

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

SEP 13 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Albemarle and Indian Trail, North Carolina) )

MM Docket No. 99-240 /  
RM - 9503

To: The Commission

**OPPOSITION TO APPLICATION FOR REVIEW**

Susquehanna Radio Corp. ("SRC"), by its counsel and pursuant to Section 1.115(d) of the Commission's Rules hereby submits its Opposition to the "Application for Review" of Monroe Broadcasting Company, Inc. ("MBC"), licensee of Station WIXE(AM), Monroe, North Carolina which seeks review of the decision in the above-captioned case, Report and Order, DA 01-1660, released July 13, 2001 ("Report and Order"). In support hereof, SRC states as follows:

I. The Application for Review Fails to Demonstrate that the Report and Order is in Conflict with the Communications Act, FCC regulation, Case Precedent or Commission Policy.

1. Section 1.115(b)(2) of the Commission's Rules require that an application for review shall concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact and conclusions of law. Moreover, the Rule requires the applicant to specify with particularity the factors that warrant the Commission consideration of the questions presented. 47 C.F.R. § 1.115. MBC's Application for Review fails to meet the requirements of Section 1.115. First, MBC fails to concisely and plainly state the questions presented for review. Second, in its "comments", MBC fails to demonstrate that the Report and Order fell within any of the factors that the Commission will consider in an application for review. Furthermore, MBC's

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Application for Review does not raise any issues that have not already been considered and discussed in the Report and Order, as MBC raised the same issues in its Comments in Opposition to SRC's proposal. Accordingly, MBC's Application for Review should be denied and dismissed as defective.

II. The Report and Order Considered the Short-Spacing Analysis as a Prerequisite to Acceptability of SRC's Proposal to Change the Community of License.

2. MBC misconstrues the Report and Order discussion of the short-spacing analysis.

The Bureau's primary discussion of the short-spacing analysis goes to the "acceptability" of SRC's proposal. The Commission has stated that "[i]n the first case the question of whether the amended allotment would result in a preferred distribution of facilities under our allotment priorities and policies will serve as a *threshold test of acceptability of the proposal.*" Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, MM Docket No. 88-526, 4 FCC Rcd 4870, ¶28 (1989) ("New Community of License R&O") (emphasis added). Even before a Section 307(b) analysis is made, the Bureau is first required to determine whether SRC's proposal is acceptable for filing and consideration. The short-spacing analysis in the Report and Order properly determined that SRC's proposal was acceptable for filing and consideration despite the existence of a short spacing. The Report and Order found the public interests benefits of eliminating two (2) pre-1964 grandfathered short-spacings and a drastic reduction in a third short-spacing to be compelling. Thus the staff could then proceed to evaluate the question of whether the provision of a first local service to Indian Trail represented a preferential arrangement of allotments. Indeed, once the Bureau determined that SRC's proposal was acceptable, the Bureau devoted the remainder of its Report and Order to discussing the Section 307(b) factors.

III. The Report and Order Properly Determined that Indian Trail, North Carolina is an Independent Community.

3. As a preliminary matter, MBC's Application for Review should be dismissed because MBC failed to demonstrate that prior case precedent or Commission policy requires an applicant to demonstrate independence from all nearby communities where such communities are not located within an urbanized area. No FCC case precedent or Commission policy stands for the proposition that when an applicant seeks to change its community of license that the applicant must demonstrate the new community of license's independence from all surrounding larger cities. The Commission has not expressed any interest in this context. Rather, in its Memorandum Opinion and Order, Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, MM Docket No. 88-526, 5 FCC Rcd 7094 (1990) ("MO&O"), the Commission clarified that the new change in community of license procedure will not "result in the migration of stations from rural to urban areas." *Id.* at ¶11. The Commission went on to state that it will "consider whether a proposal would result in shifting of service from underserved rural to a well-served urban area and the public interest consequences of any such change." *Id.* at ¶12. Contrary to MBC's contention, the Commission does not concern itself with the effects of the proposed change of community of license on all other larger surrounding communities, nor should the Commission make such requirements now as it would lead to waste of Commission's resources. See New Community of License R&O at ¶ 34.

4. Furthermore, MBC misconstrues Richard & Faye Tuck, Inc., 3 FCC Rcd 5374, ¶49 (1988) in this regard. The Commission begins paragraph 49 of that case by stating that: "[i]n concluding that *Urbanized Area* is relevant in Huntington determinations but that SMSA is not. . . We hold *only that Urbanized Area is an appropriate definition of "community" under Huntington,*

but that Huntington does not automatically encompass all communities within the SMSA.” Id (emphasis added). Clearly, the Commission intended to require eight factors for determining independence as outlined in Richard & Faye Tuck, Inc. to apply only in instances where the new community of license was within an urbanized area, not closer to another larger community. In this instance, Indian Trail, North Carolina is within the Charlotte, North Carolina urbanized area. Monroe is not an urbanized area. Accordingly, the Report and Order was correct in determining that there is no need for SRC to demonstrate Indian Trail’s independence from Monroe. Report and Order, ¶11.

4. Even assuming that SRC were required to demonstrate Indian Trail’s independence from Monroe, as the Report and Order found, the record evidence showed Indian Trail’s independence from Monroe as well as Charlotte.

(1) *The Extent to Which Indian Trail Residents Work in Indian Trail.* The record established 11.3% of the residents of Indian Trail work in Indian Trail, and that another 10.9% work in Union County. MBC failed to establish how much of the Indian Trail residents work in Monroe, and such presumption cannot be made.

(2) *The Needs and Interests of Indian Trail are Met through Local Media Outlets.* Aside from the Enquirer Journal, which MBC claims is a Monroe newspaper, and Cablevision of Monroe, the record evidence demonstrated that Indian Trail has its own webpage which provides community information, news and a means for local businesses to advertise.

(3) *Community Leaders and Residents Perceive Indian Trail as Separate from Charlotte and Monroe.* As demonstrated in the following factor, Indian Trail has its own local government and elected officials, this self-government is a demonstration that residents perceive themselves as a separate community from Monroe and Charlotte. Despite Indian Trail’s annexation eastward, there

is no basis for concluding that Indian Trail will become dependent on Monroe when it already has sufficient indicia of independence.

(4) *Indian Trail Has its Own Local Government and Elected Officials.* MBC concedes that Indian Trail is self-governed. It argues, however, that Indian Trail's municipal services are provided by Union County where Monroe is the county seat. The fact that Monroe is the county seat for Union County is not determinative that Indian Trail is dependent on Monroe. As the record evidence demonstrated, Indian Trail does provide some municipal services such as trash collection, zoning and planning for its residents, and of course governs its own local issues by its Mayor, City Council members and Town Manager.

(5) *Indian Trail Has its Own Zip Code and a Separate Listing in the Telephone Directory.* The record evidence established that Indian Trail has its own zip code (28079) and its own three-digit exchange (821) that are distinct from any other community. While Indian Trail does not have its own telephone directory, the telephone directory does have Indian Trail residential and business listings that are separate from Monroe.

(6) *Indian Trail Has Numerous Commercial Establishments and Health Facilities.* The record evidence named the many commercial establishments, health facilities, and civic and community organizations in Indian Trail. MBC merely states that such establishments are adjacent to Monroe. MBC fails to demonstrate that these businesses and establishments are *in* Monroe indicates that Indian Trail is dependent of Monroe.

(7) *Indian Trail Has a Separate Advertising Market from Charlotte and Monroe.* The record evidence established that local advertisers can advertise in the Enquirer Journal, Cablevision of Monroe or on the city's webpage. The city still maintains its webpage where advertisers can exclusively target Indian Trail residents. Although two of the media outlets may be shared with

Monroe, this does not negate Indian Trail's independence from Monroe. Indeed, Richard & Faye Tuck, Inc. stated that not all factors need to favor the applicant; however, if a majority of the factors demonstrate that the specified community is distinct from the urbanized area, the Commission will treat it as an independent community. See Parker and Port St. Joe, Florida, 11 FCC Rcd 1095, ¶¶ 9-11 (1996) (finding that the proposed community was independent, although it lacked its own telephone directory and local newspaper, and was included in the urbanized area's market by Arbitron); accord Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570, ¶ 3 (1997) (citing Parker and Port St. Joe, Florida).

(8) *Indian Trail Receives Some Municipal Services from Union County.* The record evidence establishes that Indian Trail relies upon Union County, not Monroe, for some municipal services. The police and fire protection services and school and library systems are governed by Union County, not the city of Monroe. The police and fire protection services provided to Indian Trail by Union County do not provide these services on a primary basis to Monroe. Therefore, MBC cannot claim that Indian Trail receives these services from the city of Monroe.

#### CONCLUSION

5. MBC's Application for Review is defective as it fails to meet the criteria established by Section 1.115 of the Commission Rules, and should be dismissed. Additionally, the Report and Order properly ruled that SRC's application should be accepted for filing and consideration, and that the record evidence established that Indian Trail, North Carolina is independent from Charlotte and Monroe, North Carolina, and deserving of a first local radio service. The Commission should not require in every instance that a community otherwise deserving of its own local radio service nevertheless submit extensive showings of its independence from all nearby larger communities.

Therefore, the Commission should deny the Application for Review of MBC, and uphold the Mass Media Bureau's Report and Order.

Respectfully submitted,

SUSQUEHANNA RADIO CORPORATION

By: *Tamara Y. Brown*

Mark N. Lipp

Tamara Y. Brown

Shook, Hardy & Bacon

600 14th Street, NW

Suite 800

Washington, DC 20005

(202) 783-8400

Its Counsel

September 13, 2001

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 13th of September, 2001 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **“Opposition to Application for Review”** to the following:

\* John A. Karousos, Chief  
Federal Communication Commission  
Mass Media Bureau  
445 12th Street, SW  
Room 3-A266  
Washington, D.C. 20554

Stephen T. Yelverton, Esq.  
Yelverton Law Firm, P.L.L.C.  
601 Pennsylvania Ave., N.W.  
Suite 900 South  
Washington, DC 20004  
(Counsel to Monroe Broadcasting Company, Inc.)

\* HAND DELIVERED

  
Lisa M. Balzer