

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

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MM Docket No. 99-240

RM-9503

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Albemarle and Indian Trail, North Carolina))

To: The Chief, Allocations Branch

COMMENTS OF CAPSTAR TX LIMITED PARTNERSHIP

Capstar TX Limited Partnership ("Capstar"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding, DA 99-1286 (released July 2, 1999) ("Notice").¹ As set forth below, the proposal outlined in the Notice does not represent a preferential arrangement of allotments. It would remove the sole full-time and sole FM service at Albemarle – a county seat with a population of nearly 15,000 – in favor of Indian Trail, North Carolina, a town within the Charlotte Urbanized Area which, based on the information submitted by the petitioner, appears merely to be an extension of the greater Charlotte metropolitan area. Such a result, as explained below, disserves the public interest.

¹ Capstar is the licensee of radio stations WLYT(FM), Hickory, North Carolina, WRFX(FM), Kannapolis, North Carolina, and WKKT(FM), Statesville, North Carolina, each of which operate in the Charlotte, North Carolina radio market.

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Discussion

The Notice stems from a petition for rulemaking filed by Susquehanna Radio Corp. (“Susquehanna”), licensee of station WABZ(FM), Channel 265A, Albemarle, North Carolina. Susquehanna seeks, and the Notice proposes, the reallocation of Channel 265A from Albemarle to Indian Trail, North Carolina, and the modification of its license for WABZ to specify Indian Trail as the station’s community of license. Susquehanna proposes this reallocation pursuant to Section 1.420(i) of the Commission’s Rules, which permits the modification of a station’s license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See 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) (“Change of Community R&O”), recon. granted in part, 5 FCC Rcd 7094 (1990) (“Change in Community MO&O”).

Susquehanna, of course, seeks approval of its reallocation proposal on the ground that it would provide a first local service to Indian Trail. In adopting Section 1.420(i), however, the Commission made clear its awareness of the rule’s potential to facilitate migration of stations in outlying areas to major population centers:

We do not intend to apply the first local service preference of our allotment criteria blindly. We recognize that an inflexible application of that preference, without further analysis, could consistently result in our finding that a reallocation leading to first local service for a suburb of a much larger adjacent metropolitan center justifies removing a local service from a more remote community. We wish

to dispel any concern that our new rule would lead to such a result.

* * *

It has never been Commission policy to adhere rigidly to the concept of localism if the result of that adherence is to undermine the fair, equitable, and efficient distribution of radio service mandated by Section 307(b) of the Communications Act.

Change of Community MO&O, paras. 13, 14. That the Susquehanna proposal raises such concerns can hardly be denied. The proposal would reallocate station WABZ from Albemarle – located over 40 miles from central Charlotte – to Indian Trail, about 15 miles away from the city.

In determining whether the Susquehanna reallocation proposal does in fact advance Section 307(b)'s objective of the "fair, equitable, and efficient distribution" of radio service, it is worthwhile first to note that the community of Albemarle would lose both its sole FM service and its only full-time local transmission service. The reallocation of WABZ(FM) to Indian Trail would leave Albemarle with two essentially daytime-only AM stations, WSPC(AM) and WZKY(AM), both of which are Class D stations with nighttime authority only for secondary, unprotected operation at nominal power. This hardly seems a fair, equitable and efficient distribution of service as regards Albemarle – a community with a 1990 U.S. Census population of 14,939 which is the county seat of Stanly County, North Carolina (population 51,765).

While reallocation of Channel 265A to Indian Trail would not, strictly speaking, remove Albemarle's sole local transmission service, the Commission has made clear that

to the extent this prohibition [against removal of a community's only local transmission service] implies that we are concerned with disruption of existing service only if the disruption involves a first local transmission service, it was unduly permissive. The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.

Change of Community MO&O, para. 19.

Where a proposed community reallocation is granted, the provision of a community's first local transmission service has normally been found to be a public interest benefit outweighing the loss of transmission service at the former community. That is not the case here, however, for it is far from clear that Indian Trail is an independent community warranting a first local service preference. As noted above, the Commission will not blindly apply a first local service preference in a manner that would remove local service from a more remote community in order to allow a station's migration to a metropolitan area. The reallocation at issue here presents just such a concern, as Indian Trail is located within the Charlotte Urbanized Area. Accordingly, Susquehanna must satisfy the Commission that Indian Trail is sufficiently independent from the Charlotte metropolitan area under the factors set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck").

On this score, Susquehanna's showing, as outlined in the Notice, is severely lacking. While Susquehanna arguably has submitted enough information to establish that Indian Trail possesses the attributes of a "community" (i.e., a local government, a post

office and zip code, businesses bearing its name), there is precious little evidence on which to base a finding that Indian Trail is a community sufficiently independent from the larger Charlotte Urbanized Area.

For instance, Susquehanna's own showing concedes that a mere 11.3% of Indian Trail's employment-age residents work in Indian Trail itself, while over four times more (46.5%) work in Charlotte. See Notice at 3. The Commission has found far more favorable figures than this to suggest that a community is not sufficiently independent from the larger metropolitan area. See Elizabeth City, North Carolina and Chesapeake, Virginia, 9 FCC Rcd 3586, 3589 (1994) (fact that less than 40% of Chesapeake residents worked in that community favored a finding that Chesapeake was not independent of Norfolk); RKO General, Inc., 5 FCC Rcd 3222 (1990) (fact that only 35.1% of Richmond, California residents worked in that community favored a finding that Richmond was not independent of San Francisco). Additionally, Susquehanna admits that Indian Trail telephone listings are included in the Charlotte telephone directory. See Notice at 4.

Indian Trail does not have its own newspaper. The only Indian Trail media outlets Susquehanna cites are an Internet home page and a newspaper (the *Enquirer Journal*) and cable system both based in Monroe, several miles away. With respect to the extent to which Indian Trail and Charlotte are part of the same advertising market, Susquehanna claims only that local businesses can advertise in the Monroe *Enquirer Journal*, the Indian Trail webpage, and the Monroe cable system, and that Indian Trail residents "do not need" to use Charlotte media sources in order to find out what is

happening in Indian Trail. Susquehanna provides no information on the extent to which Indian Trail businesses actually advertise on Charlotte media rather than these “local” outlets, or whether Indian Trail residents in fact primarily rely on Charlotte media outlets.

Moreover, in response to the Tuck criterion that “community leaders and residents perceive [Indian Trail] as being an integral part of, or separate from, the larger metropolitan area,” Susquehanna provides merely an historical overview of Indian Trail’s settlement and incorporation history. See Notice at 3-4. There is absolutely no mention of the perceptions of Indian Trail’s community leaders and residents as to the issue of the community’s independence from Charlotte. Susquehanna also admits that Indian Trail’s police, fire protection, schools and libraries are provided either by Union County, which is in the Charlotte Urbanized Area, or by agencies elsewhere within the county. Thus, it is clear that Indian Trail “relies on the larger metropolitan area” for these services.

In sum, Susquehanna has shown Indian Trail, at best, to satisfy only two of the eight criteria enunciated in Tuck (i.e., a local government and elected officials, and commercial establishments and health facilities bearing the Indian Trail name). That is insufficient to warrant a finding that Indian Trail is sufficiently independent from the larger Charlotte Urbanized Area to merit a first local service preference.

Conclusion

The reallocation of Channel 265A from Albemarle to Indian Trail, North Carolina, would deprive Albemarle of its only FM and only full-time transmission service. It would do so in favor of an FM allotment at Indian Trail, a community that cannot be found to be independent from the larger Charlotte Urbanized Area in which it is located. Such a result is not in the public interest, and, accordingly, Susquehanna's proposal should be denied.

Respectfully submitted,

**CAPSTAR TX LIMITED
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Dated: August 23, 1999

CERTIFICATE OF SERVICE

I, Claudia L. Lucas, a secretary in the law firm of Wiley, Rein & Fielding, hereby certify that copies of the foregoing "Comments of Capstar TX Limited Partnership" were sent this 23rd day of August, 1999, by first class United States mail, postage prepaid, to the following:

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