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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 3, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-7

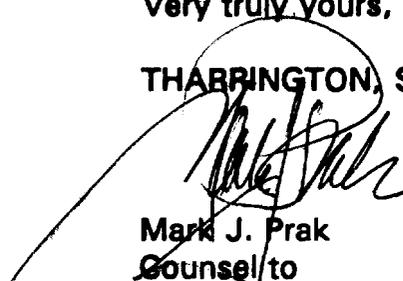
Dear Ms. Searcy:

Transmitted herewith, on behalf of WYAL Radio, Inc., permittee of Radio Station WWRT(FM), Scotland Neck, North Carolina is an original and four copies of a "Motion to Strike Reply of Radio Triangle East Company" in the above captioned proceeding.

If any questions should arise during the course of your consideration of this matter it is respectfully requested that you communicate with this office.

Very truly yours,

THARRINGTON, SMITH & HARGROVE


Mark J. Prak
Counsel to
WYAL, Inc.

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Enclosure

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of FM Allotments)	MM Docket No. 92-7
FM Broadcast Stations)	RM-7879
)	
(Scotland Neck and Pinetops,)	
North Carolina))	
To: Chief, Allocations Branch		
Mass Media Bureau		

**MOTION TO STRIKE
REPLY OF RADIO TRIANGLE EAST COMPANY**

WYAL Radio, Inc. ("WWRT"), permittee of Radio Station WWRT(FM), Scotland Neck, North Carolina, by and through its attorneys, hereby moves to strike the "Reply of Radio Triangle East Company" ("RTEC"), licensee of WSAY-FM, Rocky Mount, North Carolina, filed January 12, 1993.

I. Preliminary Statement

WWRT filed a Petition for Rulemaking requesting the Commission to substitute Channel 238 C3 for 238 A at Scotland Neck, North Carolina, the reallocation of Channel 238 C3 to Pinetops, North Carolina, as the community's first local aural transmission service, and the modification of WWRT's construction permit to specify Pinetops, North Carolina as the Station's community of license.

On March 16, 1992, RTEC filed Comments opposing the petition claiming that its implementation would result in a reallocation of a channel from a rural community to one that is designed to provide service to an urbanized area.

On August 11, 1992, the Commission released a Report and Order in the above-captioned proceeding, DA 92-971, ordering that effective September 24, 1992, the FM Table of Allotments, § 73.202(b) of the Commission's rules, be amended, with respect to the communities listed below to read as follows:

<u>City</u>	<u>Channel No.</u>
Pinetops, NC	238 C3
Scotland Neck, NC	--

In addition, the Commission ordered that pursuant to § 316(a) of the Communications Act of 1934 as amended, the construction permit of WYAL Radio, Inc. for Station WWRT(FM), Scotland Neck, North Carolina, be modified to specify operation on Channel 238 C3 at Pinetops, North Carolina, in lieu of Channel 238 A at Scotland Neck, North Carolina, subject to certain conditions.

II. RTEC's "Reply" Document Should be Stricken

In support of its Motion to Strike, WWRT states as follows:

The Commission released its Report and Order allowing the substitution and reallocation described above on August 11, 1992. RTEC subsequently filed a Petition For Reconsideration of that Order on September 16, 1992. WWRT filed its Opposition to Petition For Reconsideration on September 23, 1992. Thus, the

pleading cycle had been complete for more than three months when RTEC decided to file its "Reply." WWRT therefore objects to consideration of RTEC's "Reply."

RTEC's pleading is unauthorized by the Rules. See 47 C.F.R. § 1.45. It must be rejected as out of time. Moreover, RTEC's "Reply" fails to comply with the substantive requirements for reply pleadings. Under the Rules, replies are limited to matters raised in the opposition, not an opportunity to raise new facts or issues. See 47 C.F.R. § 1.45(b). RTEC has not even attempted to offer any reason (let alone one which could be said to rise to the level of good cause) to justify the filing of its "Reply". In its "Reply", RTEC attempts to bolster its earlier unpersuasive argument with a new case citation that was not before the Commission when its Report and Order was issued and which is not germane to the decision in this proceeding. This sort of gamesmanship serves no public interest purpose. It costs the other parties money. It needlessly delays the proceedings.

III. The Cases Cited by RTEC Do Not Support Its Position

RTEC's "Reply" is a specious attempt to pick a fight where none exists by asserting a set of facts that are unsupported in the record. RTEC faults the staff's analysis for not treating Pinetops as part of Rocky Mount based on its smaller population and lack of a local telephone directory. As WWRT has shown in its prior submissions and shows below, RTEC's unilateral attempts to "annex" Pinetops to Rocky Mount does not square with the facts.

RTEC's "Reply" supplies no new facts that serve to bolster a position the Commission staff found unpersuasive. Report and Order, ¶ 4. RTEC's reliance on Fairfield and Norwood, Ohio, 7 FCC Rcd 2377 (Alloc. Branch 1992) is inapposite. Fairfield and Norwood is factually distinct from this case in that Norwood is wholly located within the Cincinnati Urbanized Area and is completely surrounded by Cincinnati, and for that reason, among others, the Commission denied the proposed reallocation. Unlike Norwood, Pinetops is not completely encompassed by Rocky Mount, is not adjacent to Rocky Mount, and is not part of the Rocky Mount Urbanized Area.

RTEC's reliance on Van Wert, Ohio and Monroeville, Indiana, 7 FCC Rcd 6519 (Alloc. Branch 1992) is likewise grossly misplaced. In Van Wert the Commission denied the proposed reallocation to Monroeville, not because Monroeville was deemed part of a larger nearby urban area, but because the proposed reallocation required the removal of an existing transmission service with no improvement in reception and insufficient service benefits. The Commission, however, did not strip the Monroeville proposal of its first local transmission service preference because of its proximity to an Urbanized Area, but specifically stated: "We will not presume that a community outside of, but near, an Urbanized Area is not entitled to a first local transmission service preference." Id.

WWRT's proposed reallocation offers significant service benefits and does not involve the removal of an operating station. Also, contrary to RTEC's argument, reallocation to Pinetops will not result in Scotland Neck losing "its sole

local competitive voice." WYAL Radio, Inc., permittee of WWRT, is also the licensee of WYAL(AM), which will remain licensed to Scotland Neck, North Carolina. Finally, as the Commission noted, Scotland Neck will continue to enjoy reception service from seven FM stations, in addition to WWRT(FM), since the community will lie within the 60 dBu contour of Class C3 Station WWRT(FM). Report and Order, ¶ 4.

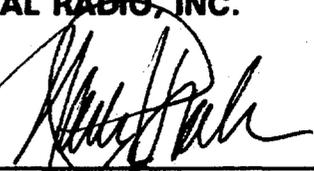
"Other than the population differential between Pinetops and Rocky Mount and the lack of a local telephone directory, RTEC presents no information to dispute that Pinetops is an independent community." Report and Order, ¶ 4. RTEC bemoans its responsibility to offer facts sufficient to persuade the Commission that Pinetops is undeserving of a first local transmission service preference because the facts are simply not there. Its attempts to, by the power of the pen, annex Pinetops to Rocky Mount cannot and will not work. RTEC's heavy reliance on a case in which the proposed community is wholly engulfed by the larger urbanized community is telling. Pinetops, North Carolina is not Rocky Mount, and neither is it Norwood, Ohio or Monroeville, Indiana. Inapposite case citation and untimely filings add nothing to an already unpersuasive argument.

IV. Conclusion

For the foregoing reasons, and based on the record in these proceedings, RTEC's "Reply to Opposition to Petition for Reconsideration" should be stricken and its Petition for Reconsideration should be denied.

Respectfully submitted,

WYAL RADIO, INC.

By: 

Mark J. Park
Daniel W. Clark

Its Attorneys

February 3, 1993

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CERTIFICATE OF SERVICE

I, Laura Rogers, a legal secretary for the law firm of Tharrington, Smith & Hargrove, hereby certify that as of this 4th day of February, 1993, a copy of the foregoing Motion to Strike Reply of Radio Triangle East Company was served upon the parties listed below in the manner indicated:

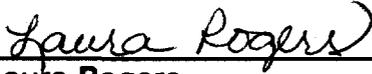
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Laura Rogers