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April 27, 2006

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APR 27 2006

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

Re: Comments on Petition for Reconsideration  
Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Water Mill and Noyack, New York)  
MB Docket No. 03-44  
RM-10650

Dear Ms. Dortch:

On behalf of Monroe Board of Education, enclosed is an original and four copies of its  
Comments on Petition for Reconsideration in the above referenced matter.

Respectfully submitted,

Deborah J. Salons

Enclosures

DJS:sf

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

APR 27 2006

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 03-44
Table of Allotments,	)	RM-10650
FM Broadcast Stations.	)	
(Water Mill and Noyack, New York)	)	
	)	

To: Chief, Media Bureau

**COMMENTS ON PETITION FOR RECONSIDERATION**

Monroe Board of Education (“Monroe”), licensee of non-commercial educational (NCE) FM stations WMNR, Monroe, Connecticut, and WGRS, Guilford, Connecticut, and translator stations W233AG, W233AI, and W233AJ, pursuant to the requirements of Section 1.429 of the Commission’s rules, hereby submits these Comments on the Petition for Reconsideration filed by Sacred Heart University (“SHU”), with respect to the Report and Order (“Report and Order”) allotting Channel 233A to Water Mill, New York.<sup>1</sup>

I. Background

This proceeding was initiated by Isabel Sepulveda, Inc., which filed a Notice of Proposed Rule Making (“NPRM”) to allot Channel 277A to Water Mill.<sup>2</sup> SHU filed comments claiming that the allotment of Channel 277A at Water Mill would result in interference to FM translator W277AB, Noyack, New York, and counterproposed the reservation of channel 277A for noncommercial purposes or the allotment of Channel 233A to Water Mill. The Report and Order allotted Channel 233A, rather than Channel 277A, to Water Mill.

<sup>1</sup> *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Water Mill and Noyack, New York), Report and Order (MB 2006).*

<sup>2</sup> *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Daisy Arkansas) (Rattan, Oklahoma), (Water Mill, New York), Notice of Proposed Rule Making, 18 FCC Rcd. 2387 (MB 2003).*

As the licensee of FM translator stations W233AG, New London, Connecticut, W233AJ, Old Saybrook, Connecticut, and W233AI Sag Harbor, New York, Monroe is adversely affected by the Report and Order. Monroe filed a Petition for Reconsideration in which it maintains that the Report and Order is apparently based on an attempt to prevent interference to one secondary service (W277AB), while ignoring the effect of the allotment on other secondary services.<sup>3</sup> SHU also filed a Petition for Reconsideration in which SHU maintains that the Report and Order erred in failing to consider SHU's request to allot Channel 277A and to reserve it exclusively for NCE use.<sup>4</sup> Although Monroe and SHU take different approaches, both parties agree on certain fundamental points.

II. The Bureau Did Not Provide a Reasoned Explanation to Support Its Decision.

Monroe maintains that the Report and Order fails to explain why Channel 233 rather than 277 was allotted, that the Bureau failed to consider the impact of the allotment of Channel 233A on other FM translators, and that the Report and Order fails to explain why interference to SHU's translator warrants deviation from the Commission's established policy.<sup>5</sup> SHU maintains that the Commission failed to explain why SHU's request to reserve Channel 277 was not considered.<sup>6</sup> The parties thus both contend that the Report and Order has failed to provide a reasoned basis for the allotment of Channel 233, rather than Channel 277.

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<sup>3</sup> See Monroe Board of Education, Petition for Reconsideration (March 22, 2006) [hereinafter Monroe Petition for Reconsideration].

<sup>4</sup> See Sacred Heart University, Petition for Reconsideration (March 24, 2006) [hereinafter SHU Petition for Reconsideration].

<sup>5</sup> *Id.* at 5.

<sup>6</sup> See SHU Petition for Reconsideration at 4.

### III. Secondary Services Are Irrelevant to Allotment Decisions.

It is well settled that translators are “a secondary service and . . . are not considered in allocations proceedings,”<sup>7</sup> and that as a secondary service, translators are not entitled to any protection from full-power stations.<sup>8</sup> The FM Assignment Policies make no mention of FM translator stations, and the Commission has historically refused to consider the impact of an allotment on a secondary service, such as an FM translator station.<sup>9</sup> Thus, Monroe and SHU agree, the Report and Order erred to the extent that it bases the allotment of Channel 233 on a desire to protect a translator on Channel 277.

### IV. The Order Violates the Notice Provisions of the Administrative Procedure Act.

The Bureau’s Report and Order violates the notice provisions of the Administrative Procedure Act (“APA”).<sup>10</sup> Monroe and SHU each believe that they were procedurally deprived of an opportunity to be heard. Monroe states that it received no timely notice of any change in Commission allocation policy, nor of the proposed allotment of Channel 223A to Water Mill, and was thus deprived of the opportunity to protect its translators from interference.<sup>11</sup> SHU points out that the Media Bureau did not issue a Public Notice that requested comment regarding SHU’s proposal to reserve Channel 277A for noncommercial purposes.<sup>12</sup>

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<sup>7</sup> *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Willows and Dunnigan, CA)*, 15 FCC Rcd. 23852, para. 12 (MB 2000). See Monroe Petition for Reconsideration at p.2.; SHU Petition for Reconsideration at p. 4.

<sup>8</sup> 47 C.F.R. §74.1203. See SHU Petition for Reconsideration at 4.

<sup>9</sup> See *Willows and Dunnigan*, *supra* note 4. See also *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Caliente, et al.)*, Report and Order, 10 FCC Rcd. 893, note 19 (MB 2004): “Although Channel 291CS at St. George is short-spaced to KWBR-LP, Channel 289LP, St. George, and to a construction permit for KTIM-LP, Channel 291LP, St. George, these short-spacings do not prevent making this allotment because low power FM stations are a secondary service and are not protected from interference from subsequent modifications to full-power FM stations.”

<sup>10</sup> 5 U.S.C. §553(b)(2000).

V. Conclusion.

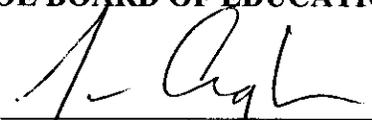
Monroe and SHU agree that the Bureau has failed to justify its allotment of Channel 233A to Water Mill, New York, and ask that the Commission reconsider its Report and Order and issue a Public Notice soliciting further comments.

Respectfully submitted,

**MONROE BOARD OF EDUCATION**

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By:

  
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John Crigler  
Deborah J. Salons  
Its Attorneys

April 27, 2006

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<sup>11</sup> See Monroe Petition for Reconsideration at 2.

<sup>12</sup> See SHU Petition for Reconsideration at 3.

CERTIFICATE OF SERVICE

I, Sharon Fox, an employee of Garvey Schubert Barer, hereby certify that I have on this 27<sup>th</sup> day of April, 2006, sent copies of the above Comments on Petition for Reconsideration by first-class, United States mail, postage prepaid, to the following:

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\*VIA HAND DELIVERY