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October 22, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Federal Communications
Office of the Secretary

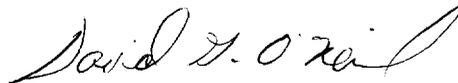
Re: Petition for Rule Making
Sanibel and San Carlos
Park, Florida
WRWX(FM)

Dear Ms. Searcy:

Ruth Communications Corporation, permittee of WRWX(FM), hereby submits an original and four copies of its "PETITION FOR RULE MAKING." Pursuant to footnote 12 of the Mass Media Services Filing Guide, no filing fee is required at this time.

Please contact the undersigned directly if there are any questions concerning this matter.

Sincerely yours,



David G. O'Neil

DGO:do
Enclosures

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

RECEIVED

OCT 22 1991

Federal Communications Commission
Office of the Secretary

In re

Amendment of Section 73.202(b))
Table of Assignments)
FM Broadcast Stations)
Sanibel and San Carlos Park,)
Florida)

RM -- 7365

MM 92-10

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

RUTH COMMUNICATIONS CORPORATION

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Its Attorneys

October 22, 1991

SUMMARY

Ruth Communications Corporation ("Ruth"), licensee of WRWX(FM), has attempted for over eight and one-half years to construct and operate WRWX(FM) on Channel 253A at Sanibel, Florida. Events beyond its control have rendered it impossible for Ruth to operate on Channel 253A at Sanibel. Changing the community of license to San Carlos Park and modifying the license of WRWX(FM) accordingly will permit Ruth to provide first local service to San Carlos Park in lieu of no service to Sanibel.

Concerns of federal, state, and local authorities have made it impossible for Ruth to operate WRWX(FM) at Sanibel. Local zoning laws prohibit Ruth from constructing a tower on Sanibel Island. Decisions by the Florida Game and Fresh Water Commission prohibit Ruth from constructing a tower on Pine Island. Operating from existing towers on Pine Island and the mainland are impermissible either because the location would not provide the required city-grade signal over Sanibel or would be short-spaced to another FM radio station. The owner of the potentially acceptable site has refused to grant Ruth permission to either construct and/or operate from their towers.

The only alternative is for Ruth to operate on Channel 253A at San Carlos Park. This will provide San Carlos Park with its first local service. San Carlos Park is recognized by the U.S. Census and is home to municipal services, schools, churches, and businesses. Accordingly, San Carlos is a community for Section 307(b) purposes. Because WRWX(FM) is not providing service to Sanibel, the change will not remove Sanibel's only local service.

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

In re

Amendment of Section 73.202(b))
Table of Assignments) RM -- _____
FM Broadcast Stations)
Sanibel and San Carlos Park,)
Florida)

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

Ruth Communications Corporation ("Ruth"), by its attorneys, hereby petitions the Commission to: 1) amend Section 73.202(b) of its Rules to simultaneously allot Channel 253A to San Carlos Park, Florida and delete Channel 253A at Sanibel, Florida; and 2) modify the construction permit of WRWX(FM) accordingly to operate on Channel 253A at San Carlos Park. Ruth also requests a waiver of Section 1.420(i) of the Commission's Rules to modify the construction permit of WRWX(FM). In support thereof, the following is hereby shown:

INTRODUCTION

1. Ruth proposes the following amendments to Section 73.202(b), FM Table of Allotments:

| <u>Community</u> | <u>Present Channel</u> | <u>Proposed Channel</u> |
|---------------------|------------------------|-------------------------|
| Sanibel, FL | 253A | ----- |
| San Carlos Park, FL | ---- | 253A |

Ruth is the permittee of WRWX(FM), Channel 253A, Sanibel, Florida. Implementing Ruth's petition requires changing the community of license for WRWX(FM).

2. Section 1.420(i) of the Commission's Rules permits an FM radio broadcast station to petition the Commission to amend the FM table of allotments to specify a new community of license for an FM radio station. Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4873 (1989), reconsidered in part, 5 FCC Rcd 7094 (1990). The Commission will not accept competing expressions of interest if the new allotment is mutually exclusive with the existing allotment. 4 FCC Rcd at 4873. While the Commission is reluctant to remove the last local service from a community, the Commission will grant a waiver of Section 1.420(i) where it believes that removal of the local service will serve the public interest. 5 FCC Rcd at 7096.

3. The Commission should grant Ruth's petition for rule making and request for a waiver of Section 1.420(i). Despite its good faith and diligent efforts over the past five years, conditions beyond Ruth's control have made it impossible for Ruth to construct and operate on Channel 253A at Sanibel. Failure to permit Ruth to change community of license will deny first local service on Channel 253A to either Sanibel or San Carlos Park.

I. HISTORY OF APPLICATION

4. In 1983, Ruth filed an application for a construction permit for a new FM radio broadcast station at Sanibel, Florida (File No. BPH-830217AI).¹ Because other mutually exclusive applications were filed, the Commission held a comparative hearing in 1985 and on March 10, 1986, the Presiding Judge granted Ruth the construction permit. Hillebrand Broadcasting, Inc., FCC 86D-17 (released March 10, 1986). The two losing applicants appealed, and exceptions were filed with the Review Board. Shortly after oral argument was presented to the Review Board, the three remaining parties reached a settlement, which was approved by the Review Board.

5. The Commission granted Ruth's application for a new FM radio broadcast station on Channel 253A at Sanibel on September 24, 1986. Public Notice No. 19917 (released October 24, 1986) (Exhibit 3). The Public Notice stipulated that Ruth's construction permit was not final but instead "[t]he grant of this [Ruth's] application is not finalized until the outcome of Commission decision of the pending application for review is determined, pursuant to Section 1.291(d) of the Commission Rules." Id.² Punta Ybel Communications ("Punta Ybel"), a

¹ Hillebrand Broadcasting, Inc. ("Hillebrand"), the predecessor corporation to Ruth, filed the original application for WRWX(FM). Mrs. Ruth Ray was the sole voting shareholder of Hillebrand. In order to avoid any confusion, references to Ruth prior to April 1989 also refer to Hillebrand.

² The Public Notice also specified the incorrect channel for WRWX(FM).

competing applicant in the Sanibel proceeding who the Commission dismissed for failure to prosecute its application, filed a series of appeals of its dismissal. Punta Ybel appealed its dismissal unsuccessfully to the U.S. Court of Appeals for the District of Columbia.³ That court denied Punta Ybel's petition in June 1988 and the decision became final in September 1988. Because Punta Ybel's application had never been considered on the merits, Ruth concluded that proceeding with construction while the appeal was pending would have entailed substantial, and unacceptable risk. Declaration of Ruth H. Ray at 2 (Exhibit 2).⁴

6. Punta Ybel's actions necessitated Ruth filing two requests for extension of time, which the Commission granted (BMPH-880225JB and BMPH-880926JQ).

**II. LOCAL, STATE AND FEDERAL AUTHORITIES HAVE
MADE IT IMPOSSIBLE FOR RUTH TO CONSTRUCT
WRWX(FM) ON CHANNEL 253A AT SANIBEL, FLORIDA**

7. From September 1988 to the present, local, state and federal authorities, implementing local, state and federal laws, rules, and regulations, have made it impossible for Ruth to construct and operate WRWX(FM) on Channel 253A at Sanibel. After finality of its construction permit, Ruth spent over three years

³ The Presiding Judge, Review Board, and the Commission dismissed Punta Ybel's appeal. Hillebrand Broadcasting, 102 FCC 2d 804 (Rev. Bd. 1985), recon. denied, 102 FCC 2d 809 (Rev. Bd. 1985), review denied, 1 FCC Rcd 419 (1986).

⁴ Accordingly, although the proceeding which resulted in the grant to Ruth was terminated on August 15, 1986 and the grant was announced and construction permit issued on September 24, 1986, the grant was not final at the time of issuance.

searching for a site on Sanibel Island, Pine Island, and the mainland. But environmental concerns of local and state authorities combined with complying with the Commission's rules concerning a required city-grade signal over Sanibel and/or short-spacing to other stations precludes operation on Channel 253A at Sanibel.

8. In its original application filed in 1983, Ruth specified a tower site in an area called "Sanibel Gardens" on Sanibel Island. Declaration of Ruth H. Ray at 2. Ruth selected this site after several discussions with Mr. Bruce Rogers, the Planning Director for Sanibel. Mr. Rogers advised Ruth that Sanibel Gardens was the only location for Ruth's proposed tower acceptable to local authorities. Id. at 2-3.

9. Approximately 43% of Sanibel Island is a wildlife refuge for turtles, eagles, and other protected wildlife. Between the time that Ruth filed its application in 1983 and Punta Ybel exhausted its appeals in September 1988, the City of Sanibel declared the Sanibel Gardens area as environmentally sensitive wetlands. Id. at 3. Between 1983 and 1988, the City of Sanibel began purchasing the property to add to their conservation area. Id. These actions by the City of Sanibel eliminated the possibility of building the tower at Sanibel Gardens. Id.

10. In August 1988 Mrs. Ray met with members of the Sanibel Planning Commission regarding a special use permit for a tower on an alternative site on Sanibel Island. The Planning

Commission informed Mrs. Ray that Sanibel was in the process of complying with a state mandate by submitting a 20 year plan on how Sanibel intended to accommodate growth. Until the Planning Commission received approval, the City of Sanibel would not schedule hearings for special permits, let alone grant such a permit. The State of Florida approved a 20 year plan for Sanibel in February 1991, two and one-half years later and only after the state rejected two previous plans. After the plan was adopted, Mr. Rogers informed Ruth that a radio broadcast tower/antenna is not a permitted use in any of the City of Sanibel's zoning districts.

11. Because the City of Sanibel was unable to approve a site on Sanibel Island, Ruth considered Pine Island for a suitable location for an FM tower. However, while two FM towers already existed on Pine Island, these towers were located too far north and were short-spaced to WXKT(FM) in Arcadia, Florida.

12. In June through August 1989 Ruth considered constructing a new tower on the southern portion of Pine Island. The first site selected by Ruth would not comply with the Commission's spacing requirements because of a proposed upgrade for WXKT(FM). The second site was held by an estate which rejected Ruth's offer for the site.

13. However, a change in the Commission's Engineering Rules permitted Ruth to reconsider its original site on Pine Island by using a directionalized antenna. On October 2, 1989, Ruth filed an application to modify the construction permit of

WRWX(FM) for the Pine Island site and a directionalized antenna (BPH-891002IA).⁵ After months of waiting, Ruth received approval from the Federal Aviation Administration ("FAA") on March 1, 1990.

14. In June 1990 an eagle's nest was discovered on Pine Island 1300 feet from Ruth's proposed tower site. Ruth immediately began working with local and federal officials to resolve to their satisfaction any potential environmental problems. First, Ruth met with representatives of the Eagle Technical Advisory Board ("Advisory Board"), a local organization having jurisdiction over activities and construction within 750 feet of an eagle's nest. At a meeting with the Advisory Board in August 1990, Ruth offered to take any additional steps necessary to protect the eagles, including lighting the tower with strobe lights, marking the guy wires, applying iridescent paint to the tower, or hanging streamers from the guy wires in order to alert eagles to the tower. After the first meeting with the Advisory Board, Ruth was encouraged that a mutually beneficial solution could be reached which would protect the eagles and enable Ruth to construct an FM tower.

15. Because Ruth's proposed tower was more than 750 feet from the eagle's nest, the tower fell under the jurisdiction of the Florida Game and Fresh Water Commission ("Florida

⁵ Because of a change in the reference point for the allocation at Arcadia, Florida, Ruth subsequently filed an application for modification specifying nondirectionalized operation at the Pine Island site (BMPH-900731IB).

Commission"). On August 22, 1990, the Florida Commission rejected Ruth's proposed tower, concluding that the tower posed a threat to the eagles. See Exhibit 5. On September 11, 1990, Ruth requested that the Florida Commission consider its August proposal to the Advisory Board as a possible solution to the matter. See Exhibit 6. On September 26, 1990, the Florida Commission rejected this offer. See Exhibit 7. On October 4, 1990, Ruth offered to construct a free-standing tower (at three times the cost of a guyed tower) to alleviate any danger to the eagles. On October 16, 1990, the Florida Commission rejected this offer. See Exhibit 8.

16. The Florida Commission requested that any tower Ruth constructed be at least one mile from any eagle's nest. This would place the tower outside both the primary and secondary zones as defined by the habitat management guidelines for bald eagles in the southeast region. See Exhibit 11. Any attempts to relocate Ruth's site on available land one mile from the first eagle's nest placed the site within one mile of another eagle's nest. Pine Island is one of the largest refuges for eagles in Florida. The location of eagle nests on Pine Island and the restriction imposed by the Florida Commission precludes Ruth from constructing an FM tower on Pine Island. The Florida Commission recommended Ruth build its tower east of I-75 or preferably lease space on an existing tower. There are many varieties of endangered species, in addition to the bald eagle, all along the shore of Western Lee County and the Florida Commission would

prefer to limit the number of new towers because of the hazard to the birds' flight patterns. Ruth cannot locate a tower in Eastern Lee County as the Florida Commission recommends, as it is too far away to provide the required city-grade signal over Sanibel as mandated by the FCC's Rules.

17. On March 6, 1991, Ruth filed a petition for rule making, requesting that the Commission change the Community of license for WRWX(FM) to San Carlos Park, upgrade WRWX(FM) to Channel 253C3 at San Carlos Park, and modify the license of WRWX(FM) accordingly. On June 28, 1991, the Commission denied Ruth's petition.

18. At this juncture the only remaining option was to consider any existing structures that would provide the required city-grade signal over the community of Sanibel. Two such towers were investigated. One tower was the cable television tower located in Sanibel Gardens and owned by Palmer Cablevision; the other was the Beasley tower from which WRXK(FM) transmits.

19. The cable tower, which is grandfathered, already includes several existing antennas and could not support any further weight, as it must withstand a wind load of 130 miles per hour. In addition, an FM antenna on a cable tower at a cable head end would cause interference to cable subscribers. Because of these problems, Palmer Cablevision will not permit Ruth to construct and operate an FM antenna on their tower.

20. The Beasley tower is located on the mainland in Lee County near Route 41 and west of I-75 by approximately three

miles. Ruth's engineer determined that the Beasley tower could not provide an adequate signal over Sanibel as required by the Commission's Rules and, therefore, could not be considered.

21. Finally, Ruth again approached Mr. Bruce Rogers, the Sanibel Planning Director, for authority to construct an FM tower on Sanibel Island. Mr. Rogers informed Ruth that the zoning laws allowed no such options. See Exhibit 12.

III. THE IMPOSSIBILITY OF OPERATING WRWX(FM) ON CHANNEL 253A AT SANIBEL AND THE OPPORTUNITY TO PROVIDE FIRST LOCAL SERVICE TO SAN CARLOS PARK SUPPORTS CHANGING THE COMMUNITY OF LICENSE FOR WRWX(FM)

22. Because it is impossible for Ruth to operate on Channel 253A at Sanibel, Channel 253A does not constitute an "existing service" at Sanibel. Consequently, changing the community of license to San Carlos Park and modifying the construction permit of WRWX(FM) accordingly does not violate the Commission's Rules. If the Commission deems that a waiver of Section 1.420(i) is required, then Ruth submits that the facts presented above support a waiver request.

23. To recap, Ruth has been unable to construct and operate WRWX(FM) on either Sanibel Island, Pine Island, or the mainland. No other sites are available which would comply with the Commission's short-spacing requirements and/or provide the required city-grade signal over Sanibel. From September 1986 through September 1988, Ruth did not have a final construction permit. Because of state requirements on zoning, Sanibel could

not issue Ruth a special use permit from September 1988 through February 1991. The new zoning plan will not authorize special use permits for an FM tower. Existing towers on Pine Island violate the Commission's short-spacing requirements. The Florida Commission has rejected any sites found by Ruth on Pine Island. Palmer Cablevision will not permit Ruth to operate on its tower.

24. Events beyond Ruth's control have made it impossible for Ruth to construct WRWX(FM) on Channel 253A at Sanibel.

25. Ruth holds a construction permit for Sanibel and as such does not provide "existing service" to Sanibel. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7097 (1990) (unconstructed permit does not constitute "existing service" for purposes of Section 1.420(i)); Greenfield and Del Rey Oaks, California, 6 FCC Rcd 631, 632 n.6 (1991) (Acting Chief, Allocations Branch) (application for construction permit does not constitute "existing service" for purposes of Section 1.420(i)). The impossibility of constructing on Channel 253A in Sanibel combined with the possibility of constructing and operating WRWX(FM) on Channel 253A in San Carlos Park effectively substitutes the provision of first local service for impossible first local service. The public interest is better served by potential service in San Carlos Park rather than no service in Sanibel.

26. Ruth's petition will enable the provision of first local service whereas currently it is impossible for Ruth to provide any service, let alone first local. In granting waivers of Section 1.420(i) of the Commission's Rules regarding removal of the last local service to a particular community, the Commission noted that it would be reluctant to remove the last local service from one community for first local service to a another community where the original community had a licensed station and the new community had an unbuilt facility. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7097 (1990) ("From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set."). The instant petition presents exactly the opposite situation. The public currently is not receiving any service and because of events beyond Ruth's control, probably never will. Ruth proposes to change community of license in order to provide first local service to the public.

27. Substituting Channel 253a at San Carlos Park for Channel 253A at Sanibel and modifying the license of WRWX(FM) accordingly will enable Ruth to provide service to the public. Both Sanibel and San Carlos Park are equidistant from Ft. Myers,

Florida, the second largest community in the vicinity.⁶ The population of the area is widely dispersed. According to the Southwest Florida Regional Planning Council, 60 percent of the County's population lives in unincorporated areas. See Exhibit 17. While removal of Channel 253A from Sanibel would remove the only local service from Sanibel, allotting Channel 253A to San Carlos Park will provide San Carlos Park with its first local service. Accordingly, Ruth's petition will not reduce the number of communities enjoying first local service.⁷ Nor did Ruth receive the construction permit through a choice of communities.

IV. SAN CARLOS PARK CONSTITUTES A COMMUNITY TO WHICH CHANNEL 253A MAY BE ALLOTTED

28. Given the impossibility of constructing an FM radio station on Channel 253 at Sanibel, Ruth began looking for alternative solutions. Relocating to another community was the only viable option --- indeed, the only option --- which would permit Ruth to provide FM radio broadcast service to a portion of Sanibel.

29. San Carlos Park is an ideal solution. Space on an existing tower (the Beasley tower) can be leased, as recommended by the Florida Commission, eliminating the environmental problems encountered in the past. This tower site provides the required

⁶ Sanibel is located to the southwest of Ft. Myers while San Carlos Park is located directly south of Ft. Myers.

⁷ Because of the impossibility of operating on Channel 253A at Sanibel, Ruth will actually be increasing the number of communities providing first local service.

city-grade signal over San Carlos Park. San Carlos Park is recognized by the U.S. Census and has over 5,000 housing units and over 11,785 residents. In addition, San Carlos Park, which was established approximately 20 years ago, has its own fire department (with two fire stations), sheriff's department, and two elementary schools (San Carlos Elementary and Three Oaks Elementary), both designated as emergency public shelters. San Carlos Park has numerous community and civic organizations, including the San Carlos⁸ Civic Association (which has constructed a community recreation complex with pool, playground equipment, and ball fields, as well as a building for community meetings and activities), branches of Kiwanis, Optimist and Rotary Clubs, a VFW Post and Auxiliary, and senior citizens groups. Southwestern Regional Airport serves San Carlos Park and is only five miles away.

30. San Carlos Park also contains child care centers, physicians and dentists, accountants, insurance, and real estate services, several banks, grocery, drug, and other retail stores and restaurants. There is a local cab company and churches of many different denominations are located in San Carlos Park.

31. Among the businesses that identify themselves with the name of San Carlos Park are: San Carlos Air Conditioning & Heating, San Carlos Beauty Salon, San Carlos Car Wash, San Carlos Child Care, San Carlos Chiropractic, San Carlos Christian Church,

⁸ There is no San Carlos separate from the San Carlos Park. All references to "San Carlos" are in fact to "San Carlos Park".

San Carlos Enterprises, San Carlos Golf Club, San Carlos Inn, San Carlos Insurance Agency, San Carlos Interiors, San Carlos Lawn Equipment, San Carlos Liquors & Lounge, San Carlos Little League, San Carlos Marina, San Carlos Medical Center, San Carlos Park Alliance Church, San Carlos Park Cab, San Carlos Park Fire District, San Carlos Park RV Sales & Service, Inc., San Carlos Professional Center, San Carlos RV Trailer Park and Islands, San Carlos Realty, Inc., San Carlos Septic Tank Service, San Carlos Day Care, San Carlos Park Animal Hospital, McDonald's of San Carlos Park, San Carlos Estate & Pawn Shop, San Carlos Barber Shop, Domino's Pizza-San Carlos Park, San Carlos Tae Kwon Do, and San Carlos Travel. See Exhibit 13 & 14. San Carlos Park is also a major exit on interstate highway I-75. See Exhibit 15. San Carlos Park currently is under consideration as the site of a new university. See Exhibit 16.

32. San Carlos Park has a year around population of 11,785 while Sanibel's permanent population is 5,468. Unlike Sanibel, which is a primary vacation/tourist area with 43% of the land preserved as a wildlife sanctuary, and a great number of hotels and time-sharing condominiums, San Carlos Park is a community of permanent residents, raising their families in San Carlos Park and working in Lee County.

33. The 11,785 residents in San Carlos Park support two elementary schools (each with 1,000 students) and together with Estero and Three Oaks elect a representative to the Lee

County Commission, the representative body for the unincorporated portions of Lee County.

34. San Carlos Park is served by three newspapers, the Southside, published monthly, the Bonita Banner, published twice weekly (Wednesday and Saturday) and serving San Carlos Park, Estero, and Bonita Springs, and the Ft. Myers News Press has a weekly insert addressing the concerns of San Carlos Park and other small unincorporated communities. See Exhibits 14, 16 & 20.

35. All of these indicia clearly support a conclusion that San Carlos is a community for purposes of Section 307(b) of the Communications Act, and that its significantly larger size than Sanibel fully justifies provision of first local service to San Carlos Park in lieu of first local service to Sanibel. As indicated in the attached engineering exhibit (Exhibit 1), Sanibel already receives service from more than five operating broadcast stations. Therefore, under Section 307(b) of the Communications Act, San Carlos Park should be found more deserving of a first service than Sanibel.

36. As demonstrated in the attached engineering exhibit, the proposal will meet or exceed all spacing requirements of Section 73.207 of the Commission's Rules, and the theoretical transmitter location shown would provide city-grade coverage to all of the requested community of license.

37. It is Ruth's intention to file an application to construct the facilities which this requested rule making would

authorize promptly upon the Commission's adoption of the requested modification of the FM Table of Allotments.

38. For these reasons, Ruth requests that the Commission amend the FM Table of Allotments as follows:

| <u>Community</u> | <u>Present Channel</u> | <u>Proposed Channel</u> |
|---------------------|------------------------|-------------------------|
| Sanibel, FL | 253A | ----- |
| San Carlos Park, FL | ----- | 253A |

and that the Commission modify the facilities of WRWX(FM) accordingly to provide service on Channel 253A at San Carlos Park without accepting competing expressions of interest or having to demonstrate the availability of an additional equivalent-class channel at San Carlos Park, in conforming with Sections 1.420(g) & (i) of the Commission's Rules.

CONCLUSION

39. Ruth has been extremely diligent for the past eight and one-half years, attempting to provide first broadcast service to Sanibel, but has been thwarted by forces beyond its control. Ruth remains ready, willing, and anxious to provide such service but at this point the combined concerns of the local, state and federal authorities regarding aviation, environmental, and zoning concerns make it impossible for Ruth to provide service at Sanibel.

40. Ruth has expended over \$250,000 in its efforts to construct a radio station at Sanibel. Mrs. Ray has left her job of 22 years as Vice President and General Manager of WMHE(FM),

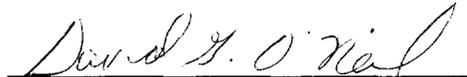
Toledo, Ohio, to move to Florida to construct and operate an FM radio broadcast station in Sanibel.

41. Ruth's efforts to provide first local FM radio broadcast service to Sanibel has been exemplary. As Mrs. Ray's declaration demonstrates, Ruth has left no stone unturned in its attempts to find a suitable location for an FM tower or to operate on an existing tower. But events beyond Ruth's control have made it impossible for Ruth to provide service in Sanibel. Allotting Channel 253A at San Carlos Park, deleting Channel 253A at Sanibel, and modifying the construction permit of WRWX(FM) accordingly will permit Ruth to provide FM broadcast service as Ruth has strived to do these past eight and one-half years.

Wherefore, for the foregoing reasons, Ruth Communications Corporation respectfully requests that the Commission grant its petition and institute a petition for rule making to amend the FM Table of Allotments and modify Ruth's construction permit as set forth herein.

Respectfully submitted,

RUTH COMMUNICATIONS CORPORATION



Theodore D. Kramer, Esq.
David G. O'Neil, Esq.

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(202) 331-0606

Its Attorneys

October 22, 1991

Study Name : PROPOSED SITE
 Channel : 253A
 Coordinates : N 26 30 2.0 W 81 54 16.0
 Separations : FM Zone 2 - Commercial

| Call | City | & | State | Stat | File - number | Chan | ERP | HAAT | Zn | Latitude | Longitude | Bear | Dist | Req'd | Clear | Notes |
|---------|--------------|---|-------|------|---------------|-------|------|------|----|------------|------------|-------|--------------------|-------|--------|---------|
| | | | | | | | | | | | | | --- kilometers --- | | | |
| WRMF | PALM BEACH | | FL | LIC | BLH 850806KQ | 250C | 100 | 1350 | 2 | 26 34 37.0 | 80 14 32.0 | 86.7 | 165.87 | 95.0 | 70.87 | |
| WXKT | ARCADIA | | FL | LIC | BLH 880127KA | 252A | 2.00 | 122 | 2 | 27 11 1.0 | 81 56 57.0 | 356.7 | 75.81 | 72.0 | 3.81 | CLOSE c |
| WXKT | ARCADIA | | FL | APPM | BPH 891204IB | 252C3 | 11.0 | 486 | 2 | 27 19 49.0 | 81 51 23.0 | 2.9 | 92.05 | 89.0 | 3.05 | CLOSE c |
| WXKT | ARCADIA | | FL | ALC | | 252C3 | | | 2 | 27 20 7.0 | 82 1 18.0 | 352.9 | 93.22 | 89.0 | 4.22 | CLOSE c |
| WRTO | GOULDS | | FL | CP | BPH 901102IE | 252C | 100 | 1627 | 2 | 25 32 24.0 | 80 28 7.0 | 126.3 | 178.84 | 165.0 | 13.84 | CLOSE |
| WRTO | GOULDS | | FL | ALC | | 252C | | | 2 | 25 32 24.0 | 80 28 7.0 | 126.3 | 178.84 | 165.0 | 13.84 | CLOSE c |
| WCOO | IMMOKALEE | | FL | LIC | BLH 840420CO | 252A | 0.90 | 555 | 2 | 26 21 19.0 | 81 21 3.0 | 106.2 | 57.52 | 72.0 | -14.48 | SHORT c |
| WCOO | IMMOKALEE | | FL | CPM | BMPH 880826IB | 252A | 2.11 | 381 | 2 | 26 21 19.0 | 81 21 3.0 | 106.2 | 57.52 | 72.0 | -14.48 | SHORT |
| WRWX | SANIBEL | | FL | CPM | BMPH 900731IB | 253A | 2.60 | 489 | 2 | 26 32 1.0 | 82 4 50.0 | 281.9 | 17.93 | 115.0 | -97.07 | SHORT c |
| WKGR | FORT PIERCE | | FL | LIC | BLH 800428AB | 254C | 100 | 1380 | 2 | 27 7 19.5 | 80 23 20.5 | 65.0 | 165.66 | 165.0 | .66 | CLOSE |
| WAYP | HOLMES BEACH | | FL | CPM | BMPH 901119JC | 254A | 3.00 | 328 | 2 | 27 27 49.0 | 82 35 30.0 | 327.7 | 126.65 | 72.0 | 54.65 | Comment |
| WAYP | HOLMES BEACH | | FL | APP | BMPH 910125IB | 254C3 | 23.0 | 328 | 2 | 27 41 23.0 | 82 43 22.0 | 328.7 | 154.75 | 89.0 | 65.75 | |
| WAYP | HOLMES BEACH | | FL | ALC | | 254C3 | | | 2 | 27 39 39.0 | 82 42 34.0 | 328.5 | 151.34 | 89.0 | 62.34 | Comment |
| D89-455 | MURDOCK | | FL | PADD | RM 7259 | 255A | | | 2 | 26 54 50.0 | 82 11 40.0 | 328.0 | 54.13 | 31.0 | 23.13 | Comment |
| D89-455 | MURDOCK | | FL | PADD | RM 6915 | 255A | | | 2 | 27 0 42.0 | 82 8 42.0 | 337.3 | 61.48 | 31.0 | 30.48 | |
| D89-455 | AVON PARK | | FL | PADD | RM 7259 | 256C3 | | | 2 | 27 29 5.0 | 81 29 23.0 | 20.5 | 116.56 | 42.0 | 74.56 | Comment |

End of Study

EXHIBIT 1

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