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

MAILED

MAY 16 2006

FCC Mail Room

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 04-375
FM Table of Allotments,	)	RM-11038
FM Broadcast Stations.	)	
(Louisburg and Hillsborough, North Carolina)	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: May 10, 2006

Released: May 12, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. Before the Audio Division for consideration is a *Notice of Proposed Rule Making*<sup>1</sup> issued at the request of New Century Media Group, LLC ("Petitioner"), licensee of Station WKXU(FM),<sup>2</sup> Channel 273A, Louisburg, North Carolina. Petitioner proposes to reallocate Channel 273A from Louisburg to Hillsborough, North Carolina, and modify the license of Station WKXU to reflect the change of community. Petitioner filed comments reiterating its intention to file an application for a construction permit to effectuate the change of community if Channel 273A is reallocated. No counterproposals or other comments were received.

2. Petitioner filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules,<sup>3</sup> which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.<sup>4</sup> In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments.<sup>4</sup> The proposal would provide a first local service at Hillsborough, a 2000 U.S. Census population of 5,446 persons. Adoption of this Priority Three proposal would result in a preferential arrangement of allotments when compared to the retention of a second local service at Louisburg, a 2000 U.S. Census population of 3,111 persons, a Priority Four proposal.<sup>5</sup> Our

<sup>1</sup> *Louisburg and Hillsborough, North Carolina, et al.*, Notice of Proposed Rule Making, 19 FCC Rcd 18738 (MB 2004) ("Notice") (This was a multiple docket Notice setting forth several separate proposals while the instant Report and Order pertains only to the docket specified above.).

<sup>2</sup> The station was referred to in the Notice by its former call sign WHLQ.

<sup>3</sup> 47 C.F.R. § 1.420(i).

<sup>4</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

<sup>5</sup> Petitioner is also the licensee of AM Station WYRN, Louisburg, North Carolina.

staff engineering analysis shows that there will be a predicted net gain in service to 245,671 persons, and that both Louisburg and Hillsborough are well-served with 5 or more full-time reception services.<sup>6</sup>

3. We recognize that Hillsborough is located within Durham Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we do not blindly apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban community and central city, and most important of all, the independence of the suburban community.<sup>7</sup> In *Faye and Richard Tuck, Inc.*,<sup>8</sup> we set forth eight factors to assess the independence of a suburban community.<sup>9</sup> Each of the eight *Tuck* factors, is addressed by the Petitioner, to demonstrate the independence of Hillsborough. Petitioner provides a statement from the Mayor of Hillsborough (Factor 3), stating that "the Town of Hillsborough is completely independent from and not dependent in any way on our neighbor [Durham] to the east." Hillsborough is the county seat of Orange County and is itself governed by an elected mayor and board of five commissioners (Factor 4) which oversees all of the town's municipal services including police, water, sewer and garbage (Factor 8). Hillsborough has numerous local businesses and medical offices (factor 6), its own zip code 27278 and two telephone books, one of which is exclusively for Hillsborough (Factor 5). Petitioner estimates that of the approximately 2,647 workers who reside in Hillsborough about 25 percent work in the community and at most about 45 percent commute to Durham, assuming they do not commute to another city (Factor 1). Petitioner states that although Hillsborough's advertising rates are affected by the advertising rates of the larger Raleigh, Durham, and Chapel Hill markets, local businesses can advertise in *The News of Orange County*, a local weekly newspaper published in Hillsborough which serves the community's local needs and interests (factors 7 and 2). We find that a majority of the *Tuck* factors are present to establish Hillsborough's independence from the Durham Urbanized Area.

4. Our staff engineering analysis shows that Channel 273A can be reallocated from Louisburg to Hillsborough, North Carolina in conformity with the technical requirements of the Commission's Rules at coordinates located 36-06-49 North Latitude and 79-00-20 West Longitude with a site restriction of 9.51

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<sup>6</sup> See *LaGrange and Rollingwood, Mississippi*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995). See also *Family Broadcasting Group*, Review Board Decision, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm. Nov. 29, 1983) (The Commission has considered five or more services to be "abundant.").

<sup>7</sup> *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

<sup>8</sup> *Id.* See also *Headland, Alabama and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352 (MMB 1995).

<sup>9</sup> The Commission considers the following factors in determining a community's interdependence with a central city: (1) the extent to which community residents work in the large metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own zip code or telephone book provided by the local telephone company; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. *Tuck*, Memorandum Opinion and Order, 3 FCC Rcd at 5378.

kilometers (5.91 miles) northeast of the community.<sup>10</sup> For all the foregoing reasons, we conclude that the public interest would be served by reallocating Channel 273A to Hillsborough, North Carolina. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station WKXU(FM), Channel 273A, Louisburg, North Carolina to specify operation on Channel 273A at Hillsborough, North Carolina.

5. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A).

6. Accordingly, pursuant to authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective June 26, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Louisburg, North Carolina	---
Hillsborough, North Carolina	273A

7. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of New Century Media Group, LLC, for Station WKXU(FM), Channel 273A, Louisburg, North Carolina, IS MODIFIED to specify operation on Channel 273A, Hillsborough, North Carolina, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

8. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), New Century Media Group, LLC, licensee of Station WKXU(FM), is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change in community of license for Station WKXU(FM) at the time its Form 301 application is submitted.

<sup>10</sup> Pursuant to MB Docket No. 03-47, Station WJMH(FM) was reclassified from Channel 271C to Channel 271C0 at Reidsville, North Carolina. *Orange, Virginia, et al.*, Report and Order, 18 FCC Rcd 12840 (2003).

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Report and Order to Petitioner's counsel, as follows:

New Century Media Group, LLC  
c/o David Kushner, Esquire  
Brooks, Pierce, McLendon, Humphrey  
& Leonard, L.L.P.  
First Union Capitol Center, Suite 1600  
150 Fayetteville Street Mall (27601)  
Raleigh, North Carolina 27602

10. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

11. For additional information concerning this proceeding, contact Helen McLean, Media Bureau (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau