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ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FILED/ACCEPTED

MAR - 8 2007

Federal Communications Commission  
Office of the Secretary

In re Application of

Indiana Community Radio Corporation )  
For a Minor Change in Licensed Facilities ) BPH-20070119AGQ  
Non-Commercial Educational Station )  
WJCF(FM), Morristown, Indiana )  
)

To: Office of the Secretary  
Attn: Audio Division, Media Bureau

**INFORMAL OBJECTION**

Cumulus Licensing LLC ("Cumulus"), by its counsel, hereby submits its objection to the above captioned minor change application filed by Indiana Community Radio Corporation ("ICRC"), licensee of noncommercial educational (NCE) Station WJCF(FM).<sup>1</sup> ICRC's application is its latest attempt to revive its defective proposal to allot Channel 262A at Morristown, Indiana for use by NCE Station WJCF(FM). However, as with its past attempts, this application is patently defective. Specifically, ICRC's proposed use of Channel 262A at Morristown, Indiana (i) conflicts with the allotment of Channel 262A at Edinburgh, Indiana for use by Station WYGB(FM),<sup>2</sup> and (ii) is defective because Channel 262A at Morristown has not been reserved for NCE use. Thus, the Commission must expeditiously dismiss the above captioned application. In support hereof, Cumulus states as follows:

<sup>1</sup> This Informal Objection is filed pursuant to Section 73.3587 of the Commission's Rules. ICRC raises false and unsupported allegations regarding Cumulus in its engineering statement attached to the above captioned application. In addition, ICRC's defective application conflicts with the Commission's decision in MB Docket No. 06-77, which involves a number of stations licensed to Cumulus. Thus, Cumulus is compelled to offer this brief Informal Objection.

<sup>2</sup> See *Burkesville, Kentucky, et al.*, 21 FCC Rcd 11465, ¶13 (Med. Bur. 2006).

1. ICRC attempted to allot Channel 262A at Morristown for use by NCE Station WJCF(FM) in both MB Docket Nos. 05-17 and 06-77. In both dockets the FCC summarily dismissed ICRC's proposal because of numerous technical and legal defects.<sup>3</sup> The above captioned application does nothing to correct these defects. As demonstrated in the channel study appended to its application, ICRC's proposed use of Channel 262A at Morristown is over eighty (80) kilometers short to Channel 262A at Edinburgh. This violates the FCC's minimum distance separation requirements contained in Section 73.207 of the Commission's Rules.

2. ICRC's failure to protect Channel 262A at Edinburgh is by itself grounds for dismissal of its application. However, its application is also defective because Channel 262A at Morristown has not been reserved for NCE use. Station WJCF(FM) currently operates on Channel 201A, which is a reserved NCE channel. While NCE stations are permitted to apply for a non-reserved FM channel, they cannot do so until the non-reserved channel (here Channel 262A) has been allotted (here to Morristown) and reserved for NCE use. This has not happened. Thus, ICRC's response to Question 13 in Section III-B on the above referenced application is patently false and the application should not have been "accepted for filing."<sup>4</sup>

3. Finally, ICRC also claims that Cumulus is in violation of the FCC's multiple ownership rules in Nashville, Tennessee.<sup>5</sup> This argument is false and unsupported by any evidence. As demonstrated in the attached BIA Report, Cumulus owns five FM stations in the

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<sup>3</sup> See *id.*; *Connersville, Indiana, et al.*, 20 FCC Rcd 18871, ¶¶ 13-14, 26 (Med. Bur. 2005). ICRC has filed a Petition for Reconsideration of the FCC's decision in MB Docket No. 06-77, which is still pending. A copy of (ii) Cumulus' Motion to Strike ICRC's Petition for Rule Making (Attachment 1), (ii) the FCC's Report and Order (*see* para. 13) (Attachment 2), and (iii) Cumulus' Opposition to ICRC's Petition for Reconsideration (Attachment 3) in MB Docket No. 06-77 are attached hereto.

<sup>4</sup> See 47 C.F.R. §73.203(a) (applications that specify a channel or community that is not contained in the FM Table of Allotments "will not be accepted for tender." (emphasis added)).


<sup>5</sup> See Engineering Statement. Cumulus also notes that ICRC continues to offer false and baseless allegations regarding Cumulus even though Cumulus' proposal in MB Docket No. 06-77 did not impact or conflict with the proposed operation of WJCF(FM) on Channel 262A at Morristown! Cumulus' proposal in that docket could be (and was) granted irrespective of whether Channel 262A was allotted to Morristown for use by WJCF(FM).

Nashville Arbitron Metro.<sup>6</sup> In addition, as noted by ICRC, Cumulus operates Station WSM(AM) pursuant to an LMA.<sup>7</sup> This combination complies with the FCC's multiple ownership rules because in the Nashville Arbitron Metro (which has 61 stations) one entity may have a cognizable interest in up to eight commercial full-power radio stations, not more than five of which are in the same service (AM or FM).<sup>8</sup>

The above captioned application clearly violates a number of the FCC's legal and technical rules and it makes baseless allegations against Cumulus and a number of other parties. The FCC should not allow parties to file these type of patently defective and frivolous applications. The best way to discourage these filings is to immediately dismiss the application.

Respectfully submitted,

CUMULUS LICENSING LLC

By:   
Mark N. Lipp  
Scott Woodworth  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006  
202-719-7503

March 8, 2007

Its Counsel

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<sup>6</sup> See Attachment 4.

<sup>7</sup> This LMA has been reported to the FCC. See, e.g., BOS-20061027AEW.

<sup>8</sup> See 47 C.F.R. §73.3555.

## ATTACHMENT 1

ORIGINAL

DOCKET FILE COPY ORIGINAL

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 06-77
Table of Allotments	)	RM-11324
FM Broadcast Stations	)	RM-11334
(Edinburgh, Hope, Versailles, and	)	
Tell City, Indiana, Burkesville, Greensburg,	)	
Hodgenville, Horse Cave, Lebanon,	)	
Lebanon Junction, Lewisport, Louisville,	)	
Lyndon, New Haven, Springfield,	)	
and St. Matthews, Kentucky,	)	
and Belle Meade, Goodlettsville,	)	
Hendersonville, Manchester,	)	
and Millersville, Tennessee)	)	

RECEIVED

AUG 22 2006

Federal Communications Commission  
Office of Secretary

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

**JOINT OPPOSITION TO MOTION TO ACCEPT LATE FILED  
COMMENTS AND MOTION TO STRIKE**

CXR Holdings, L.L.C. ("CXR"); Newberry Broadcasting, Inc.; Elizabethtown CBC, Inc.; Washington County CBC, Inc.; CBC of Marion County, Inc.; Cumulus Licensing LLC, and Edinburgh Radio (together the "Joint Parties"), by their respective counsel, hereby move to strike the "Petition for Rule Making Status Request and Reply Comments" and oppose the "Motion to Accept Late Filed Comments" filed by Indiana Community Radio Corporation ("ICRC") on August 7, 2006 (the "ICRC Pleadings"). Neither pleading is authorized and both are untimely. In support hereof, the Joint Parties state as follows:

1. It appears that the majority of the ICRC Pleadings relate to a proposal it filed in MB Docket No. 05-17.<sup>1</sup> ICRC believes that its proposals should be acted on by the FCC before CXR's proposal in this proceeding because it was filed first. However, ICRC fails to acknowledge that its first proposal was indeed acted on by the FCC in MB Docket No. 05-17. In fact, the FCC dismissed ICRC's proposal in that docket due to numerous technical and legal defects.<sup>2</sup> If ICRC was dissatisfied with the Commission's decision to dismiss its proposal, the proper forum to protest that decision would have been in MB Docket No. 05-17.<sup>3</sup> If ICRC believes that its amended proposal (filed in December 2005/January 2006) should be acted on before CSR's proposal in this proceeding, it is also wrong.<sup>4</sup> Because ICRC's amended proposal included a new community, it should be considered a new petition for rule making and subject to the freeze.<sup>5</sup>

2. Nevertheless, to the extent that ICRC is resubmitting its proposal in this proceeding, it is untimely, in violation of the current freeze on rule making petitions, and not shown to be in conflict with any proposal in this proceeding. Thus, the Commission has no choice but to strike the ICRC proposal and comments for these reasons. First, the *Notice of Proposed Rule Making* expressly stated that "[c]ounterproposals advanced in this proceeding

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<sup>1</sup> ICRC filed a number of proposals in MB Docket No. 05-17. The first was filed before the Report and Order was issued in that docket and was addressed by the FCC in the Report and Order. See *Connersville, Indiana, et al., Report and Order*, 20 FCC Rcd 18871, ¶¶ 13-14, 26 (2005). ICRC's other proposals were filed in December 2005 and January 2006 after the Report and Order that dismissed ICRC's first proposal was issued.

<sup>2</sup> *Id.* at ¶¶ 13-14, 26.

<sup>3</sup> MB Docket No. 05-17 is final because the time period for reconsideration or Commission review has expired. See 47 C.F.R. §§ 1.115, 1.117, 1.429.

<sup>4</sup> ICRC's proposals were actually contingent on the outcome of MB Docket No. 05-17, which by itself makes them defective. See *Okmulgee, Oklahoma et al.*, 10 FCC Rcd 12014 (1995) (Contingent proposals are unacceptable for filing, and must be dismissed). Furthermore, it is the policy of the Commission not to accept any rule making proposal that is contingent on the outcome of another rule making proceeding. *Saint Joseph, Clayton, Ruston, and Wisner, Louisiana*, 18 FCC Rcd 22 (2004). These are additional reasons why ICRC's proposals were dismissed by the Commission in MB Docket No. 05-17.

<sup>5</sup> See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Notice of Proposed Rule Making*, 20 FCC Rcd 11169, ¶ 47 (2005).

itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.”<sup>6</sup> The comment date in this proceeding was May 30, 2006. ICRC filed its Pleadings on August 7, 2006; over two months late. Second, even if it were a timely counterproposal, there is no evidence that it conflicts with any of the proposals in this proceeding. “A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made.”<sup>7</sup> The channel study that ICRC provides fails to show a conflict with any proposal in this proceeding. Finally, to the extent that ICRC’s proposal is a new proposal, it is defective because of the freeze on the filing of new petitions for rule making to amend the FM Table of Allotments.<sup>8</sup> For all of these reasons, the Commission must strike the ICRC proposal from this proceeding.<sup>9</sup>

3. In regard to the substantive comments made by ICRC, the Commission’s Rules provide a time for the submission of comments and reply comments to a notice of proposed rule making. 47 C.F.R. § 1.415(b)-(c). Again, in this proceeding, the comment date was May 30, 2006, and the reply comment date was June 13, 2006.<sup>10</sup> The Commission’s Rules further provide that “no additional comments may be filed unless specifically requested or authorized by the Commission.” 47 C.F.R. § 1.415(h). The ICRC Pleadings both contain material addressed to the merits of the proceeding. The Commission did not request or authorize either pleading.

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<sup>6</sup> See *Hodgenville, Kentucky, et al., Notice of Proposed Rule Making*, 21 FCC Rcd 3560, Appendix (2006) (“*Hodgenville NPRM*”).

<sup>7</sup> *Milton, West Virginia and Flemingsburg, Kentucky*, 11 FCC Rcd 6374 (1996).

<sup>8</sup> See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Notice of Proposed Rule Making*, 20 FCC Rcd 11169, ¶ 47 (2005).

<sup>9</sup> ICRC also failed to serve CXR or any other party in this proceeding as required by Section 1.420 of the Commission’s Rules and therefore made an *ex parte* presentation.

<sup>10</sup> See *Hodgenville NPRM*.

Both were filed after the deadline for filing comments and reply comments in this proceeding. Accordingly, both pleadings should be stricken as untimely.<sup>11</sup>

4. To the extent that the ICRC Pleadings can be considered reply comments on the CXR proposal - reply comments that were due at the Commission by August 1 - the only allegation made by ICRC that has any relevance whatsoever to this proceeding is that CXR's proposal to move Station WXCH(FM) from Versailles to Hope, Indiana, requires a *Tuck* showing. CXR agrees that a *Tuck* showing is required for Hope, Indiana, and thus it provided such a showing in its Counterproposal which demonstrated that Hope is independent of the Columbus, Indiana Urbanized Area.<sup>12</sup>

WHEREFORE, for the foregoing reasons, the Commission must strike the "Petition for Rule Making Status Request and Reply Comments" and reject the "Motion to Accept Late Filed Comments" filed by Indiana Community Radio Corporation ("ICRC") on August 7, 2006. They are untimely, contain numerous technical and legal defects, and do not raise any issues that are relevant to the outcome of this proceeding.

Respectfully Submitted,

CXR HOLDINGS, L.L.C.

By: K. Reed (by sum)  
Kevin F. Reed  
Christina H. Burrow  
Dow Lohnes PLC  
1200 New Hampshire Ave, NW  
Suite 800  
Washington, DC 20036  
202-776-2687

Its Counsel

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<sup>11</sup> See, e.g., *Rockport, Texas, et al.*, 4 FCC Rcd 8075 (1989); *Caliente, Nevada et al.*, 20 FCC Rcd 893 (2004).

<sup>12</sup> The remainder of the ICRC Pleadings are unsubstantiated allegations aimed at the Joint Parties and at parties not even involved in this proceeding. As such, they must be stricken.



NEWBERRY BROADCASTING, INC.  
ELIZABETHTOWN CBC, INC.  
CBC OF MARION COUNTY, INC.  
WASHINGTON COUNTY CBC, INC.  
EDINBURGH RADIO

By:

  
John F. Garziglia  
Womble Carlyle Sandridge & Rice  
1401 Eye Street, NW  
Seventh Floor  
Washington DC 20005  
202-467-6900

Their Counsel

CUMULUS LICENSING LLC

By:

\_\_\_\_\_  
Mark N. Lipp  
Scott Woodworth  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Ave, NW  
Suite 600  
Washington, DC 20004-1008  
(202) 639-6500

Its Counsel

August 22, 2006


615327

NEWBERRY BROADCASTING, INC.  
ELIZABETHTOWN CBC, INC.  
CBC OF MARION COUNTY, INC.  
WASHINGTON COUNTY CBC, INC.  
EDINBURGH RADIO

By: \_\_\_\_\_  
John F. Garziglia  
Womble Carlyle Sandridge & Rice  
1401 Eye Street, NW  
Seventh Floor  
Washington DC 20005  
202-467-6900

Their Counsel

CUMULUS LICENSING LLC

By:  \_\_\_\_\_  
Mark N. Lipp  
Scott Woodworth  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Ave, NW  
Suite 600  
Washington, DC 20004-1008  
(202) 639-6500

Its Counsel

August 22, 2006

615327

**CERTIFICATE OF SERVICE**

I, Diana Gonzales, in the law firm of Vinson & Elkins, do hereby certify that I have on this 22nd day of August, 2006, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Joint Opposition and Motion to Strike**" to the following:

\*Robert Hayne  
Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Columbus Radio, Inc.  
2470 N. State Highway 7  
North Vernon, IN 47765

Luther C. Conner, Jr.  
103 North Cross Street  
P.O. Box 177  
Albany, KY 42202-0177

Indiana Community Radio Corporation  
15 Wood Street  
Greenfield, IN 46140

  
\_\_\_\_\_  
Diana Gonzales

\* HAND DELIVERED

## ATTACHMENT 2

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

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MB Docket No. 06-77  
Table of Allotments, ) RM-11324  
FM Broadcast Stations. ) RM-11334  
(Burkesville, Greensburg, Hodgenville, Horse Cave, )  
Lebanon, Lebanon Junction, Lewisport, Louisville, )  
Lyndon, New Haven, Springfield and St. Matthews, )  
Kentucky, Edinburgh, Hope, Tell City and )  
Versailles, Indiana, Belle Meade, Goodlettsville, )  
Hendersonville, Manchester and Millersville, )  
Tennessee) )

MAILED

OCT 17 2006

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**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: October 11, 2006

Released: October 13, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding.<sup>1</sup> Elizabethtown CBC, CBC of Marion County, Inc., Washington County CBC, Inc., Newberry Broadcasting, Inc. and Cumulus Licensing LLC ("Joint Parties") filed Comments and Reply Comments. CXR Holdings, LLC, ("CXR Holdings") filed a Counterproposal and a Supplement. Indiana Community Radio Corporation ("Indiana Community") filed a "Petition for Rulemaking Status Request and Reply Comments" a "Motion to Accept Late Filed Comments" and a "Motion to Correct Errors." CXR Holdings and the Joint Parties filed a "Joint Opposition to Motion to Accept Late Filed Comments and Motion to Strike." For the reasons discussed below, we are modifying the licenses of eight stations to specify a new community of license. This will result in first local service to four communities. To accommodate these actions, we are substituting channels at five communities.

2. **Background.** At the request of the Joint Parties, the *Notice* in this proceeding proposed nine city of license modifications. Included among those proposals was a request to reallocate Channel 274A from Springfield, Kentucky, to New Haven, Kentucky, and modify the Station WLSK to specify New Haven as the community of license. These requests were filed pursuant to Section 1.420(i) 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.<sup>2</sup> In evaluating a proposal, we compare the existing versus the proposed arrangement of allotments using the FM

<sup>1</sup> *Hodgenville, Horse Cave, Lebanon, Lebanon Junction, New Haven and Springfield, Kentucky, and Belle Meade, Goodlettsville, Hendersonville, Manchester and Millersville, Tennessee*, Notice of Proposed Rule Making, 21 FCC Rcd 3560 (MB 2006).

<sup>2</sup> *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).

allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>3</sup>

3. In response to the *Notice*, CXR Holdings, licensee of Station WRKA, Channel 276A, St. Matthews, Kentucky, filed a Counterproposal. In that Counterproposal, CXR Holdings proposed the substitution of Channel 276C2 for Channel 276A at St. Matthews, reallocation of Channel 276C2 to Lyndon, Kentucky, and modification of its Station WRKA license to specify operation on Channel 276C2 at Lyndon. In order to accommodate this reallocation and upgrade, CXR Holdings proposes a series of channel substitutions and reallocations involving eight communities in Indiana and Kentucky. Included among these proposals is the proposed substitution of Channel 274A for Channel 275C3 at Tell City, Indiana, reallocation of Channel 274A to Lewisport, Kentucky, and modification of the Station WLME license to specify operation on Channel 274A at Lewisport. The proposed Channel 274A reallocation to Lewisport conflicted with the proposed reallocation of Channel 274A to New Haven, Kentucky, as set forth in the *Notice*. In Reply Comments, Washington County CBC, Inc., licensee of Station WYSB, Channel 274A, Springfield, Kentucky, and one of the Joint Parties, withdrew its interest in pursuing the reallocation of Channel 274A to New Haven. As such, there is no longer any conflict between the Joint Parties' proposal and the CXR Counterproposal.

4. **Discussion.** As requested, we are substituting Channel 294C3 for Channel 294A at Belle Meade, Tennessee, reallocating Channel 294C3 to Millersville, Tennessee, and are modifying the Station WNFN license to specify operation on Channel 294C3 at Millersville.<sup>4</sup> This reallocation will result in a first local service to Millersville while Belle Meade will continue to receive local service from Station WRQQ. The population losing service will continue to be served by more than five services.<sup>5</sup> Belle Meade and Millersville are both located in the Nashville-Davidson Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedents.<sup>6</sup> In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most important of all, the independence of the suburban community. Because, in this situation, Belle Meade and Millersville are already located in the Nashville-Davidson Urbanized Area, this relocation does not

<sup>3</sup> *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).

<sup>4</sup> The reference coordinates for the Channel 294C3 allotment at Millersville, Tennessee, are 36-26-24 and 86-37-39.

<sup>5</sup> The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, Decision, 53 RR 2d 662, (Rev. Bd. 1983), *rev. denied*. FCC 83-559 (Comm'n Nov. 29, 1983); *see also LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

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

implicate Commission policy with respect to the migration of stations from rural to urban areas.<sup>7</sup> In any event, the Joint Parties have submitted a *Tuck* exhibit demonstrating that Millersville is independent of the Nashville-Davidson Urbanized Area and entitled to consideration as a first local service.

5. In order to accommodate Channel 294C3 at Millersville, we are substituting Channel 293A for Channel 294A at Horse Cave, Kentucky, and are modifying the Station WHHT license to specify operation on Channel 293A.<sup>8</sup> Newberry Broadcasting, Inc., licensee of Station WHHT and one of the Joint Parties, has agreed to this channel substitution. To accommodate the Channel 293A substitution at Horse Cave, we are substituting Channel 297A for Channel 292A at Hodgenville, Kentucky, and are modifying the Station WKMO license to specify operation on Channel 297A.<sup>9</sup> Elizabethtown Broadcasting, Inc., licensee of Station WKMO and one of the Joint Parties, has agreed to the channel substitution and change in transmitter site. In order to accommodate the Channel 297A substitution at Hodgenville, we are substituting Channel 257A for Channel 297A at Lebanon Junction, Kentucky, and are modifying the Station WTHX license to specify operation on Channel 257A.<sup>10</sup> Elizabethtown Broadcasting, Inc. is also the licensee of Station WTHX and has again agreed to the channel substitution and change in transmitter site.

6. In order to replace the loss of the sole local service at Belle Meade, we are reallocating Channel 246C2 from Goodlettsville, Tennessee, to Belle Meade, and are modifying the Station WRQQ license to specify Belle Meade as the community of license.<sup>11</sup> This reallocation does not require a change in the Station WRQQ transmitter site. To avoid depriving Goodlettsville of its sole local service, we are reallocating Channel 221A from Hendersonville, Tennessee, to Goodlettsville and are modifying the Station WQQK license to specify Goodlettsville as the community of license.<sup>12</sup> This reallocation does not require relocation of the Station WQQK transmitter site. Cumulus Licensing LLC, licensee of Station WQQK and one of the Joint Parties, has agreed to the change in community of license. In order to avoid the loss of the sole local service at Hendersonville, we are substituting Channel 259C0 for Channel 259C at Manchester, Tennessee, reallocating Channel 259C0 to Hendersonville, and are modifying the Station WWTN license to specify operation on Channel 259C0 at Hendersonville.<sup>13</sup> Manchester will continue to receive local service

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<sup>7</sup> See *Boulder and Lafayette, Colorado*, Notice of Proposed Rule Making, 11 FCC Rcd 3632 (MMB 1996); *East Los Angeles, Long Beach and Frazier Park, California*, Report and Order, 10 FCC Rcd 2864 (MMB 1995).

<sup>8</sup> The reference coordinates for the Channel 293A allotment at Horse Cave, Kentucky, are 37-13-57 and 85-52-06.

<sup>9</sup> The reference coordinates for the Channel 297A allotment at Hodgenville, Kentucky, are 37-40-34 and 85-40-57.

<sup>10</sup> The reference coordinates for the Channel 257A allotment at Lebanon Junction, Kentucky, are 37-44-37 and 85-38-52.

<sup>11</sup> The reference coordinates for the Channel 246C2 allotment at Belle Meade, Tennessee, are 36-17-50 and 86-45-11.

<sup>12</sup> The reference coordinates for the Channel 221A allotment at Goodlettsville, Tennessee, are 36-17-50 and 86-45-11.

from Station WFTZ and Station WMSR. Cumulus Licensing LLC, licensee of Station WWTN, has agreed to the reclassification and change in community of license.

7. The *Notice* proposed the reallocation of Channel 274A from Springfield to New Haven, Kentucky, and modification of the Station WYSB license to New Haven as the community of license. To replace the loss of the sole local service at Springfield, the *Notice* also proposed the substitution of Channel 265A for Channel 265C3 at Lebanon, Kentucky, reallocation of Channel 265A to Springfield, and modification of the Station WLSK license to specify operation on Channel 265A at Springfield. Subsequently, Washington County CBC, Inc., licensee of Station WYSB, withdrew its interest in reallocating its channel to New Haven. As a consequence, CBC of Marion County, Inc., licensee of Station WLSK, also withdrew its proposal. Both Washington County CBC, Inc. and CBC of Marion County, Inc. filed statements pursuant to Section 1.420(j) of the Rules certifying that they have not and will not receive any consideration for the withdrawals of their respective expressions of interest.<sup>14</sup> As a result of the withdrawal of the proposed reallocation of Channel 274A to New Haven, there is no longer any impediment to consideration of the CXR Holdings Counterproposal.

8. As requested in the CXR Holdings Counterproposal, we are substituting Channel 276C2 for Channel 276A at St. Matthews, Kentucky, reallocating Channel 276C2 to Lyndon, Kentucky, and are modifying the Station WRKA license to specify operation on Channel 276C2 at Lyndon.<sup>15</sup> This will provide a first local service to Lyndon. Both St. Matthews and Lyndon are located in the Louisville Urbanized Area. As discussed earlier, since these communities are already located in the Urbanized Area, this reallocation does not implicate Commission policy with respect to the migration of stations from rural to urban areas. In any event, CXR Holdings has noted that Lyndon is an incorporated with a 2000 U.S. Census population of 10,270 persons. Lyndon has its own local government as well as over 500 local businesses, civic organizations and churches. In order to accommodate the Channel 276C2 allotment at Lyndon, we are substituting Channel 275A for Channel 276A at Versailles, Indiana, reallocating Channel 275A to Hope, Indiana, and are modifying the Station WXCH license to specify operation on Channel 275A at Hope.<sup>16</sup> Columbus Radio, Inc., licensee of Station WXCH, has agreed to this modification of its license. This will provide Hope with a first local service while Versailles will continue to receive local service from Station WKRY. While Hope is not located in any Urbanized Area, Station WXCH will provide a 70 dBu signal to 86 percent of the Columbus, Indiana Urbanized Area. Accordingly, CXR submitted a *Tuck* showing demonstrating that Hope is entitled to consideration as a first local service.<sup>17</sup> Hope is an incorporated community with a 2000 U.S. Census population of 2,140 persons. This population represents

<sup>13</sup> The reference coordinates for the Channel 259C0 allotment at Hendersonville, Tennessee, are 35-49-03 and 86-31-24.

<sup>14</sup> 47 C.F.R. § 1.420(j).

<sup>15</sup> The reference coordinates for the Channel 276C2 allotment at Lyndon, Kentucky, are 38-23-57 and 85-36-56.

<sup>16</sup> The reference coordinates for the Channel 275A allotment at Hope, Indiana, are 39-19-29 and 85-53-41.

<sup>17</sup> See *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).



approximately 5.5 percent of the population of Columbus, Indiana.<sup>18</sup> Also, Hope is located fifteen miles from Columbus and Station WXCH operates on Channel 275A.<sup>19</sup> CXR Holdings has also demonstrated that Hope is independent of Columbus. Hope has its own local government and elected town council. Hope has its own police and fire departments, city library and a water and sewage Department. There are three schools located in Hope as well as local churches and civic organizations. Finally, Hope has its own zip code, Post Office and local businesses.

9. In order to allot Channel 275A to Hope, we are substituting Channel 262A for Channel 275A at Edinburgh, Indiana, and are modifying the Station WYGB license to specify operation on Channel 262A.<sup>20</sup> Edinburgh Radio, licensee of Station WYGB, has agreed to this channel substitution and CXR Holdings has agreed to reimburse Edinburgh Radio for its reasonable expenses in changing the Station WYGB channel.

10. In order to accommodate the allotment of Channel 276C2 to Lyndon, Kentucky, we are substituting Channel 274A for Channel 275C3 at Tell City, Indiana, reallocating Channel 274A to Lewisport, Kentucky, and are modifying the Station WLME license to specify operation on Channel 274A at Lewisport.<sup>21</sup> This will provide Lewisport with a first local service. Tell City will continue to receive local service from AM Station WTCJ. Hancock Communications, Inc., licensee of Station WLME, has agreed to the modification of its Station license as well as the change in transmitter site. The population losing service will continue to receive in excess of five aural services.

11. The modification of the Station WKRA license to specify Lyndon as the new community of license removes the sole local service from St. Mathews, Kentucky. In order to replace the loss of this sole local service, we are reallocating Channel 295B from Louisville, Kentucky, to St. Mathews, and modifying the Station WVEZ license to specify St. Mathews as the community of license.<sup>22</sup> CXR Holdings is the licensee of Station WVEZ. This change in community of license does not require a change in channel or transmitter site.

12. In order to allot Channel 276C2 to Lyndon, we are also substituting Channel 289A for Channel 276A at Greensburg, Kentucky, and are modifying the Station WGRK-FM license to specify operation on

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<sup>18</sup> See e.g. *Kankakee and Forest Park, Illinois*, Report and Order, 16 FCC Rcd 6768 (MB 2001) (finding Park Forest independent of Chicago with a population 0.8 percent of the central city); *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (finding Newcastle independent of Oklahoma City with a population 0.9 percent of the central city).

<sup>19</sup> See e.g. *Mullins and Briarcliffe Acres, South Carolina*, Report and Order, 14 FCC Rcd 10516 (MMB 1999) (finding Briarcliffe independent of the Myrtle Beach Urbanized Area with a four-mile separation); *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia*, Report and Order, 11 FCC Rcd 5758 (MMB 1996) (finding Fort Lee independent of the Petersburg Urbanized Area with a three-mile separation).

<sup>20</sup> The reference coordinates for the Channel 262A allotment at Edinburgh, Indiana, are 39-15-37 and 86-06-21.

<sup>21</sup> The reference coordinates for the Channel 274A allotment at Lewisport, Kentucky, are 37-47-44 and 86-50-58.

<sup>22</sup> The reference coordinates for the Channel 295B allotment at St. Matthews, Kentucky, are 38-22-19 and 85-49-33.

Channel 289A.<sup>23</sup> Green County CBC, Inc., licensee of Station WGRK-FM, has agreed to this channel substitution, and CXR Holdings has agreed to reimburse Green County CBC, Inc. for the costs of changing its channel.

13. On August 7, 2006, after the May 30, 2006, comment date and June 13, 2006, reply comment date in this proceeding, Indiana Community filed a "Petition for Rulemaking Status Request and Reply Comments." Indiana Community is the licensee of noncommercial educational FM Station WJCF, Channel 201A, Morristown, Indiana. In this pleading, Indiana Community refers to the dismissal of its Counterproposal in MB Docket No. 05-17.<sup>24</sup> In that proceeding, Indiana Community requested the modification of its Station WJCF license to specify operation on Channel 262A and have this allotment reserved for noncommercial educational use. We dismissed that proposal because it was contingent on the reallocation of Channel 262A from Connersville, Indiana, to Norwood, Ohio, and, as such, was not a valid counterproposal in that proceeding. We also noted that the proposed Channel 262A allotment would be short-spaced to the licensed site of Station WWKI, Channel 263B, Kokomo, Indiana. Indiana Community did not seek reconsideration of that action.<sup>25</sup> A Channel 262A allotment at Morristown does not conflict with any proposal in this proceeding and there is reason or basis to consider this proposal in connection with our resolution of this docket. Subsequently, Indiana Community filed a "Motion to Correct Errors." Again, this pleading was not served on the other parties in either this proceeding or MB Docket No. 05-17. This *ex parte* presentation will not be considered in the context of resolving this proceeding.<sup>26</sup>

14. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

15. Accordingly, pursuant to authority contained in Sections 4(i), 5 (c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 27, 2006, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<sup>23</sup> The reference coordinates for the Channel 289A allotment at Greensburg, Kentucky, are 37-14-09 and 85-27-56.

<sup>24</sup> *Connersville, Madison and Richmond, Indiana, Erlanger and Lebanon, Kentucky, and Norwood, Ohio; and Lebanon, Lebanon Junction, New Haven and Springfield, Kentucky*, Report and Order, 20 FCC Rcd 18871 (MB 2005).

<sup>25</sup> Instead, after the release of the *Report and Order*, Indiana Community filed an "amendment" to its proposal requesting that the Station WJCF community of license be changed to Shelbyville, Indiana. The specification of a new community in a rulemaking proceeding must be filed by the comment deadline. Accordingly, this counterproposal is grossly untimely in contravention of Section 1.420(d) of the Commission's Rules which requires that counterproposals be filed by the comment date.

<sup>26</sup> In this pleading, Indiana Community references eight pending FM translator applications. A translator is a secondary service and may not cause interference to any primary station. In the event a final rulemaking proceeding impacts a pending translator application, the applicant may file a minor amendment to that application.

<u>City</u>	<u>Channel No.</u>
Edinburgh, Indiana	262A
Hope, Indiana	275A
Greensburg, Kentucky	289A
Hodgenville, Kentucky	297A
Horse Cave, Kentucky	293A
Lebanon Junction, Kentucky	257A
Lewisport, Kentucky	274A
Louisville, Kentucky	248C1, 259B, 263C2, 272A, 280A
Lyndon, Kentucky	276C2
St. Matthews, Kentucky	295B
Belle Meade, Tennessee	246C2
Goodlettsville, Tennessee	221A
Hendersonville, Tennessee	259C0
Manchester, Tennessee	268A
Millersville, Tennessee	294C3

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cumulus Licensing LCC for Station WNFN, Channel 294A, Belle Meade, Tennessee, IS MODIFIED to specify operation on Channel 294C3 at Millersville, Tennessee, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit and commencement of operation by Station WRQQ as a Belle Meade facility, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

17. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Newberry Broadcasting, Inc. for Station WHHT, Channel 294A, Horse Cave, Kentucky, IS MODIFIED, to specify operation on Channel 2293A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

18. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Elizabeth Broadcasting, Inc. for Station WKMO, Channel 292A, Hodgenville, Kentucky, IS MODIFIED, to specify operation on Channel 297A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

19. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Elizabeth Broadcasting Inc. for Station WTHX, Channel 297A, Lebanon Junction, Kentucky, IS MODIFIED, to specify operation on Channel 257A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

20. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cumulus Licensing LLC for Station WRQQ, Channel 246C2, Goodlettsville,

Tennessee, IS MODIFIED, to specify Belle Meade, Tennessee, as the community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit and commencement of operation by Station WQQK as a Goodlettsville facility, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

21. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cumulus Licensing LLC for Station WQQK, Channel 221A, Hendersonville, Tennessee, IS MODIFIED, to specify Goodlettsville as the community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit and commencement of operation by Station WWTN as a Hendersonville facility, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

22. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cumulus Licensing LLC for Station WFTZ, Channel 259C, Manchester, Tennessee, IS MODIFIED, to specify operation on Channel 259C0 at Hendersonville, Tennessee, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

24. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of CXR Holdings, L.L.C. for Station WRKA, Channel 276A, St. Matthews, Kentucky, IS MODIFIED, to specify operation on Channel 276C2 at Lyndon, Kentucky, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

25. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Columbus Radio, Inc. for Station WXCH, Channel 276A, Versailles, Indiana, IS MODIFIED, to specify operation on Channel 275A at Hope, Indiana, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

26. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Edinburgh Radio for Station WYGB, Channel 275A, Edinburgh, Indiana, IS MODIFIED, to specify operation on Channel 262A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the

Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

27. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Hancock Communications, Inc. for Station WLME, Channel 275C3, Tell City, Indiana, IS MODIFIED, to specify operation on Channel 274A at Lewisport, Kentucky, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

28. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of CXR Holdings, L.L.C. for Station WVEZ, Channel 295B, Louisville, Kentucky, IS MODIFIED, to specify St. Matthews, Kentucky, as the community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

29. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Green County CBC, Inc., for Station WGRK-FM, Channel 276A, Greensburg, Kentucky, IS MODIFIED to specify operation on Channel 289A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

30. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, the licensees receiving an upgrade and/or change in community of license are required to submit a rulemaking fee in addition to the fee required for the application to affect the upgrade and/or change in community of license.

31. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

32. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

33. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief,  
Audio Division  
Media Bureau



## ATTACHMENT 3

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 06-77
Table of Allotments	)	RM-11324
FM Broadcast Stations	)	RM-11334
(Edinburgh, Hope, Versailles, and	)	
Tell City, Indiana, Burkesville, Greensburg,	)	
Hodgenville, Horse Cave, Lebanon,	)	
Lebanon Junction, Lewisport, Louisville,	)	
Lyndon, New Haven, Springfield,	)	
and St. Matthews, Kentucky,	)	
and Belle Meade, Goodlettsville,	)	
Hendersonville, Manchester,	)	
and Millersville, Tennessee)	)	

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Newberry Broadcasting, Inc., Elizabethtown CBC, Inc., and Cumulus Licensing LLC (the "Joint Parties"), by their respective counsel, hereby oppose the Petition for Reconsideration filed by Indiana Community Radio Corporation ("ICRC") in the above captioned proceeding.<sup>1</sup> ICRC attempts to revive its defective proposal to allot Channel 262A at Morristown, Indiana for use by non-commercial educational Station WJCF(FM). However, the Media Bureau dismissed

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<sup>1</sup> The FCC released ICRC's Petition for Reconsideration in the Federal Register on December 20, 2006. The deadline for filing oppositions is January 4, 2007. See Report No. 2798. Thus, this Opposition is timely. Indiana University also filed a Petition for Reconsideration and the Joint Parties are contemporaneously filing a separate Opposition to that petition. Also, the FCC's Electronic Comment Filing System (ECFS) indicates that a number of letters have been filed in support of Indiana University's Petition. None of these letters were served on the Joint Parties and some of these letters lack a return address. Nevertheless, the Joint Parties are serving a copy of this Opposition on the individuals who provided a return address.

this proposal because, *inter alia*, it “does not conflict with any proposal in this proceeding.”<sup>2</sup> ICRC also raises for the first time a number of unrelated arguments, all of which are unsupported by any factual or technical showing. In addition, these arguments are frivolous and have no legal basis. Therefore, the FCC must dismiss ICRC’s Petition expeditiously so that the public can realize the benefits of the Joint Parties’ proposal. In support hereof, the Joint Parties state as follows:

1. The *NPRM* in this proceeding was released in response to a proposal filed by the Joint Parties on March 21, 2005.<sup>3</sup> On May 30, 2006, CXR Holdings, LLC (“CXR”) filed a Counterproposal in response to the *NPRM*. Both the Joint Parties’ proposal and CXR’s Counterproposal proposed a number of changes to the FM Table of Allotments that will serve the public interest. While both of these proposals were originally in conflict, the parties were able to propose a plan to eliminate the conflict, and on October 13, 2006, the FCC granted both the Joint Parties’ proposal (as amended) and CXR’s Counterproposal.

2. At the outset, the Joint Parties note that ICRC’s proposal does not conflict with the Joint Parties’ proposal. Thus, even if the FCC grants the relief requested by ICRC, it will have no impact on the Joint Parties proposal. Thus, the Joint Parties are contemporaneously filing a Request to Sever their proposal from this proceeding so that it can be granted by final order and the public interest benefits can be realized in a timely manner.

3. It appears that the main thrust of ICRC’s Petition relates to a proposal it originally filed in MB Docket No. 05-17,<sup>4</sup> and attempted to refile in this proceeding. More specifically,

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<sup>2</sup> See *Burkesville, Kentucky, et al.*, Report and Order, 21 FCC Rcd 11465, ¶13 (MB 2006) (“*R&O*”).

<sup>3</sup> See *Hodgenville, Kentucky, et al.*, Notice of Proposed Rule Making, 21 FCC Rcd 3560 (2006) (“*NPRM*”).

<sup>4</sup> ICRC filed a number of proposals in MB Docket No. 05-17. The first was filed before the Report and Order was issued in that docket and was addressed by the FCC in the Report and Order. See *Connersville, Indiana, et al.*,

ICRC is attempting to allot Channel 262A at Morristown, Indiana for use by non-commercial educational Station WJCF(FM) in violation of the FCC's procedural and technical rules. ICRC believes that its proposal should have been acted on by the FCC before resolution of this proceeding because ICRC's proposal was filed first. However, ICRC fails to acknowledge that its first proposal was indeed acted on by the FCC in MB Docket No. 05-17. In fact, the FCC dismissed ICRC's proposal in that docket due to numerous technical and legal defects.<sup>5</sup> If ICRC was dissatisfied with the Commission's decision to dismiss its proposal, the proper forum to protest that decision would have been in MB Docket No. 05-17.<sup>6</sup>

4. ICRC attempted to cure all of these defects with its proposal in MB Docket No. 05-17 by filing it in this proceeding. However, it still contained numerous procedural and technical defects and was properly dismissed by the Bureau. More specifically, it was untimely, in violation of the current freeze on rule making petitions,<sup>7</sup> and not shown to be in conflict with any proposal in this proceeding. Thus, the Bureau had no choice but to strike the ICRC proposal and comments for these reasons. The *Notice of Proposed Rule Making* expressly stated that "[c]ounterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be

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Report and Order, 20 FCC Rcd 18871, ¶¶ 13-14, 26 (2005). ICRC's other proposals were filed in December 2005 and January 2006 after the Report and Order that dismissed ICRC's first proposal was issued.

<sup>5</sup> *Id.* at ¶¶ 13-14, 26. ICRC's proposals were actually contingent on the outcome of MB Docket No. 05-17, which by itself makes them defective. See *Okmulgee, Oklahoma et al.*, 10 FCC Rcd 12014 (MMB 1995) (Contingent proposals are unacceptable for filing, and must be dismissed). Furthermore, it is the policy of the Commission not to accept any rule making proposal that is contingent on the outcome of another rule making proceeding. *Saint Joseph, Clayton, Ruston, and Wisner, Louisiana*, 18 FCC Rcd 22 (MB 2004). These are additional reasons why ICRC's proposals were dismissed by the Commission in MB Docket No. 05-17.

<sup>6</sup> MB Docket No. 05-17 is final because the time period for reconsideration or Commission review has expired. See 47 C.F.R. §§ 1.115, 1.117, 1.429.

<sup>7</sup> See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, *Notice of Proposed Rule Making*, 20 FCC Rcd 11169, ¶ 47 (2005).

considered if advanced in reply comments.”<sup>8</sup> The comment date in this proceeding was May 30, 2006. ICRC filed its proposal on August 7, 2006; over two months late. Further, even if it were a timely counterproposal, there is no evidence that it conflicts with any of the proposals in this proceeding. “A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made.”<sup>9</sup> The channel study that ICRC provides fails to show a conflict with any proposal in this proceeding. Thus, for this reason, the Bureau dismissed ICRC’s proposal.

5. ICRC also raises a number of unrelated arguments, all of which are false and unsupported by any factual or technical showing. First, ICRC claims that Cumulus is in violation of the FCC’s multiple ownership rules in Nashville.<sup>10</sup> In addition to the fact that this argument is false and unsupported by any evidence, it is also irrelevant to the outcome of this proceeding. It is established policy that the FCC does not consider ownership issues in conjunction with an allotment rulemaking proceeding.<sup>11</sup> Rather, any issue with respect to compliance with Section 73.3555 of the Rules will be considered in conjunction with the applications to implement the reallocation.<sup>12</sup> Second, ICRC raises an issue with the renewal of Station WRKA(FM), which was granted over two years ago (on September 7, 2004).<sup>13</sup> In addition to being untimely, false, and unsupported by any evidence, this argument again is raised in the wrong proceeding. If ICRC believed that there was an issue with Station WRKA(FM)’s

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<sup>8</sup> See *NPRM*, 21 FCC Rcd at Appendix.

<sup>9</sup> *Milton, West Virginia and Flemingsburg, Kentucky*, 11 FCC Rcd 6374 (MMB 1996).

<sup>10</sup> See ICRC Petition at p. 1.

<sup>11</sup> See *Chillicothe and Asheville, Ohio*, 17 FCC Rcd 22410 (MB 2002), *recon. denied*, 18 FCC Rcd 22410 (MB 2003), *Application for Review pending*. See also, *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 17 FCC Rcd 25055 (MMB 2002); and Letter from Peter H. Doyle, Acting Chief, Audio Services Division, to Paul A. Cicelski, Esq. et al., File No. BAPH-20011101ABD (May 24, 2001).

<sup>12</sup> See *Chillicothe, Dublin, Hillsboro, and Marion, Ohio*, 20 FCC Rcd 6305, ¶ 16 (MB 2005).

<sup>13</sup> See ICRC Petition at p. 1.

renewal application, it should have raised the issue two and a half years ago when the renewal application was released on public notice. Finally, ICRC claims that the Hope, Indiana allocation is short spaced to a construction permit for WRZX.<sup>14</sup> However, ICRC does not specify which permit and does not provide a channel study to demonstrate this short spacing. Also, a review of CDBS reveals that when ICRC filed its Petition Station WRZX(FM) did not have a construction permit.<sup>15</sup>

6. ICRC's Petition attempts to revive a defective proposal that has been denied by the FCC on numerous occasions and it makes unsupported and false allegations against the Joint Parties and their proposals. As demonstrated herein, none of these arguments have any legal basis and seem to do nothing more than delay the outcome of this proceeding. Thus, the FCC must strike ICRC's Petition expeditiously so that the public can realize the benefits of the Joint Parties' proposal.

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<sup>14</sup> See ICRC Petition at p. 1.

<sup>15</sup> Station WRZX(FM) subsequently filed a modification of license application on December 8, 2006 (BMLH-20061208ACR). However, this application was required to protect the new Hope allocation.

Respectfully Submitted,

NEWBERRY BROADCASTING, INC.  
ELIZABETHTOWN CBC, INC.

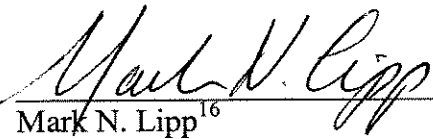
By:

  
John F. Garziglia  
Womble Carlyle Sandridge & Rice  
1401 Eye Street, NW  
Seventh Floor  
Washington DC 20005  
202-467-6900

Their Counsel

CUMULUS LICENSING LLC

By:

  
Mark N. Lipp<sup>16</sup>  
Scott Woodworth  
Wiley Rein & Fielding LLP  
1776 K Street, NW  
Washington, DC 20006  
202-719-7503

Its Counsel

December 29, 2006

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<sup>16</sup> Please note the change in address for Cumulus' counsel for the purpose of service.

### CERTIFICATE OF SERVICE

I, Faye Jones, in the law firm of Wiley Rein & Fielding LLP, do hereby certify that I have on this 29th day of December, 2006, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Opposition**" to the following:

\* Robert Hayne  
Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Kevin F. Reed  
Christina H. Burrow  
Robert J. Folliard, III  
Dow Lohnes PLC  
1200 New Hampshire Ave, NW  
Suite 800  
Washington, DC 20036  
(*Counsel to CXR Holdings, L.L.C.*)

Indiana Community Radio Corporation  
Jennifer Cox-Hensley  
15 Wood Street  
Greenfield, IN 46140

The Honorable Richard G. Lugar  
United States Senate  
306 Hart Senate Office Building  
Washington, DC 20510

The Honorable Evan Bayh  
United States Senate  
463 Russell Senate Office Building  
Washington, DC 20510

Marcus Reed  
118 S. College Avenue  
Bloomington, IN 47404

David C. Fischer, CFA  
Reinsurance Group of America  
1370 Timberlake Manor Parkway  
Chesterfield, MO 63017-6039

Christine E. Riveire  
336 Transylvania Park  
#10  
Lexington, KY 40508

Candace J. McLaughlin  
7022 White Oak Avenue  
Hammond, IN 46324

Judy S. Yarbor  
110 S. Weber Drive  
Haubstadt, IN 47639-8130

Natalie Yarbor  
Indiana University  
110 S. Weber Drive  
Haubstadt, IN 47639

Bill Yarbor  
110 South Weber Drive  
Haubstadt, IN 47639

Daniel Pierce  
5321 East State Road 46  
Bloomington, IN 47401

Mary M. Donovan  
2109 Evans Road  
Flossmoor, IL 60422



Teresa and James Noonan  
618 South 11<sup>th</sup> Street  
Lafayette, IN 47905

Wyatt Travis Clark  
1100 S. Woodlawn Avenue  
Apt. 7  
Bloomington, IN 47401

Jennifer Jameson  
555 Lynwood Drive  
Encinitas, CA 92024

Laura Littlepage  
4003 Towhees Drive  
Indianapolis, IN 46237

Marlene Connor  
1409 W. Zedler Lane  
Mequon, WI 53092

Thomas A. Heller  
410 6<sup>th</sup> Street  
Columbus, IN 47201

Jeff Kuehl  
107 ½ E. Main Street  
Greensburg, In 47240

James M. Sloan  
2109 Evans Road  
Flossmoor, IL 60422

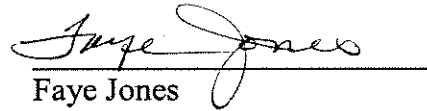
Kristin Peach  
208 E. 10<sup>th</sup> Street  
Bloomington, IN 47408

Mark A. Norman  
221 East Fourth Street  
Cincinnati, OH 45202

Thomas Neo  
644 Lafayette Avenue  
Columbus, IN 47201

Tyler Yeager  
Indiana University  
323 S. Grant Street, Apt. 12  
Bloomington, IN 47401

\* HAND DELIVERED

  
Faye Jones

## ATTACHMENT 4



## FCC Geographic Market Definition for Nashville, TN

Call Letters	AM/ FM	Type	Freq	Station	Format	Home Market	Market			City & State of License	County of License
							Designtn Date	Home Mkt Rank	Owner		
WQSV	AM	C	790	C	Chtry/Gospl	Nashville, TN	07/02/2003	44	Sycamore Valley Broadcasting	Ashland City, TN	Cheatham
WAKM	AM	C	950	C	Country	Nashville, TN	07/02/2003	44	Franklin Radio Assoc	Franklin, TN	Williamson
WUBT	FM	C	101.1	C	Urban	Nashville, TN	07/02/2003	44	p Clear Channel	Russellville, KY	Logan
WAMB	AM	C	1200	C	Adlt Stndrd	Nashville, TN	07/02/2003	44	p Barry, William	Nashville, TN	Davidson
WYXE	AM	C	1130	C	Span/Chrst	Nashville, TN	07/02/2003	44	Iglesia de Dios Hispana Pentecostal, Nashville TN	Gallatin, TN	Sumner
WQSE	AM	C	1030	C	Softn Gspel	Nashville, TN	07/02/2003	44	p Grace Broadcasting Services Inc	White Bluff, TN	Dickson
WPFD	AM	C	850	C	Country	Nashville, TN	07/02/2003	44	Martin, R.L., Trustee	Fairview, TN	Williamson
WCOR	AM	C	1490	C	Cntry/Sprts	Nashville, TN	07/02/2003	44	Barry, William	Lebanon, TN	Wilson
WDBL	AM	C	1590	C	News/Talk	Nashville, TN	07/02/2003	44	Lightning Broadcasting LLC	Springfield, TN	Robertson
WDKN	AM	C	1260	C	Country	Nashville, TN	07/02/2003	44	Edmisson & Eubank Communications Inc	Dickson, TN	Dickson
WGNS	AM	C	1450	C	Talk	Nashville, TN	07/02/2003	44	Rutherford Group Inc	Murfreesboro, TN	Rutherford
WHIN	AM	C	1010	C	Country	Nashville, TN	07/02/2003	44	WHIN Inc	Gallatin, TN	Sumner
WHEW	AM	C	1380	C	Mexcn/Varty	Nashville, TN	07/02/2003	44	SG Communications	Franklin, TN	Williamson
WRLT	FM	C	100.1	C	AAA	Nashville, TN	07/02/2003	44	Tuned In Broadcasting Inc	Franklin, TN	Williamson
WNVL	AM	C	1240	C	Span/AdHts	Nashville, TN	07/02/2003	44	Davidson Media Group LLC	Nashville, TN	Davidson
WKDF	FM	C	103.3	C	Country	Nashville, TN	07/02/2003	44	Citadel Communications	Nashville, TN	Davidson
WLAC	AM	C	1510	C	Nws/Tlk/Spt	Nashville, TN	07/02/2003	44	p Clear Channel	Nashville, TN	Davidson
WNRQ	FM	C	105.9	C	Clsc Rock	Nashville, TN	07/02/2003	44	p Clear Channel	Nashville, TN	Davidson
WPLN	AM	C	1430	C	Nws/Tlk/Cls	Nashville, TN	07/02/2003	44	Nashville Public Radio	Madison, TN	Davidson
WNSG	AM	C	880	C	Black Gospl	Nashville, TN	07/02/2003	44	Davidson Media Group LLC	Nashville, TN	Davidson
WWTN	FM	C	99.7	C	Talk	Nashville, TN	07/02/2003	44	Cumulus Broadcasting Inc	Manchester, TN	Coffee
WMGC	AM	C	810	C	Mexican	Nashville, TN	07/02/2003	44	Radio 810 Nashville Limited	Murfreesboro, TN	Rutherford
WNAH	AM	C	1360	C	Gospel	Nashville, TN	07/02/2003	44	Hermitage Broadcasting	Nashville, TN	Davidson
WNQM	AM	C	1300	C	Chrst/Talk	Nashville, TN	07/02/2003	44	F.W. Robbert Broadcasting	Nashville, TN	Davidson
WQQK	FM	C	92.1	C	UrbAC/R&B	Nashville, TN	07/02/2003	44	Cumulus Broadcasting Inc	Hendersonville, TN	Sumner
WQKR	AM	C	1270	C	Adlt Stndrd	Nashville, TN	07/02/2003	44	Venture Broadcasting LLC	Portland, TN	Sumner
WSCI	AM	C	1100	C	Variety	Nashville, TN	07/02/2003	44	Lightning Broadcasting LLC	Springfield, TN	Robertson
WYFN	AM	C	980	C	Relig Music	Nashville, TN	07/02/2003	44	Bible Broadcasting Network	Nashville, TN	Davidson
WSIX	FM	C	97.9	C	Country	Nashville, TN	07/02/2003	44	p Clear Channel	Nashville, TN	Davidson
WSM	AM	C	650	C	Country	Nashville, TN	07/02/2003	44	Gaylord Entertainment Company	Nashville, TN	Davidson
WSM	FM	C	95.5	C	Country	Nashville, TN	07/02/2003	44	Cumulus Broadcasting Inc	Nashville, TN	Davidson
WNSR	AM	C	560	C	Sports	Nashville, TN	07/02/2003	44	Southern Wabash Communications Corporation	Brentwood, TN	Williamson
WCJK	FM	C	96.3	C	Adult Hits	Nashville, TN	07/02/2003	44	South Central Communications Corporation	Murfreesboro, TN	Rutherford

"C" - Commercial Station; "NC" - Non Commercial Station

"p" indicates pending sale to owner listed



## FCC Geographic Market Definition for Nashville, TN

Call Letters	AM/FM	Type	Market			Home Market	City & State of License	County of License
			Designtn	Home Mkt Rank	Owner			
WVOL	AM	1470 C	07/02/2003	44	Heidelberg Broadcasting LLC	Nashville, TN	Berry Hill, TN	Davidson
WVRY	FM	105.1 C	07/02/2003	44	Salem Communications Corporation	Nashville, TN	Waverly, TN	Humphreys
WMRO	AM	1560 C	07/02/2003	44	Classic Broadcasting Inc	Nashville, TN	Gallatin, TN	Sumner
WGFX	FM	104.5 C	07/02/2003	44	Citadel Communications	Nashville, TN	Gallatin, TN	Sumner
WBUZ	FM	102.9 C	07/02/2003	44	Cromwell Group Inc, The	Nashville, TN	La Vergne, TN	Rutherford
WRVW	FM	107.5 C	07/02/2003	44	p Clear Channel	Nashville, TN	Lebanon, TN	Wilson
WJXA	FM	92.9 C	07/02/2003	44	South Central Communications Corporation	Nashville, TN	Nashville, TN	Davidson
WENO	AM	760 C	07/02/2003	44	Trevecca Nazarene University	Nashville, TN	Nashville, TN	Davidson
WVNS	FM	102.5 C	07/02/2003	44	Cromwell Group Inc, The	Nashville, TN	Pegram, TN	Cheatham
WFFI	FM	93.7 C	07/02/2003	44	Salem Communications Corporation	Nashville, TN	Kingston Springs, TN	Cheatham
WFFH	FM	94.1 C	07/02/2003	44	Salem Communications Corporation	Nashville, TN	Smyrna, TN	Rutherford
WFCM	AM	710 NC	07/02/2003	44	Moody Bible Institute of Chicago Incorporated	Nashville, TN	Smyrna, TN	Rutherford
WANT	FM	98.9 C	07/02/2003	44	Bay, Susan	Nashville, TN	Lebanon, TN	Wilson
WBOZ	FM	104.9 C	07/02/2003	44	Salem Communications Corporation	Nashville, TN	Woodbury, TN	Cannon
WNFN	FM	106.7 C	07/02/2003	44	Cumulus Broadcasting Inc	Nashville, TN	Belle Meade, TN	Davidson
WRQQ	FM	97.1 C	07/02/2003	44	Cumulus Broadcasting Inc	Nashville, TN	Goodlettsville, TN	Davidson
WFCM	FM	91.7 NC	07/02/2003	44	Moody Bible Institute of Chicago Incorporated	Nashville, TN	Murfreesboro, TN	Rutherford
WFMQ	FM	91.5 NC	07/02/2003	44	Cumberland University	Nashville, TN	Lebanon, TN	Wilson
WFSK	FM	88.1 NC	07/02/2003	44	Fisk University	Nashville, TN	Nashville, TN	Davidson
WMOT	FM	89.5 NC	07/02/2003	44	Middle Tennessee State University	Nashville, TN	Murfreesboro, TN	Rutherford
WMTS	FM	88.3 NC	07/02/2003	44	Middle Tennessee State University	Nashville, TN	Murfreesboro, TN	Rutherford
WNAZ	FM	89.1 NC	07/02/2003	44	Trevecca Nazarene University	Nashville, TN	Nashville, TN	Davidson
WNRZ	FM	91.5 NC	07/02/2003	44	Trevecca Nazarene University	Nashville, TN	Dickson, TN	Dickson
WPLN	FM	90.3 NC	07/02/2003	44	Nashville Public Radio	Nashville, TN	Nashville, TN	Davidson
WRVU	FM	91.1 NC	07/02/2003	44	Vanderbilt University	Nashville, TN	Nashville, TN	Davidson
WVCP	FM	88.5 NC	07/02/2003	44	Volunteer State Community College	Nashville, TN	Gallatin, TN	Sumner
WKDA	AM	900 C	07/02/2003	44	Bay, Susan	Nashville, TN	Lebanon, TN	Wilson
WCRT	AM	1160 C	11/17/2005	44	Bott Radio Network	Nashville, TN	Donelson, TN	Davidson

Number of Stations in Geographic Market 61

### Previous Stations in Geographic Market

WBVR	FM	96.7 C	Country	Bowling Green, KY	02/08/2005	208	Forever Communications Inc	Auburn, KY	Logan
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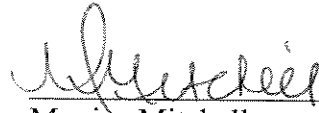
"C" - Commercial Station; "NC" - Non Commercial Station

"p" indicates pending sale to owner listed

### **CERTIFICATE OF SERVICE**

I, Monica Mitchell, do hereby certify that I have on this 8th day of March, 2007, caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Informal Objection"** to the following:

Indiana Community Radio Corporation  
15 N. Wood Street  
Greenfield, IN 46140

  
\_\_\_\_\_  
Monica Mitchell