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February 15, 2000

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

-- BY HAND --

RECEIVED
FEB 15 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 99-347
(Exmore and Cheriton, Virginia and Fruitland, Maryland)

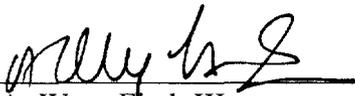
Dear Ms. Salas:

Attached please find the Reply Comments of Be-More Broadcasting filed in the above referenced rulemaking proceeding.

Please direct any questions to the undersigned.

Respectfully submitted,

BE-MORE BROADCASTING COMPANY

By 
A. Wray Fitch III

cc: As Per Certificate of Service

[K:0807/SALAS5.AWF]

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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.)
(Exmore and Cheriton, Virginia, and)
Fruitland, Maryland))

MM Docket No. 99-347
RM-9751
RM-9761

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF BE-MORE BROADCASTING

BE-MORE BROADCASTING

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February 15, 2000

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SUMMARY

Be-More's proposal to provide a first transmission service to Cheriton is the preferred allocation. Cheriton is a community with no other transmission services. It is an incorporated city with its own mayor and over 40 businesses. Great Scott proposes to remove the only operating station from Exmore, WKHI -- a station which has been providing service to the community for 28 years. Although Fruitland is a larger community and the Great Scott proposal would result in service to more people, the Commission's strong policy against removal of a sole existing operating station outweighs any potential gain in service. Furthermore, Great Scott's proposal to reallocate Channel 298B1 to Fruitland is, in reality, a proposal to reallocate the Channel to a suburb of Salisbury, which is already a well served radio market with over 30 stations. Even if Fruitland is considered a separate community for purposes of providing a first service, "other public interest matters" of the Commission's allotment priorities weigh against removing the only radio station in a rural community to an already well served identifiable radio market.

Great Scott's contingent counterproposal to allocate an additional channel to Cheriton cannot be considered. Great Scott has failed to submit a technically complete counterproposal as required. In any event, the NOPR is limited to proposals to changes of communities of license and fails to provide the requisite notice for any contemplated addition of a new channel. Lastly, it appears there is no realistic available site to accommodate the counterproposal.

Be-More's proposal to reallocate a yet unbuilt station, which has no listenership, to a community with no other stations, is the preferred allocation.

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
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Amendment of Section 73.202(b),)	MM Docket No. 99-347
Table of Allotments,)	RM-9751
FM Broadcast Stations.)	RM-9761
(Exmore and Cheriton, Virginia, and)	
Fruitland, Maryland))	

REPLY COMMENTS OF BE-MORE BROADCASTING

Be-More Broadcasting ("Be-More") files this reply to the Comments filed in this proceeding. Sound Enterprises, Inc. and Cumulus Media, Inc. filed Comments supporting the Be-More proposal. Great Scott Broadcasting ("Great Scott") filed Comments supporting its proposal to reallocate the only operating station in Exmore, Virginia to Fruitland, Maryland. As demonstrated more fully below, the public interest supports grant of the Be-More proposal to allocate Channel 298B to Cheriton, Virginia.¹

1. Cheriton Is A Community.

Cheriton is a community for allotment purposes. Great Scott argues, based on a search of Yahoo Yellow Pages, that Cheriton is not a community because of what it does not have. It is evident from review of what Cheriton does have that it is a community for allotment purposes. The following provide more than adequate *indicia* of Cheriton's status as a community:

a. Incorporated City.

Cheriton is a government census designated place with a 1990 population of 515 people. It is a listed community in the Rand McNally Road atlas; and is an incorporated city with defined city boundaries.

¹ Be-More clarified that it is requesting allocation of Channel 291B to Cheriton, not 291B1.

b. Government.

Cheriton has its own Mayor and City Council.

c. Governmental Services.

Cheriton has (1) its own Cheriton Volunteer Fire Department; and (2) its own Cheriton Post Office.

d. Businesses.

Cheriton has the following businesses: Cherrystone Family Camping & RV Resort, P.O. Box 545, Cheriton, VA 23316; Cherrystone Tackle Shop, 1344 Townsfield Road, Cheriton, VA 23316; Cherrystone Resort Store, 1379 Townfield Road, Cheriton, VA 23316; Advantage Business Service, 3316 Cherrystone Road, Cheriton, VA 23316; Cheriton Television Center Sales, 21223 S Bayside Street, Cheriton, VA 23316; Family Auto Sales, 21180 N Bayside Road, Cheriton, VA 23316; Cheriton Texaco, 21209 N Bayside, Stokely Road, Cheriton, VA 23316; Western Auto Assoc. Store, 21217 Bayside Road, Cheriton, VA 23316; Amy's Salon, 21098 North Bayside Road, Cheriton, VA 23316; Advantage Business Svc., 3316 Cherrystone Road, Cheriton, VA 23316; B & B Contractors, 21071 N Bayside Road, Cheriton, VA 23316; Leatherbury Equipment Co., 22699 Bayview Circle, Cheriton, VA 23316; W F Rolley Hardware, Cheriton, VA 23316; Steve's Sporting Goods, 21223 S Bayside Street, Cheriton, VA 23316; Cornish Funeral Home, 21397 S Bayside Road, Cheriton, VA 23316; Pine Needle, 21194 N Bayside Road, Cheriton, VA 23316; Shreeves Realty, 3534 W Sunnyside Road, Cheriton, VA 23316; Williams Welding & Repair, 4413 Sunnyside Road, Cheriton, VA 23316; Cape Charles Oil Co., 20194 Lankford Hwy., Cheriton, VA 23316; H & R Block Inc., 21229 Lankford Hwy., Cheriton, VA 23316; Jackson Hewitt, 21069 N Bayside Road, Cheriton, VA 23316, and Cheriton Pharmacy, 21230 S Bayside Road, Cheriton, VA 23316.

e. Financial/Banks.

Crestar Bank, 21263 Lankford Hwy., Cheriton, VA 23316; and Shore Bank, Chincoteague Branch, 21220 N. Bayside Dr., Cheriton, VA 23316.

f. Civic/Churches.

Cheriton Baptist Church, 21291 S Bayside Road, Cheriton, VA 23316; Cheriton United Methodist Church, Cheriton, VA 23316; Holy Light Apostolic Church, 4327 Sunnyside Road, Cheriton, VA 23316; Bayview Citizens for Social Justice; and Cheriton Senior Service Center;

g. Hotels/Bed and Breakfasts

Elderberry House, Cheriton, VA 23316; and Between the Bay and Sea B&B, 3576 Cherrystone Road, Cheriton, VA 23316;

h. Social/Community Organizations.

Cheriton Day Care Center, 22198 S Bayside Road, Cheriton, VA 23316; and Cheriton Head Start Center, 22200 S Bayside Road, Cheriton, VA 23316;

i. Food/Restaurants.

Chesapeake Bay Cafe, 21229 S Bayside Road, Cheriton, VA 23316; Zorobabels Cafe' Books & Gifts, 21204 N Bayside Road, Cheriton, VA 23316; J H West Seafood Inc., PO Box 174, Cheriton, VA 23316; R & C Seafood Shoppe, 21229 Lankford Hwy., Cheriton, VA 23316; Cheriton Quick Mart, 20194 Lankford Hwy., Cheriton, VA 23316; and Cheriton Super Market, 21210 S Bayside Road, Cheriton, VA 23316;

j. Health Care.

Bayview Community Health Center; P.O. Box 970, Cheriton, VA 23316; David F Dalessio DO, Linda Philpot MD and Rosa L King MD - Bayview Community Health Center, 22214 S Bayside Road, Cheriton, VA 23316.

In addition to the fact that Cheriton is a clearly delineated, defined, incorporated community, it is evident that its citizens consider themselves to be part of an identifiable community. Mr. Michael Pierson, who is on the Habitat Management Advisory Committee, identifies himself as a Cheriton resident; Marilyn Williams from the Eastern Shore Community College Board also identifies herself as a Cheriton resident. The community is also growing, with the proposed construction of Powercat, N.A., a manufacturing facility. *See, generally* Exhibit 1 and Be-More Comments pp. 2, 3.

2. Cheriton Easily Meets the Criteria for Community.

Cheriton easily meets the threshold criteria for community status. In *Redwood, Mississippi*, 1998 FCC Lexis 3891 (July 31, 1998), the Commission found that Redwood, Mississippi is a community for allocation purposes despite the fact that it has a population of only 200, is not incorporated, and has no autonomous governing body. Redwood has ten businesses, one church, a volunteer fire department, post office, and provides municipal electricity. Cheriton, by contract, is an incorporated city, has more than 40 businesses, 3 churches, its own government, civic organizations, banks, restaurants, hotels, and health care facilities.

Similarly, in *Homerville, Lakeland, and Statenville, Georgia*, 6 FCC Rcd. 5802 (1991), the Commission determined that Statenville is a community. Statenville is not incorporated or listed in the census report. Statenville is a county seat, has one civic organization, four churches, a community center, some businesses, a post office, and a fire station.

In *Cal-Nev-Ari, Boulder City, and Los Vegas, Nevada*, 1999 FCC Lexis 5038 (October 8, 1999), the Commission determined that *Cal-Nev-Ari* is a community entitled to an FM allotment, despite the fact it has a population of only 350 people, is not incorporated, or listed in the U.S. census. *Cal-Nev-Ari* has a casino, a post office, gas station, a Laundromat, mobile homes, a motel,

a market, and recreational vehicle park and ranch. *Cal-Nev-Ari* has no local government, no community organizations, civic or social organizations, or religious institutions.

In *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments (Semora, North Carolina)*, 5 FCC Rcd. 934 (1990), the Commission found that Semora, North Carolina is a community. Semora is not listed in the census reports, has a population of only 150, has no local government, and provides no municipal services except for a volunteer fire department. Semora has a civic organization and two churches.

In *Semora* and *Cal-Nev-Ari*, petitioners submitted supplemental evidence to demonstrate the residents consider themselves part of the community. In *Semora*, the supplemental information consisted of a petition signed by a number of individuals attesting to their belief that Semora was a community. In *Cal-Nev-Ari* two professional sociologists interviewed local residents and submitted a report. This type of supplemental information is only necessary when the "community" is not incorporated.²

In *Kenansville, Florida*, 5 FCC Rcd. 2663 (1990), the Commission reversed itself on reconsideration and determined that Kenansville, with a population of 700 is a community. Although Kenansville was not listed in the census report or incorporated, it was listed in the Rand McNally Commercial Atlas, had its own post office, zip code, telephone exchange, volunteer fire department, a church, community center, several businesses, and a civic center.

² See, *Kenansville, Florida*, 5 FCC Rcd. 2663 at Paragraph 8 (1990), "If a community is not incorporated or listed in census reports, the proponent for a channel allotment to that locality must show the place to be a geographically identifiable population grouping. *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982). While the proponent of the allotment need not show that the borders of the municipality are precisely ascertainable, the proponent must show that residents of the locality are commonly regarded as a distinct group. This can be proven by the testimony of local residents or by objective indications of the existence of a common perception that a locality's populace constitutes a distinct geographical population grouping... Examples of objective indications of community status include the existence of political, commercial, social and religious organizations and services in the community."

The cited precedent fully supports a finding that Cheriton is a community for allotment purposes. None of the above communities was incorporated or had its own government; Cheriton does. Several of the communities had no banks, Cheriton does. Several had no health facilities, Cheriton does. Several had no restaurants, hotels or civic organizations. Cheriton does. It is true that Cheriton has no police department, school, or chamber of commerce. None of the communities cited above did either, and the Commission has made it clear that there is no such requirement. *See Kenansville, Florida, supra*, at Paragraph 10 ("The Commission does not require a municipality to provide every municipal service in order to merit a finding of community status. Therefore, the fact that Osceola County provides police protection, schools, and garbage collection does not inevitably lead to a conclusion that Kenansville is not a community. Similarly, the absence of local government, a newspaper, or a bank is not fatal to Meredith's claim."); *Redwood, Mississippi, supra*, at Paragraph 4 ("Although Redwood does not appear to have a local police force, garbage collection, water district, or sewage, the Commission has stated that a municipality need not provide every public service on its own in order to merit community status, nor is the absence of a newspaper or a bank fatal to community status."); *See also, Semora, North Carolina*, 5 FCC Rcd. at 935.

3. Great Scott's Contingent Counterproposal to Allocate Channel 297A to Cheriton, Virginia Should be Denied.

a. Great Scott's Counterproposal is Not Technically Correct and Complete and Must be Dismissed.

Commission precedent requires that Counterproposals be technically and procedurally correct at the time they are filed. *Fort Bragg, California*, 6 FCC Rcd. 5817 (1991). Great Scott has failed to provide necessary geographic and population data necessary in order to assess its Counterproposal relative to the proposal of Be-More Broadcasting. In *Lincoln, Osage Beach, Steelville and Warsaw, Missouri*, 11 FCC Rcd. 6372 (1996) The Commission dismissed a counterproposal for failure to submit pertinent geographic and population data necessary to do a comparison. The Commission

noted. "[T]he Petitioner failed to submit other pertinent geographical and population data necessary to do a comparison between two mutually exclusive upgrades. Since this proceeding involved mutually exclusive upgrade proposals, this information should have been submitted with the original counterproposal. We have consistently held that counterproposals must be technically and procedurally correct at the time of their filing." *Id.* at Paragraph 5.

b. The Counterproposal Cannot Be Considered.

The NOPR in this proceeding deals exclusively with proposals to change communities of license, not with allocation of different channels. The NOPR, therefore, does not give notice to the public that any new channel allocation is contemplated and, as such, none can be proposed. To accept a Counterproposal for allotment of a new channel in a Rulemaking limited to a proposed change in city of license, denies the public of the opportunity to suggest a preferential use of a channel like that proposed by Great Scott in Cheriton. The Commission must determine first which, if any, of the city of license changes it will grant. It is only if the Great Scott proposal is granted that any proposal to allocate Channel 297A to Cheriton should be considered in a separate rulemaking, this allows the public the opportunity to comment on that proposal, including the opportunity to suggest a preferable allocation of the channel.

Undersigned is unaware of any precedent where allocation of a new channel was considered in a counterproposal involving an NOPR limited to proposed changes in a city of license. Great Scott's reliance on *Kerman, California*, 11 FCC Rcd. 2887 (1996) is completely inapposite. That case grew out of a Notice of Proposed Rulemaking to add a new channel 252A to Kerman, California and had nothing to do with a change in city of license.

Indeed, Great Scott's proposal to allocate 297A cannot even be considered as a counterproposal. "A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made."

Kerman, California, Supra. at n. 2. The allocation of 297A to Cheriton is not an alternative and mutually exclusive allotment, it is simply an afterthought of an additional channel which could be allocated if Great Scott's proposal to move to Fruitland is granted.

c. No Suitable Site.

The Commission generally presumes in a rulemaking proceeding that a technically feasible site is available. However, that presumption is rebuttable where there is no reasonable likelihood that a site will not be available. *See, Moncks Corner, Kiawah Island and Sampit, South Carolina*, 11 FCC Rcd. 8630 at Paragraph 14 (1996). The vast majority of the area identified in Great Scott's area to locate for Channel 297 is marsh land and the barrier islands are owned by the Nature Conservancy. *See, Great Scott Exhibit RM-3 and Be-More Exhibit 2.* In the remaining small area to locate, there are no existing towers, and the county is unlikely to approve any further tower construction. *See Exhibit 2.*

In denying a rulemaking proposal in the *Moncks Corner* proceeding, the Commission specifically noted, "We do not consider a marshy area to constitute an available site...." *Id. at Paragraph 14.* *See also, Ocracoke, North Carolina*, 9 FCC Rcd. 2011 (1994), (denial of rulemaking due to unavailable site proposed in swamp area.); *See also, Wilmington, North Carolina*, 6 FCC Rcd. 6969 (1991) (Remaking denied due to unavailability of site based on FAA concerns as well as denial of another proposal for area located in an ecologically sensitive Atlantic coastal area.)

4. The Public Interest and Allotment Priorities Favor Grant of Be-More's Proposal.

a. Service Reception.

Be-More's proposal to allocated Channel 291B to Cheriton, Virginia will result in a land area loss of 35.1 kilometers and a loss of service to 191 people. These 191 people would also loose a third night time aural service. *See Be-More Comments, Exhibit 2.* The Great Scott proposal will result in a net gain of service to 62, 076 people and 1,203 square kilometers, which includes

providing a second night time aural service to 647 people. Any preference for the Great Scott proposal for reception service is outweighed by the loss of Exmore's only operating station, a station which has been providing service to Exmore for the past 28 years. Nor, as more fully discussed below, does the Great Scott proposal outweigh provision of a first local service to Cheriton in lieu of an allocation to Fruitland, a suburb of Salisbury.

b. 307(b) Considerations.

Be-More argues in its Comments that Fruitland, as a suburb of the Salisbury urbanized area, should not be entitled to credit for a first local transmission service. Great Scott has undoubtedly argued in its Reply Comments that Salisbury is not an urbanized area and that, therefore, such an analysis is not necessary. Although Salisbury may not be an urbanized area as defined by the Census Bureau, it is a defined sizable market and, more importantly, a specifically identifiable radio market. Salisbury is the 153 radio market. *See Exhibit 3.* Since Salisbury and the surrounding area is considered part of the same radio market, there is a clear basis to support the contention that Fruitland's local transmission service needs are adequately satisfied by other stations within the larger metropolitan area and that any proposal to allocate a channel to Fruitland is merely a proposal to allocate a channel to an already well served market. Section 307(b) requires the Commission to "make such distribution of licenses....among the several states and communities as to provide a fair, efficient and equitable distribution of radio service..." 47 USC Section 307(b). In making that determination, the Commission does not, and should not, always conclude that a proposal to allocate a channel to a community with no broadcast outlet is entitled to credit for a first service when that community is dependant upon the larger metropolitan area and service will be provided to the metropolitan area. *Huntington Broadcasting Company vs. FCC*, FCC 192 F 2d 33, 35 (D.C. Circuit 1951).

In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd. 7094 (1990) (Reconsideration Order) the Commission specifically noted that it would consider under "other public interest matters" whether a reallocation would result in a shift from an underserved rural area to a well served urban area.

Among other factors relevant pursuant to Section 307(b), the Commission considers under these residual categories that location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the proposed change. Under these circumstances, it is proper for the Commission to consider whether a proposal would result in shifting of service from an underserved rural to a well-served urban area and the public interest consequences of any such change.

Id. at Paragraph 12.

Be-More respectfully submits that to ignore market realities, and particularly Fruitland's proximity to and interdependence on the Salisbury market in a 307(b) analysis would be arbitrary and capricious. There is no rational basis to distinguish between a census based definition of urbanization and marketplace real world radio market definition.

Before making an assessment on what extent the smaller community is part of a larger metropolitan area, the interdependence of the smaller community should be considered. A showing of interdependence between the smaller and larger community is dependent on the relative size and proximity of the communities. *Faye and Richard Tuck*, 3 FCC Rcd. 5374 at Paragraph 34 (1988). Given the close proximity of Fruitland to Salisbury, as well as its much smaller size, the burden of demonstrating interdependence is light. *See* Be-More Comments at 4, 5. In assessing interdependence, the Commission considers a number of factors. Many of these factors support a finding of interdependence. The Commission considers the extent to which community residents work in the larger metropolitan area, rather than the specified community. Only 180 of Fruitland's

1,567 workers work in Fruitland. *See* Exhibit 4. The Commission considers whether the smaller community has its own newspaper or other media outlets. Fruitland has none, but Salisbury has three papers, *The Daily Times*, *The Salisbury News*, and *The Lower Shore Business Review*, as well as radio and television stations. *See* Be-More Comments Exhibit 4. The Commission considers whether the smaller community has its own telephone book. Fruitland does not.

The Commission also considers the extent to which the specified community and central city are part of the same advertising market. Since Fruitland has no media outlets and is considered part of the Salisbury radio market, Fruitland and Salisbury must be deemed to be part of the same advertising market.

The Commission also considers the extent to which the small community relies on the larger community for municipal services. Although Fruitland has its own fire department, police department and one school, it relies on Salisbury for libraries, hospitals, etc.³

The Commission also considers whether the community has its own business establishments, health facilities or transportation systems. Fruitland does have its own commercial establishments, but has no health facilities or transportation systems. *See*, generally Exhibit 5. Fruitland is interdependent on Salisbury, which is a radio market served by 32 stations. As such, reallocation of Channel 298B1 to Fruitland should not be considered as providing a first local service, but, instead, as providing a 33rd voice to the Salisbury radio market.⁴ At minimum, even if Fruitland is deemed entitled to a first local service credit, the weight of any such credit should be light under the "other public interest matters" *See Reconsideration Order* at Paragraph 12.. The proposal, in reality,

³ Other factors considered are whether the smaller community has its own local government and elected officials and whether the community leaders and residents perceive the smaller community as an integral part of or separate from the larger metropolitan area. Fruitland has its own government.

⁴ Great Scott is the licensee of seven stations in the Salisbury/Ocean City radio market: WJYN(FM), Bethany Beach; WJWL(AM) and WZBH(FM), Georgetown, Delaware; WJNE(FM), Laurel, Delaware; WRBG(FM), Ocean View, Delaware; WJWK(AM) and WGBG(FM), Seaford, Delaware and WOCQ(FM), Berlin, Maryland.

results in reallocation of yet another channel to a market already well served as compared to Be-More's proposed reallocation to a community which is not near or adjacent to any large community or radio market.

c. Great Scott's Two Meritless Public Interest Arguments.

Great Scott makes two baseless arguments to support its proposal. First, Great Scott claims, "Be-More's proposal to change its community of license is entirely unnecessary to effectuate the technical changes it requests." *Comments* at 8. Great Scott claims Be-More can provide reception service to both Exmore and Cheriton from the "site proposed" without the need to change communities. Great Scott should know better. Obviously, if Be-More intended to construct a tower at its theoretical proposed site, it would not have filed a Petition for Rulemaking; it would have simply filed a minor modification application. In a rulemaking proceeding it is necessary to identify a fully spaced site, but not necessary to use it.⁵ In order to avoid having to construct a new tower, Be-More contemplates utilizing an already approved tower, which will not provide a city grade signal over Exmore but will provide a city grade signal over Cheriton.

Secondly, Great Scott claims that "Grant of Be-More's proposal would perversely reward a lack of diligence in construction." *Comments* at 8. First, Great Scott has no knowledge of what Be-More has or has not done to construct a station, so its claims are completely speculative. More importantly, it is disingenuous to assert that Be-More is somehow being "perversely reward[ed]" for lack of diligence when Commission rules allow a permittee three years to construct a station.

⁵ *See, Pueblo, Colorado*, 16 CR 610 (July 7, 1999) at Paragraph 24, ("When a party files a Petition for Rulemaking to amend the Table of Allotments, a hypothetical set of reference coordinates are used for purposes of making the allotment. The Petitioner is not required to specify an actual transmitter site where the station will be operated, only a theoretical fully spaced transmitter site location.")

d. The Paramount Public Interest Weighs Against Removal of Great Scott's WKHI Exmore Station, Which Has Been Serving Exmore for the Past 28 Years.

As noted by at least two other parties filing comments in this proceeding, Sound Enterprises, Inc. and Cumulus, the Commission strongly disfavors removal of a communities only operating station. This is particularly true of a station like WKHI, which has been operating in Exmore for the past 28 years.⁶ Absent a channel reallocation that would provide a first reception area to a significantly sized population, the Commission has emphasized that it will not support removal of a communities sole local broadcast service.

The prohibition on the removal of an existing station representing a community's sole local broadcast service furthers our statutory mandate. Although this prohibition might, as a theoretical matter, appear to elevate the provision of local (i.e. transmission) service to our highest priority there are virtually no population areas of the country where our higher allotment priorities, such as first reception service, that have not been attained. Therefore, as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied. Under these circumstances, we believe a prohibition against the removal of local service is warranted, since such an action could result in diminishment rather than enhancement of local service...[I]n the rare circumstances where removal of a local service might serve the public interest by, for example, providing a first reception service to a significantly sized population, we will entertain requests to waive the prohibition.

See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License (Reconsideration Order). 5 FCC Rcd. 7094, 7096 at Paragraph 16, 17.

The Commission has also made clear that replacing an operating station with a construction permit does not justify removal of an existing long-operating station.

We specifically wish to clarify that replacement of an operating station with a vacant allotment or construction permit, although a factor to be considered in favor of the proposal, does not adequately cure the disruption to "existing service" occasioned by

⁶ According to the 1999 Broadcasting and Cable Yearbook, WKHI began operating in 1972.

removal of an operating station. From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set. Therefore in analyzing proposals pursuant to Section 1.420(i), we intend to examine the effect of the proposal on existing service to the public particularly closely.

Id. at 7097.

5. Conclusion.

Be-More's proposal to provide a first transmission service to Cheriton is the preferred allocation. Cheriton is a community with no other transmission services. It is an incorporated city with its own mayor and over 40 businesses. Great Scott proposes to remove the only operating station from Exmore, WKHI -- a station which has been providing service to the community for 28 years. Although Fruitland is a larger community and the Great Scott proposal would result in service to more people, the Commission's strong policy against removal of a sole existing operating station outweighs any potential gain in service. Furthermore, Great Scott's proposal to reallocate Channel 298B1 to Fruitland is, in reality, a proposal to reallocate the Channel to a suburb of Salisbury, which is already a well served radio market with over 30 stations. Even if Fruitland is considered a separate community for purposes of providing a first service, "other public interest matters" of the Commission's allotment priorities weigh against removing the only radio station in a rural community to an already well served identifiable radio market.

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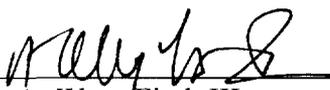
-- 15 --

Be-More's proposal to reallocate a yet unbuilt station, which has no listenership, to a community with no other stations, is the preferred allocation.

Respectfully submitted,

BE-MORE BROADCASTING

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