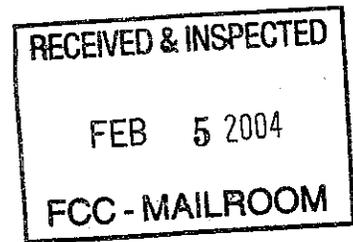


Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554



In the Matter of:

WABZ(FM), Albemarle and Indian Trail NC  
Susquehanna Radio Corp.  
Facility ID: 52553  
Application for Construction Permit,  
File No. BPH-20020116AAG

TO: The Commission

RECEIVED  
FEB - 6 2004  
AUDIO SERVICES DIVISION

**APPLICATION FOR REVIEW**

William B. Clay  
5629 Charing Place  
Charlotte, N.C. 28211

February 4, 2004

1-6-04

## SUMMARY

The above-captioned proceeding is the second step of a two-step, non-competitive § 1.420(i) change in community of license that was requested by the licensee of FM broadcast station WABZ-FM. The first step, reallocation of FM channel 265A from Albemarle, N.C. to Indian Trail, N.C., was granted pursuant to an allotment priority based on Indian Trail receiving first local service. In the instant proceeding, the licensee specified signal population coverage substantially different from the fictitious coverage specified in the first step.

The signal coverage specified in the instant proceeding creates strong disincentives against WABZ providing an outlet for local self-expression of Indian Trail, the sole regulatory objective of first local service and the basis for its high allocation priority. The Media Bureau denied our objections in this proceeding, contending that issues related to signal coverage should have been raised at the allocation stage, not the application stage. This is an incorrect interpretation of Commission policy. Such issues *must* be considered in this proceeding.

After two decades of deregulation, no regulatory obligation remains that might compel the licensee to provide Indian Trail an outlet for local self-expression; only market forces could now do so. Market forces favoring such an outcome are absent in this and the majority of recent urban changes of community of license. Such changes almost never create coverage favoring provision of an outlet for local self-expression of the communities of license, even though the independence of their needs and interests from their urban areas is the primary basis for conferring first local service priority. The process underlying this outcome demonstrates many similarities to the *Bechtel* case, and therefore appears to be arbitrary, capricious, and unlawful.

The Commission should rescind the Staff's action in the instant proceeding and reverse the reallocation that preceded it.

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In accordance with Sections 0.283(b) and 1.115 of the Commission's Rules, William B. Clay hereby seeks review by the Commission of actions of the Associate Chief, Audio Division, Media Bureau ("the Bureau") in the above-captioned proceeding. Those actions include denial of Informal Objections<sup>1</sup> filed by Clay and the grant of a Construction Permit to Susquehanna Radio Corp. ("SRC") dated Jan. 6, 2004. Public Notice of those actions was made Jan. 9, 2004<sup>2</sup>. This Application is timely filed within Feb. 8, 2004.

As shall be demonstrated below, the Bureau's actions, taken pursuant to delegated authority, are contrary to established Commission policy. Further, this grant is the product of a process that demonstrably fails to achieve the Commission's clearly defined regulatory objective of providing for community self-expression. The policy underlying that process must therefore be revised. Thus, this Application for Review warrants Commission consideration pursuant to §1.115(b)(2)(i) and (iii).

#### QUESTIONS PRESENTED FOR REVIEW

In the two-step process of specifying a new community of license for an FM broadcast station, when can a licensee's *intended* signal population coverage be challenged with respect to its compliance with Commission policy and objectives?

Given the reduced regulation of broadcasters over the last two decades, does first local service *in urban areas* usually achieve the result that is the Commission's sole rationale for its high allocation preference: providing local-self expression to the community of license?

When current policy almost *never* creates incentives to provide for local-self expression of the independent interests and needs of suburban communities of license, but instead creates strong incentives to serve larger urban areas, is said policy not arbitrary, capricious, and unlawful, because it consistently fails to fulfill the clearly-defined objective of that policy?

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<sup>1</sup> *Informal Objection* filed April 18, 2002 and *Reply to Opposition* filed June 5, 2002.

<sup>2</sup> Broadcast Actions, Report No. 45648.

## ARGUMENT

### I. Background

1. In November 1998, Susquehanna Radio Corp. (“SRC”), owner of WABZ-FM, then licensed to Albemarle, N.C., presented a *Petition for Rule Making*<sup>3</sup> to the Allocations Branch that sought reallocation of WABZ’s channel, 265A, to Indian Trail N.C., a suburban community in the Charlotte, N.C. Urbanized Area with a population 1,942 (1990) and located 23 km from the center of Charlotte. SRC requested application of 73 CFR 1.420(i), which allows a licensee to request a new community of license without risking loss of its license to a competing applicant. SRC requested first local service priority<sup>4</sup> and claimed Indian Trail meets the *Tuck* criteria<sup>5</sup> for independence from Charlotte. SRC’s petition specified a transmitter site that included only 2% of Charlotte’s territory within its 70 dBu city-grade contour and claimed the site would eliminate two of its three grandfathered short-spacings and reduce the third. In July 2001, the Allocations Branch the arguments of two *Comments* in opposition<sup>6</sup> and issued a *Report and Order* reallocation channel 265A from Albemarle to Indian Trail<sup>7</sup>. That action is currently pending Application for Review<sup>8</sup>.

2. SRC filed the captioned *Application for Construction Permit* at Indian Trail in January 2002. William Clay (“Clay”) filed an *Informal Objection* on April 18 and a *Reply to Opposition* on June 5. Clay pointed out that the requested transmitter site was located 15 km closer to Charlotte than the site specified at the allocation step and the new site covered 96% of

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<sup>3</sup> RM-9503, MM Docket No. 99-240, filed Nov. 9, 1998.

<sup>4</sup> *Revision of FM Assignment Policies and Procedures (“Revision”)*, 90 FCC 2d 88 (1982), ¶ 7.

<sup>5</sup> *Faye & Richard Tuck (“Tuck”)*, 3 FCC Rcd 5374 (1988), ¶ 36.

<sup>6</sup> Filed by Monroe Broadcasting Co., Inc and Capstar TX Limited Partnership, Aug. 23, 1999.

<sup>7</sup> DA 01-1660, released July 13, 2001, Application for Review pending.

<sup>8</sup> Filed by Monroe Broadcasting Co., Inc, Aug. 9, 2001.

Charlotte's area within its 60 dBu protected contour despite being only a Class A facility. It also created a new §73.215 short-spacing even after triggering downgrade of the short-space spaced station to Class C0. Clay contended that these changes at the application step nullified the public interest benefits claimed in the allocation step and demonstrated that SRC never had any real intention of serving Indian Trail's *independent* interests and needs. Of course, it is these *independent* local interests and needs that SRC and the Allocations Branch cited as primary justification for application of first local service priority. Clay requested that a construction permit not be granted and that the reallocation be reversed because of SRC's lack of candor.

3. On January 6, 2004, the Media Bureau denied Clay's Informal Objection and granted SRC the captioned construction permit. Clay now applies for Commission review of these actions on the grounds cited on page 1, above.

4. Clay has previously established standing in this proceeding and is thus a qualified applicant for review under §1.115(a). However, in anticipation of possible challenges of this standing, he hereby stipulates:

- a) Clay will be directly, materially, and permanently harmed by this grant due to the loss of service of FM translator W264AF<sup>9</sup> when SRC's new facility begins broadcast operation.

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<sup>9</sup> As demonstrated by Figure 1 of the Comprehensive Technical Exhibit submitted with SRC's *Application for Construction Permit*, W264AF is located well within the 70 dBu city-grade contour of the newly-authorized transmitter and will therefore generate impermissible first adjacent channel interference with it. W264AF is located in a heavily-populated area of offices, retail stores, and residences. It is thus unlikely to benefit from any Commission waiver tolerating such interference. Once SRC's facility is on the air and actual interference is (by definition) generated, W264AF must be shut down in accordance with §74.1203(a)(1), as noted at ¶ 4 of SRC's *Opposition to Informal Objections*, filed May 23, 2002 ("*Opposition*"). In any case, the new facility's strong first-adjacent channel signal (6,000 W ERP at a distance of 8.7 km) will render W264AF (38 W ERP) inaudible to all but its nearest neighbors.

- b) Since SRC's grant is contrary to Commission policy, arbitrary, capricious, and unlawful, so is the consequent harm to Clay, notwithstanding the secondary status of the FM translator service.

**II. The Bureau failed to consider signal population coverage at the application step as required by Commission policy.**

5. The Bureau contends that "... the issues raised against SRC's ... intent to serve the City of Charlotte are considered untimely and moot because such issues should have been addressed at the time of the rulemaking proceeding.<sup>10</sup>". This ignores the undisputable fact that actual coverage of the intended facility was first set forth in SRC's Application for Construction Permit, submitted by necessity after the rulemaking proceeding was concluded. As SRC itself points out, "... there is no requirement that the reference [transmitter] site [specified in the rulemaking phase] will be used in a subsequent application ..."<sup>11</sup> Thus, the extent to which the facility that will actually be built provides service to the Charlotte metro area could only be addressed at the rulemaking phase by speculating on SRC's intentions, an option that the Commission has specifically and categorically rejected:

As to any question about the *bona fides* of the parties involved, we believe that it cannot be effectively resolved in rule making where none of the relevant particulars about the actual use of the channel are available. ... In any event, we do not believe it is appropriate to question the intent of the party seeking an assignment to a particular community in the rule making process.<sup>12</sup>

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<sup>10</sup> Letter dated Jan. 6, 2004 by Associate Chief, Audio Division, to William Clay and others.

<sup>11</sup> *Opposition to Informal Objections*, Susquehanna Radio Corp, filed May 23, 2002, ¶ 12.

<sup>12</sup> *Revision*, ¶ 37. This paragraph exclusively addresses the *Berwick* issue; i.e., "... when someone proposes the assignment of a channel to a particular community and it appears that the petitioner's real purpose may be to use this suburban location to serve another larger community nearby." This is precisely the question at issue in the instant case.

6. Is this 22 year-old policy an obsolete artifact of the old regime? No, it was still hard at work as late as last Halloween.

All stations are required to serve their communities of license. We generally presume in an allocations context that a station will, in fact, do this.<sup>13</sup>

Acting upon that presumption, the Staff scrupulously ignored the commentor's amply-documented historical analysis of the applicant's likely intentions<sup>14</sup>, instead basing their allotment decision upon fictitious coverage specified by their *Petition for Rule Making*<sup>15</sup>.

7. It is therefore current and firmly established Commission policy that questions of licensees' intent that might be suggested by the *potential* urban coverage of an allotment in the rulemaking phase can be raised *exclusively* in the application phase, only after that potential is manifested as a tangible request. The Staff's contention to the contrary is clearly in error.

8. If there is any question about SRC's intentions regarding coverage of Charlotte versus Indian Trail, it can therefore be raised *only* at this point in the two-step process. If this error is allowed to stand, it establishes a "shell game" in which issues related to actual coverage can *never* be contested. Further, it renders two of the three established *Huntington* criteria<sup>16</sup> useless diversions, since signal population coverage and its relationship to the size of the community of license can only be evaluated based on a specific, non-fictional coverage pattern.

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<sup>13</sup> *MO&O*, DA 03-3443, docket 99-322, rel. Oct. 31, 2003, ¶ 4.

<sup>14</sup> *Comments in Response to "Request for Supplemental Information"*, Franklin Communications, *et. al.*, filed Jul. 17, 2003, MM Docket 99-322, p. 4, footnote 3.

<sup>15</sup> Filed by Secret Communications II, L.L.C., Apr. 26, 1999, RM-9762, MM Docket 99-322.

<sup>16</sup> The *Huntington* criteria, first set forth in 1951, were last revised and comprehensively explicated in *Tuck*. The criteria are currently defined at ¶ 28 as: (1) the relationship between the specified [community] and the central city of the Urbanized Area, (2) size and proximity of the specified community to the central city, and (3) signal population coverage; the second two criteria having less significance than the first.

**III. Regulatory changes since *Revision* nullify the sole public benefit that first local service priority, when applied in urban areas, is intended to confer.**

9. The Commission has long given “first local service” a high priority in its effort to fulfill its 307(b)<sup>17</sup> statutory mandate<sup>18</sup>. First local service became an FM frequency allocation criterion in 1961 as one of three objectives of the new FM Table of Assignments (not yet expressed in its current form): “Service of local origin to as many communities as possible.<sup>19</sup>” “First local service” priority was defined in its current form in 1980<sup>20</sup>. By 1988, as the *Tuck* MO&O notes at several points, the courts had repeatedly ordered that communities should be denied such local transmission service only under the most convincing circumstances:

As the court has indicated, we run afoul of our responsibilities under section 307(b) when we subordinate a community’s need for local transmission service to efficiency considerations and “allot [a] frequency so as to provide service to the greatest population and area possible.<sup>21</sup>”

10. But what community-related obligations were imposed upon a station when “first local service” for a community of license was proposed as the third allocation priority and its importance underscored by the courts?<sup>22</sup>

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<sup>17</sup> *Communications Act of 1934* as amended, 47 USC 307(b): “... when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and *communities* as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” [emphasis added]

<sup>18</sup> *Tuck*, ¶ 23: “... the usual 307(b) presumption that every separate community needs at least one local transmission service.”

<sup>19</sup> *Notice of inquiry, Notice of Proposed Rule Making and Memorandum Opinion and Order*, FCC 61-833, 26 FR 6130, which led to establishment of the current FM Table of Assignments.

<sup>20</sup> *Notice of Inquiry and Notice of Proposed Rule Making*, 45 FR 26390 (1980), opening the proceeding that produced *Revision*, codifying the current allocation priorities.

<sup>21</sup> *Tuck*, ¶32.

<sup>22</sup> See *Comments in Response to “Request for Supplemental Information”* (¶27-40), and *Application for Review* (¶28-33), both Franklin Communications, Inc., *et al*, MM Docket No. 99-322, filed Jul. 17, 2003 and Dec. 15, 2003, for more comprehensive treatment of this material.

- a) Formal ascertainment of the needs and interests of the community and direct lines of communication between the station and community representatives.
- b) Detailed programming logs for review at license renewal, delineating, among other things, the stations' attention to local programming.
- c) Origination of the majority of a stations' programming from a main studio located in the community.
- d) Maintenance at the main studio (or elsewhere in the community) of the stations public inspection file, available to the public during regular business hours.
- e) Coverage of the community by a "city-grade" (70 dBu) signal.

In the transition to market-regulated broadcasting, nearly all of these obligations have been gradually eliminated. The first of these obligations was removed in 1981, the second in 1984, the third in 1987, and the fourth in 1998. Only the city-grade signal obligation remains.

11. What benefit did the Commission intend to confer upon a community of license with these now-vanished obligations? *Tuck* repeatedly names one – and only one – benefit of local transmission service over full-time aural service: local self-expression.

The need for service concerns both the number of stations that can be received in a given area (reception service) and *the availability of local outlets for self-expression in the community* (transmission service).<sup>23</sup> [emphasis added]

Although the *Tuck* decision was adopted the year after abolition of a station's obligation to originate programming in its community of license, the arguments upon which *Tuck* was decided predate that abolition<sup>24</sup>. *Tuck* neither asked nor answered the question, "Does the benefit of local self-expression still accrue to communities of license?"

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<sup>23</sup> *Tuck*, ¶20. *Tuck* cites local self-expression as *the* benefit of local service four times (see also ¶22, 24, and 32).

<sup>24</sup> *Tuck*, ¶9.

12. Since 1998, the only discernable and enforceable obligation of an FM station to its community of license is to provide a city-grade signal over the entire community. Since nearly any community in an urban area receives city-grade coverage from multiple FM stations (as does Indian Trail in this case<sup>25</sup>), no identifiable benefit is now conferred by status as a community of license. And, lest the city-grade signal be claimed as a significant benefit of local service in some cases, we observe that the Commission consistently cites the 60 dBu protected signal contour as the yardstick for FM aural service when deciding among allocation priorities.

13. While there is no longer any regulatory stimulus for a station to provide for local self-expression, its signal population coverage might do so in certain circumstances. Signal population coverage obviously determines the size, composition, and common interests of any broadcast station's potential audience. If a large proportion of that potential audience is located in a station's community of license, then the station has a market incentive to serve the needs and interests that are *independent* of other communities in its coverage area. *Huntington* recognizes this practical truth. It only requires a test of community independence if a postulated facility covers a larger urban area<sup>26</sup>. Where *Huntington* now breaks down is in the obsolete assumption that being named upon a broadcast license may confer the benefit of local self-expression (or any other discernable benefit beyond aural service) upon a community *even if signal population coverage does not encourage that outcome*.

14. We shall demonstrate below that this assumption has, in fact, broken down in the vast majority of recent non-competitive urban reallocations and that no outlet for local self-expression can be presumed to accrue in such cases.

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<sup>25</sup> *Clay Reply to Opposition*, ¶7 and footnote 10.

<sup>26</sup> *Tuck*, ¶22.

15. Thus, the only present-day motivation for a station to provide local self-expression derives from its market – if a substantial proportion of potential listeners find truly local self-expression compelling. No reasonable observer would find the 1.7% of potential WABZ listeners who reside in Indian Trail (11,905 of the 717,178 residents within WABZ’s predicted 60 dBu contour<sup>27</sup>) to be a credible target market for a commercial broadcaster. Indeed, SRC has never stated in either the instant proceeding or the rulemaking that preceded it that it would provide a single specific benefit or service to Indian Trail beyond city-grade coverage. To pretend that Indian Trail may realize an outlet for local self-expression in WABZ is like waiting up for Santa Claus on Christmas eve because we believed in him as six year-olds.

**IV. The Bureau consistently fails to apply the two *Huntington* criteria that could rectify ineffective application of first local service priority in urban areas.**

16. Why, given the sea-change from a regulated to market-driven environment, does the Bureau still weigh community independence so heavily as to essentially ignore the relationship between the other two *Huntington* factors, signal population coverage and the size and distance of the community of license from the urban center<sup>28</sup>? Because the courts repeatedly enjoined the Commission against presumptively denying communities their 307(b) hope of local self-expression simply because they happen to be embedded in larger urban areas<sup>29</sup>. Reading *Tuck*, one is moved by the Staff’s dogged and frustrated search for a methodology that passes judicial muster as a rigorous, consistent, and fair implementation of their 307(b) mandate in this difficult situation.

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<sup>27</sup> 2000 Census.

<sup>28</sup> *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (M.M. Bur. 1996) and other similar proceedings cited in that decision at ¶ 8.

<sup>29</sup> *Tuck*, ¶ 23, 24, 32, and 33.

17. *Tuck* successfully rectified a lack of rigor in *Huntington* that the courts regularly criticized, even when they upheld the Commission's decisions<sup>30</sup>, but at the cost of giving little weight to *Huntington*'s two population-based criteria. Having finally found secure refuge from repeated battering in the courts, the Bureau has held for 16 years with a death grip to the strict and mechanical application the community independence criterion<sup>31</sup>, while the regulatory matrix in which *Tuck* and *Huntington* were established has gradually vanished.

18. Thus, engineering considerations apart, there is now effectively a single criterion for reallocation of a channel under first local service priority: the existence of an incorporated or otherwise recognizable community that has a zip code, school, businesses bearing its name, etc.<sup>32</sup> and that is not yet named in any radio broadcast license. Every incorporated community is presumed independent; the burden of proof to the contrary falls upon the opponent<sup>33</sup>. Given the historical development of US urban areas, it's a rare suburb in which at least several of the *Tuck* community independence criteria cannot be easily satisfied. Only an unusual and vigorously contested case fails *Tuck*'s test of community independence<sup>34</sup>.

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<sup>30</sup> *Tuck*, ¶ 16-18 and 27.

<sup>31</sup> This despite its regular, predictable, and (almost?) never-manifested claim to the contrary, starting with *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 12, 4870 (1989), ¶ 25: "... the Commission's policy is to apply the allotment criteria in a flexible manner where circumstances warrant." This mantra is repeated in virtually every R&O in which the Bureau dismisses objectors' citation of a low ratio of community of licensure population to signal population coverage as a reason to deny reallocation.

<sup>32</sup> Only a minority of the eight criteria defined by *Tuck* at ¶ 36 is required to qualify as an independent community.

<sup>33</sup> *New Radio*, 804 F.2d at 760: "... the burden of invoking [a *Huntington*] exception will fall on the party seeking to apply it." cited in *Tuck*, ¶ 24.

<sup>34</sup> e.g., *Grants and Peralta, New Mexico*, MM Docket No. 98-158, DA 99-2841 (1999). That a licensee represented by competent and experienced counsel would present such a weak Petition suggests the extent to which the reallocation process has been viewed to rely on mechanical application of the *Tuck* criteria to the exclusion of any reasoned judgment specific to each case.

19. We now see the reality of reallocation rulemaking: it is useless to contest application of first local service priority upon the grounds of the small size of a proposed community of license with respect to signal population coverage. Ample judicial precedent has rendered the Bureau powerless to *presumptively* deny the 307(b) birthright conferred by community independence solely due a community's urban surroundings<sup>35</sup>.

20. However, as we have established above, at the *application* step it is proper for opponents to raise such arguments and it is incumbent upon the Staff to fairly and honestly consider them. In the course of such consideration, the oft-cited precedents that prevent giving more weight to signal coverage issues at the *allocation* step no longer apply. As we have just seen, the courts objected to the Commission's *presumption* that suburban communities will not benefit from an outlet for local self-expression based solely upon postulated circumstances. At the application step, the Bureau is no longer being asked by opponents to make presumptions based on postulates; it can decide based on unambiguous facts and upon actual outcomes of comparable cases operating in the current regulatory and market environment.

21. In the instant case, SRC requested and obtained coverage that creates unmistakable economic disincentives against providing local self-expression of the *independent* needs and interests that were the determining factor in the preceding rulemaking. Since that coverage was specified under SRC's control and at their initiative<sup>36</sup>, it contradicts the commitment implicit in their claim to first local service priority: that they will serve Indian Trail's *independent* interests and needs in some meaningful sense.

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<sup>35</sup> The courts' objections would appear to be moot if such reallocations were a one-step process, decided on the basis of non-fictional coverage of a concretely requested facility.

<sup>36</sup> *Revision*, ¶ 29: "... the mere presence of a channel tells little about how or even just where it would be put to use by a particular licensee." *Tuck*, ¶31: "Power and class of station are matters that are largely within the discretion of the broadcast applicant."

22. And yet the Bureau refuses to consider the reality of *actual* signal population coverage and the irresistible market disincentives it creates in this clear-cut case. The simplicity of continuing to apply an outmoded and ineffective policy is clear, but the public benefit is more difficult to discern when the policy's results clearly operate counter its objective.

**V. Actual outcomes are overwhelmingly contrary to the Commission's policy objective; thus, the existing process is arbitrary, capricious, and unlawful.**

23. The Commission adopted *Community of License* in 1989, shortly after the last of the deregulatory changes described above, which included abolition of any obligation to originate programming from the community of license (the "main studio rule"). *Community of License* established §1.420(i), which, under specified circumstances, exempts licensees from competition for their channel after it is assigned to a new community.

24. While *Community of License* pays careful attention to the public interest and marketplace efficiencies expected of that change<sup>37</sup>, it curiously omits any discussion of whether there remained any need to retain the two-step change process once the policy that necessitated a *separate* application step – competition for the license in its new community – was abolished. It also fails to address possible mutual reinforcement among the effects of abolition of the main studio rule, abolition of competition for a newly reallocated channel, and retention of the two-step reallocation process. We shall presently demonstrate that this unforeseen mutual reinforcement has virtually eliminated any chance that market forces might motivate a station to provide an outlet for a small suburban community's *independent* self-expression (beyond what the station may offer to its entire coverage area) once that community becomes the "beneficiary" of first local service preference.

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<sup>37</sup> *Community of License*, ¶ 24.

25. That *Community of License* failed to foresee the mutual reinforcement of these changes is understandable, since the unquestioned assumption that the benefit of local self-expression accrues to a community of license had been so long and strongly inculcated among regulators, the courts, the industry, and its listeners. Further, its disappearance in an urban context is the result of two seemingly independent and near-simultaneous changes.

26. We demonstrate that since *Community of License* became effective, the fictitious coverage specified at the allocation step by licensees seeking urban reallocations has, in the majority of cases, significantly understated the urban coverage they later obtain. Furthermore, in most such cases, the extremely low initial percentage of covered population that is located in the community of license has been reduced still further by some combination of subsequent transmitter site moves, upgrades, and even downgrades. Voluntarily undertaking such complex and expensive initiatives can leave no doubt about the objectives of those who pursue them: maximum signal population coverage, concomitantly eliminating any shred of market incentive to provide an outlet for local self-expression of the needs and interests of their community of license that are *independent* of their larger urban coverage area.

27. We have examined all FM channel assignment proceedings that we could find which commenced during two recent years, 1998 and 1999<sup>38</sup>. These years were chosen because they:

- include the instant case, thus maximizing regulatory and market similarities,

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<sup>38</sup> This examination was performed by manual inspection of search results of the Commission's ECFS (Electronic Comment Filing System) Web site. The search criterion was *Notices of Proposed Rule Making* released during 1998-1999. Thus, there are two possible sources of error in this selection: (1) proceedings that may be omitted from or incorrectly categorized within the ECFS database and (2) human error in reviewing those proceedings. While some of each source of error may have occurred in this analysis, we know of no reason that such error would lead to a systematic bias of the results we present.

- are far enough in the past that nearly all affected licensees have completed the subsequent application step and consummated their station move by completing construction, and
- in most cases, enough time has passed that licensees' plans to increase urban coverage have by now been revealed by subsequent applications – in some cases, more than once!

And while 1998 and 1999 are far enough in the past for us to observe some subsequent history, they are recent enough that the full record of these proceedings is readily available to us.

28. The proceedings we found were selected for analysis by the following criteria:

- A §1.420(i) reallocation.
- The reallocated channel provides first local service at the new community of license.
- Two-step process completed through the application step or request denied.
- A single channel reallocation or simple multi-channel rearrangement.
- The winning Petition, in cases of mutually exclusive Petitions.

If a proceeding's *Report and Order* ("R&O") mentions any neighboring urban area (even if only to exclude it as requiring a *Huntington* examination), we counted it as an urban reallocation.

29. For each selected reallocation, we obtained the following information from the *R&O* and from other sources available on the Commission Web site:

- Distances between the nearby urban center (if any) and licensee-specified transmitter sites, using the Audio Division's "radio tools popup" for distances between coordinates.
- Changes in channel class and/or transmitter power.
- Population of community of license and of signal coverage area.

Using this information, we were able in all but two cases to determine if there has been a significant change in signal coverage with respect to the facility specified at the allotment stage.

30. What do these observations show?

a) FM channel assignment NPRMs found	83
b) proceeding failed selection criteria (Table C)	34
b) §1.420(i) reallocations selected (Table B)	49
c) urban reallocation (Table A)	27
d) urban reallocation granted	25
e) application step urban coverage increase (one time)	5
f) subsequent urban coverage increase	10
g) extensive urban coverage at reallocation, unchanged	6
h) incomplete/undetermined urban coverage, unchanged	4

31. Of the successful urban reallocations for which population figures were provided, only 0.2% to 4.6% of the potential audience resided in their community of license<sup>39</sup>. 60% of the reallocated facilities *decreased* that already low percentage. An additional 24% had extensive urban coverage (60 dBu) from the outset of the reallocation, and made no further changes. Would any reasonable person regard this as providing an outlet for local self-expression of the small but ostensibly independent communities named in these stations' licenses?

32. Our selection methodology was intended to ensure that the reallocations selected for examination are a representative sample of those made since the adoption of §1.420(i). The 27 urban reallocations identified in that sample also appear to be representative, including large and smaller urban areas, all classes, allotment-step transmitter site change and no allotment-step change, and Staff decisions specifying and not specifying a site restriction.

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<sup>39</sup> An examination of the reallocations for which complete reallocation population coverage figures were *not* supplied suggests the missing figures would not significantly change this result.

33. At first glance, the low count of category “e” might suggest that application step changes from the coverage specified at the allocation step are rare. That is false. Of the ten stations tabulated in category “f,” four also changed coverage at the application step, for a total of nine. Thus in 36% of urban reallocations, a coverage change occurred at the application step.

34. It might be argued that coverage changes subsequent to the two-step reallocation process (category “f”) are normal change activity and extraneous to this discussion. That is false, too. Of the ten such coverage changes, only one does not obviously increase urban coverage. As we have shown above, in the current absence of regulatory incentives for licensees to provide specific benefits for their communities of license, only market forces can do so. By decreasing the percentage of their potential audience located within their community of license, these licensees are acting in direct opposition to the regulatory objective upon which their reallocation priority was based. All ten subsequent coverage changes bring urban coverage to a level that would have been impossible without the preceding reallocation,<sup>40</sup> showing the direct dependence of these later changes upon that reallocation.

35. Perhaps the most disturbing figure is this: of the 25 urban reallocations, only ten (categories “g” and “h”), 40%, now deliver the coverage upon which their reallocation decision was based, though less than five years have passed since their reallocations were granted. Thus, in 60% of urban reallocations, the Bureau based its decision upon fictitious or transitory coverage

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<sup>40</sup> Due to the “anchoring” effect of the community coverage rule, § 73.315(a), requiring a 70 dBu “city-grade” signal over the entire community of license.

and the public and competitors had no opportunity to know and respond to the licensees' intent at the allocation step – a grave failing in a non-competitive proceeding.<sup>41</sup>

36. These statistics demonstrate that any causal link which may have once existed between the *Huntington* and *Tuck* criteria and the public service actually delivered by licensees has, in the case of §1.420(i) urban reallocations, been unmistakably dissolved. If the Commission cannot adjust its application of the *Huntington* and *Tuck* criteria to restore a causal link in such cases, then these criteria will continue to demonstrate the same lack of predictive value as the comparison licensing system that was rejected by the Court in *Bechtel*<sup>42</sup>. In that case, preference was given to prospective licensees with the best score on a measure of the "integration" of ownership and management. The Court averred,

... the integration preference is peculiarly without foundation. While the Commission makes it a central focus of allocation, the Commission takes no interest whatever in the matter when it comes to transfers or even in the continuing conduct of the original licensee. The Commission appears to have no evidence that the preferred structure even survives among the winners, much less that it does so among especially outstanding broadcasters. Because of applicants' incentive to create a facade of integration, and the difficulty of identifying sound business practices, even the preference's touted objectivity proves an illusion. Though we owe substantial deference to the Commission's expertise, we are forbidden to suspend our disbelief totally. We find the integration policy arbitrary and capricious.

37. The courts reverse a Commission decision granting or denying a broadcast license only if that decision is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>43</sup> As in *Bechtel*, we have here a clearly defined regulatory objective (provision of an outlet for local self-expression) and clearly defined evaluation criteria. Those criteria are evidently intended to make a "predictive judgment" that Petitioners who postulate a facility which suits the

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<sup>41</sup> It is difficult to perceive the benefit of such a process. In urban settings, it frequently gives rise to an elaborate charade of extensive *Huntington* and *Tuck* showings and short-spacing analyses based on coverage that is never implemented. This is both inefficient and misleading.

<sup>42</sup> *Bechtel v. FCC*, 10 F.3d 874 (D.C. Cir. 1993).

<sup>43</sup> 5 U.S.C. 706(2)(A); see *DirectTV, Inc. v. FCC*, 110 F.3d 816, 826 (D.C. Cir. 1997).

criteria will have some reasonable probability of fulfilling the regulatory objective. As in *Bechtel*, application of the criteria is a one-time event at the allocation step, not subsequently verified or monitored by the Commission – not even when substantially different coverage is sought at the application step. As in *Bechtel*, applicants have an “incentive to create a façade” – in this case, of an FM station that appears likely to provide self-expression of the distinct needs and interests that make a community independent of its surrounding urban area. And as in *Bechtel*, there is no evidence to support the validity of that predictive judgment in the case of §1.420(i) urban reallocations. On the contrary, we have produced strong evidence that this predictive judgment demonstrably does *not* reflect actual outcomes in most cases.

38. Comparing the instant proceeding to *Bechtel*, it appears that current allocation policy in §1.420(i) urban reallocations is equally arbitrary and capricious<sup>44</sup>.

#### CONCLUSION

39. We have shown that the Staff’s statement that signal population coverage cannot be considered at the application step of the two-step process for change in FM broadcast stations’ community of license is incorrect. The Bureau must indeed consider proffered coverage arguments at this time in the instant proceeding. Further, in the case of §1.420(i) changes in community of license under a claim of first local service priority (and in particular, in the instant proceeding), we have shown that the Commission’s *Huntington* and *Tuck* criteria are applied in a

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<sup>44</sup> Fortunately, in contrast to the dear departed “integration” policy, it’s possible to remedy the problem without fundamentally disrupting long-established allocation priorities and policy. Requiring that a specific minimum percentage of an urban population receiving aural service from a reallocated channel be located in the community of license could restore the predictive value of *Huntington* and *Tuck* in urban reallocations. This adjustment would be more easily made in a one-step process like the FM upgrade procedure in § 73.3573(a)(i), which would also increase efficiency for all concerned.

manner that fails to predict whether the intended benefit of first local service (local self-expression of a community's *independent* needs and interests) actually accrues to the new community of license.

40. Although the current policy may have been adequately predictive in the past, regulatory changes since it was established have so altered the environment that all links to the policy's intended benefits in urban areas are now broken. The now-failed predictive value of that policy renders it arbitrary, capricious, and unlawful. The Commission must alter existing policy to accommodate the many regulatory and marketplace changes since the current policy's foundations were established 22 years ago.

## RELIEF SOUGHT

41. Based upon the facts recited in this *Application for Review* and the *Objections* that preceded it, the Bureau's grant of a Construction Permit to SRC should be rescinded and the Commission's reallocation of channel 265A from Albemarle to Indian Trail should be reversed<sup>45</sup>.

42. Fortunately, this can be done easily – if it is done promptly. WABZ still serves Albemarle as it did at the beginning of this process, so there have not yet been any subsequent co- or adjacent-channel allocation or engineering changes that would now have to be unwound<sup>46</sup>.

Respectfully submitted,

William B. Clay  
5629 Charing Place  
Charlotte NC 28211  
tel. 704-442-7308

February 4, 2004

I, William B. Clay, verify under penalty of perjury that the foregoing is true and correct.  
Executed on February 4, 2004.

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<sup>45</sup> It is the Commission's policy that reallocated channels do not automatically revert to their previously assigned community simply because they are not implemented as expected at the new community. However, the preceding reallocation (RM-9503, MM Docket No. 99-240) is still subject to an application for review, providing a convenient vehicle by which to restore channel 265A to Albemarle, N.C.

<sup>46</sup> Apart from the Class C to C0 downgrade of WROQ (FM), Facility ID 318, BLH-19870204LD, which should also be reversed since it is a direct consequence of this arbitrary, capricious, and unlawful grant.

TABLE A: URBAN \$1.420(U) REALLOTMENTS INITIATED 1998-1999

MM dkt #	R&O DAW	call	urban	comm of license	urban adjacent	RO chan	RO lat	long	dist	1st CP lat	long	dist	chan	1st CP lat	long	dist	pop CL	pop cov	G	CL %	coverage change	
197-253	95-2136	KWRSK	80C-5	FORE CITY, TX	Longview TX	265C3	32-52-55	94-49-18	43	32-41-54	94-37-4	25	same	same	same	888	unk			0.2%	closer, downgr	
4	98-18	95-1942	WPEZ	70-5	HAMPTON, GA	300C1	33-15-04	84-25-10	55	33-29-22	84-34-7	33	300C2	33-29-24	84-34-7	33	2,694	1,315,042		0.2%	closer, downgr	
7	98-50	95-483	KJCM	70-22	KRUM, TX	226C3	33-26-34	97-08-08	25	33-26-13	97-29-5	41	226C0	33-42-0	97-23-0	59	1,542	165,673		0.9%	stronger	
9	98-53	95-459	KBOK	70-01	BRYANT, AR	227A	34-30-30	92-32-42	35	34-30-27	92-32-48	35	227C3	34-47-31	92-28-38	18	5,289	174,572		4.6%	closer + upgr	
11	98-112	00-322	WVWVQ	70-45	COLLEGE PARK, GA	263C3	33-45-32	84-30-10	11	33-45-34	84-30-19	1	263C2	33-41-20	84-30-38	13	20,457	2,133,614		1.0%	mid-urban + upgr	
12	98-123	95-2378	WVAZ	70-3	HILLIARD, OHIO	268A	40-03-26	83-08-36	16	39-58-10	83-00-10	1	same	same	same	11,796	968,753		1.2%	mid-urban		
13	98-148	95-478	WAZO	70-04	SHALLOTTE, NC	265C3	33-56-48	78-00-04	31	33-57-40	78-1-37	30	same	same	same	3,816	unk				nc	(to site not recog. comm)
16	98-158	95-2841	KOLV	70-5	REPALTA, NM	268C1	iderty										6,306	206,423	G		undat	
17	98-174	95-240	WYXW	70-5	Spencer, MA	265A	42-11-00	72-02-30	22	42-2-11	71-59-22	29	same	same	same	5,161	unk					nc, FC
18	98-176	00-143	KLNC	70-9	Cedar Park, TX	227C	30-43-34	97-59-23	56	NC							857	45,867	G		closer	
20	98-178	95-1669	KBDT	70-9	LEUPP, AZ	265C	35-26-34	110-56-40	67	NC							11,244	35			closer	
23	98-208	95-2096	KLCI	70-8M	ELK RIVER, MN	291C2	45-23-00	93-48-30	62	NC							44	11,143	unk		closer + downgr	
25	98-36	00-373	WPCX	70-5	KAUKAUNA, WI	265C3	44-24-38	87-34-20	38	44-29-17	87-45-40	21	same	same	same	unk	164,336	G			closer	
29	98-63	00-1221	KLHK	70-1	DUTTON, MT	250C	47-57-46	111-38-14	58	NC							392	unk			closer + downgr	
27	98-69	95-1219	KROX	80C-95	BUJDA, TX	268C1	29-57-00	97-22-13	50	NC							1,795	unk			closer + downgr	
28	98-115	00-1109	WVBN	70-05	TUSCOLA, MI	268A	iderty										unk				mid-urban + downgr	
33	98-70	95-1837	KXST	70-57	ENCINITAS, CA	271B	33-06-40	117-12-05	44	NC							95,386	unk			undat	
36	98-240	95-1286	WABZ	70-02	INDIAN TRAIL, NC	265A	35-06-53	80-33-44	28	35-07-29	80-43-30	16	same	same	same	1,942	437,240				0.4%	closer
37	98-246	00-1881	KFMR	70-1	Sun City West, AZ	236C	34-14-33	112-21-53	92	34-13-48	112-21-2	90	same	same	same	34-13-15	26,344	1,406,730	G		83% power incr	
38	98-245	00-371	WLTB	70-95	OWEGO, NY	268A	42-03-44	75-55-37	5	same							16,890	212,160	G		nc, FC	
39	98-241	00-1675	KLMZ	70-5	FOULKE, AR	262A	33-15-42	93-53-06	24	33-21-5	93-50-41	21	same	same	same	634	63,940				1.0%	nc
40	98-276	00-1695	KJUN	70-1	TILLAMOOK, OR	281C3	45-46-98	122-57-13	38	45-29-20	122-41-40	4	281C2	same	same	4,001	704,242	G			mid-urban + upgr	
41	98-279	00-1206	KDJM	70-84	BROOMFIELD, CO	223C1	40-03-15	105-04-12	36	40-6-7	104-54-4	39	same	same	same	24,638	unk				nc, FC	
42	98-302	00-835	KFCZ	70-03	GARREDALE, TX	271C	31-57-55	102-46-10	9	NC							1,103	unk			nc, mid-urban, FC	
43	98-322	00-1572	WFCB	70-03	ASHVILLE, OH	265C1	38-35-30	83-06-38	43	NC							3,174	unk			mid-urban	
48	98-344	00-777	KJFK	70-4	LEANDER, TX	265C1	30-43-34	97-59-23	35	NC							unk	unk				nc, FC
49	98-350	00-700	WRZA	70-1	PARK FOREST, IL	260B	41-18-04	87-49-35	20	NC							24,656	unk				nc, FC

Explanation of Columns

- 1 #
  - 2 MM dkt #
  - 3 R&O DA #
  - 4 call
  - 5 urban exg
  - 6 comm of license
  - 7 urban adjacent
  - 8 lat/long
  - 9 RO chan
  - 10 lat/long
  - 11 dist
  - 12 1st CP lat/long
  - 14 dist
  - 15 last chan
  - 16 last CP lat/long
  - 18 dist
  - 19 pop CL
  - 20 pop cov
  - 21 G
  - 22 CL%
  - 23 coverage change
- Row number from Table B.  
 Docket number or reallocation proceeding.  
 DA no. of Report and Order approving or denying reallocation.  
 Call sign associated with reallocated channel at time of R&O, updated where subsequent changes were noted during data gathering.  
 Statement of urban coverage if supplied in R&O. \*60+.5\* means 60 dBu coverage over less than 50% of urban area. \*70+-\* means 70 dBu coverage over 100% of urban area.  
 Community of license after reallocation.  
 Nearby urban area (not necessarily immediately adjacent to community of license).  
 FCC reference coordinates for central city of urban area.  
 Channel reallocated by R&O.  
 Coordinates of site specified by licensee at allocation step.  
 Distance (km) between site specified by licensee at allocation step and reference coordinates of central city.  
 Coordinates of first construction permit after reallocation; omitted for reallocations in which no change of transmitter site ("NC") was specified.  
 Distance (km) between site specified by licensee at application step and reference coordinates of central city; omitted for "NC" reallocations.  
 Channel currently assigned to reallocated facility; indicates class upgrade or downgrade since reallocation.  
 Coordinates of current or last applied-for site, if different from "1st CP" site or site of "no change of site" reallocation.  
 Distance (km) between current or last applied-for site and reference coordinates of central city, if different from "1st CP" site or from "no change of site" reallocation.  
 Community of license population, when cited in R&O.  
 Signal population coverage (or gain), when cited in R&O.  
 If "C", figure in "pop cov" column is covered population gain; otherwise, total covered population.  
 Community of license population as percent of allocation step ("licitious") signal population coverage, when figures available in R&O (pop CL / pop cov).  
 Cause of change in coverage. nc=no significant change. FC=full/extensive urban coverage. undet=undetermined change in coverage. upgr=class upgrade. downgr=class downgrade.  
 If "coverage change" entry is indented, some change in coverage occurred subsequent to "1st CP" or to "no change of site" reallocation.

Table B: §1.420(i) REALLOTMENTS SELECTED, 1998-1999

RM#	MM docket	NPRM released	NPRM DA#	R&O DA#	com	call	stat	1 loc frm	1 loc to	Communities	Remarks	
1	RM-9198	97-253	1/9/1998	97-2752	98-2136	1	KWSK	gr	N	Y	DAINGERFIELD AND ORE CITY, TEXAS	
2	RM-9142	98-15	2/6/1998	98-177	98-901	1	KQMC	gr	N	Y	BRINKLEY AND COLT, ARKANSAS	
3	RM-8819	98-17	2/13/1998	98-209	98-1724	3	WKLY	gr	(1)	Y	BEAVER DAM AND BROWNSVILLE, KY	
4	RM-9204	98-18	2/20/1998	98-289	98-1942	10	WPEZ	gr	N	Y	MACON AND HAMPTON, GA	
5	RM-9227	98-31	3/6/1998	98-444	98-1204	1	WSRD	gr	N	Y	JOHNSTOWN AND ALTAMONT, NY	
6	RM-9238	98-37	3/20/1998	98-507	99-538	3	KLIS	gr	N	Y	PALESTINE AND FRANKSTON, TX	
7	RM-9247	98-50	4/10/1998	98-659	99-493	2	KICM	gr	(4)	Y	HEALDTON, OK AND KRUM, TX	
8	RM-9239	98-52	4/17/1998	98-691	98-2213	1	WWFY	gr	(1)	Y	HAGUE, NY AND ADDISON, VT	
9	RM-9253	98-53	4/24/1998	98-692	99-450	1	KBOK	gr	N	Y	MALVERN AND BRYANT, ARKANSAS	
10	RM-9264	98-75	6/12/1998	98-995	99-493	1	KGOK	gr	N	Y	PAULS VALLEY AND HEALDTON, OK	
11	RM-9268	98-112	7/10/1998	98-1330	00-322	>20	WWWC	gr	N	Y	Anniston AL and COLLEGE PARK GA	app recon
12	RM-9291	98-123	7/17/1998	98-1373	99-2378	6	WZAZ	gr	N	Y	MARYSVILLE AND HILLIARD, OHIO	
13	RM-9331	98-149	8/14/1998	98-1550	99-478	1	WAZO	gr	(1)	Y	LONG BEACH AND SHALLOTTE, NC	now oak island
14	RM-9174	98-154	8/28/1998	98-1683	99-712	5	WZKR	gr	N	Y	KOSCIUSKO AND Decatur, MS	
15	RM-9290	98-159	9/4/1998	98-1726	01-1200	12	KSIL	gr	(1)	Y	WALLACE, IDAHO AND BIGFORK, MT	app rev
16	RM-9342	98-158	9/11/1998	98-1727	99-2841	4	KQLV	deny	(1)	Y	GRANTS AND PERALTA, NEW MEXICO	
17	RM-9356	98-174	9/25/1998	98-1940	99-240	3	WXWV	gr	N	Y	Webster and Spencer, Massachusetts	curr 1.87 kW
18	RM-9363	98-176	9/25/1998	98-1939	00-143	9	KLNC	gr	N	Y	Killeen and Cedar Park, Texas	
19	RM-9365	98-180	10/2/1998	98-1956	99-2095	1	WSHN	gr	N	Y	FREMONT AND HOLTON, MICHIGAN	
20	RM-9334	98-179	10/2/1998	98-1957	99-1669	4	KBDT	gr	(1)	Y	ORAIBI AND LEUPP, ARIZONA	
21	RM-9355	98-185	10/9/1998	98-2033	99-799	1	KHIX	gr	(1)	Y	Carlin and Ely, NV	upgr; return carlin
22	RM-9360	98-194	11/13/1998	98-2253	99-2687	1	WAXK	gr	(1)	Y	JEWETT AND WINDHAM, NY	lo power
23	RM-9396	98-208	11/27/1998	98-2366	99-2096	2	KLCI	gr	N	Y	PRINCETON AND ELK RIVER, MN	subseq downgr
24	RM-9407	98-222	12/11/1998	98-2491	99-1220	1	new	gr	(1)	Y	LORDSBURG AND HURLEY, NM	upgr & adj chan
25	RM-9372	99-36	2/5/1999	99-289	00-373	2	WPCK	gr	N	Y	DENMARK AND KAUKAUNA, WI	
26	RM-9398	99-63	2/12/1999	99-321	99-1221	1	KLHK	gr	N	Y	SHELBY AND DUTTON, MT	
27	RM-9478	99-69	3/5/1999	99-446	99-1219	2	KROX	gr	N	Y	GIDDINGS AND BUDA, TX	
28	RM-9400	99-76	3/19/1999	99-534	99-3004	1	new	gr	N	(8)	SILVERTON AND BAYFIELD, CO	
29	RM-9378	99-115	4/9/1999	99-677	00-1109	3	WWBN	deny	Y	Y	CLIO AND TUSCOLA, MI	
30	RM-9374	99-140	4/30/1999	99-819	00-1108	5	KTMO	gr	N	Y	KENNETT, MISSOURI AND KEISER, AR	
31	RM-9402	99-139	4/30/1999	99-815	00-655	2	KAWT	gr	(1)	Y	PRINCEVILLE and KAPAA, HI	
32	RM-9412	99-139	4/30/1999	99-815	00-655	1	KAYI	gr	(1)	Y	PRINCEVILLE and KALAHEO, HI	
33	RM-9545	99-170	5/14/1999	99-919	99-1837	1	KXST	gr	N	Y	OCEANSIDE AND ENCINITAS, CA	
34	RM-9391	99-167	5/14/1999	99-899	99-2035	1	WAOX	gr	(1)	Y	MOUNT OLIVE AND STAUNTON, IL	
35	RM-9658	99-239	6/25/1999	99-1236	00-1902	9	KEDD	gr	N	Y	JOHANNESBURG AND EDWARDS, CA	
36	RM-9503	99-240	7/2/1999	99-1286	01-1660	9	WABZ	gr	N	Y	ALBEMARLE AND INDIAN TRAIL, NC	
37	RM-9593	99-246	7/2/1999	99-1311	02-1861	11	KFMR	gr	N	Y	Winslow and Sun City West, AZ	
38	RM-9680	99-245	7/2/1999	99-1310	00-371	1	WLTB	gr	N	Y	JOHNSON CITY AND OWEGO, NY	
39	RM-9480	99-241	7/2/1999	99-1291	00-1675	3	KLMZ	gr	N	Y	STAMPS AND FOUKE, AR.	
40	RM-9702	99-276	9/3/1999	99-1803	00-1395	2	KJUN	gr	N	Y	SCAPPOOSE AND TILLAMOOK, OREGON	
41	RM-9716	99-279	9/10/1999	99-1850	00-1206	1	KDJM	gr	N	Y	GREELEY AND BROOMFIELD, CO	origin urban
42	RM-9727	99-302	10/15/1999	99-2186	00-835	1	KFZX	gr	N	Y	MONAHANS AND GARDENDALE, TEXAS	
43	RM-9762	99-322	10/29/1999	99-2356	02-2694	22	WFCB	gr	N	Y	CHILLICOTHE AND ASHVILLE, OH	
44	RM-9733	99-321	10/29/1999	99-2353	00-1147	1	KBIL	gr	N	Y	GRAND ISLE AND EMPIRE, LA	
45	RM-9701	99-329	11/19/1999	99-2562	01-631	3	KLJT	gr	N	Y	Avalon and Fountain Valley CA	
46	RM-9701	99-329	11/19/1999	99-2562	01-631	3	KELT	gr	N	Y	Riverside and Adelanto CA	
47	RM-9750	99-343	12/3/1999	99-2685	00-1572	2	WWRK	gr	N	Y	Elberton and Laveria, GA	
48	RM-9709	99-344	12/3/1999	99-2686	00-777	1	KJFK	gr	N	Y	LAMPASAS AND LEANDER, TEXAS	
49	RM-9677	99-330	12/15/1999	99-2563	01-700	3	WRZA	gr	N	Y	KANKAKEE AND PARK FOREST, IL	
(1) no loss of svc. as facility is unbuilt												
(4) no loss of service due to contemporaneous reallo												
(8) provides service to white and gray areas												

**Table C: FM FREQUENCY ALLOCATIONS NOT SELECTED, 1998-1999**

1	RM-9199	97-251	1/9/1998	97-2749	BRECKENRIDGE AND GRAFORD, TEXAS	withdrawn
2	RM-9178	98-8	1/30/1998	98-135	ALBION, HONEOYE FALLS, AND SOUTH BRISTOL TOWNSHIP, NY	3-way swap
3	RM-9183	98-22	2/27/1998	98-326	DERUYTER AND CHITTENANGO, NY	withdrawn
4	RM-9255	98-55	4/17/1998	98-716	PLEASANTON, BANDERA AND HONDO, TX	chan not comm change
5	RM-9256	98-59	4/24/1998	98-771	Casper, Wyoming	new allocs
6	RM-9027	98-112	7/10/1998	98-1330	COLLEGE PARK, COVINGTON AND MILLEDGEVILLE, GEORGIA	competitive loser
7	RM-9271	98-134	7/24/1998	98-1426	SHERIDAN, WY AND COLSTRIP MT	chan swap & upgrade
8	RM-9082	98-155	8/28/1998	98-1682	ALVA, MOORELAND, TISHOMINGO, TUTTLE, AND WOODWARD, OK	new chan created; moves denied
9	RM-9133	98-155	8/28/1998	98-1682	ALVA, MOORELAND, TISHOMINGO, TUTTLE, AND WOODWARD, OK	new chan created; moves denied
10	RM-9263	98-162	9/11/1998	98-1785	SUGAR HILL AND TOCCOA, GEORGIA	not impl; mod refused
11	RM-9371	98-187	10/16/1998	98-2061	DES MOINES, IOWA, AND BENNINGTON, NEBRASKA	1.420(g); mut consent; no comm change
12	RM-9351	98-191	10/23/1998	98-2120	LEESVILLE, LA	1.420(g); chan not comm change
13	RM-9380	99-70	3/5/1999	99-448	DEER LODGE, HAMILTON AND SHELBY, MONTANA	1.420(g); chan not comm change
14	RM-9362	99-71	3/5/1999	99-456	IRONTON AND SALEM, MISSOURI	1.420(g); chan not comm change
15	RM-9367	99-74	3/12/1999	99-498	BAY SPRINGS AND ELLISVILLE, Ms	to comm not 1st local svc
16	RM-9446	99-75	3/19/1999	99-502	GRANTS AND MILAN, NM	withdraw post R&O
17	RM-9536	99-116	4/9/1999	99-676	ANGEL FIRE, CHAMA AND TAOS, NM	no explicit mention of 1.420(g); chan not comm change
18	RM-9502	99-123	4/16/1999	99-727	ROYSTON AND COMMERCE, GA	to comm not 1st local svc
19	RM-9336	99-145	5/7/1999	99-868	MISHICOT, WI AND GULLIVER, MI	1.420(g); chan not comm change
20	RM-9538	99-144	5/7/1999	99-866	ARCADIA, LA, AND WAKE VILLAGE, TX	1.420(g); mut consent; no comm change
21	RM-9546	99-214	6/4/1999	99-1089	CAMP WOOD, TX FM PROCEEDING	1.420(g); chan not comm change
22	RM-9479	99-229	6/18/1999	99-1173	DAYTON, INCLINE VILLAGE AND RENO, NEVADA	mut consent; 3-way swap
23	RM-9321	99-232	6/25/1999	99-1233	FORT BRIDGER, WYOMING AND HYRUM, UTAH	withdraw
24	RM-9678	99-244	7/21/1999	99-1293	CUMBERLAND, KENTUCKY AND WEBER CITY, VA	complex, contested, multi-chan swap
25	RM-9424	99-278	9/10/1999	99-1949	SUSQUEHANNA, PA AND CONKLIN, NY	mut consent; swap
26	RM-9697	99-284	9/17/1999	99-1881	GALVESTON AND MISSOURI CITY, TX	to comm not 1st local svc due to contemp. change
27	RM-9720	99-293	9/24/1999	99-1973	Canton and Saranac Lake, New York	chan change, no move
28	RM-9721	99-293	9/24/1999	99-1973	Canton and Saranac Lake, New York	chan change, no move
29	RM-9714	99-298	10/8/1999	99-2100	ST. JAMES AND FAIRMONT, MN	withdraw
30	RM-9755	99-326	11/5/1999	99-2422	Bowling Green and Bardstown, Kentucky	1.420(g); chan swap
31	RM-9728	99-331	11/19/1999	99-2564	MADISONVILLE AND COLLEGE STATION, TX	still pending; competing proposals
32	RM-9773	99-342	12/3/1999	99-2684	GEORGE WEST AND PEARSALL, TEXAS	1.420(g); chan not comm change
33	RM-9777	99-361	12/17/1999	99-2825	PLAINVILLE AND LARNED, KS	1.420(g); chan not comm change
34	RM-9730	99-362	12/17/1999	99-2843	CANTON AND MORRISTOWN, NEW YORK	1.420(g); chan swap

**CERTIFICATE OF SERVICE**

I, William B. Clay, hereby certify that on this 4<sup>th</sup> day of February, 2004, I caused to be served by first-class mail, postage prepaid, a copy of the foregoing "Application for Review" upon the following:

Mr. Mark N. Lipp, Esq.  
Vinson & Elkins, LLP  
The Willard Office Building  
1455 Pennsylvania Ave., NW  
Washington DC 20004-1008

Ms. Ruth L. Moeller  
5439 Chedworth Dr.  
Charlotte NC 28210

OBC Broadcasting Inc.,  
Two Newton Executive Park  
Newton MA 02462-1434

William B. Clay

**Lipp, Mark N.**

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**From:** Lynne Greenamyre [lgreenam@susqkc.com]  
**Sent:** Thursday, February 19, 2004 5:47 PM  
**To:** Fred Greaves  
**Cc:** Dave Alpert; Dennis Eversoll  
**Subject:** KCFX - Public Affairs Programming for Harrisonville during 2003



KCFX Harrisonville  
2003.xls

Gents,

Attached is a file reflecting our list of public affairs programming specifically featuring Harrisonville, MO, our city of license for KCFX-FM.

As I mentioned in an earlier e-mail to Fred, we also air PSAs (listed as NCSAs, Non-commercial Sustaining Announcements) for the Missouri Broadcasters Association, which are targeted to all residents of Missouri. A list of Missouri Broadcasters NCSAs is attached for 2003, except for first quarter. We are shutting down our Marketron systems for a conversion and so I'm not able to go in and reprint the info for Jan-March 2003, though I'm fairly certain we would have been airing Missouri Broadcasters announcements during that time.

Let me know if I can provide additional information.

Lynne Greenamyre  
Executive Assistant  
Susquehanna Kansas City

Harrisonville Today	Local	1/5/2003	6:00 AM	5 minutes
Harrisonville Today	Local	1/12/2003	6:00 AM	5 minutes
Harrisonville Today	Local	1/19/2003	6:00 AM	5 minutes
Harrisonville Today	Local	1/26/2003	6:00 AM	5 minutes
Harrisonville Today	Local	2/2/2003	6:00 AM	5 minutes
Harrisonville Today	Local	2/9/2003	6:00 AM	5 minutes
Harrisonville Today	Local	2/16/2003	6:00 AM	5 minutes
Harrisonville Today	Local	2/23/2003	6:00 AM	5 minutes
Harrisonville Today	Local	3/2/2003	6:00 AM	5 minutes
Harrisonville Today	Local	3/9/2003	6:00 AM	5 minutes
Harrisonville Today	Local	3/16/2003	6:00 AM	5 minutes
Harrisonville Today	Local	3/23/2003	6:00 AM	5 minutes
Harrisonville Today	Local	3/30/2003	6:00 AM	5 minutes
Harrisonville Today	Local	4/6/2003	5:58 AM	7 minutes
Harrisonville Today	Local	4/13/2003	5:58 AM	7 minutes

Harrisonville Today	Local	4/20/2003	5:58 AM	7 minutes
Harrisonville Today	Local	4/27/2003	5:58 AM	7 minutes
Harrisonville Today	Local	5/4/2003	5:58 AM	7 minutes
Harrisonville Today	Local	5/11/2003	5:58 AM	7 minutes
Harrisonville Today	Local	5/18/2003	5:58 AM	12 minutes
Harrisonville Today	Local	5/25/2003	5:58 AM	7 minutes
Harrisonville Today	Local	6/1/2003	5:58 AM	7 minutes
Harrisonville Today	Local	6/8/2003	5:58 AM	7 minutes
Harrisonville Today	Local	6/15/2003	5:58 AM	7 minutes
Harrisonville Today	Local	6/22/2003	5:58 AM	7 minutes

Harrisonville Today	Local	6/29/2003	5:58 AM	7 minutes
Harrisonville Today	Local	7.06.03	5:50a	7 minutes
Harrisonville Today	Local	7.15.03	5:50a	7 minutes
Harrisonville Today	Local	7.20.03	5:50a	7 minutes
Harrisonville Today	Local	7.27.03	5:50a	7 minutes
Harrisonville Today	Local	8.10.03	5:50a	7 minutes
Harrisonville Today	Local	8.17.03	5:50a	7 minutes

Harrisonville Today	Local	8.24.03	5:50a	7 minutes
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Harrisonville Today	Local	8.3.03	5:50a	7 minutes
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Harrisonville Today	Local	8.31.03	5:50a	7 minutes
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Harrisonville Today	Local	9.07.03	5:50a	7 minutes
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Harrisonville Today	Local	9.14.03	5:50a	7 minutes
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Harrisonville Today	Local	9.21.03	5:50a	7 minutes
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Harrisonville Today	Local	9.28.03	5:50a	7 minutes
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Harrisonville Today	Local	10/5/2003	05:50AM	7 minutes
Harrisonville Today	Local	10/12/2003	05:50AM	7 minutes
Harrisonville Today	Local	10/18/2003	05:50AM	7 minutes
Harrisonville Today	Local	10/26/2003	05:50AM	7 minutes
Harrisonville Today	Local	11/2/2003	05:50AM	7 minutes
Harrisonville Today	Local	11/9/2003	05:50AM	7 minutes
Harrisonville Today	Local	11/16/2003	05:50AM	7 minutes
Harrisonville Today	Local	11/23/2003	05:50AM	7 minutes
Harrisonville Today	Local	11/30/2003	05:50AM	7 minutes
Harrisonville Today	Local	12/7/2003	05:50AM	7 minutes

Harrisonville Today	Local	12/14/2003	05:50AM	7 minutes
Harrisonville Today	Local	12/21/2003	05:50AM	7 minutes
Harrisonville Today	Local	12/28/2003	05:50AM	7 minutes

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Kansas City Extra	Local	5/4/2003	7:00 AM	25 minutes
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Kansas City Extra	Local	6/15/2003	7:00 AM	25 minutes
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NCSA	Regional	4/21 to 6/30/03	31 times	30 seconds
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NCSA	Regional	4/21 to 6/30/03	63 times	30 seconds
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NCSA	Regional	7/1/03 to 9/30/03	40 times	30 seconds
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NCSA	Regional	7/1/03 to 9/30/03	39 times	60 seconds
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NCSA	Regional	7/5/03 to 9/30/03	41 times	60 seconds
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NCSA	Regional	8/21/03 to 9/30/03	27 times	30 seconds
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NCSA	Regional	8/25/03 to 9/30/03	23 times	30 seconds
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NCSA	Regional	8/27/03 to 9/29/03	12 times	30 seconds
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Animal welfare in Harrisonville - A look at one local shelter/dog holder and how he got stuck with a dog.	civic, animal welfare	\$2,500
Harrisonville's largest drugs bust in 10 years - part one	law, civic	\$2,500
Harrisonville's largest drugs bust in 10 years - part 2	law, civic	\$2,500
Harrisonville's largest drugs bust in 10 years - part 3	law, civic	\$2,500
Harrisonville Head-start opens - part one	extra curricular, education	\$2,500
Harrisonville Head-start opens - part 2	extra curricular, education	\$2,500
Harrisonville Head-start opens part 3	extra curricular, education	\$2,500
Harrisonville Chamber's upcoming Business expo	economy	\$2,500
Harrisonville Chamber's upcoming Business expo	economy	\$2,500
Harrisonville Chamber's upcoming Business expo	economy	\$2,500
Red Cross March campaign in Harrisonville part one	economy	\$2,500
Red Cross March campaign in Harrisonville part 2	economy	\$2,500
Red Cross March campaign in Harrisonville part 3	economy	\$2,500
Support the Troops Rally - Donations for Harrisonville VFW, benefiting troops families	Family	\$1,000
Part 1: Interview with Rose Garrett of Harrisonville on Son suffering from liver disease	Health	\$1,000

Part 2: Interview with Rose Garrett of Harrisonville on Son suffering from liver disease	Health, Charity, Law and Public Safety	\$1,000
John E Robinson indicted on capital murder charges in Cass County	Crime and Public Safety	\$1,000
Harrisonville MP's heading to the Gulf for clean up in Iraq	Military	\$1,000
Part 1: Interview with Cass County Sheriff Dwight Diehl on Meth Problem	Crime, Drugs	\$1,000
Part 2: Interview with Cass Country Sheriff Dwight Diehl on Meth Problem	Crime, Drugs	\$1,000
Interview with Cass County Prosecutor Chris Koster on John E Robinson Murder Trial	Public Safety, Economy, Court System	\$1,000
Part 2: Interview with Cass County Prosecutor Chris Koster on John E Robinson Murder Trial	Public Safety, Economy, Court System	\$1,000
Part 3: Interview with Cass County Prosecutor Chris Koster on John E Robinson Murder Trial	Crime	\$1,000
Kids placed on the wrong buses in Harrisonville.	Education, Kids	\$1,000
Interview with Harrisonville Resident Sandy Goforth Part 1: Teacher Phil Hoge of Harrisonville R-9 School District is facing harassment charges.	Education, Crime, Sexual Harassment	\$1,000

Interview with Harrisonville Resident Sandy Goforth  
Part 2: Teacher Phil Hoge of Harrisonville R-9 School District is facing harassment charges.

Education,  
Crime, Sexual  
Harassment \$1,000

Part 1, Host: James Fisher interviews founder and owner of Premier Pyrotechnics talking about firework safety.

Public Safety \$1,000

Part 2, Host: James Fisher interviews founder and owner of Premier Pyrotechnics talking about firework safety.

Public Safety \$1,000

Part 13, Host: James Fisher interviews founder and owner of Premier Pyrotechnics talking about firework safety.

Public Safety \$1,000

Part 4, Host: James Fisher interviews founder and owner of Premier Pyrotechnics talking about firework safety.

Public Safety \$1,000

Part 2: Host Scott Mayman does show on Harrisonville High School "Job Shadowing" Program. Opportunity for students to look over the shoulder of people at work.

Education, Teen  
issues \$1,000

Part 3: Host Scott Mayman does show on Harrisonville High School "Job Shadowing" Program. Opportunity for students to look over the shoulder of people at work.

Education, Teen  
issues \$1,000

Part 4: Host Scott Mayman does show on Harrisonville High School "Job Shadowing" Program. Opportunity for students to look over the shoulder of people at work.

Education, Teen issues \$1,000

Part 1: Host Scott Mayman does show on Harrisonville High School "Job Shadowing" Program. Opportunity for students to look over the shoulder of people at work.

Education, Teen issues \$1,000

Part 5: Host Scott Mayman does show on Harrisonville High School "Job Shadowing" Program. Opportunity for students to look over the shoulder of people at work.

Education, Teen issues \$1,000

Part 1 Host: James Fisher interviews County Commissioner Gary Mallory on the new justice center in Cass County.

Judicial, Crime, Politics, Safety \$1,000

Part 2, Host: James Fisher interviews County Commissioner Gary Mallory on the new justice center in Cass County.

Judicial, Crime, Politics, Safety \$1,000

Part 3, Host: James Fisher interviews County Commissioner Gary Mallory on the new justice center in Cass County.

Judicial, Crime, Politics, Safety \$1,000

Part 4, Host: James Fisher interviews County Commissioner Gary Mallory on the new justice center in Cass County.

Judicial, Crime, Politics, Safety \$1,000

Part 1: Host James Fisher interviews Del Dunmire from Growth Industries to talk about redevelopment of Harrisonville	government, neighborhood redevelopment, entertainment	\$1,000
Part 2: Host James Fisher interviews Del Dunmire from Growth Industries to talk about redevelopment of Harrisonville	government, neighborhood redevelopment, entertainment	\$1,000
Part 3: Host James Fisher interviews Del Dunmire from Growth Industries to talk about redevelopment of Harrisonville	government, neighborhood redevelopment, entertainment	\$1,000
Part 1: Host George Woods interviews KCMO-AM reporter Mike Troop talking about the plea agreement that was reached in the John E Robinson murder trial being held in Cass County.	crime and punishment, judicial system, government	\$1,000
Part 2: Host George Woods interviews KCMO-AM reporter Mike Troop talking about the plea agreement that was reached in the John E Robinson murder trial being held in Cass County.	crime and punishment, judicial system, government	\$1,000
Part 3: Host George Woods interviews KCMO-AM reporter Mike Troop talking about the plea agreement that was reached in the John E Robinson murder trial being held in Cass County.	crime and punishment, judicial system, government	\$1,000
Part 4: Host George Woods interviews KCMO-AM reporter Mike Troop talking about the plea agreement that was reached in the John E Robinson murder trial being held in Cass County.	crime and punishment, judicial system, government	\$1,000
Part 1: Host George Woods talks about Whooping Cough outbreak in Cass County.	public health, education, children's issues	\$1,000
Part 2: Host George Woods talks about Whooping Cough outbreak in Cass County.	public health, education, children's issues	\$1,000
Part 3: Host George Woods talks about Whooping Cough outbreak in Cass County.	public health, education, children's issues	\$1,000

Part 4: Host George Woods talks about Whooping Cough outbreak in Cass County.	public health, education, children's issues	\$1,000
Part 1: Host Scott Maymen interviews Operations Manager Denis Bagley from Harrisonville Animal Hospital on Pet Safety	pet care, animal rights and safety, recreation, pet adoption.	\$1,000
Part 2: Host Scott Maymen interviews Operations Manager Denis Bagley from Harrisonville Animal Hospital on Pet Safety	pet care, animal rights and safety, recreation, pet adoption.	\$1,000
Interview with Mark Buxton of the Missouri Health Services Department: The ongoing problem of Anti-Biotic resistance.	Health	\$2,500
Interview with Guyla Stidmon of the National Alliance for the Mentally Ill of Greater Kansas City Missouri Broadcasters Association - Dept of Transportation	Mental Health, Children's Issues, Education	\$2,500
Missouri Broadcasters Association - MO Army Nat'l Guard	public safety	\$6,200
Missouri Broadcasters Association - MO Army Nat'l Guard	public safety	\$12,600
Missouri Broadcasters Association - MO Army Nat'l Guard	public safety, employment	\$8,000
Missouri Broadcasters Association - MO Army Nat'l Guard	public safety, employment	\$7,800
Missouri Broadcasters Association - Dept of Transportation	public safety	\$8,200
Missouri Broadcasters Association - Make a Difference Day	education, community involvement	\$5,400
Missouri Broadcasters Association - MO Bar Association	education, crime	\$4,600
Missouri Broadcasters Association - US Coast Guard	employment, public safety	\$2,400

Missouri Broadcasters Association - Emergency Response	public safety, government	\$2,200
Missouri Broadcasters Association - US Coast Guard	public safety, employment	\$5,400
Missouri Broadcasters Association - Emergency Response	public safety, government	\$5,400
Missouri Broadcasters Association - MO Army Nat'l Guard	public safety, employment	\$16,000
Missouri Broadcasters Association - Missouri Bar Assn	public safety, education	\$10,600