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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:)	MM Docket No. 95-88
)	
Amendment of Section 73.202 (b))	RM-8641
Table of Allotments)	
FM Broadcast Stations)	
Rose Hill and Trenton,)	
North Carolina)	

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COMMENTS IN OPPOSITION TO PROPOSED RULE MAKING

Topsail Broadcasting, Inc. ("Topsail"), licensee of broadcast Station WZXS(FM), Topsail Beach, North Carolina, by its counsel, pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its comments in opposition to an amendment of the FM table of allotments as proposed by Duplin County Broadcasters ("Duplin") in Notice of Proposed Rule Making, DA 95-1277, rel. June 19, 1995. In opposition thereto, the following comments are submitted by Topsail.

Statement of the Facts

Duplin is the licensee of Station WBSY(FM), Channel 284 A, Rose Hill, North Carolina. It requests the substitution of Channel 284 C2 for Channel 284 A and the reallocation of the upgraded channel to Trenton, North Carolina.

Rose Hill has a population of 1,287. It is located in Duplin County, which has a population of 39,995. Duplin County is a rural area with no community having a population over 3,000. Rose Hill has one other local transmission service, which is 250 watt daytime-only Station WEGG(AM). Trenton has a population of 284. It is located in Jones County, which has a population of 9,414. Trenton has no local transmission

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service.

Duplin County is in a remote area located on the fringe of major radio markets and is located outside of population centers. Wilmington (New Hanover County), which has a metro area population of 139,800 is located 42 miles to the south. Jacksonville (Onslow County), which has a metro area population of 122,700, and MSA population of 155,000, is located 35 miles to the east (1994 population estimates are used).

Although Jones County is rural and has a small population, it is located in the middle of the Jacksonville-New Bern-Havelock-Kinston-Goldsboro radio markets and in close proximity to population centers in those areas. Trenton is only 15 miles south west from New Bern (Craven County), which has a city population of 17,363, and a county population of 86,700. New Bern is a designated city in the Greenville-Washington-New Bern television market which is a top-100 market and ADI ranked 105.

Trenton is 20 miles south east from Kinston (Lenoir County), which has a city population of 25,295, and a county population of 58,000; and is 30 miles north west of Havelock (Craven County), which has a city population of 20,268. The Cherry Point Marine Air Station is located adjacent to Havelock. See, attached map.

Trenton is only 14 miles north of the boundary of the Jacksonville (Onslow County) metro area which has a population of 122,700, and MSA population of 155,000. Camp LeJeune Marine Base is adjacent to Jacksonville. Trenton is only 24 miles south east of the boundary of the Goldsboro (Wayne County) metro area which has a population of 98,900, and MSA population of 110,200. Seymour Johnson Air Force Base is adjacent to Goldsboro.

Three FM stations are licensed to Jacksonville. One of these stations is a Class C with 100,000 watts and another is a Class C2 with a 50,000 watt equivalent. Two FM stations are licensed to Goldsboro. One of these stations is a Class C with 100,000 watts. Three Class C 100,000 watt FM stations are licensed to New Bern. Two FM stations are licensed to Havelock and the nearby community of Newport. One of these stations is a Class C with 100,000 watts. Three FM stations are licensed to Kinston. One of these stations is a Class C with a 100,000 watt equivalent. Official notice of FCC records requested.

These eight Class C and Class C2 stations provide 1.0 mV/m or better service to Trenton. The three New Bern Class C FM stations provide city-grade service to Trenton. Rose Hill has no city-grade FM service, other than currently licensed Station WBSY. Official notice of FCC records requested.

Arguments

The proposed rule making must be denied. It is nothing more than a cleverly disguised attempt to slip a high-power 50,000 watt wide-area regional channel into the middle of a major media market and population center. The provisions of Section 1.420 must not be abused by Duplin to abandon a smaller market for a larger market. Cf., FM Table of Allotments (Eaton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama), 6 FCC Rcd 6580 (1991).

Trenton is uniquely situated in the middle of the Jacksonville-New Bern-Havelock-Kinston-Goldsboro media markets. It is a rural "hole" in the center of a "doughnut" of cities. The contention of Duplin in its petition for rule making that Trenton is not located

near any urbanized areas is patently misleading.

The actual intent of Duplin is to serve the nearby population centers of New Bern, Havelock, and Kinston, and the nearby Jacksonville and Goldsboro metro areas and MSA's which circle Trenton, not the tiny community of Trenton, which has a population of just 284. If Duplin was interested in only serving Trenton, it would have proposed a 6,000 watt Class A allocation, or a 25,000 watt Class C3 allocation, which would be more than adequate to meet the needs of Trenton and Jones County, but would not reach Jacksonville, New Bern, Havelock, Kinston, or Goldsboro. Instead, Duplin shows its hand by proposing a Class C2 allocation with 50,000 watts which would serve these nearby population centers, metro areas, and MSA's.

The petition for rule making must also be denied because it proposes to deprive Rose Hill of its only FM transmission service and its only nighttime service. Such a reallocation is in conflict with Commission policy and precedent. See, FM Table of Allotments (Fredericksburg, Helotes, and Castroville, Texas), DA 95-1276, paras. 10-12, rel. June 16, 1995. There, the Commission denied a proposed reallocation of the sole FM transmission service and the sole nighttime service from a remote community to a smaller community which was located adjacent to population centers and where the proposed community of license had more reception services than the community to be abandoned.

As noted by the Commission, the public has a legitimate expectation that existing service will continue, and this expectation is a factor which must be weighed independently against the service benefits that may result from a reallocation of a channel from one community to another. Thus, the public interest benefits accruing from the

provision of a first transmission service to Trenton must be significant enough to outweigh the loss of the sole FM transmission service and nighttime service to Rose Hill. The first local transmission service preference with respect to Trenton will not be "blindly applied." *Id.*, paras. 10-11.

The only public service benefit that Duplin can present is increased FM service to an area that is already well-served with eight Class C and Class C2 FM stations. However, this is insufficient. See, FM Table of Allotments (Van Wert, Ohio, and Monroeville, Indiana), 7 FCC Rcd 6519, 6520-6521, paras. 10-12 (1992); FM Table of Allotments (Bronson and Cross City, Florida), DA 95-1604, para. 6, rel. July 26, 1995. See also, FM Table of Allotments (Berlin, De Forest, Markesan, and Wautoma, Wisconsin), DA 95-1569, para. 7, rel. July 19, 1995, where both communities are well-served the allotment priority goes to the larger community. Thus, Rose Hill with a population of 1,287 would be preferred over Trenton with a population of 284.

Any reliance by Duplin on FM Table of Allotments (Scotland Neck and Pinetops, North Carolina), 7 FCC Rcd 5113 (1992), is misplaced. Although there the Commission allowed the Scotland Neck station to move closer to the Rocky Mount Urbanized Area (MSA), the facts are fundamentally different. In that situation, the Scotland Neck station was already providing service to 90% of Rocky Mount. *Id.*, para. 4. In the case at hand, Duplin now provides no service whatsoever to Jacksonville, New Bern, Havelock, Kinston, or Goldsboro, or to the adjacent metro areas and MSA's. Moreover, the Scotland Neck station proposed local service with only an upgrade to C3. Here, Duplin proposes a high-power 50,000 watt wide-area Class C2 regional service from Trenton.

Another basis to deny the petition for rule making is that Duplin has not demonstrated that Trenton, which has a population of just 284, is a community for allotment purposes. Merely the fact that Trenton is incorporated is not sufficient to confer community status. See, FM Table of Allotments (Klamath Falls, Altamont, and Butte Falls, Oregon, and Dorris, California), DA 95-1470, para. 15, rel. July 10, 1995.

Even if Duplin demonstrated that Trenton is a community for allotment purposes, it nevertheless may not be entitled to a Section 307 (b) preference over Rose Hill. Trenton is a "quiet village" which has no need for its own local transmission service. Cf., FM Table of Allotments (Scranton and Surfside Beach, South Carolina), 3 FCC Rcd 2798, 2799, para. 5 (1988).

WHEREFORE, in view of the foregoing, the petition for rule making filed by Duplin must be denied as contrary to Commission policy and precedent.

Respectfully submitted,

By: 
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August 10, 1995



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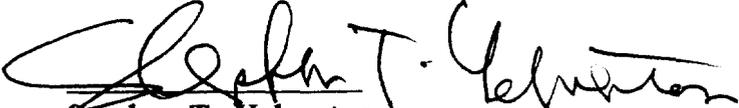
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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney, do hereby certify that I have caused to be hand served or mailed, U.S. Mail, postage prepaid, a copy of the foregoing "Comments in Opposition to Proposed Rule Making" to the following:

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