose to provide that."

Glanzer: A considerable number of our members are from the Des Moines area as well as the West Des Moines area. The vendors we utilized at our business are from the Des Moines area and the West Des Moines Area. Therefore, there is an [sic] definite relationship between the Des Moines and West Des Moines business community.

Schlepphorst: "Yes, I definitely consider West Des Moines to be an integral part of the Greater Des Moines area."

Garlock: "I definitely believe that West Des Moines is an integral part of the Greater Des Moines Metropolitan area. So many of the attractions West Des Moines people use are in Des Moines. Many of the people who live in our apartments in West Des Moines work elsewhere in the Des Moines Metro."

It is clear that community leaders and residents of West Des Moines do not perceive themselves to be a part of a community that is separate and distinct from the Greater Des Moines metropolitan area.

(iv) Whether the Specified Community Has Its Own Local Government and Elected Officials. West Des Moines is an incorporated city within the boundaries of Polk County, Iowa. West Des Moines has its own elected city councillors and mayor, and an appointed city manager.

(v) Whether the Smaller Community Has Its Own Telephone Book Provided by the Local Telephone Company or Zip Code. U.S. West is the local telephone company service provider. It publishes a primary telephone directory entitled, "Des Moines and Surrounding Communities." Its approximately 600 white pages of residential and business telephone numbers contain listings for West Des Moines residences and businesses as well as listings for businesses and residences in other communities within the Greater Des Moines area. U.S. West also publishes a "Des Moines West" directory in which West Des Moines listings are grouped with those of the communities of

Clive, Johnston, Urbandale, and Windsor Heights, Iowa. West Des Moines has its own zip code (50265).

(vi) Whether the Community Has Its Own Commercial Establishments, Health Facilities, and Transportation Systems. According to the State of Iowa Department of Finance and Revenue, as of 1993 West Des Moines had 4,714 businesses operating within its boundaries. West Des Moines does not have its own transportation system. The Metro Transit Authority serves West Des Moines with daily bus service in and out of the central city of Des Moines. Two large taxicab companies operate in the Greater Des Moines area. West Des Moines relies upon the Des Moines International Airport for commercial airline service. The next closest terminal for scheduled commercial air passenger service is in Kansas City, about 175 miles to the south. West Des Moines does not have a hospital and is dependent upon several large medical centers operating within the boundaries of the City of Des Moines.

Thus, while West Des Moines has a complement of local businesses, West Des Moines is dependent upon the central city of Des Moines for transportation and hospital facilities and services.

(vii) The Extent to Which the Specified Community and the Central City Are Part of the Same Advertising Market. The Arbitron Company -- which, as the Commission knows, provides the only radio broadcast station audience survey reports that are routinely available throughout the country -- classifies the Des Moines Metro market as including the counties of Polk, Warren, Dallas, and Story, Iowa. West Des Moines is located in Polk County. The City of Ames, Iowa (which is the central city of Story County) is located some 20 miles north of Des Moines and well away from the Des Moines Urbanized Area; yet even Ames is included in the Metro by Arbitron. The A.C. Nielsen Company, which measures television viewing, defines the Total Survey Area of the Des Moines-Ames "Designated Market Area" (or "DMA") as consisting of 33 counties in Iowa (including Polk County, where West Des Moines is situated, and all of the Des Moines Urbanized Area) and one county in Missouri. The Metro portion of Nielsen's Des Moines-Ames DMA consists of Polk, Warren, Dallas, and Story Counties, which encompasses both West Des Moines and the Des Moines Urbanized Area. West Des Moines is located within the Des Moines Standard Metropolitan Statistical Area. Reference is also made to the fact that nearly two-thirds (15 of 24) of the radio stations serving the general area cover all of

both West Des Moines and the Des Moines Urbanized Area with their predicted city-grade signals.

It thus is apparent that from the perspective of advertisers and those interested in media purchases in the area, there is no distinction between West Des Moines and the Des Moines Urbanized Area.

(viii) The Extent to Which the Specified Community Relies on the Larger Metropolitan Area for Various Municipal Services Such as Police, Fire Protection, Schools, and Libraries. West Des Moines has its own police, fire protection, schools, and libraries.

5. A review of the foregoing yields the conclusion that West Des Moines should be presumed to have its needs for local aural transmission service satisfied by the radio broadcast stations that are licensed by the Commission to serve communities within the Des Moines Urbanized Area. West Des Moines is located within that Urbanized Area, and the population of West Des Moines is only one-fifth of the population of Des Moines, the central city in the Urbanized Area. The city-grade signals of the vast majority of radio stations serving the general area

(including KJJY) encompass all of both West Des Moines and the Des Moines Urbanized Area, without differentiation. Of the eight factors used to assess the interdependence criterion, four strongly suggest that such interdependence exists: the majority of West Des Moines workers commute to jobs within the Des Moines Urbanized Area; community leaders perceive no basis for distinguishing West Des Moines from the greater metropolitan area; West Des Moines has no daily or weekly newspaper (a lack found significant in RKO), no television stations, no cable television system of its own, and only one local radio station, which operates at low power and for limited periods; and the advertising market includes West Des Moines in the Des Moines Metro for both television and radio market purchases. Two of the other factors support a finding of West Des Moines's independence: West Des Moines has its own local government and elected officials; and West Des Moines has its own police, fire protection, schools, and libraries. ^{13/} The remaining two factors are inconclusive: although West Des Moines has its own commercial establishments, it is without its own hospital or transportation system (in RKO, the Commission

^{13/} Both of these factors also favored a finding of Richmond's independence from the San Francisco-Oakland Urbanized Area in RKO, supra. 5 FCC Rcd at 3224, Para. 16. However, the Commission declined to make such a finding.

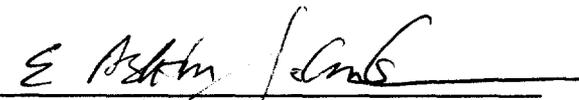
likewise noted that Richmond has many commercial establishments but lacks its own transportation system and hospital facilities); ^{14/} and, although West Des Moines has its own zip code, it shares a telephone directory with four other communities. A majority of the factors that yield a conclusive indication on the issue of West Des Moines's interdependence with the Des Moines Urbanized Area supports a finding of such interdependence.

14/ 5 FCC Rcd at 3224, Para. 18.

WHEREFORE, for the reasons set forth in the this Supplement to Comments and in Fuller-Jeffrey's previously-submitted Comments, Fuller-Jeffrey respectfully urges the Commission to adopt the proposed amendment to Section 73.202(b) set forth in the Notice.

Respectfully submitted,

**FULLER-JEFFREY BROADCASTING
CORPORATION OF GREATER DES MOINES**

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July 24, 1996

APPENDIX 1

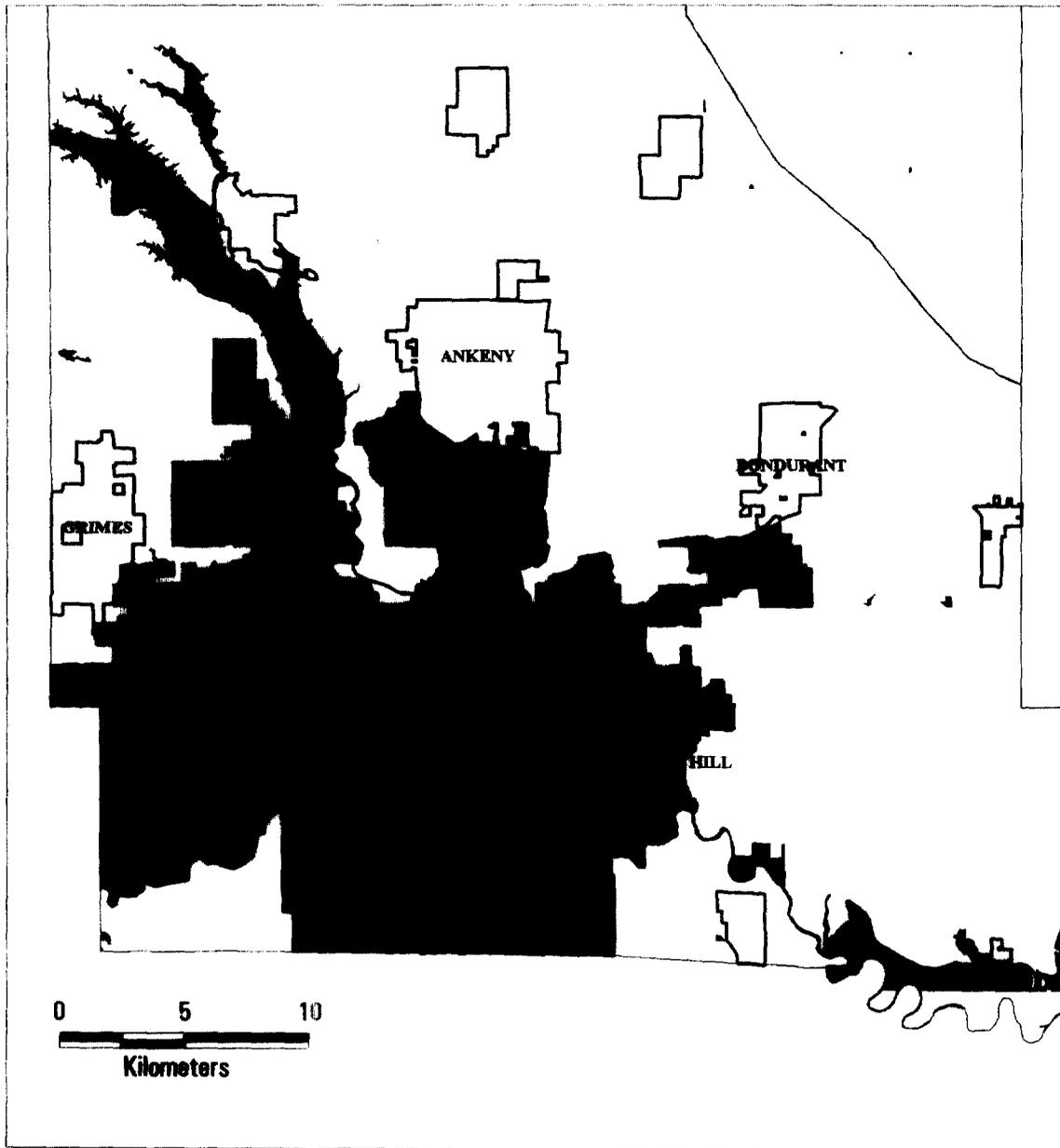


FIGURE 1
COMMUNITY BOUNDARIES

prepared December 1995 for
Fuller-Jeffrey Broadcasting Corporation
of Greater Des Moines

Suffa and Cavell, Inc.
Consulting Engineers - Fairfax, VA

APPENDIX 2

Clyde E. Evans
Community Development Director
City of West Des Moines

"West Des Moines is definitely an integral part of the Greater Des Moines Metropolitan area. Based on commuting patterns and work patterns, many West Des Moines residents work in Des Moines ... and Des Moines residents work in West Des Moines as well. Many of the Metro facilities used by West Des Moines residents are Downtown. In addition, West Des Moines provides funding for many of those facilities such as the Convention and Visitors Center, the Botanical Center, Science Center, Art Center, and Living History Farms. That funding is not mandatory ... we choose to provide that."


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