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

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Anniston and Ashland, Alabama)
and College Park, Georgia))

MM Docket No. _____
RM _____

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

PETITION FOR RULE MAKING

WNNX LICENSE INVESTMENT CO.

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SUMMARY

WNNX License Investment Co. ("WHMA"), licensee of Station WHMA-FM, Anniston, Alabama, requests the reallocation of its channel to College Park, Georgia (pop. 20,457), as its first local service. This proposal is designed to enable the Commission to eventually dismiss MM Docket No. 89-585 where the community of license is proposed for Sandy Springs, Georgia and has an Application for Review pending. The Mass Media Bureau denied the Sandy Springs proposal in 1991 due to the proposed creation of overlap and interference to WUSY, Cleveland, Tennessee and due to the failure of the prior licensee to demonstrate Sandy Springs' independence from the Atlanta Urbanized Area. As a result of the deficiencies, the proposed loss area of approximately 400,000 persons was given greater emphasis than would be the case where a first local service preference is awarded.

Although WHMA believes that the 1991 Application for Review makes a compelling case for reversal of the Bureau's decision, WHMA is interested in resolving this matter in the most expeditious fashion. Therefore, WHMA offers a new proposal which: (1) completely eliminates the short spacing, overlap and interference to WUSY; (2) unquestionably demonstrates that College Park is an independent community and deserve a first local service preference; (3) offers two new services (at Anniston and Ashland, Alabama) to replace WHMA's signal in much of the current coverage area; (4) provides a net gain in population of 1,691,114; and (5) eliminate another pre-existing short spacing to Station WVNA-FM, Tuscumbia, Alabama.

The College Park proposal is in conflict with a pending petition to reallocate Station WLRR's channel from Milledgeville to Covington, Georgia. WHMA's proposal for College Park should be preferred under priority 3, first local service, along with the other public interest benefits while Covington would receive a second local service.

Accordingly, WHMA urges the Commission to act expeditiously to propose and then grant the WHMA proposal to College Park, Georgia and bring a final resolution to the long-standing Sandy Springs proceeding.

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PETITION FOR RULE MAKING

WNNX License Investment Co. ("WHMA"), licensee of Station WHMA-FM, Anniston, Alabama, by its counsel, hereby requests the Commission to institute a rule making proceeding to amend Section 73.202(b) of the Commission's Rules to substitute Channel 263C3 for Channel 263C, change the community of license for Station WHMA from Anniston, Alabama to College Park, Georgia and to modify the license accordingly. In addition, WHMA requests the allotments of Channel 261C3 to Anniston, Alabama and Channel 264A to Ashland, Alabama. WHMA is the successor in interest in a long standing rule making proceeding (MM Docket No. 89-585) in which a previous licensee requested the reallocation of WHMA's channel from Anniston to Sandy Springs, Georgia. That proceeding is currently pending on Application for Review. WHMA hereby states that should the Commission adopt the changes requested in this Petition, WHMA agrees to withdraw the pending Application for Review and to have MM Docket No. 89-585 dismissed with prejudice. In support hereof, WHMA states as follows:

I. INTRODUCTION

1. The instant Petition to serve College Park, Georgia complies with the Commission's technical standards and policies governing change in community of license cases. Unlike the Sandy Springs proposal, this petition contains no short spacing problems, meets the test for community independence and has no other deficiencies. The Commission should be able to process this request in a routine fashion pursuant to existing policies and case law.

2. The original proposal of Emerald Broadcasting of the South ("Emerald") filed on February 12, 1990, in MM Docket No. 89-585, was designed to provide a first local service to Sandy Springs, Georgia and offered numerous benefits including a large increase in the number of people to be served by WHMA and the elimination of one pre-existing short spacing and the reduction of another short spacing. Nevertheless, the Commission staff denied this proposal on October 25, 1991 primarily for three reasons: (1) there would be significant areas of overlap and interference to Station WUSY, Cleveland, Tennessee; (2) the community of Sandy Springs was not adequately shown to be independent of Atlanta to warrant a first local service preference; and (3) the Commission found that "other public interest" benefits did not outweigh the fact that approximately 400,000 persons would lose an existing service. As will be demonstrated, the two factors (interference and lack of independence) which caused the FCC to deny the Sandy Springs proposal are not present in WHMA's College Park proposal and, because that is true, the third factor (loss area) will not weigh as heavily in the overall analysis.

3. Emerald submitted an Application for Review (“1991 Application for Review”) of the Commission’s staff Report and Order on November 25, 1991. The merits of that Application for Review will not be discussed in any detail here. Suffice it to say that Emerald made a compelling case for reversal which virtually paralyzed the Commission into inaction for nearly six (6) years. The Application for Review was finally dismissed by staff action on June 27, 1997 for reasons unrelated to the merits of the proposal. WHMA submitted an Application for Review (“1997 Application for Review”) on July 28, 1997 alleging that the staff action had no legal effect because the Bureau did not have delegated authority to act on the 1991 Application for Review. The 1997 Application for Review is currently pending and WHMA’s purpose in filing the instant petition is to postpone any further review or litigation concerning MM Docket No. 89-585 and allow the Commission to finally put this proceeding to rest.

4. WHMA believes the Commission should process this petition while MM Docket No. 89-585 is pending for several reasons. As indicated, WHMA inherited this rule making proceeding from a prior owner of the station. While WHMA certainly prefers a favorable resolution of MM Docket No. 89-585, WHMA recognizes that based on the history of this proceeding, a quick resolution at the Commission and then, if necessary, in the appellate court(s) is unlikely. WHMA believes it would conserve Commission resources to offer a simpler, less controversial proposal for WHMA which complies fully with the Commission’s technical rules and policies with regard to change in community of license. Nevertheless, the Commission should not assume that WHMA has abandoned the Sandy Springs proposal or has conceded in any way that there is a fatal deficiency in the pending proposal. Rather WHMA is

submitting its own proposal rather than pursuing one that it inherited in the interest of a quicker resolution and to provide College Park a first local service.

II. TECHNICAL ANALYSIS

5. As demonstrated in the attached channel study, the proposed allotment of Channel 263C3 to College Park, Georgia at reference point coordinates of 33° 45' 32" and 84° 30' 10" meets the spacing requirements of Section 73.207 of the Commission's Rules. There are no short spacings, channel changes at other communities, or site relocations by other stations needed, unlike the earlier Sandy Springs proposal, which required a site relocation for Station WSSL, Gray Court, South Carolina and a short spacing to Station WUSY, Cleveland, Tennessee. In this regard, WHMA's instant proposal would completely eliminate a pre-existing short spacing of 57.1 kilometers to WUSY. Like the Sandy Springs proposal, another pre-existing short spacing of 1.8 kilometers to Station WVNA-FM, Tuscumbia, Alabama is eliminated.

6. The value of the elimination of two short spacing, especially one with the magnitude of 57.1 kilometers, must not be underestimated by the Commission. Originally, when the FM Table of Allotments was created in 1963 by Dkt. 14185, Third Report, Memorandum Opinion and Order 40 FCC 747, the highest priority in allotting channels was the "Provision for all existing FM stations." This priority did not mean only that a channel would be listed in the FM Table for each operating station, but also, to the extent possible,

decisions would be based on reducing or eliminating pre existing short spacings. See, e.g., Eatontown, Point Pleasant and Red Bank, New Jersey, 5 RR 2d 1762 (1965).¹

7. In 1982 when the Commission simplified its allotment priorities, in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), it did not specifically codify the elimination of a pre-existing short spacing as a priority. However, the Commission continues to be bound by the mandate in Section 307(b) of the Communications Act, as amended, to distribute frequencies in a fair, efficient and equitable manner. By the terms “fair and equitable”, the Commission is responsible for providing, to the extent possible, allocations based on spacing rules which are equitable to all stations. Thus, where the Commission is presented with the opportunity to enable Stations WUSY and WVNA to achieve full spacing protection toward Anniston, Alabama, the Commission should make every effort to do so.

8. Furthermore, by eliminating the short spacing, WUSY has the added benefit of eliminating a significant area of overlap containing 11,675 persons within a 295 square kilometer area (see Figure 10c of the Engineering Statement), and an area of interference caused to WUSY containing 2306 persons within an area of 115 square kilometers.

9. A major factor in the Commission’s denial of the Sandy Springs proposal was the proposed overlap and interference to WUSY. As stated, the instant proposal would completely eliminate the short spacing, overlap and interference to WUSY.

¹ This case at p. 1764 para. 4, cites the general principle set forth in the Third Further Notice of Proposed Rule Making, FCC 64-70 para. 5 with respect to existing short spaced stations that “where a proposed change or series of changes would eliminate all short spacing problems, would create no new [short-spacing] problems, and would not require the deletion of any existing or proposed assignment, the requested change or changes will, in all uncontested cases, be granted.” (Emphasis added).

III. CHANGE OF COMMUNITY PREREQUISITES

10. WHMA seeks to change the community of license from Anniston, Alabama to College Park, Georgia under the provisions of Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License 4 FCC Rcd 4870 (1989), reconsideration granted in part, 5 FCC Rcd 7094 (1990) wherein certain prerequisites are set forth -- (1) the proposed channel must be mutually exclusive with the existing channel; (2) the new community must be preferred over the existing community under the Commission's allotment priorities; and (3) the old community may not be deprived of its only existing service.

11. First, as shown in the attached Engineering Statement, Figure 1, the proposed use of Channel 263C3 at College Park is incompatible with the current use of Channel 263C at Anniston. Second, College Park (pop. 20,457) would be preferred under the Commission's allotment priorities by receiving a first local service while Anniston has four remaining radio stations WGRW(FM), WHMA(AM), WDNG(AM) and WANA(AM). In addition, Channel 261C3 is proposed as a second FM channel for use at Anniston which would replace WHMA-FM. Thus, the Commission's allotment criteria would favor a first local service for College Park (priority 3) over a fifth service at Anniston. See Revision of FM Assignment Policies and Procedures, supra. Third, Anniston would not be left without existing service.

12. In Change of Community of License, supra at 7096, the Commission stated that it was concerned with the potential migration of stations from underserved rural areas to well served urban areas. In making its determination, the Commission stated that it would be guided in awarding a first local service preference by the criteria set forth in Faye and Richard

Tuck, 3 FCC Rcd 5374 (1988). College Park is located within the Atlanta urbanized area.

Therefore, WHMA will demonstrate that College Park is indeed a separate, independent and self-sufficient community which is deserving of its own local radio station.

13. At the outset, WHMA notes that the station currently operates in an urban setting within the Anniston, Alabama Urbanized Area (pop. 68,150). In addition to Anniston's five radio stations, this Urbanized Area contains other communities with local radio stations such as WHOG(AM), Hobson City, Alabama and WOXR(AM), WVOK(FM) and WTBJ(FM) Oxford, Alabama. Thus, the Commission can fairly conclude that the proposed move is from one urban setting to another urban area. Nevertheless, WHMA offers the following information demonstrating College Park's independence as a community.

IV. INDEPENDENCE OF COLLEGE PARK

14. In Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), the Commission set forth three factors to be considered in determining whether a suburban community should receive a first local service preference: (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

15. As to signal population coverage, the proposed 70 dBu contour will encompass only 44.3% the Atlanta Urbanized Area. See Figure 13. That percentage is favorable to the proposal because the Commission's standard is a 50% coverage before it requires a showing of independence. See Headland, AL and Chattahoochee, FL, 10 FCC Rcd 10352 (1995). As to the relative sizes, the population of College Park (20,457) is 5.2% of the population of Atlanta (394,017). A 5.2% of population is not unusually small for the Commission to look favorably on this factor. See e.g., Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996)

where the suburb of Newcastle's population was 0.9% of Oklahoma City. See also Bay St. Louis and Poplarville, MS, 10 FCC Rcd 13144 (1995) (4.5%); Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992) (3.1%) and D'Iberville and Wiggins, MS *supra* (3.7%).

16. The Commission has stated on a number of occasions that the first two factors, while pertinent, are not as significant as evidence of independence. See e.g., Clovis and Madera, California, 11 FCC Rcd 5219 (1996) at para. 20; Coolidge and Gilbert, Arizona, 11 FCC Rcd 3610 (1996) at para. 9; D'Iberville and Wiggins, Mississippi, 10 FCC Rcd 10796 (1995) at para. 6. In addition, College Park is not contiguous to Atlanta but separated by the communities of East Point and Hapeville.

17. The Commission will consider eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. Faye and Richard Tuck, ¶ 36. In addition to the eight enumerated factors, the

Commission may consider other relevant showings that particular applicants propose. RKO General, Inc. (KFRC), 5 FCC Rcd 3222, ¶ 14 (1990). All eight factors need not favor the applicant, however; if a majority of the factors demonstrate that the specified community is distinct from the urbanized area, the Commission will treat it as an independent community. Faye and Richard Tuck, supra; Parker and St. Joe, Florida, 11 FCC Rcd 1095, ¶¶ 9-11 (1996) (finding that the proposed community was independent, although it lacked its own telephone directory and local newspaper, and was included in the urbanized area's market by Arbitron); accord Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570, ¶ 3 (1997) (citing Parker and St. Joe, Florida).

18. In this case, the eight factors unquestionably demonstrate that College Park is separate and independent from Atlanta, and College Park's unique characteristics reinforce that conclusion. The following information concerning College Park can be found in greater detail in Exhibit 1.

1) College Park Residents Work In College Park

College Park is comprised of a multitude of large and small businesses and government offices that employ and sustain the City's citizens. Major employers located in the community and which employ primarily College Park residents include Hartsfield International Airport (one of the largest and busiest airports in the country), the Federal Aviation Administration's Southeastern Headquarters, twenty-seven hotels and motels, and the Georgia International Convention Center (owned and operated by College Park). Other prominent College Park employers of College Park residents include Coca Cola, John Weiland Homes, Hitachi, Valujet, Valvoline, Sysco Foods, and the Phoenix Office Corporate Park. In all, College Park has 802 businesses which employ the City's residents. Not only is College Park fully self-sufficient in

providing work for its residents, but a large number of workers (40%) actually commute from Atlanta and other nearby communities to College Park!

2) College Park Has Local Publications Covering The Community's Needs and Interests

The residents of College Park are served by several publications. Daily news, information, and events are covered in *The South Fulton Neighbor*, which includes news, activities, and people in College Park, but intentionally excludes news pertaining specifically to Atlanta. See letter from the news editor of *The South Fulton Neighbor* in Exhibit 1. College Park businesses reach local residents by advertising in the *Neighbor*. Residents also learn of local events ranging from a "National Night Out Against Crime" to ski trips, Easter egg hunts, races, family festivals, and athletic instruction through the City of College Park Recreation Department's newsletter. Local tutoring, safety programs, summer camps, and holiday events are also advertised there.

3) Community Leaders and Residents Perceive Themselves As Separate From Atlanta

Community leaders and residents have a strong sense of independence from the City of Atlanta. Indeed, a number of businesses identify so strongly with the City that they include the words "College Park" in their name. These include College Park Animal Hospital, College Park Appliance Parts and Service, College Park Florist, College Park Furniture Co., College Park Screen and Door, College Park Shell, College Park Shoe Repair, and College Park Industrial Welding, Inc. to name a few. Conversations with community leaders confirm that they perceive themselves as living in an autonomous community that does not depend on Atlanta for its well being or its identity. See letter from the Mayor and City Manager of College Park in Exhibit 1.

The Department of Recreation bolsters this local identity. Only residents of the City of College Park are entitled to use the City's recreation facilities. Nonresidents must pay a nonresident fee for each person and activity in which they participate. The Recreation Department Newsletter contains a prominent notice to nonresidents and highlights the resident/nonresident distinction.

4) College Park Has Its Own Local Government and Elected Officials

The City of College Park has a large, active local government that functions independently of Atlanta. The City is run by an elected Mayor, four elected City Council members, and a City Manager. In addition, the government includes a Utilities Department, Inspection Department, Engineering Department, Commercial & Industrial Development Department, Tax Department, Business Licenses Department, Recreation Department, Purchasing Department, Electrical Construction Department, Fire Department, Department of Public Works, and Police Department. The City uses its taxing authority to collect, among others, a hotel/motel tax, flight equipment tax, and special district tax. Its total All Funds Budget for 1996-1997 was over \$52 million. See 1996-1997 Annual Budget in Exhibit 1.

College Park is a member of the Georgia Municipal Association ("GMA"). According to the GMA profile of College Park, the City government has 297 full-time employees. Key municipal personnel include a City Auditor, City Attorney, City Clerk, City Engineer, Federal Program Coordinator, Finance Officer, Fire Chief, Police Chief, and Public Works Superintendent. The City has its own municipal court with its own City judge. A Code Enforcement officer enforces the City's zoning, building, electric, plumbing, and other municipal codes. Finally, the College Park government owns and operates an electrical distribution system,

a potable water distribution system, and a sanitary sewer collection system within its corporate limits, as well as numerous parks and recreation facilities.

5) College Park Is Concentrated In One Zip Code Serviced By Its Own Postal Service Station, and Has Its Own Government Listing in the Telephone Book

The zip code for the City of College Park is 30337. The U.S. Postal Service operates the College Park Station to service the area. Although College Park does not have its own telephone book, the City has an independent listing in the government pages of the telephone book which is typical of many cities near Atlanta.

6) College Park Has Numerous Commercial Establishments and Its Own Health Facilities

College Park has a thriving business community with 802 licensed establishments. As mentioned above, a number of businesses use College Park in their name, while many others call College Park home. Approximately twenty-seven hotels and motels service the area. Two of the most visible signs of College Park's economic independence are the Hartsfield Airport and the City-owned and operated Convention Center (discussed below in (9)). College Park has eight city parks and six recreation centers. In addition, as indicated in the enclosed videotaped presentation, College Park built and owns the FAA's office complex and a regional health center. See Exhibit 1.

College Park is also home to a number of religious and civic organizations. Churches include the College Park Christian Methodist Episcopal Church, College Park First United Methodist Church, and the College Park Presbyterian Church. Civic organizations include the College Park Masonic Lodge and the College Park Woman's Club.

Moreover, College Park has its own municipal golf course. The City owns the College Park Branch of the Fulton County Health Care Center. It also has a cemetery.

7) College Park's Advertising Market Is Distinct From Atlanta's

While some advertising directed at Atlanta residents will necessarily reach College Park residents, College Park nonetheless has a distinct advertising market. Many of its businesses reach College Park residents by advertising in the *Neighbor*, which does not circulate in Atlanta.

8) College Park Has Its Own Police Force, Fire Department, Jail, Court, and Other Services

College Park provides many municipal services to its residents. In 1996-1997, the police force included 82 sworn police positions and 10 non-sworn support personnel. The fire department consisted of 61 certified firefighters, one fire prevention officer, one arson investigator, and one support person. The City also provides a jail, municipal court, emergency dispatch, emergency medical service, planning, zoning, inspections, licensing, taxing authority, and business development. Furthermore, as mentioned above, the City provides electricity to its residents through a City-owned and operated electric power generation and distribution system that competes with Georgia Power. The City also owns and operates a potable water distribution system and a sanitary sewer collection system. The Department of Public Works provides service related to parks and grounds, sanitation, street maintenance, water and sewer, and electricity. Furthermore, the City owns the College Park Branch of the Fulton County Library and the College Park Branch of the Fulton County Health Care Center. It has several of its own public schools and is home to the Woodward Academy, a prestigious private school.

9) College Park Owns and Operates a Convention Center

College Park boasts several unique characteristics that underscore its independence from the urbanized area. Most significantly, it owns and operates the Georgia International Convention Center. The Convention Center is Georgia's second largest convention facility, measuring 329,000 square feet and featuring five separate exhibit halls, two ballrooms, thirty-

five meeting rooms, and three executive boardrooms. According to its Mission Statement, the Convention Center's primary objective is "to facilitate events that generate economic benefits to the City of College Park." The Convention Center is uniquely positioned to sponsor community events on a grand scale for College Park residents. Moreover, it is a major attraction to people outside of College Park and draws people there, both putting College Park on the map and filling its coffers for the benefit of City residents. The Convention Center is designed to serve as a place that enables residents to "coalesce", congregate, and instill the spirit and feeling that College Park residents have in common.

10) College Park Is A Major Transportation Hub

College Park is home to the Hartsfield Airport and is a major transportation hub for the CSX railroad line and several interstate highways. The Airport is subject to the City's taxing authority and is therefore a major source of revenue to College Park. A large network of hotels and motels has developed within College Park to support both the Airport and the Convention Center.

19. WHMA recognizes that the Mass Media Bureau rejected the attempt of Emerald to change WHMA's community of license to Sandy Springs, Georgia. In that decision, Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama, 6 FCC Rcd 6580 (1991), the Commission concluded that Sandy Springs was not sufficiently independent of Atlanta under the Faye and Richard Tuck factors to warrant a first local service preference.

20. While, as indicated, WHMA supports the positions taken in the pending Application for Review disputing the Bureau's findings, nonetheless, College Park has many of the factors of independence found to be lacking in Sandy Springs. Specifically, College Park has been incorporated for more than 100 years, while Sandy Springs is unincorporated. The

Commission acknowledged that were Sandy Springs to incorporate, that might serve as “more indicia of independence.” Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama, supra at ¶ 26. Moreover, unlike Sandy Springs, College Park has an extensive, aggressive municipal government system that owns and operates numerous enterprises. College Park is a member of the Georgia Municipal Association, while Sandy Springs is not. College Park provides many government services, such as water, sewer, electric, sanitation, fire, police, jail, court, and numerous others, that Sandy Springs does not. College Park has the power to tax while Sandy Springs does not. Furthermore, whereas key entities in Sandy Springs use Atlanta addresses interchangeably, businesses and government offices in College Park generally give their addresses as “College Park.” While Sandy Springs has been referred to as “Atlanta’s second downtown,” College Park stands on its own as an independent community. Finally, College Park has unique attributes, most notably the Convention Center and Hartsfield International Airport, which make it a thriving, self-sustaining community that is beyond a doubt independent of Atlanta. These unique attributes also make College Park a highly desirable location for a radio station. In this regard, WHMA has discovered in speaking with community leaders such as the Mayor that there is a tremendous need for a local radio station to cover the many news stories, events, and issues that are unique to College Park.

V. COLLEGE PARK DESERVES A FIRST LOCAL SERVICE

21. Having demonstrated that College Park is indeed independent of Atlanta, WHMA must now demonstrate that it is more deserving of a first local service than the continuation of a fifth local service to Anniston. Most importantly, the Commission’s priorities (no. 3) favor a first local service over a fifth local service to Anniston. In addition, WHMA proposes to allot Channel 261C3 to Anniston to replace the service that Anniston

would otherwise lose. While Channel 261C3 will not reach the entire area now covered by Channel 263C, the new channel will cover Anniston with a 70 dBu signal. In addition, the new allotment of Channel 264A to Ashland, Alabama will also reach some of the area that would lose the WHMA signal. WHMA hereby states that it will apply for Channel 261C3 at Anniston and Channel 264A at Ashland should the Commission allot these channels and WHMA will construct the authorized facilities. WHMA has a sincere interest in doing so. In the past year since it became the licensee, WHMA has discovered that Anniston is an attractive place to operate a radio station and would like to continue to provide service to this community.

22. In addition to the first local service preference to which College Park is entitled, the population of the respective communities are comparable (20,457 for College Park to 26,623 for Anniston). Certainly the difference of 6,166 persons does not justify a difference of 5 local services to none. Moreover, the number of persons that will be reached by the proposed 60 dBu contour of the proposed Class C3 facility at College Park is 2,131,288, while the current 60 dBu coverage of the station as a Class C at Anniston is 658,920 resulting in a net gain of 1,691,114 persons. When the proposed new Anniston Channel 261C3 and Ashland Channel 264A allotments are factored in, 221,229 persons already served by WHMA will continue to receive a service from either of the two new signals, reducing the loss area to 440,174 population. See Figure 11, Sheet 1 of the Engineering Statement. In addition, there will be a gain in service from the elimination of pre-existing overlap and interference with Station WUSY, Cleveland, Tennessee. The population within the prohibited contour overlap

area that will be eliminated contains 11,675 persons and within the interference area totals 2,306 persons. See Figure 11, sheet 2.

23. Thus, while the first local service preference is sufficient to demonstrate that College Park deserves the proposed channel allotment, the additional public interest factors of a substantial net gain in population helps to bolster the proposal.

VI. OTHER PUBLIC INTEREST FACTORS

24. The “other public interest factors” set forth in the Bureau’s Report and Order placed heavy emphasis on the aforementioned approximately 400,000 persons in the net loss area. However the Bureau admits at para. 27 of the Report and Order that the net loss area played a significant role in that decision because Sandy Springs was not accorded a first local service preference. Specifically, the Bureau stated that, “[g]iven our conclusions with respect to the three relevant factors, it is clear that Emerald’s proposal for Sandy Springs should not be awarded a first local service preference. Accordingly, we turn next to an evaluation of the proposal under the fourth of our FM allotment priorities, other public interest matters.” (emphasis added) supra at p. 6585. Clearly, here, College Park qualifies for a first local service which places far less emphasis on the net loss area.

25. Recent case law supports WHMA’s position that significant loss area figures are of less value in the overall analysis where a first local service preference is awarded. See e.g., Temple and Taylor, Texas (DA 97-1939) released September 12, 1997, where a loss area of 240,006 persons was deemed secondary to Taylor’s need for a first local service.

26. The Commission also requires that the petitioner provide a showing that the loss area will retain at least five aural services. See e.g., Atlanta and Glenwood, Iowa, 10 FCC

Rcd 13160 (1995). This factor is of course relevant in the context of priority 4, other public interest factors and has not been used by the Commission to deny a priority 3 first local service preference.

27. At note 30 of the Report & Order in MM Docket No. 89-585, the Bureau recognized that any loss of coverage to unserved and underserved areas would be replaced by the proposed Class C3 allotment at Anniston and the Class A allotment at Lineville.² With that finding in mind, WHMA offers the following information as to adequacy of service in the loss area. The Engineering Statement sets forth the areas and population within the existing WHMA 60 dBu contour, and the proposed new Anniston and Ashland contours. Of this area, 86.1% of the population would continue to receive at least five full time aural reception services. Further 96.5% of the listeners would continue to receive four or more such services while 99.8% of the population would continue to receive at least three such services. These figures are adequate based on Earle, Pocohantas and Wilson, Arkansas and Como and New Albany, Mississippi, 10 FCC Rcd 8270 (1995) in which 85% of the loss area would continue to receive five or more full time aural services. See also Huntsville and Willis, Texas, 10 FCC Rcd 3329 (1995), where only 64% of the population in the loss area would continue to receive at least five full time aural services, with 76% receiving at least four such services, 90% receiving at least three such services and 98.2% receiving only two or more services.

28. The Commission should also consider the fact that by allowing WHMA to relocate to College Park, two new services would be available to certain portions of the loss

² The former Lineville proposal is exactly the same in proposed coverage area and population to be served as the proposed Ashland allotment. The reason for the change was a recent annexation of area extending the Lineville boundary outside the proposed 70 dBu contour.

areas which would otherwise not be possible, a net increase in service over the current situation. Thus, the proposed move actually increases the availability of service to these areas by two to one. Accordingly, the number of remaining services in the loss area are consistent with other cases approved by the Commission and the value of this factor weighs less heavily than the many public interest benefits of this proposal including College Park's first local service.

29. Finally, although WHMA proposes to downgrade its class of station, such proposals to lower the class are routinely permitted without any special showings and are not typically used as a factor in the overall public interest analysis. See, e.g., Homestead and North Miami Beach, Florida, 10 FCC Rcd 3149 (1995) and Canovanas, Puerto Rico, et al., 10 FCC Rcd 6673 (1995).

VII. COLLEGE PARK VS. MILLEDGEVILLE

30. WHMA is aware of the pending Petition for Rule Making proposing to reallocate Channel 264A from Milledgeville to Covington and upgrade to a Class C3 channel which is in conflict with WHMA's current proposal. Preston W. Small ("Small"), licensee of Station WLRR(FM), Milledgeville, Georgia states that Covington would receive its first full time local service or at least its first local FM service and a first local FM service to Newton County (at para. 2). In addition, Small states that Covington (pop. 10,026) is in greater need of local service than Milledgeville which has five operating stations (at para. 2). Furthermore, Small indicates that the gain area would include 180,387 persons in an approximately 4,800 sq. mile area while WLRR's current 60 dBu services reaches 49,918 persons in approximately 1,800

sq. kilometers.³ There is no indication of the number of aural services retained in the loss area, a factor of added value where the proposal is for a second local service to Covington which would be considered under priority 4, "other public interest matters."

31. Covington should be evaluated under priority 4 because it has Station WGFS(AM) with 5 kW daytime and 250 watts at night, a full time station. On the other hand, College Park has no local service and as demonstrated earlier, is entitled to a first local service preference. The population of College Park is double the population of Covington (20,457 to 10,026) and the net gain area for WHMA's proposal is 1,641,114 persons compared to 130,409 persons for the Covington proposal. Under these factors and the additional public interest matters, College Park would be favored for Channel 263C3 as a first local service.

VIII. CONCLUSION

32. WHMA offers the Commission a viable and desirable proposal to replace the long standing Sandy Springs rule making. While WHMA was not involved in the highly publicized proceedings in 1990-1991, it has become the successor in interest and has the same purpose as the Commission -- to reach a speedy resolution to MM Docket No. 89-585. WHMA's proposal to provide a first local service to College Park, Georgia is offered after much evaluation in an effort to provide many public interest benefits and serve an attractive community which has an urgent need for a local radio service. WHMA's parent, Susquehanna Radio Corp., has a strong record of service to the many communities it serves across the

³ Small compares the current service in sq. kilometers and the proposed service in square miles. The figures indicate that the proper comparison should be in sq. kilometers.

country. Its many subsidiary licensees are actively involved in civic affairs and community events and can be counted on to provide College Park's residents with the service they deserve.

The benefits of WHMA's proposal to the public are numerous:

- A first local service to College Park, Georgia (pop. 20,457)
- Two new services -- a second local station for Ashland, Alabama and a replacement FM service to Anniston, Alabama neither of which could be provided without the removal of WHMA.
- The complete elimination of a 57.1 kilometer short spacing, interference and overlap to WUSY, Cleveland, Tennessee and of a 1.8 kilometer short spacing to WVNA-FM, Tuscumbia, Alabama.
- A net increase in population served of 1,691,114 persons
- The termination of the long standing rule making proceeding in MM Docket No. 89-585.

WHMA urges the Commission to act expeditiously to issue a Notice of Proposed Rule Making looking to achieve these benefits. Should Channel 263C3 be reallocated to College Park, WHMA will apply for and construct the facility expeditiously.