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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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,)	DOCKET FILE COPY ORIGINAL
North Carolina)	

MOTION TO STRIKE REPLY COMMENTS

Topsail Broadcasting, Inc. ("Topsail"), licensee of broadcast Station WZXS(FM), Topsail Beach, North Carolina, by its counsel, hereby moves to strike the "Reply Comments" of Duplin County Broadcasters ("Duplin"), filed August 25, 1995. Those reply comments were filed in response to comments of Topsail and to other parties in this proceeding, which were submitted on August 10, 1995. Topsail's comments were in opposition to an amendment of the FM table of allotments proposed by Duplin in Notice of Proposed Rule Making, DA 95-1277, rel. June 19, 1995, to reallocate Channel 284 from Rose Hill, North Carolina, to Trenton, North Carolina. In support of its motion to strike, Topsail submits the following comments.

The proponent of a rule making to reallocate a channel and to move its community of license has the burden of presenting the evidence most favorable to its proposal and the burden of demonstrating compliance with Commission rules and policies in its initial comments. Duplin evaded its burdens by making only a cursory showing in its August 10, 1995, initial comments, and then subsequently making a more extensive and expansive showing in its August 25, 1995, reply comments.

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Duplin has, in effect, submitted late-filed initial comments. As a result, Topsail and the other opposing parties have been prevented from filing a rebuttal to its actual showing (the reply comments) in support of the rule making. Accordingly, the reply comments of Duplin must be stricken from the record as late-filed initial comments in order to prevent prejudice to the opposing parties. The reply comments submitted information and arguments which should have been in the August 10, 1995, initial comments of Duplin and thus would have been subject to rebuttal by the opposing parties.

As an example of the unfairness of this ploy by Duplin, it posits in the reply comments that the key issue in the rule making is whether Trenton is independent of the nearby Jacksonville MSA (urbanized area) and the nearby cities of New Bern, Kinston, Havelock, and Goldsboro, which are some 15 to 25 miles from Trenton, and thus whether Trenton is deserving of a first transmission service preference. In support, Duplin makes an extensive showing of the history of Trenton indicating that it is older than the surrounding population centers and thus presumably independent of these cities.

However, whether Trenton is independent of the surrounding MSA (urbanized areas) and population centers is irrelevant to the issue to be resolved. The actual issue in dispute is whether it is in the public interest to remove the sole FM transmission service and the sole nighttime transmission service from Rose Hill and reallocate it to Trenton whereby it would then provide city-grade service to the already well-served cities of Jacksonville, New Bern, and Kinston, and to other population centers.

The Commission has spoken on this issue many times and has consistently rejected such proposals. 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 transmission 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. See also, 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.

Curiously, Duplin fails to mention these cases in its reply comments. Instead, it cites to FM Table of Allotments (Atlantic and Glenwood, Iowa), DA 95-1583, rel. July 25, 1995, as somehow being controlling, but offers no explanation. However, that case is wholly inapposite.

There, an existing Class C FM station, which was already providing city-grade service to 90% of the Omaha Urbanized Area, was allowed to change its city of license, and thereby increase its coverage to Omaha. The former city of license was left with an AM service which provided nighttime service, albeit less than 250 watts. Moreover, a Class C3 FM service had been proposed for that city.

In the case of Duplin, it now provides no city-grade service (or any service) to Jacksonville, New Bern, Kinston, Havelock, or Goldsboro. Its current city of license, Rose Hill, which is significantly larger than Trenton, would be left with a 250 watt daytime only AM station. Moreover, there is no evidence that another FM transmission service could be allocated to Rose Hill, as was the case in Atlantic, Iowa.

In its reply comments, Duplin also ignores well-established Commission precedent that a first transmission service preference will not be automatically granted to communities with a population under 1,000, such as Trenton. See, Memorandum Opinion and Order, FCC 95-328, para. 9, rel. August 29, 1995. Therein, the Commission cites to Ruarch Associates, 99 FCC2d 338 (Rev. Bd. 1984), aff'd 101 FCC2d 1358 (1985).

Even if Duplin's reply comments were procedurally acceptable, they nevertheless contain substantial and convincing evidence that Trenton is interdependent with the nearby cities of New Bern, Kinston, Havelock, and Jacksonville, and not independent of them. As an example, Exhibit 8 shows that Trenton is included in the New Bern-Havelock telephone directory and that Trenton residents can make local calls to New Bern and Kinston. Several businesses located in New Bern, Kinston, and Jacksonville have listings in the Trenton section of the New Bern-Havelock telephone directory.

Trenton is provided electric service from Carolina Power and Light Company located in New Bern. The areas outside the town limits are provided electric service from the Jones-Onslow Electric Membership Corporation located in Jacksonville. Coastal Area Community Telecom, which is located in Jacksonville, serves Trenton and Jones County. See, Duplin reply comments, Exhibit 8.

Lenoir Community College, which is located in Kinston, has a branch campus in Jones County near Trenton. The Neuse Center for Mental Health and Substance Abuse, which is located in New Bern, also serves Trenton. The transmitter tower for Station WUNM-TV, which is licensed to Jacksonville, is located in Jones County near Trenton. See, Duplin reply comments, Exhibit 8.

In its reply comments, Duplin makes much ado about the long history of Trenton, which was first settled in 1710 by German and Swiss Palatine (Protestant) refugees from Bern, Switzerland. However, it fails to note that nearby New Bern was also settled in 1710 by these same refugees from Bern and hence the name New Bern. Since 1710, these two nearby communities have been culturally and economically intertwined based upon a common ancestry and history, with New Bern being the dominant community.

In its reply comments, Duplin is curiously silent about the close proximity of Trenton to New Bern, Kinston, Havelock, Jacksonville, and Goldsboro. Although, Duplin vaguely alludes to the fact that broadcast stations in those cities provide city-grade service to Trenton, it fails to acknowledge that the Channel 284 C2 allocation in Trenton would provide city-grade service to those cities.

WHEREFORE, in view of the foregoing, the reply comments filed by Duplin on August 25, 1995, must be stricken from the record as late-filed initial comments.

Respectfully submitted,

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September 1, 1995

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 "Motion to Strike Reply Comments" to the following:

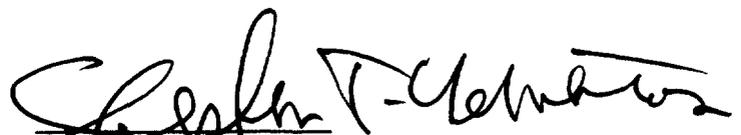
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