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September 23, 2004

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SEP 23 2004

Federal Communications Commission  
Office of Secretary

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

**Re: Reply to Opposition to Motion for Leave to File Supplement to  
Petition for Reconsideration  
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 Reply to Opposition to Motion for Leave to File Supplement to Petition for Reconsideration.

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 23 2004

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 )  
Trout Lake and Mercer Island, Washington<sup>1</sup> )

To: Chief, Media Bureau

**REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENT TO  
PETITION FOR RECONSIDERATION**

Mercer Island School District ("MISD"), by counsel, hereby submits its Reply to First Broadcasting Investment Partners, LLC's ("First Broadcasting")<sup>2</sup> Opposition to MISD's Motion for Leave to file a Supplement to its Petition for Reconsideration in the above-captioned matter. The Supplement provides the Commission with additional information relevant to a full consideration of the proposals before it in the public interest.

1. As described in the Motion for Leave to File Supplement to Petition for Reconsideration, the Supplement is based on new information obtained subsequent to the

<sup>1</sup> 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.

<sup>2</sup> Mid-Columbia Broadcasting, Inc., though not specifically named as a party in the Opposition, is a signatory to the Opposition.

reconsideration filing deadline and could not have been earlier developed or acquired. More specifically, the Supplement is based upon information disclosed by Mid-Columbia Broadcasting, Inc. ("Mid-Columbia") in its minor change application for construction permit to modify the KMCQ(FM) facilities to implement the Commission's decision in this matter.<sup>3</sup> Though filed prior to the applicable reconsideration deadline, public notice of the application's filing was not given until subsequent to that deadline.<sup>4</sup>

2. First Broadcasting does not deny these basic facts yet nevertheless contends that MISD's submission is not based on newly discovered information. It's contention cannot be accepted in light of its acceptance of these basic facts.

3. First Broadcasting's assertion that good cause for the Supplement has not been shown should be rejected. First Broadcasting's attempt to paint the submission as going only to the issue of whether a *Tuck*<sup>5</sup> analysis was required in this case is merely an attempt to avoid scrutiny of its wholly deficient *Tuck* showing. MISD's submission goes to the application of the *Tuck* factors in this case and not to the issue of whether a *Tuck* analysis was required.

4. Simply put, the staff's *Tuck* analysis in this case was perfunctory at best. MISD's petition for reconsideration demonstrates the failures in the staff's analysis. The Supplement merely provides additional information in support of that showing based upon information made available subsequent to the reconsideration deadline.

5. In *Tuck*, the Commission specified three factors for evaluating a community's independence, the first being signal population coverage, i.e., the degree to which the proposed

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<sup>3</sup> *Report and Order*, DA 04-2054, released July 9, 2004.

<sup>4</sup> *Public Notice*, Report No. 25805, released August 24, 2004.

<sup>5</sup> *Faye and Richard Tuck* ("*Tuck*"), 3 FCC Rcd 5374 (1988).

station will provide service to both the suburban community and the larger metropolis.<sup>6</sup> Accordingly, contrary to First Broadcasting's assertion, signal population coverage is always at issue in cases requiring a *Tuck* analysis, even when the analysis is required in cases such as this, where *Tuck* comes into play because the community itself is within the urbanized area.

6. Moreover, First Broadcasting conceded that signal population coverage is at issue when it postured in the Petition for Rulemaking that the proposed Channel 283C3 at Covington, Washington would permit service to only 8.8 percent of the Seattle Urbanized Area – an assertion that the staff blindly accepted in the face of contrary evidence when it granted the community of license change.<sup>7</sup> The Supplement rebuts First Broadcasting's assertion and supports MISD's contention (made from the outset)<sup>8</sup> that a far greater area will be served – a fact that should have led the staff to conclude that Covington is not independent of Seattle and the Urbanized Area.

7. The information is decidedly relevant to this proceeding. First Broadcasting's efforts here are merely part and parcel of its strategy to obscure the issues and to deflect the actual scrutiny of its proposal that is so lacking in this matter.

8. So too is First Broadcasting's effort to portray the Supplement as based on information that could have previously been supplied to the Commission. MISD's Supplement is based on newly discovered information, i.e., the minor change application in file no. BPH-20040809ABL filed after the reconsideration deadline.

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<sup>6</sup> *Tuck*, supra. See also Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama, 6 FCC Rcd 6,580 ¶23 (M.M. Bur. 1991), app. for rev. dismissed, 12 FCC Rcd 8392 (M.M. Bur. 1997).

<sup>7</sup> MISD does not "argue" that Channel 283C3 from the allotment reference coordinates will "permit service to only 8.8 percent of the Seattle Urbanized Area." Opposition at para. 3. MISD has always taken the position that First Broadcasting, in asserting only 8.8% coverage, has grossly understated coverage of the area.

<sup>8</sup> See Joint Comments of MISD and Peninsula School District No. 401.

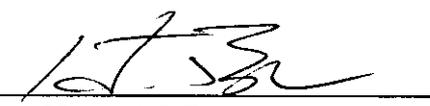
9. While MISD has submitted evidence demonstrating the First Broadcasting's postured 8.8 % coverage to be a gross understatement, MISD could not have previously submitted the specific information contained in the Supplement. Until the minor change application for Channel 283C3 at Covington was placed on public notice, MISD did not possess the requisite information regarding the proposal to generate specific facts regarding the true extent of coverage. MISD was able to make accurate coverage calculations only after the specifics of the Covington proposal were revealed, an event that did not occur until subsequent to the reconsideration deadline.

10. Furthermore, First Broadcasting does not deny that MISD's Supplement was filed well before its reconsideration opposition deadline and fails to demonstrate how it will be prejudiced by the Supplement's acceptance.

Accordingly, Mercer Island School District respectfully submits that good cause exists for acceptance of the Supplement.

Respectfully submitted,

**MERCER ISLAND SCHOOL DISTRICT**

By: 

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Its Counsel

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September 23, 2004

**CERTIFICATE OF SERVICE**

I, Howard J. Barr, do hereby certify that I have on this 23<sup>rd</sup> day of September, 2004, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing Reply to Opposition to Motion for Leave to File Supplement to Petition for Reconsideration to the following:

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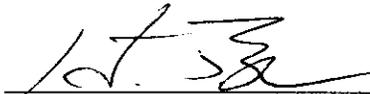
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