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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Ardmore, Brilliant, Gadsden, Moundville)
Pleasant Grove, Scottsboro, Trussville)
Tuscaloosa and Winfield, Alabama, Columbus)
and Okolona, Mississippi, McMinnville,)
Pulaski and Walden, Tennessee))

MM Docket No. 01-62 /
RM-10053

To: Chief, Allocations Branch
Stop Code 1800D5

COMMENTS AND COUNTERPROPOSAL
OF COX RADIO, INC.

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SUMMARY

In response to the *Notice of Proposed Rule Making* in MM Docket No. 01-62, Cox Radio, Inc. (“Cox”) respectfully proposes a mutually exclusive, new allotment of Channel 288A to Springville, Alabama (the “Springville Proposal”) as a counterproposal to Capstar TX Limited Partnership’s and Jacor Licensee of Louisville II, Inc.’s proposal to reallocate Channel 288C3 from Trussville, Alabama to Pleasant Grove, Alabama (the “Pleasant Grove Proposal”). The Springville Proposal should be granted over the Pleasant Grove Proposal because it would provide first local aural service to the community of Springville, which receives fewer reception services than Pleasant Grove and would serve a greater number of persons than the net population gain from the Pleasant Grove Proposal. The Springville Proposal also would provide a new service to the public while the Pleasant Grove Proposal essentially seeks upgraded facilities. The Pleasant Grove Proposal, on the other hand, would remove the sole local service from Trussville and cause an unacceptable interruption of service to the public that would not be remedied by the proposal to replace the lost local service at Trussville with WQEN(FM). Accordingly, the Commission should grant the Springville Proposal and deny the Pleasant Grove Proposal.

Cox opposes the proposal to reallocate Channel 290A from Winfield to Brilliant, Alabama, and to modify Station WKXM-FM’s license to specify Brilliant as its community of license. The Commission should deny the proposal because Brilliant fails to qualify as a community for FCC allotment purposes and removal of the only local FM service from Winfield would be contrary to the public interest and unnecessary in light of WKXM-FM’s current 70 dBu coverage over Brilliant.

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Tuscaloosa and Winfield, Alabama, Columbus)	
and Okolona, Mississippi, McMinnville,)	
Pulaski and Walden, Tennessee))	

To: Chief, Allocations Branch
Stop Code 1800D5

COMMENTS AND COUNTERPROPOSAL OF COX RADIO, INC.

Cox Radio, Inc. (“Cox”),¹ by its attorneys, respectfully submits these comments in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned proceeding (“*Notice*”).² The *Notice* proposes eight interrelated proposals affecting allotments in communities located in Alabama, Mississippi, and Tennessee pursuant to a Petition for Rule Making (“*Petition*”) submitted by Capstar TX Limited Partnership (“*Capstar*”) and Jacor Licensee of Louisville II, Inc. (“*Jacor*”). In these comments, Cox respectfully submits a

¹ Through a wholly-owned subsidiary, Cox is the licensee of seven radio stations in the Birmingham market.

² *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Ardmore, Brilliant, Gadsden, Moundville, Pleasant Grove, Scottsboro, Trussville Tuscaloosa and Winfield, Alabama, Columbus and Okolona, Mississippi, McMinnville, Pulaski and Walden, Tennessee), Notice of Proposed Rule Making, DA 01-563, MM Docket No. 01-62, RM-10053 (rel. Mar. 2, 2001) (“Notice”).*

counterproposal to Capstar's and Jacor's proposal to substitute Channel 288C3 for Channel 290A at Trussville, Alabama; reallocate Channel 288C3 to Pleasant Grove; and modify Station WENN(FM)'s license to specify operation on Channel 288C3 at Pleasant Grove, Alabama (the "Pleasant Grove Proposal"). Cox proposes instead a mutually exclusive, new allotment of Channel 288A to Springville, Alabama (the "Springville Proposal"), which would enable Cox to provide the first local aural service to the community of Springville.

By these comments, Cox also opposes the proposal to reallocate Channel 290A from Winfield to Brilliant, Alabama, and to modify Station WKXM-FM's license³ to specify Brilliant as its community of license. As shown herein, Brilliant fails to qualify as a community for FCC allotment purposes and does not merit a first local service preference. Moreover, removal of the only local FM service from Winfield would be contrary to the public interest and unnecessary in light of WKXM-FM's current 70 dBu coverage over Brilliant. For these reasons, the Commission should deny the proposal to reallocate WKXM-FM from Winfield to Brilliant.

I. THE COMMISSION SHOULD GRANT COX'S COUNTERPROPOSAL TO PROVIDE SPRINGVILLE WITH ITS FIRST LOCAL AURAL SERVICE.

A. The Springville Proposal Is in Technical Compliance with the Commission's Rules.

As indicated in the Technical Exhibit, the Springville Proposal complies with the Commission's technical requirements.⁴ Operation from the proposed site at Springville would provide the requisite city grade signal coverage to all of Springville and would comply with the minimum distance separation requirements, with the exception of the proposed reallocation of

³ The licensee of WKXM-FM is Ad-Media Management Corporation.

⁴ See Exhibit A (Technical Exhibit by du Treil, Lundin & Rackley, Inc. ("Technical Exhibit")).

WENN(FM) from Trussville to Pleasant Grove.⁵ As proposed, the Channel 288A service area would contain 177,400 persons according to the 2000 Census in an area of 2,460 square kilometers.⁶ No aural services are assigned to Springville,⁷ and accordingly, grant of Cox’s counterproposal would provide Springville with its first local aural service.

B. Springville is a Community Deserving of First Local Aural Service.

The Town of Springville, Alabama, qualifies as a community and merits a first local aural service preference.⁸ The Commission defines communities as “geographically identifiable population groupings”⁹ and considers whether the political, social and commercial organizations located in the community identify themselves with the community.¹⁰ Springville’s local government, social organizations, and local businesses all identify themselves with the community of Springville and create a cohesive network for the residents of the town.

The Town of Springville is not located within any Census-defined Urbanized

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ Indeed, in 1999, Capstar proposed to reallocate WQEN(FM) on Channel 271C from Gadsden to Springville to provide this community with its first local service. The FCC did not question Springville’s status as a community in the *Notice of Proposed Rule Making* subsequently issued proposing the change. See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Gadsden and Springville, Alabama), Notice of Proposed Rule Making*, 15 FCC Rcd 10062 (2000). For unspecified reasons, Capstar subsequently requested dismissal of its Petition for Rule Making. See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Gadsden and Springville, Alabama), Report and Order*, 15 FCC Rcd 12622, ¶ 1 (2000).

⁹ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Grants and Peralta, New Mexico), Report and Order*, 14 FCC Rcd 21446, ¶ 8 (1999) (“*Grants and Peralta*”).

¹⁰ See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Las Vegas and Rowe, New Mexico), Report and Order*, 2001 FCC Lexis 559, ¶ 3 (FCC Jan. 26, 2001).

Area.¹¹ The city grade service area would encompass only 1.5% of the land area in the Birmingham Urbanized Area and 0.3% of the population in the Birmingham Urbanized Area based on the 2000 Census.¹² The city grade service area would not encompass any part of the Anniston Urbanized Area.¹³ Thus, the proposed allotment at Springville would cover less than 50% of an Urbanized Area. Accordingly, a *Tuck* analysis demonstrating that Springville is independent of an Urbanized Area is not required.¹⁴

The “appeal” of Springville, “where old times are not forgotten,”¹⁵ “is found in friendly people and the preservation of its history.”¹⁶ Springville is an incorporated town¹⁷ with a population of 2,521 people¹⁸ and occupies an area of 10.025 square kilometers.¹⁹ Springville has its own city hall²⁰ and local government, which is headed by Mayor Charles Griffin.²¹ The local

¹¹ See Exhibit A (Technical Exhibit).

¹² See *id.*

¹³ See *id.*

¹⁴ *Faye and Richard Tuck, Memorandum Opinion and Order*, 3 FCC Rcd 5374 (1988); see, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Headland, Alabama, and Chattahoochee, Florida), Report and Order*, 10 FCC Rcd 10352, ¶ 11 (1995).

¹⁵ See Exhibit B (Springville Area Chamber of Commerce (visited March 22, 2001) <<http://www.springvillealabama.com/>>).

¹⁶ See *id.*

¹⁷ See Exhibit B (2000 Rand McNally Commercial Atlas and Marketing Guide); (Springville Area Chamber of Commerce Local Government (visited March 22, 2001) <<http://www.springvillealabama.com/governme.htm>>).

¹⁸ See Exhibit A (Technical Exhibit), citing the 2000 Census.

¹⁹ See Exhibit B (Key to the City's Page for Springville (visited March 22, 2001) <<http://www.pe.net/~rksnow/alcountyspringville.htm>>).

²⁰ See Exhibit B (Springville Area Chamber of Commerce Visitor Information (visited March 22, 2001) <<http://www.springvillealabama.com/visitor.htm>>).

²¹ See Exhibit B (Springville Area Chamber of Commerce Local Government (visited March 22, 2001) <<http://www.springvillealabama.com/governme.htm>>).

government includes a seven-member City Council, the members of which serve on Committees such as the Budget Committee, Park and Recreation Board, Industrial Development Board, Business License Committee, Street Committee, and Building & Mobile Home Permits Committee.²² Springville also has commissions such as the Planning and Zoning Commission, a Springville Historical Commission, Springville Board of Adjustments, Springville Industrial Development Board, Springville Commercial Development Authority, and a Springville Library Board.²³ Springville has a police department led by Police Chief Chris Isbell,²⁴ with six full-time and two-part time officers.²⁵ Springville also has a volunteer fire department with two stations:²⁶ Springville recently opened the second fire station due to the town's continuing growth.²⁷ Fire Chief Lynn Klinner and Deputy Chief Richard Harvey are among the twenty-four firefighters in the Springville fire department.²⁸ Springville also has its own public utilities,²⁹ its own telephone directory,³⁰ and its own zip code (35146).³¹ All of these services provide an essential network of

²² See Exhibit B (Springville Area Chamber of Commerce Local Government (visited March 22, 2001) <<http://www.springvillealabama.com/governme.htm>>).

²³ See *id.*

²⁴ See Exhibit B (Springville Police Department, (visited April 22, 2001) <<http://www.usacops.com/al/p35146/>>).

²⁵ Conversation with Springville City Hall staff.

²⁶ See Exhibit B (Yahoo! Yellow Pages (visited April 22, 2001) <<http://www.yahoo.com>>); Conversation with Springville fire department staff.

²⁷ See Exhibit B (William Thornton, *Springville Seeks Fire Station Bids*, THE BIRMINGHAM NEWS, (Dec. 29, 2000)).

²⁸ The fire department staff consists of two full-time staff, two part-time staff, and twenty volunteers. Conversation with Springville fire department staff.

²⁹ See Exhibit B (Springville Area Chamber of Commerce Visitor Information (visited March 22, 2001) <<http://www.springvillealabama.com/visitor.htm>>).

³⁰ Conversation with Springville Public Library staff.

³¹ See Exhibit B (Facts and Maps, Springville, Alabama (visited March 25, 2001) <www.digital-neighbors.com/city/al/springville490b.htm>).

public services for the residents of Springville.

Springville also has a Chamber of Commerce³² that acts as a link between the government and the businesses in Springville. In addition, a number of businesses identify themselves with the name of the town, such as the Springville Florist & Wedding Chapel, Springville Cafe, Springville Camp and Conference Center, and Springville House.³³

Springville offers its residents a variety of community and cultural resources. Springville has its own Springville Public Library and Museum³⁴ and numerous churches,³⁵ and offers a rich array of cultural events including “Old Tymes Day,” a day of crafts and entertainment; “Homestead Hollow,” a showcase of artists, craftsmen and historical demonstrations held four times a year; the “Christmas Home Tour;” and the annual Christmas Parade.³⁶ Springville residents also may participate in any of the non-profit organizations in Springville such as the Springville Youth Association, Boy Scouts, Girl Scouts, Springville Kiwanis Club, and Adult Sports Leagues.³⁷

³² See Exhibit B (Springville Area Chamber of Commerce Chamber Mission (visited March 22, 2001) <<http://www.springvillealabama.com/chamber.htm>>).

³³ See Exhibit B (Springville Area Chamber of Commerce Business Directory (visited March 23, 2001) <<http://www.springvillealabama.com/director.htm>>).

³⁴ See Exhibit B (Springville Area Chamber of Commerce Visitor Information (visited March 22, 2001) <<http://www.springvillealabama.com/visitor.htm>>).

³⁵ The Springville Chamber of Commerce website lists the names and addresses of fourteen churches located in Springville. See Exhibit B (Springville Area Chamber of Commerce Churches (visited March 23, 2001) <<http://www.springvillealabama.com/churches.htm>>).

³⁶ See Exhibit B (Springville Area Chamber of Commerce (visited March 22, 2001) <<http://www.springvillealabama.com>>).

³⁷ See Exhibit B (Springville Area Chamber of Commerce Non-Profit Organizations (visited March 23, 2001) <<http://www.springvillealabama.com/organiza.htm>>).

In light of the strong indicia of a nexus between the community and its political, social and commercial organizations, the Town of Springville clearly merits community status for FCC allotment purposes. A grant of the proposal would enable Cox to provide the residents of this community with their first local aural service. Upon the Commission's adoption of the counterproposal, Cox will timely file an application for a construction permit for Channel 288A at Springville and construct and operate the station in accordance with applicable Commission rules. Accordingly, the Commission should grant the counterproposal to allot Channel 288A to Springville, Alabama.

C. The Commission Should Grant the Springville Proposal to the Exclusion of the Pleasant Grove Proposal Because the Springville Proposal Would Better Serve the Public Interest.

The proposed allotment to Springville, Alabama is mutually exclusive with the proposed reallocation of Channel 288C3 from Trussville to Pleasant Grove.³⁸ The FCC evaluates competing allotment proposals in light of the FM allotment priorities set forth in *Revision of FM Assignment Policy and Procedures*.³⁹ These priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. The second and third priorities are given equal weight by the Commission.⁴⁰ Both the Springville Proposal and the Pleasant Grove Proposal would provide first local service to the respective community, and therefore both proposals invoke the third priority. When resolving mutually

³⁸ See Exhibit A (Technical Exhibit).

³⁹ *Revision of FM Assignment Policy and Procedures, Second Report and Order*, 90 FCC 2d 88, 91 (1982) (“*Revision of FM Assignment Policy and Procedures*”). See, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Waelder and Yorktown, Texas), Report and Order*, 12 FCC Rcd 21762, ¶ 3 (1997) (“*Waelder*”).

⁴⁰ *Revision of FM Assignment Policy and Procedures* at 90 FCC 2d 91. See, e.g., *Waelder* at 12 FCC Rcd 21762, ¶ 3.

exclusive proposals that invoke co-equal second or third priorities, the Commission examines the proposals under the fourth priority, public interest matters.⁴¹ In its examination, the Commission analyzes the availability of other reception services to the communities,⁴² the population of each community,⁴³ the extent of each station's proposed coverage in terms of area and population,⁴⁴ and any other relevant public interest considerations such as whether the proposal contemplates new service as opposed to merely upgraded service⁴⁵ or would result in the interruption of existing service.⁴⁶ Upon examination of the public interest benefits of these mutually exclusive proposals, the Commission should grant the Springville Proposal to the exclusion of the Pleasant Grove Proposal.

1. The Springville Proposal would provide service to areas that receive fewer reception services.

The Springville Proposal would provide service to Springville and surrounding areas that receive fewer reception services than those areas proposed to be served by the Pleasant Grove

⁴¹ *Waelder* at 12 FCC Rcd 21762, ¶ 3.

⁴² *See, e.g., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cowden and Tower Hill, Illinois), Report and Order*, 10 FCC Rcd 10511, ¶ 6 (1995) (“*Cowden*”); *Waelder* at 12 FCC Rcd 21762, ¶ 3.

⁴³ *See, e.g., Cowden* at 10 FCC Rcd 10511, ¶ 6; *Waelder* at 12 FCC Rcd 21762, ¶ 3.

⁴⁴ *See, e.g., Cowden* at 10 FCC Rcd 10511, ¶ 6; *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Llano and Marble Falls, Texas), Report and Order*, 12 FCC Rcd 6809, ¶ 6 (1997), *recon. denied*, 13 FCC Rcd 25039 (1998) (“*Llano*”).

⁴⁵ *See Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Benton, El Dorado, Hampton, Harrison, Mena and Sherwood, Arkansas; Homer, Louisiana; Sallisaw and Vinita, Oklahoma; Hooks and Kilgore, Texas), Notice of Proposed Rule Making*, 2 FCC Rcd 1963, ¶ 25 (1987).

⁴⁶ *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Mount Horeb, Mazomanie and Dodgeville, Wisconsin)*, 12 FCC Rcd 11963, ¶ 5 (1997) (“*Mount Horeb*”) (stating that prevention of a possible disruption in service from the proposed channel substitution of an existing station is a public interest consideration weighing in favor of the competing proposal.); *Llano* at 12 FCC Rcd 6809, ¶ 6.

Proposal. As a result, the Springville Proposal would provide greater benefit to the public interest. The proposed Springville service area currently receives a minimum of eight services and a maximum of nineteen services while the proposed Pleasant Grove service area receives a minimum of twelve services and a maximum of twenty-five services.⁴⁷ Although both Springville and Pleasant Grove are considered to be well-served because they receive more than five reception services,⁴⁸ the Commission has taken into account the number of reception services even when both areas are well-served.⁴⁹ Accordingly, this factor should weigh in favor of the Springville Proposal, which would provide first local service to the area with fewer reception services.

Moreover, as stated previously, Springville is not located within any Census-defined Urbanized Area, and the city grade service area of the proposed Springville station would encompass only 1.5% of the Birmingham Urbanized Area land area and 0.3% of the Birmingham Urbanized Area population based on the 2000 Census.⁵⁰ In marked contrast, the Pleasant Grove Proposal would increase WENN(FM)'s current 70 dBu service contour from 52.7% coverage to 78.2% coverage of the Birmingham Urbanized Area land area and from 58.8% coverage to 83.8% coverage of the Birmingham Urbanized Area population.⁵¹ Accordingly, the Springville

⁴⁷ Exhibit A (Technical Exhibit).

⁴⁸ See *Llano* at 12 FCC Rcd 6809, ¶ 6.

⁴⁹ See *Cowden* at 10 FCC Rcd 10511, ¶ 6 (noting that Cowden receives reception service from sixteen stations and Tower Hill receives service from fifteen stations in the Commission's analysis of public interest factors).

⁵⁰ See Exhibit A (Technical Exhibit).

⁵¹ See *id.* The Petition states that the proposed service area of the Pleasant Grove Proposal would cover only 52.4% of the Birmingham Urbanized Area. According to the Technical Exhibit, the Pleasant Grove Proposal would result in coverage of 78.2% of the Birmingham Urbanized Area. The calculation of 52.4% appears to be an error.

Proposal requests authorization to provide service to a greater population and area outside any Census-defined Urbanized Area while the Pleasant Grove Proposal seeks to serve the majority of the Birmingham Urbanized Area, which already receives ample media services. Thus, the Commission should find that the Springville Proposal would better serve the public interest because it would provide new service to an area that is substantially outside of any Urbanized Area.

2. The Commission should not grant the Pleasant Grove Proposal solely based on the greater population of Pleasant Grove.

The Town of Springville has a population of 2,521 persons⁵² while Pleasant Grove has a population of 8,458 persons.⁵³ Yet, the Commission should not grant the Pleasant Grove Proposal solely based on Pleasant Grove's larger population. If the Commission were to do so, such an action would create the skewed result that every larger community would receive preference for a first local service over any smaller community. As a result, only large metropolises would have local radio service and more rural or growing areas would have none. Such a result would be inconsistent with Section 307(b) of the Act and would not be in the public interest.⁵⁴ As discussed, the Town of Springville is a community deserving of first local service and should not be penalized based on the size of its population.

⁵² See *id.*

⁵³ Notice at ¶ 5.

⁵⁴ Cf. *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Sumter, Orangeburg and Columbia, South Carolina)*, 11 FCC Rcd 6376, ¶ 7 (1996) (rejecting a station-to-population ratio calculation on the basis that such results would lead to a gravitation of broadcast services away from rural areas to more populous urban areas and, thus, would be inconsistent with Section 307(b) of the Communications Act.)

3. The number of persons served by the Springville Proposal is greater than the number of persons served by the Pleasant Grove Proposal's net population gain.

As proposed, the Channel 288A service area in Springville would contain 177,400 persons according to the 2000 Census over an area of 2,460 square kilometers.⁵⁵ The service area for the proposed Channel 288C3 allotment in Pleasant Grove would contain 797,000 persons over 4,775 square kilometers. The net population and area gain from the Pleasant Grove Proposal, however, would be only 148,930 persons over an area of 2,314 square kilometers.⁵⁶ A comparison of the number of persons served by proposed Channel 288A at Springville (177,400 persons) with the “net” population gain at Pleasant Grove (148,930 persons) demonstrates that the proposed allotment of Springville will serve 28,470 more persons over an area of 146 square kilometers as compared to the Pleasant Grove Proposal.⁵⁷ This type of comparison is consistent with the Commission’s action in *Sibley, Iowa and Brandon, South Dakota* in which the Commission compared the number of persons that would be served by the proposed new service to Brandon with the number of persons that would be served by the net gain from a proposed reallocation to Brandon.⁵⁸ Accordingly, under this calculation, the Springville Proposal should be favored over the Pleasant Grove Proposal.

⁵⁵ See Exhibit A (Technical Exhibit).

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Sibley, Iowa, and Brandon, South Dakota), Report and Order*, 13 FCC Rcd 22209, ¶ 5 (1998), *recon denied, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Sibley, Iowa, and Brandon, South Dakota), Memorandum Opinion and Order*, 15 FCC Rcd 19130 (2000).

- 4. The Springville Proposal provides a greater public interest benefit than the Pleasant Grove Proposal because it requests authorization to provide a new service while the Pleasant Grove Proposal essentially seeks upgraded facilities.**

The Springville Proposal is preferable to the Pleasant Grove Proposal because it requests authorization for new primary service as compared to the Pleasant Grove Proposal, which essentially requests a modification of license to upgrade WENN(FM)'s facilities. The Commission has stated that where a modification proposal and a new allotment proposal are mutually exclusive, "a modification of license to upgrade facilities to a superior channel is regarded as an increase in existing service which does not provide as great a public benefit as that of a new primary service."⁵⁹ Accordingly, the Springville Proposal, which proposes a new primary service, would provide a greater public benefit than Capstar's proposed upgraded service to Pleasant Grove.

- 5. The Pleasant Grove Proposal causes an unacceptable interruption of service.**

In contrast to the public interest benefits provided by the Springville Proposal, the Pleasant Grove Proposal results in an unacceptable interruption of service that is contrary to the public interest. The Pleasant Grove Proposal proposes the substitution of Channel 288C3 for Channel 290A at Trussville, the reallocation of Channel 288C3 to Pleasant Grove, and modification of WENN(FM)'s license to specify operation on Channel 288C3 at Pleasant Grove. As a result of this proposal, not only will 20,800 persons over 428 square kilometers experience

⁵⁹ *Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Benton, El Dorado, Hampton, Harrison, Mena and Sherwood, Arkansas; Homer, Louisiana; Sallisaw and Vinita, Oklahoma; Hooks and Kilgore, Texas), Notice of Proposed Rule Making*, 2 FCC Rcd 1963, ¶ 25 (1987). See also, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pontotoc, Winona, Coffeerville and Rienzi, Mississippi, and Bolivar, Middleton, Selmer and Ramer; Tennessee)*, 11 FCC Rcd 14430, ¶ 15 (1996).

a loss of service,⁶⁰ but also Trussville will lose its sole local service.⁶¹ The *Notice* indicates that Capstar proposes to replace the lost local service at Trussville by the reallocation of Channel 279C1 from Gadsden to Trussville and modification of WQEN(FM)'s license to specify Trussville as the community of license.⁶² The replacement of the sole local service of WENN(FM) with WQEN(FM) in Trussville will not remedy the interruption of service that the Pleasant Grove Proposal will cause to the public. In a similar case, the Commission addressed proposals to move the sole local service from Llano, Texas, to Marble Falls, Texas, and to allot a replacement channel in Llano to replace the lost local service:

We are also concerned by any disruption in service that would be occasioned by removing the sole local service from Llano. In *Community of License*, 5 FCC Rcd at 7097, the Commission specifically stated that the public has a legitimate expectation that existing service will continue, and that this expectation is a factor to be weighed independently against the service benefits that may result from reallocating a channel. We did so in this proceeding. Ordinarily, allotment of a replacement channel is not sufficient to overcome the concern pertaining to a disruption of local service.⁶³

The Pleasant Grove Proposal poses an unacceptable risk of disruption of service for WENN(FM)'s current listeners.⁶⁴ The Commission has stated that when examining two

⁶⁰ See Exhibit A (Technical Exhibit).

⁶¹ Petition at ¶ 31.

⁶² *Notice* at ¶ 8.

⁶³ *Llano* at 12 FCC Rcd 6809, ¶ 7.

⁶⁴ The Pleasant Grove Proposal is not the only proposal set forth in the *Notice* that would result in a disruption of service. In addition to the proposal to substitute Channel 288C3 for Channel 290A at Trussville, the *Notice* proposes the substitution of Channel 290A for Channel 288A at Tuscaloosa, the substitution of Channel 252C1 for Channel 252A at Pulaski, Tennessee, the substitution of Channel 278A for Channel 252A at Scottsboro, Alabama, and the substitution of Channel 279C3 for Channel 280A at McMinnville, Tennessee. *Notice* at ¶¶ 3, 6, 10, 13, 14. The resulting disruption of service caused by the five proposed channel substitutions clearly would be contrary to the public interest. See *Mount Horeb* at 12 FCC Rcd 11963, ¶ 5.

competing proposals, the prevention of the possible disruption of service resulting from a channel substitution is a public interest consideration weighing in favor of the competing proposal, even where the proposals requested allotments to different communities.⁶⁵

Accordingly, the disruption to the public from the Pleasant Grove Proposal clearly weighs in favor of grant of the Springville Proposal, which would provide the public with a new service and also permit the retention of the current local service at Trussville.

In light of the foregoing, the public interest benefits weigh in favor of granting the Springville Proposal. Springville deserves its first local service, which Cox proposes to provide without the disruption of existing service that would result from the grant of the Pleasant Grove Proposal. Accordingly, the Commission should grant the Springville Proposal and deny the Pleasant Grove Proposal.

II. THE COMMISSION SHOULD DENY THE PROPOSED REALLOCATION OF WKXM-FM FROM WINFIELD TO BRILLIANT.

A. Brilliant Does Not Qualify as a Community for FCC Allotment Purposes.

Capstar and Jacor also propose the reallocation of Channel 290A from Winfield, Alabama, to Brilliant, Alabama.⁶⁶ The Brilliant reallocation is not necessary to any of the other allotment proposals set forth in the *Notice*, yet it must be denied because Brilliant, Alabama, does not qualify as a community for FCC allotment purposes.

The Commission defines communities as “geographically identifiable population groupings.”⁶⁷ Although generally the Commission looks to whether the community is

⁶⁵ See *Mount Horeb* at 12 FCC Rcd 11963, ¶ 5.

⁶⁶ *Notice* at ¶ 7.

⁶⁷ *Grants and Peralta* at 14 FCC Rcd 21446, ¶ 8.

incorporated or listed in the U.S. Census, this evidence is rebuttable.⁶⁸ The minimal information regarding Brilliant provided by Capstar and Jacor together with the information submitted herein demonstrates that there is no nexus between the political, social and commercial organizations and the area known as Brilliant.

Brilliant has a population of only 751 people (with 366 housing units) as of the 1990 Census⁶⁹ and a population of 762 people according to the 2000 Census.⁷⁰ As the population statistics from 1990 to 2000 indicate, the town has not experienced a noticeable growth in population over the last ten years. Notably, the population of Brilliant declined 13.8% from 1980 to 1990.⁷¹ The land area of Brilliant is a mere 3.02 square miles⁷² or approximately 7.825 square kilometers.⁷³

According to Brilliant's city clerk, most people who live in Brilliant work in the nearby larger cities of Hamilton or Winfield, and two of the major employers in Brilliant, Brilliant Homes and A-1 Manufacturing, have recently gone out of business.⁷⁴ In conjunction with the

⁶⁸ See *Grants and Peralta* at 14 FCC Rcd 21446, ¶ 8 (finding that Peralta does not qualify as a community despite its listing in the U.S. Census); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pleasant Dale, Nebraska), Report and Order*, 14 FCC Rcd 18893, ¶ 6 (1999) (finding that Pleasant Dale does not qualify as a community despite its incorporated status) (“*Pleasant Dale*”).

⁶⁹ See Exhibit C (Places Named Brilliant (visited April 16, 2001) <<http://www.placesnamed.com/B/R/brilliant.asp>>).

⁷⁰ Exhibit A (Technical Exhibit).

⁷¹ See Exhibit C (1990 Census; 1987 Census of Governments; 1990 Survey of Governments; Alabama Criminal Justice System Figures).

⁷² See Exhibit C (Places Named Brilliant (visited April 16, 2001) <<http://www.placesnamed.com/B/R/brilliant.asp>>).

⁷³ See Exhibit C (Key to the City's Page for Brilliant (visited April 16, 2001) <www.pe.net/~rksnow/alcountybrilliant.htm>).

⁷⁴ American Homestar is the parent company of Brilliant Homes. See Exhibit C (Tanya Sasser Rutledge, *American Homestar Continues Expansion Through Acquisition*, HOUSTON

continued...

closing of Brilliant Homes, the parent company has offered its workers transfers to a plant in Lynn, Alabama.⁷⁵ As a result of the closings, many more people will need to leave Brilliant to work. The Commission has stated that employment outside the area is a factor weighing against community status.⁷⁶ According to Brilliant’s city clerk, Brilliant does not have a local phone directory — the listings for Brilliant are included in the Hamilton and Haleyville phone directories.⁷⁷ Brilliant has no local library.

Merely stating that the town “has a mayor, town council, . . . zip code, and several retail businesses,” as the Petition has done, is insufficient to demonstrate that Brilliant is a community.⁷⁸ The Petition contains no indication that the businesses are intended to serve the needs of Brilliant rather than nearby Hamilton or Winfield.⁷⁹ The Commission has stated that “[t]his is a critical deficiency because in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question.”⁸⁰

...continued

BUSINESS JOURNAL, April 18, 1997.) See also Exhibit C (*American Homestar Corporation Announces Results for Fiscal 2000*, BUSINESS WIRE, Aug. 15, 2000 (stating that American Homestar has closed its manufacturing facility in Brilliant Alabama)).

⁷⁵ See Exhibit C (*American Homestar to Consolidate Production in Alabama*; BUSINESS WIRE, Mar. 15, 2000).

⁷⁶ See *Grants and Peralta* at 14 FCC Rcd 21446, ¶ 8.

⁷⁷ See Exhibit C (Haleyville Hamilton Yellow Pages, Jan. 2001).

⁷⁸ See Petition at ¶¶ 28, 29. See *Pleasant Dale* at 14 FCC Rcd 18893, ¶ 6 (finding that Pleasant Dale did not qualify as a community even though it is incorporated, has a mayor, town council, post office, zip code, and several retail businesses).

⁷⁹ See *Pleasant Dale* at 14 FCC Rcd 18893, ¶ 6.

⁸⁰ *Id.*

As demonstrated, Brilliant fails to qualify as a community. Accordingly, Brilliant does not merit a first local service priority and reallocation of the channel to Brilliant would not serve the public interest.⁸¹ As such, the proposal should be denied.

B. Removal of WKXM-FM From Winfield Is Contrary to the Public Interest, Particularly Given That WKXM-FM Already Covers Brilliant With a City Grade Contour.

Even if Brilliant were to qualify as a community, the removal of WKXM-FM from Winfield would be contrary to the public interest in light of Winfield residents' legitimate expectation of continuing service and WKXM-FM's current city grade contour coverage of Brilliant. WKXM-FM is Winfield's only local FM service, and as such, removal of WKXM-FM will leave the 4,540 persons of Winfield with essentially a daytime-only AM station.⁸² The Commission has held time and again that communities of license have a legitimate expectation that existing transmission service will continue.⁸³ The Commission also stated that it will weigh this expectation of continuing service against the benefits of the proposed reallocation, even when the service to be removed is a reception service.⁸⁴ Since 1992,⁸⁵ the community of Winfield has come to rely on WKXM-FM for programming that addresses the community's problems, needs and interests. The Commission must therefore give particular weight to the legitimate expectation of the residents of Winfield that service from WKXM-FM will continue.

⁸¹ See *id.* (finding that reallocation of channel to Pleasant Dale would not serve the public interest because Pleasant Dale does not qualify as a community).

⁸² Exhibit A (Technical Exhibit).

⁸³ See e.g., *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, Memorandum Opinion and Order*, 5 FCC Rcd 7094, ¶ 19 (1990).

⁸⁴ See *id.*

⁸⁵ The FCC granted WKXM-FM's license to cover on May 1, 1992. FCC File No. BLH-19910725KA.

Moreover, the fact that WKXM-FM's existing 70 dBu contour already encompasses Brilliant⁸⁶ is a factor that weighs heavily against the grant of the proposal. Channel 290A's licensed transmitter site is located only 2.9 kilometers from the proposed transmitter site and only 4 kilometers from Brilliant.⁸⁷ When a station already provides a 70 dBu signal to its desired community but provides no evidence that it was unable to provide the community with specialized service, the Commission has consistently denied petitions to reallocate stations.⁸⁸ In this case, WKXM-FM covers Brilliant from its current licensed transmitter site, proposes to move the transmitter a mere 2.9 kilometers, and fails to demonstrate that it cannot provide specialized service to Brilliant from its current allocation. Accordingly, the Commission should deny the proposal to reallocate WKXM-FM to Brilliant.

Denial of the proposed reallocation would preserve Winfield's only local FM service and, at the same time, permit WKXM-FM to serve Brilliant from its current site. The public interest benefits associated with denial of the proposal clearly outweigh any benefits associated with granting the request. In light of the above, the Commission should deny the proposal to reallocate WKXM-FM from Winfield to Brilliant.

⁸⁶ See Exhibit A (Technical Exhibit).

⁸⁷ See *id.*

⁸⁸ See, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Sumter, Orangeburg and Columbia, South Carolina), Report and Order*, 11 FCC Rcd 6376, at ¶ 7; *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Bronson and Cross City, Florida), Report and Order*, 10 FCC Rcd 8102, ¶6 (1995); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Brunswick and Waycross, Georgia), Report and Order*, 8 FCC Rcd 17, ¶10 (1992).

CONCLUSION

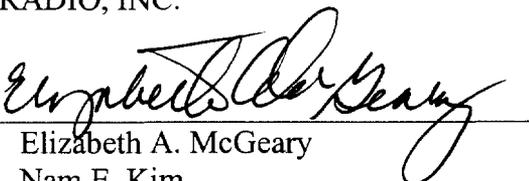
In light of the foregoing, the Commission should grant Cox's counterproposal proposing the allotment of Channel 288A to Springville, Alabama, and deny the Petition's mutually exclusive proposal proposing the reallocation of WENN(FM) on Channel 288C3 from Trussville to Pleasant Grove. As discussed, grant of the Springville Proposal would provide the community of Springville with its first local service and would serve the public interest more effectively than a grant of the Pleasant Grove Proposal.

Moreover, the Commission should deny the proposed reallocation of WKXM-FM from Winfield to Brilliant, Alabama. As demonstrated, Brilliant fails to qualify as a community given the lack of a nexus between the community and the political, social and commercial organizations. In addition, the residents of Winfield have a legitimate expectation of continued service from WKXM-FM, and WKXM-FM has not demonstrated that it is unable to provide specialized service to Brilliant from its current location.

Respectfully submitted,

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By:


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April 24, 2001

Exhibit A

**Technical Exhibit
by du Treil, Lundin & Rackley, Inc.**

TECHNICAL EXHIBIT
IN SUPPORT OF COMMENTS IN MM DOCKET NUMBER 01-62

Technical Narrative

The Technical Exhibit, of which this Narrative is part, contains a (1) counterproposal of Channel 288A at Springville in lieu of Channel 288C3 at Pleasant Grove, (2) analysis of urbanized area coverage of the proposed Channel 288C3 at Pleasant Grove and (3) analysis of reallocation of Channel 290A to Brilliant.

All population data, unless otherwise noted, is based upon the 2000 Housing and Population Census. The determination of available reception services was based on the criteria set forth in footnote 1 of the Notice of Proposed Rule Making in MM Docket No. 96-219 (DA 96-1774; adopted October 25, 1996, released November 1, 1996).

Proposed Channel 288A Springville, Alabama

Channel 288A is proposed at Springville, Alabama as a counterproposal to reallocating Channel 290A at Trussville, Alabama to Channel 288C3 at Pleasant Grove, Alabama.

The attached Figure 1 is a tabulation of the required separations pertinent to the use of Channel 288A at Springville. The proposed reference site complies with the Commission's minimum distance separation requirements contained in Section 73.207 to all existing, authorized and proposed stations and allotments, except for the proposed Channel 288C3 at Pleasant Grove. Operation from the reference site will provide the requisite city grade signal to all of Springville. Figure 2 is a coverage map

showing the 70 dBu contour and the city limits of Springville.

Below are the Springville reference site geographic coordinates:

33° 46' 30" North Latitude
86° 28' 18" West Longitude

According to the 2000 Census, the town of Springville has a population of 2,521 persons. The Channel 288A service area would contain 177,400 persons over an area of 2,460 square kilometers.¹ There are no aural services assigned to Springville.

The proposed Channel 288C3 at Pleasant Grove will serve a population of 797,000 persons over an area of 4,775 square kilometers. The existing Channel 290A at Trussville already serves a population of 648,000 persons over an area of 2,460 square kilometers. The net population and area gain between the existing Channel 290A at Trussville and Channel 288C3 at Pleasant Grove is 148,930 persons over an area of 2,314 square kilometers.² As aforementioned, the proposed Channel 288A at Springville will serve 177,400 persons over an area of 2,460 square kilometers. Therefore, in comparing Channel 288A at Springville service to the "net" Channel 288C3 gain at Pleasant Grove, the new Springville proposal will provide an additional service to 28,470 persons over an area of 146 square kilometers compared to the Pleasant Grove proposal. All populations are based upon the number of persons residing within the 60 dBu service contour.

¹ According to the 1990 Census, the Channel 288A service area would contain 148,250 persons.

² The population and area loss between Channel 290A at Trussville and Channel 288C3 at Pleasant Grove is 428 square kilometers containing a population of 20,800 persons. The population and area gain between Channel 290A at Trussville and Channel 288C3 at Pleasant Grove is 2,742 square kilometers containing a population of 169,730 persons.