

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

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JAN 28 1992

MM Docket No. 92-_____

Federal Communications Commission
Office of the Secretary

In the Matter of:)
)
Amendment of §73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Germantown, Tennessee))

RM - _____

To: Chief, Allocations Branch

**PETITION FOR RULE MAKING
AND REQUEST FOR ORDER TO SHOW CAUSE**

Omni Broadcasting Corp. ("Omni"), by its attorneys, herewith petitions the Commission to institute a rule making proceeding to amend the FM Table of Allotments as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Germantown, Tennessee	231C2, 298A		231C2, 298C3

Furthermore, Omni requests that its construction permit BPH-870908MV be modified to specify operation on Channel 298C3, conditioned on the final resolution of the proceeding in MM Docket No. 88-429. In support, the following is shown:

1. MM Docket No. 88-429 is the licensing proceeding for a new FM broadcast station on Channel 298A at Germantown, Tennessee. Therein, the Review Board

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granted Omni's application (File No. BPH-870908MV). Eugene Walton, FCC 91R-92, 6 FCC Rcd. 6071, ___ RR2d ___ (1991). Applications for review of the Review Board Decision are pending before the Commission.

2. Omni herewith petitions the Commission to amend the FM Table of Allotments to substitute Channel 298C3 for Channel 298A at Germantown. If the FM Table of Allotments is amended as proposed, then Omni will tender an FCC Form 301 application for modification of construction permit to specify Class C3 facilities. If authorized, then Omni will construct promptly and operate the station on Channel 298C3.

3. In support of this Petition, Omni submits the attached Technical Statement prepared by Kenneth H. Larkin, Jr., demonstrating compliance with the Commission's technical rules.

4. It is understood and agreed that any order amending the FM Table of Allotments as proposed herein would be conditioned upon the final outcome of the proceeding in MM Docket No. 88-429.

5. The public interest is served by Omni's proposed amendment of the FM Table of Allotments. It is well established precedent that the public interest is served by the upgrade of an FM channel to a higher class. By proceeding at this time, as opposed to after a final decision in MM Docket No. 88-429, Omni insures

the upgrade of Channel 298 at Germantown, which could be lost by the passage of time. Omni also firmly believes that this Petition will expedite inauguration of higher powered service to the public on Channel 298.

6. Omni is aware of the Commission's decision in the Lafayette, Louisiana proceeding in MM Docket No. 87-197, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lafayette, Louisiana), 4 FCC Rcd. 5073, 66 RR 2d 1038 (1989). Therein, the Commission declined to upgrade the Lafayette, LA Class A FM allotment to a Class C2 channel while applications were pending. However, the factual circumstances are different.

7. First, the Review Board has granted Omni's application for a construction permit, although that grant is not yet final. By contrast, in the Lafayette proceeding, the applicants had not been designated for hearing when the petition for rule making was filed, and they had not gone through hearing at the time the Report and Order was adopted and released. No Lafayette applicant had been granted a construction permit.

8. Second, there will be no burden on either the existing Germantown applicants or on the F.C.C. staff. There will be no need, or opportunity, for any of the Germantown applicants to amend their applications to specify Class C3 facilities, and thus no need for the

Commission to process such amendments. Omni will instead tender an FCC Form 301 application for modification of construction permit after the grant of its application in MM Docket No. 88-429 has become final. Thus, no issues concerning basic qualifications could arise.

9. Finally, the channel cannot be reopened for applications. An exhaustive comparative hearing has been held and the record closed. The Administrative Law Judge adopted and released an Initial Decision. The Review Board adopted and released a Decision granting Omni's application. Section 1.420(g)(3) is satisfied, and the Channel cannot be reopened for applications.

WHEREFORE, Omni requests that the Commission issue a Notice of Proposed Rule Making proposing to amend the FM Table of Allotments as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Germantown, Tennessee	231C2, 298A		231C2, 298C3

and to modify Omni's construction permit to specify operation on Channel 298C3.

Respectfully Submitted

OMNI BROADCASTING CORP.

by Harold K. McCombs, Jr.
Harold K. McCombs, Jr.

Its Attorney

January 28, 1992

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TECHNICAL STATEMENT
PETITION FOR RULEMAKING
OMNI BROADCASTING CORPORATION
GERMANTOWN, TENNESSEE
ALLOTTED: 298A
PROPOSED: 298C3

PREPARED JANUARY 22, 1992

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TECHNICAL SHOWING
PETITION FOR RULEMAKING
GERMANTOWN, TENNESSEE

This statement and the associated exhibits are part of a Petition for Rulemaking seeking to upgrade the allotment of FM channel 298A at Germantown, Tennessee. The statement has been prepared at the request of Omni Communications Corporation.

The petition seeks to modify Section 73.202 of the Commission's Rules, the Table of FM Allotments by substituting FM channel 298C3 for channel 298A at Germantown, Tennessee.

In the Commission's Report and Order in MM Docket No. 85-313 released April 29, 1996, a procedure was adopted (by amendment of Section 1.420 of the Commission's Rules) whereby FM stations or proposals could be upgraded to higher class adjacent or co-channel frequencies.

As shown on attached Figure 1, an area exists for which a channel 298C3 transmitter site could be located while providing required city grade coverage of the community of Germantown, Tennessee. A suggested reference point is North Latitude 34-56-28 West Longitude 89-42-29, located approximately 18.7 kilometers southeast of Germantown. The site restriction is necessary to meet required separation requirements with respect to station KFTH at Marion, Arkansas on channel 296A and to the allotment of channel 297A at Osceola, Arkansas.

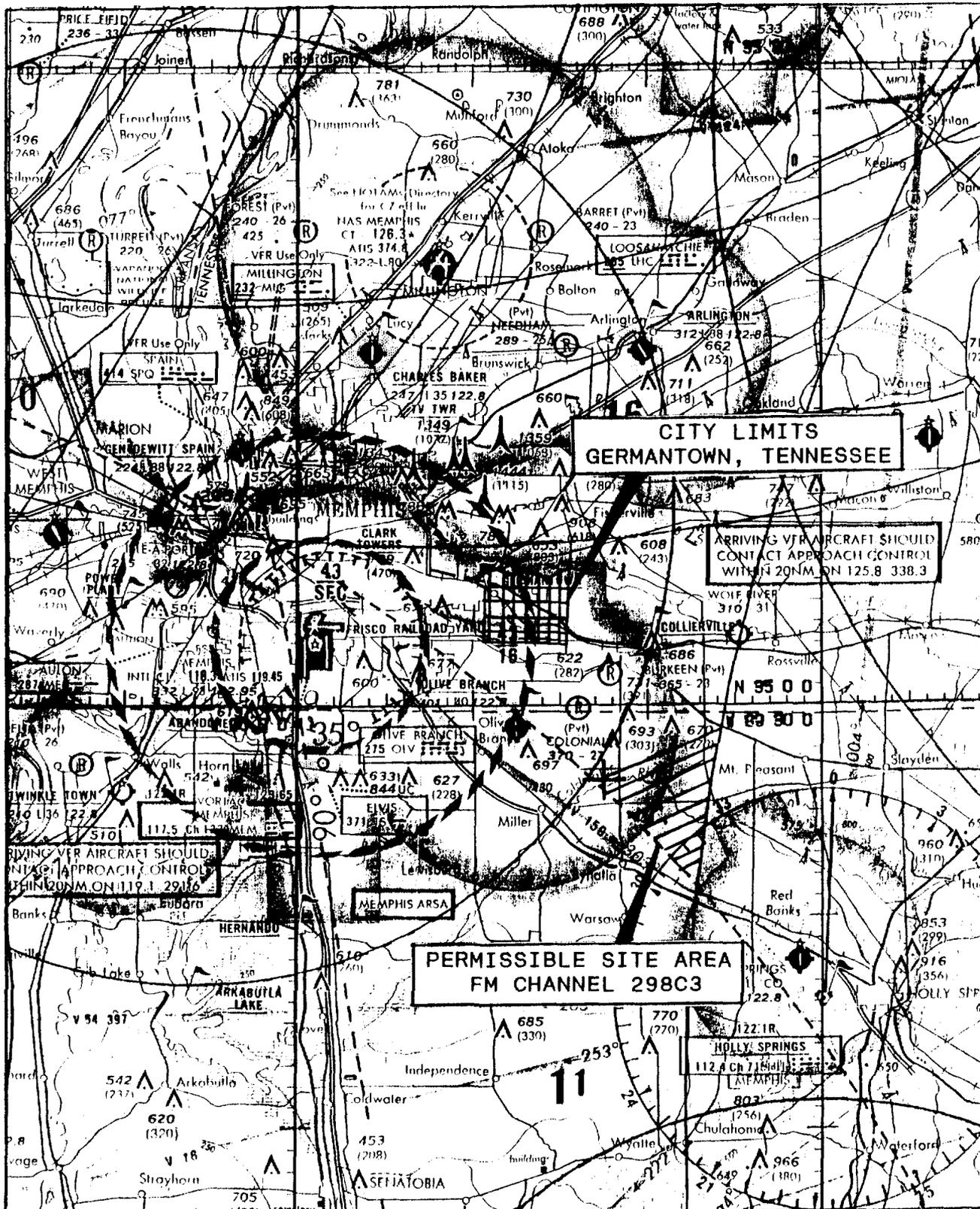
Figure 2 is a tabulation of allocations factors considering the distances from the proposed reference point to other pertinent facilities and proposals.

The city of Germantown, Tennessee is incorporated and is located in Shelby County. The population of the city is 20,459 and the population of the county is 777,113 (1980 U.S. Census Final Count).

In summary, the petitioner seeks the substitution of FM channel 298C3 for channel 298A at Germantown, Tennessee. It is demonstrated in this report that suitable area exists for which a transmitter site could be located which could provide the required city grade coverage of the community of license.

Should further technical information be needed during the processing of this petition, please contact this office.

GERMANTOWN TN - FIGURE 1 Channel 298C3 Ref. N345628 W894229



SCALE 1: 50000



FM Spacing study

Title: GERMANTOWN TN - FIGURE 2
Channel 298C3 (107.5 MHz)
Database: DW 01/07/92

Latitude: 34-56-28
Longitude: 89-42-29
Safety zone: 50 km

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License		St FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
WMOD	LIC	WEST TENNESSEE RADIO NET	244A	3	35-15-00	65.0	82.00	12
BOLIVAR		TN BLH-6562	96.7	91	88-53-28	245.5		CLEAR
Deletion proposed; Was WQKZ-FM 08/01/88;								
Deletion proposed; Was WQKZ-FM 08/01/88; Application for License (BMLH-910730 d 08/15/91; Ant: Elec. Res. Inc.								
WDLJ	CP	SON RISE BROADCASTING IN	245C3	25	33-35-38	210.5	173.2	14
INDIANOLA		MS BPH-910226IE	96.9	100	90-39-29	29.9		CLEAR
ORDERED FROM 245A; CP Granted 08/06/91 per FCC release #21183 dated 08/13/91;								
Was WZXR 06/04/90 per FCC release #135 dated 06/01/90								
KVNZ	CP	RAMBLIN COMMUNICATIONS	295A	3	34-45-41	258.0	94.72	42
MARIANNA		AR BPH-880727MK	106.9	100	90-43-14	77.5		CLEAR
CP IS HEREBY CANCELLED & CALL DELETED 10/15/91;								
Call Granted 01/23/90 per FCC release #126 dated 01/26/90								
KFTH	LIC	BIG BEN COMMUNICATIONS I	296A	3	35-09-23	304.2	42.71	42
MARION		AR BLH-860224KC	107.1	100	90-05-46	124.0		CLOSE
See WEST MEMPHIS AR								
ALLOC			296A		35-08-48	298.3	48.46	42
WEST MEMPHIS		AR	107.1		90-10-36	118.0		CLOSE
Allocated to MARION AR								
WKLJ	LIC	OXFORD RADIO INCORPORATE	296A	3	34-18-58	165.0	71.78	42
OXFORD		MS BLH-850226KT	107.1	91	89-30-19	345.1		CLEAR
Deletion proposed; ORDERED TO 229A; Network: US2								
WKLJ	CP	OXFORD RADIO INCORPORATE	296A	3	34-18-58	165.0	71.78	42
OXFORD		MS BPH-850717MB	107.1	97	89-30-19	345.1		CLEAR
Deletion proposed; CP IS HEREBY FORFEITED 3/18/91; ORDERED TO 229A;								
Network: US2; CP Granted 01/27/86; Ant: Shiveley 6813								
ALLOC			297A		35-43-03	346.8	88.53	89
OSCEOLA		AR DOC-87-619	107.3		89-55-58	166.7		ROUNDS
SITE RESTRICTION 2.1 MI NE; Granted effective 09/06/91, adopted 07/22/91, released 07/23/91; Filing window 09/09-10/09/91 **CLOSED**								
NEW	APP	POLLACK BROADCASTING COM	297A	3	35-45-59	347.8	93.73	89
OSCEOLA		AR 911009ME	107.3	68	89-55-43	167.6		CLOSE
Received per FCC release #15119 dated 11/01/91								
WQLT	LIC	BIG RIVER BROADCASTING C	297C	100	34-40-24	98.7	184.8	176
FLORENCE		AL BLH-870813KD	107.3	305	87-42-56	279.9		CLOSE
Network: ABC; Affiliated with WSBM(AM)								

FM Spacing study

Title: GERMANTOWN TN - FIGURE 2
Channel 298C3 (107.5 MHz)

Latitude: 34-56-28
Longitude: 89-42-29

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	License	St FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
NEW	CP	OMNI BROADCASTING CORP	298A	3	35-07-46	347.7	21.39	142
GERMANTOWN		TN BPH-870908MV	107.5	100	89-45-30	167.7		SHORT
DOC-88-429; CP Granted 10/11/91 per FCC release dated 10/29/91								
WMJW	ORD	CAROL B. INGRAM	298C3	25	33-56-58	224.2	153.0	153
ROSEDALE		MS BPH-911030IE	107.5	100	90-51-57	43.6		CLOSE
ORDERED FROM 295A CLEVELAND, MS; TDF; Was WZRI 11/01/91 per FCC release #170 dated 11/01/91								
KKJJ	CP	JACK G HUNT	298C3	20	36-29-55	355.7	173.3	153
CAMPBELL		MO BMPH-910409IB	107.5	112	89-51-16	175.6		CLEAR
CP Granted 10/18/91 per FCC release #21239 dated 10/30/91; Call Granted 02/21/90 per FCC release #128 dated 02/23/90								
WHHM-FM LIC		WANDA SMITH	299A	3	35-27-23	59.5	113.9	89
HENDERSON		TN BLH-901221KC	107.7	100	88-37-36	240.1		CLEAR
Call Granted 09/06/90 per FCC release #142 dated 09/07/90; License Granted 10/15/91 per FCC release #21231 dated 10/21/91								
KFIN	CP	DUKE BROADCASTING CORPOR	300C	100	35-47-53	315.8	133.7	96
JONESBORO		AR BPH-870218IC	107.9	311BT	90-44-30	135.2		CLEAR
CP IS HEREBY FORFEITED 3/21/91; Network: CNN; CP Granted 06/02/88								

>> End of channel 298C3 study <<

FM Spacing study

Title: GERMANTOWN TN - FIGURE 2
Channel 298C3 (107.5 MHz)
Database: FCC 11/26/91

Latitude: 34-56-28
Longitude: 89-42-29
Safety zone: 50 km

Call City of	Auth License	Licensee name St	FCC File no.	Chan Freq	ERP-kW EAH-m	Latitude Longitude	Br-to -from	Dist. (km)	Req. (km)
PRM Bolivar	DEL	Tupelo Communications, I TN	RM-7085	244A 96.7		35-15-00 88-53-28	65.0 245.5	81.99	12 CLEAR
WDLJ Indianola	CP	Son Rise Broadcasting, I MS	BPH-910226IE	245C3 96.9	25 100	33-35-38 90-39-29	210.5 29.9	173.2	14 CLEAR
KVNZ Marianna	CP	Ramblin Communications AR	BPH-880727MK	295A 106.9	3 100	34-45-41 90-43-14	258.0 77.5	94.72	42 CLEAR
KFTH Marion	LIC	Big Ben Communications, AR	BLH-860224KC	296A 107.1	3 100	35-09-23 90-05-46	304.2 124.0	42.71	42 CLOSE
ALLOC Marion		AR		296A 107.1		35-09-23 90-05-46	304.2 124.0	42.71	42 CLOSE
WKLJ-FM Oxford DOC-84-734	LIC	Oxford Radio, Inc. MS	BLH-850226KT	296A 107.1	3 91	34-18-58 89-30-19	165.0 345.1	71.78	42 CLEAR
WKLJ-FM Oxford	CP	Oxford Radio, Inc. MS	BPH-850717MB	296A 107.1	3 97	34-18-58 89-30-19	165.0 345.1	71.78	42 CLEAR
ALLOC Oxford		MS		296A 107.1		34-18-58 89-30-19	165.0 345.1	71.78	42 CLEAR
PRM Oxford	DEL	Oxford Radio, Inc. MS	RM-7590	296A 107.1		34-18-58 89-30-19	165.0 345.1	71.78	42 CLEAR
PRM Oxford	DEL	Oxford Radio, Inc. MS	RM-7590	296A 107.1		34-18-58 89-30-19	165.0 345.1	71.78	42 CLEAR
ALLOC Osceola Filing window 09/09-10/09/91 **CLOSED**		AR	DOC-87-619	297A 107.3		35-43-03 89-55-58	346.8 166.7	88.53	89 ROUNDS
NEW Osceola	APC	Pollack Broadcasting Com AR	911009ME	297A 107.3	3 68	35-45-59 89-55-43	347.8 167.6	93.73	89 CLOSE
ALLOC Florence		AL		297C 107.3		34-40-24 87-42-56	98.7 279.9	184.8	176 CLOSE
WQLT Florence	LIC	Big River Broadcasting C AL	BLH-870813KD	297C 107.3	100 305	34-40-24 87-42-56	98.7 279.9	184.8	176 CLOSE
NEW Germantown DOC-88-429; Cut-off 04/28/88; Initial Decision to Deny	APC	Penderson Communications TN	BPH-870908MS	298A 107.5	3 100BT	35-03-15 89-45-46	338.4 158.4	13.50	142 SHORT

FM Spacing study

Title: GERMANTOWN TN - FIGURE 2
Channel 298C3 (107.5 MHz)

Latitude: 34-56-28
Longitude: 89-42-29

Call City of License	Auth License	Licensee name St FCC File no.	Chan Freq	ERP-kW EAH-m	Latitude Longitude	Br-to -from	Dist. (km)	Req. (km)
ALLOC Germantown		TN DOC-86-387	298A 107.5		35-03-23 89-45-57	337.7 157.7	13.83	142 SHORT
Filing window 08/10-09/08/87 **CLOSED**								
NEW Germantown	APC	Heart of America Broadca TN 870904MU	298A 107.5	3 91	35-02-45 89-50-33	313.5 133.4	16.90	142 SHORT
NEW Germantown	APC	Henderson Broadcasting, TN BPH-870908MJ	298A 107.5	3 100	35-06-56 89-47-40	338.0 157.9	20.90	142 SHORT
DOC-88-429; Cut-off 04/28/88; Initial Decision to Deny								
NEW Germantown	APC	Omni Broadcasting Corpor TN BPH-870908MV	298A 107.5	3 100	35-07-46 89-45-30	347.7 167.7	21.39	142 SHORT
DOC-88-429; Cut-off 04/28/88; Initial Decision to Deny								
NEW Germantown	APC	Germantown Broadcasting TN BPH-870908MY	298A 107.5	2.15 117	35-08-34 89-48-20	338.4 158.4	24.08	142 SHORT
DOC-88-429; Cut-off 04/28/88; Initial Decision to Deny								
NEW Germantown	APC	D.J. and C.C. Bott, Join TN BPH-870908MN	298A 107.5	2.30 114	35-08-39 89-48-08	339.2 159.2	24.11	142 SHORT
DOC-88-429; Cut-off 04/28/88; Initial Decision to Deny								
NEW Germantown	APC	Eugene Walton TN BPH-870904MS	298A 107.5	2.20 115	35-08-39 89-48-20	338.6 158.5	24.22	142 SHORT
DOC-88-429; Initial Decision to Grant								
ALLOC Rosedale		MS DOC-89-415	298C3 107.5		33-56-20 90-51-10	223.6 42.9	153.1	153 CLOSE
ALLOC Campbell		MO DOC-90-513	298C3 107.5		36-29-42 89-51-17	355.7 175.6	172.9	153 CLEAR
KKJJ Campbell	CP	Jack G. Hunt MO BMPH-910409IB	298C3 107.5	20 112	36-29-55 89-51-16	355.7 175.6	173.3	153 CLEAR
ALLOC Henderson		TN DOC-88-286	299A 107.7		35-26-24 88-38-24	60.0 240.6	111.9	89 CLEAR
Filing window 06/20-07/20/89 **CLOSED**								
WHHM-FM Henderson	LIC	Wanda Smith TN BLH-901221KC	299A 107.7	6 100	35-27-23 88-37-36	59.5 240.1	113.9	89 CLEAR
ALLOC Jonesboro		AR	300C1 107.9		35-47-56 90-44-31	315.8 135.2	133.7	76 CLEAR

>> End of channel 298C3 study <<

CERTIFICATION

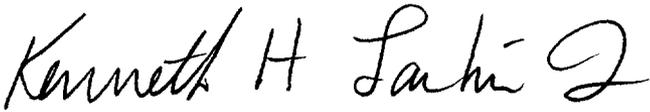
I, Kenneth H. Larkin, Jr., do hereby certify under penalty of perjury;

That my qualifications in telecommunications matters are of record before the Federal Communications Commission having been presented and accepted upon many occasions in the past;

That I am a consultant doing business at Nashville, Tennessee specializing in technical topics pertaining to the broadcast industry and the associated RF transmission systems;

That I have been retained by Omni Broadcasting Corporation to perform certain technical studies and prepare this report of same;

That the accompanying technical report and exhibits were prepared by me personally or under my immediate personal supervision and that all information presented therein is true and correct of my own knowledge and belief.

/s/ 
Kenneth H. Larkin, Jr.

Executed on January 22, 1992

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Nashville, Tennessee 37221

Telephone (615) 646-4950
FAX (615) 646-9211

CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., do hereby certify that I have caused to be mailed, First Class postage prepaid, this 28th day of January, 1992, copies of the foregoing "Petition For Rule Making And Request For Order To Show Cause" to the following:

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* By Hand