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Cox Radio, Inc.
220 North Main Street, Suite 402
Greenville, SC 29604
RE: WHZT(FM)

Appalachian Broadcasting Company, Inc
P.O. Drawer E
Toccoa, GA 30577
RE: WGOG(FM)

Tugart Properties, LLC
P.O. Box E
Toccoa, GA 30577
RE: WSNW(AM)

RE: WHZT(FM), Seneca, South Carolina
Facility Identification Number: 5971
File No: BPH-20090819AGV

WGOG(FM), Walhalla, South Carolina
Facility Identification Number: 2462
File No. BPH-20090819AGW

WSNW(AM), Seneca, South Carolina
Facility Identification Number: 5969
File No. BP-20090819AGX

Dear Applicants:

This letter refers to (1) the minor change application of Cox Radio, Inc. ("Cox Radio"), licensee of Station WHZT(FM), Channel 251C0, Seneca, South Carolina, proposing the reallocation of Station WHZT(FM) from Channel 251C0 from Seneca, to Williamston, South Carolina, as its first local service (2) the minor change application of Appalachian Broadcasting Company, Inc. ("Appalachian Broadcasting"), permittee of Station WGOG(FM), Channel 288A, Walhalla, South Carolina, requesting the reallocation of Station WGOG(FM), Channel 288A from Walhalla, to Powdersville, South Carolina, as its first local service; (3) the minor change application of Tugart Properties, LLC ("Tugart Properties"), licensee of Station WSNW(AM), 1150 kHz, Seneca, South Carolina, proposing the reallocation of Station WSNW(AM), 1150 kHz, from Seneca, to Walhalla, South Carolina, to prevent removal of its potential sole local service. On December 10, 2009, Cox Radio filed an Informal Objection. On January 7, 2010,

Appalachian Broadcasting filed an Opposition to Informal Objection. For the reasons discussed below, we are granting the Stations WGOG(FM) and WSNW(AM) applications, dismissing the Station WHZT(FM) application, and denying Cox Radio's Informal Objection.

Background. These applications 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.¹ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² The Station WHZT(FM) application would provide a first local service to Williamston, while the Station WGOG(FM) application would provide a first local service to Powdersville combined with the Station WSNW(AM) application to prevent the removal of Walhalla's potential local service.³ In this instance, Station WHZT(FM) and Station WGOG(FM) applications both triggers Priority (3). Additionally, the Stations WHZT(FM) and WSNW(AM) applications propose to remove Seneca's only local services, which is against Commission's removal of sole local service prohibition.⁴ As such, the Station WGOG(FM) application combined with the Station WSNW(AM) application conflict with the Station WHZT(FM) application.

Cox Radio filed an Informal Objection. It states that the Stations WGOG(FM) and WSNW(AM) applications violate Section 73.3517(e) of the Rules, which state that only FM applicants are eligible to file contingent applications under this subsection. Additionally, Cox Radio states that the Station WGOG(FM) application is flawed because Powdersville is dependent on the Greenville, SC Urbanized Area. To this end, Cox Radio states that Powdersville only satisfies two⁵ of the eight *Tuck* criteria, demonstrating that Powdersville does not warrant a first local preference.⁶ As such, the Stations WGOG(FM) and

¹ 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).

² *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).

³ *Community of License*, 4 FCC Rcd 4870, n. 26 (stating that the Commission will evaluate the proposal in order to determine whether the combined service gains in community B and the allotment of first local transmission service in community C outweigh the loss of second local service in community A).

⁴ *Community of License*, 5 FCC Rcd at 7096; see also *In the Matter of Revision of Procedures Governing Amendments To FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*

⁵ Cox Radio concedes that Powdersville meets *Tuck* factors 2 and 7.

⁶ See *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*"). In making such a determination, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban community and central city, and most important of all, the independence of the suburban community. The Commission considers the following factors in determining a community's interdependence with a central city: (1) the extent to which community residents work in the large metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its

WSNW(AM) applications does not result in a preferential arrangement of allotments since the Station WGOG(FM) application is proposing a twelfth local service at Greenville. Thus, retaining Station WSNW(AM) at Seneca and WGOG(FM) as the sole local service at Walhalla outweighs providing an additional station to the Greenville, SC Urbanized Area.

Appalachian Broadcasting filed an Opposition to Informal Objection. It states that under current Commission policy, simultaneously-filed contingent AM and FM minor change applications are routinely accepted by the Commission.⁷ Moreover, Appalachian Broadcasting states that its submitted a *Tuck* showing with the Station WGOG(FM) application, demonstrating that Powdersville is independent of the Greenville, SC Urbanized Area.⁸ Appalachian Broadcasting contends that Powdersville warrants a first local preference.⁹ As such, it states that under the Commission's FM allotment priorities, a new first local service to a community with the larger population prevails.¹⁰ To the end, Appalachian Broadcasting states that a first local service at Powdersville (2000 U.S. Census pop. 5,362 persons) is preferred over a first local service at Willamston (2000 U.S. Census pop. 3,964 persons) under Priority 3.

Discussion. We deny Cox Radio's Informal Objection. In doing so, we find that under current Commission policy, we do process routinely, simultaneously-filed contingent AM and FM minor change applications. As such, the Station WSNW(AM) application, requesting the reallocation of the station from Seneca to Walhalla is contingent with the Station WGOG(FM) application, proposing the reallocation of

own zip code or telephone book provided by the local telephone company; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. *Tuck*, 3 FCC Rcd at 5378.

⁷ *Citing Columbus and Monona, Wisconsin*, Memorandum Opinion and Order, 21 FCC Rcd 10012 (MB 2005) and *Waverly, Alabama*, Report and Order, 24 FCC Rcd 10891 (MB 2009).

⁸ Appalachian Broadcasting agrees with Cox Radio that it concedes under *Tuck* factors 2 and 7 and does not qualify under *Tuck* factor 5. It claims, however, that Powdersville meets the requisite test of independence under *Tuck* factors 1, 4, 6, and 8. It argues that under factor 1, according to the 2000 U.S. Census, 9.67 percent (256 persons) of local residents work in Powdersville. *Citing Arlington and Boardman, Oregon*, Report and Order, 23 FCC Rcd 11174 (MB 2008)(stating that according to the 2000 U.S. Census, 10 percent, (49 of the 490 persons) of local residents of Iona). As to factor 3, Appalachian Broadcasting submitted sworn declarations from local community leaders and residents stating that Powdersville is regarded as separate and distinct, separate and apart, and independent from Greenville and the greater Greenville, SC Urbanized Area. Moreover, Powdersville is recognized by the U.S. Census Bureau as a Census Designated Place ("CPD") and identified on commercial maps. Under factor 4, it concedes that the fact that Powdersville has its own elected officials on the Anderson County Council satisfies this factor. Under factor 6, Appalachian Broadcasting states that Powdersville has numerous commercial businesses and health establishment that several identify themselves with Powdersville in their chosen names. As to factor 8, it states that Powdersville does not receive services for the Greenville metropolitan area.

⁹ Appalachian Broadcasting submitted a letter from the editor of the *Powdersville Post* stating that the U.S. Census misspells Powdersville as Powdersville. The correct spelling is Powdersville as identified by local residents and community leaders, local commercial establishments, the Anderson County council and the state of South Carolina and governmental maps.

¹⁰ *Citing West Liberty and Richwood, Ohio*, 6 FCC Rcd 6084 (MB 1991).

that station from Walhalla to Powdersville because the proposed Station WSNW(AM) application prevents the removal of Walhalla's potential sole local service.

In regards to the proposed Station WGOG(FM) reallocation to Powdersville, we disagree with Cox Radio's contention that Powdersville is dependent on the Greenville, SC Urbanized Area. In awarding a Priority (3) preference to Powdersville 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.¹¹ In this regard, Appalachian Broadcasting submitted a *Tuck* showing, demonstrating that Powdersville is independent of the Greenville, SC Urbanized Area, satisfying majority of the *Tuck* factors.¹² Therefore, we conclude that Powdersville warrants a first local preference since Powdersville is independent of the Greenville, SC Urbanized Area.

Both the Station WSNW(AM) reallocation application to Walhalla and the Station WHZT(FM) reallocation application to Williamston propose to remove Seneca's only two local services. To this end, the Commission strongly disfavors the removal of a community's sole local service. This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.¹³ However, the Commission emphasized in *Community of License Reconsideration Order* that "the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver." Rather, such a proposal "is presumptively contrary to the public interest. As such, the public has a legitimate expectation that existing service will continue, and this expectation is a factor weighed independently against the service benefits that may result from reallocation of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service. Therefore, we must compare the contingent Station

¹¹ *Id* note 6.

¹² Powdersville is a Census Designated community with a 2000 U.S. Census population of 5,362 persons. Powdersville is located 10 miles from the central city of Greenville. The reallocation of Station WGOG(FM) to Powdersville will cover 53 percent of the Greenville, SC Urbanized Area. The central city of Greenville is located in Greenville County, while Powdersville is located in Anderson County. Nearly 10 percent of Powdersville residents worked in Powdersville according to the 2000 U.S. Census.¹² Powdersville has its own weekly newspaper, the *Powdersville Press* and local newspaper, the *Powdersville Post*. Residents and community leaders perceived Powdersville as separate and distinct from Greenville. Municipal services are provided by Anderson County such as law enforcement, police and fire protection, and library system. However, Powdersville has its own utility company named Powdersville Water District. Powdersville schools are part of the Anderson County school district no. 1 (Anderson One). However, given Powdersville growth, the Anderson County school district is building an elementary, middle, and high school located in Powdersville, bearing Powdersville within each school's name. Powdersville has its own private Christian school named CrossPoint Christian Academy. Powdersville has no local government but elects its own member to Anderson County Council (District 6). Additionally, Powdersville has established the Powdersville Council to the Greater Easley Chamber of Commerce, which is governed by nine officers. Powdersville has local commercial establishments, churches, and health service providers. Powdersville is not part of the Greenville's advertising market since Powdersville has its own weekly and local newspapers. Powdersville shares its zip codes (29611 and 29673) with Greenville and does not have its own local telephone book.

¹³ See *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(stating that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest).

WGOG(FM) application to Powdersville, as its first local service combined with the Station WSNW(AM) application to Walhalla against the Station WHZT(FM) application to Williamston, as its first local service.

Conflicting proposals are considered on a comparative basis consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.¹⁴ In comparing a first local services under Priority (3), a first local services to Powdersville for Station WGOG(FM) (2000 U.S. Census pop. 5,362 persons) for Station WGOG(FM) combined with a first local service to Walhalla (2000 U.S. Census pop. 3,801 persons) for Station WSNW(AM) is preferred over a first local service to the *smaller* community of Williamston (2000 U.S. Census pop. 3,791 persons) as proposed by Station WHZT(FM). Therefore, we are granting the Stations WGOG(FM) and WSNW(AM) applications and dismissing the Station WHZT(FM) application. The reallocation of Station WGOG(FM) from Walhalla to Powdersville results in a preferential arrangements of allotments under Priority (3). To prevent removal of Walhalla's potential sole local service, we are reallocating Station WSNW(AM) from Seneca to Walhalla. Seneca will continue to receive local service from Station WHZT(FM).

Conclusion. Accordingly, IT IS ORDERED, That the December 10, 2009 Informal Objection filed by Cox Radio IS HEREBY DENIED. IT IS FURTHER ORDERED, That the aforementioned applications filed by Appalachian Broadcasting (File No. BPH-20090819AGW) and Tugart Properties, LLC (File No. BP-20090819AGX) ARE HEREBY GRANTED. IT IS FURTHER ORDERED, That the aforementioned application (File No. BPH-20090819AGV) IS HEREBY DISMISSED. This action is taken pursuant to Section 0.283 of the Commission's Rules.¹⁵

Sincerely,



Rodolfo Bonacci
Assistant Chief
Audio Division
Media Bureau

Cc: ROBERT J. FOLLIARD, III, ESQ.
DOW LOHNES PLLC

DAN J. ALPERT
THE LAW OFFICE OF DAN J. ALPERT

¹⁴ *Id.* n 2.

¹⁵ 47 CFR § 0.283.