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MLB-Dayton IV, LLC.
300 Conshohocken State Road
Suite 380
Conshohocken, PA 19428

In Re: WKSX(FM), Enon, OH
Facility ID #10113
MLB-Dayton IV, LLC ("MLB")
BPH-20070119AGI
Informal Objection

Dear Applicant:

This letter is in reference to: (1) WKSX's above-captioned minor change application BPH-20070119AGI to modify the community of license from Urbana, OH to Enon, OH, and change channel, antenna height, and effective radiated power; (2) the February 15, 2007 Informal Objection filed by Bradlee J. Beer ("Beer") styled as an Informal Comment; (3) the April 16, 2007 Comments filed by Centerville City Schools Board of Education ("Centerville"); and (4) all other related pleadings.¹ For the reasons set forth below, we deny the informal objection, and grant the application.

Centerville's Comments. On April 16, 2007, Centerville filed Comments regarding WKSX's application. Centerville states that the proposed WKSX modification would include a channel change from Channel 269 to Channel 268 which would displace WCWT-FM, Centerville, OH.² Furthermore, Centerville indicates that rather than oppose WKSX's application, it has elected to work with MLB to find a replacement channel that could be used by WCWT. These efforts have resulted in Centerville filing an application (BPED-20071105AEW) to operate WCWT on Channel 297.³ Centerville concludes that the grant of this application will allow WCWT to remain on the air.

¹ We have also received dozens of letters from local residents objecting to the Application. These letters were addressed directly to the Audio Division and were not served on MLB or its counsel. We believe it appropriate to treat the letters as the comments of individual listeners pursuant to 47 C.F.R. 1.1204(a)(g). The authors of these letters do not become parties to this proceeding by virtue of their comments. See Note 4 to Paragraph (d) of Section 1.1202 of the Rules, 47 C.F.R. § 1.1202. These letters add nothing substantive to the existing record in the proceeding. Accordingly, they need not and will not be considered here.

² Pursuant to 47 C.F.R. Section 512(d), Class D non-commercial educational (secondary) stations will be permitted to operate only as long as no interference is caused to any commercial FM broadcast station. In the event that the Class D (secondary) station would cause interference to a commercial FM station after that Class D (secondary) station is authorized, the Class D (secondary) station must cease operation.

³ This application remains pending before the Commission.

Beer Informal Objection. On February 21, 2007, Beer filed an informal objection stating that WKSX's proposed amounts to a move-in to the Dayton Urbanized Area. Moreover, Beer believes that the village of Enon is not an independent community, and thus, fails a Tuck analysis. In addition, Beer claims that WKSX's proposed application would displace Class D FM Station WCWT and FM Translator W268AX, Huber Heights, OH. Therefore, Beer concludes that it would not be in the public interest to approve WKSX's proposal.

Discussion. Regarding the displacements, Class D FM and translator stations are secondary services and by definition are not protected by full power FM stations. However, as stated earlier, Centerville has filed an application for WCWT to change channels in order to remain on the air. In addition, W268AX has been granted a construction permit (BPFT-20070302AAI) to change channel to Channel 266. Furthermore, Beer has failed to provide any technical reasons for denying MLB's application.

With respect to WKSX's reallocation objection, this application was filed pursuant to Section 73.3573(g) of the Commission's rules which permits the modification of a station's Authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. Any reallocation proposal must result in a preferential arrangement of allotments.⁴ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵ This application will provide a first local service to Enon under Priority (3) and result in a net gain in service to 158,234 persons under Priority (4). In his Informal Comments, Bradlee J. Beer contends that this reallocation would not be a first local service to Enon, but rather an additional station in the Dayton Urbanized Area.

We grant the application. In doing so, we recognize that Enon is located within the Dayton Urbanized Area. In awarding Priority (3) preference to Enon as a first local service, the Commission is concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, the Commission will 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 such circumstances, the Commission requires the city of license modification proponent to submit a *Tuck* showing.⁶ In evaluating these showings, the Commission considers the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and most important, the extent to which the suburban community is independent of the Urbanized Area. In considering a reallocation proposal, the Commission takes into account the well established *Huntington* doctrine which operates as a limited exception to the normal Section 307(b)⁷

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

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

⁶ See *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*"); see also *Huntington Broadcasting Co., v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951) ("*Huntington*"); *RKO General, Inc. (KFRC)*, Memorandum Opinion and Order, 5 FCC Rcd 3222 (1990) ("*RKO*").

presumption that every separate community is deserving of at least one local transmission service.⁸

Under the *Tuck* criteria, Enon is entitled to consideration as a first local service. Enon is approximately 16 miles from Dayton and the Station WKSX 70 dBu contour will cover only 27 percent of the Dayton Urbanized Area.⁹ According to the 2000 U.S. Census, the population of Enon is 2,638 persons while the population of Dayton is 132,679 persons. This percentage is comparable to those of other suburban communities awarded a first local service preference.¹⁰ After reviewing this proposal, we conclude that Enon is also sufficiently independent of the Dayton Urbanized Area to justify consideration as a first local service. Enon is not dependent upon the Dayton Urbanized Area for employment. According to the 2000 U.S. Census, eight percent of the Enon workforce work in Enon and the applicant has identified local businesses providing additional employment opportunities. Enon has its own weekly newspaper, the Enon Messenger. Enon also has the Enon Community Historical Society and the Enon website refers to 150 years of prosperity and heritage. Enon is governed by a mayor and council. The local government of Enon also consists of a police and fire department, as well as two public parks and a water treatment plant. Enon has its own post office and zip code. In addition, Enon has a library, an elementary school and a middle school. Finally, Enon has its own civic organizations and five churches.

Conclusion. In light of the above, the February 15, 2007 Informal Objection styled as an Informal Comment filed by Beer IS HEREBY DENIED. Furthermore, all other related pleadings ARE HEREBY DISMISSED AS MOOT. In addition, the application BPH-20070119AGI IS HEREBY GRANTED. The authorization is enclosed.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Richard F. Swift, Esq.
Mark N. Lipp, Esq.
Bradlee J. Beer

⁷ 47 U.S.C. § 307(b).

⁸ See *Tuck* at 5376.

⁹ Cf. *Headland, Alabama, and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352 (MMB 1995) (required a *Tuck* showing when a 70 dBu signal was provided to more than 50 percent of the Urbanized Area).

¹⁰ See e.g., *Park City, Montana*, Report and Order, 19 FCC Rcd 2092 (MB 2004) (Park City with a population of less than 1 percent of Billings and located 21 miles from Billings); *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (Newcastle with a population of less than 1 percent of Oklahoma City and located 15 miles from Oklahoma City).