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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 4, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20544

Re: Amendment of Section 73.606(b), Table of Allotments, FM Broadcast Stations (Goldsboro, Smithfield, Louisburg and Rolesville, North Carolina)
MM Docket No. 02-40; RM-10377; RM-10508

Dear Ms. Dortch:

Enclosed please find, on behalf of New Age Communications, Inc., the original and four copies each of a Motion for Leave to File Supplement and a Supplement for filing in the above-referenced matters.

Please note that the Supplement itself further asks that the Commission issue a Request for Supplemental Information due to the recent release of pertinent Census 2000 data.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with the undersigned.

Sincerely,

David Kushner

David Kushner

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 02-40
Table of Allotments	)	RM-10377
FM Broadcast Stations	)	RM-10508
(Goldsboro, Smithfield, Louisburg, and	)	
Rolesville, North Carolina)	)	

Motion for Leave to File Supplement

New Age Communications, Inc. ("NAC"), licensee of Station WKIX(FM), Channel 272A, Goldsboro, North Carolina, by its counsel, hereby requests leave to supplement the record in the above-captioned proceeding because of the recent release of Census 2000 data. In support of this motion, NAC shows the following:

On August 3, 2001, NAC filed a Petition for Rule Making ("Petition") requesting that the Commission specify **a** new community of license for WKIX by amending the Table of FM Allotments, 47 C.F.R. § 73.202(b), by (i) deleting Channel 272A from Goldsboro, North Carolina, (ii) adding Channel 272A to Smithfield, North Carolina, and (iii) modifying the license for WKIX(FM), Goldsboro, North Carolina, to specify "Smithfield, North Carolina" as the Station's community of license.

On February 22, 2002, the Commission released the Notice of Proposed Rule Making ***("Notice"),*** DA 02-409, in this proceeding. NAC filed comments restating its intention, if the Commission allots Channel 272A to Smithfield, to promptly file an application for a construction permit to operate WKIX at Smithfield, North Carolina, and, upon grant, to promptly construct and operate the facilities. Comments and a counterproposal were also filed by Franklin Broadcasting

Co., licensee of WHLQ(FM), Channel 273A, Louisburg, North Carolina ("WHLQ'). WHLQ counterproposed to amend the Table of FM Allotments by realloting Channel 273A from Louisburg to Rolesville, North Carolina, and having its license modified accordingly. On May 15,2002,NAC filed reply comments to WHLQ's comments.

Subsequently, on July 22,2002, the Commission issued **a** Public Notice, Report No. 2565, formally recognizing WHLQ's counterproposal and allowing comments. On August 6, 2002, WHLQ filed comments supporting its counterproposal and arguing, contrary to NAC in its May 15 Reply Comments, that WHLQ is not obligated to satisfy a ***Tuck*** analysis[1] because Rolesville is not located in the Raleigh Urbanized Area and its proposed 70 dBu contour does not cover 50% of the Raleigh Urbanized Area.

Throughout this proceeding to date, both NAC and WHLQ have been required to rely principally on 1990 census data because most of the relevant Census 2000 data had not yet been released. In particular, the question of whether WHLQ must satisfy a ***Tuck*** analysis has assumed that Rolesville is not part of the Raleigh Urbanized Area, as determined by the 1990 Census. In October 2002, however, after all formal periods for comment had closed, the U.S. Census Bureau released data indicating that, as defined by Census 2000, Rolesville is now partially located in the Raleigh Urbanized Area.

Good cause exists to accept the attached Supplement. The Commission should not rely on outdated, 12 year old census data when current data exists. The public interest would be ill-served by failing to recognize that Rolesville is now partially located within the Raleigh Urbanized Area

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

since otherwise it risks permitting a station to abandon a rural community's (Louisburg's) only FM service to move to a well-served urban area while prohibiting first local FM service in the county seat (Smithfield) of the fastest growing county in North Carolina. In addition, WHLQ will not be prejudiced by consideration of the Supplement since NAC requests that the Commission issue a Request for Supplemental Information affording the parties opportunity to comment further on the new Census 2000 data and the *Tuck* factors.

For the foregoing reasons, NAC requests leave to file the attached Supplement.

Respectfully submitted,

Wade H. Hargrove

David Kushner

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Counsel to ***New*** *Age Communications, Inc.*

November 4, 2002

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In the Matter of	)	
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Amendment of Section 73.202(b)	)	MM Docket No. 02-40
Table of Allotments	)	RM-10377
FM Broadcast Stations	)	RM-10508
(Goldsboro, Smithfield, Louisburg, and	)	
Rolesville, North Carolina)	)	

SUPPLEMENT

New Age Communications, Inc. ("NAC"), licensee of Station WKIX(FM), Channel 272A, Goldsboro, North Carolina, by its counsel, hereby submits this Supplement in the above-captioned proceeding to reflect recently-released Census 2000 data.

In this proceeding, NAC is requesting that the Commission specify a new community of license for WKIX by amending the Table of FM Allotments, 47 C.F.R. § 73.202(b), by (i) deleting Channel 272A from Goldsboro, North Carolina, (ii) adding Channel 272A to Smithfield, North Carolina, and (iii) modifying the license for WKIX(FM), Goldsboro, North Carolina, to specify "Smithfield, North Carolina" as the Station's community of license. Franklin Broadcasting Co., licensee of WHLQ(FM), Channel 273A, Louisburg, North Carolina ("WHLQ')), has counterproposed to amend the Table of FM Allotments by realloting Channel 273A from Louisburg to Rolesville, North Carolina, and having its license modified accordingly.

NAC's Petition for Rule Making and WHLQ's counterproposal cannot both be granted at the sites specified. WHLQ contends that its counterproposal should be granted and NAC's Petition denied because WHLQ would provide first local transmission service to Rolesville which is a higher priority than NAC's provision of first full-time FM transmission service to Smithfield. NAC argued,

in Reply Comments filed May 15,2002, that WHLQ is not entitled to an allotment preference for providing first local transmission service to Rolesville pursuant to the Commission's policies set forth in *Faye and Richard Tuck,* 3 FCC Rcd 5374 (1988) *("Tuck"),* and its progeny, especially since Rolesville is interdependent with the major metropolitan area of Raleigh. Consequently, NAC contended that, in a comparative analysis, the public interest is better served by NAC's proposal to bring first full-time FM transmission service to Smithfield than it is by WHLQ's counterproposal to bring the 15th aural service licensed to the greater Raleigh area and to deprive Louisburg of its one and only FM station. WHLQ has counter-argued, in comments filed August ***6,*** 2002, that WHLQ is not obligated to satisfy a *Tuck* analysis because Rolesville is not located in the Raleigh Urbanized Area and its proposed 70 dBu contour does not cover 50% of the Raleigh Urbanized Area.

Throughout this proceeding to date, both NAC and WHLQ have been required to rely principally on 1990 census data because most of the relevant Census 2000 data had not yet been released. In particular, the question of whether WHLQ must satisfy a *Tuck* analysis has assumed that Rolesville is not part of the Raleigh Urbanized Area, as determined by the 1990 Census. Just recently, however, in October 2002, the U.S. Census Bureau released data indicating that, as defined by Census 2000, Rolesville is now partially located in the Raleigh Urbanized Area. Maps released by the Census Bureau' indicate that the principal part of Rolesville, including its major "cross-roads,'' the intersection of Main Street and Young Street, is now located in the Raleigh Urbanized Area.[2] By the methodology by which the Census Bureau determines an urbanized area,

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[1] ***See*** <http://ftp2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua73261/>. Copies of the relevant maps as well as an appropriate enlargement are attached hereto as an Exhibit.

[2] Rolesville is really too small to have a "downtown," but, to the extent WHLQ may argue (continued...)

the part of Rolesville now included in Raleigh Urbanized Area necessarily includes the densest concentration of Rolesville's population.

It is clear under Commission precedent that, regardless of the extent of WHLQ's proposed 70 dBu contour, because the proposed community of license is partially located in an urbanized area, WHLQ must satisfy a *Tuck* analysis if it is to be accorded an allotment preference.[3] To date, WHLQ has not attempted to do so because WHLQ has argued that it is not obligated to do so. In its comments of August 6, 2002, WHLQ briefly attempted to rebut NAC's detailed showing that Rolesville is interdependent with Raleigh, but it did not engage in a full *Tuck* analysis!

In the past, when confronted with a proposed community partially located in an urbanized area, the Commission has issued a formal Request for Supplemental Information and afforded the proponent of the reallotment an opportunity to submit a *Tuck* analysis.[5] Although NAC believes that

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[2](...continued)
that it does, the central part of the town is now located in the Raleigh Urbanized Area.

[3] *See, e.g.*, *Malvern and Bryant, Arkansas,* 14 FCC Rcd 3576 (1999), at ¶ 4 & n.4 (stating that even though only 17.6% of community's population resides in urbanized area and proposed 70 dBu contour covers less than 1% of urbanized area, *Tuck* analysis still required); *Bay St. Louis and Poplawille, Mississippi,* 10 FCC Rcd 13144 (1995); *Falmouth and Mashpee, Massachusetts,* 10 FCC Rcd 10445 (1995); *Elizabeth City, North Carolina, and Chesapeake, Virginia,* 9 FCC Rcd 3586 (1994); *see also Hallie and Ladysmith, Wisconsin,* 10 FCC Rcd 9257 (1995).

[4] Although NAC, at this time, will not attempt to counter WHLQ's weak rebuttal, it is worth observing that there is a serious question of the *bona fides* of the so-called citizen letters that WHLQ provided to support its August 6,2002, Comments. The handwritten letters allegedly authored by Scott Reece and Nancy Kelly were obviously written by the same person. Similarly, the handwritten letters allegedly authored by Herbert Eddins, Rodney Privette, and Caroly Barttolon are also all written with the same handscript.

[5] *See, e.g.*, *Elizabeth City, North Carolina, and Chesapeake, Virginia,* Request for Supplemental Information, 7 FCC Rcd 6815 (1992); *Bay St. Louis and Poplarville, Mississippi,* Request for Supplemental Information, 6 FCC Rcd 4400 (1991).

WHLQ cannot satisfy such an analysis, as it previously demonstrated, NAC accepts that the Commission should afford WHLQ such an opportunity. Therefore, NAC respectfully requests that the Commission issue a Request for Supplemental Information and permit WHLQ to submit information it deems relevant. The Request should not allow any further counterproposals to be submitted since an opportunity for the filing of counterproposals has already been provided. In addition, NAC should be permitted an opportunity to file reply comments. This procedure comports with past Commission practice.

Conclusion

For the foregoing reasons, NAC respectfully requests that the Commission consider the release of the Census 2000 data relating to the partial incorporation of Rolesville into the Raleigh Urbanized Area. NAC further respectfully requests that the Commission issue a Request for Supplemental Information affording WHLQ a period of 30 days to submit information relevant to a ***Tuck*** analysis and that NAC be afforded an additional period of 30 days to file reply comments pursuant to such a Request.

Respectfully submitted,

Wade H. Hargrove

David Kushner

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*Counsel to **New Age** Communications, Inc.*

November 4, 2002

Certificate of Service

The undersigned, of the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certifies that s/he has caused a copy of the foregoing **Motion for Leave to File Supplement** and **Supplement** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

James **A.** Koemer
Koerner & Olender, P.C.
5809 Nicholson Lane, Suite 124
North Bethesda, Maryland 20852-5706

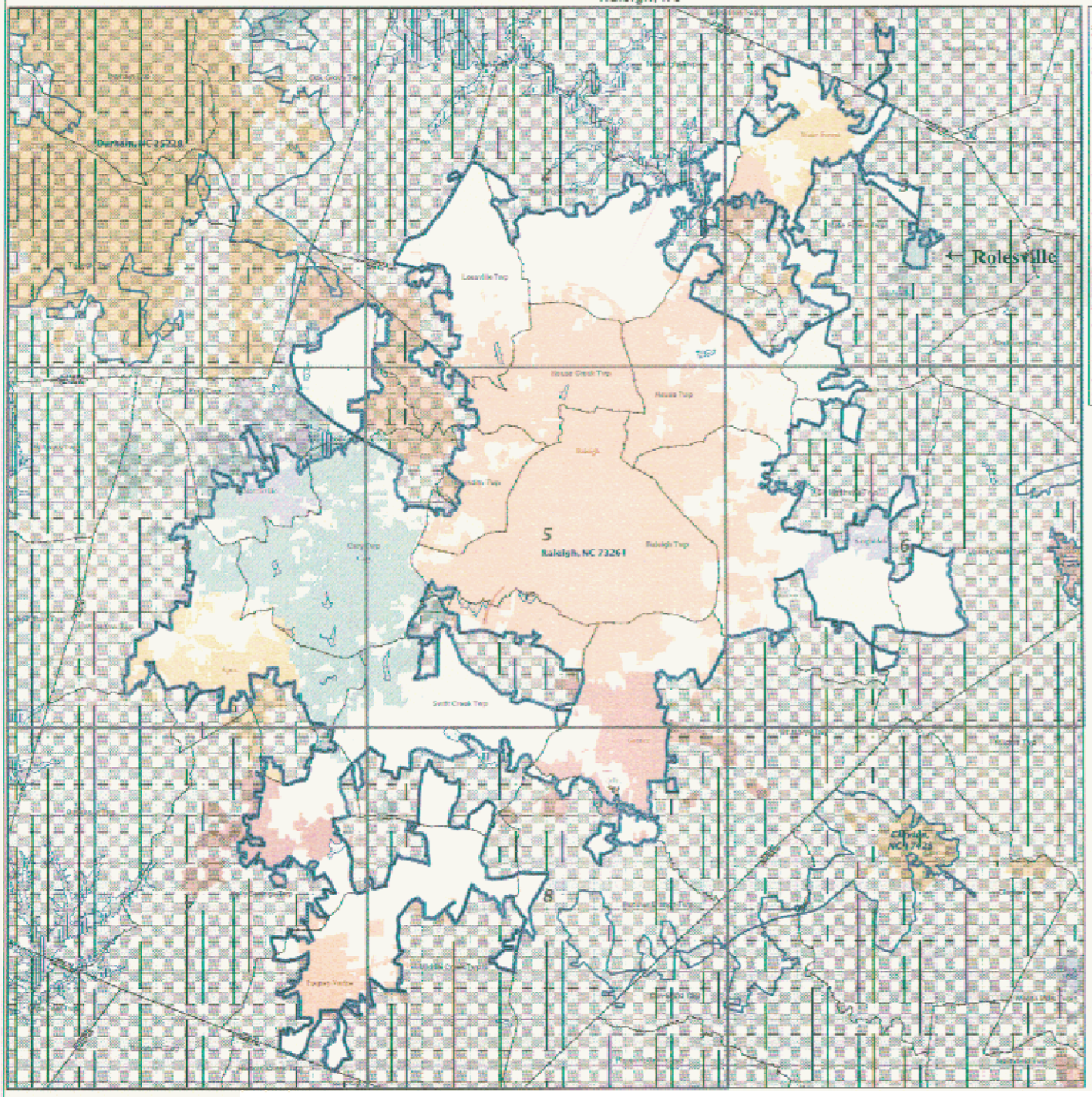
This the 4th day of November, 2002,

Samara S. Krepa

Exhibit

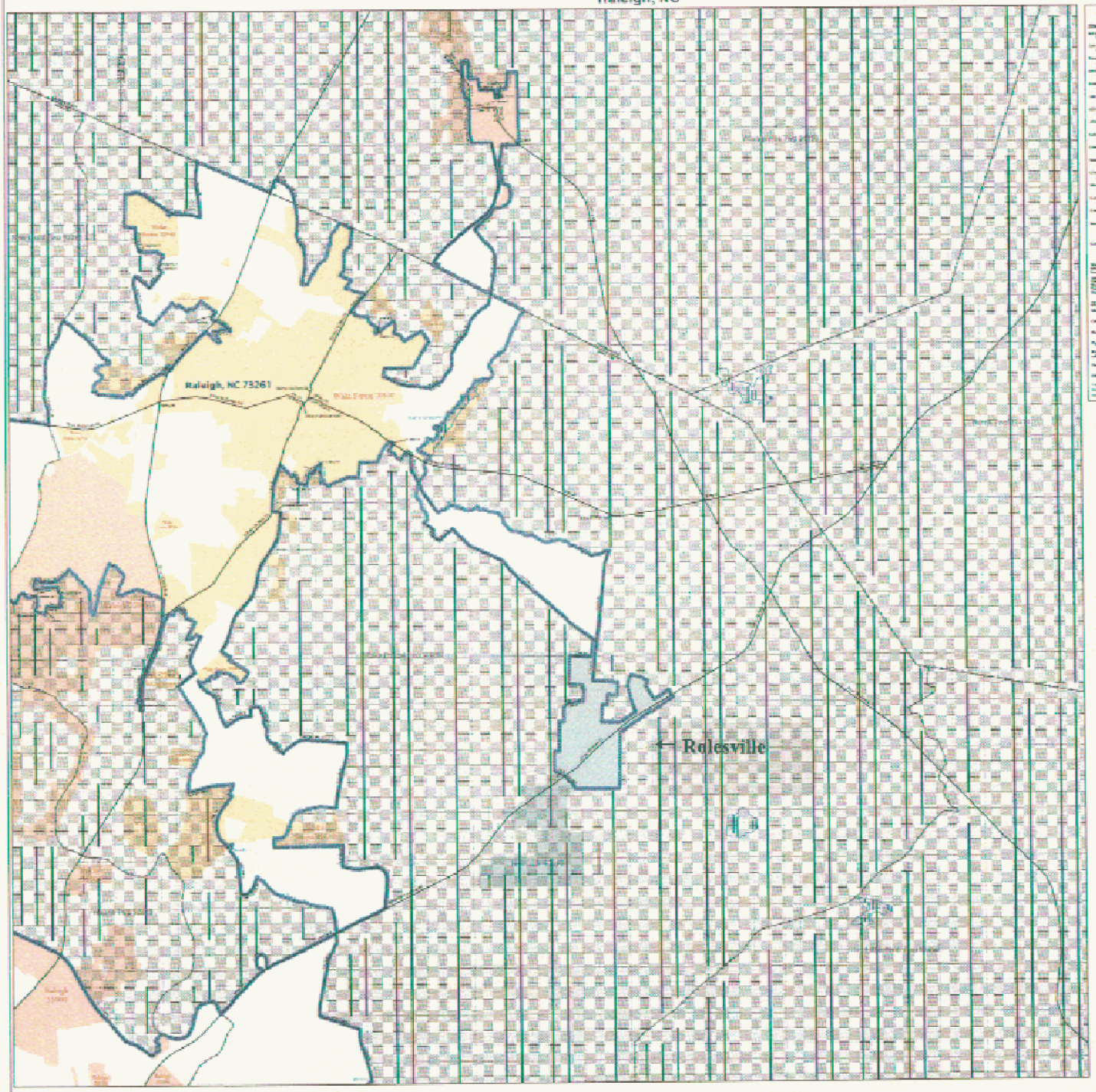
Maps of Raleigh, North Carolina, Urbanized Area (Census 2000)

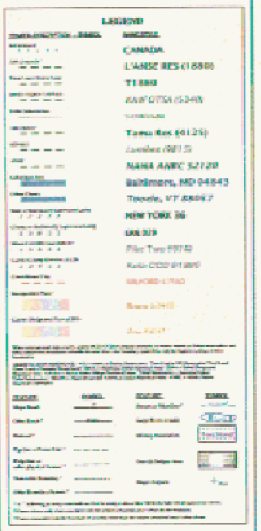
URBANIZED AREA OUTLINE MAP (CENSUS 2000)
Raleigh, NC



URBANIZED AREA OUTLINE MAP (CENSUS 2000)

Raleigh, NC





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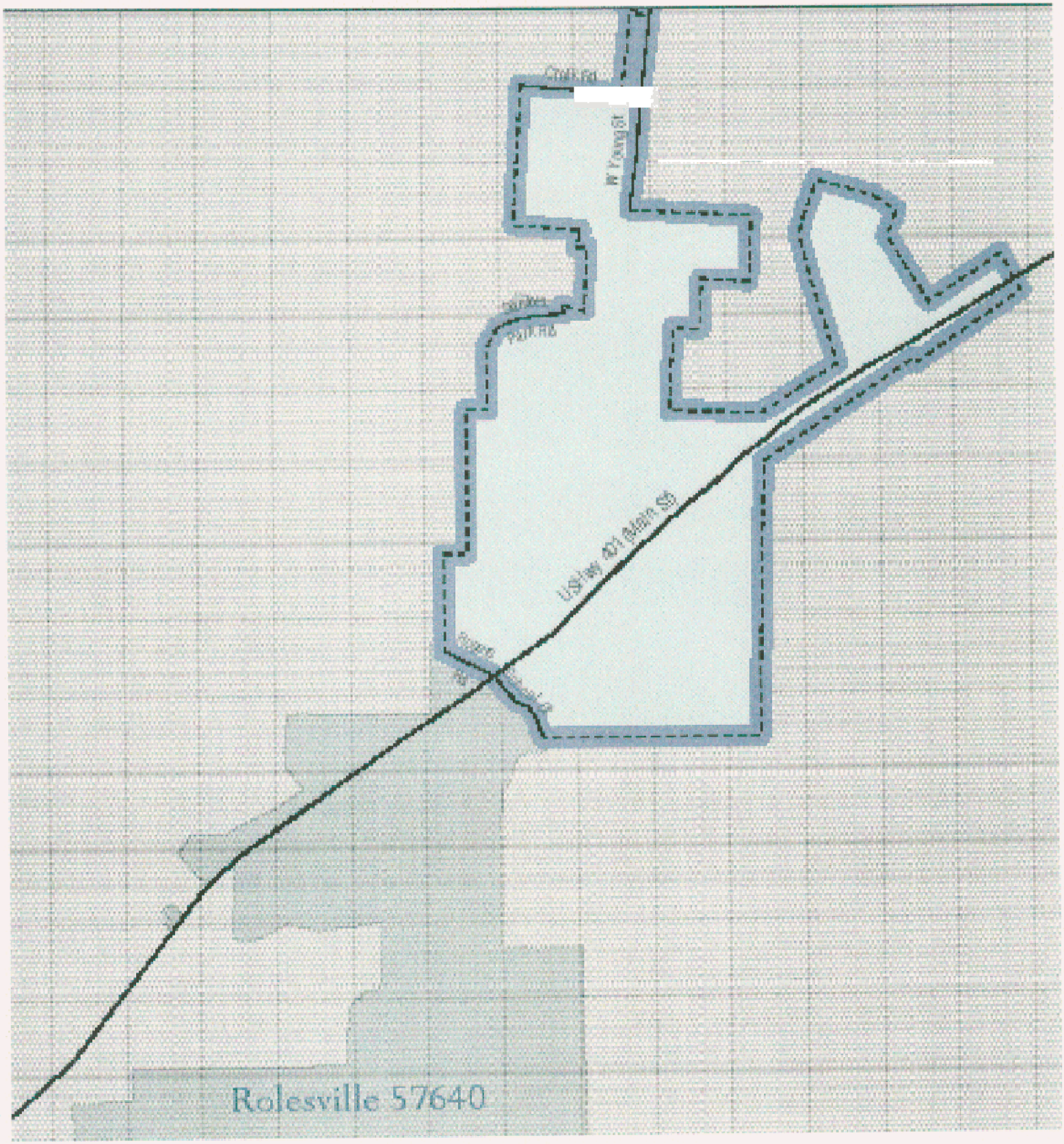
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US Hwy 401 Main St
Rolesville 57640