

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

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 06-77
Table of Allotments	)	RM-11324
FM Broadcast Stations	)	RM-11334
(Edinburgh, Hope, Versailles, and	)	
Tell City, Indiana, Burkesville, Greensburg,	)	
Hodgenville, Horse Cave, Lebanon,	)	
Lebanon Junction, Lewisport, Louisville,	)	
Lyndon, New Haven, Springfield,	)	
and St. Matthews, Kentucky,	)	
and Belle Meade, Goodlettsville,	)	
Hendersonville, Manchester,	)	
and Millersville, Tennessee)	)	

FILED/ACCEPTED

DEC 29 2006

Federal Communications Commission  
Office of the Secretary

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

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Newberry Broadcasting, Inc., Elizabethtown CBC, Inc., and Cumulus Licensing LLC, (the "Joint Parties"), by their respective counsel, hereby oppose the Petition for Reconsideration filed by Indiana University ("Indiana") in the above captioned proceeding.<sup>1</sup> Indiana's sole argument is that the operation of Channel 262A at Edinburgh, Indiana will interfere with the operation of low power Station WIUX-LP on Channel 262.<sup>2</sup> However, as Indiana acknowledges

<sup>1</sup> The FCC has not yet released Indiana's Petition for Reconsideration on Public Notice. Thus, this Opposition is timely. Indiana Community Radio Corporation also filed a Petition for Reconsideration and the Joint Parties are contemporaneously filing a separate Opposition to that petition.

<sup>2</sup> The FCC's Electronic Comment Filing System (ECFS) indicates that a number of letters have been filed in support of Indiana's Petition. None of these letters were served on the Joint Parties and some of these letters lack a return address. Nevertheless, the Joint Parties are serving a copy of this Opposition on the individuals who provided a return address. Finally, the Joint Parties are also aware of two letters filed by Senators Lugar and Bayh. These letters were not served on the Joint Parties by the Senators. The FCC's Office of General Counsel has forwarded these letters to undersigned counsel along with the FCC's letter ruling that the Senators' letters include an *ex parte*

in its Petition, low power FM stations are secondary facilities and must protect authorized full power facilities even after such stations modify their facilities. Therefore, the FCC must dismiss Indiana's Petition expeditiously so that the public can realize the benefits of this docket. In support hereof, the Joint Parties state as follows:

1. The *NPRM* in this proceeding was released in response to a proposal filed by the Joint Parties on March 21, 2005.<sup>3</sup> On May 30, 2006, CXR Holdings, L.L.C. ("CXR") filed a Counterproposal in response to the *NPRM*. Both the Joint Parties' proposal and CXR's Counterproposal proposed a number of changes to the FM Table of Allotments that will serve the public interest. While both of these proposals were originally in conflict, the parties were able to propose a plan to eliminate the conflict, and on October 13, 2006, the FCC granted both the Joint Parties' proposal (as amended) and CXR's Counterproposal.

2. At the outset, the Joint Parties note that Indiana's Petition is not seeking reconsideration of the Joint Parties' proposal. Rather, Indiana is seeking reconsideration of the FCC's decision to allot Channel 262A at Edinburgh, Indiana, which is part of CXR's Counterproposal. Thus, because CXR's Counterproposal and the Joint Parties' proposal are no longer in conflict, even if the FCC grants the relief requested by Indiana, it will have no impact on the Joint Parties' proposal. Thus, the Joint Parties are contemporaneously filing a Request to Sever their proposal from this proceeding so that it can be granted by final order and the public interest benefits can be realized in a timely manner. Nevertheless, the Joint Parties will briefly address the merits of Indiana's Petition.

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presentation. The letters also indicate that the Senators have been informed that WIUX-LP could be "displaced or turned off" as a result of this proceeding. However, as discussed herein, there is an alternate channel available for WIUX-LP.

<sup>3</sup> See *Hodgenville, Kentucky, et al.*, Notice of Proposed Rule Making, 21 FCC Rcd 3560 (2006) ("*NPRM*").

3. Indiana's sole argument is that the operation of Channel 262A at Edinburg, Indiana will interfere with the operation of low power Station WIUX-LP on Channel 262.<sup>4</sup> As mentioned, this argument, even if true, provides no legal basis for reconsideration of this proceeding. The FCC's rules expressly provide that "it shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any *subsequently* authorized commercial or NCE FM station that operates on the same channel ..."<sup>5</sup> Further, both the Media Bureau and the full Commission have held in numerous rule making proceedings that LPFM stations are secondary services and that the FCC "would not compromise the technical integrity of the FM service or prevent existing stations from modifying their facilities."<sup>6</sup>

4. Clearly, WIUX-LP is not entitled to protection from the operation of Channel 262A at Edinburg because it is a secondary service. Nevertheless, in order to accommodate the continued operation of Station WIUX-LP, the Joint Parties asked their engineering consultant to locate an alternate, fully-spaced channel for WIUX-LP. Such a channel exists,<sup>7</sup> and on November 9, 2006, the Joint Parties sent a letter to Indiana notifying it of the existence of an alternate channel. However, the Joint Parties have not received a response from Indiana. Further, even though this alternate channel is not mutually exclusive with WIUX-LP's existing

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<sup>4</sup> Indiana also claims that it "did not have a fair chance to file public comments" on CXR's Counterproposal to allot Channel 262A at Edinburg because "this frequency did not appear on the Commission's internet site or on a public notice until after the reply comment date of June 13, 2006." This argument, however, ignores the fact that the FCC did release an additional Public Notice on July 17, 2005 (Report No. 2778). This Notice specifically listed the proposed allotment of Channel 262A at Edinburg and offered a 15 day reply period during which at least one other party that operates translator stations filed comments.

<sup>5</sup> 47 C.F.R. § 73.809(a).

<sup>6</sup> *Dubach, Louisiana, et al.*, 20 FCC Rcd 19495, ¶12 (2005); see *Letter to Harry F. Cole and Richard A Helmick*, DA 06-1429 (Med. Bur. 2006); *Cridersville, Ohio*, 20 FCC Rcd 15200 (Med. Bur. 2005); *Lahaina and Waianae, Hawaii*, 20 FCC Rcd 7605 (Med. Bur. 2005).

<sup>7</sup> See Engineering Exhibit.

channel, the FCC's rules permit an LPFM station to change to a non-adjacent frequency upon a technical showing of reduced interference.<sup>8</sup> Thus, even though WIUX-LP is a secondary service and does not have standing to file a petition for reconsideration in this proceeding, there is a solution that will permit it to continue its operation.

5. Finally, if Indiana is concerned about the continued operation of Station WIUX-LP, it could have submitted comments in the open docket on the future of the LPFM service.<sup>9</sup> It has not, but instead, it is using this proceeding to delay the implementation of a rule making that will provide a first local service to four communities with a combined population of 18,456 persons. Therefore, the FCC should expeditiously dismiss Indiana's Petition.

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<sup>8</sup> 47 C.F.R. § 73.870(a).

<sup>9</sup> See *Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rule Making, MM Docket No. 99-25, 20 FCC Rcd 6763 (2005).

Respectfully Submitted,

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Its Counsel

December 29, 2006

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<sup>10</sup> Please note the change in address for Cumulus' counsel for the purpose of service.

ENGINEERING EXHIBIT

Graham Brock, Inc. - Broadcast Technical Consultants  
 St. Simons Island, GA - Washington, DC  
 Indiana University Student Broadcsating  
 Using WIUX-LP site as reference

REFERENCE

39 10 17 N.  
 86 30 58 W.

CLASS = L1  
 Current Spacings

DISPLAY DATES

DATA 11-07-06  
 SEARCH 11-08-06

----- Channel 256 - 99.1 MHz -----

Call	Channel	Location	Azi	Dist	FCC	Margin
ALLO	USE 255B	Salem	IN 149.6	73.53	97.0	-23.47
WZKF	LIC 255B	Salem	IN 152.5	100.78	97.0	3.78
AL1346	RSV 255B	Prospect	KY 144.0	101.15	97.0	4.15
W203BL	CP 203D	Kirksville	IN 187.7	9.77	5.0	4.77
WZPL	LIC 258B	Greenfield	IN 33.6	78.71	67.0	11.71
ALLO	USE 258B	Greenfield	IN 33.4	79.54	67.0	12.54
AP3472	APP 254D	Martinsville	IN 15.4	31.55	8.0	23.55
WWDN.C	CP -D 202B	New Whiteland	IN 50.3	41.19	12.0	29.19
AP1646	APP 253D	Bedford	IN 167.4	39.01	8.0	31.01
AP0303	APP 254D	Brooklyn	IN 17.4	40.20	8.0	32.20
AP1913	APP 256D	Lynhurst	IN 25.3	65.53	26.0	39.53
ALLO	USE 259B	Louisville	KY 146.6	107.18	67.0	40.18
WDJX	LIC 259B	Louisville	KY 146.6	107.18	67.0	40.18
WXTT	LIC 256B	Danville	IL 315.7	152.87	112.0	40.87
ALLO	USE 256B	Danville	IL 315.7	152.87	112.0	40.87
AP6082	APP 256D	Indianapolis City	IN 24.7	73.25	32.0	41.25
AP7506	APP 254D	Edinburgh	IN 67.8	56.73	14.0	42.73
AP5946	APP 253D	Franklin	IN 49.0	52.60	8.0	44.60
AP1907	APP-D 253D	Franklin	IN 59.0	54.72	8.0	46.72
WINH	LIC 253B	Paris	IL 295.3	114.88	67.0	47.88
ALLO	USE 253B	Paris	IL 295.3	114.88	67.0	47.88
AP2458	APP 256D	Indianapolis	IN 25.6	75.75	26.0	49.75
AP0188	APP-D 254D	Indianapolis	IN 31.0	76.50	8.0	68.50
ALLO	USE 259B	Frankfort	IN 3.6	138.97	67.0	71.97
WSHW	LIC 259B	Frankfort	IN 3.6	138.97	67.0	71.97

## CERTIFICATE OF SERVICE

I, Faye Jones, in the law firm of Wiley Rein & Fielding LLP, do hereby certify that I have on this 29th day of December, 2006, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Opposition**" to the following:

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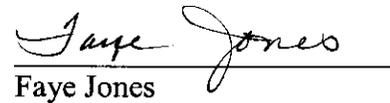
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