

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments, FM Broadcast)
Stations (Mt. Pleasant and Hemlock,)
Michigan))

MM Docket # 01-107
RM-10057
RECEIVED

JUN 28 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Chief, Allocations Branch

**COMMENTS OF THE MACDONALD BROADCASTING COMPANY
IN RESPONSE TO NOTICE OF PROPOSED RULE MAKING**

The MacDonald Broadcasting Company (MacDonald), by counsel and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415) hereby respectfully submits its comments¹ in response to the Notice of Proposed Rule Making (the Notice), DA 01-1152, released May 4, 2001. The Notice proposes to reallocate FM Channel 233C1 from Mount Pleasant, Michigan to Hemlock, Michigan, and to modify the license of FM Broadcast Station WCEN, Mount Pleasant, to specify operation at Hemlock, at the request of Wilks Broadcasting LLC (Wilks). In opposition to this proposal, MacDonald states as follows:

1. MacDonald is the licensee of, *inter alia*, WSAM-AM and WKCQ-FM, Saginaw, Michigan, and WEEG-FM, Essexville, Michigan, each of which compete with WCEN for listeners and advertising revenues in the Saginaw-Bay City-Midland market. It is therefore an

¹ These comments are being tendered after the close of the comment date (June 25, 2001) but well within the reply comment date. The Commission's ECFS shows, as of this date, that no statement of continuing interest was filed by the Petitioner. Assuming that such comments were filed by the Petitioner, but do not appear in the database, these comments may be treated as reply comments in this proceeding.

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interested party relative to this proceeding, within the meaning of such in the Commission's rules.

2. The proposed city of license change for WCEN, from Mt. Pleasant to Hemlock, is no more than a "move-in" from a smaller community to the City of Saginaw. Mt. Pleasant, with a 2000 census population of 25,946 persons, is located approximately 50 miles from Saginaw. Hemlock, with a population of only 1,601, is located approximately 10 miles directly west of Saginaw. Hemlock is a suburb of the larger city of Saginaw (which has a population of more than 130,000, including the City population of 70,000 and the township population of 40,000 persons). Though the Notice indicates that the transmitter site for WCEN would not change if the proposed allotment of Channel 233C1 is moved to Hemlock, the city of license change would permit WCEN to locate its main studio in Saginaw, a city with a substantially larger population than Hemlock or Mt. Pleasant. The only conceivable reason for the city of license change is to permit identification of WCEN with the City of Saginaw.

3. That this is the intention of the petitioner is made clear by virtue of the fact that there is no main studio for WCEN anywhere near Mt. Pleasant. Rather, the main studio for WCEN is and has been located in Saginaw, in violation of the Commission's main studio rule, Section 73.1125(a). The proposed allocation change would legalize the location of the station's main studio in Saginaw. Attached hereto as **Exhibit A** is a statement of Mr. Nicholas J. Hall, a resident of Saginaw. Mr. Hall states, under penalty of perjury, that on or about June 27, 2001, he visited, at approximately 1:00 PM, a studio for WCEN located at 1795 Tittabawassee Road in Saginaw, in order to inspect the station's public file. He was allowed to review that file at that location. He spoke with an employee of the station, one Charlie Rood, who stated that the

Tittabawassee Road, Saginaw studio was the only broadcast location and main studio for WCEN, and was told that it was.

4. As further evidence of the intent of the licensee to make WCEN a Saginaw station, there appeared in the Saginaw Morning Sun newspaper on May 15, 2001 an article concerning the proposed city of license change. Therein, the Marketing Manager of WCEN was quoted. The article stated, in part, as follows:

"The FCC wants us to broaden out coverage area of license by moving closer to our operating facility." Market Manager Mike Laviolette said. The move is just a formality, Laviolette said, and does not change WCEN's operations or programming. "The license is just a piece of paper," Laviolette said. What is important is what you do on the air, because those are the things that benefit a community."

Wilks bought WCEN last August and moved operations from Mt. Pleasant to Saginaw in November....

It is apparent that the licensee has moved all broadcast operations and the studio of WCEN to Saginaw, and the proposed city of license change is no more than an effort to legitimize the conversion of this station to a Saginaw station.

5. Under these circumstances, where it is apparent that the move to a suburban community adjacent to an urbanized area is merely a subterfuge for a move to the larger city, the Commission should have required of the Petitioner in this proceeding the same showing required in other cases, to determine whether or not Hemlock warrants a first local service preference. *See, Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd. 10342 (1995); *RKO General (KFRC)*, 5 FCC Rcd. 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd. 5324 (1988). Under those authorities, three criteria are considered in making a first local service preference determination: (1) signal coverage, i.e. the degree to which the station would provide

coverage not only to the suburban community (Hemlock) but to the adjacent metropolis as well; (2) the size and proximity of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city. None of those issues is addressed in this proceeding, or was addressed by the petitioner to date. Here, signal coverage does not change, but the town of Hemlock is substantially smaller than the City of Saginaw, and, as a small town with a population of only 1,601 is largely dependent on Saginaw for services. In *Ada, Newcastle and Watonga, Oklahoma*, the Commission applied the *KFRC* and *Tuck* factors by reviewing eight criteria, none of which is addressed in this case, to-wit:

(a) The extent to which community residents work in the larger metropolitan area, rather than the specified community.

(b) Whether the smaller community has its own newspaper or other media that cover the community's local needs and interests.

(c) Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area.

(d) Whether the specified community has its own local government and elected officials.

(e) Whether the smaller community has its own telephone book provided by the local telephone company or zip code.

(f) Whether the community has its own commercial establishments, health facilities, and transportation systems.

(g) The extent to which the specified community and the central city are part of the same advertising market.

(h) The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries.

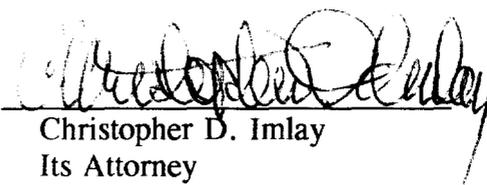
Applying these criteria, it is inescapable that Hemlock, though a CDP, is nonetheless inextricably interconnected with Saginaw, and the obvious intent of the licensee of WCEN is for the station to become a Saginaw station. A community with a population similar to Hemlock was found not

to warrant an allotment due to its proximity to, and location between, two larger communities, the urbanized area of which included the small community. *Greenfield and Del Ray Oaks, California*, 4 CR 1276 (MMB 1996) (Community for allotment purposes denied allotment under *Tuck* and *KFRC* criteria). Given these circumstances, MacDonald urges that the proposed reallocation not be made, and that the license of WCEN not be modified as proposed in the Notice. Alternatively, the Commission is requested to solicit a showing by the Licensee addressing the above-referenced criteria, heretofore unaddressed, and allowing a reasonable reply period thereafter.

Therefore, the foregoing considered, The MacDonald Broadcasting Company respectfully requests that the Notice Proposal not be adopted, and that Channel 233C1 not be reallocated from Mt. Pleasant to Hemlock. Further, it is requested that the Commission investigate the current location of the main studio of WCEN and determine whether the licensee is in violation of Section 73.1125(a) of the Commission's rules and if so, what the proper sanction should be.

Respectfully submitted,

THE MACDONALD BROADCASTING COMPANY

By: 
Christopher D. Imlay
Its Attorney

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June 29, 2001

EXHIBIT A

I, Nicholas J. Hall hereby state under penalty of perjury the following:

On Wednesday, June 27, 2001, between the time of 12:50 p.m. and 1:05 p.m. I visited and inspected the Federal Communications Commission Public File of radio stations WSGW and WCEN at the site of 1795 Tittabawassee Rd., Saginaw, MI.

The FCC Public File reflected a Mt. Pleasant studio address for WCEN. When questioning the individual (Charlie Rood) who showed me the FCC Public File about a petition for a ruling making City of license from Mt. Pleasant to Saginaw or Hemlock, he indicated that he wasn't aware of one, but that Operations Manager Dave Maurer might know of one and that he would not be available for approximately one half hour.

When I asked Mr. Rood if WCEN was still broadcasting out of Mt Pleasant, he said no. When asked Tittabawassee Road was the only broadcast location and main studio, he said yes.

Signed,

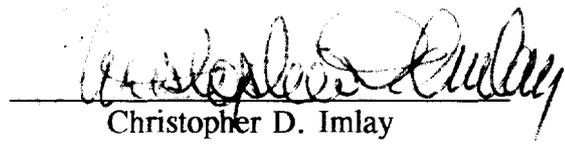
A handwritten signature in black ink, appearing to read "Nicholas J. Hall". The signature is written in a cursive style with a large initial "N".

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify under penalty of perjury that I caused to be served, this 29th day of June, 2001, via United States Mail, postage prepaid, a copy of the "COMMENTS OF THE MACDONALD BROADCASTING COMPANY IN RESPONSE TO NOTICE OF PROPOSED RULE MAKING" on the following:

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Mass Media Bureau
Federal Communications Commission
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