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

MAY 30 2006

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Hodgenville, Horse Cave, Lebanon,)
Lebanon Junction, New Haven and Springfield,)
Kentucky, and Belle Meade, Goodlettsville,)
Henderson, Manchester, and Millersville,)
Tennessee))

MB Docket No. 06-77
RM-11324

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

COUNTERPROPOSAL

CXR HOLDINGS, L.L.C.

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May 30, 2006

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List A B C D E

TABLE OF CONTENTS

	Page
SUMMARY	iii
I. PRELIMINARY MATTERS.....	2
II. CONFLICT WITH THE NPRM	3
III. COMPLIANCE WITH THE COMMISSION’S TECHNICAL RULES	4
A. STATION WRKA, ST. MATTHEWS TO LYNDON, KENTUCKY.....	4
1. Technical Compliance	4
2. Change in Community of License	4
B. STATION WXCH, VERSAILLES TO HOPE, INDIANA	8
1. Technical Compliance	8
2. Change in Community of License	9
(a) Hope residents consider their community to be separate from Columbus, Indiana	11
(b) Hope has its own local government and elected officials.....	13
(c) Hope provides extensive municipal services to its residents	13
(d) Hope has its own zip code	14
(e) Hope has many commercial establishments	14
(f) Hope offers its residents substantial employment opportunities ..	15
(g) Hope has local media outlets and local businesses can advertise to residents directly	15
C. STATION WYGB, EDINBURGH, INDIANA.....	15
D. STATION WGRK, GREENSBURG, KENTUCKY.....	16
E. STATION WKYR, BURKESVILLE, KENTUCKY	16
F. STATION WLME, TELL CITY, INDIANA TO LEWISPORT, KENTUCKY	17

TABLE OF CONTENTS
(continued)

	Page
1. Technical Compliance	17
2. Change in Community of License	17
G. STATION WVEZ, FROM LOUISVILLE TO ST. MATTHEWS, KENTUCKY.....	20
1. Technical Compliance	20
2. Change in Community of License	20
IV. CONCLUSION.....	22

SUMMARY

By this Counterproposal, CXR Holdings, L.L.C. (“CXR”) proposes a set of allotments providing first local service to three communities: Lyndon, Kentucky; Hope, Indiana; and Lewisport, Kentucky. Under the Commission’s allotment priorities, the Commission should favor CXR’s Counterproposal over the initial proposal in the *Notice of Proposed Rulemaking* because the Counterproposal would provide first local service to three communities with a larger combined population than the two communities specified in the *Notice*.

CXR proposes to delete Channel 276A at St. Matthews, Kentucky and allot Channel 276C2 to Lyndon, Kentucky, for use by WRKA(FM) as Lyndon’s first local service. To replace the local service in St. Matthews, CXR proposes to reallocate Channel 295B from Louisville, Kentucky to St. Matthews, Kentucky for use by WVEZ(FM).

To accommodate WRKA(FM) providing first local service to Lyndon, Kentucky, CXR proposes several additional changes to the FM table of allotments:

- WXCH(FM) changes from Channel 276A at Versailles, Indiana to Channel 275A at Hope, Indiana, as that community’s first local service;
- WLME(FM) changes from Channel 275C3 at Tell City, Indiana to Channel 274A at Lewisport, Kentucky as that community’s first local service; and
- WGRK-FM, Greensburg, Kentucky, changes from Channel 276A to Channel 300A at its current transmitter site.

Providing first local service to Hope, Indiana requires WYGB(FM), Edinburgh, Indiana, to change from Channel 275A to Channel 262A at the station’s current transmitter site. Moreover, to allot Channel 300A at Greensburg, Kentucky for WGRK-FM, WKYR(FM), Burkesville,

Kentucky, must change from Channel 300A to Channel 276A with a slight transmitter site change.

All told, CXR's Counterproposal would provide first local service to Lyndon, Kentucky; Hope, Indiana; and Lewisport, Kentucky. It also would maintain local service in St. Matthews, Kentucky, while Tell City, Indiana and Versailles, Indiana would retain other local aural services. Adoption of the Counterproposal would achieve a preferential arrangement of allotments under the Commission's allotment priorities. Accordingly, CXR respectfully requests that the Commission grant the instant Counterproposal to amend Section 73.202(b), the FM Table of Allotments, as proposed herein.

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To: Office of the Secretary
Attn: Assistant Chief, Audio Division
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COUNTERPROPOSAL

CXR Holdings, L.L.C. ("CXR"), licensee of Station WRKA(FM), St. Matthews, Kentucky, by its counsel, hereby submits this counterproposal to the *Notice of Proposed Rulemaking*, DA 06-793 (rel. April 7, 2006) ("*NPRM*") in the above-captioned proceeding. CXR proposes to change the channel and class of WRKA from Channel 276A to 276C2, relocate the station to a new transmitter site, and change its community of license to Lyndon, Kentucky. In order to accomplish these changes, the following amendments to the FM Table of Allotments are requested:

<u>Community</u>	<u>Channel</u>	
	<u>Existing</u>	<u>Proposed</u>
St. Matthews, Kentucky	276A	295B
Lyndon, Kentucky	----	276C2
Versailles, Indiana	276A	----
Hope, Indiana	----	275A
Edinburgh, Indiana	275A	262A
Greensburg, Kentucky	276A	300A
Burkesville, Kentucky	300A	276A
Tell City, Indiana	275C3	----
Lewisport, Kentucky	----	274A
Louisville, Kentucky	295B	----

Adoption of this counterproposal will provide first local service to three communities: Lyndon, Kentucky (2000 U.S. Census pop. 9,369), Hope, Indiana (2000 U.S. Census pop. 2,140) and Lewisport, Kentucky (2000 U.S. Census pop. 1,639), and will provide 60 dBu radio service to an increased population of 387,083. In support whereof, CXR states as follows:

I. PRELIMINARY MATTERS

CXR has reached agreement with the licensees of all but two of the affected stations for the changes proposed herein. The consent statements of the licensees of WXCH(FM), Versailles, Indiana, WKYR-FM, Burkesville, Kentucky and WLME(FM), Tell City, Indiana, are attached hereto as Exhibit A.¹ With respect to the remaining two stations, CXR requests that the Commission first issue an Order to Show Cause to Edinburgh Radio, the licensee of Station WYGB(FM), Edinburgh, Indiana, to show cause why its channel should not be changed from 275A to 262A at its current site and second issue an Order to Show Cause to Green County CBC, Inc., licensee of Station WGRK-FM, Greensburg, Kentucky, to show cause why its channel should not be changed from 276A to 300A at its current site. CXR hereby states that it will reimburse each licensee for its reasonable expenses in changing channel and/or transmitter

¹ CXR is the licensee of the seventh affected station, WVEZ(FM), Louisville, Kentucky.

site in accordance with *Circleville, Ohio*, 8 FCC 2d 159 (1967). Thus, this proposal complies with the Commission's policy in *Columbus, Nebraska*, 59 RR 2d 1184 (1986).

CXR also states that it will apply for Channel 276C2 at Lyndon, Kentucky and construct the facilities if the Commission grants this proposal. CXR hereby states that pursuant to Section 1.420(j), it has not paid nor promised to pay, in any agreement, any licensee, permittee or applicant for withdrawing an expression of interest, dismissing an application or forbearing to file an expression of interest or application.

II. CONFLICT WITH THE *NPRM*

As indicated in the attached Engineering Statement,² this proposal, which would result in the allotment of Channel 274A to Lewisport, Kentucky, conflicts with the *NPRM* proposal to allot Channel 274A at New Haven, Kentucky. The Commission should favor first local services to three communities, Hope, Indiana; Lyndon, Kentucky; and Lewisport, Kentucky (with a combined 2000 U.S. Census pop. of 13,148) over first local services to two communities, New Haven, Kentucky and Millersville, Tennessee (with a combined 2000 U.S. Census pop. of 6,157) under its FM priorities.³

² Attached as Exhibit E.

³ See *Modification of FM and TV Authorizations to Specify a New Cmty. of License*, 4 FCC Rcd 4870, 4874 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (stating that the Commission will review "the totality of the service improvements"); *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982); *Lake City, Chattanooga, Tennessee, et al.*, 10 FCC Rcd 18,961, ¶ 23 (MB 2005) (favoring the proposal offering first local service to the larger community); *Blanchard, Louisiana and Stephens, Arkansas*, 8 FCC Rcd 7083 (MMB 1993), *recon. denied*, 10 FCC Rcd 9828 (1995).

III. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES

A. STATION WRKA, ST. MATTHEWS TO LYNDON, KENTUCKY

1. Technical Compliance

As indicated in the attached channel study in the Engineering Statement, Exhibit E, Figure 1, Channel 276C2 can be allotted to Lyndon, Kentucky in compliance with the Commission's spacing rules provided that changes are made at Versailles, Indiana; Greensburg, Kentucky; Edinburgh, Indiana; and Tell City, Indiana. Those changes, and the other modifications required in turn, will be discussed below. From the proposed site the station will provide a 70 dBu signal to Lyndon.⁴

2. Change in Community of License

In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990), the Commission stated that in order to grant a change in community of license, (1) the proposed use of the channel must be mutually exclusive with its current use; (2) the existing community of license must retain local service; and (3) the proposed arrangement of allotments must be preferred over the existing arrangement under the Commission's allotment priorities. In reviewing a proposal to change a station's community of license, the Commission compares the proposed allotment plan and the existing state of allotments for the communities involved.⁵ To determine whether a proposal would result in a preferential arrangement of allotments, the Commission is guided by the FM

⁴ See Exhibit E, Figure 2.

⁵ *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

allotment priorities.⁶ The FM priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).⁷

Here, the attached channel study, Exhibit E, Figure 1, demonstrates that the proposed allotment of Channel 276C2 at Lyndon is mutually exclusive with the current allotment of Channel 276A at St. Matthews. To avoid depriving St. Matthews of its only local service, as discussed below, CXR will change the community of license for its station WVEZ(FM) from Louisville, Kentucky to St. Matthews, Kentucky. Thus, the proper comparison is between the provision of a first local service at Lyndon (pop. 9,369) under priority (3) and the provision of a fifteenth local service to Louisville, Kentucky under priority (4). The allotment of 276C2 at Lyndon will result in a net gain in 60 dBu service to 240,673 people. *See* Exhibit E, Figure 3. No loss area will be created.

Both Lyndon and St. Matthews are located within the Louisville Urbanized Area. The Commission generally will conduct a *Huntington/Tuck* analysis when a proposed community is located within an urbanized area.⁸ The Commission does not require a *Huntington/Tuck* analysis, however, where the proponent proposes to move from one community within an urbanized area to another community within the same urbanized area.⁹ As noted, WRKA proposes to change its community of license from St. Matthews to Lyndon, both of which are

⁶ *Id.*

⁷ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁸ *See Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁹ *See, e.g., Worcester and Westborough, Massachusetts*, 18 FCC Rcd 23750, ¶ 3 (2003); *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996); *East Los Angeles, et al., California*, 10 FCC Rcd 2864 (1995).

within the Louisville Urbanized Area. Thus, “the station is not ‘moving into’ an urbanized area, but is already serving the area,”¹⁰ and therefore a *Huntington/Tuck* analysis is not required.

Lyndon qualifies as a community for allotment purposes and merits a first local aural service preference. The Commission defines communities as “geographically identifiable population groupings”¹¹ and considers whether the social, economic, and cultural organizations located in the community identify themselves with the community.¹² In addition, the Commission has a long-standing policy of presuming community status “if the proposed community is either incorporated or listed in the U.S. Census.”¹³ As discussed in greater detail below, Lyndon has all the indicia of a community for FM allotment purposes.

The city of Lyndon was founded in 1871 and incorporated in 1965.¹⁴ According to the most recent information from the U.S. Census Bureau, Lyndon has a population of 10,270; this represents an increase from the population count of 9,369 in the 2000 Census.¹⁵ Lyndon has its own local government led by Mayor Susan Barto as well as a city clerk (Stacey Woodward),

¹⁰ *Shelby and Dutton, Montana*, 14 FCC Rcd 9514 (1999).

¹¹ *Strattanville and Farmington Township, Pennsylvania*, 15 FCC Rcd 23848, ¶ 5 (2000).

¹² *See, e.g., id.; Dillsboro and Rosman, North Carolina*, 15 FCC Rcd 25562 (2000).

¹³ *Brookline, Missouri*, 10 FCC Rcd 13038, ¶ 4 (1995). *See also Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, ¶ 34 (1982) (“Section 307(b) requires that we continue to require assignments to ‘communities’ as geographically identifiable population groupings. For this purpose it is sufficient that the community is incorporated or is listed in the census.”)

¹⁴ *See Exhibit B (CITY OF LYNDON, WELCOME FROM THE MAYOR, at <http://www.cityoflyndon.org/247314.html> (last visited May 26, 2006)).*

¹⁵ *See Exhibit B (U.S. CENSUS BUREAU, 2004 POPULATION ESTIMATES, CENSUS 2000, available at http://factfinder.census.gov/servlet/SAFFPopulation?_event=ChangeGeoContext&geo_id=16000US2148558&_geoContext=&_street=&_county=lyndon%2C+kentucky&_cityTown=lyndon%2C+kentucky&_state=&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=010&submenuId=population_0&ds_name=null&ci_nbr=null&qr_name=null®=null%3Anull&_keyword=&_industry= (last visited May 26, 2006)).*

treasurer (Sonya Kaiser), and a seven-member city council.¹⁶ The government of Lyndon provides municipal services, including sanitation¹⁷ as well as a fire department.¹⁸ The fire department, known as Lyndon Fire and Rescue, maintains two stations in Lyndon with a fleet of four engine companies and two ladder companies.¹⁹ In addition to providing fire and rescue service, the department's career personnel are trained emergency medical technicians.²⁰

Lyndon is home to a variety of businesses and commercial establishments. The City website reports that there are more than 500 businesses in Lyndon²¹ and many of the local businesses identify with the community by using "Lyndon" in their name, such as Lyndon Liquors, Lyndon Bp Tire & Muffler Store, Lyndon Animal Clinic, Lyndon Therapeutic Massage, Lyndon Lanes, Lyndon TV, Lyndon Mini Storage, Lyndon Pet Grooming, and Donut Kastle of Lyndon.²²

¹⁶ See Exhibit B (CITY OF LYNDON, ELECTED OFFICIALS, at <http://www.cityoflyndon.org/247317.html> (last visited May 26, 2006); LAND OFFICE, KENTUCKY SECRETARY OF STATE, LYNDON, KENTUCKY, at <http://apps.sos.ky.gov/land/cities/citydetail.asp?id=245&city=Lyndon&idctr=245> (last visited May 26, 2006)).

¹⁷ See Exhibit B (CITY OF LYNDON, SANITATION SERVICES, at <http://www.cityoflyndon.org/267781.html> (last visited May 26, 2006)).

¹⁸ See Exhibit B (LYNDON FIRE AND RESCUE, at <http://www.lyndonfire.com> (last visited May 26, 2006)).

¹⁹ See Exhibit B (LYNDON FIRE AND RESCUE, ABOUT US, at http://www.lyndonfire.com/about_us.htm (last visited May 26, 2006)).

²⁰ See *id.*

²¹ See Exhibit B (CITY OF LYNDON, ELECTED OFFICIALS, at <http://www.cityoflyndon.org/247317.html> (last visited May 26, 2006)).

²² See Exhibit B (YAHOO! YELLOW PAGES, at http://yp.yahoo.com/py/ypResults.py?Pyt=Typ`&city=Lyndon&state=KY&uzip=40222&country=us&msa=4520&cs=4&ed=f2ARFa1o2TzqMbFF2Jc3DkDTRoiHCd.Vt.S1jx1N_PTI&tab=B2C&stx=lyndon&stp=a&doprox=1&sorttype=distance&beyond=1&desc=lyndon&offset=0&FBoffset=2&allbiz=1 (last visited May 26, 2006)).

Lyndon has many religious and community organizations as well. Local churches include the Lyndon Baptist Church and Lyndon Christian Church.²³ Lyndon has a public high school, the Jaeger Education Center,²⁴ a Lyndon Area Business Association,²⁵ and local branches of civic organizations, such as the General Federation of Women's Clubs and the Lyndon Jaycee's, Inc.²⁶ The local business association works with the City during the year, particularly on special events like the Lyndon Area Fair and the annual holiday celebration of "Light Up Lyndon."²⁷

The residents of Lyndon are proud to live and work in their City and Lyndon is clearly a community for allotment purposes and therefore deserving of a first local service.

B. STATION WXCH, VERSAILLES TO HOPE, INDIANA

To accommodate the provision of first local service to Lyndon, Kentucky, Station WXCH(FM), Versailles, Indiana, must change from Channel 276A to Channel 275A, relocate its transmitter site, and change its community of license to Hope, Indiana.

1. Technical Compliance

As indicated in the attached channel study, Exhibit E, Figure 4, Channel 275A can be allotted to Hope in compliance with the Commission's spacing rules provided that other changes

²³ See Exhibit B (CHURCHANGEL.COM, at <http://churchange.com/WEBKY/louisvil.htm> (last visited May 25, 2006)).

²⁴ See Exhibit B (LYNDON, KENTUCKY, at <http://www.city-data.com/city/Lyndon-Kentucky.html> (last visited May 26, 2006)).

²⁵ See Exhibit B (LYNDON AREA BUSINESS ASSOCIATION, at <http://www.neighborhoodlink.com/louisville/lyndon/main.html> (last visited May 26, 2006); CITY OF LYNDON—LYNDON AREA BUSINESS ASSOCIATION, INC., at <http://www.cityoflyndon.org/1189455.html> (last visited May 30, 2006)).

²⁶ See Exhibit B (GUIDESTAR BASIC RESULTS, at <http://www.guidestar.org/pqShowResults.do> (last visited May 26, 2006)).

²⁷ See Exhibit B (CITY OF LYNDON—LYNDON AREA BUSINESS ASSOCIATION, INC., at <http://www.cityoflyndon.org/1189455.html> (last visited May 30, 2006)).

consistent with the instant counterproposal are made. From the new transmitter site, the station will place a 70 dBu contour over Hope. *See* Exhibit E, Figure 5. The licensee of WXCH(FM) has consented to the changes, such consent is attached hereto in Exhibit A. CXR reiterates that the licensee will be reimbursed for its expenses in making the changes.

Almost ninety-five percent of the population within the loss area will remain well served with five or more aural stations. *See* Exhibit E, Figures 6 and 7. A small portion of the loss area representing 2,206 people will continue to receive service from four aural services. The Commission regularly approves proposals to create a new first local service even though small portions of the loss area are reduced from five to four services.²⁸ The reallocation of Channel 275A to Hope as its first local service falls well within this line of precedent.

2. Change in Community of License

The relocation of WXCH(FM) from Versailles to Hope complies with the Commission's policy in *Community of License, supra*. The proposed allotment of Channel 275A at Hope is mutually exclusive with the current allotment of Channel 276A at Versailles. *See* Exhibit E, Figure 4. Versailles will retain local service because it will continue to be served by Station WKRY(FM), Channel 201A. Thus, the proper comparison is between the provision of a first local service at Hope (pop. 2,140) under priority (3) and the provision of a second local service

²⁸ *See, e.g., Chillicothe, Dublin, Hillsboro, and Marion, Ohio*, 20 FCC Rcd 6305 (MB 2005) (granting a reallocation where portions of the loss area would be reduced from five to four services and from four to three services); *Detroit Lakes and Barnesville, Minnesota*, 16 FCC Rcd 22581 (MMB 2001) (granting a reallocation from Detroit Lakes to Barnesville leaving 1,458 persons with four aural services; 449 persons with three aural services; and 54 persons with two aural services), *recon. granted on other grounds*, 17 FCC Rcd 25055 (MMB 2002); *Scappoose and Tillamook, Oregon*, 15 FCC Rcd 10899 (MMB 2000) (granting a reallocation from Tillamook to Scappoose leaving 4,312 persons with four aural services; 2,461 persons with three aural services; and 19 persons with two aural services); *Earle, Arkansas, et al.*, 10 FCC Rcd 8270 (MMB 1995) (granting an allotment leaving fifteen percent of the loss area (6,788 persons) with less than five aural services).

at Versailles under priority (4). The allotment of 275A to Hope will result in a net gain in 60 dBu service to 101,887 people. See Exhibit E, Figure 6.

Hope is not located in any Urbanized Area. However, the 70 dBu contour covers 86.3% of the Columbus, Indiana Urbanized Area. Accordingly, a showing using a *Huntington/Tuck* analysis is required.

An analysis of Hope based on the *Tuck* factors clearly indicates that Hope is sufficiently independent of the Columbus Urbanized Area to justify a first local service preference. In *Tuck*, the Commission set forth an eight-factor analysis of the interdependence of a community within a larger urbanized area, which includes review of the following points: whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; whether the specified community has its own local government and elected officials; 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; whether the smaller community has its own local telephone book provided by the local telephone company or zip code; whether the community has its own commercial establishments, health facilities, and transportation systems; the extent to which the community residents work in the larger metropolitan area, rather than the specified community; whether the smaller community has its own newspaper or other media that covers the community's needs and interests; and the extent to which the specified community and the central town are part of the same advertising market.²⁹ In accordance with Commission precedent, Hope satisfies a majority

²⁹ *Faye and Richard Tuck*, 3 FCC Rcd 5374 at ¶ 36.

of the *Tuck* factors; therefore, it should be considered independent for allotment purposes.³⁰

(a) *Hope residents consider their community to be separate from Columbus, Indiana.*

Hope's citizens consider themselves to be residents of their own separate community. The town of Hope was incorporated in 1829 and as discussed previously, has a population of 2,140 according to the U.S. Census.³¹ This population represents approximately 5.5% of the population of Columbus, Indiana.³² As to proximity, Hope is located approximately fifteen miles from Columbus.³³ The Commission has granted channel change petitions where the proposed community's population as a percentage of that of the central city was considerably smaller³⁴ and where the community was located far closer to the central city of the urbanized area.³⁵

³⁰ *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

³¹ See Exhibit C (U.S. CENSUS BUREAU FACT SHEET—HOPE, INDIANA, at http://factfinder.census.gov/servlet/SAFFacts?_event=&geo_id=16000US1834744&geoContext=01000US%7C04000US18%7C16000US1834744&street=&county=hope&cityTown=hope&state=04000US18&zip=&lang=en&sse=on&ActiveGeoDiv=&useEV=&pctxt=fph&pgsl=160&submenuId=population_0&ds_name=null&ci_nbr=null&qname=null®=null%3Anull&keyword=&industry= (last visited May 30, 2006)).

³² Columbus has a population of 39,059 according to the 2000 U.S. Census. See Exhibit C (U.S. CENSUS BUREAU FACT SHEET—COLUMBUS, INDIANA, at http://factfinder.census.gov/servlet/SAFFacts?_event=Search&geo_id=16000US1834744&geoContext=01000US%7C04000US18%7C16000US1834744&street=&county=columbus&cityTown=columbus&state=04000US18&zip=&lang=en&sse=on&ActiveGeoDiv=geoSelect&useEV=&pctxt=fph&pgsl=160&submenuId=population_0&ds_name=DEC_2000_SAFF&ci_nbr=null&qname=null®=null%3Anull&keyword=&industry= (last visited May 30, 2006)).

³³ Distance calculated using YAHOO! DRIVING DIRECTIONS, at <http://maps.yahoo.com/dd>. See Exhibit C.

³⁴ See, e.g., *Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768 (2001) (finding Park Forest independent of Chicago despite population equal to 0.8% of that of central city); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (1996) (finding Newcastle independent of Oklahoma City despite population equal to 0.9% of that of central city).

³⁵ See, e.g., *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (1999) (finding Briarcliffe independent of Myrtle Beach Urbanized Area despite only four mile separation); *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, Virginia*, 11 FCC Rcd

Hope has a rich history dating back to the 1800's when the town was founded by Martin Hauser and members of the Moravian faith.³⁶ The town of Hope has its own Chamber of Commerce and offers a great deal of services, organizations, and attractions to local residents.³⁷ As the Hope United Methodist Church website observes, "[t]he town is fiercely independent."³⁸ The town is home to three schools that serve students from kindergarten through the twelfth grade: Cross Cliff Primary, Hope Intermediate, and Hauser Junior-Senior High School.³⁹ Hope has at least eight churches within its town limits.⁴⁰ Hope offers its residents and visitors numerous recreational activities, such as golfing; hosts annual community events, such as the Hope Bike Ride and Hope Heritage Days; and boasts of numerous local chapters of community-based organizations, such as the American Legion, Free & Accepted Masons of Indiana, International Association of Lions Clubs, and the Royal Neighbors of America.⁴¹

5758 (1996) (finding Fort Lee independent of Petersburg Urbanized Area despite only three mile separation).

³⁶ See Exhibit C (HOPE UNITED METHODIST CHURCH, HOPE, INDIANA – A SURPRISING LITTLE TOWN, at <http://www.gbgm-umc.org/hopeumc-indiana/Other.html> (last visited May 26, 2006)).

³⁷ See Exhibit C (HOPE AREA CHAMBER OF COMMERCE, at <http://www.hopechamber.com/index.html> (last visited May 26, 2006)).

³⁸ See Exhibit C (HOPE UNITED METHODIST CHURCH, HOPE, INDIANA – A SURPRISING LITTLE TOWN, at <http://www.gbgm-umc.org/hopeumc-indiana/Other.html> (last visited May 26, 2006)).

³⁹ See Exhibit C (FLAT ROCK-HAWCREEK SCHOOL CORPORATION, at <http://www.flatrock.k12.in.us> (last visited May 26, 2006)).

⁴⁰ See Exhibit C (VERIZON ONLINE YELLOW PAGES, at <http://www.superpages.com> (last visited May 26, 2006)).

⁴¹ See Exhibit C (GOLF LINK, CLIFTY CREEK GOLF COURSE, at <http://www.golflink.com/golf-courses/golf-course.asp?course=13319> (last visited May 26, 2006); HOPE AREA CHAMBER OF COMMERCE, TOWN CALENDAR OF EVENTS, at <http://www.hopechamber.com/town/calendar-events.html.html> (last visited May 26, 2006); MELISSA DATA, NONPROFIT ORGANIZATION LOOKUP, at <http://www.melissadata.com/Lookups/np.asp?zip=47246&submit1=Submit> (last visited May 26, 2006)).

These attributes, coupled with the usual evidence of a thriving, independent community, such as its own local government, municipal services, and businesses, demonstrate that Hope views itself as, and is, its own community, independent of Columbus.

(b) *Hope has its own local government and elected officials.*

Hope's local government plays a large part in facilitating and promoting the town's community activities and gives local residents an opportunity to participate in the administration of the community's affairs. Hope's elected officials include the Clerk Treasurer (Shirley Robertson) and the five members of the town council.⁴² Hope also has a Water and Sewage Works Manager (Ernest Holt, Jr.), Town Marshall (Donald Bailey), Plan Commission President (Randy Sims), and Building and Zoning Administrator (Matthew Galbraith).⁴³

(c) *Hope provides extensive municipal services to its residents.*

Hope maintains a Police Department, led by Chief Donald Bailey, and a Volunteer Fire Department, led by Fire Chief Randy Wood.⁴⁴ The Police Department employs three full-time police officers who receive assistance from eight unpaid reserve officers.⁴⁵ Meanwhile, the Fire Department includes an Ambulance Service, which is staffed by a team of Emergency Medical Technicians.⁴⁶ In 1998, the town completed construction of the Hope Library, a 6,000 square

⁴² See Exhibit C (HOPE AREA CHAMBER OF COMMERCE, COMMUNITY INFORMATION, at <http://www.hopechamber.com/town/index.html> (last visited May 26, 2006)).

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See Exhibit C (HOPE AREA CHAMBER OF COMMERCE, LIVING HERE, at <http://www.hopechamber.com/living-here/index.html> (last visited May 26, 2006)).

⁴⁶ See *id.*

foot facility that houses 20,000 volumes and is fully computerized for use by local residents.⁴⁷

Hope also offers Water and Sewage Works services, as mentioned above.

(d) *Hope has its own zip code.*

Hope has its own zip code (47246)⁴⁸ and Post Office.⁴⁹

(e) *Hope has many commercial establishments.*

There are 72 different business establishments in Hope.⁵⁰ The town features a 75 acre Industrial Park with several industrial and commercial buildings that offer citizens services in the areas of construction, trucking, injection molding, environmental clean-up, fixtures and special machines, hardwoods, and agriculture.⁵¹ Many local establishments identify themselves as Hope businesses by using “Hope” in their name. Examples include Hope Food Mart, Hope Auto Parts, Hope Sportswear, and Hope Utilities Garage.⁵²

⁴⁷ See Exhibit C (HOPE AREA CHAMBER OF COMMERCE, ARCHITECTURE IN THE COMMUNITY, at <http://www.hopechamber.com/town/architecture.html> (last visited May 26, 2006)).

⁴⁸ See Exhibit C (USPS – ZIP CODE LOOKUP, at <http://zip4.usps.com/zip4/citytown.jsp> (last visited May 26, 2006)).

⁴⁹ See Exhibit C (USPS POST OFFICE LOCATOR, at <http://www.switchboard.com/bin/cgiad.dll?PR=139&BI=5679965&LNK=54:9&MEM=1355&CID=1222&T=Hope&S=IN&QV=D68DBF12EDE44771A1C080D18EA472E010281E3FBC9937C4404303203O01897B2E07017F449B313203O078285CF0D017F4423313203O03822F3D0D017F4443313203&QR=1&QX=1&QT=BCD> (last visited May 26, 2006)).

⁵⁰ See Exhibit C (U.S. CENSUS BUREAU, ZIP CODE BUSINESS PATTERNS, at <http://censtats.census.gov/cbpnaic/cbpnaic.shtml> (last visited May 26, 2006)).

⁵¹ See Exhibit C (HOPE AREA CHAMBER OF COMMERCE, LIVING HERE, at <http://www.hopechamber.com/living-here/index.html> (last visited May 26, 2006)).

⁵² See Exhibit C (AMAZON.COM YELLOW PAGES, at <http://www.amazon.com/gp/yp/geo/IN/Hope/104-1709500-0008703> (last visited May 26, 2006)).

(f) *Hope offers its residents substantial employment opportunities.*

Hope's substantial local business base provides its residents with many employment opportunities. As discussed above, Hope has a 75 acre Industrial Park and the town website states that Hope has diversified industry including the construction of structural steel, trucking injection molding, construction and environmental clean-up, fixtures and special machines, hardwoods, seasonal plants, architectural panels, dust collector filters and blast cabinet gloves, and agriculture.⁵³

(g) *Hope has local media outlets and local businesses can advertise to residents directly.*

Hope residents have access to local media through the *Hope Star-Journal*, a weekly newspaper published in Hope. This paper has a circulation of approximately 1,100.⁵⁴ Additionally, the Hope Chamber of Commerce makes its website available for local organizations to publicize various events.⁵⁵

In sum, Hope clearly satisfies the *Tuck* requirements for demonstrating an independent community for allotment purposes and thus merits a first local service preference. This allotment request, therefore, would serve the public interest as it would provide a first local service to Hope.

C. STATION WYGB, EDINBURGH, INDIANA

In order to allot Channel 275A to Hope, Station WYGB(FM), Edinburgh, Indiana, must change from Channel 275A to Channel 262A. Channel 262A can be allotted to Edinburgh at the

⁵³ See Exhibit C (HOPE AREA CHAMBER OF COMMERCE, LIVING HERE, at <http://www.hopechamber.com/living-here/index.html> (last visited May 26, 2006)).

⁵⁴ See 2005 EDITOR & PUBLISHER INTERNATIONAL YEARBOOK PART II 97 (2005).

⁵⁵ See Exhibit C (HOPE AREA CHAMBER OF COMMERCE, TOWN CALENDAR OF EVENTS, at <http://www.hopechamber.com/town/calendar-events.html> (last visited May 26, 2006)).

station's current licensed coordinates and the station's granted construction permit site in compliance with the Commission's spacing rules. *See* Exhibit E, Figures 8 and 9. As stated previously, should the Commission adopt this proposal and substitute Channel 262A for Channel 275A at Edinburgh, Indiana, CXR will reimburse the licensee for its reasonable expenses in changing channels. However, since no agreement has been reached, it will be necessary to issue an Order to Show Cause to Edinburgh Radio, the licensee of WYGB(FM), in order to change its channel.

D. STATION WGRK, GREENSBURG, KENTUCKY

In order to allot Channel 276C2 to Lyndon, Station WGRK-FM, Greensburg, Kentucky, must change from Channel 276A to Channel 300A. Channel 300A can be allotted to Greenburg at the station's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Burkesville, Kentucky, as discussed below. *See* Exhibit E, Figure 10. As stated previously, should the Commission adopt this proposal and substitute Channel 300A for Channel 276A at Greensburg, Kentucky, CXR will reimburse the licensee for its reasonable expenses in changing channels. However, since no agreement has been reached, it will be necessary to issue an Order to Show Cause to Green County CBC, Inc., the licensee of WGRK-FM, in order to change its channel.

E. STATION WKYR, BURKESVILLE, KENTUCKY

In order to allot Channel 300A to Greensburg, Station WKYR-FM, Burkesville, Kentucky, must change from Channel 300A to Channel 276A. Channel 276A can be allotted to Burkesville with a change in the station's current coordinates in compliance with the Commission's spacing rules. *See* Exhibit E, Figure 11. From the proposed site the station will continue to provide a 70 dBu signal to Burkesville. *See* Exhibit E, Figure 12. The allotment of

Channel 276A will result in a net gain in 60 dBu service to 4,246 people, *see* Exhibit E, Figure 13, and the small loss area will remain well served. *See* Exhibit E, Figure 14. The licensee of WKYR-FM has consented to the changes, such consent attached hereto in Exhibit A. CXR reiterates that the licensee will be reimbursed for its expenses in making the changes.

F. STATION WLME, TELL CITY, INDIANA TO LEWISPORT, KENTUCKY

To accommodate the provision of first local service to Lyndon, Kentucky, Station WLME(FM), Tell City, Indiana, must change from Channel 275C3 to Channel 274A, relocate its transmitter site, and change its community of license to Lewisport, Kentucky.

1. Technical Compliance

As indicated in the attached channel study, Exhibit E, Figure 15, Channel 274A can be allotted to Lewisport in compliance with the Commission's spacing rules provided that other changes consistent with the instant Counterproposal are made. From the new transmitter site, the station will place a 70 dBu contour over Lewisport. *See* Exhibit E, Figure 16. A gain-loss study is also attached. *See* Exhibit E, Figure 17. The loss area will continue to receive adequate aural service. *See* Exhibit E, Figure 18. The licensee of WLME(FM) has consented to the changes, such consent attached hereto in Exhibit A. CXR reiterates that the licensee will be reimbursed for its expenses in making the changes.

2. Change in Community of License

The relocation of WLME(FM) from Tell City to Lewisport complies with the Commission's policy in *Community of License, supra*. The proposed allotment of Channel 274A at Lewisport is mutually exclusive with the current allotment of Channel 275C3 at Tell City. *See* Exhibit E, Figure 15. Tell City will retain local service because it will continue to be served by Station WTCJ(AM), 1230 kHz. Thus, the proper comparison is between the provision of a first

local service at Lewisport (pop. 1,639) under priority (3) and the provision of a second local service at Tell City under priority (4). The allotment of 274A to Lewisport will result in a net gain in 60 dBu service to 40,277. See Exhibit E, Figure 17.

Lewisport is not located in any Urbanized Area and the proposed WLME(FM) 70 dBu contour encompasses only 37.9% of the Owensboro, Kentucky Urbanized Area. Accordingly, a showing using a *Huntington/Tuck* analysis is not required.

Lewisport enjoys the attributes that the Commission traditionally associates with a community. Lewisport, Kentucky was incorporated in 1844.⁵⁶ According to the most recent U.S. Census data, Lewisport has a population of 1,627.⁵⁷ The zip code assigned to the city is 42351⁵⁸ and the local post office is located at 550 4th Street in Lewisport.⁵⁹ The city has a mayor (Chad Gregory), Clerk/Treasurer (Beth Mullins), Administrator (Tim Thompson), and Water/Gas/Sewer Superintendent (Wayne Hodskins) as well as a six-member city council.⁶⁰

⁵⁶ See Exhibit D (LAND OFFICE, KENTUCKY SECRETARY OF STATE, LEWISPORT, KENTUCKY, at <http://apps.sos.ky.gov/land/cities/citydetail.asp?id=231&city=Lewisport&idctr=231> (last visited May 23, 2006)).

⁵⁷ See Exhibit D (U.S. CENSUS BUREAU, 2004 POPULATION ESTIMATES, CENSUS 2000, available at http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&_name=lewisport%2C+ky&_state=&_county=lewisport%2C+ky&_cityTown=lewisport%2C+ky&_zip=&_sse=on&_lang=en&pctxt=fph (last visited May 25, 2006)).

⁵⁸ See Exhibit D (USPS – ZIP CODE LOOKUP, at <http://zip4.usps.com/zip4/citytown.jsp> (last visited May 25, 2006)).

⁵⁹ See Exhibit D (USPS POST OFFICE LOCATOR, at <http://www.switchboard.com/bin/cgiad.dll?PR=139&BI=19446880&LNK=54:9&MEM=1355&CID=1222&T=Lewisport&S=KY&QV=FF0298E7AB79451EB8578058B42BBB0010281E3FBC9937C4404303203O0188FB2D72577E44FD313203O078910004F547E446A323203O03892F3D4F547E44F4313203&QR=1&QX=1&QT=BCD> (last visited May 23, 2006)).

⁶⁰ See Exhibit D (LAND OFFICE, KENTUCKY SECRETARY OF STATE, LEWISPORT, KENTUCKY, at <http://apps.sos.ky.gov/land/cities/citydetail.asp?id=231&city=Lewisport&idctr=231> (last visited May 23, 2006)).

Lewisport maintains both a fire and a police department to serve local residents.⁶¹ The three schools located in Lewisport (Lewisport Elementary School, Hancock County Middle School, and Hancock County High School) serve students of all grade levels.⁶² In addition, the city has a public library.⁶³

Lewisport is home to a number of religious and civic organizations as well as several businesses. At least seven churches reside in Lewisport.⁶⁴ Additionally, the city can boast of having local branches of many community-based organizations, including the Free & Accepted Masons of Kentucky, International Association of Lions Clubs, National Society of the Sons of the American Revolution, and the United Steelworkers of America.⁶⁵ Quite a few local institutions link themselves to the community by including “Lewisport” in their name. Such organizations include the Lewisport Community Center, Lewisport Liberty Pharmacy, Lewisport Care Center, Hucks Heating Air Lewisport, Lewisport United Methodist Church, Lewisport Baptist Church, and the Lewisport Senior Citizen Center.⁶⁶ These combined factors demonstrate that Lewisport is an independent community and deserving of first local service.

⁶¹ See Exhibit D (KENTUCKY FIRE DEPARTMENTS DATABASE, KENTUCKY FIREWIRE.COM, at <http://kyfirewire.com/directory/KentuckyFDdetail.asp?id=243&pageno=5> (last visited May 23, 2006); LEWISPORT POLICE DEPARTMENT, USACOPS.COM, at <http://www.usacops.com/ky/p42351/index.html> (last visited May 23, 2006)).

⁶² See Exhibit D (LEWISPORT, KENTUCKY, at <http://www.city-data.com/city/Lewisport-Kentucky.html> (last visited May 22, 2006)).

⁶³ See Exhibit D (NATIONAL CENTER FOR EDUCATIONAL STATISTICS, at http://nces.ed.gov/surveys/libraries/librarysearch/Library_detail.asp?Search=1&details=0&LibraryID=KY0043-003&ID=KY0043-003 (last visited May 25, 2006)).

⁶⁴ See Exhibit D (VERIZON ONLINE YELLOW PAGES, at <http://www.superpages.com> (last visited May 25, 2006)).

⁶⁵ See Exhibit D (GUIDESTAR BASIC RESULTS, at <http://www.guidestar.org/pqShowResults.do> (last visited May 23, 2006)).

⁶⁶ See Exhibit D (YAHOO! YELLOW PAGES, at <http://yp.yahoo.com/py/ypResults.py?stx=lewisport&stp=a&tab=B2C&city=Lewisport&state=K>

G. STATION WVEZ, FROM LOUISVILLE TO ST. MATTHEWS, KENTUCKY

Station WRKA, which will be relocating to Lyndon, Kentucky as described above, is St. Matthews' only local service. To avoid depriving St. Matthews of its only local service, CXR's Station WVEZ will change its community of license from Louisville, Kentucky to St. Matthews, Kentucky. This change can be accomplished with no change in the station's current transmitter site.

1. Technical Compliance

Channel 295B can be allotted to St. Matthews at WVEZ(FM)'s current transmitter site in compliance with the Commission's spacing rules. *See* Exhibit E, Figure 19. WKFS(FM), Milford, Ohio, currently is short spaced to WVEZ(FM) pursuant to the Commission's contour protection rules.⁶⁷ CXR does not propose any technical changes to WVEZ(FM)'s facilities. Accordingly, allotting Channel 295B to St. Matthews is consistent with the Commission's allotment policies because it will not create any new short spacings or exacerbate the existing short spacing between WKFS(FM) and WVEZ(FM).⁶⁸ WVEZ(FM) provides 70 dBu coverage to the community of St. Matthews with its current facilities. *See* Exhibit E, Figure 20. No gain-loss study is necessary because there will be no change in the coverage of the station.

2. Change in Community of License

The relocation of Station WVEZ from Louisville to St. Matthews, Kentucky, satisfies the prerequisites of *Community of License, supra*. First, the proposed allotment of Channel 295B to St. Matthews is inconsistent with its current allotment at Louisville. *See* Exhibit E, Figure 19.

Y&uzip=42351&country=us&msa=0000&slt=37.936951&sln=-86.902039&cs=4 (last visited May 26, 2006); VERIZON ONLINE YELLOW PAGES, at <http://www.superpages.com> (last visited May 25, 2006)).

⁶⁷ *See* 47 C.F.R. § 73.215 (2005).

⁶⁸ *See Killeen and Cedar Park, Texas*, 15 FCC Rcd 1945 (MMB 2000).