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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

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| In the Matter of | ) | |
| | ) | |
| Amendment of Section 73.202(b) | ) | MM Docket No. 98-216 |
| Table of Allotments | ) | RM-9381 |
| FM Broadcast Stations | ) | |
| | ) | |
| (Arnoldsburg, West Virginia) | | |

To: Mass Media Bureau (Policy & Rules)

REPLY COMMENTS

Mountaineer Communications ("Mountaineer"), by its attorney, respectfully submits these reply comments to the comments of Star Communications, Inc. ("Star"), in the above-captioned proceeding.

Star objects to Mountaineer's proposal to provide Arnoldsburg with its first radio service on the basis that it is "not a community of such size and nature as to merit its own local radio station." Star adds, "For sure, it cannot support one financially."

Star is the licensee of WVRC-AM-FM, Spencer, West Virginia, located 13 miles from Arnoldsburg. Its motive for filing its comments in opposition to Mountaineer's petition is clear; it simply does not want the competition which Mountaineer's station would provide. However, the Commission is not charged with protecting existing stations from competition[1]; many years ago it determined to ignore economic arguments against new broadcast

[1] More than once the Commission has found that the public interest is served by allotting a first competitive service to a community, even in lieu of a first service to a smaller city. See, e.g. Ruarch Associates, 99 FCC 2d 338 (Rev. Bd. 1984), aff'd, 101 FCC 2d 1358 (1985) and Beacon Broadcasting, 104 FCC 2d 808 (Rev. Bd. 1986) (Subsequent history omitted.)

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services. Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988). recon. denied, 4 FCC Rcd 2276 (1989). In any event, Star has not even attempted to provide any facts to support its assertion that allotting a station to Arnoldsburg would disserve the public interest by adversely affecting Star's ability to provide public interest programming.

Here, the Commission is not presented with competing proposals for a new station, but merely the question of whether to allot the new channel at Arnoldsburg. Star's self-interest in protecting its monopoly can carry no weight in this matter. c.f. Revision of FM Assignment Policies and Procedures, 80 FCC 2d 88 (1982). (Allotment of a new service is preferable to an upgrade of an existing service.)

Star's assertion that Arnoldsburg fails to meet the Commission definition of a community worthy of its own allotment is belied by the facts Star provides in its own comments. Star acknowledges that Arnoldsburg has an elementary school and 16 businesses, with the school and many businesses identifying themselves with Arnoldsburg by name, such as the Arnoldsburg branch of the Calhoun Bank and Arnoldsburg Mini Storage. Star also informs the Commission of the existence of the "Arnoldsburg School Improvement Council."

Star's factual showing supporting Arnoldsburg's community status does not stop there. Star references the annual "Molasses Festival" which takes place in Arnoldsburg. (Comments @ page 2,

par. 4). Star further reports on the "Health Fair recently held in the West Fork Community Center in Arnoldsburg." (Comments @ page 3)

Star omitted certain facts about Arnoldsburg which the Commission has used in the past to determine community status. Arnoldsburg has its own Post Office and separate Zip Code, 25234. It appears on road maps, see e.g. the attached excerpt from the West Virginia map in the 1993 Rand McNally Road Atlas.[2]

Star cites the Commission's allotment of WPGC-FM to the Washington suburb of Morningside, Maryland, as somehow relevant to the instant proceeding, arguing that stations licensed to such small communities must, in reality, act as outlets for the larger city. Star's argument has no import here. WPGC-FM went on the air in the 1950's, a period when FM was not nearly as popular as it is now, and the Commission was seeking to encourage FM at the expense of AM. The FM allotment rules at that time were much different. More recently, the Commission has recognized that stations licensed to small communities in urbanized areas may be considered as belonging to the central city, not to the suburb. Faye and Richard Tuck, 3 FCC Rcd 5374 (1988); Eatonton and Sandy Springs, Georgia, et al., 6 FCC Rcd 6581 (MMB 1991) (Subsequent history omitted.) That a Morningside station may program primarily to the greater Washington, DC, area has no bearing on whether

[2] Star further omits mention that Arnoldsburg and Spencer are in different counties, Calhoun and Roane respectively; and further that there are no broadcast stations licensed to any community in Calhoun County.

Arnoldsburg should receive its own station.

Arnoldsburg is not located in an urbanized area. A station licensed to Arnoldsburg has the primary obligation to serve the needs and interests of that community. While Star expounds on the past involvement of its owners in the civic affairs of Arnoldsburg, and their stations' coverage of events there, Star's showing simply emphasizes Arnoldsburg's unique needs, needs which call for the community's own transmission outlet.

Star's stations, licensed to Spencer, must give that community their highest attention; Arnoldsburg is merely one community within their service area. Star may change its stations' focus at any time, reducing or even discontinuing their concern with Arnoldsburg's needs. This is exactly why the Commission, in acting to further the goals of Section 307(b) of the Communications Act, seeks to give each community its own local outlet. Star offers no authority for its proposition that a community does not merit its own local station because a station licensed to a different community provides some coverage of local events.

In this regard, it is instructive to recall the argument Star's counsel raised against the use of integration as a method of evaluating competing applicants which carried great weight in Bechtel v. FCC, 10 F. 3d 875 (D.C. Cir. 1993). There he successfully argued that ownership is merely "ephemeral", and thus cannot be the basis of FCC decisions which have permanent effect.

This argument applies equally to Star's ownership of his stations and their past service to Arnoldsburg. Star refers to

no case where the Commission has refused to allot a station to an independent and otherwise worthy community simply because an existing station provides some measure of service thereto.

The Commission has previously set forth the criteria it uses to determine whether a population grouping is a community for purposes of radio station allotment. There must be "a sense of unity and involvement in community concerns as shown by evidence that the residents function as and conceive of themselves as a community around which their interests coalesce." Mighty-Mac Broadcasting Co., 101 FCC 2d 303, 306 (Rev. Bd. 1986), review denied, FCC No. 86-127 (March 24, 1986).

Community status may be shown by objective indications of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping.' A community's location on a map, and identification therewith by businesses, churches and schools in the vicinity by including the name of the community in their names or giving it as their address. Moreover, the Commission looks to see that the area is not encompassed or intersected by borders of incorporated municipalities. Beacon Broadcasting, 2 FCC Rcd 7562 (1987)

In Yermo and Mountain Pass, California, 45 RR 2d 58 (Br. Bur. 1979), the Commission allotted FM stations to two small communities in California, including Mountain Pass, population estimated by the petitioner as 250-260. The Commission stated the following as demonstrating community status for Mountain Pass:

> The nature of this place as a mining town provides the commonality of purpose which, as reflected in the services locally provided to the residents and employees, qualifies this place as a community. As such, the town is identified by a road sign and a community post office is assigned to it with a separate zip code number.

Arnoldsburg offers even more indicia of community than did Mountain Pass. As shown by Star's own comments, the residents of Arnoldsburg clearly identify themselves with the community and its has the necessary elements of separateness, such as its own Zip Code and position on highway maps. Arnoldsburg fully meets the Commission's criteria for community status. Star's objections must be overruled.

Star suggests something sinister in the fact that the undersigned counsel represents both Mountaineer Communications and Mountain State Broadcasting, which is a petitioner for a new FM service at Gassaway, West Virginia. Counsel's involvement demonstrates the bona fides of the proposals, that there is an entity eager to provide the radio service sought. Commission policy requires no more and Star's assertion that the Commission should require disclose of petitioner's principal or principals at this stage is not only unsupported but clearly incorrect.

In this regard it is worth noting that the oppositions to both the instant proposal as well as to the Gassaway channel, both of which were filed by local broadcasters seeking to keep their monopoly, used the same counsel and adopted much the same arguments. This strongly suggests that the two broadcasters banded and conspired together for the purpose of delaying the

introduction of broadcast competition. Submission of pleadings for the purpose of delay is an unacceptable abuse of the Commission's processes, and has led to license revocation in the past. Radio Carrollton, 72 FCC 2d 264 (1979).

Accordingly, the Commission should amend Section 73.202(b) to allot Channel 264A to Arnoldsburg, West Virginia.

Respectfully Submitted,

MOUNTAINEER COMMUNICATIONS

By _____
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February 9, 1999

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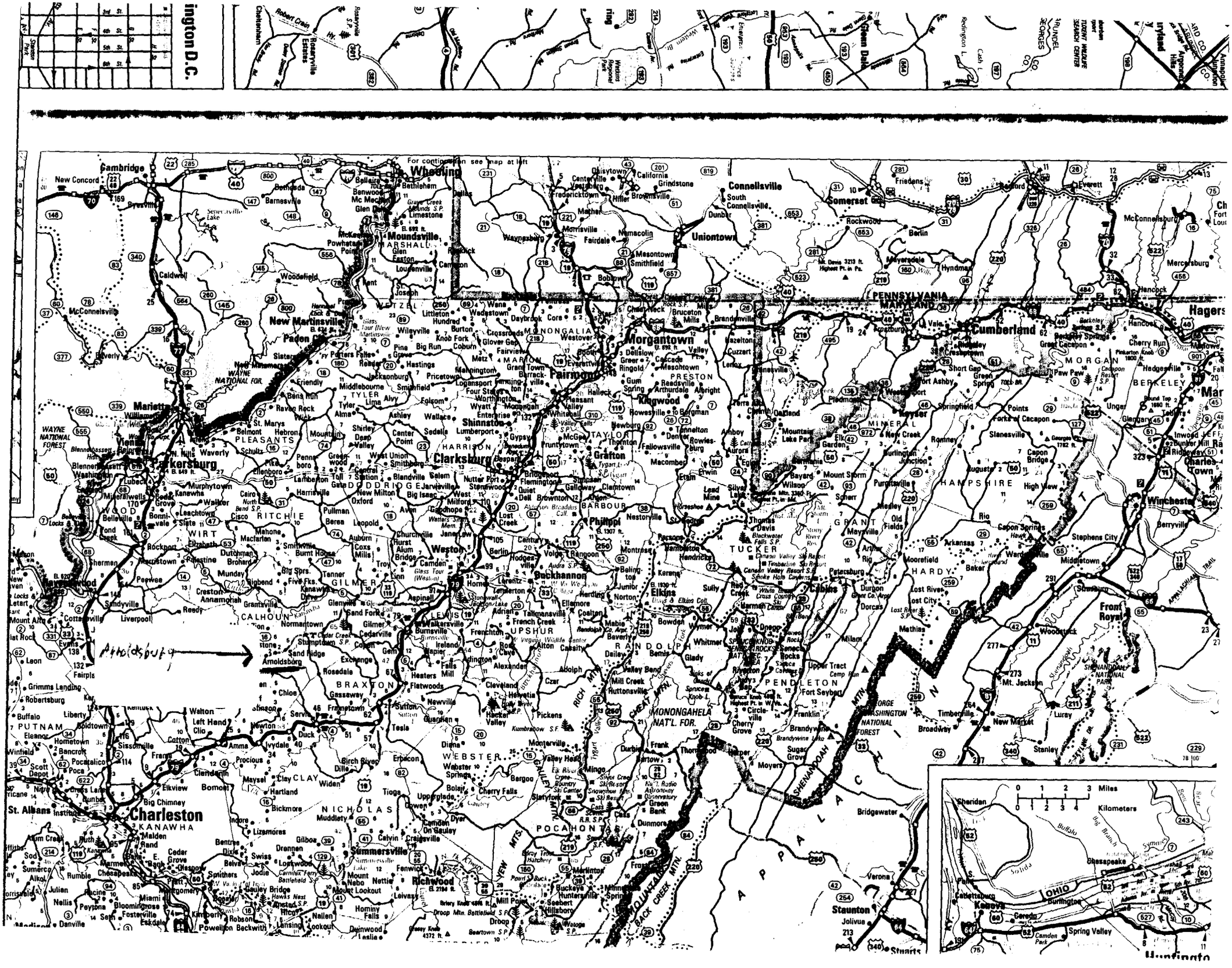
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For continuation see map at left
Wheeling
Cambridge
New Concord
Bridgeport
Bellaire
Bethlehem
Benwood
Mc Mechen
Glen Dale
Moundsville
Limestone
Cresaptown
Cumberland
Hagers
Hancock
Mercersburg
McConnellsville
Caldwell
Woodsfield
Beverly
Marietta
Williamstown
Vienna
Parkersburg
Belpre
Ravenswood
Sandyville
Liverpool
Cottageville
Evans
Fairplains
Grimms Landing
Robertsburg
Buffalo
Eleanor
Hometown
Winfield
Scott Depot
Poca
Pocatalico
Nitro
Institute
St. Albans
Charleston
Big Chimney
Elkview
Clendenin
Sissonville
Cross Lanes
Dunbar
Kenova
Ceredo
Chesapeake
Huntington
Barboursville
Milton
Ona
Salt Rock
Hurricane
Teays
Winfield
Putnam
Kanawha
Jackson
Roane
Calhoun
Gilmer
Lewis
Braxton
Webster
Nicholas
Clay
Pocahontas
Randolph
Upshur
Barbour
Tucker
Pendleton
Hardy
Grant
Mineral
Hampshire
Morgan
Berkeley
Jefferson
Pleasants
Wirt
Ritchie
Doddridge
Harrison
Taylor
Monongalia
Marion
Preston
Tyler
Wetzel
Marshall
Ohio
Brooke
Hancock
Pennsylvania
Maryland
Virginia
Ohio
Kentucky
Appalachian Mts.
Allegheny Mts.
Cheat Mtn.
Monongahela Nat'l. For.
Shenandoah Nat'l. For.
Mt. Davis 3213 ft. Highest Pt. in Pa.
Spruce Knob 4863 ft. Highest Pt. in W.Va.
Backbone Mtn. 3360 ft. Highest Pt. in Md.
Sheridan
Buffalo
Big Branch
Solida
Chesapeake
Ceredo
Kenova
Catlettsburg
Burlington
Spring Valley
Camden Park
Miles
Kilometers

## CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 1999, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

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