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February 23, 2006

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FEB 23 2006

Federal Communications Commission
Office of Secretary

By Hand

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002
Attn: Audio Division, Media Bureau

Re: Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations
(Cambridge, Newark, St. Michaels, and Stockton,
Maryland, and Chincoteague, Virginia)
MB Docket 04-20; RM-10842, RM-11128, RM-11129,
RM-11130

Dear Ms. Dortch:

Transmitted herewith on behalf of MTS Broadcasting, L.C. are an original and four copies of an "Opposition to Petition for Reconsideration" filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP

Attorneys for
MTS Broadcasting, L.C.

By: 
Andrew S. Kersting

Enclosure

cc: Certificate of Service (w/ encl.) via hand & first class mail

202-955-6631 014
List A B C D E

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

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To: Office of the Secretary		
Assistant Chief, Audio Division		
Media Bureau		

**OPPOSITION TO
PETITION FOR RECONSIDERATION**

MTS BROADCASTING, L.C.

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To: Office of the Secretary
Assistant Chief, Audio Division
Media Bureau

**OPPOSITION TO
PETITION FOR RECONSIDERATION**

MTS Broadcasting, L.C. (“MTS”), acting pursuant to Section 1.429(f) of the Commission’s rules, 47 C.F.R. §1.429(f), hereby opposes the Petition for Reconsideration (the “Petition”) filed January 20, 2006, by CWA Broadcasting, Inc. (“CWA”) in response to the *Report and Order*, DA 05-3101 (Aud. Div. December 2, 2005) (“*Report and Order*”), issued in the above-captioned proceeding.¹ The Opposition also responds to the separate Supplement to Petition for Reconsideration (the “Supplement”) filed by CWA on February 10, 2006.

I. Introduction and Summary.

CWA’s Petition reflects CWA’s continuing effort to reverse the very action which it requested – and received -- from the Commission: namely, the reallocation of Channel 232A from Cambridge, Maryland to St. Michaels, Maryland. The *Report and Order* re-affirmed that action by concluding that the allotment of Channel 232A to St. Michaels remained a preferential arrangement under the Commission’s long-standing allotment priorities for amending the FM

¹ This Opposition is timely filed in accordance with Sections 1.429(f) and 1.4(b) of the Commission’s rules. 47 C.F.R. §§1.429(f), 1.4(b).

Table of Allotments and denied CWA's request to allow WINX-FM ("WINX" or the "Station") to remain at Cambridge. *See Report and Order* at ¶ 12 n.9.

In its Petition, CWA alleges that the *Report and Order* constitutes "arbitrary and capricious" action and must be reversed. Petition at 9, 14. In support of its position, CWA claims that the Media Bureau (the "Bureau") erred (1) by failing to account for precedent in determining that Newark, Maryland, qualifies as a community for allotment purposes, *id.* at 2, (2) by allegedly relying upon the feasibility of an upgrade of Channel 232A to a class B1 station at St. Michaels, and (3) by failing to account for the service benefits that would allegedly accrue from the reallocation of Channel 232B1 to Cambridge, including alleged service to a gray area. If the Bureau rejects its arguments, CWA proposes that the Bureau allot Channel 232B1 to Oxford, Maryland as a first local service. *Id.* at 16.

None of CWA's arguments has any merit.

First, as a Census Designated Place ("CDP"), Newark is entitled to a presumption that it qualifies as a community for allotment purposes, and none of the facts or precedent cited by CWA is sufficient to overcome that presumption – especially in light of the objective indicia in the record of Newark's status as a community.

Second, contrary to CWA's claim, the Bureau did not rely on an upgrade of Channel 232 at St. Michaels as a basis for the denial of CWA's proposal to allot Channel 232B1 to Cambridge. The *Report and Order* merely mentioned that upgrade as a possibility which could offset any disappointment by CWA in the result.

Third, CWA's proposal to allot Channel 232B1 to Cambridge would not provide service to any gray area (and the alleged service benefit to other underserved areas would be far less beneficial than claimed) because (1) those benefits are premised on use of a transmitter at

the Cambridge reference point and (2) CWA cannot locate WINX's transmitter at that reference point or anywhere other than its existing location.

CWA's Oxford proposal also must be rejected because it fails to comply with Section 1.429(b) of the Commission's rules and constitutes an untimely counterproposal.

In view of the foregoing, there is no factual or legal defect in the *Report and Order*, and CWA should be compelled to comply with the full Commission's 1997 order to file a Form 301 application to implement the change in WINX's community of license to St. Michaels.²

II. Newark is a Qualifying Community.

A. CWA's Allegations.

CWA's Petition claims that the Bureau erred in finding that Newark qualifies as a community for allotment purposes. Petition at 2. The Petition asserts that the Bureau "misapplied Commission precedent" and ignored evidence previously presented by CWA to rebut the presumption that Newark, as a CDP, is a qualifying community. *Id.* at 3. CWA premises those arguments on its view that Newark does not possess the "social, economic, or cultural characteristics that inform the Commission's definition of a 'community' for allotment purposes," citing *Grants and Peralta, New Mexico*, 14 FCC Rcd 21446, 21449 (MMB 1999) ("*Peralta*"); *Stock Island, Florida*, 8 FCC Rcd 343 (MMB 1993) ("*Stock Island*"); and *East Hemet, California*, 4 FCC Rcd 7895 (MMB 1989) ("*East Hemet*"). Petition at 3. The Petition further contends that the Bureau improperly relied on *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcasting Assignments (Semora, North Carolina)*, 5 FCC Rcd 934 (1990) ("*Semora*"). *Id.* at 2-3.

² MTS has this same day filed a separate Motion to Compel to achieve that result.

B. Report and Order Consistent with Precedent.

Contrary to the Petition's contentions, the *Report and Order's* reliance on *Semora* was appropriate. Like Newark, *Semora* (1) was not located on the fringe of a larger urban area, (2) had its own post office, local volunteer fire department, civic organization, and two churches (both of which had *Semora* in their names), (3) had no local government and provided no municipal services except for its volunteer fire department, and (4) supported several stores, two restaurants, and a night club. Although the amount of commercial activity in *Semora* (like Newark) was limited, the Commission explained that it had never established a minimum amount of commercial activity necessary to qualify an area as a community. 5 FCC Rcd at 935. The Commission added the following:

. . . the fact that persons from outside *Semora* may participate in commercial activities within the community does not foreclose a finding of community status, but instead serves as evidence that persons from surrounding areas view *Semora* as a center of business activities for a surrounding area.

5 FCC Rcd at 935. The Commission concluded the foregoing the factors provided strong evidence of the existence of a community even though each factor in isolation would not necessarily make *Semora* a community for allotment purposes.

Newark's status as a community is even more compelling than *Semora's* because, unlike *Semora*, Newark is a CDP. Consequently, there would be no reasonable basis for the Bureau to conclude that *Senora* is a community for allocation purposes but that Newark is not.

None of the decisions cited by CWA justify a different conclusion. In *Peralta*, the Allocations Branch held that *Peralta* was not a community for allotment purposes. 14 FCC Rcd at 21449. Like Newark, *Peralta* is a CDP, but unlike Newark, which is located in a rural area, *Peralta* is only about 20 miles from an urban area (Albuquerque, New Mexico) – a factor that suggested that *Peralta* was little or nothing more than an extension of that urban area. That

conclusion was reinforced by other facts. Unlike Newark, Peralta did not have its own post office; instead, Peralta's mail was delivered to a post office in the neighboring community of Bosque Farms. And unlike Newark, Peralta did not have any civic or social organizations. The Allocations Branch also expressed concern that there was "no separate listing for Peralta residents or businesses in the [local] telephone book." *Id.* In contrast, Newark residents are separately identified in the phone book for Somerset-Worcester Counties. *See* MTS Supplemental Comments (June 17, 2004) ("Supplemental Comments") at 3 and Exhibit H thereto. In this context, the Bureau's disregard of *Peralta* was amply justified.

The facts in *Stock Island* and *East Hemet* are equally distinguishable. Although Stock Island is a CDP, it only had a fire department, a businessman's association, and a neighborhood improvement program. 8 FCC Rcd at 843. It therefore lacked the churches, business establishments, and post office that are found in Newark. In *East Hemet*, the Allocations Branch found there was no persuasive evidence that East Hemet, California – which similarly lacked the post office, local businesses, and organizations found in Newark – was a community separate and distinct from Hemet, California. The Allocations Branch therefore deleted an allotment from East Hemet.³

³ CWA also cited *Rockport, Gregory, Alice and Armstrong, Texas*, 4 FCC Rcd 8075 (MMB 1989), and *Broadview, Montana*, 14 FCC Rcd 14101 (MMB 1999). Petition at 4, n.3 and n. 5. Those cases similarly fail to support CWA's argument that Newark should not be considered a community for allotment purposes.

In *Rockport*, the town of Armstrong was not a CDP, and the proponent failed to demonstrate that the community had any businesses, social organizations or governmental units that identified themselves with the community. The Allocations Branch therefore held that Armstrong was not a community for allotment purposes. 4 FCC Rcd at 8076.

In *Broadview*, the proponent claimed that a variety of governmental and community organizations existed in Broadview, but the Allocations Branch found that the proponent failed to provide evidence that they had a Broadview address or that they were intended to serve Broadview as opposed to an expanded rural area. As a result, the Allocations Branch found that Broadview was not a community for allotment purposes. 14 FCC Rcd at 14101.

The Petition's invocation of *Danville and Nonesuch, Kentucky*, 18 FCC Rcd 9304 (AD 2003), is also unavailing. Petition at 4, n.4. Nonesuch (1) was not a CDP, (2) did not have any civic organizations, businesses, or churches located in the community, (3) did not have a population number associated with it, and (4) did have a post office or its own zip code. Indeed, there were signs posting a 55 mile-per-hour speed limit near Nonesuch, thereby indicating the absence of any businesses or homes in the area. The Audio Division therefore concluded that Nonesuch was not a community for allotment purposes. 18 FCC Rcd at 9306.

Newark stands in sharp contrast to Nonesuch. Although Newark does not have its own local government, it is served by a local post office which serves Newark and no other community.⁴ Newark also hosts (1) the Newark Station, which functions as a gas station, a convenience store and a “grill;”⁵ (2) the Worcester County Solid Waste Facility;⁶ and (3) the Queponco Railway Station, Inc.⁷

Unlike Nonesuch, Newark benefits from the presence of several civic organizations and a school. They include Mary Lou's Assisted Care facility, Shore Up Community Action, and the Worcester Career and Tech Center. See Supplemental Comments at 5 and Exhibit I.

⁴ With the general exception of incorporated cities, local government in the State of Maryland consists of a county government rather than a municipal government. For example, Bethesda, Maryland – which plainly qualifies as a community for allotment purposes – has no mayor or other local government but is instead subject to governance by Montgomery County. The Commission does not require municipalities to have their own local government in order to merit community status. See *Semora*, 5 FCC Rcd at 935.

⁵ Supplemental Comments at 2 and Exhibit D.

⁶ CWA attempts to discredit MTS's reference to the Worcester County Solid Waste facility by claiming that a “garbage dump” that serves the county, and not Newark specifically, cannot be an indicator of community status. Petition at 6, n.6. However, in *Port St. Joe and Eastpoint, Florida*, 18 FCC Rcd 11233 (AD 2003), the Audio Division found Eastpoint to be a community for allotment purposes and observed that Eastpoint was home to several Franklin County facilities, including its “Solid Waste Department.” 18 FCC Rcd at 11234. For the same reason, the location of the Worcester County Solid Waste facility in Newark (which is part of Worcester County) provides indicia of community status.

⁷ Supplemental Comments at 5 n.5 (citing MTS Comments, Exhibit B at 10) and Exhibit H.

Another contrast with Nonesuch are Newark's three churches, which are a focus of community activities. Although CWA attempts to discredit the churches in Newark by noting that "50% of the attendees of two out of the three churches" reside outside the Newark community (Petition at 6, n.6), that allegation hardly precludes a finding of community status. Indeed, the fact that persons from outside Newark may attend church there merely demonstrates that persons from the surrounding areas view Newark as a center of cultural and, in this case, religious activity. *See Semora*, 5 FCC Rcd at 935. As explained in MTS's Supplemental Comments, the Bowen and Trinity Churches have a joint vacation bible school which meets for one week during the summer. The bible school is for children between the ages of pre-school through middle school. Approximately 35 children attend the vacation bible school, 75% of whom reside in Newark. *See Supplemental Comments at 6.*

The Petition also cites *Gaviota, California*, 16 FCC Rcd 1518 (MMB 2000), in an effort to show that Newark does not constitute a community for allotment purposes. Petition at 6. However, that case is similarly distinguishable from the facts surrounding Newark. *Gaviota* had its own zip code, but it did not have a post office for the past 12 years, was not listed in the U.S. Census, and had no official population. *Id.* at 1518-19, 1521-22. *Gaviota* did have its own volunteer fire department, but it was operated by the residents of Hollister Ranch, a private development in the community. *Id.* at 1519. And, while the proponent listed 15 businesses which purportedly had a *Gaviota* mailing address, the Allocations Branch found that the "overwhelming majority" of those businesses were located in the neighboring community of Goleta and did not have a sufficient nexus with *Gaviota*. *Id.* at 1519, 1522. On the basis of those facts, the Allocations Branch concluded that the petitioner failed to establish that *Gaviota* was a community for allotment purposes. *Id.* at 1522.

The facts in *Gaviota* are markedly different from those concerning Newark. Unlike Gaviota, Newark is a CDP and has its own post office which serves only the Newark community. *See MTS Comments, Exhibit B at 2.* And, in contrast to Gaviota's fire department, most of the volunteers in Newark's fire department reside in Newark. Supplemental Comments, Exhibit A. And unlike Gaviota, Newark has several business establishments and a variety of social organizations which have a strong nexus with the Newark community.

In sum, then, the *Report and Order* properly relied upon the Commission's decision in *Semora* and properly rejected reliance on the other cases cited by CWA.

III. Channel 232A Properly Retained at St. Michaels.

A. Allotment Priorities Must Be Applied on Consistent Basis.

CWA claims that both CWA and the Commission have consistently treated Cambridge, rather than St. Michaels, as WINX's community of license. CWA therefore argues that the Bureau should not strictly apply the Commission's allotment priorities and should instead maintain WINX's community of license as Cambridge "as a matter both of equity and fair and rational administrative process." Petition at 9-10.

There is no authority for CWA's novel proposition and, not surprisingly, CWA failed to cite any Commission precedent to support its position. Beyond that fundamental flaw, CWA distorts the history of this matter and, in so doing, creates a classic "boot strap" argument.

In the prior Cambridge/St. Michaels allotment proceeding,⁸ Channel 232A was reallocated from Cambridge to St. Michaels, and CWA's construction permit was modified to specify St. Michaels as the Station's community of license (subject only to the filing of a minor change application specifying the new facility). 12 FCC Rcd at 3506. In short, WINX is no longer deemed to be "licensed" to operate in Cambridge.

⁸ *Cambridge and St. Michaels, Maryland*, 12 FCC Rcd 3504 (1997).

CWA is nonetheless able to make its so-called equitable argument about retaining service in Cambridge now only because CWA knowingly defied that Commission order to implement the community-of-license change which CWA had requested. As a result, CWA has continued to operate WINX from Cambridge without a channel allotment and only on the basis of an implied Special Temporary Authorization.⁹ *See Dos Palos, Chualar, and Big Sur, California*, 19 FCC Rcd 1826, 1831 (AD 2004).

There is a certain irony – and inconsistency – in CWA’s present contention that “the Bureau forego a strict application of the Commission’s allotment priorities . . .” Petition at 9-10. CWA relied on “strict application” of the Commission’s allotment priorities when it could not find a suitable transmitter site in the Cambridge area and sought to have Channel 232A reallocated to St. Michaels in order to save the Station’s construction permit in the prior Cambridge/St. Michaels allotment proceeding. Now, after it no longer desires to implement its prior allotment proposal, CWA wants the Commission to ignore the very allotment priorities that enabled CWA to preserve the authorization which entitles CWA to operate the Station today.

CWA should not be permitted to play fast and loose with the Commission’s allotment policies by seeking to obtain the benefit of those policies when it suits its fancy and then avoid application of those same allotment priorities when the result is not to CWA’s liking. To do otherwise would be especially egregious in this case where CWA has flagrantly disregarded a Commission order to implement the change-in-community allotment proposal which CWA requested.

⁹ It is true, as CWA points out, that it did receive a license which specifies Cambridge as its community of license. However, that action reflected nothing more than the “covering” of the original construction permit which CWA had been issued for Cambridge, Maryland and did not in any way reflect a re-allotment of Channel 232 back to Cambridge or a disavowal by the Commission of its ability to require CWA to comply in the future with the decision to allot Channel 232 to St. Michaels.

It matters not that CWA earlier found a transmitter site which, in CWA's view, eliminated the need to move Channel 232A from Cambridge to St. Michaels. If CWA had found a suitable transmitter site prior to the initial allotment proceeding becoming final, it was incumbent upon CWA to file a petition for reconsideration and withdraw its expression of interest in its earlier proposal. Having failed to do so, the Commission properly directed CWA to file another rulemaking petition if it wanted Channel 232A reallocated back to Cambridge. See *Cambridge and St. Michaels, Maryland*, 17 FCC Rcd 20425, 20426 (2002).

B. Possibility of Channel 232B1 Upgrade at St. Michaels Formed No Basis for Bureau's Decision.

1. CWA's Allegations.

In the *Report and Order*, the Bureau stated that "a preliminary engineering review indicates that there would not be a technical impediment for a Channel 232B1 upgrade at St. Michaels." *Report and Order* at ¶ 5 n.14 (emphasis added). CWA claims that, contrary to that statement, a B1 upgrade of Channel 232 at St. Michaels is not possible and that the *Report and Order* improperly failed to account for the service gains from operation of Channel 232B1 at Cambridge, including the provision of a second reception service to 1,106 persons in a 276 square kilometer area. *Id.* at 15-16 and Exhibit 1.

CWA's Petition included a statement from its own engineer explaining why Channel 232B1 could not be allocated to Cambridge. On February 10, 2006, CWA filed its Supplement, which included a memorandum dated February 5, 2003 (obtained from the Commission through a Freedom of Information Act request) in which a Bureau engineer said that a Channel 232B1 allotment would not be fully-spaced at St. Michaels. The Bureau engineer further stated that CWA's proposal would bring service to underserved areas, including 1,184 persons over 10 square kilometers receiving only one full-time reception service (a gray area). Supplement at 3.

According to CWA, the *Report and Order* failed to account for the analysis of its own engineer and, therefore, “the Bureau should have approved CWA’s Cambridge proposal.” Petition at 16.

2. CWA’s Errors.

Despite CWA’s allegations, the *Report and Order* did not rely on the upgrade of Channel 232 to a Class B1 as a basis for denying CWA’s proposal. On the contrary, the *Report and Order* concluded that retaining Channel 232A in St. Michaels would provide that community with its first local transmission service and thereby serve the third FM allotment priority. Substituting Channel 232B1 at Cambridge for Channel 232A at St. Michaels would trigger only the fourth FM allotment priority, namely, “other public interest matters.” *Report and Order* at ¶5. In short, the *Report and Order*’s decision was premised on the strict application of the Commission’s long-standing FM priorities and not on whether Channel 232B1 could be accommodated at St. Michaels. The footnote did nothing more than suggest that 232B1 might be possible at St. Michaels – not that such an upgrade was a lynchpin to the Bureau’s decision.¹⁰

The absence of an upgrade at St. Michaels, then, provides no basis to reverse the *Report and Order*. Nor can CWA seek salvation – as urged by its Petition – on the basis of the service which Channel 232B1 at Cambridge would allegedly provide to underserved areas. Contrary to the misleading implication of CWA’s Petition, the alleged service gains from Channel 232B1 at Cambridge are theoretical – not real.

¹⁰ It also bears emphasizing that the Bureau may well have taken into account the statements of the engineering memorandum included in the Supplement when making the statement about the possibility of a B1 upgrade for WINX in St. Michaels. The record does not reflect what other engineering analysis were performed by the Bureau. Further exploration of those analyses is irrelevant, however, because the *Report and Order* makes clear that the decision would be the same even if there is no upgrade possibility at St. Michaels.

As recognized in the *Notice of Proposed Rule Making*, 19 FCC Rcd 2592 (Aud. Div. 2004) (“*NPRM*”), CWA has acknowledged from the outset of this proceeding that WINX’s existing transmitter site is the only site from which the Station can operate and still provide the requisite city-grade coverage to Cambridge. In the event its proposal had been adopted, CWA would have implemented its Channel 232B1 upgrade from WINX’s existing transmitter site near Trappe, Maryland, and not from the proposed allotment reference point. The simple truth is that CWA has no alternative transmitter site available, and that is why it was forced to have Channel 232A reallocated to St. Michaels in the first place. It would be arbitrary for the Commission to ignore that undisputed fact and rely on some theoretical site or allotment reference point that will never be used to implement the new allocation.¹¹

IV. Oxford Proposal Should Not Be Considered.

As an alternative proposal, CWA requests that the Commission reallocate Channel 232B1 to Oxford, Maryland. CWA claims that Oxford constitutes a community for allotment purposes, that Oxford would present “all of the public interest gains” of its pending proposal, and that the allotment of Channel 232B1 would provide Oxford with its first local transmission service. Petition at 16. CWA further asserts that its Oxford proposal is not barred on reconsideration because the Commission has previously made changes to the FM Table on reconsideration “in order to better serve the public interest,” citing *Ash Fork, Arizona*, 19 FCC Rcd 6104 (MB 2004).

¹¹ The unavailability of an alternative transmitter site is confirmed by the application which CWA filed on July 18, 2002 – about four months prior to filing its rulemaking petition on November 27, 2002 – which specified the use of WINX’s existing transmitter site for the proposed upgrade of WINX to Channel 232B1 in Cambridge. See File No. BPH-20020718ABE. Although that application was dismissed on November 8, 2005, the technical proposal in that application made clear that CWA planned to implement its proposed Channel 232B1 upgrade from WINX’s existing site.

Even assuming, *arguendo*, that Oxford qualifies as a community for allotment purposes, CWA's Oxford proposal fails to comply with Section 1.429(b) of the Commission's rules. 47 C.F.R. §1.429(b). That subsection explicitly allows consideration of new facts and proposals in a petition for reconsideration only if they "relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission" or if they "were unknown to petitioner until after his last opportunity to present them to the Commission and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity" CWA had every opportunity to propose the substitution of Channel 232B1 Oxford in its original rulemaking petition. Having failed to advance its Oxford counterproposal until after the issuance of the *Report and Order*, CWA is precluded from advancing its Oxford proposal now. *See WWIZ, Inc.*, 37 FCC 685, 695 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *Magnolia, Arkansas and Oil City, Louisiana*, 19 FCC Rcd 1553, 1554 (Aud. Div. 2004).

Subsection 1.429(b)(3) does state that the Commission can consider a proposal that could have been advanced earlier if "[t]he Commission determines that consideration of the facts relied on is required in the public interest." 47 C.F.R. § 1.429(b)(3). However, CWA cannot rely on that clause because its Oxford proposal effectively constitutes an untimely counterproposal. *See Taccoa, Sugar Hill and Lawrenceville, Georgia*, 16 FCC Rcd 21191, 21192 (MMB 2001). In *Taccoa*, the Allocations Branch made clear that, in the absence of a substantial justification based on new and reasonably unforeseen events, a new or revised proposal will not be processed in the same docket. *See also Noblesville, Indianapolis, and Fishers, Indiana*, 18 FCC Rcd 11039, 11040 (AD 2003); *Grenada, Artesia, and Okolona*,

Mississippi, 7 FCC Rcd 4838 (P & R Div. 1992). Accordingly, CWA's proposal is not ripe for consideration and cannot forestall implementation of the *Report and Order*.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Petition filed by CWA be denied and the *Report and Order* be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2006, a copy of the foregoing Opposition to Petition for Reconsideration was hand-delivered or sent by first-class mail, postage prepaid, to the following:

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