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June 4, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Secretary
Federal Communications Commission
236 Massachusetts Avenue NE, Suite 110
Washington, D.C. 20054

Re: RM 10399, MB docket No. 02-72

Dear Ms. Secretary:

Attached please find an original and four copies of reply comments in the above captioned proceeding.

Any comments or questions, please contact the undersigned.

Sincerely,

John Garabedian

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List ABCDE

Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN - 4 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	MB docket No. 02-72
(Nantucket, Massachusetts)	)	RM-10399

GARABEDIAN REPLY TO COMMENTS
FROM BREWSTER and MONOMOY

To the Commission:

Before the Commission is a Notice of Proposed Rulemaking issued in response to our petition to allocate channel 254B1 to Nantucket, Massachusetts as its second commercial FM broadcast service. This proposal meets all Commission technical requirements and requires no site restriction.

Three comments were filed to this proposed rulemaking; one in support of the proposed Nantucket allocation, and two suggesting mutually exclusive counterproposals for Class A allocations on the same Class B channel to "South" Chatham, Massachusetts and "East" Harwich, Massachusetts.

John Garabedian hereby files this reply to the comments and counterproposals of Brewster Broadcasting Company ("Brewster") and Monomoy Media ("Monomoy") in the above captioned proceeding. He requests the Commission disqualify and dismiss the Brewster and Monomoy counterproposals which are actually intended to serve either the Town of Chatham or the Town of Harwich which are within a much larger urbanized area, the Barnstable/Yarmouth MSA, also known as the Cape Cod Radio Market, rather than the island of Nantucket.

Summary of Reply

"South" Chatham and "East" Harwich are not "communities" as defined under Tuck[1], but are simply neighborhoods within the small New England towns of Chatham and Harwich, which are adjacent to each other. Chatham and Harwich are part of the much larger Barnstable-Yarmouth Metropolitan Area. They are in Barnstable County, twenty-six miles (across a part of the Atlantic Ocean known as Nantucket Sound) from the Town of Nantucket which is a distinct, and geographically separate, community in Nantucket County. Nantucket is a town, a county, and three islands (Nantucket, Tuckernuck, and Muskeget).

[1] See Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988)

The signals from the 6 KW stations proposed for the "South" Chatham and "East" Harwich neighborhoods cannot be received in Nantucket. While the "South" Chatham and "East" Harwich neighborhoods are already served by more than a dozen stations, only three stations currently serve Nantucket.

When Congress wrote Section 307(b) into the Communications Act of 1934, it did so intending to prevent the over concentration of frequency allocations to one area to the detriment of services to others. Congress did not intend that every road intersection, tourist attraction, or zip code in America should have a radio station. In furtherance of the stated Congressional policy, it has been the longstanding practice of the Commission to disqualify applicants proposing facilities disguised to serve a tiny "community" which are really intended to serve an adjoining larger market. This is clearly what Brewster and Monomoy are proposing for Harwich and Chatham.

These "communities" of "South" Chatham and "East" Harwich are actually small neighborhoods. They have no government, no school systems, do not collect taxes, and do not provide fire or police protection. "South" Chatham is contained within the Town of Chatham. "East" Harwich is contained within the Town of Harwich. Both Chatham and Harwich already have operating commercial FM stations. Application for an FM allocation in these neighborhoods is an attempt to mislead the Commission into granting them a "first local service" preference to build yet another radio station to serve the over-radioed Cape Cod radio market[2]. If they had proposed an allocation in either the Town of Harwich or the Town of Chatham they would have no claim of "first local service".

The Cape Cod Radio Market

The Cape Cod Metro Radio Market as defined by the Arbitron Ratings Service lists Cape Cod as America's 182nd largest radio market with a population of 199,300 persons twelve and over. It contains the towns of Barnstable, Brewster, Dennis, Eastham, Mashpee, Orleans, Sandwich, and Yarmouth, as well as Harwich and Chatham. This market currently contains 21 licensed radio stations[3] of which 12 cover the Town of Harwich and the Town of Chatham. There are three additional allocations to this market; one unbuilt Class A FM construction permit licensed to Truro, Massachusetts, and two unbuilt Class A FM allocations allotted to Brewster and to West Tisbury, Massachusetts. Thus a total of 24 aural services will soon be serving the Cape Cod Radio Market. Brewster is immediately adjacent to the South Chatham and the East Harwich (see map below).

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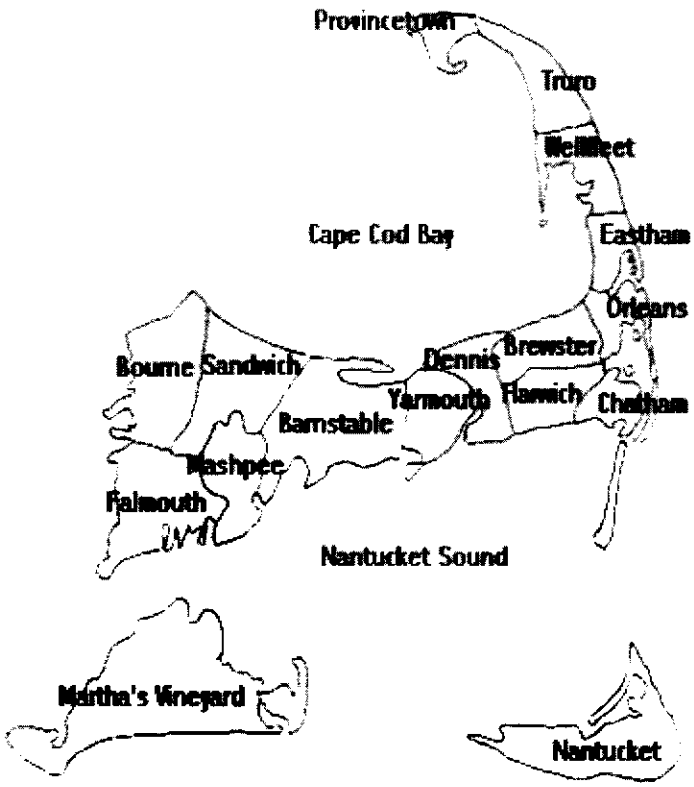
[2] The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3).]

[3] *WFPB Orleans; WBUR West Yarmouth; WCAI Woods Hole; WCCT- Harwich; WKKL West Barnstable; WNAN Nantucket; WSDH Sandwich; WFPB-FM Falmouth; WOMR Provincetown; WMVY Tisbury; WYST Harwichport; WXTK West Yarmouth; WRZE Nantucket; WQRC Barnstable; WWKJ Mashpee; WCIB Falmouth; WPXC Hyannis; WOCN South Yarmouth; WKPE Orleans; WCOD Hyannis; WFCC Chatham*



Not surprisingly, "East" Harwich and "South" Chatham are not on this map because they do not exist as communities, but are simply neighborhoods in Harwich and Chatham.

The Commission has a long history of rejecting proposals for sub-standard radio stations squeezed into suburban neighborhoods with the hidden intent of serving the larger community.

The Town of Harwich, of which "East" Harwich is the neighborhood immediately adjacent to Chatham, and the Town of Chatham are part of the Barnstable-Yarmouth Metropolitan Area as defined by the U.S. Office of Management and Budget.

This Metropolitan Area is a common community with regional government authorities, such as the Cape Cod Commission, which regulates zoning, traffic, environmental management, and growth issues. This area has a regional transportation authority, the Cape Cod Regional Transportation Authority that links residents in the Metropolitan Area communities.

The following are the communities recognized by the U.S. Department of Budget, which make up the Barnstable-Yarmouth Metropolitan Area:

```
25                    MASSACHUSETTS
001                 Barnstable County (part)
001 03600  0740     Barnstable city       Barnstable-Yarmouth, MA MSA
001 07980  0740     Brewster town         Barnstable-Yarmouth, MA MSA
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001	12995	0740	Chatham town	Barnstable-Yarmouth, MA MSA
001	16775	0740	Dennis town	Barnstable-Yarmouth, MA MSA
001	19295	0740	Eastham town	Barnstable-Yarmouth, MA MSA
001	29020	0740	Harwich town	Barnstable-Yarmouth, MA MSA
001	39100	0740	Mashpee town	Barnstable-Yarmouth, MA MSA
001	51440	0740	Orleans town	Barnstable-Yarmouth, MA MSA
001	59735	0740	Sandwich town	Barnstable-Yarmouth, MA MSA 001
82525		0740	Yarmouth town	Barnstable-Yarmouth, MA MSA

SECTION 307(b) COMMISSION POLICY

Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allocate channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990).

Because "first local service" receives priority treatment, some applicants proposed to locate their transmitters in small suburban communities, immediately adjacent to larger markets. The Commission's concern with such abuse of the allocation system for AM stations is reflected in the Commission's 1964 *Suburban Policy,* in which the Commission declared that it would treat applications for suburban communities as applications for the major city, and apply the technical requirements of signal coverage as if the application was for the larger community.

Suburban Policy and case law, which actually goes back earlier than 1964 (See Huntington Broadcasting co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951), have established clear guidelines. RKO General , Inc. (KFRC) ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). First, the Commission examines "signal population coverage," that is, the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the urbanized area of the city. Third, the Commission determines the interdependence of the suburban community with the central city. This third type of evidence involves eight additional factors set forth in Tuck.

In Tuck, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether 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 local 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.

As is shown below and in the attached chart "Comparison of Proposals", the Brewster and Monomoy counterproposals are pretending to provide "first local service" to two non-communities in order to get a preference under 307(b), while the stations are really intended to serve neighborhoods which are already served, by more than a dozen stations.

By contrast, the Garabedian proposal is to provide a second local commercial FM service to Nantucket, which is unquestionably a separate community, isolated by the Atlantic Ocean, and located in a different country from Chatham and Brewster.

The 25 KW facility proposed for Nantucket is a far more efficient use of the spectrum than the 6 KW facilities suggested in these counterproposals. It is a fully spaced B1 channel and does not require a "specified" location for its antenna.

"SOUTH" CHATHAM, MASSACHUSETTS

Monomoy proposes allocating a Class A channel to "South" Chatham, Massachusetts, a tiny neighborhood of 800 people located within the Town of Chatham (2000 census population 6,579). The proposed facility will provide a 60-dBu signal to 94,985 people, 99.1% of who (all but 800) live outside the proposed "community" of license.

"South" Chatham is not a government entity, but rather a neighborhood in the Town of Chatham. Its residents pay taxes to the Town of Chatham, which provides all town services.

"South" Chatham has no local newspaper, no local government, no elected officials, no telephone directory, no school department, no police department, no fire department, no local transit system, and in fact replies upon the Town of Chatham for these services. It is really a small neighborhood shopping center at the intersection of two small roads. Residents of "South" Chatham pay taxes to the Town of Chatham, vote for government officials in the Town of Chatham, get their beach permits from the Town of Chatham, as well as fire, police, snowplowing, school system and dog licensing from the Town of Chatham.

Since 99.1% of the population of the proposed allocation to the "South" Chatham neighborhood live outside the "boundaries" of "South" Chatham, it is clear the only reason for proposing "South" Chatham is to mislead the Commission into giving a "first local service" preference to their proposal over the Nantucket proposal. The counterproposal of Monomoy should be dismissed for failing to satisfy the Tuck criteria.

Not only does the Monomoy proposal for the "South" Chatham neighborhood fail to satisfy the Tuck criteria, but even if Monomoy proposed an allocation to the Town of Chatham, a real

community, it would fail. The Town of Chatham has a Class B FM station, WFCC-FM. In addition, Chatham (and "South" Chatham) receives 11 other fulltime aural services. They are WFPB, Orleans; WYST, Harwichport; WCCT, Harwich; WXTK, West Yarmouth; WQRC, Barnstable; WCIB-FM, Falmouth; WPXC, Hyannis; WOCN, South Yarmouth; WKPE, Orleans; WCOD, Hyannis; new FM allocation, Brewster.[4]

Of course, a Chatham proposal would not be a first local service, or a first or second aural service.

"EAST" HARWICH, MASACHUSETTS

Brewster proposes allocating a Class A channel to "East" Harwich, Massachusetts, a neighborhood of 4,744 persons located within the Town of Harwich (2000 census population 12,386), immediately adjacent to Chatham. The proposed facility will provide a 60-dBu signal to 90,466 persons, 94.8% of whom (all but 4,744) live outside the proposed "community" of license.

"East" Harwich is not a government entity, but rather a neighborhood in the Town of Harwich. Its residents pay taxes to the Town of Harwich, which provides all town services.

"East" Harwich has no local newspaper, no local government, no elected officials, no telephone directory, no school department, no police department, no fire department, no local transit system, and in fact replies upon the Town of Harwich for these services. Residents of "East" Harwich pay taxes to the Town of Harwich, vote for government officials in the Town of Harwich, get their beach permits from the Town of Harwich, as well as fire, police, snowplowing, school system and dog licensing from the Town of Harwich.

"East" Harwich does not even have a zip code.

Since 94.8% of the population of the proposed allocation to the "East" Harwich neighborhood live in an urbanized area outside of the undefined "boundaries" of "East" Harwich, it is clear the only reason for proposing "East" Harwich was attempt to mislead the Commission into giving a

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[4] Brewster Broadcasting has already succeeded in getting the Commission to allocate a Class A channel to Brewster, Massachusetts, an immediately adjoining town to Harwich and Chatham. This channel is awaiting action in auction 37.

The following is taken from Northeast Radio Watch 2/6/1999, a radio newsletter:
"Cape Cod needs another FM allocation the way Howard Stern needs another FCC complaint...but where there's an open frequency there's sure to be an applicant or two, so the FCC added a class A allocation to Brewster this week at the request of the "Brewster Broadcasting Company" and Ernie Boch. The 94.3 channel was made possible by Boch's WXTK frequency change (to 95.1 from 94.9) last year -- and it's another case where the FCC was able to convince itself that Brewster had no "local broadcast service" even though it sits right on the edge of one of the most over-radioed markets, on a per-capita basis, in the country. Oh yeah, it's also home to the main studio of one station (WFCC) and transmitters of two (WFCC and WYST), not that that matters. Have we mentioned lately that we think the allocation rules need to be revised?"

"first local service" preference to their proposal over the Nantucket proposal. The counterproposal of Brewster should be dismissed for failing to satisfy the Tuck criteria.

Even if Brewster proposed an allocation to the Town of Harwich, a real community, it would fail. The Town of Harwich has a non-commercial FM station (WCCT) and a commercial Class A FM station licensed to Harwichport, WYST-FM, another neighborhood of Harwich. In addition, Harwich (and "East" Harwich) receives 11 fulltime aural services. They are WFPB, Orleans; WYST, Harwichport; WCCT, Harwich; WXTK, West Yarmouth; WQRC, Barnstable; WCIB, Falmouth; WPXC, Hyannis; WOCN, South Yarmouth; WKPE, Orleans; WCOD, Hyannis; new FM allocation, Brewster.[5]

Of course, a Harwich proposal would not be a first local service or a first or second aural service.

NANTUCKET, MASSACHUSETTS

The proposed rulemaking allocates a Class B1 channel to Nantucket, Massachusetts, an island 26 miles off the coast of Cape Cod. Nantucket is a town in Nantucket County with a year round population of 11,638 persons, and a summer population of triple that number. The proposed facility will provide a 60-dBu signal to all 11,638 persons, 100% of whom live within the proposed community of license.

Nantucket is a real community with a New England town form of government. The town levies taxes and provides fire, police, schools and every other town service.

Nantucket has its own weekly newspaper, the *Inquirer and Mirror,* one commercial FM station (WRZE), and two non-commercial FM stations (WNAN and WNCK, yet unbuilt).

Nantucket has its own regional transportation authority, which runs a bus line, and its own airline (Island Airlines), which operates scheduled service to Cape Cod. In fact, Nantucket Memorial Airport has the second highest number of annual operations of any airport in New England (Logan Airport in Boston has more), although most of the airplanes are small, and many are privately owned.

Nantucket has three zip codes, 02554, 02564, and 02584.

Nantucket has its own telephone directory.

Nantucket has several shopping districts including a bustling downtown area, and busy harbor.

Aside from the three local aural services, no other radio signals encompass Nantucket completely with a 60-dBu signal.

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[5] See footnote 2, above.

Thus the proposed allotment to Nantucket would create a second local commercial service and a fourth aural service.

A "Comparison of Proposals" chart comparing the three proposals is attached.

CONCLUSION

The Brewster counterproposal for the "East" Harwich neighborhood and the Monomoy counterproposal for the "South" Chatham should be dismissed because they do not and cannot meet the requirements of Tuck, and because they propose services in an urbanized area in which 94.8% and 99.1% of the population within their signals lives outside the purported "communities".

Rather than propose the twenty-fourth aural service to Cape Cod, the Nantucket proposal affords the Commission the opportunity in the intent of 307(b) to allocate the second commercial FM channel and fourth aural service to Nantucket Town, Nantucket Island, and Nantucket County.

Once the Nantucket proposal is granted, the petitioner (and the second entity filing comments supporting this petition) have both committed to promptly apply for, and, if granted the license, construct and operate the station.

WHEREFORE the Commission amends the table of allotments as follows:

City	Present	Proposed
Nantucket, Massachusetts	242B	242B, 254B1

I certify that an original and four copies of this document were hand delivered to the FCC, and courtesy copies sent via First Class U. S. Mail postage prepaid to the following:

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Respectfully submitted,

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June 4, 2002

Comparison of Proposals

RM-10399

Nantucket, Massachusetts

	Nantucket	East Harwich	South Chatham
Population	11,638 persons	4,744 persons	840 persons
Local Aural Services	1	2	1
Local Service	WRZE/Nantucket	WCCT/Harwich (non-com)	WFCC/Chatham
Second aural service	WNAN (non-com)/Nantucket	WYST/Harwichport (Harwich)	WYST/Harwichport (Harwich)
Third aural service	WNCK (non-com)/Nantucket	WFPB/Orleans	WCCT/Harwich (non-com)
Fourth aural service	none	WKPE/Orleans	WFPB/Orleans
Fifth aural service	none	WFCC/Chatham	WKPE/Orleans
Sixth aural service	none	WXTK/West Yarmouth	WXTK/West Yarmouth
Seventh aural service	none	WQRC/Barnstable	WQRC/Barnstable
Eighth aural service	none	WCIB/Falmouth	WCIB/Falmouth
Ninth aural service	none	WCOD/Hyannis	WCOD/Hyannis
Tenth aural service	none	WPXC/Hyannis	WPXC/Hyannis
Eleventh aural service	none	WOCN/S. Yarmouth	WOCN/S. Yarmouth
Twelfth aural service	none	NEW/Brewster	NEW/Brewster
TOTAL aural services	3	12	12
Local Newspaper	Yes	No	No
Local Government	Yes	No	No
Elected Officials	Yes	No	No
Zip Code	02554, 02564, 02584	No	02659
Phone Book	Yes	No	No
Police Department	Yes	No	No
Fire Department	Yes	No	No
Part of urbanized area	No	Yes	Yes
Outside larger metro	Yes	No	No
Residents work in community	100%	unknown	unknown
Airport	Yes	No	No
Airline	Yes	No	No
Local transit system	Yes	No	No
Part of Common adv. Market	No	Yes	Yes
Neighborhood of community	No	Yes	Yes
Population within 60 dBu signal	11,638 persons	90,466 persons	94,985 persons
Population in "community"	11,638 persons	4,744 persons	840 persons
Per cent outside "community"	0%	94.8%	99.10%