

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

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Arlington, The Dalles, and Moro Oregon, and)
Covington and Trout Lake, Washington))

MB Docket No. 02-136
RM-10458

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

COMMENTS AND COUNTERPROPOSAL
OF NEW NORTHWEST BROADCASTERS LLC

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TABLE OF CONTENTS

	Page
SUMMARY.....	iv
I. PROPOSED SUBSTITUTION OF CHANNEL 226C3 FOR CHANNEL 225C1 AND REALLOTMENT OF CHANNEL 226C3 TO GLADSTONE, OREGON ..	3
A. Technical Compliance	4
B. Gladstone Is an Independent Community Deserving of First Local Aural Service	5
(1) Signal population coverage	8
(2) Population and proximity in comparison to Portland.....	9
(3) <i>Tuck</i> analysis	10
(a) <i>Gladstone residents consider their community to be separate from Portland, Oregon</i>	11
(b) <i>Gladstone has its own local government and elected officials</i>	12
(c) <i>Gladstone provides extensive municipal services to its residents</i>	12
(d) <i>Gladstone has its own zip code</i>	13
(e) <i>Gladstone has many commercial establishments and considerable health care resources</i>	13
(f) <i>Gladstone offers its residents substantial employment opportunities</i>	14
(g) <i>Gladstone has local media outlets</i>	14
(h) <i>Gladstone businesses can advertise to residents directly</i>	15
II. PROPOSED SUBSTITUTION OF CHANNEL 230C2 FOR CHANNEL 229C AT PORTLAND, OREGON.....	16
III. PROPOSED SUBSTITUTION OF CHANNEL 232C3 FOR CHANNEL 231C3, TILLAMOOK, OREGON	17

IV.	PROPOSED SUBSTITUTION OF CHANNEL 227C FOR CHANNEL 226C, SPRINGFIELD-EUGENE, OREGON.....	18
V.	PROPOSED SUBSTITUTION OF CHANNEL 225A FOR CHANNEL 228A, COOS BAY, OREGON.....	19
VI.	PROPOSED SUBSTITUTION OF CHANNEL 224A FOR CHANNEL 232A, LONG BEACH, WASHINGTON.....	20
VII.	PROPOSED ALLOTMENT OF CHANNEL 228C3 TO MANZANITA, OREGON, AS ITS FIRST LOCAL SERVICE.....	20
	A. Technical Compliance	21
	B. Manzanita Is a Community Deserving of First Local Aural Service.....	21
VIII.	PROPOSED ALLOTMENT OF CHANNEL 259A TO ILWACO, WASHINGTON, AS ITS SECOND LOCAL SERVICE	25
	A. Technical Compliance	25
	B. Ilwaco Is a Community Deserving of Second Local Aural Service	26
IX.	PROPOSED ALTERNATE ALLOTMENT OF CHANNEL 236A TO TROUT LAKE, WASHINGTON, AS ITS FIRST LOCAL SERVICE	26
	A. Technical Compliance	26
	B. Trout Lake Is a Community Deserving of First Local Aural Service.....	27
X.	THE COMMISSION SHOULD GRANT THE COUNTERPROPOSAL AND ALTERNATE ALLOTMENT TO TROUT LAKE TO ACHIEVE A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS AND AN EFFICIENT USE OF BROADCAST SPECTRUM	29
XI.	SUMMARY OF PROPOSED AMENDMENTS TO FM TABLE OF ALLOTMENTS, 47 C.F.R. § 73.202(b) (CHANGES INDICATED IN BOLD TYPE).	31
	CONCLUSION.....	32

SUMMARY

In response to the *Notice of Proposed Rule Making* in MB Docket No. 02-136, New Northwest Broadcasters LLC (“NNB”) respectfully proposes a mutually exclusive set of interrelated allotments that would result in first local service to Gladstone and Manzanita, Oregon, and second local service to Ilwaco, Washington as a counterproposal (the “Counterproposal”) to the proposal of Mid-Columbia Broadcasting, Inc. and First Broadcasting Company, L.P. to reallocate Channel 283C from The Dalles, Oregon, to Covington, Washington for KMCQ(FM); to allot Channel 283C1 to Moro, Oregon; to allot Channel 261C2 to Arlington, Oregon; and to allot Channel 226A to Trout Lake, Washington (the “Joint Proposal”).

The Counterproposal proposes to substitute Channel 226C3 for Channel 225C1 at Astoria, Oregon, and to reallocate Channel 226C3 to Gladstone, Oregon, as its first local service for use by KAST-FM; to substitute Channel 230C2 for Channel 229C in Portland, Oregon at a new reference site for KPDQ-FM; to substitute Channel 232C3 for Channel 231C3 in Tillamook, Oregon for KTIL-FM; to substitute Channel 227C for Channel 226C in Springfield-Eugene, Oregon for KGNU(FM); to substitute Channel 225A for Channel 228A in Coos Bay, Oregon, for KDCQ(FM); to substitute Channel 224A for Channel 232A in Long Beach, Washington at a new reference site for KAQX(FM); to allot Channel 228C3 at Manzanita, Oregon, as its first local service, and to allot Channel 259A at Ilwaco, Washington as its second local service.

NNB also proposes an alternate allotment of Channel 236A in lieu of Channel 226A to Trout Lake, Washington, for the Joint Proposal, as a means to eliminate the conflict between the Counterproposal and the Joint Proposal, thereby permitting the Commission to grant both proposals.

**Before the
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Amendment of Section 73.202(b))	
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(Arlington, The Dalles, and Moro Oregon, and)	
Covington and Trout Lake, Washington))	

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

**COMMENTS AND COUNTERPROPOSAL
OF NEW NORTHWEST BROADCASTERS LLC**

1. New Northwest Broadcasters LLC (“NNB”), by its attorneys, respectfully submits these Comments and Counterproposal in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned proceeding (“*Notice*”).¹ The *Notice* proposes to change the community of license of KMCQ(FM), Channel 283C3, from The Dalles, Oregon to Covington, Washington; to allot Channel 283C1 to Moro, Oregon; to allot Channel 261C2 to Arlington, Oregon; and to allot Channel 226A to Trout Lake, Washington (collectively, the “Joint Proposal”) pursuant to a petition for rule making submitted jointly by Mid-Columbia

¹ In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Arlington, The Dalles, and Moro Oregon, and Covington and Trout Lake, Washington), *Notice of Proposed Rule Making*, DA 02-1339, MB Docket No. 02-136, RM-10458 (rel. June 7, 2002) (“*Notice*”).

Broadcasting, Inc., licensee of KMCQ(FM), and First Broadcasting Company, L.P., which holds an option to purchase KMCQ(FM).

2. In these Comments and Counterproposal, NNB respectfully submits a mutually exclusive set of interrelated allotments as a counterproposal (the "Counterproposal") to the Joint Proposal. NNB proposes to substitute Channel 226C3 for Channel 225C1 at Astoria, Oregon, and to reallocate Channel 226C3 from Astoria to Gladstone, Oregon, as its first local service for use by KAST-FM. This proposed channel substitution and reallocation to Gladstone is mutually exclusive with the Joint Proposal's proposed allotment of Channel 226A to Trout Lake, Washington. To accommodate the proposed provision of first local service to Gladstone, NNB proposes (a) to substitute Channel 230C2 for Channel 229C in Portland, Oregon at a new reference site for KPDQ-FM; (b) to substitute Channel 232C3 for Channel 231C3 in Tillamook, Oregon for KTIL-FM; (c) to substitute Channel 227C for Channel 226C in Springfield-Eugene, Oregon for KGNU(FM); (d) to substitute Channel 225A for Channel 228A in Coos Bay, Oregon, for KDCQ(FM); (e) to substitute Channel 224A for Channel 232A in Long Beach, Washington at a new reference site for KAQX(FM); (f) to allocate Channel 228C3 at Manzanita, Oregon, as its first local service, and (g) to allocate Channel 259A at Ilwaco, Washington as its second local service. NNB has obtained consents from the licensees of all affected stations except Oregon Eagle, Inc., licensee of KTIL-FM, Tillamook, Oregon and Bay Cities Building Company, Inc. licensee of KDCQ(FM), Coos Bay, Oregon. NNB respectfully requests that the Commission require Oregon Eagle, Inc. and Bay Cities Building Company, Inc. to change the frequencies of stations KTIL-FM and KDCQ(FM), respectively, to accommodate the proposed new allotments

pursuant to the Commission's policies.² NNB pledges to reimburse all affected licensees for reasonable costs in implementing the channel substitutions in accordance with the Commission's policies.³

3. Grant of the Counterproposal would provide first local service to the communities of Gladstone and Manzanita, Oregon and second local service to the community of Ilwaco, Washington. Moreover, the Counterproposal would create a "net" gain in service to 1,320,817 persons (or as many as 1,322,219 persons under another scenario).⁴

4. As stated, the Counterproposal is mutually exclusive with the Joint Proposal because the proposed substitution of Channel 226C3 for Channel 225C1 at Astoria and the reallocation of Channel 226C3 to Gladstone is mutually exclusive with the Joint Proposal's proposed allotment of Channel 226A to Trout Lake, Washington. To enable the Commission to grant both the Joint Proposal and the Counterproposal, by these comments, NNB proposes an alternate allotment of Channel 236A in lieu of Channel 226A to Trout Lake, Washington. By adopting this alternate allotment for Trout Lake, Washington, the Commission may grant both the Counterproposal and the Joint Petition and achieve a preferential arrangement of allotments and an efficient use of broadcast spectrum.

I. PROPOSED SUBSTITUTION OF CHANNEL 226C3 FOR CHANNEL 225C1 AND REALLOTMENT OF CHANNEL 226C3 TO GLADSTONE, OREGON.

5. The Counterproposal proposes the substitution of Channel 226C3 for Channel 225C1 at Astoria, Oregon, and the reallocation of Channel 226C3 to Gladstone, Oregon for use by KAST-FM as Gladstone's first local service (the "Gladstone Proposal"). Astoria, Oregon

² See *Columbus, Nebraska*, 59 RR 2d 1184 (1986).

³ See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

⁴ See Exhibit A (Technical Exhibit by Hatfield & Dawson ("Technical Exhibit")).

would continue to be served by non-commercial educational stations KZNX(FM) and KMUN(FM), and by full-time stations KKEE(AM), and KAST(AM).⁵ Thus, the Counterproposal would provide Gladstone with its first local aural service while Astoria would continue to be served by local services, thus achieving a preferential arrangement of allotments.

6. Upon the Commission's adoption of the Counterproposal, NNB will file an application to operate KAST-FM on Channel 226C3 at Gladstone and implement the necessary changes in accordance with applicable Commission rules.⁶

A. Technical Compliance.

7. The Gladstone Proposal complies with the Commission's technical requirements.⁷ Operation of KAST-FM on Channel 226C3 from the proposed reference site would provide the requisite city grade coverage to Gladstone and would comply with the minimum distance separation requirements, with the exception of KPDQ-FM on Channel 229C at Portland, Oregon, KGNU(FM) on Channel 226C at Springfield-Eugene, Oregon, and the proposed allotment of Channel 226A at Trout Lake, Washington.⁸ The Counterproposal, however, proposes to modify these allotments to accommodate the Gladstone Proposal. The proposed allotment of Channel 226C3 at Gladstone is mutually exclusive with KAST-FM's present assignment of Channel 225C1 at Astoria, Oregon.⁹

⁵ See *id.*

⁶ The licensee of KPDQ-FM in Portland, Oregon and its corporate parent are the holder of an option to buy KAST-FM. If the Counterproposal is granted and they exercise the option prior to construction of KAST-FM, they have stated that they will file an application to operate KAST-FM on Channel 226C3 at Gladstone and implement the necessary changes in accordance with applicable Commission rules. (See Exhibit B).

⁷ See Exhibit A (Technical Exhibit).

⁸ See *id.*

⁹ See *id.*

8. The Gladstone Proposal would result in a service gain over an area of 4,808 square kilometers containing 1,737,442 persons and would result in a loss area of 9,902 square kilometers containing 160,134 persons.¹⁰ The loss area would continue to receive service from at least five aural services¹¹ and thus is considered to be well-served.¹² As proposed, the Channel 226C3 60 dBu service area would contain 1,736,793 persons in an area of 4,808 square kilometers.¹³ No aural services are assigned to Gladstone,¹⁴ and accordingly, grant of the Counterproposal would provide Gladstone with its first local aural service while Astoria would continue to be served by KZNX(FM) on Channel 209A, KMUN(FM) on Channel 220C2, KKEE(AM) on 1230 kHz, and KAST(AM) on 1370 kHz.¹⁵

B. Gladstone Is an Independent Community Deserving of First Local Aural Service.

9. In reviewing a proposal to change a station's community of license, the Commission compares the proposed allotment plan and the existing state of allotments for the communities involved.¹⁶ To determine whether a proposal would result in a preferential arrangement of allotments, the Commission is guided by the FM allotment priorities.¹⁷ The FM priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local

¹⁰ See *id.*

¹¹ See *id.*

¹² *Llano and Marble Falls, Texas*, 12 FCC Rcd 6809, ¶ 6 (1997), *recon. denied*, 13 FCC Rcd 25039 (1998) ("*Llano*").

¹³ See Exhibit A (Technical Exhibit).

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community R&O*").

service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).¹⁸ The upgrade and reallocation of Channel 226C3 at Gladstone fall under allotment priority (3) because they will bring a first local service to Gladstone, and Astoria will continue to have a local service. In contrast, retention of the allotment at Astoria only provides Astoria with an additional local service and Gladstone with no local services. Thus, a comparison of the proposed allotment plan and the existing state of allotments demonstrates that grant of the Gladstone Proposal would achieve a preferential arrangement of allotments.

10. Gladstone qualifies as a community for allotment purposes and merits a first local aural service preference. The Commission defines communities as “geographically identifiable population groupings”¹⁹ and considers whether the political, social and commercial organizations located in the community identify themselves with the community.²⁰ The Commission has stated that the requirement of community status is generally satisfied if the proposed community is incorporated and listed in the U.S. Census.²¹ As discussed in greater detail below, Gladstone has all the indicia of a community for FM allotment purposes. The city of Gladstone was

...continued

¹⁷ *Id.*

¹⁸ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

¹⁹ *Strattanville and Farmington Township, Pennsylvania*, 15 FCC Rcd 23848, ¶ 5 (2000).

²⁰ *See, e.g., Strattanville and Farmington Township, Pennsylvania*, 15 FCC Rcd 23848, ¶ 5 (2000); *Dillsboro and Rosman, North Carolina*, 15 FCC Rcd 25562, (2000).

²¹ *See, e.g., Brookline, Missouri*, 10 FCC Rcd 13038, ¶ 4 (1995) (“While ‘incorporation is not a prerequisite [for community status], and while a community need not have a clearly delineated area and population, it is no doubt correct to state that in most cases a community is a city, town, village, or other political subdivision’”); *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, ¶ 34 (1982) (stating that listing in the census is sufficient to demonstrate community status).

incorporated in 1911²² and has a population of 11,438 according to the 2000 U.S. Census.²³ Moreover, Gladstone has its own local government led by current mayor Wade Byers and six full-time city council members.²⁴ The government of Gladstone also provides municipal services including a police department, a fire department, and public works department.²⁵ Gladstone has its own zip code (97027)²⁶ and its own Post Office.²⁷ Gladstone has numerous local businesses, a public library, a senior citizen's center, eleven churches, and medical clinics.²⁸ Thus, Gladstone clearly contains all the indicia of community status.

11. Gladstone also is clearly independent of the Portland Urbanized Area. Generally, if a proposed reallocation would result in city-grade coverage of fifty percent (50%) or more of

²² See Exhibit C (Assisting Communities – Oregon Economic & Community Development Department (visited July 15, 2002) (<http://www.econ.state.or.us/>)).

²³ See Exhibit C (U.S. Census Bureau).

²⁴ See Exhibit C (City of Gladstone – Councils, Commissions, Committees, and Boards (visited July 15, 2002) (<http://www.ci.gladstone.or.us/gladstone/city.government/councils.html>)).

²⁵ See Exhibit C (City of Gladstone – Police Department (visited July 15, 2002) (<http://www.ci.gladstone.or.us/gladstone/public.safety/police.html>); City of Gladstone – Fire Department (visited July 15, 2002) (<http://www.ci.gladstone.or.us/gladstone/public.safety/fire.html>); City of Gladstone – Public Works (visited July 15, 2002) (<http://www.ci.gladstone.or.us/gladstone/public.services/public.works.html>)).

²⁶ See Exhibit C (USPS City State / ZIP Code Associations (visited July 15, 2002) (<http://www.usps.com/cgi-bin/zip4/ctystzip2>)).

²⁷ See Exhibit C (United States Postal Service – Post Office Locator (visited July 15, 2002) (<http://www.mapsonus.com/db/USPS/>)).

²⁸ See Exhibit C (Yahoo! Yellow Pages, Gladstone, OR – All Businesses (visited July 15, 2002) (<http://yp.yahoo.com/>); City of Gladstone – Public Services (visited July 15, 2002) (<http://www.ci.gladstone.or.us/gladstone/public.services.html>); Yahoo! Yellow Pages, Gladstone, OR – Churches (visited July 15, 2002) (<http://yp.yahoo.com/>); (Assisting Communities – Oregon Economic & Community Development Department (visited July 15, 2002) (<http://www.econ.state.or.us/>); Yahoo! Yellow Pages, Gladstone, OR – Doctors and Clinics (visited July 15, 2002) (<http://yp.yahoo.com/>)).

an urbanized area, the Commission will conduct an analysis under *Tuck* to determine whether the proposed community of license is independent of the urbanized area.²⁹ The proposed allotment of Channel 226C3 at Gladstone would provide 70 dBu service to eighty percent (80%) of the land area and eighty-two percent (82%) of the population of the Portland Urbanized Area.³⁰ An analysis of the *Tuck* factors clearly demonstrates that Gladstone is independent of the Portland Urbanized Area.

12. In evaluating a community's independence, the Commission is guided by the following three factors: (1) signal population coverage, that is, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis, as gauged by a number of indicia.³¹ All three factors indicate that Gladstone is entitled to a first local service preference.

(1) Signal population coverage.

13. The proposed Channel 226C3 at Gladstone will encompass eighty percent (80%) of the land area and eighty-two percent (82%) of the population of the Portland Urbanized Area with its 70 dBu signal contour.³² The Commission has granted proposed allotments to numerous

²⁹ *Faye and Richard Tuck*, 3 FCC Rcd 5374 at ¶¶ 1-4 (1988).

³⁰ See Exhibit A (Technical Exhibit).

³¹ *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580, ¶ 23 (1991), *appl. for rev. dismissed*, 12 FCC Rcd 8392 (1997). See also *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951).

³² See Exhibit A (Technical Exhibit).

communities in which the proposed facilities would encompass a greater percentage of the urbanized area.³³

(2) Population and proximity in comparison to Portland.

14. According to the 2000 Census, Gladstone has a population of 11,438 persons.³⁴ Although this is approximately 2.2% of the population of Portland,³⁵ with more than eleven thousand residents, Gladstone has a significant number of residents. As to proximity, Gladstone is located eleven miles from Portland.³⁶ The Commission many times has granted channel change petitions when the proposed community's population as a percentage of that of the central city was considerably smaller³⁷ and when the community was located much closer to the central city of the urbanized area.³⁸ The cities of Oatfield and Milwaukie, Oregon are located between Gladstone and Portland, and Gladstone and Portland also are located in different counties. Gladstone is located within Clackamas County, and Portland is located within

³³ *E.g., St. Augustine and Neptune Beach, Florida*, 2001 FCC LEXIS 5806 (2001) (granting the proposed reallotment to Neptune Beach in which the proposed facilities would encompass 95.3% of the Jacksonville urbanized area); *Farmersville, Blue Ridge, Bridgeport, Texas, et al.*, 12 FCC Rcd 4099 (1997) (granting the proposed reallotment to Flower Mound in which the proposed facilities would encompass 100% of the Denton Urbanized Area and 75% of the Lewisville Urbanized Area).

³⁴ *See* Exhibit C (U.S. Census Bureau).

³⁵ Portland's population was 529,121 according to the 2000 Census. *See* Exhibit B (U.S. Census Bureau).

³⁶ *See* Exhibit C (How Far is It – Gladstone, OR and Portland, OR (visited July 22, 2002) <<http://www.indo.com/cgi-bin/dist?place1=gladstone%2C+or&place2=portland%2C+or>>).

³⁷ *E.g. Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (1996) (finding Newcastle independent of Oklahoma City despite population equal to 0.9% of that of central city because evidence of independence is of more significance).

³⁸ *E.g. Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (1999) (finding Mullins independent of Myrtle Beach Urbanized Area despite four miles separation); *Cadiz and Oak Grove, Kentucky*, 10 FCC Rcd 10785 (1995), *pet. for recon. denied*, 11 FCC Rcd 22208

continued...

Multnomah County.³⁹ Accordingly these factors weigh in favor of finding that Gladstone is a substantial community that is independent of Portland.

(3) Tuck analysis.

15. An analysis of Gladstone based on the *Tuck* factors clearly indicates that Gladstone is sufficiently independent of the Portland Urbanized Area to justify a first local service preference. In *Tuck*, the Commission set forth an eight-factor analysis of the interdependence of a community within a larger urbanized area, which includes review of the following points: (a) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (b) whether the specified community has its own local government and elected officials; (c) 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; (d) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (e) whether the community has its own commercial establishments, health facilities, and transportation systems; (f) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (g) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; and (h) the extent to which the specified community and the central city are part of the same advertising

...continued

(1996), *decision set aside on other grounds*, 16 FCC Rcd 9556 (2001) (finding Oak Grove independent of Clarksville Urbanized Area despite six and a half mile separation).

³⁹ See Exhibit C (How Far is It – Gladstone, OR and Portland, OR (visited July 22, 2002) <<http://www.indo.com/cgi-bin/dist?place1=gladstone%2C+or&place2=portland%2C+or>>).

market.⁴⁰ Although the Commission has generally held that a community must satisfy only a majority of the *Tuck* factors to be considered independent for allotment purposes,⁴¹ an examination of the facts presented herein shows that Gladstone satisfies all eight of those factors.

(a) *Gladstone residents consider their community to be separate from Portland, Oregon.*

16. Although Gladstone is located near Portland, its citizens consider themselves to be residents of their own separate community. The city of Gladstone was incorporated in 1911 and has a rich history dating back to the 1800's when the city was founded by Harvey Edward Cross.⁴² The city of Gladstone maintains its own internet website providing information regarding the city's services and facilities.⁴³ As this website observes, the Gladstone School District "serves nearly the same geographic boundaries as the city, helping the community maintain a strong sense of identity."⁴⁴ Numerous schools including the Gladstone High School, Kraxberger Junior High School, and John Wetten Elementary School serve the community's residents.⁴⁵ Gladstone has at least eleven churches within its city limits.⁴⁶ Gladstone offers its residents and visitors numerous recreational activities including fishing, water activities, hiking hunting, wetlands, and wildlife.

⁴⁰ *Faye and Richard Tuck*, 3 FCC Rcd 5374 at ¶ 36.

⁴¹ *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

⁴² See Exhibit C (City of Gladstone – History (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/history/history.html>>).

⁴³ See Exhibit C (City of Gladstone – General Information (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/front.page.html>>).

⁴⁴ See Exhibit C (City of Gladstone - Schools (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/public.services/schools.html>>).

⁴⁵ See *id.*

⁴⁶ See Exhibit C (Yahoo! Yellow Pages, Gladstone, OR – Churches (visited July 15, 2002) <<http://yp.yahoo.com/>>).

17. These attributes, coupled with the usual evidence of a thriving, independent community, such as its own local government, municipal services, and businesses demonstrate that Gladstone views itself as, and is, its own community, independent of Portland.

(b) *Gladstone has its own local government and elected officials.*

18. Gladstone's local government plays a large part in facilitating and promoting the city's community activities and gives local residents an opportunity to participate in the administration of the community's affairs. Gladstone has an elected mayor (Wade Byers), and six full-time city council members.⁴⁷ "The City Council is committed to providing the optimum level of services for Gladstone residents while minimizing costs imposed on taxpayers."⁴⁸ Gladstone also has a Budget Committee, Planning Commission, Traffic Safety Commission, Senior Center Advisory Board, Park and Recreation Board, and Library Board.⁴⁹

(c) *Gladstone provides extensive municipal services to its residents.*

19. As Gladstone's website reports, "Residents of Gladstone enjoy a variety of quality municipal services."⁵⁰ Gladstone Public Works provides its residents with maintenance and upgrade of the roads, water service, sewer service, and park maintenance.⁵¹ The City of

⁴⁷ See Exhibit C (City of Gladstone – City Hall (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/city.government/city.hall.html>>); Conversation with Gladstone City Clerk (July 17, 2002).

⁴⁸ See Exhibit C (City of Gladstone – City Hall (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/city.government/city.hall.html>>).

⁴⁹ See Exhibit C (City of Gladstone – City Government (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/city.government/city.government.html>>); (City of Gladstone – Councils, Commissions, Committees, and Boards (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/city.government/councils.html>>).

⁵⁰ See Exhibit C (City of Gladstone – Public Services (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/public.services.html>>).

⁵¹ See Exhibit C (City of Gladstone – Public Works (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/public.services/public.works.html>>).

Gladstone also provides weekly curbside recycling and yard debris collection.⁵² Residents also enjoy the Gladstone Public Library, the Gladstone Senior Center, and the Recreation Department.⁵³

20. Gladstone has its own Fire Department with forty volunteer firefighters and a Police Department with sixteen officers, which include Police Chief Bob King, three sergeants, one detective, one school resource officer, one motor officer, nine patrol officers, and twelve reserve officers.⁵⁴ As stated previously, Gladstone also offers its residents numerous schools.

(d) *Gladstone has its own zip code.*

21. Gladstone has its own zip code (97027)⁵⁵ and its own Post Office.⁵⁶

(e) *Gladstone has many commercial establishments and considerable health care resources.*

22. Gladstone has a considerable local commercial base for its residents. Gladstone's five largest employers as of June 2002 were the Gladstone School District, Thomason Ford Company, Thomason Toyota, McCafferty-Whittle Construction, and Stein Oil, Inc.⁵⁷ Many businesses identify themselves as Gladstone businesses by using "Gladstone" in their name

⁵² See Exhibit C (City of Gladstone – Recycling (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/public.services/recycling.html>>).

⁵³ See Exhibit C (City of Gladstone – Public Services (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/public.services/public.services.html>>).

⁵⁴ See Exhibit C (City of Gladstone – Police Department (visited July 15, 2002) <<http://www.ci.gladstone.or.us/gladstone/public.safety/police.html>>); Conversation with Fire Department Clerk (July 16, 2002).

⁵⁵ See Exhibit C (USPS City State/Zip Code Associations (visited July 15, 2002) <<http://www.usps.com/cgi-bin/zip4/ctystzip2>>).

⁵⁶ See Exhibit C (United States Postal Service –Post Office Locator (visited July 15, 2002) <<http://www.mapsonus.com/db/USPS/>>).

⁵⁷ See Exhibit C (Assisting Communities – Oregon Economic & Community Development Department (visited July 15, 2002) (<http://ww.econ.state.or.us/>>).

including the Gladstone Beauty Salon, the Gladstone Card Room, the Gladstone Chevron, the Gladstone City Shops, Gladstone Gifts & Deli, and the Gladstone Lanes.⁵⁸

23. Gladstone also has numerous health clinics for its residents including the Gladstone Medical Center, Northwest Mental Health, the Gladstone Chiropractic Center, Gladstone Family Practice Clinic, and Custom Dental Prosthetics.⁵⁹

(f) *Gladstone offers its residents substantial employment opportunities.*

24. Gladstone's substantial local business base provides its residents with many employment opportunities. According to the 1990 Census, 33.8% of Gladstone residents over the age of sixteen worked in Gladstone.⁶⁰ The Commission has considered communities independent of their urbanized area under circumstances where a substantially smaller percentage of residents were employed within the community.⁶¹

(g) *Gladstone has local media outlets.*

25. Gladstone residents have access to local media through the *Clackamas Review*, a weekly newspaper published in Oak Grove.⁶² This paper has a circulation of approximately 20,000, including Gladstone. Gladstone residents also have access to media within Clackamas

⁵⁸ See Exhibit C (Yahoo! Yellow Pages, Gladstone, OR – All Businesses (visited July 15, 2002) <<http://yp.yahoo.com/>>).

⁵⁹ See Exhibit C (Yahoo! Yellow Pages, Gladstone, OR – Doctors and Clinics (visited July 15, 2002) <<http://yp.yahoo.com/>>; Yahoo! Yellow Pages, Gladstone, OR – Social Services (visited July 15, 2002) <<http://yp.yahoo.com/>>).

⁶⁰ See Exhibit C (1990 Census Lookup (1.4a) (visited July 15, 2002) <<http://venus.census.gov/cdrom/lookup/1026747135>>).

⁶¹ E.g., *Albermarle and Indian Trail, North Carolina*, 14 FCC 10524 (1999) (“*Albermarle*”) (holding Indian Trail deserving of first local service although only 11% of the residents worked within the community).

⁶² See 2001 EDITOR & PUBLISHER INTERNATIONAL YEARBOOK PART II 278 (2001).

county including the *Canby Herald*, the *Lake Oswego Review*, the *Wilsonville Spokesman*, and the *Sandy Post*⁶³. In addition, numerous Gladstone businesses and organizations maintain web sites that provide information to the community.⁶⁴

(h) *Gladstone businesses can advertise to residents directly.*

26. These various media outlets show that Gladstone businesses can reach Gladstone residents without utilizing the Portland advertising market. In addition to advertising in the *Clackamas Review*, the *Canby Herald*, the *Lake Oswego Review*, the *Wilsonville Spokesman*, and the *Sandy Post*, businesses can utilize the North Clackamas County Chamber of Commerce. As the Chamber of Commerce's website notes, "As a chamber member, this section provides you with greater exposure than most advertising venues."⁶⁵ Businesses also can advertise through the internet using their own websites or those that offer advertising listing services.⁶⁶

27. In sum, Gladstone clearly satisfies the *Tuck* requirements for demonstrating an independent community for allotment purposes and thus merits a first local service preference. The Gladstone Proposal therefore would serve the public interest as it would provide a first local service to Gladstone.

⁶³ See *id.* 278-79.

⁶⁴ See, e.g., Exhibit C (Armstrong Buick Volkswagon (visited July 25, 2002) <<http://www.armstrongbuickvw.com>>); (Jal Duncan Photography (visited July 25, 2002) <<http://www.jalduncan.com>>); (Happyrock Coffee Company (visited July 25, 2002) <www.happyrockcoffee.com>); (Advanced Home Brokers (visited July 25, 2002) <www.a-h-b.com>); (Dr. David Wheeler (visited July 25, 2002) <<http://www.0disease.com/index.html>>); (Williamette Mortgage Services, Inc. (visited July 25, 2002) <<http://www.loansnow.com/about.html>>); Shotokan Karate (visited July 25, 2002) <<http://www.nwkarate.com/omac.htm>>).

⁶⁵ See Exhibit C (North Clackamas County Member Directory (visited July 27, 2002) <<http://www.yourchamber.com/subjectindex.cfm?ModuleID=MEMBERDIRECTORY>>).

⁶⁶ See Exhibit C (Gladstone Oregon Classifieds Directory (visited July 25, 2002) <<http://www.buyersusa.com>>).

II. PROPOSED SUBSTITUTION OF CHANNEL 230C2 FOR CHANNEL 229C AT PORTLAND, OREGON.

28. To accommodate the provision of first local service to Gladstone, NNB proposes to substitute Channel 230C2 for Channel 229C in Portland, Oregon with new reference site coordinates for KPDQ-FM (“KPDQ”) (the “Portland Proposal”). Salem Media of Oregon, Inc. (“Salem”), licensee of KPDQ-FM, has consented to the modification of KPDQ-FM’s license from Channel 230C2 to Channel 229C and agreed to file an application to implement the changes upon grant of the Counterproposal.⁶⁷ In accordance with the Commission’s policies,⁶⁸ this agreement involves an exchange of consideration which is deemed to cover reimbursement for reasonable costs in implementing the facilities modification.

29. The Portland Proposal complies with the Commission’s technical requirements.⁶⁹ As noted in the Technical Exhibit, new reference site coordinates are proposed for the channel substitution, and operation from the proposed site would continue to provide the requisite city grade signal to Portland.⁷⁰ The Portland Proposal would comply with the minimum distance separation requirements, with the exception of KTIL-FM on Channel 231C3 at Tillamook, Oregon. The Counterproposal however, proposes to modify this allotment to accommodate the Portland Proposal and ultimately, the Gladstone Proposal. As proposed, the Channel 230C2 service area would contain 1,932,974 persons in an area of 8,569 square kilometers and would result in a loss area of 10,958 square kilometers containing 364,783 persons.⁷¹ The loss area

⁶⁷ A copy of the consent is included as Exhibit D.

⁶⁸ See, e.g., *Bowling Green, Kentucky*, DA 01-560, MM Docket No. 99-326, RM-9755 (rel. Mar. 2, 2001); *Circleville, Ohio*, 8 FCC 2d 159 (1967).

⁶⁹ See Exhibit A (Technical Exhibit).

⁷⁰ See *id.*

⁷¹ See *id.*

would continue to receive service from at least five aural services⁷² and thus is considered to be well-served.⁷³

III. PROPOSED SUBSTITUTION OF CHANNEL 232C3 FOR CHANNEL 231C3, TILLAMOOK, OREGON.

30. To accommodate the Portland Proposal and ultimately the Gladstone Proposal, NNB proposes to substitute Channel 232C3 for Channel 231C3 in Tillamook, Oregon, at the current transmitter site for KTIL-FM and to modify KTIL-FM's license accordingly (the "Tillamook Proposal"). Oregon Eagle, Inc. is the licensee of KTIL-FM. NNB respectfully requests that the Commission require Oregon Eagle, Inc. to change KTIL-FM's frequency to accommodate the proposed new allotments pursuant to the Commission's policies.⁷⁴ In accordance with the Commission's policies, NNB pledges to reimburse Oregon Eagle, Inc. for its reasonable costs in implementing the channel substitution.

31. As indicated in the Technical Exhibit, the Tillamook Proposal complies with the Commission's technical requirements.⁷⁵ Operation on the proposed channel from the current transmitter site at Tillamook would provide the requisite city grade signal coverage to Tillamook and would comply with the minimum distance separation requirements, with the exception of KAQX(FM) on Channel 232A at Long Beach, Washington.⁷⁶ The Counterproposal proposes to modify this allotment to accommodate the Tillamook Proposal and ultimately, the Gladstone Proposal. The Channel 232C3 service area would contain 24,053 persons over an area of 2,628

⁷² *See id.*

⁷³ *See, e.g., Llano and Marble Falls, Texas*, 12 FCC Rcd 6809, ¶ 6 (1997), *recon. denied*, 13 FCC Rcd 25039 (1998) ("Llano").

⁷⁴ *See Columbus, Nebraska*, 59 RR 2d 1184 (1986).

⁷⁵ *See Exhibit A (Technical Exhibit).*

⁷⁶ *See id.*

square kilometers. The channel substitution does not involve a change in transmitter site, and therefore, will not result in any gain or loss areas.⁷⁷

IV. PROPOSED SUBSTITUTION OF CHANNEL 227C FOR CHANNEL 226C, SPRINGFIELD-EUGENE, OREGON.

32. To accommodate the Gladstone Proposal, NNB proposes to substitute Channel 227C for Channel 226C in Springfield-Eugene, Oregon, at the current transmitter site for KGNU(FM) and to modify the license of KGNU(FM) accordingly (the “Springfield-Eugene Proposal”). McKenzie River Broadcasting Co., Inc. (“McKenzie River”), licensee of KGNU(FM), has consented to the modification of KGNU(FM)’s license from Channel 226C to Channel 227C. McKenzie River has agreed to file an application to implement the changes consistent with the Commission’s rules upon grant of the Counterproposal.⁷⁸ In accordance with the Commission’s policies, NNB pledges to reimburse McKenzie River for its reasonable costs in implementing the channel substitution.

33. As indicated in the Technical Exhibit, the Springfield-Eugene Proposal complies with the Commission’s technical requirements.⁷⁹ Operation on the proposed channel from the current transmitter site at Springfield-Eugene would provide the requisite city grade signal coverage to Springfield-Eugene and would comply with the minimum distance separation requirements, with the exception of KDCQ(FM) on Channel 228A at Coos Bay, Oregon.⁸⁰ As proposed, the Channel 227C service area would contain 514,392 persons over an area of 19,875

⁷⁷ *See id.*

⁷⁸ A copy of the consent is included as Exhibit E.

⁷⁹ *See* Exhibit A (Technical Exhibit).

⁸⁰ *See id.*

square kilometers.⁸¹ The channel substitution does not involve a change in transmitter site, and therefore, will not result in any gain or loss areas.⁸²

V. PROPOSED SUBSTITUTION OF CHANNEL 225A FOR CHANNEL 228A, COOS BAY, OREGON.

34. To accommodate the Gladstone Proposal, NNB proposes to substitute Channel 225A for Channel 228A in Coos Bay, Oregon, at the current transmitter site for KDCQ(FM) (the “Coos Bay Proposal”). Bay Cities Building Company, Inc. is the licensee of KDCQ(FM). NNB respectfully requests that the Commission require Bay Cities Building Company, Inc. to change KDCQ(FM)’s frequency to accommodate the proposed new allotments pursuant to the Commission’s policies.⁸³ In accordance with the Commission’s policies, NNB pledges to reimburse Bay Cities Building Company, Inc. for its reasonable costs in implementing the channel substitution.

35. As indicated in the Technical Exhibit, the Coos Bay Proposal complies with the Commission’s technical requirements.⁸⁴ Operation on the proposed channel from the current transmitter site at Coos Bay would provide the requisite city grade signal coverage to Coos Bay and would comply with the minimum distance separation requirements, with the exception of KKNU(FM) on Channel 226C at Springfield-Eugene, Oregon.⁸⁵ The Counterproposal proposes to modify this allotment to accommodate the Coos Bay Proposal and ultimately, the Gladstone Proposal. As proposed, the Channel 225A 60 dBu service area would contain 51,739 persons

⁸¹ *See id.*

⁸² *See id.*

⁸³ *See Columbus, Nebraska*, 59 RR 2d 1184 (1986).

⁸⁴ *See Exhibit A (Technical Exhibit).*

⁸⁵ *See id.*

over an area of 1,651 square kilometers. The channel substitution does not involve a change in transmitter site, and therefore, will not result in any gain or loss areas.⁸⁶

VI. PROPOSED SUBSTITUTION OF CHANNEL 224A FOR CHANNEL 232A, LONG BEACH, WASHINGTON.

36. To accommodate the Tillamook Proposal and ultimately the Gladstone Proposal, NNB proposes to substitute Channel 224A for Channel 232A in Long Beach, Washington, at the same transmitter site, for NNB's station KAQX(FM) (the "Long Beach Proposal"). NNB will file an application to implement the changes consistent with the Commission's spacing rules upon grant of the Counterproposal.

37. As indicated in the Technical Exhibit, the Long Beach Proposal complies with the Commission's technical requirements.⁸⁷ Operation from the proposed site at Long Beach would provide the requisite city grade signal coverage to Long Beach and would comply with the minimum distance separation requirements, with the exception of KAST-FM on Channel 225C1 at Astoria, Oregon, which the Counterproposal proposes to modify by the Gladstone Proposal.⁸⁸

38. As proposed, the Channel 224A service area would contain 29,580 persons over an area of 782 square kilometers and will not result in any gain or loss areas.⁸⁹

VII. PROPOSED ALLOTMENT OF CHANNEL 228C3 TO MANZANITA, OREGON, AS ITS FIRST LOCAL SERVICE.

39. To address the loss area from the proposed provision of first local service to Gladstone, NNB proposes to allot Channel 228C3 to Manzanita, Oregon as its first local service (the "Manzanita Proposal"). In accordance with the Commission's policies, if allotted, NNB

⁸⁶ *See id.*

⁸⁷ *See id.*

⁸⁸ *See id.*

pledges to apply for Channel 228C3 at Manzanita, and if authorized, to construct the station in accordance with applicable Commission rules.

A. Technical Compliance.

40. The Manzanita Proposal complies with the Commission's technical requirements.⁹⁰ Operation from the proposed site would provide the requisite city grade signal coverage to Manzanita and would comply with the minimum distance separation requirements with the exception of KAST-FM on Channel 225C1 at Astoria, Oregon; KPDQ-FM on Channel 229C at Portland, Oregon; and KTIL-FM on Channel 231C3 at Tillamook, Oregon.⁹¹ These allotments are addressed in the Counterproposal by the Gladstone Proposal, the Portland Proposal, and the Tillamook Proposal, respectively.

41. The proposed Channel 228C3 60 dBu service area would provide service to 30,735 persons in an area of 2,667 square kilometers.⁹² No aural services are assigned to Manzanita.⁹³ Thus, grant of the Counterproposal would provide Manzanita with its first local aural service, resulting in a preferential arrangement of allotments.

B. Manzanita Is a Community Deserving of First Local Aural Service.

42. The city of Manzanita, Oregon, qualifies as a community and merits a first local aural service preference. Manzanita is an incorporated city, listed in the Census, and thus meets

...continued

⁸⁹ *See id.*

⁹⁰ *See id.*

⁹¹ *See id.*

⁹² *See id.*

⁹³ *See id.*

the basic criteria for a community.⁹⁴ Moreover, Manzanita's local government and businesses all identify themselves with the community of Manzanita and thereby create a cohesive network for the residents of the city.

43. The City of Manzanita is not located within any Census-defined Urbanized Area and would not encompass any portion of an Urbanized Area.⁹⁵ Accordingly, a *Tuck* analysis demonstrating that Manzanita is independent of an Urbanized Area is not required.⁹⁶

44. "Driving south along Highway 101, you can't help but stop and peak over Oregon's steep cliffs. From high above you see something special[] lies beneath. The city you are looking at is Manzanita."⁹⁷ Manzanita, which means "little apple" in Spanish,⁹⁸ is a quaint city located on the coast of Oregon. The city of Manzanita was incorporated in 1946⁹⁹ and has a population of 564 persons.¹⁰⁰ Manzanita has its own city hall and local government, which is led

⁹⁴ See, e.g., *Brookline, Missouri*, 10 FCC Rcd 13038, ¶ 4 (1995) ("While 'incorporation is not a prerequisite [for community status], and while a community need not have a clearly delineated area and population, it is no doubt correct to state that in most cases a community is a city, town, village, or other political subdivision"); *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, ¶ 34 (1982) (stating that listing in the census is sufficient to demonstrate community status).

⁹⁵ See Exhibit A (Technical Exhibit).

⁹⁶ *Faye and Richard Tuck*; see, e.g., *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352, ¶ 11 (1995).

⁹⁷ See Exhibit F (Description of Manzanita (NWcoast.com) (visited July 15, 2002) <<http://nwcoast.com/city/description/manzanita.asp>>).

⁹⁸ See Exhibit F (Manzanita (visited July 15, 2002) <<http://www.neahkahnie.net/manzanita/>>).

⁹⁹ See Exhibit F (Assisting Communities - Oregon Economic & Community Development Department (visited July 15, 2002) <<http://www.econ.state.or.us/>>).

¹⁰⁰ See Exhibit F (Census Bureau, Census 2000).

by current Mayor Walter Hinson¹⁰¹ and four city council members.¹⁰² Manzanita has a Department of Public Safety, which is comprised of two public safety officers and one police officer¹⁰³ and has sixteen volunteer firefighters.¹⁰⁴ Manzanita has its post office and its own zip code (97130).¹⁰⁵ All of these services provide an essential network of public services for the residents of Manzanita.

45. Manzanita offers its residents (as well as its visitors) a variety of community and cultural resources. As a coastal city, Manzanita offers its residents the seven-mile long Manzanita Beach where seals can be found lounging on the jetty located at the south end of the beach.¹⁰⁶ Manzanita has its own public library,¹⁰⁷ a private school,¹⁰⁸ a natural health clinic,¹⁰⁹

¹⁰¹ See Exhibit F (The League of Oregon Cities – City Directory 2002 (visited July 22, 2002) <<http://www.or.cities.org/loc/citybooks/citybookview.cfm?city+96>>; Yahoo! Yellow Pages, Manzanita, OR – Government (visited July 15, 2002) <<http://yp.yahoo.com>>).

¹⁰² Conversation with City Clerk (July 17, 2002).

¹⁰³ *Id.*

¹⁰⁴ *Id.*; See Exhibit F (Assisting Communities - Oregon Economic & Community Development Department (visited July 15, 2002) <<http://www.econ.state.or.us/>>).

¹⁰⁵ See Exhibit F (USPS City State / Zip Code Associations (visited July 15, 2002) <<http://www.usps.com/cgi-bin/zip4/ctystzip2>>); United States Postal Service – Post Office Locator: Listing Browser (visited July 15, 2002) <<http://mapsonus.switchboard.com>>).

¹⁰⁶ See Exhibit F (Manzanita, Oregon, North Oregon Coast (visited July 15, 2002) <<http://neahkahniet.net/manzanita.html>>).

¹⁰⁷ See Exhibit F (Yahoo! Yellow Pages, Manzanita, OR – Libraries (visited July 15, 2002) <<http://yp.yahoo.com>>).

¹⁰⁸ See Exhibit F (Yahoo! Yellow Pages, Manzanita, OR – Elementary Schools (visited July 15, 2002) <<http://yp.yahoo.com>>).

¹⁰⁹ See Exhibit F (Yahoo! Yellow Pages, Manzanita – Doctors and Clinics (visited July 15, 2002) <<http://yp.yahoo.com>>).

and a golf course.¹¹⁰ Churches in Manzanita include the Calvary Bible Church, St. Catherine's Episcopal Church, Covenant Community Church, and Unity by the Pacific.¹¹¹

46. According to the U.S. Census Bureau report for 1999, forty-two business establishments are located within Manzanita's zip code.¹¹² The Manzanita Merchants Association sponsors community events during the year including an Easter Bonnet Contest and Easter Egg Hunt, a Fourth of July Parade, annual Kite Festival, Tree Lighting and Community Christmas Party, a Twelveth Night Tree Burning.¹¹³ Businesses in Manzanita include the U.S. Bank, Bernard Custom Construction, Oregon Coast Cyber Café, Sunset Vacation Rentals, Skin-Scent-sation Day Spa, Gales Bar & Grill, and Osborne Studio & Gallery.¹¹⁴ Numerous businesses identify themselves with the name of the city, including the Candy Basket of Manzanita, Inn at Manzanita, Manzanita Beach Realty, Manzanita Chinese Palace, Manzanita Fresh Foods, Manzanita Natural Health Clinic, Manzanita News and Espresso, and Manzanita Seafood Market.¹¹⁵

47. In light of the strong indicia of a nexus between the community and its political, social and commercial organizations, the city of Manzanita clearly merits community status for

¹¹⁰ See Exhibit F (Manzanita Oregon, Oregon Coast – Local Entertainment and Activities (visited July 15, 2002) <<http://www.manzanitaoregon.com/>>).

¹¹¹ See Exhibit F (Churches on the Oregon Coast (visited July 15, 2002) <<http://www.doormat.com/churches.html>>)

¹¹² See Exhibit F (ZIP Code Business Patterns (visited July 15, 2002) <<http://censtats.census.gov/cgi-bin/zbpnaic/zbpsect.pl>>).

¹¹³ See Exhibit F (Manzanita, OR – Shopping and Services – Manzanita Merchants (visited July 15, 2002) <<http://www.neahkahnie.net/merchants/>>).

¹¹⁴ See Exhibit F (Manzanita Merchants Association (visited July 15, 2002) <<http://www.neahkahnie.net/merchants/manzania-business-directory.html>>).

FCC allotment purposes. Grant of the Counterproposal therefore would provide first local aural service to the residents of Manzanita and achieve a preferential arrangement of allotments.

VIII. PROPOSED ALLOTMENT OF CHANNEL 259A TO ILWACO, WASHINGTON, AS ITS SECOND LOCAL SERVICE.

48. To address the loss area from the proposed provision of first local service to Gladstone, NNB proposes to allot Channel 259A to Ilwaco, Washington, as its second local service (the “Ilwaco Proposal”). In accordance with the Commission’s policies, if allotted, NNB pledges to apply for Channel 259A at Ilwaco, and if authorized, to construct the station in accordance with applicable Commission rules.

A. Technical Compliance.

49. The Ilwaco Proposal complies with the Commission’s technical requirements.¹¹⁶ Operation from the proposed site would provide the requisite city grade signal coverage to Ilwaco and would comply with the minimum distance separation requirements.¹¹⁷

50. The proposed Channel 259A 60 dBu service area would provide service to 30,032 persons in an area of 796 square kilometers.¹¹⁸ Currently, KVAS(FM), on Channel 280C3, which is licensed to NNB, is assigned to Ilwaco¹¹⁹ Thus, grant of the Counterproposal would provide Ilwaco with its second local aural service.

...continued

¹¹⁵ See Exhibit F (State of Oregon Business Directory (visited July 15, 2002) <<http://www.stateoforegon.com>>; Yahoo! Yellow Pages, Manzanita, OR – Businesses (visited July 15, 2002) <<http://yp.yahoo.com>>).

¹¹⁶ See Exhibit A (Technical Exhibit).

¹¹⁷ See *id.*

¹¹⁸ See *id.*

¹¹⁹ See *id.*

B. Ilwaco Is a Community Deserving of Second Local Aural Service.

51. As the Commission already has determined, Ilwaco is a community deserving of local service.¹²⁰ Thus, grant of the proposed allotment would provide second local service to this community.

IX. PROPOSED ALTERNATE ALLOTMENT OF CHANNEL 236A TO TROUT LAKE, WASHINGTON, AS ITS FIRST LOCAL SERVICE.

52. To resolve the conflict between the Joint Petition and the instant Counterproposal, NNB proposes an alternate allotment of Channel 236A instead of Channel 226A to Trout Lake, Washington, as its first local service (the "Alternate Trout Lake Proposal") and also expresses an interest in the alternate allotment of Channel 236A to Trout Lake. In accordance with the Commission's policies, if allotted, NNB pledges to apply for Channel 236A at Trout Lake, and if authorized, to construct the station in accordance with applicable Commission rules.

53. Adoption of the Alternate Trout Lake Proposal would permit the Commission to grant both the Counterproposal and the Joint Proposal (using the alternate channel at Trout Lake), resulting in provision of first local service to six communities: Gladstone, Manzanita, Moro, and Arlington, Oregon; and Covington and Trout Lake, Washington.

A. Technical Compliance.

54. The Alternate Trout Lake Proposal complies with the Commission's technical requirements.¹²¹ Operation from the proposed site would provide the requisite city grade signal

¹²⁰ *Ilwaco, Washington*, 7 FCC Rcd 1762 (1992) (allotting Channel 280C3 to Ilwaco, Washington as its first local service).

¹²¹ See Exhibit A (Technical Exhibit).

coverage to Trout Lake and would comply with the minimum distance separation requirements.¹²²

55. The proposed Channel 236A 60 dBu service area would provide service to 2,002 persons in an area of 2,519 square kilometers.¹²³ No aural services are assigned to Trout Lake.¹²⁴ Thus, grant of the Counterproposal and the Alternate Trout Lake Proposal¹²⁵ would provide Trout Lake with its first local aural service, resulting in a preferential arrangement of allotments.

B. Trout Lake Is a Community Deserving of First Local Aural Service.

56. Trout Lake, Washington, qualifies as a community and merits a first local aural service preference. Trout Lake is a Census Designated Place and thus meets the basic criteria for a community.¹²⁶

57. Trout Lake is not located within any Census-defined Urbanized Area and would not encompass any portion of an Urbanized Area.¹²⁷ Accordingly, a *Tuck* analysis demonstrating that Trout Lake is independent of an Urbanized Area is not required.¹²⁸

¹²² *See id.*

¹²³ *See id.*

¹²⁴ *See id.*

¹²⁵ As the Commission states in the *Notice*, “The filing of a counterproposal may lead [it] to allot a different channel than was requested for any of the communities involved.” *Notice* at Appendix, ¶ 4.

¹²⁶ *See, e.g., Arnold and Columbia, California*, 7 FCC Rcd 6302 (1992) (stating that the designation as a Census Designated Place “raises a strong presumption of community status”); *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, ¶ 34 (1982) (stating that listing in the census is sufficient to demonstrate community status).

¹²⁷ *See* Exhibit A (Technical Exhibit).

¹²⁸ *See Faye and Richard Tuck; see, e.g., Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352, ¶ 11 (1995).

58. The town of Trout Lake is a Census Designated Place¹²⁹ with a population of 494 persons.¹³⁰ Trout Lake is governed by a community council,¹³¹ has its own zip code (98650)¹³² and its own post office.¹³³ Trout Lake also is the home of Jonah Ministries, which sponsors a number of youth camps in the area. Jonah Ministries was founded by Trout Lake dairy farmers at the former Trout Lake school, which was vacated when the community built a new school south of town.¹³⁴ The annual Trout Lake Dairy Fair also is held on the grounds of the former school.¹³⁵ Trout Lake has two schools that educate students in kindergarten through high school.¹³⁶ Churches in Trout Lake include the Bridgehouse, Church of Christ, Mt. Adams Baptist Church, and the Presbyterian Church.¹³⁷ Trout Lake also offers its residents a women's quilting group and a book club, and it recently held its Seventh Annual Trout Lake Festival of the Arts.¹³⁸

¹²⁹ See Exhibit G (Census Bureau, Census 2000).

¹³⁰ See *id.*

¹³¹ Conversation with White Salmon City Clerk (July 17, 2002).

¹³² See Exhibit G (USPS City State / Zip Code Associations (visited July 16, 2002) <<http://www.usps.com/cgi-bin/zip4/ctystzip2>>).

¹³³ See Exhibit G (United States Postal Service – Post Office Locator (visited July 16, 2002) <<http://maponus.switchboard.com>>).

¹³⁴ See Exhibit G (About Jonah Ministries (visited July 26, 2002) <<http://www.campjonah.com/About%20Jonah%20Ministries.html>>).

¹³⁵ See *id.*

¹³⁶ See Exhibit G (National Center for Educational Statistics (visited July 17, 2002) <<http://www.nces.ed.gov/>>).

¹³⁷ See Exhibit G (Yahoo! Yellow Pages, Trout Lake WA – Churches (visited July 16, 2002) <<http://yp.yahoo.com>>).

¹³⁸ See Exhibit G (Trout Lake, Washington (visit July 16, 2002) <<http://www.rockisland.com/~newmoon/property.html>>; Trout Lake Festival of the Arts (visited July 16, 2002) <<http://www.gorgearts.org/tlarts.htm>>).

59. According to the 1999 U.S. Census Bureau, Trout Lake has nineteen business establishments.¹³⁹ Businesses in Trout Lake include the Farm (A Bed & Breakfast),¹⁴⁰ Serenity's, Denali Wilderness Lodge, Elk Meadows RV Park, Kelley's Trout Creek Inn, and the largest organic herb farm in the United States.¹⁴¹ In addition, a number of businesses identify themselves with the name of the town, such as the Trout Lake Grocery, Trout Lake Iron & Carriage, Trout Lake Massage Therapy, and Trout Lake's Upper Cut.¹⁴² In light of the strong indicia of a nexus between the community and its political, social and commercial organizations, Trout Lake clearly merits community status for FCC allotment purposes. A grant of the Alternate Trout Lake Proposal therefore would provide first local aural service to the residents of Trout Lake.

X. THE COMMISSION SHOULD GRANT THE COUNTERPROPOSAL AND ALTERNATE ALLOTMENT TO TROUT LAKE TO ACHIEVE A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS AND AN EFFICIENT USE OF BROADCAST SPECTRUM.

60. The Counterproposal presents a set of interrelated allotments that is mutually exclusive with the Joint Proposal and would achieve a preferential arrangement of allotments based on the FCC's allotment priorities.¹⁴³ First local service would be provided to the communities of Gladstone and Manzanita, thus invoking the third FM allotment priority, and

¹³⁹ See Exhibit G (ZIP Code Business Patterns (visited July 16, 2002) <<http://censtats.census.gov/cgi-bin/2bpnaic/2bpsect.pl>>).

¹⁴⁰ See Exhibit G (The Farm (visited July 27, 2002) <<http://www.thefarmbnb.com/>>).

¹⁴¹ See Exhibit G (Yahoo! Yellow Pages, Trout Lake, WA – Businesses (visited July 16, 2002) <<http://yp.yahoo.com/>>; Trout Lake, Washington (visited July 16, 2002) <<http://www.llamasales.com/town.html>>).

¹⁴² See Exhibit G (Yahoo! Yellow Pages, Trout Lake, WA – Businesses (visited July 16, 2002) <<http://yp.yahoo.com/>>).

¹⁴³ *Revision of FM Assignment Policy and Procedures* at 90 FCC 2d 91. See, e.g., *Moncks Corner, Kiawah Island, and Sampit, South Carolina*, 15 FCC Red 8973, ¶ 16 (2000).

second local service would be provided to Ilwaco, Washington, invoking the fourth allotment priority. Moreover, the Counterproposal would create a “net” gain in service to 1,320,817 persons (or as many as 1,322,219 persons under another scenario). NNB also has presented the Alternate Trout Lake Proposal as a means by which the Commission may grant both the Counterproposal and the Joint Proposal, provide first local service to seven communities, and achieve a more efficient use of spectrum. Grant of the Alternate Trout Lake Proposal to resolve the conflict between the proposals would be consistent with the Commission’s allotment policies.¹⁴⁴ Accordingly, examination of these mutually exclusive proposals based on the FM allotment priorities and resulting public interest benefits clearly weighs in favor of granting the Counterproposal and the Alternate Trout Lake Proposal instead of granting solely the Joint Proposal.

¹⁴⁴ See, e.g., *Arriba, Bennett, Brush and Pueblo, CO; Pine Bluffs, WY*, 2002 FCC LEXIS 677 (Feb. 8, 2002) (finding that it was unnecessary to compare the competing proposals because an alternate equivalent channel was available); *Wickenburg, Bagdad and Aguila, Arizona*, 2001 FCC LEXIS 2062 (April 13, 2001)(finding that it was unnecessary to compare the competing proposals because an alternate equivalent channel was available).

XI. SUMMARY OF PROPOSED AMENDMENTS TO FM TABLE OF ALLOTMENTS, 47 C.F.R. § 73.202(b) (CHANGES INDICATED IN BOLD TYPE).

	<u>Present</u>	<u>Proposed</u>
Astoria, Oregon	225C1	--- (would continue to be served by noncommercial stations KZNX(FM) and KMUN(FM) and by KKEE(AM) and KAST(AM).
Coos Bay, Oregon	228A, 254C2, 290C2	225A, 254C2, 290C2
Gladstone, Oregon	---	226C3
Manzanita, Oregon	---	228C3
Portland, Oregon	222C, 229C, 238C, 246C, 254C1, 258C1, 262C, 266C, 270C	222C, 230C2 , 238C, 246C, 254C1, 258C1, 262C, 266C, 270C
Springfield-Eugene, Oregon	226C	227C
Tillamook, Oregon	231C3	232C3
Ilwaco, Washington	280C3	259A, 280C3
Long Beach, Washington	232A	224A
Trout Lake, Washington	---	236A

CONCLUSION

61. In light of the foregoing, the Commission should grant the Counterproposal proposing the aforementioned mutually exclusive set of allotments and the Alternate Trout Lake Proposal.

Respectfully submitted,

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