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March 21, 2007

Our File No. 20828-00101-60

FILED/ACCEPTED

MAR 21 2007

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

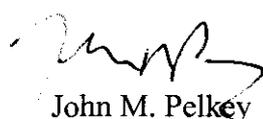
Re: **Reply to Opposition to Petition for Reconsideration**
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Port Norris, New Jersey; Fruitland and Willards, Maryland;
Chester, Lakeside, and Warsaw, Virginia)
MB Docket No. 04-409
RM-11108
RM-11234

Dear Ms. Dortch:

Transmitted herewith on behalf of MainQuad Communications, Inc., are an original and four copies of its Reply to Opposition to Petition for Reconsideration in the above-referenced matter.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,


John M. Pelkey

Enclosures
JMP:yg
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Before the
Federal Communications Commission
Washington, D.C. 20054

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Federal Communications Commission
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In the Matter of)
)
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(Port Norris, New Jersey; Fruitland and Willards,)
Maryland; Chester, Lakeside, and Warsaw,)
Virginia))

Reply to Opposition to Petition for Reconsideration

MainQuad Communications, Inc. (“MainQuad”), through counsel, hereby replies to the “Opposition to Petition for Reconsideration” filed by Cox Radio, Inc. (“Cox”), with respect to a Petition for Reconsideration filed by MainQuad in the above-captioned proceeding. In its Petition for Reconsideration, MainQuad seeks reversal of the *Report and Order* released by the Commission on October 13, 2006.¹ As will be demonstrated below, Cox’s Opposition fails to address the fundamental issues raised by MainQuad in its Petition for Reconsideration. Cox’s Opposition fails to recognize that it has no vested right to any particular set of reference coordinates. Commission practice has long recognized that the staff may alter reference coordinates as necessary to serve the public interest. On the date that MainQuad filed its facilities modification application with respect to WARV-FM, the facilities proposed in that application were fully-spaced to the reference coordinates as established by the Commission. As a result, the Commission should not have, after the fact, established new reference coordinates that caused the WARV-FM application to become short spaced. Similarly, Cox’s Opposition fails to come to grips with the fact that the *Report and Order* issued in the above-referenced

¹ *Port Norris, et al.*, 21 FCC Rcd 11449 (MB 2006).

proceeding turns Section 307(b) on its head by refusing to increase the net number of stations so as to allow the rural community of Port Norris, New Jersey to receive its first local service and, *in lieu thereof*, permitting Cox to change the community of license of WDYL(FM) from one community within the Richmond urbanized area to another -- even though the new community already receives service from WDYL(FM) and even though the staff did not even attempt to determine whether the proposed community of license of Lakeside is so sufficiently separate from Richmond as to warrant awarding Cox credit for providing first local service to Lakeside. As a result, for the reasons set forth therein, MainQuad's Petition for Reconsideration should be granted.

I. The Lakeside Reference Coordinates should not have been changed in the *Report and Order*.

In its Petition for Reconsideration, MainQuad explained that the *Report and Order* erred in that it established reference coordinates that conflicted with the reference coordinates proposed by MainQuad in a facilities modification application filed with respect to WARV-FM, Petersburg, Virginia, on April 28, 2005. That application had not sought to construct new facilities, but instead had sought to correct the coordinates for the WARV-FM facility that had been in place for at least 12 years. Significantly, the application as filed was fully spaced with the reference coordinates that had then been established by the Commission for the proposed Lakeside, Virginia, facility. By adopting coordinates for the Lakeside allocation that are different than those that were in place at the time that MainQuad filed its application, the *Report and Order* created a short-spacing situation that is inconsistent with the Commission's own rules. The appropriate way to remedy this error is to reinstate the reference coordinates that were in place at the time that the WARV-FM application was filed.

Acknowledging that the WARV-FM application was fully spaced to the reference coordinates in place at the time of the submission of that application, Cox seeks to belittle the significance of those coordinates by claiming that they were a “clerical error.” Nothing could be further from the truth.

At the time that it realized that the licensed coordinates for WARV-FM were incorrect, MainQuad performed an engineering study to determine whether a correction of those coordinates would lead to a short-spacing. That study revealed that the correction of the WARV-FM coordinates would create a theoretical short-spacing to the reference coordinates proposed by Cox in the instant rule making. There is no magic to the selection of reference coordinates, however. The Commission has discretion to change reference coordinates and, in a letter of April 15, 2005 (the “April 15 Letter Request”), MainQuad requested that the Commission exercise that discretion and specify reference coordinates for Lakeside that would be properly spaced to the long-constructed WARV-FM facilities. The reference coordinates suggested by MainQuad, namely 37°, 36', 48" NL; 77°, 21', 46" WL, allowed the requisite city-grade coverage over Lakeside and thus were totally consistent with the Commission's rules. MainQuad's April 15 Letter Request was served upon counsel for CXR,² but CXR did not oppose MainQuad's request during the ensuing 10 day period and, after the reference coordinates had been changed by the Commission staff, MainQuad on April 28, 2005, filed the requisite coordinate correction application. Thus, for Cox to now claim that the Commission's decision to change the reference coordinates so as to accommodate MainQuad was a “clerical error” is

² Cox suggests for the first time in its Opposition to Petition for Reconsideration that its counsel may not have received MainQuad's letter on a timely basis because certain other pleadings filed by MainQuad were served on one of Cox's counsel at 1200 New York Avenue, rather than at 1200 New Hampshire Avenue, an error that was not brought to MainQuad's counsel's attention until Cox filed the pleading to which this Reply responds. Significantly, Cox does not assert that the April 15 Letter Request was so misaddressed. Moreover, Cox's assertion glosses over the fact that Cox has been jointly represented in this proceeding by two law firms and copies of the April 15 Letter Request were sent to both firms. Thus, even if Cox were correct that one of its counsel did not receive the April 15 Letter Request on a timely basis, it is undisputed that Cox's co-counsel was timely served with the letter.

simply incorrect. Rather than being a “clerical error,” the staff’s decision to change the reference coordinates was a considered action designed to permit WARV-FM to file a coordinate *correction application that would be fully spaced to the Lakeside allocation.*

II. The Underlying Rule Making is at Odds with Section 307(b) of the Communications Act.

Even if Cox were correct and the adoption of reference coordinates permitting WARV-FM to file its coordinate correction application was a “clerical error,” the fact remains that the underlying rule making whereby the Commission has established different reference coordinates for Lakeside is fatally flawed and thus must be reversed. In its Petition for Reconsideration, MainQuad explained that, by failing to apply the *Tuck*³ criteria to the instant rulemaking simply because both Chester and Lakeside are located within the Richmond urbanized area, the Commission exalted form over substance. The purpose behind *Tuck* is to help ensure that a proponent does not game the system by seeking credit for first local service by proposing to provide service to a community that is dependent upon, and contiguous to, a central city. By declining to perform a *Tuck* analysis simply because WDYL(FM)’s present and proposed communities of license are both located within the Richmond urbanized area, the Commission has given Cox a “free pass.” It has permitted Cox to receive credit for providing first local service to Lakeside even though the Commission made no determination whatsoever that Lakeside is truly independent of Richmond and that Cox is thus entitled to first local service credit. As a result, Section 307(b), which requires the Commission to effectuate a “fair, efficient, and equitable distribution of radio services” among the nation’s communities, has been undermined. Pursuant to the *Report and Order*, Cox is permitted to upgrade WDYL(FM), but the number of stations in the Richmond urbanized area is not increased. Lakeside, which already

³ *Faye and Richard Tuck, Inc.*, 3 FCC Rcd. 5374 (1988).

receives service from WDYL(FM), will continue to receive service from WDYL(FM). The only difference will be that Lakeside will now be mentioned at the top of the hour. By contrast, Port Norris, New Jersey, will not receive its own radio station and the net number of radio stations in the country will remain static.

Accordingly, for the reasons set forth in the MainQuad Petition for Reconsideration, the reference coordinates for the Lakeside allocation that were in place as of the filing of the WARV-FM coordinate correction application should be reinstated. Alternatively, the *Report and Order* should be reversed, Channel 299A should be allocated to Port Norris, New Jersey, and Chester, Virginia, should once again be specified as the WDYL(FM) community of License.

Respectfully submitted,

MAINQUAD COMMUNICATIONS, INC.

By: 
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March 21, 2007

CERTIFICATE OF SERVICE

I, Yvette Graves, an employee of Garvey Schubert Barer, hereby certify that I have on this 21st day of March, 2007, sent copies of the above "Reply to Opposition to Petition for Reconsideration" by first-class, United States mail, postage prepaid, to the following:

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