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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, D.C. 20554

Re: MM Docket No. 02-76; RM-10405; DA 02-864;
Counterproposal re Amendment of Section 73.202(b),
FM Table of Allotments,
FM Broadcast Stations (Crisfield, Maryland)

Dear Madame:

Enclosed for filing in the above-referenced proceeding, on behalf of Commonwealth Broadcasting, L.L.C., and Sinclair Telecable, Inc., dba Sinclair Communications, are an original and four copies of a Counterproposal and Comments.

Should any questions arise concerning this matter, please contact the undersigned counsel.

Sincerely,



Howard M. Weiss

HMW/emo
Enclosure(s)

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ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Crisfield, Maryland))

MD Docket No. 02-76
Rm-10405

RECEIVED

JUN - 3 2002

To: Assistant Chief, Audio Division

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COUNTERPROPOSAL AND COMMENTS

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June 3, 2002

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SUMMARY

Sinclair Telecable, Inc., dba Sinclair Communications, licensee of Station WROX-FM, Channel 241B, Cape Charles, Virginia, and Commonwealth Broadcasting, L.L.C., licensee of Station WEXM(FM), Channel 291A, Exmore, Virginia (“Counterproponents”) submit a Counterproposal and Comments in response to the Commission’s Notice of Proposed Rulemaking in MB Docket No. 02-76, RM-10405, DA 02-864. The NPRM proposes to adopt Bay Broadcasting, Inc.’s substitution of Channel 250A for channel 245A at Crisfield, Maryland, in order to alleviate a perceived ducting interference problem on Petitioner’s Station WBEY(FM).

Counterproponents advance an alternative allocation plan which would provide a first local service on Channel 250B1 at Belle Haven, Virginia. To accommodate the Belle Haven allotment, Counterproponents would substitute Channel 290A for Channel 252A at Nassawadox, Virginia. To accommodate that channel, Counterproponents would re-allot Channel 291A from Exmore, Virginia, to Poquoson, Virginia, and move Channel 241B from Cape Charles to replace it at Exmore. Counterproponents have a current intention to apply for the Belle Haven channel and build it if a construction permit is granted, as well as to take all actions necessary to relocate WEXM and WROX-FM, as proposed.

The Counterproposal should be adopted based on a Section 307(b) comparison with Petitioner’s proposal. The provision of first local service to two communities which *easily meet Commission standards for independent status triggers the third FM allotment priority*. Petitioner’s undocumented and unquantified interference rationale, at best, falls under the less weighty fourth FM allotment priority. Further, adoption of the

Counterproposal would bring new reception service to almost 500,000 persons, while creating only a far smaller, well-served loss area. Accordingly, the Counterproposal should be adopted.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MD Docket No. 02-76
Table of Allotments,)	Rm-10405
FM Broadcast Stations.)	
(Crisfield, Maryland))	

To: Assistant Chief, Audio Division

COUNTERPROPOSAL AND COMMENTS

Commonwealth Broadcasting, L.L.C. and Sinclair Telecable, Inc., dba Sinclair Communications (“Counterproponents”), by their attorney and pursuant to Section 1.420 of the Commission’s rules, 47 C.F.R. §1.420, hereby submit their Counterproposal and Comments (the “Counterproposal”) in the above-captioned proceeding. The Counterproposal responds to the Commission’s Notice of Proposed Rulemaking, DA 02-864, released April 12, 2002 (the “NPRM”). This Counterproposal is timely submitted pursuant to the NPRM’s comment deadline and Section 1.420(d) of the rules. In support hereof, Commonwealth states as follows:

I. INTRODUCTION

1. The NPRM reflects a Petition for Rulemaking filed on behalf of Bay Broadcasting, Inc. (“Petitioner”), proposing the substitution of Channel 250A for Channel 245A for Station WBEY(FM), Crisfield, Maryland. Petitioner claims that the channel

change was required to avoid severe ducting interference on its existing channel. The Audio Division initially returned the Petition by letter dated February 5, 2002, as unacceptable. The staff found that the proposal did not provide 70 dBu coverage over the entire city of license.

2. Subsequently, Petitioner filed a petition for reconsideration in which it requested that its petition be reinstated, or in the alternative, that a new transmitter site specified by Petitioner be utilized instead. Petitioner insisted that it did place a city-grade signal over all of Crisfield from its initially proposed site, but offered an alternative reference site should that argument be rejected.

3. In the NPRM, the staff reaffirmed that WBEY's signal from the site originally proposed was deficient, but agreed to issue the NPRM using Petitioner's alternative site.

II. COUNTERPROPOSAL

A. The Counterproposal Allotment Plan

4. In lieu of the Petition's narrowly focused proposal to alleviate an unquantified interference condition, Counterproponents, who are commonly controlled, propose the following mutually-exclusive, multi-level, allotment plan:

1. allotment of a first local service on Channel 250B1, at Belle Haven, Virginia;
2. substitution of Channel 290A for Channel 252A at Nassawadox, Virginia;

3. re-allotment of Channel 291A from Exmore, Virginia, now operated as WEXM by Commonwealth, to provide a first local service to the city of Poquoson, Virginia; and
4. re-allotment of Channel 241B, now operated as WROX-FM at Cape Charles, Virginia, by Sinclair to Exmore, Virginia, to replace the channel to be moved to Poquoson.¹

5. As demonstrated in the attached Technical Statement, prepared by Jefferson Brock, Counterproponents' engineering consultant, this allotment plan will bring a first local transmission service to two communities. While removing Exmore's existing channel, the plan will ensure continuation of service to that community by re-allotting and upgrading WROX's channel and operations there. Cape Charles, WROX's current city of license, will continue to be served by an existing non-commercial FM station licensed to the community. Almost 500,000 persons will receive new FM service from the proposed Belle Haven and Poquoson channels. The overwhelming majority of the area presently receiving service from WEXM will continue to be well-served by five or more full-time stations. Accordingly, Counterproponents request that the Commission make the following changes in §73.202:

	Belle Haven, Virginia	
Present		Proposed
None		250B1

¹ Counterproponents have pending an August 29, 2001, petition for rulemaking asking that the Commission relocate Channel 291A from Exmore to Belle Haven and relocate Channel 241B to Exmore as a replacement service. Should the Counterproposal be adopted, Counterproponents will withdraw that petition.

Nassawadox, Virginia

Present 252A	Proposed 290A
-----------------	------------------

Poquoson, Virginia

Present None	Proposed 291A
-----------------	------------------

Exmore, Virginia

Present 291A	Proposed 241B
-----------------	------------------

Cape Charles, Virginia

Present 241B	Proposed None ²
-----------------	-------------------------------

Crisfield, Maryland

Present 245A	Proposed 245A
-----------------	------------------

- B. Providing a First Local Service to Belle Haven Serves a Higher FM Priority Than WBEY's Channel Switch and Should Therefore Prevail Over Petitioner's Proposal.

6. The FM Table of Allotments was created to allow the Commission to meet its obligations under Section 307(B) of the Communications Act and the allotment priorities in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982). The main objective of the priorities is to provide service to the entire country, *while providing as many program choices to as many listeners as possible and providing local service to as many communities as possible.* To these ends, the

² Non-commercial FM station WAZP, operating on Channel 214B1, will remain licensed to Cape Charles, Virginia. It places a 70 dBu contour over the community.

Commission set the following priorities: (1) first full-time aural service; (2) second full-time aural service; (3) first local transmission service; and (4) other public interest matters (priorities 2 and 3 were given equal weight).

7. Applying these priorities to the comparison between the proposal in the NPRM and the Counterproposal, the provision of the first local service to Belle Haven (and Poquoson) fulfills the third FM priority, while resolution of WBEY's alleged interference problem, at best, relates only to FM allotment priority four. Petitioner's "described technical difficulties... do not establish a public interest benefit which could form the basis for a grant in a comparative analysis with [the Counterproposal]." Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Pleasanton, Bandera, Hondo and Schertz, Texas, 2000 FCC LEXIS 731, at Para. 7. (Chief, Allocations Branch 2000).

8. The community of Belle Haven is an incorporated town listed in the U.S. Census with a 2000 U.S. Census population of 480. It is located in Accomack County, Virginia, between the Chesapeake Bay and the Atlantic Ocean and encompasses approximately 1.52 square miles of land (972 acres). The town has a Mayor/Town Council government, over two hundred houses, its own post office/zip code, numerous businesses, and two churches.³ It is thus undeniably a cognizable community entitled to a first local service preference under FM priority 3.⁴ See Revision of FM Assignment Policies, supra at 100 (community status requirement generally satisfied if community incorporated and listed in Census); Amendment of Section 73.202(b), Table of

³ See <http://www.easternshorevirginia.com> and related websites.

⁴ Likewise, Poquoson is an incorporated city with a population in excess of 11,000 persons. (See Paras. 15-36 below.) It too is entitled to a local transmission service.

Allotments, FM Broadcast Stations (Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia), 11 FCC Rcd 5758 (Chief, Policy and Rules Division 1996) (strong presumption of community status where listed in Census).

9. The Technical Statement demonstrates that Channel 250B may be allotted to Belle Haven at the site specified consistent with all Commission separation requirements, with the exception of the Nassawadox allotment. Further, the proposed facility will place a city-grade signal over Belle Haven.

10. In contrast, Petitioner's proposal contemplates no new transmission or reception service. Rather, the channel switch proposed in the NPRM is allegedly necessary to cure a ducting interference problem caused by a New Jersey station. While Petitioner claims that this problem is severe, no quantitative analysis or studies are offered. No estimate of the number of listeners affected is advanced. No maps, tables or documented listener complaints are submitted. The only evidence offered is the conclusory "observation" of Petitioner's consultant.

11. Further, it is unclear whether Petitioner has specified a viable, adequately spaced site for its proposed facilities on Channel 250A. The staff has twice ruled that the site proposed in the Petition does not permit city-grade coverage of all of Crisfield. The alternate site proposed in the Petition for Reconsideration, albeit hypothetical, must nevertheless constitute a viable, suitable site. Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Moncks Corner, Kiawah Island, and Sampit, South Carolina), 11 FCC Rcd 8630 (Chief, Allocations Branch (1996)). The presumption that Petitioner's alternate site meets this test is rebuttable, and analysis of the location of the site indicates that it is located in a tidal marshland area near the Chesapeake Bay.

Moreover, the alternate site lies within the Saxis Wildlife Management Area, owned by the Commonwealth of Virginia and reserved for hunting and fishing. Under these circumstances, permission to construct a broadcast tower seems doubtful at best.

12. In sum, the mutually-exclusive component of the Counterproposal's allotment plan would provide a first local service to a cognizable community. This factor standing alone overcomes Petitioner's interference rationale, which, even if adequately verified and documented, falls under the less important fourth FM allotment priority. The Counterproposal should therefore be adopted.⁵ Should the Belle Haven channel be dropped in, the Counterproponents have a present intention to apply for it, and if their application is granted, construct the authorized facilities.

C. The Nassawadox Allotment Should Be Moved To Channel 290

13. In order to accommodate the Belle Haven allotment, the present Channel 252A allotment at Nassawadox, Virginia, must be modified. Counterproponents propose that the vacant allotment at Nassawadox be switched to Channel 290A. This should have no impact on any party, as no applications for this channel have as yet been accepted by the Commission. Again, from the specified site, spacings are consistent with Commission requirements and a 70dBu signal is placed over the entire community of Nassawadox.

⁵ As noted in the Technical Statement, Counterproponents have pending a Petition for Rulemaking to allot Channel 241B to Belle Haven, filed on August 29, 2001. Should the Counterproposal be adopted, that Petition will be withdrawn.

D. To Accommodate the Nassawadox Re-Allotment, Channel 291A Should Be Moved to Poquoson

14. Counterproponents further ask that Channel 291 be removed from Exmore, Virginia and re-alloted to the City of Poquoson, Virginia, in order to permit the Nassawadox switch. Sinclair, licensee of Station WEXM(FM), which now operates on the channel, will comply with a Commission order to make this move and file all appropriate applications to implement service at Poquoson.

15. Poquoson is deserving of a first local transmission service. Attached hereto as Exhibit 1 are copies of materials from the City of Poquoson's website. Attached as Exhibit 2 is a copy of the 1999-2001 Comprehensive Plan Update prepared under the supervision of the City of Poquoson's Planning Commission. These materials, as well as data included in the Technical Exhibit, demonstrate beyond a doubt that Poquoson is not only a cognizable community for Section 307(b) purposes, but also an independent community entitled to a first local service preference under the criteria outlined in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck") and RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990), vacated as moot, 6 FCC Rcd 1808 (1991) ("KFRC"), despite its inclusion in the Norfolk-Virginia Beach-Newport News, Virginia, Urbanized Area ("Norfolk Urbanized Area").

16. Under KFRC and Tuck, whenever the Commission considers a change of community proposal contemplating a move inside an Urbanized Area, it examines the community to which the move will be made to determine whether the proposal does, in fact, warrant a first local service preference, or whether all of the aural services within the Urbanized Area should be attributed to the community. Bon Air, supra. The criteria applied are as follows: First, the Commission examines "signal population coverage,"

i.e., the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Second, it takes note of the size and proximity of the suburban community relative to the core community in the Urbanized Area. Third, the Commission examines the interdependence of the suburban community with the central city. Bon Air, supra. Eight types of factors are considered under the third criterion:

- (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community;
- (2) Whether the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests;
- (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;
- (4) whether the specified community has its own local government and elected officials;
- (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code;
- (6) whether the community has its own commercial establishments, health facilities and transportation systems;
- (7) The extent to which the specified community and the central city are part of the same advertising market; and

- (8) 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. KFRC, 5 FCC Rcd at 3223; Tuck, 3 FCC Rcd at 5378.

17. Application of these criteria is difficult in the context of a possibly unique Urbanized Area like the Norfolk Urbanized Area. The Commission recognized this reality in Amendment of Section 73.202(b), Table of Allotment, FM Broadcast Stations. (Elizabeth City, North Carolina and Chesapeake, Virginia), 9 FCC Rcd 3586 (Acting Chief, Allocations Branch, 1994). There, the Commission allotted a channel to Chesapeake, Virginia, noting petitioner's argument that "the instant case is not a typical core city/suburban city situation." (at Para. 5.) The Commission further observed that "there is not one identifiably dominant community within the Urbanized Area." (at Para. 17.) The proposed community of license "cannot be said to be ancillary to a central metropolis, but rather is in itself a sizable, distinct community, located in an Urbanized Area composed of a number of similar communities." (Id.) This is, of course, in sharp contrast to the central cities at issues in KRFC (San Francisco) and Tuck (Dallas).⁶

18. While we deal with the same Urbanized Area here, Counterproponents do not contend that Poquoson is Chesapeake. However, they do contend that Poquoson is a substantial, independent community in an Urbanized Area, without an interdependent relationship with any other particular community therein. As Exhibits 1 and 2 illustrate, Poquoson was attributed with 11,566 persons in the 2000 Census. But city leaders believe that its actual population is likely in excess of 12,000 persons. They

⁶ In Bon Air, supra, the Commission held that Williamsburg, a city of 11,998 persons (2000 Census) in the Norfolk Urbanized Area, was an independent community, although the Commission did not award the community an FM channel because it already had aural service.

project that it will grow to 19,000 in the coming years. Carved out of York County⁷ in 1952 and incorporated as a city in 1975 upon a citizens' referendum reflecting their desire to maintain its fine separate school system, Poquoson has its own city government, police and fire departments, parks, library system, businesses⁸, churches, zip code and numerous other indicia of a separate city.

19. In 1997, a new Poquoson municipal complex was built at the end of a newly constructed City Hall Avenue. The new City Hall contains 18,000 square feet and is occupied by the City Manager's Office, the City Clerk, School Board, Engineering, Finance and Planning Departments, the City Assessor, Registrar, Commissioner of Revenue and the Treasurer's Office. Adjacent to City Hall is a new 12,000 square foot Library. Poquoson's seven-member City Council levies taxes, enacts ordinances, appoints the City Manager, adopts a budget and performs numerous other municipal functions. Similarly, the City Manager, the chief administrative officer of Poquoson, has wide-ranging authority to enforce ordinances and resolutions of the City Council, appoint officers and employees, prepare and submit a budget, and enter into contracts.

20. Poquoson also has elected constitutional officers, including a City Treasurer and a City Commissioner of the Revenue. While its sheriff and court officials are shared with York County, Poquoson's School Board is entirely independent of other jurisdictions. It administers a general system of free public schools, with 2449 students and 182 teachers, one of the best in the state. Poquoson also has a Board of Zoning Appeals, a Planning Commission, a Wetlands Board, a Board of Adjustments and

⁷ Importantly, York County is not within the Norfolk Urbanized Area.

⁸ A list of licensed Poquoson businesses, as well as a directory of Poquoson organizations and churches, is attached as Exhibit 3 hereto.

Appeals and other independent agencies. A Fleet Maintenance Department maintains all city and school vehicles. A City Attorney represents the City and serves as its legal advisor. The City has its own police and fire departments as well as engineering, sewerage, public works, waste management, parks and recreation, and building permit departments.

21. Exhibit 3, the listing of Poquoson businesses and institutions, demonstrates the extent of separate, active business and professional life in Poquoson. Businesses in the city range from contractors to home repair and maintenance shops to therapists to landscapers to advertising agencies to computer stores. Over four hundred businesses are contained in the list. Civic organizations, churches, realtors and retailers in Poquoson, and focused on Poquoson residents, service the community.

22. Poquoson has a weekly newspaper known as the Poquoson Post, which focuses on the City. It is published every Wednesday in conjunction with the Yorktown Crier in York County. Poquoson also utilizes Channel 46, a governmental access channel on the Cox cable system, to broadcast City Council and Commission meetings and publicize other City news and events. The City also publishes its own business directory, a bi-monthly newsletter, and a brochure about the City. Recently, the City arranged to acquire from Cox a tower which will be used for City agencies like the school system and the fire department. This will supplement existing municipal communications facilities.

23. *A twelve million dollar expansion of the city's sewerage system has recently been completed. It will facilitate growth by permitting build-out of long vacant lots, the owners of which could not secure septic tank permits because of the water*

table. The significant development will trigger a growth surge, according to City officials. This growth will also be fueled by the high per capita incomes of Poquoson residents, among the highest in the state, a low crime rate, and the comfortable suburban character of the City.

24. Conversations with City governmental officials and review of the data supplied in Exhibits 1-3 indicate that Poquoson's residents pride themselves on their community's autonomy, distinctiveness and special local flavor. The City differs politically, socially and economically from its larger neighbors, Hampton and Newport News, as well as its "country cousin," York County. Poquoson's decision to leave the county and strike off on its own in the 1950's is perhaps the best evidence of this independence.

25. Applying the Tuck factors to this fact pattern, Counterproponents submit that they have made the case necessary to rebut the Urbanized Area presumption. With respect to "signal population coverage," the Technical Statement shows that the Class A channel which will serve Poquoson will cover only 9.57% of the Norfolk Urbanized Area. Even focusing on the two larger cities in the Urbanized Area nearest to Poquoson -- Hampton and Newport News -- only 25% of the former and 50% of the latter will be encompassed by Channel 291A's 70 dBu signal. These facts underline the localized nature of the Poquoson channel. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Parker and Port St. Joe, Florida), 11 FCC Rcd 1095, 1096 (Chief, Allocations Branch, 1996) (allotment approved where city-grade signal covered 3% of central city and 30% of Urbanized Area); Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Amiston and Ashland, Alabama,

and College Park, Covington, Milledgeville and Social Circle, Georgia, 15 FCC Rcd 3411 (Chief Allocations Branch, 2001) (allotment approved despite coverage of 45% of Atlanta Urbanized Area, citing grants of first local service preference where as much as 90% of Urbanized Area encompassed).

26. The next Tuck factor, proximity and relative populations, is of limited utility here where there is no one central city in the huge Urbanized Area. It is true that Poquoson's population is less than one-tenth that of Hampton, and is likewise substantially smaller than some of the other cities in the Urbanized Area. However, Poquoson's remoteness (9.5 and 14 miles, respectively) from the designated Urbanized Area cities of Norfolk and Virginia Beach and its former inclusion within York County -- not part of the Urbanized Area -- render this factor inconclusive. See Elizabeth City, North Carolina, supra.

27. In any event, the Commission has repeatedly indicated that the first two Tuck factors are far less important than the interdependence analysis and its eight criteria. Amiston, Alabama, supra; Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (D'Iberville and Wiggins, Mississippi), 10 FCC Rcd 10796 (Chief, Allocations Branch 1995); Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Bay St. Louis and Poplarville, Mississippi), 10 FCC RCD 13144 (Chief, Allocations Branch 1995). Further, a proponent is generally required only to meet a majority of the eight interdependence factors. Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ankeny and West Des Moines, Iowa), 11 FCC Rcd 4413 (Chief, Allocations Branch 2000); Pleasanton, Texas, supra, at Para. 8.

28. With respect to the first interdependence factor, the last official employment figures for Poquoson indicate that 5600 persons were employed, of whom 1200 worked within the City. However, conversations with the City Planning Commission establish that as many as 2200 person may be employed within the City, because of the predominance of fishing-related businesses in the community, which tend not to maintain formal employment records. While it is indisputable that most of Poquoson's residents work outside the City because of its suburban character, there is no concrete evidence that the majority of them work in any one of the Urbanized Area's other cities. An employment percentage within the community in excess of 30% compares favorably with the findings in Amiston, supra, at Para. 7 (16%) and Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Coolidge and Gilbert, Arizona), 11 FCC Rcd 3610 (Chief, Allocations Branch 1996). In both cases, a first local service preference was awarded.

29. On the second interdependence factor, Poquoson does have a weekly newspaper. While that paper is published outside Poquoson and in conjunction with a York County newspaper, it is nevertheless evidence of a separate local identity, particularly as to the Urbanized Area. Poquoson also has it own local access channel on the cable system, a comprehensive website and a newsletter published by the City Government. See Amiston, supra, at Para. 7.

30. On the third Tuck interdependence factor, it is clear that Poquoson's city *leaders and residents view it as a separate, independent community. This is evidenced* by the decisions in 1952 to leave York County and to become a City in 1975. It is also

supported by the City Government's website and Comprehensive Plan, as well as comments made to Counterproponents' counsel during the preparation of this pleading.

31. With regard to the fourth Tuck factor, as noted above, Poquoson's complex, multi-tiered City Government and elected officials are powerful evidence of its independence.

32. On the fifth Tuck factor, Poquoson has its own post office and zip code. Its telephone listings are published in a regional directory by Verizon. That directory includes only Hampton, Newport News, Poquoson, Seaford and Yorktown yellow and white pages. Thus, listings for several other major cities in the Urbanized Area, including Norfolk, Virginia Beach, Chesapeake and Suffolk, are in a different directory.

33. On balance, the sixth Tuck factor supports a finding in Counterproponents' favor as well. Poquoson's transportation and hospital needs are served by regional institutions shared with other communities on the Peninsula. The city has a Health Department shared with York County and shares a sheriff and court facilities with the County. However the City has hundreds of its own commercial establishments and all other typical elements of a municipality's administrative functions are the responsibility of Poquoson governmental institutions (e.g., voting, planning, waste management, rodent and insect control, libraries, etc.)

34. Poquoson is included in the Norfolk Arbitron market. It is otherwise unclear whether Poquoson and the entire Urbanized Area are part of the same advertising market. *More likely, there may be at least two or more "markets" because of the size of the Urbanized Area.* And York County may be Poquoson's closest advertising partner. See Elizabeth City, North Carolina, supra.

35. The eighth Tuck interdependence factor is overwhelmingly weighted in Counterproponents' favor. As described in detail above and in Exhibits 1 and 2, Poquoson has its own municipal services furnished by its own elected and/or appointed governmental officials.

36. Thus, as to Tuck factors 2, 3, 4, 5 and 8, Poquoson is manifestly eligible for a first local service preference. As to factors 1, 6 and 7, the record is inconclusive or tipped in Poquoson's favor. The Commission has adopted a liberal and flexible approach illustrated by the Commission precedents cited above. Under these precedents, the Commission should find that Poquoson, whose population is substantially higher than many communities recently found deserving of an allotment⁹, is more than deserving of its own FM transmission service.¹⁰

E. Channel 241B Should be Moved to Exmore from Cape Charles to Replace Channel 291A

37. The final component of Counterproponents' Allotment Plan is designed to ensure that Exmore retains its only transmission service, pursuant to the dictates of Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1990); recon. granted in part, 5 FCC Rcd 7094 (1990). Counterproponents propose that Channel 241 be re-allotted and existing Station WROX(FM) be re-licensed to Exmore. Because WROX(FM) is licensed to Sinclair, this will ensure that there will be no break in service to that community. Nor will Cape

⁹ See, e.g., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Rapid City and Lead, South Dakota), 10 FCC Rcd 7715 (Chief, Allocations Branch, 1995).

¹⁰ The Technical Statement demonstrates that Channel 291A at Poquoson meets all of the Commission's separation requirements, and will provide the requisite signal over Poquoson from the site specified by Counterproponents.

Charles, WROX's current city of license, be left without service, as noncommercial Station WAZP(FM) serves the community on Channel 214B1.

38. The Technical Statement also notes that Channel 241B at Exmore is currently short-spaced to Station WVKL, Norfolk, Virginia, on Channel 239B. However, the Technical Statement explains that this short-spacing is grandfathered since both channels were allotted prior to March 1, 1984. Pursuant to MM Docket No. 80-90, such short-spacings are permissible. Moreover, the proposed reference site for Channel 241B at Exmore will reduce this short-spacing. Accordingly, the proposed channel change is consistent with Commission requirements. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Fremont and Holton, Michigan), 14 FCC Rcd 17108 (Chief, Allocations Branch (1999); Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Killeen and Cedar Park, Texas), 15 FCC Rcd 1945 (Chief, Allocations Branch 2000).

F. Counterproponents' Allotment Plan Will Provide a New Reception Service to a Substantial Gain Area and the Smaller Loss Area It Creates Is Well-Served

39. The Technical Statement states that the new Belle Haven channel will provide new 60 dBu (1.0 mV/m) service to 34,528 persons in 4,802.9 square kilometers. The re-allotment of Channel 291A to Poquoson will provide 60 dBu service to 447,049 persons in 2,516.1 square kilometers. This gain area is well-served, but is nevertheless substantially larger than the loss area created by WEXM's move. WEXM's present primary service area has 12,507 persons who will lose service when the channel is re-

allotted to Poquoson.¹¹ However, all of these persons will be well-served with five or more services, with the exception of a small area containing 36 persons who will receive only four services. This underserved loss area is de minimis. See Bon Air, supra, at Para. 14 (underserved area containing 520 persons held de minimis).

40. Accordingly, Counterproponents' allotment plan contemplates not only transmission service cognizable under the third FM priority, but also reception service gains cognizable under the fourth FM allotment priority. The Counterproposal is consistent with Section 307(b)'s goals in all respects.

III. Conclusion

41. The Counterproposal should be adopted. It provides new transmission service to two communities, both of which meet Commission criteria for entitlement to a first local service preference. It will not remove service from any community, and it will bring new reception service to almost half a million listeners. The loss area the Counterproposal creates is well-served. These powerful Section 307(b) benefits easily outweigh the undocumented interference reduction to one station Petitioner's channel switch purports to accomplish.

Respectfully submitted,
COMMONWEALTH BROADCASTING, L.L.C.
And
SINCLAIR TELECABLE, INC.
DBA SINCLAIR COMMUNICATIONS

¹¹ Sinclair will specify the existing WROX-FM site at the application stage, utilizing a supplemental city grade analysis. Thus, no change in WROX-FM's coverage will occur as a result of the move to Exmore, and therefore no Section 307(b) analysis is required as to this component of the Counterproposal allotment plan..

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Date: June 3, 2002

CERTIFICATE OF SERVICE

I, Howard M. Weiss, hereby certify that on this 3rd day of June, 2002, I caused copies of the foregoing Counterproposal and Comments to be delivered, via United State Postal Service, to the following individual:

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