

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

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In the Matter of:)
)
Amendment of Section 73.202(b),) MB Docket No. 04-219
FM Table of Allotments, FM Broadcast Stations) RM-10986
(Evergreen, Alabama and Shalimar, Florida))

TO: Audio Division

REPLY COMMENTS OF GULF COAST BROADCASTING COMPANY, INC.

Gulf Coast Broadcasting Company, Inc. (hereinafter "GCBC"), by its attorney, hereby respectfully replies to the Comments filed in this proceeding by Quantum of Fort Walton Beach License Company, LLC (hereinafter "Quantum"), under date of August 2, 2004. In reply thereto, it is alleged:

I. Quantum's Arguments Concerning the Alleged Withdrawal of Reception Service and Creation of New Underserved Areas are Wholly Without Merit.

1. In its Comments, Quantum alleges that as a result of the relocation of Station WPGG from Evergreen, Alabama to Shalimar, Florida, GCBC will be withdrawing service from 8,340 persons who would lose their fifth service and 722 persons who would lose their fourth service. To support its claim that these alleged losses are somehow significant, Quantum cites two ancient cases: *West Michigan Telecasters, Inc.*, 22 FCC 2d 943 (1970), *recon. denied*, 26 FCC 2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc.*, 460 F 2d 883 (D.C. Cir. 1972); and *Triangle Publications, Inc.*, 37 FCC 307, 3 RR 2d 37 (1964). Neither of these decisions has the slightest relevance, here.

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2. *West Michigan Telecasters* was a case in which a television station in Grand Rapids, Michigan was attempting to move its transmitter site. The move created a short spacing. Hence, a waiver of the Commission's Rules was required. There is no waiver issue presented here. Furthermore, this case involves an FM allotment, not the relocation of a television transmitter site.

3. *Triangle Publications, Inc.* is equally inapposite. It also involved the relocation of the transmitter site of a television station, requiring a waiver of the Commission's Rules. Once again, there is no waiver issue here and the proposed re-allotment is governed by the Commission's FM policies, not by television policies.

4. In modern times, FM allocations have been made in accordance with FM Allotment Priorities, enunciated in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Those priorities, recited in both GCBC's Comments and Quantum's Comments, do not give any weight to third, fourth or fifth services. That is why Quantum has been unable to find any recent cases, or, indeed any cases at all, in which the Commission has denied an FM allotment, simply because a small number of people would lose their fourth or fifth reception service.

II. GCBC's Proposal Will Achieve a Preferential Arrangement of Allotments

5. The re-allotment proposed by GCBC will provide a first local service to the community of Shalimar, Florida. Thus, GCBC's proposal satisfies one of the four priorities, *i.e.*, number 3, which is first local service. Consequently, unless Quantum can show that Shalimar is not entitled to a first local service, GCBC's proposal must be adopted. In its Comments, Quantum argues that Shalimar is not independent of the Fort

Walton Beach urbanized area. However, as we will show, Shalimar is thoroughly independent and Quantum's arguments are unavailing.

A. The Town Manager's Statement Establishes That Shalimar Residents Perceive Themselves To Live In Shalimar, And Not Anywhere Else.

6. Quantum attacks the statement of the Town Manager, because the Town Manager lives on the outskirts of the incorporated boundaries of Shalimar. However, that fact does not detract from the Town Manager's conclusions. It merely shows that the actual area in which people reside and consider themselves to be residents of Shalimar is even larger than the incorporated boundaries of the town. Thus, it militates in favor of Shalimar's need for new service, not against it.

7. Furthermore, in at least one past case, the Commission has given great weight to the opinion of a Town Manager. In *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13, 876 (2001), the Allocations Branch relied, expressly, on a letter from the Town Manager of Indian Trail, North Carolina, to show that the community was independent and self-sustaining. The Branch said:

“In a supplement to its reply comments, Susquehanna provides a letter from the Town Manger of Indian Trail, North Carolina, stating that, based on his experience, the residents of Indian Trail consider their town to be a vibrant, growing, and self-sustaining community that offers its residents access to all of the government services, commercial establishments, and cultural activities of an independent community. Susquehanna has also provided a description and overview of Indian Trail and its incorporation and development as part of its Petition for Rulemaking. In short, the record is replete with objective evidence of Indian Trail's independence from Charlotte.”

16 FCC Rcd 13,876, 13,881.

B. The Census Bureau Figures Cited By Quantum Actually Reinforce The Need for A First Local Service At Shalimar.

8. Quantum cites Census Bureau figures showing that only 362 people of the 718 residents of Shalimar work for a living; and that the remainder are retired. This is another way of saying that approximately 50% of the residents of Shalimar are retired, and do not work for a living. This cuts against Quantum's argument. It shows that half of the residents of the town remain in or close to their homes, and do not work elsewhere. This fact only reinforces the conclusion that Shalimar is completely independent, since these 50% of Shalimar residents are not dependent upon going to work in any other community, or any other part of the urbanized area.

C. Shalimar Is Not Dependent on the Fort Walton Beach Urbanized Area For Media That Cover Shalimar's Local Needs And Interests.

9. Quantum admits, as it must, that the town of Shalimar has a very extensive website, at www.shalimarflorida.org. Quantum argues, however, that the website, “. . . does not contain advertising or an area for residents to discuss current events or to post classified ads.” Quantum, however, does not say how it knows this. Unless it has been monitoring the website for a long period of time, it would have no way of knowing what is posted on the site, from time to time.

10. One thing is certain; the site contains a very extensive listing of all the businesses in Shalimar. Hence, to the extent that those businesses are promoted by their listings on the website, Quantum is wrong when it argues that Shalimar businesses have no outlet for advertising in Shalimar.

D. The Fact that Shalimar's Elected Government Is Part-Time Is Wholly Irrelevant.

11. Quantum admits that Shalimar operates under a Mayor/Commission form of government, with five unpaid members; that the elections occur in odd-numbered years; that the Mayor is elected to a two-year term; and that Commissioners serve four-year terms, with two Commissioners elected every two years. Thus, Quantum concedes, as it must, that Shalimar has all the characteristics of an independent, incorporated community, including an elected city government.

12. Quantum, however, seeks to dismiss these characteristics by arguing that the Mayor and the Commissioners are only "part time positions and they must be located by their staffs if their assistance is required by a resident." Thus, Quantum left-handedly admits that the Mayor and the Commissioners have full-time staff. Under these circumstances, that fact that the Mayor and the Commissioners are part-time is completely irrelevant. Full-time people staff the town government.

13. Quantum is also obliged to admit that the Town of Shalimar has a police department and a fire house. The fact that on occasions, if no one is available at the police station, an Okaloosa County Sheriff will respond to the call is totally irrelevant. Quantum states that, "Shalimar relies on Okaloosa County to support its police department," but Quantum does not explain what it means by "support," nor does it provide any evidence, whatsoever, to back up its claim.

14. The fact that Shalimar does not have a motor vehicle office or a voter registration office is also entirely irrelevant. Many small towns, located far from urbanized areas do not have such services. The same is true for natural gas and water

service. Many small towns, located far from urbanized areas rely upon outside utilities to provide water and gas.

E. The Fact that Shalimar Does Not Have Its Own Telephone Book is Irrelevant, As It Has Its Own Zip Code.

15. Quantum points out that Shalimar does not have its own telephone book, provided by the telephone company. That is true, but totally irrelevant because, under *Tuck* factor number 5, it is sufficient for a community to have its own zip code and post office. Shalimar does, in fact, have its own zip code and post office.

F. Quantum's Attack On Shalimar's Commercial Establishments, Health Facilities, and Transportation Systems Is Unavailing.

16. It is just not true that, as Quantum alleges, "Shalimar has a limited number of commercial establishments" Mr. Bosiger's Declaration, attached to GCBC's original Comments, show a total of 74 commercial establishments in Shalimar. That's a very large number for a community of 718 people.

17. Similarly, Shalimar has a medical clinic, operated by the town doctor. Many communities that size do not have a clinic, but Shalimar does.

18. Finally, Quantum's allegation that only one person in Shalimar uses public transportation to travel to work is consistent with the finding that approximately 50% of the residents of Shalimar do not go to work. They are retired, and spend their time gardening, reading, watching TV, socializing with the other residents, and otherwise doing what retired people do. Life for them is centered around their homes, in Shalimar. Thus, Shalimar is not a so-called "bedroom" for some other community.

III. Conclusion

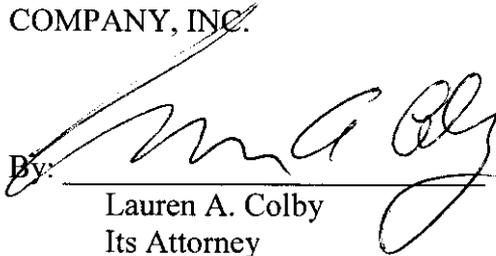
19. Adoption of the rule changes proposed by GCBC will satisfy one of the Commission's FM Allotment Priorities, *i.e.*, the establishment of a first local broadcast service to an independent community, Shalimar, Florida. Therefore, the proposed change is in the public interest, and should be adopted.

August 16, 2004

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Respectfully submitted,

GULF COAST BROADCASTING
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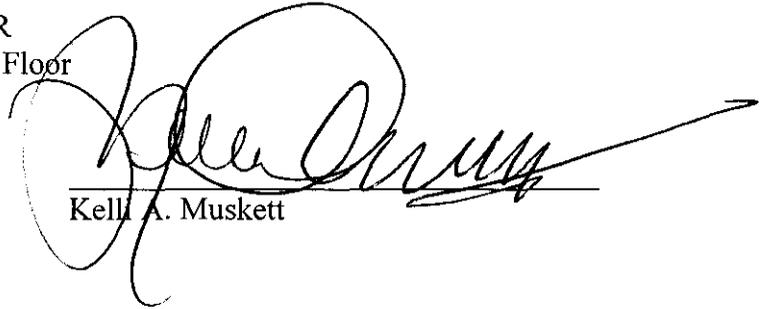
By: 

Lauren A. Colby
Its Attorney

CERTIFICATE OF SERVICE

I, Kelli A. Muskett, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 16th day of August, 2004, to the offices of the following:

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Kelli A. Muskett