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

AUG 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)	
)	
Amendment of Section 73.202,)	MM Docket No. 99-240
Table of Allotments,)	RM-9503
FM Broadcast Stations,)	
(Albemarle and Indian Trail,)	
North Carolina))	

To: The Commission

APPLICATION FOR REVIEW

MONROE BROADCASTING COMPANY, INC.

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August 9, 2001

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APPLICATION FOR REVIEW

Monroe Broadcasting Company, Inc. ("MBC"), licensee of Station WIXE (AM), Monroe, North Carolina, by its counsel, pursuant to 47 C.F.R. 1.115, hereby submits its "Application for Review" of the action of the Chief, Allocations Branch, pursuant to delegated authority, in Report and Order in MM Docket No. 99-240 (RM-9503), DA-01-1660, rel. July 13, 2001. Therein, Channel 256 A, which is licensed to Susquehanna Radio Corp. ("SRC") and operated as Station WABZ (FM), was reallocated at the request of SRC from Albemarle, North Carolina, to Indian Trail, North Carolina.

MBC seeks review because the action of the Chief, Allocations Branch, is in conflict with case precedent and established Commission policy. In support of its application for review, MBC submits the following comments.

- (a) The Report and Order Erred by Holding that Because Monroe was Not a U.S. Census Designated Urbanized Area there was No Need for the Petitioner to Demonstrate the Independence of Indian Trail from Monroe

The Report and Order, at para. 11, holds that because the City of Monroe is not a U.S. Census designated Urbanized Area, there was no need for SRC, the petitioner, to demonstrate the independence of the community of Indian Trail from the adjacent City of Monroe. However, this holding is patently in conflict with case precedent and established Commission policy and therefore must be reversed and the rulemaking remanded to the staff for further consideration.

The Commission has never held that the sine qua non for determining the interdependence of two adjacent communities is the communities being located in a U.S. Census designated Urbanized

Area, or that the larger community itself be such a designated Urbanized Area. Rather, established Commission policy as stated in Richard & Faye Tuck, Inc., 3 FCC Rcd 5374, 5380, para. 49 (1988), is that "the party seeking to have us apply Huntington to a community outside an Urbanized Area must affirmatively show that there is sufficient dependence on the central city to support a public interest finding that the [smaller] given community's local transmission needs can be adequately satisfied by stations licensed to other communities within the larger ... area."

In accord is Beaufort County Broadcasting Co. v. FCC, 787 F.2d 645, 653 (D.C. Cir. 1986). It holds that in a non-metropolitan context, a party may be allowed to demonstrate the interdependence of two adjacent communities, although the burden is higher than in a metropolitan context.

In its comments filed with the Chief, Allocations Branch, MBC affirmatively demonstrated the interdependence of Indian Trail and Monroe and the dependence of the smaller community of Indian Trail (pop. 1,942) on the adjacent and larger City of Monroe (pop. 20,600). Both communities are located in Union County. Monroe is the county seat and dominant community in the county.

Three radio stations are licensed to Monroe. They are Stations WIXE (AM), WKRE (AM), and WDEX (AM). The latter station is a Class B with 2.5 kw service both daytime and nighttime. Monroe is located just outside the Charlotte MSA and it has a radio market distinct from Charlotte.

The proposed tower site for Station WABZ (FM) is 6.2 miles

northeast of Indian Trail. Thus, as a result of the close proximity to Monroe, the protected 70 dBu signal contour would encompass all of Monroe and most of Union County, and would mostly replicate the signal contours of the Monroe AM stations.

Indian Trail's dependence upon and interdependence with Monroe is amply demonstrated by record evidence as follows:

(1) The Extent to Which Indian Trail Residents Work in Monroe

According to data submitted by SRC, only 11.3% of the residents of Indian Trail work in that community, while 10.9% work elsewhere in Union County. Because Monroe is the closest community to Indian Trail in Union County and the economic and business center of that county, it is presumptive that those persons work in or adjacent to Monroe.

(2) Whether Indian Trail has its Own Media or is Served by Monroe

According to data submitted by SRC, Indian Trail is served by the Monroe Enquirer Journal and by Cablevision of Monroe. Indian Trail is also served by Stations WIXE (AM), WKRE (AM), and WDEX (AM), which are licensed to Monroe.

(3) Whether Indian Trail Perceives Itself to be a Part of Monroe

According to data submitted by SRC, Indian Trail has recently annexed much land and population adjacent to Monroe. The growth of both Indian Trail and Monroe is toward each other.

(4) Whether Indian Trail has its Own Local Government

According to data submitted by SRC, although Indian Trail is an incorporated community, all municipal services are provided by Union County (Monroe is the county seat).

(5) Whether Indian Trail has its Own Telephone Book

According to data submitted by SRC, Indian Trail telephone listings are included in a large metro area telephone book, which includes both Charlotte and Monroe.

(6) Whether Indian Trail has its Own Commercial Establishments

Although Indian Trail has its own commercial establishments, it is located adjacent to Monroe, which is the commercial, economic and business center of Union County.

(7) The Extent that Indian Trail is Part of the Monroe Ad Market

According to data submitted by SRC, Indian Trail is wholly dependent upon the Monroe Enquirer Journal and Cablevision of Monroe for local advertising and thus is an integral part of the Monroe advertising market. Indian Trail is also served by Stations WIXE (AM), WKRE (AM), and WDEX (AM), which are licensed to Monroe.

(8) The Extent that Indian Trail Relies Upon Monroe for Services

According to data submitted by SRC, Indian Trail relies wholly upon Union County for municipal services. The Union County government, located in Monroe, provides police and fire protection, water and sewage services, library services, and operates the public schools.

Accordingly, in its attempt to show that Indian Trail is independent of nearby urban Charlotte, SRC admitted to the interdependence of Indian Trail and Monroe and its dependence upon Monroe. Thus, the reallocation to Indian Trail must be considered as a fourth local service and a second full-time service to Monroe.

Under Commission policy in Richard & Faye Tuck, 3 FCC Rcd at

5378, para. 37, one of the more important tests for determining interdependence is whether the two communities are part of the same advertising market and whether the smaller community utilizes advertising outlets in the larger community. In the instant case, SRC has acknowledged and demonstrated the interdependence of Indian Trail and Monroe and its dependence upon media outlets in Monroe through being in the same local advertising market.

(b) The Report and Order Erred by Considering the Reduction of Short-Spacing to be a Higher Priority than a Preferential Arrangement Under Section 307 (b)

The Report and Order, at paras. 2-7, erred by considering the reduction of short-spacing to be a higher priority than a preferential arrangement under Section 307 (b). This error requires reversal and a remand for further consideration.

Under established Commission policy, a proposal which would reduce or eliminate signal degradation and technical problems would not, standing alone, justify a reallocation. It must first be shown that the reallocation would result in a preferential arrangement under Section 307 (b). Ravenswood and Elizabeth, West Virginia, 10 FCC Rcd 3181, paras. 3-4 (1995).

In accord is Chillicothe, Forest, Lima, New Washington, Peebles, and Reynoldsburg, Ohio, 12 FCC Rcd 13710, 13715, para. 13 (1996), recon. dismissed, rel. Jan. 15, 1999. It holds that the fact that a proposed reallocation would reduce or eliminate short-spacings, even without creating new short-spacings to previously unaffected stations, is not sufficient by itself to warrant a grant.

The fact that the staff addressed the short-spacing issue in the first six substantive paragraphs of the Report and Order and addressed the Section 307 (b) issues only last is conclusive proof that the reduction of short-spacing took priority over a preferential arrangement under Section 307 (b). Indeed, with respect to the issue of the interdependence of Indian Trail with Monroe, the staff gave it cursory treatment, as an afterthought, and did no real analysis.

Accordingly, the rulemaking must be remanded to the staff to consider in the first instance the interdependence of Indian Trail with Monroe and its dependence upon Monroe and thus whether the reallocation would result in a preferential arrangement under Section 307 (b), or rather a fourth transmission service to Monroe. Only after this determination has been made, can the staff consider the reduction of short-spacing as a "public interest" factor.

WHEREFORE, in view of the foregoing, the action of the Chief, Allocations Branch, must be reversed and remanded for further consideration, as inconsistent with and in conflict with case precedent and established Commission policy.

Respectfully submitted,

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By: 

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August 9, 2001

CERTIFICATE OF SERVICE

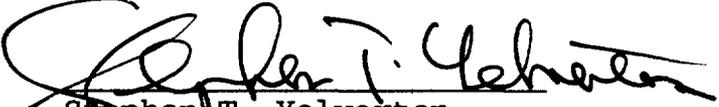
I, Stephen T. Yelverton, an attorney at law admitted to practice in the District of Columbia, hereby certify that on the 9th day of August, 2001, I have caused to be mailed, U.S. Mail, postage pre-paid, a copy of the "Application for Review" filed by Monroe Broadcasting Company, Inc., to the following persons or parties:

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