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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 13, 2001

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 00-245
RM-9971
Alberta, Virginia, and Whitakers, North Carolina

Dear Ms. Salas:

Transmitted herewith, on behalf of Garysburg Radio, are an original and four copies of its "Reply Comments" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Garysburg Radio

AGC:mah
Enclosures

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List A B C D E

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEB 13 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM DOCKET NO. 00-245
Table of Allotments, FM Broadcast Stations.) RM-9971
(Alberta, Virginia, and Whitakers, North Carolina)

Directed to: Chief, Allocations Branch

REPLY COMMENTS

Garysburg Radio, by its attorneys, hereby respectfully submits its Reply Comments in the above-captioned proceeding. With respect thereto, the following is submitted:

1. The Commission initiated the instant proceeding with the release of its *Notice of Proposed Rule Making*, DA 00-2771, released December 8, 2000, (“*NPRM*”). Therein, the Commission proposed to amend Section 73.202(b) of its Rules, the Table of Allotments for FM Broadcast Stations, to substitute Channel 276C3 for Channel 276A at Alberta, Virginia, and to reallocate Channel 276C3 from Alberta to Whitakers, North Carolina, and that the authorization for WAQD(FM) be modified to reflect the new community of license. In response to the *NPRM*, Garysburg Radio submitted its “Comments and Counterproposal,” proposing instead that Channel 299A be substituted for Channel 276A at Alberta, and that Channel 276A be allotted to Garysburg, North Carolina, as that community’s first local aural transmission service. In addition, Dinwiddie Radio Company (“Dinwiddie Radio”) submitted its “Comments and Counterproposal,” in which it proposed that Channel 276A be retained at Alberta and that Channel 299A be allotted to Dinwiddie, Virginia. Finally, MainQuad Broadcasting, Inc.

("MainQuad"), the successor-in-interest to the original rule making proponent, submitted its comments in support of the proposal outlined in the *NPRM*.

2. In its "Comments and Counterproposal," Garysburg Radio demonstrated that adoption of its counterproposal would better serve the public interest and the Commission's FM allotment priorities as set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982) than would the proposal set forth in the *NPRM*. Further, Garysburg Radio noted that it appeared that circumstances had changed such that the proposed relocation of WAQD(FM) would now result in a loss of the sole existing service at Alberta. Specifically, Garysburg Radio pointed out that, on December 18, 2000, MainQuad filed its application for license to cover construction permit and stated that WAQD(FM) was operating pursuant to automatic program test authority.

3. In its own Comments, MainQuad now states that it has taken WAQD(FM) off the air. It attributes its decision to cease operating to an unspecified number of complaints concerning interference to television Channel 12, which operates on a frequency which bears a harmonic relationship to that of WAQD(FM). Notably, however, MainQuad does not indicate that it made any effort whatsoever to resolve the interference complaints before deciding to shut down its station. For example, MainQuad does not indicate that it attempted to find any potential technical solutions, such as the installation of filters, which could reduce or eliminate the claimed interference problems. Indeed, MainQuad's description of the problem indicates that it has not even made the necessary effort to determine the actual cause of the problem. Rather, MainQuad determined that it would proceed directly to the normally drastic step of ceasing operation. Given the substantial monetary investment MainQuad had just made to construct the station and

place it into operation, the speed with which it decided to give up and shut down WAQD(FM) seems odd at best. The station's license application was not filed until December 18, 2000, and presumably the station went on the air just prior to that date. By the time that MainQuad's Comments were filed on January 29, 2001, the station was already off the air. There is no indication whatsoever that MainQuad has sought or will seek to resolve the stated interference issues so that the station may return to operation. These actions are contrary to the normal expectations for a permittee, which having expended the necessary funds to acquire a permit and construct a station's facilities, will make every effort to keep the station in operation.

4. Thus, the only logical explanation for MainQuad's seemingly irrational course of conduct is that it has deliberately acted in a manner calculated to improve its position in the instant proceeding. MainQuad was forced to build hastily the WALQ(FM) facilities in order to avoid loss of the construction permit, and it appears that MainQuad has now seized the first opportunity to take the station off the air in order to avoid the Commission's presumption against removing the sole existing local service from a community. *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Such gamesmanship is contrary to the public interest and must not be rewarded. MainQuad acquired a construction permit to serve the people of Alberta and the surrounding area. It is quite clear, however, that MainQuad has not, in fact, sought to serve the residents of Alberta but rather to abandon them as quickly as possible to move to a larger community.

5. Moreover, the community of Whitakers, to which MainQuad seeks to move, is located just outside of the Rocky Mount, North Carolina, urbanized area. As Dinwiddie Radio has

pointed out in its Comments and Counterproposal, the rule making petitioner's choice of reference co-ordinates for the community of Whitakers is somewhat north of that community. It is possible to place a fully spaced site closer to the community, however. While from the petitioner's specified site, the proposed facility would cover only 27.9 percent of the Rocky Mount Urbanized Area, from the more logical reference site, the station would cover 63.9 percent of the Rocky Mount Urbanized Area. Dinwiddie Radio "Comments and Counterproposal" at 4.¹ Accordingly, Garysburg Radio supports Dinwiddie Radio's conclusion that MainQuad should be required to submit a "*Tuck*" showing so that the Commission may consider the extent to which WAQD(FM) would be likely to provide service to the entire Rocky Mount Urbanized Area. See, *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

6. In sum, MainQuad is attempting to manipulate the Commission's policies applicable to rule making proceedings in order to gain an unwarranted advantage for itself. MainQuad has ceased providing service to the people of Alberta without making any effort to resolve claimed interference issues for the obvious purpose of attempting to avoid having WAQD(FM) considered to be an existing service in Alberta. Further, it is pursuing reallocation at a reference site farther than necessary from its proposed new community of license so that it will not be required to make a *Tuck* showing. The overall pattern of behavior shows that MainQuad is seeking to abandon the community of Alberta, which has no other local broadcast service, in

¹ The further possibility also remains that, once the reallocation is made, MainQuad could move the station's facilities even closer to Rocky Mount through the use of a contour protection application pursuant to Section 73.215 of the Commission's Rules.

order to serve the Rocky Mount Urbanized Area. Such a move would be contrary to the public interest. In order to prevent such gamesmanship in future, WAQD(FM) should be considered as an existing service in Alberta, and MainQuad should be required to submit a *Tuck* showing.

Respectfully submitted,

GARYSBURG RADIO

By: 
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February 13, 2001

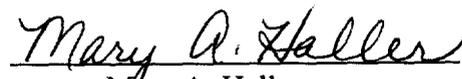
CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Reply Comments" were sent this 13th day of February, 2001, by United States mail, postage prepaid, to the following:

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