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September 8, 2004

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

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SEP - 8 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Motion for Stay
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 Motion for Stay.

Should any questions arise concerning this matter, please contact the undersigned.

Respectfully submitted,


Howard J. Barr

Enclosure

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

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SEP - 8 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE 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)	
Trout Lake and Mercer Island, Washington ¹)	

To: Chief, Media Bureau

MOTION FOR STAY

Womble Carlyle Sandridge & Rice, PLLC.
1401 Eye Street, N.W.
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Washington, D.C. 20005
(202) 857-4506

September 8, 2004

¹ MISD submits that the community of Mercer Island should be added to the caption given its proposed allotment of Channel 283A for KMIH(FM) at Mercer Island, Washington.

SUMMARY

Mercer Island School District (“MISD”) demonstrates herein that grant of a stay of the effective date of the rule change allotting FM Channel 283C3 to Covington, Washington adopted in *Report and Order*, DA 04-2054, released July 9, 2004 and suspension of the processing of Mid-Columbia Broadcasting, Inc.’s application to implement that decision is in the public interest.

MISD establishes its likelihood of success on the merits. MISD documents the numerous errors that underlie the *Report and Order*, including, but not limited to the erroneous application of Commission policy and an almost abject failure to consider information submitted in opposition to the proposal at issue. MISD also demonstrates the irreparable injury it will suffer absent a stay. Specifically, the loss of the KMIH service.

MISD further demonstrates that no party will be harmed by the grant of the requested stay as quick action on this stay by the Commission will allow for considered action on the petition for reconsideration. Any delay in new service at Covington will be insubstantial as compared with the harm caused by the loss of the KMIH(FM) service at Mercer Island absent favorable action on the petition for reconsideration. Finally, the larger public interest is served by maintenance of the status quo pending action on the petition for reconsideration.

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

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Bellingham, Forks, Hoquiam, Aberdeen, Walla)	
Walla, Kent, College Place, Long Beach, Ilwaco)	
Trout Lake and Mercer Island, Washington ²)	

To: Chief, Media Bureau

MOTION FOR STAY

Mercer Island School District ("MISD"), pursuant to Section 1.429(k) and Section 1.102(b)(2) of the Commission's Rules, respectfully requests, upon good cause shown, a stay of the effective date of the rule change allotting FM Channel 283C3 to Covington, Washington adopted in *Report and Order*, DA 04-2054, released July 9, 2004 and suspend processing of the Mid-Columbia Broadcasting, Inc. application to implement that decision.³

Section 1.429(k) of the Commission's Rules specifically allows for the Commission to stay the effective date of a rule change, pending a decision on a petition for reconsideration for "good cause shown." MISD recognizes the four established criteria for issuance of a stay promulgated in Virginia Petroleum Jobber's Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958), as

² MISD submits that the community of Mercer Island should be added to the caption given its proposed allotment of Channel 283A for KMIH(FM) at Mercer Island, Washington.

³ See File No. BPH-20040809ABL

interpreted in Washington Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977), to wit: (1) likelihood of success on the merits; (2) irreparable injury to movant; (3) insubstantial harm to others; (4) the larger public interest. MISD addresses each of these criteria thereby establishing good cause for grant of this motion.⁴

The following is shown in support thereof:

I. MISD'S LIKELIHOOD OF SUCCESS ON THE MERITS

5. MISD has a substantial likelihood of success on the merits of its Petition for Reconsideration. Numerous errors underlie the Audio Division's decision to grant the community of license change – from The Dalles Oregon to Covington, Washington – for KMIH-FM.

6. No grounds existed for application of the *Taccoa Policy*⁵ (permitting Joint Petitioners⁶ to substitute Kent, Washington for Covington, Washington as the proposed new community of license for KMCQ(FM) in lieu of submitting comments supporting the Covington allotment). The erroneous application of the *Taccoa Policy* was further compounded when the staff permitted Joint Petitioners to abandon Kent for the previously abandoned Covington.

7. All that aside though, the finding that Covington is separate from the Seattle Urbanized Area and entitled to a first local preference was unsupported by the evidence of record (most of which was completely overlooked). The Audio Division failed to adequately consider

⁴ . The Commission has in the past granted a request for a stay in an allotment proceeding even after a filing window had opened. See Order Granting Request for Stay, MM Docket 88-31, DA89-126, released February 2, 1989 (stay of Report and Order establishing a January 30 to March 1, 1989 filing window for FM Channel 245A at Dry Ridge, Kentucky).

⁵ *Taccoa, Sugar Hill and Lawrenceville, Georgia*, 16 FCC Rcd 21191 (MMB 2001).

⁶ Mid-Columbia Broadcasting, Inc. and First Broadcasting Investment Partners, LLC are referred to herein as (“Joint Petitioners”).

significant information and evidence contradicting Joint Petitioners' showing and failed to adequately apply the appropriate criteria or analysis. Furthermore, the Audio Division failed to adequately consider the merits of a Channel 283A allotment at Mercer Island for KMIH(FM) in lieu of the Joint Petitioners proposals.

A. The Commission's Taccoa Policy was Erroneously Applied

8. The *Report and Order* failed to even mention, much less consider, MISD's arguments against application of the *Taccoa Policy*. An applicant counterproposing its own proposal must supply more than just "an explanation as to why the counterproposal could not have been advanced in the original petition for rulemaking."⁷ The *Taccoa Policy* requires a "careful[] review" of a rulemaking proponent's counterproposal and an "explanation, such as unforeseen circumstances," as to why the new proposal could not have been advanced in the initial petition for rule making."⁸

9. The *Report and Order* is almost entirely bereft of any review of the circumstances underlying the Joint Petitioners Kent counterproposal, much less a "careful review." The *Report and Order* merely took at face value Joint Petitioners' assertion that the circumstances justified consideration of the counterproposal under *Taccoa*. More was required.

10. Even a cursory analysis would have revealed that Joint Petitioners were not forced to seek an alternative to the original Covington proposal or even permitted to do so by virtue of some unexpected regulatory action.⁹ Any change that did take place – be it a change in Canadian

⁷ *Report and Order* at ¶ 3.

⁸ *Taccoa*, 16 FCC Rcd at 21192 (emphasis added).

⁹ *Compare, Springfield, Tennessee, Oak Grove and Trenton, Kentucky*, 18 FCC Rcd 25628 (2003) ("Saga's revised proposal [substituting Trenton for Oak Grove] was necessary due to the fact that the modification of its Station WJOI-FM license to specify Oak Grove would contravene the Commission's new multiple ownership rules";

regulatory policy¹⁰ or Joint Petitioners entering into an agreement with Saga Communications -- were at Joint Petitioners' behest and in furtherance of their own business interests making the action a voluntary one and not an unforeseen circumstance.

11. Joint Petitioners alleged inability to reach an agreement with Saga regarding the modification of KAFE prior to filing the Covington proposal was also insufficient to warrant the counterproposal's consideration. Acceptance of this justification completely ignored the fact that nothing compelled or required Joint Petitioners to file the Covington proposal in the first place. Joint Petitioners should not be permitted to propose an allotment and then amend on the claim of an unforeseen circumstance based upon its own voluntary actions.¹¹ Having failed to offer an explanation "as to why the new proposal could not have been advanced in the initial petition for rule making," the Kent proposal should have been processed in a new proceeding.¹²

12. The erroneous application of the *Taccoa Policy* was further compounded when the staff permitted Joint Petitioners to abandon Kent as they had Covington before and reinstate Covington -- a community for which Joint Petitioners never timely made the requisite "present intention" statement¹³ -- as the proposed new KMCQ(FM) community of license. Like the Kent

likewise, the unforeseen stay of those rules permitted Saga to return to its original Oak Grove proposal); *Tullahoma, Tennessee and Madison, Alabama*, DA 03-2716 (2003) ("in this proceeding petitioner amended its proposal to reflect a change in the borders of the City of Madison, an event that was 'reasonably unforeseeable' to petitioner").

¹⁰ There was no such change; only Joint Petitioners' self serving "technical exhibit from a Canadian engineering firm [leading] Saga [to] "believe[] that Channel 281(c) at Bellingham can be coordinated with Canada as a specially negotiated short spaced allotment". *Report and Order* at ¶ 3.

¹¹ See *Noblesville, Indianapolis and Fishers, Indiana*, DA 03-1118 (2003) (Commission refused to process an amended proposal under the *Taccoa Policy* because the "change in the allotment request was proposed after one of the petitioners assumed ownership of a nearby station [and] [i]n that situation, the petitioners clearly anticipated the intervening event that prompted them to revise the original allotment proposal").

¹² *Id.*

¹³ Failure to make the present intention statement is fatal to an allotment proposal. 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

counterproposal, the reinstatement of the Covington proposal was not precipitated by some regulatory action permitting the proponent to return to its favored proposal.¹⁴ Rather, Joint Petitioners voluntarily withdrew the amended proposal in favor of the original proposal solely to avoid compliance with a Show Cause order and to defeat the possibility that Counterpetitioner's¹⁵ counterproposal might be accepted.

5. Joint Petitioners failed to adequately justify the need for the Kent counterproposal and likewise failed to provide any justification for the withdrawal of that proposal and reinstatement of the original Covington proposal. Unlike the parties in *Springfield, Tennessee, Oak Grove and Trenton, Kentucky*, who were essentially forced to abandon their proposed move to Oak Grove, Kentucky because of the Commission's adoption of new multiple ownership rules and who then sought reinstatement of that proposal when those rules were stayed, nothing compelled the Joint Petitioners to seek out an alternative community by way of a counterproposal other than its own business dealings and nothing changed so as to require reinstatement of the original proposal.

6. Joint Petitioners never provided any reason, much less a compelling one, supporting reinstatement of the original proposal. To the contrary, the Joint Petitioners' "Withdrawal of Counterproposal" firmly established that nothing compelled the withdrawal of the counterproposal other than a **voluntary decision** to abandon the counterproposal: "The Joint Petitioners have decided that they will not pursue the Counterproposal submitted in response to the *Notice of Proposed Rule Making*, 17 FCC Rcd 10678 (2002), in this proceeding."¹⁶ At that

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)

¹⁴ See n. 10, *supra*.

¹⁵ Collectively, Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition, LLC.

¹⁶ Withdrawal at para. 1.

point, Joint Petitioners should have been dismissed from this proceeding since they no longer had any request (valid or otherwise) pending before the Commission. No basis existed for consideration of the Covington proposal, much less the grant of that proposal.

B. Covington Was Not Entitled to a First Local Service Preference

7. The *Report and Order* completely neglects the people of Mercer Island in favor of the illusory first local preference to Covington and fails to achieve a “fair, efficient and equitable distribution of radio service”¹⁷ The grant of a dispositive preference here resulted in precisely the anomalous result, i.e., an “artificial or purely technical manipulation of the Commission’s 307(b) related policies,” the Commission sought to avoid when a station seeks to relocate to a suburban community in or near an Urbanized Area.¹⁸ Grant of Joint Petitioners’ proposal has resulted in the shifting of service from an underserved rural area to a well served urban area at the expense of an existing local service without any countervailing benefits.

8. The *Report and Order’s Tuck* analysis here was so cursory as to almost belie belief. For example, the *Report and Order* did not even mention, much less consider, any countervailing arguments or evidence against a Covington finding. MISD’s Comments established Covington to be undeserving of a first local service preference based upon application of the *Tuck* criteria consistent with Section 307(b).¹⁹

9. Of the eight factors within the third *Tuck* criterion, MISD demonstrated that **not one** weighed in favor of finding Covington independent from Seattle and the Seattle Urbanized Area.

¹⁷ *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984).

¹⁸ *Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988); *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).

¹⁹ See *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), and *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990).

Given the signal population coverage of Joint Petitioners' reallocation proposal²⁰ and the huge size disparity between Covington and Seattle²¹ and the proximity between the two,²² Joint Petitioners' showing under the third *Tuck* criterion fell well short of establishing that Covington is independent of the much larger central city of Seattle and the Seattle Urbanized Area:

- Joint Petitioners failed to “establish that a majority of residents live and work in the community.”²³ Joint Petitioners provided no evidence to establish this factor. Worse, the *Report and Order* did not even recite this as a factor to be examined. much less analyze MISD's demonstration that, at a maximum, only 35% of Covington's civilian

²⁰ Appendix A to MISD's Comments was a Dataworld study showing propagation contours from the proposed site based upon the minimal information (minimum Class C3 – 25kw, 100m HAAT) then available. MISD demonstrated that the proposed Covington facility will provide 70 dBu service to 39% of the Seattle Urbanized Area and 60 dBu service to 71% of that area – far in excess of the 8.8% coverage proffered by Joint Petitioners. MISD's Petition for Reconsideration contained a more recent Dataworld study showing that the proposed allotment will provide 70 dBu service to 1,250,325 persons or 46% of the urbanized area and 60 dBu service to 1,875,187 persons or 69% of the urbanized area. Not only did Joint Petitioners fail to rebut this showing but, even worse, the *Report and Order* never even took it under consideration. Since the reconsideration deadline, Joint Petitioners filed a minor change application seeking to effectuate the community of license change. See File No. BPH-20040809ABL. Joint Petitioners propose a transmit site on Radio Hill in Enumclaw, Washington (47-11-13NL, 121-54-11 WL) with an antenna centered at 605 meters above mean sea level, 20 meters above ground level and 97 meters above average terrain with 25 kw effective radiated power. *Id.* Dataworld has studied this application and reached the following conclusions as to coverage:

City Grade (70 dBu) Contour

Seattle-Tacoma, Washington Urbanized Area Population	2,712,205
Population within Urbanized Areas	1,371,068
Population outside Urbanized Areas	107,937

Grade A (60 dBu) Contour

Seattle-Tacoma, Washington Urbanized Area Population	2,712,205
Population within Urbanized Areas	1,977,547
Population outside Urbanized Areas	137,605

This study demonstrates that, out of a total urbanized area population of 2,712,205, KMCQ operating from Enumclaw will provide 70 dBu coverage over a total population of 1,479,005, 1,371,068 of which are located within the urbanized area. KMCQ operating from Covington will therefore place a 70 dBu contour over 51% of the urbanized area population. Perhaps more importantly, fully 92% of the 70 dBu population covered by KMCQ at Covington is located within the urbanized area. Put another way, only 8% of the 70 dBu population is outside of the urbanized area. KMCQ operating from Covington will place a 60 dBu contour over almost 73% of the urbanized area population. Ninety four percent (94%) of the 60 dBu population covered by KMCQ at Covington is located within the urbanized area. Put another way, only 6% of the 60 dBu population is outside of the urbanized area.

²¹ Covington is 1/40th the size of Seattle and 1/20,000 the size of the Seattle Urbanized Area.

²² 15 km.

²³ *Pleasanton, Bandera and Schertz, Texas*, 15 FCC Rcd 3068, 3071 (2000).

labor force (and only 18% of Covington's total population) can work in Covington.²⁴ The Commission has found it to be "significant" where 46.5% of employment age residents worked outside of the proposed community of license and within the larger nearby central city.²⁵ For unexplained reasons, the *Report and Order* did not consider this or any other data MISD supplied on the issue.²⁶

- Joint Petitioners conceded that Covington does not have its own daily newspaper. MISD demonstrated that Covington not only lacks a daily newspaper, it does not even have a weekly paper.²⁷
- The Audio Division did not consider, much less provide any analysis on community perception issue. This omission was perhaps understandable since Joint Petitioners did not provide even a single statement from a Covington community leader as to the issue of whether they perceive Covington to be separate from the larger Seattle Urbanized Area.²⁸
- While Covington does have a local government, it does not have its own phone book or zip code.
- The evidence demonstrated that, while Covington may have a variety of small businesses located within its city limits, it does not have its own public transportation system. Like those residing in other Seattle/King County suburbs, residents of Covington 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.
- MISD demonstrated that Covington and Seattle are part of the same advertising market, another issue the Audio Division failed to consider or analyze.
- The Audio Division erroneously concluded that Covington residents need not rely on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. Covington is, in fact, reliant on the larger metropolitan area for each of these services.

²⁴ MISD Comments at pp. 10-12 Joint Petitioners conceded that the figure is likely far lower.

²⁵ See *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (Allocations Branch 2001).

²⁶ For example, the *Report and Order* completely ignored perhaps the most telling Census Bureau statistics on this factor: the 33.9 mean travel time to work for Covington residents. Given that it takes approximately five (5) minutes to travel across Covington by vehicle, the foregoing statistics support only one conclusion: the mean citizen does not work in Covington, but elsewhere in the Seattle Urbanized Area. See Attachment II to MISD's Comments (Of the 7,013 persons in Covington that were employed – out of a civilian labor force of 7,350 – 6,899 commuted to work. Of those, 6,472 commuted via vehicle, 134 used public transportation, 27 walked, 29 used other means and 237 worked at home.)

²⁷ MISD demonstrated that Joint Petitioners' attempt to establish this factor through reliance on the daily *South County Journal* was meritless.

²⁸ Joint Petitioners sole showing on the issue was to recite basic facts regarding Covington's incorporation in 1997 and to extract a quote from the City's Vision Statement. This falls far short of establishing that Covington's leadership perceive the community to be separate from, and independent of, the Seattle Urbanized Area.

Commission policy holds that a community will be considered to be independent only when a majority of the Tuck factors demonstrate that the community is distinct from the urbanized area, this one factor is insufficient to support the allotment's grant.²⁹

10. The evidence demonstrated that Covington is interdependent with Seattle and the Seattle Urbanized Area. The proposed allotment did not warrant award of a first local service preference and should have been treated "as simply an additional allotment to the urban area."³⁰ That is, all of the services of the Seattle Urbanized Area should have been attributed to Covington and the reallocation proposal should have been considered pursuant to FM allotment priority four, "other public interest matters."³¹ By failing to reach this conclusion, the *Report and Order* "condone[s] an artificial and unwarranted manipulation of the Commission's policies."³²

II. MISD WILL BE IRREPARABLY HARMED

11. Grant of the Covington allotment to KMCQ(FM) will result in the loss of MISD's KMIH(FM) service on Channel 283D at Mercer Island. In the place of a local high school radio station run and programmed by students attending the high school, the staff has substituted just another commercial Seattle station.

12. To prevent that, MISD opposed the proposed reallocation to Covington and counterproposed that KMIH(FM) be granted the equivalent of Class A status on its current channel 283 at Mercer Island, Washington and that its license be modified accordingly. The Audio Division failed to fully consider the public interest benefits to be derived by the maintenance of the KMIH(FM) service at Mercer Island and the grant of a Class A allotment to

²⁹ See, e.g., *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

³⁰ *KFRC*, 5 FCC Rcd at 7097

³¹ *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681, 12684 (Allocations Branch 1996).

³² *Id.*

KMIH(FM) at Mercer Island, Washington. The decision to sacrifice the “valuable service”³³ being provided by KMIH(FM) for just another commercial Seattle station flies in the face of sound public policy.

13. Mid-Columbia recently submitted an application with the Commission seeking to implement the community of license change adopted in the *Report and Order*.³⁴ Mid-Columbia should not be required to expend substantial resources in pursuing a channel allotment that was made contrary to applicable Commission precedent. Likewise, the scarce resources of the Commission should not be used to process an application submitted pursuant to a decision made contrary to applicable Commission precedent and when the community of license will be changed pursuant to favorable Commission action on the petition for reconsideration. Each of these actions and expenditures undertaken by both the petitioner and the Commission cannot be made whole again upon favorable action on the petition for reconsideration absent a grant of this stay.

III. INSUBSTANTIAL HARM TO OTHERS

14. No party will be harmed by the grant of the requested stay as quick action on this stay by the Commission will allow for considered action on the petition for reconsideration. Any delay in new service at Covington will be insubstantial as compared with the harm caused by the loss of the KMIH(FM) service at Mercer Island absent favorable action on the petition for reconsideration.

³³ *Report and Order* at ¶ 5.

³⁴ See File No. BPH-20040809ABL.

IV. THE LARGER PUBLIC INTEREST IS SERVED BY THE GRANT OF THE REQUESTED STAY

15. Finally, the larger public interest will be well served by a grant of this motion and favorable action on the petition for reconsideration. Broadcasters must serve the public interest, and the Commission has consistently interpreted this to require broadcast licensees to air programming that is responsive to the interests and needs of their communities.”³⁵ KMIH(FM) has been serving the public interest through the airing of programming responsive to the needs and interests of the Mercer Island community and through the positive learning environment it creates for the students of Mercer Island High School.

16. KMIH(FM), notwithstanding its Class D status, provides a valuable and irreplaceable service to the Mercer Island Community.³⁶ The Audio Division’s failure to factor the loss of this service into the equation fails to serve the public interest. The loss of KMIH(FM) and the loss of the valuable educational resource that is the radio program at Mercer Island High School that will result from the implementation of the grant of the reallocation proposal will be disastrous to the high school, the school district and the community at large with no countervailing public

³⁵ <http://www.fcc.gov/localism/>. See also, *Notice of Inquiry*, DA 04-129, released July 1, 2004.

³⁶ This program: teaches students the essentials of broadcasting; teaches and promotes programming, production, promotions, Commission rules, community service, EAS, and other methods of radio-based emergency response, computer training in a broadcast setting, Internet web design, and engineering and radio theory; provides an invaluable service to the school and the local area with its live broadcasts of community events and Mercer Island High School (“MIHS”) athletics providing not only a special service to the community, but also a singular opportunity for students to learn and experience the art of live play-by-play broadcasting and for the studio crew to experience live remote broadcasting from the technical side. KMIH(FM) is an active member of the Washington State Emergency Broadcast team and MIHS students are trained and practiced in proper EAS procedures in accordance with the Commission’s rules. Such procedures were put to the test in 2001 when a moderate earthquake shook Seattle. Within minutes, MIHS students were on the air dealing with the situation and providing much needed information to the community. The Mercer Island Department of Public Safety also relies on KMIH(FM). Over 60 students are currently directly involved in the MIHS radio vocational program though many more are involved in the station on a daily basis. Many KMIH(FM) graduates are now employed in the broadcast industry while many others have obtained apprenticeships out of high school or immediately became involved in high positions at college radio stations. The first hand experience they gained at KMIH(FM) undoubtedly played a great role.

interest benefits. The decision to allot a distant broadcaster what amounts to KMIH(FM)'s channel and effectively shutter KMIH(FM), fails to serve the localism mandate and therefore fails to serve the public interest. Grant of the requested stay will prevent this public interest travesty from occurring and allow the Commission time to fully and adequately consider the facts of this case.

CONCLUSION

Wherefore, the premises considered, Mercer Island School District respectfully requests that the Commission grant this Motion for Stay of the effective date of the rule change allotting FM Channel 283C3 to Covington, Washington adopted in *Report and Order*, DA 04-2054, released July 9, 2004 and suspend processing of the Mid-Columbia Broadcasting, Inc. application to implement that decision.

Respectfully submitted,

MERCER ISLAND SCHOOL DISTRICT

By: 
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Its Attorney

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September 8, 2004

CERTIFICATE OF SERVICE

I, Howard J. Barr, do hereby certify that I have on this 8th day of September, 2004, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing Motion for Stay to the following:

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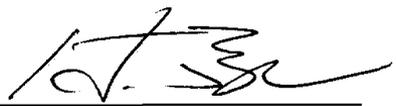
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