

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUL 30 2003

In the Matter of )  
 )  
Amendment of Sections 73.606(b), )  
Table of Allotments, )  
Television Broadcast Stations )  
(Goldfield and Tonopah, NV) )

RM- \_\_\_\_\_  
Federal Communications Commission  
Office of Secretary

To: Chief, Allocations Branch  
Policy and Rules Division  
Media Bureau

**SUPPLEMENT TO  
PETITION FOR RULE MAKING**

1. Nevada Channel 3, Inc., licensee of KTVY-TV, Facility ID 86201, Channel 7, Goldfield, Nevada, hereby supplements the above-referenced petition for rulemaking filed on August 16, 2002 ("Petition"), requesting the reallocation of Channel 7 from Goldfield to Tonopah, Nevada, and a corresponding modification of the authorization for KTVY-TV.

2. As noted in the Petition, although the reallocation would result in the removal of the only allotment from Goldfield, the Section 307(b) benefits associated with a relocation to Tonopah, which in fact has no operating television station and thus would gain a first local transmission service, substantially outweigh any harm that might be perceived from removing Goldfield's only allotment. Goldfield lacks the attributes of a community and so would not even qualify for the allotment of Channel 7 if it were proposed anew today.

3. Absence of Community Indicia. As set forth in the Petition, Channel 7 was allotted to Goldfield in 1952 in a nationwide allotment proceeding, based primarily on "interference avoidance standards" without consideration of social or economic attributes. See *Amendment of Section 3.606 of the Commission's Rules*, 41 F.C.C. 148 (1952). Today, the

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Commission takes a much more analytical approach to allotting channels, approving new allotments only where the proposed community qualifies as a legitimate “community” under a long line of Commission case precedent. The factors considered include whether a community is incorporated or is listed in U.S. Census and whether it has institutions such as local government; commercial or industrial organizations; civic associations; schools or a library; a local newspaper, bank, or gas station; and religious organizations, and whether there is a sense of unity and involvement in community concerns and local activities involving residents. *See Danville and Nonesuch, Kentucky*, DA 03-1474 (MB, rel. May 5, 2003). The presence of a post office and a zip code alone is not enough to establish community status, *see Coker, Alabama*, 43 RR 2d 190 (1978); and a place with no local government and only “some” businesses and churches does not qualify a place as a community for allotment purposes. *Gretna, Florida*, 6 FCC Rcd at 633 (MMB 1991). Further, reliance on an outside county or township for utilities, road work, or such emergency services as police or fire departments is a strong indication that an area is not a “community” capable of supporting a broadcast service. *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991). A lack of financial institutions, newspaper or other local media, or a library also make it difficult for an area to meet the community definition standard. *See Aguila, Arizona*, 6 FCC Rcd 4278 (1991). As shown below, it is clear that a party seeking an allotment to Goldfield, Nevada today would fail, as Goldfield cannot meet the “community” test for allotment purposes.

4. Loss in Population. Goldfield is not recognized as a Census Designated Place in the 2000 U.S. Census. The State of Nevada Demographer estimates that as of July 1, 2002, the population of Goldfield was only 438 people, a 31 percent overall decrease in size since

Channel 7 was initially allotted over 50 years ago.<sup>1</sup> The dwindling population has resulted in lost business and lost economic opportunities, making Goldfield unable to support any enterprise the size of a full-power television broadcast station.

5. No Local Utilities or Public Services. Goldfield relies entirely on Esmerelda County for its utilities and public services. There is no local Goldfield government. The one school located in Goldfield, Goldfield Elementary School, which goes from Kindergarten through Grade 8, is controlled and operated by the Esmerelda County School District and currently enrolls a total of only 28 students in all grades combined.<sup>2</sup> All utilities are provided by Esmerelda County, and the nearest hospital is located in Tonopah.

6. No Goldfield Businesses. The dwindling population has resulted in a loss of any real business economic base in Goldfield. The largest employer is the Goldfield Elementary School, which as noted is funded and run by Esmerelda County and serves only 28 students. Information obtained from the Esmerelda County Commission indicates that those people who do reside in Goldfield must travel approximately 30 miles to Tonopah to conduct such primary business activities as banking and grocery shopping. The library in Goldfield is only open part-time and has no telephone line. There is only one church in Goldfield, Goldfield Baptist Church, which does not have its own building and actually meets in the Elementary School. *See* [www.nbcsbc.org/main/associations/lbachurches](http://www.nbcsbc.org/main/associations/lbachurches).

7. Summary of Factors. To summarize the relevant factors, Goldfield has a declining population, is not incorporated, has no local government or any government services

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<sup>1</sup> *See Amendment of Section 3.606, supra.*

<sup>2</sup> *See* [http://www.greatschools.net/modperl/browse\\_school/nv/281](http://www.greatschools.net/modperl/browse_school/nv/281).

not provided on the county level, has no employer larger than its single 28-student school, has only a part-time library, has no newspaper and no bank, and has only one church that does not have its own building. These factors demonstrate that Goldfield is not a “community” for allotment purposes. Compare *Danville and Nonesuch, KY, supra* (population 850, with no specific social, commercial, religious or governmental aspects to the community; allotment denied), with *Port St. Joe and Eastpoint, Florida, DA 03-1843* (MB, released May 20, 2003) (population 2,158, with own post office, zip code, volunteer fire department, two motels, sewer and water district, elementary school, grocery stores, and five churches; allotment granted despite active opposition), and *Reydon, Oklahoma, DA 03-586* (MB, released March 4, 2003) (population only 177, but community listed in Census and incorporated, with its own mayor, post office, school district, city hall, and a “number” of local churches; allotment granted).

8. Goldfield is a Ghost Town. As noted in the initial Petition, it must not be overlooked that Goldfield is commonly recognized as a living “ghost town”,<sup>3</sup> and pictures of buildings that remain abandoned since the early 20<sup>th</sup> century are prominently displayed in their state of decay.<sup>4</sup> Against such a backdrop, and the costs that will be associated with not only continued operations of the KTVY-TV analog operation, but the eventual transition to digital operation, it is clear such a small dwindling community cannot support a full power television broadcast station. These economic factors are important, and Nevada Channel 3, Inc. submits that the much higher cost of operating a television station compared to a radio station justifies

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<sup>3</sup> See [www.ghosttowns.org](http://www.ghosttowns.org).

<sup>4</sup> See [www.ghosttowngallery.com/htme/goldfield.htm](http://www.ghosttowngallery.com/htme/goldfield.htm).

applying a more stringent “community” test to TV allotments than the Media Bureau has applied to FM allotments. The Commission recognized the problems of supporting a TV station in a community that “lacks the population and economic base to sustain full-service operations, and must therefore rely upon satellite authorizations, rebroadcasting and other arrangements for the provision of television programming it otherwise would not receive” when it approved continued satellite status for WSUR-TV in *Milton S. Maltz and Raycom Media*, 13 FCC Rcd 15527, 15537 (MMB 1998). Thus Goldfield cannot be found to be a community for TV allotment purposes.

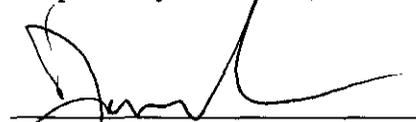
9. Conclusion. These facts demonstrate that no economic or civic attributes exist in Goldfield. Goldfield is therefore incapable of being a stand-alone community that can support a full power commercial television broadcast station. Although the Commission normally avoids removing a community’s sole local broadcast service, the Commission has also stated that a waiver of the prohibition will be considered “in the rare circumstances where removal of a local service might serve the public interest.”<sup>5</sup> Those circumstances are unquestionably present here, particularly where the allotment was made in the first place without any consideration of the attributes of Goldfield and went unused for over 50 years, during which time the population of Goldfield shrunk. Removal of the allotment from Goldfield is justified based on all traditional factors other than the fact that the allotment is occupied. Thus under the facts present here, relocation to Tonopah is fully warranted, if not

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<sup>5</sup> See, e.g., *Ardmore, Oklahoma and Sherman, Texas*, 7 FCC Rcd 4846, 4847 (1992).

necessary, to ensure that KTVY-TV has an opportunity to survive and to provide service in the public interest.<sup>6</sup>

Respectfully submitted,



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Dated: July 30, 2003

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<sup>6</sup> Further, as noted in the Petition, Nevada Channel 3, Inc. is not proposing to relocate the transmitter site, and therefore there will be no change in reception service provided to any area or population.

**CERTIFICATE OF SERVICE**

I, Donna L. Brown, hereby certify that on this 30th day of July, 2003, a copy of the foregoing "Supplement to Petition for Rule Making" has been served via hand delivery upon the following:

Brad Lerner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20036

  
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Donna L. Brown