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

MAILED
JUN 18 2008
FCC

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 04-409
Table of Allotments,	)	RM-11108
FM Broadcast Stations.	)	RM-11234
(Port Norris, New Jersey, Fruitland, and Willards,	)	
Maryland, Chester, Lakeside, and Warsaw,	)	
Virginia)	)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 11, 2008 **Released: June 13, 2008**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two Petitions for Reconsideration directed to the *Report and Order*[1] issued in the proceeding, filed by MainQuad Communications ("MainQuad"), licensee of Station WARV-FM, Petersburg, Virginia, and Port Norris Radio. CXR Holdings, Inc. ("CXR"), licensee of Station WDYL(FM), Chester, Virginia filed an opposition to Petition for Reconsideration. Main Quad and CXR filed responsive pleadings. Original petitioner, Dana Puopolo did not participate. For the reasons discussed below, we deny the Petitions for reconsideration.

2. **Background**. This proceeding was initiated by a petition for rule making filed by Dana Puopolo, requesting the allotment of Channel 299A at Port Norris, New Jersey, as the community's first local aural transmission service. In response, CXR filed a counterproposal which, as amended[2], requested the substitution of Channel 265B1 for Channel 266A, reallotment of Channel 265B1 from Chester to Lakeside, Virginia as the community's first local aural service, and modification of Station WDYL's license to reflect the changes. Both Chester and Lakeside are located within the Richmond Urbanized Area. To accommodate the allotment of Channel 265B1 at Lakeside, CXR proposed the substitution of Channel 298A for Channel 265A at Warsaw, Virginia, at a new transmitter site and the modification of Station WNNT-FM's license to reflect the channel substitution. CXR also proposed to substitute Channel 299A for Channel 298B1 at a new site at Fruitland, Maryland and modify Station WKHI(FM)'s license accordingly.[3] Port Norris Radio opposed the CXR proposal, arguing that Lakeside is part of the Richmond, Virginia, Urbanized Area and is not deserving of a first local service preference pursuant to the Commission's holding in *Faye and Richard Tuck, Inc.*[4]

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[1] *Port Norris, New Jersey, Fruitland, and Willards, Maryland, Chester, Lakeside, and Warsaw, Virginia*, Report and Order, 21 FCC Rcd 11449 (MMB 2006).

[2] Proposals to substitute Channel 299B1 for 298B1 at Fruitland and reallot Channel 299B1 from Fruitland to Willards, Maryland, and reallot Channel 273B from Princess Anne, Maryland to Fruitland, Maryland, which the licensees had agreed to, were deleted in CXR's amended counterproposal.

[3] Great Scott Broadcasting, licensee of WKHI(FM), Fruitland, Maryland, and Tidewater Communications, Inc., licensee of Station WNNT-FM, Warsaw, Virginia, consented to these modifications.

[4] *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) *("Tuck")*.

3. The staff compared the conflicting proposals under our policy set forth in *Revision of FM Assignment Policies and Procedures*.[5] The proposal and counterproposal each involved an allotment to a community that would receive its first local aural transmission service, a Priority 3 factor. The staff granted the allotment to Lakeside, the larger community, a Census Designated Place with a 2000 U.S. Census population of 11,157 persons.[6] Port Norris has a 2000 U. S. Census population of 1,507 persons.

4. On reconsideration, both Port Norris Radio and MainQuad again argue that the staff erred when it granted the reallotment of Channel 265B1 from Chester to Lakeside without analyzing Lakeside's independence from Richmond using the *Tuck* factors.[7]

5. **Decision**. We deny reconsideration. First, the argument raised on reconsideration was raised at the *Report and Order* stage and was fully addressed. Second, neither Port Norris Radio nor MainQuad point out a legal or factual error made below. They merely argue that *Tuck* should have been applied. We reiterate that the staff followed existing precedent and correctly decided that Lakeside, the larger community, deserved the allotment. Following *East Los Angeles, California*,[8] an analysis pursuant to *Huntington Broadcasting Co. v. FCC*[9] and *Tuck* is not necessary because both Lakeside and Chester are within the Richmond Urbanized Area, and there was no issue as to whether the petitioner was attempting to move into an Urbanized Area. *Huntington* and *Tuck* are applied to ensure that a first local service preference is not used as a mechanism for a station to enter a large market. As we stated in *East Los Angeles*, this concern does not exist in cases in which a station is already licensed to a community in an urbanized area seeks to change its community of license to another community in the same urbanized area.

6. Accordingly, IT IS ORDERED That the petitions for reconsideration filed by Port Norris Radio and MainQuad Communications, Inc. ARE DENIED.

7. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Victoria McCauley, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

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[5] *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

[6] Port Norris is a Census Designated Place with a 2000 U.S. Census population of 1,507 persons.

[7] MainQuad also argues that the staff should have altered the coordinates for Channel 265B1 at Lakeside to avoid a short spacing with Station WARV-FM, Petersburg, Virginia. This issue is moot because a construction permit for Channel 265B1at Lakeside (File No. BPH-20070118ACS) has been granted that clears the Station WARV-FM modified coordinates specified in its application for construction permit. *See* File No. BPH-20050428ABL.

[8] *See East Los Angeles, Long Beach and Frazier Park, California,* Report and Order, 10 FCC Rcd 2864 (MMB 1995); *recon. dismissed,* 13 FCC Rcd 4692 (MMB 1998).

[9] *Huntington Broadcasting Co. v. FCC.*, 92 F.2d 33 (D.C. Cir. 1951) ("*Huntington*").