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February 2, 2004

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Federal Communications Commission
Office of Secretary

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street
1W A325
Washington, D.C. 20554

**Re: Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
MB Docket No. 02-136; RM-10458,
RM-10663, RM-10667, RM-10668**

Dear Ms. Dortch:

Transmitted herewith on behalf of Mercer Island School District is an original and four copies of its Supplement for submission in the above-referenced matter.

Should any questions arise concerning this matter, please contact this office directly.

Respectfully submitted,


Howard J. Barr

Enclosure

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

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*Federal Communications Commission
Office of Secretary*

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments)	MB Docket No 02-136
FM Broadcast Stations)	RM-10458
Arlington, The Dalles, Moro, Fossil,)	RM-10663
Astoria, Gladstone, Tillamook, Springfield-)	RM-10667
Eugene, Coos Bay, Manzanita and Hermiston,)	RM-10668
Oregon and Covington, Trout Lake, Shoreline,)	
Bellingham, Forks, Hoquiam, Aberdeen, Walla)	
Walla, Kent, College Place, Long Beach, Ilwaco)	
and Trout Lake, Washington)	

To: Chief, Allocations Branch

SUPPLEMENT

Mercer Island School District ("Mercer Island"), by counsel, hereby submits its Supplement in the above-captioned matter.¹ The following is shown in support thereof:

I. BACKGROUND

KMIH(FM) has been licensed by the Federal Communications Commission ("FCC" or "Commission") since 1970, and has been owned and operated by the Mercer Island School District ("Mercer Island") over the duration of its existence. The station is a working laboratory for high school students, on the air 24 hours a day at 104.5 FM (channel 283), providing students a springboard into the world of radio broadcasting, and media in general.

¹ In a separately filed Motion, Mercer Island respectfully requests acceptance of this submission.

KMIH(FM) is presently classified as a “Class D” FM station. Current FCC rules define Class D stations as stations with transmitter power output (“TPO”) of 10 watts or less.²

The Commission awarded Class D licenses until 1978. Then, choosing to “strike the balance in favor of licensing higher-powered stations to ensure that large audiences were served”³ the Commission adopted a ban on the further award of Class D licenses and devised a plan, the goal of which was to move as many 10-watt stations as possible to open space on commercial channels. The plan involved giving Class D stations several alternatives. First, Class D stations were encouraged to upgrade to Class A status. Those not upgrading were to move to open space on commercial channels or to newly created FM Channel 200. Those unable to migrate were to move to the least preclusive noncommercial channel.⁴ The Commission also ended Class D stations’ protection against interference. Class D stations are now considered as secondary services and are not entitled to protection from full-service FM stations.⁵

KMIH(FM) was originally licensed to operate on 90.1 MHz with 10 watts of power. In furtherance of the Commission’s mandate, in June of 1992 Mercer Island applied for authority to relocate KMIH(FM) to the commercial band (on its current 104.5 MHz) and was granted such authority in December of that year. Construction of the facility was completed in the spring of 1993.

² See 47 C.F.R. §73.506(a), §73.506(a) of the Commission’s rules.

³ See *Creation of a Low Power Radio Service*, 15 FCC Rcd 19,208, 19,236 (2000) (reconsideration) (discussing *Changes in the Rules Relating to Noncommercial Educ. FM Broad. Stations*, 70 FCC 2d 972, 983 (1978) (codified at 47 C.F.R. §73.512(d), §73.512(d) of the Commission’s rules)).

⁴ See *Changes in the Rules Relating to Noncommercial Educ. FM Broad. Stations*, 70 FCC 2d 972, 974 (1978); *Creation of a Low Power Radio Service*, 19 CR 2055, para. 27, n.37 (1999).

The station now operates on 104.5 MHz with 30 watts of power and a 60 dBu (signal strength) contour that stretches over 6 Km from the transmitter site.⁶ Because the station operates with greater than “maximum” facilities for its class, it is considered to be a “Superpowered” Class D station. The Commission has stated that it is aware of five Superpowered Class D stations.⁷ With its current facilities, KMIH(FM) is the functional equivalent of a fully protected, i.e. primary, Class A FM facility.

A Class A FM station is considered to be a station with a minimum effective radiated power (“ERP”) of 100 watts (0.1 kW).⁸ A Class A station may, however, have an ERP of less than 100 watts provided that its 60 dBu contour equals or exceeds 6 kilometers.⁹ While KMIH(FM) operates at less than 100 watts, the Engineering Statement demonstrates that its 60 dBu contour equals or exceeds 6 km.¹⁰ Nevertheless, KMIH(FM) is still considered by the Commission to be a Class D secondary service with no interference protection rights.

Notwithstanding KMIH(FM)’s longstanding history of service in the public interest, KMIH(FM) now stands at the precipice

In 2001, Mid-Columbia Broadcasting Inc., in partnership with First Broadcasting (“Joint Petitioners”), initiated this proceeding via their petition for rulemaking proposing to

⁶ Exhibit A, Engineering Statement of Doug Vernier

⁷ *1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, 13 FCC Rcd 14849, para. 64 (1998). The Commission “propose[d] to grandfather such superpowered Class D facilities permitting them to continue to operate as Class D stations at their present power and antenna height and to modify their facilities provided they do not extend their predicted 60 dBu contour distances.” *Id.* The Commission has yet to act on this proposal. See *1998 Biennial Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, 22 CR 612, para. 45 (2000).

⁸ 47 C.F.R. §73.211(a)(1), §73.211 (a)(1) of the Commission’s rules

⁹ 47 C.F.R. §73.211(a)(3), §73.211 (a)(3) of the Commission’s rules

¹⁰ See Section 72.215(b)(2)(iv) of the Commission’s rules

move KMCQ, at a frequency of 104.5, from its current community of license, The Dalles, Oregon, some 130 miles to Covington, Washington, a Seattle suburb located within the Seattle Urbanized Area and approximately 16 miles from Mercer Island ¹¹

Grant of either proposal will almost certainly result in the death of KMIH(FM), not only to the detriment of the students at Mercer Island but to the community at large which has come to rely on KMIH(FM) for their local news, sports and entertainment. The following Arbitron ratings information demonstrates that KMIH(FM) is more than just a footnote on the local radio horizon. Rather, it provides reliable statistical evidence regarding the number of people who rely on the station. According to Arbitron Fall 2003 Top-Line Estimates KMIH achieved the following ratings ¹²

Metro Survey Area				Total Market		
AQH Persons (00) 10	AQH Survey % 0.2	Cume Persons(00) 411	Cume Rating % 1.3	AQH Persons (00) 10	Cume Persons (00) 411	Avg TSL (hrs) 3.1

The following table represents the station's average ratings for the last three ratings periods:¹³

Metro Survey Area				Total Market		
AQH Persons(00) 10.6	AQH Survey % 0.13	Cume Persons(00) 318	Cume Rating % 1.03	AQH Persons(00) 10.6	Cume Persons (00) 318	Avg TSL (hrs) 4.4

¹¹ The proposal was later amended to relocate the station to the equally distant Seattle suburb of Kent, Washington which is located approximately 12 miles from Mercer Island.

¹² Exhibit B hereto.

¹³ Exhibit C hereto.

Mercer Island opposed this proposal as well as the counterproposal of Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition, LLC (“Counterpetitioners”), who proposed, among other things, the re-location of KDUX-FM from Aberdeen, Washington to Shoreline, Washington (another move-in to a community within the Seattle Urbanized Area) and a change in channel from 284C2 to 283C2

In lieu thereof, Mercer Island proposed that the Commission adopt a special allocation granting KMIH(FM) the equivalent of Class A status and protection in accordance with the Class A minimum distance separations on channel 283 at Mercer Island, Washington.¹⁴ Mercer Island’s comments and other submissions in this docket fully demonstrate that grant of its proposal will best serve the public interest and will result in the most preferential arrangement of allotments¹⁵ This Supplement demonstrates that grant of Mercer Island’s proposal is consistent with and can be accomplished within the confines of the Commission’s rules

II. THE COMMISSION SHOULD GRANT/ESTABLISH AN ALLOTMENT FOR KMIH(FM) AT MERCER ISLAND, WASHINGTON ON CHANNEL 283A

The Commission’s minimum distance separation rules require a 165 km spacing between a Class A station and a first adjacent Class C station.¹⁶ Under that standard, KMIH is short spaced to KAFE(FM), Bellingham, Washington by 33 kilometers.¹⁷ This condition,

¹⁴ As the licensee of the station, Mercer Island will apply for the channel and construct the facility as authorized

¹⁵ The Commission’s policies require that any reallocation proposal result in a preferential arrangement of allotments. See *Amendment of the Commission’s Rules Regarding 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*”)

¹⁶ Section 73.207 of the Commission’s rules

¹⁷ According to the Commission’s records, KAFE(FM) is located at coordinates 48-40-48 NL, 122-50-24 WL while KMIH(FM) is located at coordinates 47-34-21 NL, 122-13-01 WL. A distance of 132 km

however, has been in existence since 1992 when the Commission first granted KMIH(FM) permission to relocate to channel 283

The Commission will permit short spaced assignments as long as the application therefore proposes contour protection¹⁸ Contour protection is deemed to exist where the predicted interfering contour of the proposed station does not overlap the protected contour of other short spaced stations and where the predicted interfering contours of other short spaced assignments do not overlap the predicted protected contour of the proposed station.

Under the rules, the F(50/50) field strength along the protected contour is 1 mV/m (60 dBu) while the interfering contour is 6 dB lower than the F (50/50) field strength along the protected contour for which overlap is prohibited (54 dBu)¹⁹ As shown in the attached Engineering Statement, using the FCC methodology, the KAFE(FM) 54 dBu contour approximately bisects the KMIH(FM) 60 dBu protected contour. Mercer Island submits, however, that the results of this study are not reflective of real world conditions

Because of the way the Commission's methodology considers terrain, in this case, it fails to generate real world interference signal contours The Commission's methodology assumes the terrain along the path will fall into the norm assumed when the tables were originally conceived and the terrain beyond 16 kilometers from the transmitter is not considered. Because of the way the Commission considers terrain, the attenuating impact of drastically changing terrain and mountains and hills beyond 16 kilometers is ignored and, in this case, it fails to generate real world interference signal contours.

¹⁸ Section 73.215 of the Commission's rules

¹⁹ Section 73.215 (a) (1) and (2) of the Commission's rules

Mercer Island demonstrates that, in this case, use of the Longley-Rice Irregular Terrain Model ("Longley-Rice") is appropriate as an alternative prediction model.²⁰ The Commission employed this methodology in determining the new DTV allocation scheme²¹ and it has become the standard alternative prediction method. For example, the Commission recognized the usefulness of such studies in the television market modification context:

The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.²²

"Studies of this type have been increasingly used elsewhere in the Commission's processes to reflect signal propagation and thus warrant[s] consideration here."²³

These statements hold equally true in the radio context. The Engineering Statement submitted herewith demonstrates through use of the Longley-Rice Model that a short spaced Class A allocation KMIH(FM) on Channel 283 at Mercer Island is contour protected and that the allocation may be granted consistent with the Commission's rules.

²⁰ See Engineering Statement.

²¹ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 13 FCC Rcd 7418 (1998) ("we continue to believe that [the Longley-Rice model] provides a sufficiently accurate measure of service and interference. Furthermore, the Longley-Rice model is in the public domain and has been extensively documented, thereby ensuring that all parties using this model will be able to achieve the same results.")

²² *Arkansas 49, Inc. Petition For Modification of the Television Market of Television Station KYPX (TV), Camden, Arkansas*, DA 03-3653, n 9 (MB 2003).

²³ *Petition of Channel 39, Inc., For Modification of Television Market of Station WDZL, Miami, Florida*, 13 FCC Rcd 3108, para. 19 (C SB 1998).

Considering the valuable services KMIH(FM) provides to the Mercer Island Community -- services that it has been providing for over thirty years -- and given that it is one of only a few Superpowered grandfathered Class D stations still operating, rather than adopt the Joint Petitioners reallocation proposal, the Commission should instead adopt a special allocation granting KMIH(FM) the equivalent of Class A status and protection in accordance with the Class A minimum distance separations on channel 283 at Mercer Island, Washington²⁴ Interestingly, in a separate docket, Joint Parties engineering consulting firm has supported the concept Mercer Island puts forth here. In comments submitted on October 20, 1998 in MM Docket No. 98-93 Du Treil, Lundin & Rackley, Inc. stated that "[t]he Commission should consider proposals for Class D stations to upgrade to Class A along the lines of one-step applications for processing purposes."²⁵

Mercer Island has performed a study indicating that no alternative channel -- either in the reserved or non-reserved band -- exists.²⁶ Commission precedent provides for the reservation of a non-reserved channel for non-commercial educational use in situations similar to this.²⁷

²⁴ As the licensee of the station, MISD will apply for the channel and construct the facility as authorized.

²⁵ Comments of Du Treil, Lundin & Rackley, Inc. ("DLR") in the Matter of 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules MM Docket No. 98-93, page 6, submitted October 22, 1998. DLR likewise supports application of the Longley-Rice model to the FM broadcast service. See Reply Comments of Du Treil, Lundin & Rackley, Inc. in the Matter of 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules MM Docket No. 98-93, submitted December 4, 1998 ("It would seem logical to extend the extensive work in the television broadcasting service using the Longley-Rice model to the FM broadcasting service.")

²⁶ Exhibit D hereto.

²⁷ See *Bronson Michigan*, DA 91-790 (Allocations Branch 1991), *Butte, Montana*, 9 FCC Red 2180 (Allocations Branch 1994), *Buhl Minnesota*, 9 FCC Red 2180 (Allocations Branch, 1994).

Moreover, the Commission's more recent action in MM Docket 95-31²⁸ further supports a grant of the requested Channel 283A allocation at Mercer Island. There, the Commission reaffirmed the relaxed reservation standard adopted in the Report and Order "which [will] enable would-be applicants for NCE stations in the full-power FM and TV services to add to the number of channels reserved for their use when they demonstrate that they are technically precluded from using an already-reserved channel, and they will provide needed NCE service in a given area."²⁹

As demonstrated in the technical study attached in Exhibit D (submitted previously in this docket as an attachment to Mercer Island's original comments), no alternative channel – either in the reserved or non-reserved band – exists. Accordingly, to maintain its operations, KMIH(FM) must remain on channel 283.

Furthermore, KMIH(FM) provides a first local NCE service to at least ten percent of the population within the proposed station's service area and that such population is at least 2000 persons. Exhibit A hereto demonstrates that KMIH provides 60 dBu service to all of Mercer Island. Mercer Island has a 2000 Census population of 22,036.

This proposed allocation will result not only in a preferential arrangement of allotments, but one far superior to that proposed by the Joint Petitioners.

"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."³⁰ Adoption

²⁸ *Reexamination of the Comparative Standard for Noncommercial Educational Applicants* ("Second Report & Order"), 18 FCC Rcd 6691 (2003).

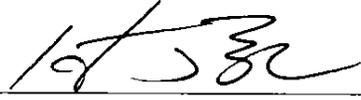
²⁹ *Second Report & Order*, 18 FCC Rcd at para. 1.

³⁰ *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984).

of this counterproposal will result in a preferential arrangement of allotments since it will serve to preserve the longstanding - truly local -- first local service KMIH(FM) has provided to the citizens of Mercer Island

Respectfully submitted,

MERCER ISLAND SCHOOL DISTRICT

By 
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