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August 13, 2002

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AUG 13 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**RE: Reply Comments  
Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Arlington, The Dalles, and Moro Oregon and  
Kent and Trout Lake, Washington)  
MB Docket No. 02-136; RM-10458**

Dear Ms. Dortch:

Transmitted herewith on behalf of Mercer Island School District and Peninsula School District No. 401 is an original and four (4) copies of their Reply Comments in response to the comments filed in the above-referenced proceeding.

Should any questions arise in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,

  
Howard J. Barr

Enclosures  
cc: Service List

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MB Docket No. 02-136  
RM-10458

To: Chief, Allocations Branch

REPLY COMMENTS

MERCER ISLAND SCHOOL DISTRICT  
PENINSULA SCHOOL DISTRICT NO. 401

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## SUMMARY

Rather than support their proposed reallocation of Channel 283C3 from The Dalles, Oregon to Covington, Washington, the Joint Petitioners now propose to reallocate the channel to Kent, Washington. Counterpetitioners seek to amend the Table of Allotments by deleting the Channel 284C2 allotment at Aberdeen, Washington, reallocate channel 283C2 to Shoreline, Washington and modify the KDUX-FM license to specify operation on channel 283C2 at Shoreline.

Joint Commenters demonstrate herein that neither proposal will result in a preferential arrangement of allotments. Both merely seek to shift service from an underserved rural area to the well served Seattle area without any countervailing public interest benefits. Evaluation of both proposals under the Commission's Section 307(b) policies demonstrates that adoption of either proposal will be in contravention of those policies.

Furthermore, Joint Petitioners' amended proposal is fraught with procedural infirmities such that the Commission should treat it as a new proposal and either dismiss it or conduct a notice and comment rule making proceeding.

Both proposals will result in the loss of valuable services at Mercer Island and Gig Harbor, Washington. The Commission should adopt Joint Commenters proposal that it grant/establish an allotment for KMIH(FM) at Mercer Island, Washington. MISD reiterates that it will apply for the channel and construct the facility as authorized.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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FM Broadcast Stations	)	RM-10458
(Arlington, The Dalles, and Moro Oregon and	)	
Kent and Trout Lake, Washington	)	

To: Chief, Allocations Branch

**REPLY COMMENTS**

Mercer Island School District ("MISD") and Peninsula School District No. 401 ("Peninsula") (collectively "Joint Commenters"), by their counsel, hereby submit their Reply Comments in response to the comments filed in the above-captioned proceeding. The following is shown in support thereof:

**I. JOINT PETITIONERS' COUNTERPROPOSAL SHOULD BE REJECTED  
*AB INITIO***

In lieu of their original proposal to amend the FM Table of allotments by changing the KMCQ(FM) community of license from The Dalles, Oregon to the Seattle bedroom community of Covington, Washington, Joint Petitioners<sup>1</sup> now propose to delete Channel 283C from The Dalles, Oregon and to allot Channel 283C2 to another Seattle suburb. This time to Kent, Washington. The Commission should reject this blatant attempt to manipulate its rulemaking

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<sup>1</sup> Joint Petitioners consist of Mid-Columbia Broadcasting, Inc. ("Mid-Columbia"), licensee of station KMCQ(FM), channel 283C (104.5), The Dalles, Oregon, and First Broadcasting Company, L.P. ("FBC"). Saga Broadcasting Corp. joined Joint Petitioners in the submission of their Comments and Amended Proposal in this proceeding.

procedures and to circumvent the notice and comment requirements of the Administrative Procedure Act.<sup>2</sup>

Among the many procedural infirmities of Joint Petitioners' Comments and Amended Proposal is that it serves to exclude the public from commenting on the proposal. While the public was given notice of Joint Petitioners' proposal to abandon The Dalles and to relocate 240 miles to the already well served community of Covington, Washington, the public has no notice of their intention to now abandon The Dalles (and Covington) in favor of the equally well served (and equally distant) community of Kent.<sup>3</sup>

The proposal therefore fails to satisfy the APA's notice and comment requirements. The Commission should treat Joint Petitioners' Comments and Amended Proposal as a new petition for rulemaking to amend the Table of Allotments and either dismiss it or conduct a notice and comment rule making proceeding.

Furthermore, in making their counterproposal, Joint Petitioners failed to satisfy the most basic Commission requirement. The *NPRM*<sup>4</sup> required Joint Petitioners not only to comment on the merits of their proposal, but to restate their present intention to apply for the channel if allotted and, if authorized, to promptly construct the station. Joint Petitioners failed on both scores. They failed to comment on the merits of their proposal and failed to submit a showing of continuing interest in the proposed Covington allotment.

The *NPRM* made no allowance for the submission of a counterproposal in lieu thereof. Accordingly, Joint Petitioners' counterproposal is not within the scope of the *NPRM* and fails to

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<sup>2</sup> Section 553 of the Administrative Procedure Act (APA), 5 USC §553.

<sup>3</sup> One can only wonder to which community Joint Petitioners will propose to move in their reply comments.

<sup>4</sup> *Arlington, The Dalles, and Moro, Oregon, and Kent and Trout Lake, Washington*, DA 02-1339 (2002).

meet the “logical outgrowth” test “normally ... applied to consider whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule.” *Arizona Public Service Co. v. EPA*, 211 F.3d 1280, 1299 (2000); *see also Association of Battery Recyclers, Inc. v. EPA*, 208 F.3d 1047, 1059 (DC Cir 2000); *First Am. Discount Corp. v. Commodity Futures Trading Comm’n*, 222 F.3d 1008, 1014 (DC Cir 2000).

Given Joint Petitioners’ proposal to reallocate the Channel to Covington and having affirmatively stated that they would apply for the Channel and construct at Covington as, no party could possibly have anticipated the possibility that the Channel might instead be reallocated to Kent, Washington by virtue of a counterproposal emanating from the rulemaking proponent.<sup>5</sup> Indeed, no commenter considered the possibility in their comments.

Having failed to satisfy the *NPRM’s* requirements by commenting on their proposal and making the requisite expression of interest, the Commission should decline to make any allotment in favor of Joint Petitioners.<sup>6</sup> The Commission should treat Joint Petitioners’ Comments and Amended Proposal as a new petition for rulemaking and either dismiss it or conduct a notice and comment rulemaking proceeding.

Moreover, the Commission should take the opportunity to do here what it did not in *Taccoa, Sugar Hill, and Lawrenceville, Georgia*, 16 FCC Rcd 21191 (Allocations Branch 2001),

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<sup>5</sup> The focus of this test is “whether ... [the party], ex ante, should have anticipated that such a requirement might be imposed.” *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983).

<sup>6</sup> The submission of comments by a rulemaking petitioner and the present intention restatement serve as a predicate to any action the Commission might take in the course of this proceeding. *See Murray, Kentucky*, 3 FCC Rcd 3016 (MMB 1988) and *Pine, Arizona*, 3 FCC Rcd 1010 (Allocations Branch 1988) (the Commission’s longstanding policy is to refrain from making an allotment to a community absent an expression of interest.). Not only should the Commission find that Joint Petitioners failed to make the requisite statement of continuing interest, but it should find their counterproposal to constitute a specific withdrawal of interest. Given Joint Petitioners’ withdrawal the Commission should decline to make any allotment proposed by Joint Petitioners in this proceeding.

i.e., establish a policy prohibiting rulemaking proponents from counterproposing their own proposals. Aside from the APA issues that arise, permitting rulemaking proponents to do so works an unnecessary hardship on the Commission and its staff and imposes an intolerable burden and works an intolerable unfairness on other parties.

For example, by submission of their proposal Joint Petitioners forced the Commission's staff to expend scarce time, energy and resources considering an allotment that Joint Petitioners never had any intention of pursuing. Likewise, Joint Petitioners forced Joint Commenters to expend time, energy and, most importantly, scarce funds to mount an opposition to a proposal Joint Petitioners never had any intention of pursuing. Not only should the Commission establish a policy prohibiting petitioners from counterproposing themselves, but it should require Joint Petitioners to reimburse Joint Commenters for all fees and expenses incurred in connection with this proceeding.

## **II. JOINT PETITIONERS FAILED TO SUBMIT AN APPROPRIATE EXPLANATION TO WARRANT ACCEPTANCE OF THEIR NEW PROPOSAL**

Even if the Commission declines to establish a policy prohibiting rulemaking proponents from counterproposing their own proposals, the Commission should deny Joint Petitioners attempt to do so in this instance. To address the numerous concerns that arise in situations such as this, the Commission stated that, at a minimum, it will

carefully review future counterproposals filed by the original rulemaking proponent. In the absence of an explanation, **such as unforeseen circumstances**, as to why the new proposal could not have been advanced in the initial petition for rule making, we reserve the right, as a procedural matter, to process the new proposal in a new proceeding.

*Tocoa*, 16 FCC Rcd at 21192 (emphasis added). The Commission's sole reference to "unforeseen circumstances" as an acceptable explanation indicates it intended to impose a substantial burden upon petitioners who counterpropose their own proposals.

Joint Petitioners' "explanation" fails to meet this substantial burden. Thus, even if the Commission should decide against adoption of a hard and fast policy against considering counterproposals submitted by the proponent, given Joint Petitioners' failure to carry their burden, the Commission should treat the Kent proposal as a new petition for rulemaking and either dismiss it or process it in a new proceeding.

Joint Petitioners' sole justification is that it had entered into discussions with Saga regarding the KAFE channel change whose:

cooperation was conditioned on the resolution of spacing issues with respect to certain Canadian allotments. Unable to bring those issues to a favorable resolution, FBC and Mid-Columbia filed the petition for rulemaking. **Since that time, there have been changes with regard to the Canadian channel allotments involved such that it now appears that the necessary Canadian approvals can be obtained** (emphasis added).

Having said that, however, Joint Petitioners failed to point to any change(s) with respect to the Canadian allotments. By their own admission then, no support exists for Joint Petitioners' justification. No unforeseen circumstances (or for that matter any other circumstances) exist that warrant acceptance of Joint Petitioners' new proposal.

Since there were no changes with respect to the Canadian allotments, there has been no change in Joint Petitioners' ability to protect them. *See Assoc. for East End Land Mobile Coverage*, 13 FCC Rcd 23868 (1998) (factors equally present at the time do not constitute changed or unforeseen circumstances). Put another way, Joint Petitioners could have made the

very same proposal vis a vis the Canadian allotments (and obtained Saga's cooperation) at the very outset. To put it yet another way, nothing prevented Joint Petitioners from proposing Kent in the first instance. Joint Petitioners failed to establish any changed or unforeseen circumstance and their proposal must be rejected. *Id.*

### **III. THE PROPOSED REALLOTMENT FAILS TO ACHIEVE A FAIR, EFFICIENT AND EQUITABLE DISTRIBUTION OF RADIO SERVICE**

As Joint Commenters addressed in their Comments, the Commission's paramount responsibility in its implementation of Section 307(B) of the Communications Act is to achieve a "fair, efficient and equitable distribution of radio service ..." *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984). "The ultimate touchstone for the FCC is ... the distribution of service, rather than of licenses or stations; the constituency to be served is people, not municipalities." *Id.* Even assuming that the Commission should find an unforeseen circumstance sufficient to warrant consideration of Joint Petitioners' counterproposal, review of the proposal consistent with the Commission's Section 307(b) policies demonstrates that it fails to result in a "fair, efficient and equitable distribution of radio service ..." *Id.* The proposal fails to result in a preferential arrangement of allotments and should be denied.

Again, "the constituency to be served is people, not municipalities." *Id.* But though Joint Petitioners, propose to serve the community of Kent,<sup>7</sup> their proposal evidences no present (or future) intention to serve the people of Kent. Likewise, Counterpetitioners<sup>8</sup> proposal evidences no intention to serve the people of Shoreline, Washington. "[T]he constituency to be served is

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<sup>7</sup> Much like they earlier proposed to serve the community of Covington.

<sup>8</sup> Counterpetitioners, consisting of Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition, LLC, propose, among other things, the re-location of KDUX-FM) from Aberdeen, Washington to Shoreline, Washington and a change in channel from 284C2 to 283C2.

people, not municipalities.” *Id.* The communities of Kent and Shoreline are merely means to an end: Seattle. The Commission should refuse to cast a blind eye to this reality.

Nowhere in their proposals, for example, do Joint Petitioners or Counterpetitioners indicate that they will provide coverage of Kent or Shoreline high school athletics; a public service offered by both KMIH(FM), Mercer Island, Washington and K283AH at Gig Harbor. These, and the other valuable services locally produced and presented by the broadcasters at KMIH(FM) and KGHP(FM) in service to the people of their local communities will be lost forever should Joint Petitioners proposal be adopted. A preferential arrangement of allotments cannot be the result when long standing local community broadcasters are displaced by large regional broadcasters proposing only to add one more in the cacophony of voices to a well served metropolitan area.

The people of Kent (as were/are the people of Covington) and the people of Shoreline, by virtue of their location within the Seattle Urbanized Area (and despite the fact that no station is presently specifically allotted to either community), are already exceedingly well served. Radio-Locator.com reveals forty three (43) stations, twenty two (22) of which are FM stations, within close listening range of both Kent and Shoreline. Attachment A. An added voice, despite the nominal affiliation with Kent or Shoreline, will not result in a preferential arrangement of allotments.

The Commission itself has recognized that the grant of a dispositive preference, such as that sought here, to an applicant proposing a first local service near a metropolitan area has the potential to produce “anomalous results” that can contravene section 307(b)’s statutory mandate.

*Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988).<sup>9</sup> To avoid such results, the Commission specifically stated that it will not apply the first local service preference of its allotment criteria blindly so as to avoid allowing an “artificial or purely technical manipulation of the Commission’s 307(b) related policies” when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990).

Whether Kent, Covington or Shoreline is the named community of license, the proposals boil down to little more than an “artificial [and] purely technical manipulation of the Commission’s Section 307(b) policies.” *Id.* In each case, longstanding service will be shifted from an underserved rural area to an exceedingly well served urban area without any countervailing public interest benefits. On top of that, adoption of either (or any) of the proposals will result in the loss of longstanding first local services at Gig Harbor and Mercer Island.

Application of the *Tuck* criteria consistent with the mandates of Section 307(b) demonstrates that, for these purposes, the suburban Seattle communities of Kent (and Covington) and Shoreline are not independent of, but rather interdependent with, Seattle and the Seattle Urbanized area and that neither is deserving of a first local service preference. *See New Radio Corp.*, 804 F.2d 756, 762 (D.C. Cir. 1986) (a city can be “a cognizable community with local needs and interests” while also being “so integrally related to neighboring communities as to be part of a single larger community for Section 307(b) purposes).” *See also Arizona Number One Radio, Inc.*, 2 FCC Rcd 44 (1987), *aff’d mem. Interstate Broadcasting System v. FCC*, 836 F.2d 1408, (D.C. Cir. 1988).

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<sup>9</sup> The FM allotment criteria are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

Furthermore, the proposed reallocation of Channel 283C is mutually exclusive with the existing operations of KMIH(FM), Mercer Island, Washington on co-channel 283, licensed to MISD, and FM translator K283AH, Gig Harbor, licensed to Peninsula. The stations serve as valuable training grounds for students of the school districts and are a significant asset to their communities. The public interest will most definitively fail to be served in the event Channel 283C is reallocated to Seattle at the expense of KMIH(FM) and K283AH.

Joint Petitioners' proposal is now even more analogous to the situation in Richmond<sup>10</sup> than when Covington was proposed as the community of license. Counterpetitioners' proposal is similarly analogous. As discussed in the Joint Commenters original comments, the city of Richmond (population 74,676 was located 16 miles northeast of San Francisco across the San Francisco Bay), though within the San Francisco-Oakland Urbanized area. *KFRC*, 5 FCC Rcd 3222. Notwithstanding the existence of a number of factors showing Richmond to be an independent community in and unto itself,<sup>11</sup> the Commission found that grant of a Section 307(b) preference would produce an anomalous result. *Id* at 3223.

Because of the size disparity between Richmond and San Francisco and the proximity between the two, the Commission found that the first two of the *Tuck* standards "strongly favor[ed] applying *Huntington* and not giving a Section 307(b) preference to the Richmond applicants." *Id*. The same situation exists here. Each of Kent and Shoreline are proximate to and

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<sup>10</sup> See *RKO General, Inc.* ("*KFRC*"), 5 FCC Rcd 3222 (1990).

<sup>11</sup> Richmond was an incorporated city with its own city council-city manager government that provided a number of municipal services; was part of the Richmond Unified School District and had a budget in excess of \$117 million in 1984-85. Additionally, 31% of Richmond's 28,739 person workforce worked in San Francisco while only 2% worked in San Francisco. Richmond also had a weekly shopper newspaper, and a number of cultural and recreational facilities, churches, medical facilities, civic and other organizations. Richmond telephone numbers were listed in a separate directory and calls to San Francisco and Oakland were toll calls. *KFCR*, 5 FCC Rcd at 3222-23. See also 4 FCC Rcd 4997, 4999 Rev. Bd. 1989).

significantly smaller than the central city of Seattle. The evidence, as it did in *KFRC*, also demonstrates that neither is independent of the central city of Seattle.

A fair, efficient and equitable distribution of radio service, rather than the distribution of licenses to particular communities warrants denial of the Joint Petitioners' and the Counterpetitioners' respective proposals. *See NAB v. FCC*, 740 F.2d at 1190. The Commission must not only review these reallocation proposals pursuant to its *Tuck* criteria, but it must do so in a manner consistent with Section 307(b), *Huntington* and *KFRC*.

#### **IV. JOINT PETITIONERS HAVE FAILED TO DEMONSTRATE THAT KENT IS INDEPENDENT OF THE SEATTLE URBANIZED AREA**

The following criteria demonstrate that Kent is not independent of the Seattle Urbanized Area. *Tuck*, 3 FCC Rcd at 5377-78.

##### **A. Signal Population Coverage**

As Joint Petitioners concede, operating from Kent, KMCQ(FM) will place a 70 dBu contour over 79% of the Seattle Urbanized Area. Thus, the station will serve the vast majority of the Seattle Urbanized Area. In this case, Joint Petitioners fail even worse than when they proposed to relocate KMCQ(FM) to Covington. The Commission should make no mistake about it; Joint Petitioners can call it what they like but this is a Seattle radio station.

##### **B. Size and Proximity to the Central City**

Kent has a 2000 Census population of 79,524 (approximately the same size as Richmond) whereas Seattle has a 2000 Census population of 563,374 making Kent 14% or 7/50ths the size of Seattle. The Seattle Urbanized Area has a 2000 Census population of 2,712,205, making Kent .029 percent – or 29/100000ths -- the size of the Urbanized Area. As discussed previously, Richmond was just 1/9<sup>th</sup> – or 11% -- the size of San Francisco *KFRC*, 5 FCC Rcd 3223. As

Joint Petitioners note, Kent is located just 26 kilometers – or 16 miles from Seattle; the same distance separating Richmond and San Francisco. *KFRC*, 5 FCC Rcd 3223. Comparatively, Kent is to Seattle what Richmond was to San Francisco; except that in this case the two are not separated by a body of water. Given the distinct similarities between Kent and Richmond, consistent with its own precedent, the Commission should decline to award Kent the first local preference priority sought by Joint Petitioners.

**C. Kent is Interdependent with Seattle**

As for the third of the *Tuck* criteria and its eight factors, the evidence demonstrates that Kent is interdependent with the Seattle Urbanized Area.

**1. Extent to Which Residents of Kent Work in the Town of Kent**

The Joint Petitioners seek to avoid their burden to establish that a majority of Kent residents work within that community. See *Pleasanton, Bandera and Schertz, Texas*, 515 FCC Rcd 3068, 3071 (Allocations Branch 2000) (“*Schertz*”). Merely showing that employment opportunities exist within a community, as Joint Petitioners seek to do, “is not sufficient to establish that a majority of residents live and work in the community, as we have generally required.” *Id.*

Perhaps most telling are the Census Bureau’s statistics indicating that the mean travel time to work for Kent residents is 28.9 minutes. See Attachment B. This lengthy commute places Kent residents within a radius encompassing virtually the entire Seattle Urbanized Area. Joint Petitioners themselves concede that the most recent statistics demonstrate that 72.5% of Kent’s residents work outside of Kent.

The evidence demonstrates that a majority of the Kent's workforce are employed outside of Kent and elsewhere within the Seattle Urbanized Area. Accordingly, the evidence under factor 1 strongly suggests that Kent is interdependent with the larger Seattle Urbanized Area.

## 2. Newspapers and Other Media

First, the South County Journal ("SCJ") is a Covington newspaper and now it's a Kent newspaper. This is a classic example of trying to have your cake and eat it too.

Just as the SCJ was not a local Covington paper, nor is the SCJ a local Kent paper. As demonstrated in Joint Commenters Comments in this proceeding, Kent is only one of a number of communities receiving service from the SCJ.<sup>12</sup> The Seattle Times and the Seattle Post-Intelligencer is the predominant paper in the region dwarfing SCJ readership. See Attachment C.

Moreover, it has recently been reported that the SCJ and its sister publication the Eastside Journal will merge later this year to form one large paper known as the King County Journal. Attachment D hereto. The primary markets for this new paper will be the suburbs of Bellevue, Redmond and Renton. *Id.* No mention of added service to Kent.<sup>13</sup>

Additionally, as was the case with Covington, the fact that Kent has its own website is insignificant. As does Covington's, Kent's website follows the standard of all cities in Washington that run their own websites and is indicative of nothing other than the fact that Kent is a city. Many other small communities in the general vicinity that are likewise interdependent

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<sup>12</sup> According to information provided by that paper, however, the paper is distributed not only to residents of Covington, but to residents in the surrounding areas of Renton (zip codes 98056, 98059, 98055 and 98058), Kent (zip codes 98032, 98031 and 98042) and Auburn (98001, 98002 and 98092).

<sup>13</sup> As discussed in Joint Commenters Comments, in addition to the South County Journal, the Seattle Urbanized Area is served by not just one, but two daily newspapers: the Seattle Times and the Seattle Post-Intelligencer, both of which have South King County bureaus (as does the Morning News Tribune of nearby Tacoma).

with the Seattle Urbanized area – such as Mercer Island ([www.ci.mercer-island.wa.us](http://www.ci.mercer-island.wa.us)), Maple Valley ([www.ci.maple-valley.wa.us](http://www.ci.maple-valley.wa.us)) and Kent ([www.ci.kent.wa.us](http://www.ci.kent.wa.us)) run their own websites.

### **3. Community Perception**

Again, Joint Petitioners did not provide even a single statement from a Kent community leader on the issue of whether they perceive Kent to be separate from the larger Seattle Urbanized Area. Instead, Joint Petitioners merely provide a brief Kent history lesson. This falls far short of establishing that Covington's leadership perceive the community to be separate from, and independent of, the Seattle Urbanized Area.

Furthermore, while Kent may be situated in the Green River Valley, geographically, Kent and the rest of the Seattle area (and its other suburbs) are completely contiguous. Unlike Richmond (which was found to be interdependent with) and San Francisco, Kent and Seattle are not separated by any geographical boundary.

### **4-5. Whether the Specified Community has its Own Local Government and Elected Officials/Own Telephone Book Provided by the Local Telephone Company or Zip Code**

Kent does have its own local government and elected officials.<sup>14</sup>

As was the case with the SCJ, Joint Petitioners once again seek to have their cake and eat it too. First, when it served their purposes to do so, they contended that zip code 98042 belonged to Covington. Now suddenly, 98042 is a Kent zip code. As is the case with the SCJ, Joint Petitioners do not even attempt to explain this.

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<sup>14</sup> It does not, however, have its own King County Council representative. Rather, Kent is lumped together with Auburn, Burien, Des Moines, Normandy Park, SeaTac and Tukwila. Nor does Kent form its own state legislative district.

Joint Petitioners seek to skew the issue by asserting that Kent has separate listings in the local telephone book. The question, however, is not whether Kent is listed in the phone book, but whether Kent has its own local telephone book. The simple answer is no – Kent does not have its own local telephone booth..

By way of comparison, Gig Harbor, KGHP(FM)'s community of license has its own phone book and the Gig Harbor Post Office has three zip codes – 98335, 98329 and 98332 – assigned to it. Likewise, Mercer Island has its own zip code – 98040.

**6. Whether the Community Has its Own Commercial Establishments, Health Facilities, and Transportation Systems**

Likewise, the minimal information provided here is insufficient to demonstrate that Kent is independent of the Seattle Urbanized Area. The existence of a variety of small businesses located within Kent's city limits is diminished by the fact that the vast majority of Kent's residents work outside of Kent.

Additionally, Kent does not have its own public transportation system. Like those residing in other Seattle/King County suburbs, residents of Kent are dependant upon King County Metro for public transportation. They are likewise dependant upon the Seattle Urbanized Area for longer distant travel as train, bus and air terminals are all located elsewhere in the Urbanized Area.

Finally, while certain specialist medical services may be available in Kent, Kent does not have a central medical facility. One would ordinarily anticipate that a truly independent community, particularly one the size of Kent, would provide such services. The lack of such a facility, given the extent of such facilities in neighboring Seattle, is particularly telling.

**7. Extent to Which the Specified Community and the Central City are Part of the Same Advertising Market**

As before, Joint Petitioners claim that “residents of Kent do not need to travel to Seattle or seek out other media sources in order to find out what is happening in their community.” Again, however, they fail to explain what relevance this has to the inquiry. To the extent it has any relevance, it demonstrates that the advertisements come to them in Seattle Publications, i.e., the Seattle Times and Seattle Post-Intelligencer, and by way of the other numerous Seattle media outlets.

The question is a simple one. Are Kent and Seattle part of the same advertising market? The answer is also a simple one: Yes. The fact that Kent businesses advertise in the soon to be eliminated SCJ proves nothing and does not a Kent advertising market make.

The “Kent ad buy is as nonexistent as the “Covington ad buy.” Kent and Seattle are part of the same advertising market. Kent is located within both the Seattle Arbitron Metro and the Seattle DMA; establishing that the two are part of the same advertising market. *See Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 16 FCC Rcd 22581 (2001).

Furthermore, Kent is located within the Seattle Basic Trading Area.<sup>15</sup> BTAs are based on Rand McNally's Commercial Atlas & Marketing Guide. BTA boundaries follow county lines and include the county or counties whose residents make the bulk of their purchases in that area. BTAs are geographic boundaries that segment the United States for licensing purposes. For example, the FCC uses BTAs to license a number of services. Thus, for a number of licensing purposes, the Commission considers Shoreline to be interdependent with Seattle. The same conclusion should be reached here.

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<sup>15</sup> The Seattle BTA is one of forty seven Major Trading Areas.

**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.**

With the exception of library services, Kent provides its own services in these areas. For its library services, Kent is dependant upon King County.

**V. COUNTERPETITIONERS HAVE FAILED TO DEMONSTRATE THAT SHORELINE IS INDEPENDENT OF THE SEATTLE URBANIZED AREA**

Counterpetitioners counterpropose that KDUX-FM be re-located approximately 120 miles from Aberdeen, Washington to Shoreline, Washington as that community's first local service, necessitating a change in channel from Channel 284C2 to Channel 283C2.<sup>16</sup>

Given Shoreline's location within the Seattle Urbanized Area, it too must pass a *Tuck* analysis. A review of its proposal consistent with the Section 307(b) principles as discussed herein (and in Joint Commenters original comments in this proceeding) warrant denial of this proposal as well.

**A. Signal Population Coverage**

As Joint Petitioners concede, operating from Shoreline, KDUX(FM) will place a 70 dBu contour over 23.4% of the Seattle Urbanized Area and 100% of the Bremerton Urbanized Area. Thus, the station will serve a significant portion of one Urbanized Area and will completely serve another.

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<sup>16</sup> Given that this proposal will have the same effect upon the operations of translator station K283AH, Gig Harbor, Washington and KMIH(FM), Mercer Island, Washington, for the reasons set forth herein and in Joint Commenters original comments – all of which are incorporated by reference herein – adoption of this proposal will fail to serve the public interest.

**B. Size and Proximity to the Central City**

Counterpetitioners concede that Shoreline is significantly smaller than the central city of Seattle. At 8.9% of the population of Seattle (and .019% of the population of the Seattle Urbanized Area), by comparison, Shoreline does not fare even as well as Kent on this score. As Counterpetitioners note, Shoreline is located just 16 kilometers – or 9.9 miles from Seattle; less than the distance separating Richmond and San Francisco. *KFRC*, 5 FCC Rcd 3223. The substantial disparity in size between Shoreline and Seattle and Shoreline and the Seattle Urbanized Area, along with the proximity between the two, strongly suggests that Shoreline is interdependent with the much larger central city of Seattle. *See KFRC*, 5 FCC Rcd at 3223.

**C. Shoreline is Interdependent with Seattle**

As for the third of the *Tuck* criteria and its eight factors, the evidence demonstrates that Shoreline is interdependent with the Seattle Urbanized Area.

**1. Extent to Which Residents of Shoreline Work in the Town of Shoreline**

Counterpetitioners, as do Joint Petitioners, seek to avoid their burden to establish that a majority of Covington residents work within that community. *See Pleasonton, Bandera and Schertz, Texas*, 515 FCC Rcd 3068, 3071 (Allocations Branch 2000) (“*Schertz*”). Merely showing that employment opportunities exist within a community, as Counterpetitioners seek to do, “is not sufficient to establish that a majority of residents live and work in the community, as we have generally required.” *Id.*

According to the 2000 US Census, the mean travel time to work for a Shoreline resident was 26.9 minutes. The length of the mean commute for Shoreline’s 26,276 workers suggests that a majority of the Shoreline workforce are employed outside of Shoreline and elsewhere within the

Seattle Urbanized Area. Accordingly, the evidence under factor 1 strongly suggests that Shoreline is interdependent with the larger Seattle Urbanized Area.

## 2. Newspapers and Other Media

Unlike Joint Petitioners, Counterpetitioners concede that Shoreline does not have a daily newspaper. Given Shoreline's size, the Commission should discount the existence of the weekly Shoreline Enterprise. *See KFRC*, 5 FCC Rcd 3222 at Para. 17 (the Commission finding it "significant" that Richmond did not have its own daily newspaper, particularly because the San Francisco daily newspaper had such wide distribution throughout the Bay area).

## 3. Community Perception

Counterpetitioners did not provide even a single statement from a Shoreline community leader on the issue of whether they perceive Shoreline to be separate from the larger Seattle Urbanized Area. Instead, Counterpetitioners merely provide a few feel good statements about Shoreline. This falls far short of establishing that Covington's leadership perceive the community to be separate from, and independent of, the Seattle Urbanized Area.

Shoreline's own website demonstrates Shoreline's interdependence with Seattle:

**The City of Shoreline offers classic Puget Sound beauty and the convenience of suburban living with the attractions of nearby urban opportunities.**

Before becoming a city in 1995, the City of Shoreline was an island of unincorporated King County surrounded by the older cities of Seattle, Edmonds, Woodway and Lake Forest Park ... It is primarily residential with more than 70 percent of the households being single-family residences.

The foregoing demonstrates that Shoreline's community leaders do not perceive Shoreline to be independent of Seattle.

**4-5. Whether the Specified Community has its Own Local Government and Elected Officials/Own Telephone Book Provided by the Local Telephone Company or Zip Code**

Shoreline does have its own local government and elected officials.

Shoreline does not have its own phone book.

Shoreline does not have its own zip code. Each of the three zip codes it relies upon are Seattle zip codes. Use of "Shoreline" in lieu of "Seattle" is merely "acceptable. Indeed, Shoreline's own pamphlet "Currents" is mailed with a "Seattle" postmark.

**6. Whether the Community Has its Own Commercial Establishments, Health Facilities, and Transportation Systems**

Likewise, the minimal information provided here is insufficient to demonstrate that Shoreline is independent of the Seattle Urbanized Area. While Shoreline may have a variety of small businesses located within its city limits, by Counterpetitioners own admission, the vast majority of the private sector office space in Shoreline is "functionally obsolete."<sup>17</sup> Shoreline does not have its own public transportation system. Like those residing in other Seattle/King County suburbs, residents of Shoreline are dependant upon King County Metro for public transportation. They are likewise dependant upon the Seattle Urbanized Area for longer distant travel as train, bus and air terminals are all located elsewhere in the Urbanized Area.

Furthermore, while certain specialist medical services may be available in Shoreline, Shoreline does not have its own central medical facility. As with Kent, one would ordinarily anticipate that a truly independent community, particularly one the size of Shoreline, would provide such services. The lack of such a facility, given the extent of such facilities in neighboring Seattle, is particularly telling.

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<sup>17</sup> See Counterpetitioners Exhibit F at P. III.

**7. Extent to Which the Specified Community and the Central City are Part of the Same Advertising Market**

The question is not whether businesses can advertise to Shoreline residents, but whether Shoreline and Seattle are part of the same advertising market. The question is a simple one, as is the answer: Yes.

The fact that one can advertise in the Shoreline Weekly does not a Shoreline advertising market make. Shoreline and Seattle are part of the same advertising market. Shoreline is located within both the Seattle Arbitron Metro and the Seattle DMA; establishing that the two are part of the same advertising market. *See Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 16 FCC Rcd 22581 (2001).

Furthermore, Shoreline is located within the Seattle Basic Trading Area.<sup>18</sup> BTAs are based on Rand McNally's Commercial Atlas & Marketing Guide. BTA boundaries follow county lines and include the county or counties whose residents make the bulk of their purchases in that area. BTAs are geographic boundaries that segment the United States for licensing purposes. For example, the FCC uses BTAs to license a number of services. Thus, for a number of licensing purposes, the Commission considers Kent to be interdependent with Seattle. The same conclusion should be reached here.

**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.**

While Shoreline does have a small police force, as Counterpetitioners admit, the service is provided pursuant to a contract with the King County Sherriff's Department. Shoreline has no municipal library of its own. Its library services are provided by King County.

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<sup>18</sup> The Seattle BTA is one of forty seven Major Trading Areas.

## **VI. THE PROPOSED REALLOTMENT WOULD NOT RESULT IN A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS**

The Commission will consider a community as independent only when a majority of the Tuck factors demonstrate that the community is distinct from the urbanized area. *See, e.g., Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996). The foregoing demonstrates that the majority of the factors weigh in favor of finding both Kent and Shoreline to be interdependent with Seattle and the Seattle Urbanized Area. Neither community is deserving of a first local service preference within the context of this proceeding. Rather, each should be treated as proposing “simply an additional allotment to the urban area. *KFRC*, 5 FCC Rcd at 7097. Accordingly, the Commission should not award a first local preference to either Joint Petitioners or Countepetitioners, but rather attribute all of the services of the Seattle Urbanized Area to Kent/Shoreline and consider the reallocation proposals pursuant to FM allotment priority four, “other public interest matters.”<sup>19</sup>

Both Joint Petitioners and Countepetitioners are motivated solely by the desire to depart their rural community for the attraction of the much larger Seattle Urbanized Area. Any other finding would be to “condone an artificial and unwarranted manipulation of the Commission’s policies.” *KFRC*, 5 FCC Rcd at 7097. The proposals seek merely to add one more voice to an already well served marketplace at the expense of the people resident in the underserved communities of The Dalles and Aberdeen. The illusory net increase in coverage aside, no public interest benefit will be derived from adoption of either proposal.

As discussed in Joint Commenters Comments, the Commission must weigh the “legitimate expectation [of the residents of Aberdeen and The Dalles] that existing service will continue ...

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<sup>19</sup> *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681, 12684 (Allocations Branch 1996).

against the service benefits that may result from reallocating a channel from one community to another. Neither Joint Petitioners nor Counterpetitioners have identified any public interest factors sufficient to offset the legitimate expectation of continued service.

Furthermore, as an additional public interest factor, the Commission should consider the loss of service that will result from the loss of KMIH(FM) and KGHP(FM)'s translator K283AH should Joint Petitioners' or Counterpetitioners' proposal be adopted. Finally, as described in Joint Commenters Comments, in lieu of either of the proposals, the Commission should grant/establish an allotment for KMIH(FM) at Mercer Island, Washington. MISD reiterates that it will apply for the channel and construct the facility as authorized.

Adoption of this counterproposal will result in a preferential arrangement of allotments since it will serve to preserve the longstanding service KMIH(FM) has provided to the citizens of Mercer Island. By adopting this counterproposal – rather than any of the other proposals before it -- the Commission will fulfill the paramount responsibility in its implementation of Section 307(b).

## CONCLUSION

Application of the *Tuck* criteria in a manner consistent with Section 307(b), *Huntington* and *KFRC* demonstrates that Kent (and Covington) and Shoreline are interdependent with the vastly larger central city of Seattle and the Seattle Urbanized Area and that the proposed reallocations are not entitled to a first local service preference. Rather, the proposals should be examined under the Commission's fourth allotment priority. Analysis of the proposals under that priority requires a finding that neither will result in a preferential arrangement of allotments.

Finally, the Commission should adopt the proposed allocation at Mercer Island as proposed in Joint Commenters original comments in this proceeding.

Respectfully submitted,

**MERCER ISLAND SCHOOL DISTRICT AND  
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