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LAW OFFICES
SMITHWICK & BELENDIUK, P.C.

2033 M STREET, N.W.
SUITE 207
WASHINGTON, D.C. 20036

Federal Communications Commission
Office of the Secretary

TELEPHONE
(202) 785-2800

TELECOPIER
(202) 785-2804

March 11, 1991

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

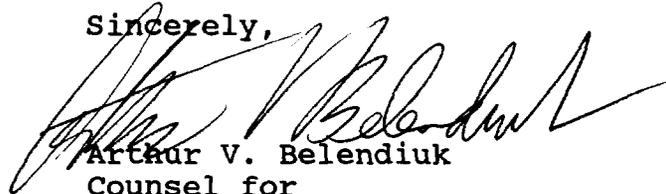
Re: MM Docket No. 91-10 ✓
Baldwin, Florida

Dear Ms. Searcy:

Transmitted herewith, on behalf of Douglas Johnson, are an original and six copies of a Motion to Enlarge Issues Against JEM Productions Limited Partnership in the above-referenced FM proceeding.

If there are any questions with respect to this matter, please communicate with the undersigned.

Sincerely,



Arthur V. Belendiuk
Counsel for
DOUGLAS JOHNSON

Enc.
AVB/lmv.A0311

cc: Mr. Douglas Johnson

ORIGINAL
FILE RECEIVED

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

MAR 11 1991

Federal Communications Commission
Office of the Secretary

In re Application of)	MM Docket No. 91-102
Charley Cecil &)	
Dianna Mae White)	File No. BPH-891214MM
d/b/a WHITE BROADCASTING)	
PARTNERSHIP)	
PEACHES BROADCASTING, LTD.)	File No. BPH-891214MN
SAGE BROADCASTING CORPORATION)	File No. BPH-891214MR
OF JUPITER, FLORIDA)	
FIRST COAST BROADCASTING)	File No. BPH-891214MU
COMPANY)	
DOUGLAS JOHNSON)	File No. BPH-891214MZ
NORTHEAST FLORIDA)	File No. BPH-891214NA
BROADCASTING CORP.)	
JEM PRODUCTIONS, LIMITED)	File No. BPH-891214ND
PARTNERSHIP C/O JOYCE)	
MORGAN)	
For Construction Permit)	
for a New FM Station on)	
Channel 289A in)	
Baldwin, Florida)	

TO: The Honorable Edward J. Luton
Administrative Law Judge

MOTION TO ENLARGE ISSUES
AGAINST JEM PRODUCTIONS
LIMITED PARTNERSHIP

Douglas Johnson ("Johnson"), by his counsel, and pursuant to Section 1.229 of the Commission's rules, hereby moves for the addition of the following issue against JEM Productions Limited Partnership ("JEM"), in the above-captioned proceeding:

To determine whether JEM's proposed transmitter and antenna location would constitute a hazard to air navigation.

By Hearing Designation Order, FCC DA 91-122, MM Docket No. 91-

10, released February 11, 1991, seven applicants, including Johnson and JEM, were designated for a comparative hearing to determine which of the applicants would be granted a construction permit for a new FM Station, Channel 289A, in Baldwin, Florida. Johnson numbered among six of the applicants that had an air hazard issue specified against them; the seventh applicant, JEM, was unaffected by the air hazard issue.

Contemporaneously with filing his application, Johnson notified the Federal Aviation Administration ("FAA") of the location and height of his proposed tower, as well as the frequency and power of his proposed station. Johnson's Application, FCC Form 301, p.15. The other five applicants with the air hazard issue specified against them did the same.

JEM is the sole applicant in this proceeding that neglected to notify the FAA of its proposed antenna location site.¹ JEM was required to notify the FAA. As the FAA stated in Ann M. Counihan:

Notice needs to be given for any future construction or alteration that would exceed the above described height, increase the ERP, alter the transmitting frequency, and/or add other transmitting devices. Compliance with this condition is in accordance with section 77.13(a)(4) of the FAR.²

Had JEM given this notice, the FAA would not have issued a determination of no air hazard. The FAA would have found that possible intermodulation problems exist at this location.

¹ Question 5, FCC Form 301 asks: Has the FAA been notified of the proposed structure? JEM's answer to this is "No".

² See, Anne M. Counihan, FAA OE Docket No. 89-AWA-OE-63 (June 8, 1990), Attachment B. See Also, 47 C.F.R. Section 77.13 (1990).

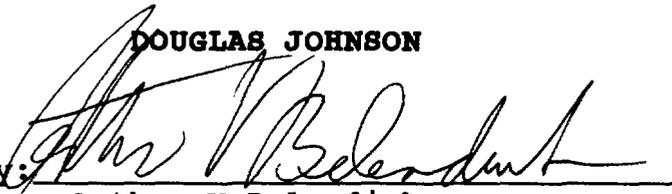
Johnson has contacted his engineer, E. Harold Munn, who has verified this fact. See, Declaration of Engineer E. Harold Munn, Attachment A, (Any location site within the "open area" from which the required city coverage can be attained, will result in theoretical interference to the FAA facility). Thus, JEM should have known that there would be a potential electro-magnetic interference ("EMI") air hazard problem with its proposed antenna and transmitter location site.

JEM was required to file with the FAA. Only its failure to comply with FAA rules allowed it to escape an air hazard issue before the FCC.

For the reasons set forth above, Johnson requests that the requested issue be granted. Further, Johnson requests that the Commission should require JEM to notify the FAA of its proposal.

Respectfully Submitted,

DOUGLAS JOHNSON

By: 

Arthur V. Belendiuk
His Attorney

Smithwick & Belendiuk, P.C.
2033 M Street, N.W.
Suite 207
Washington, DC 20036
(202) 785-2800

March 11, 1991

ATTACHMENT A

ENGINEERING STATEMENT

DUPLICATE COPY

This firm was retained to prepare this Engineering Statement concerning the allotment of FM Channel 289 (105.7 kHz) for use at Baldwin, Florida. The Federal Aviation Administration has objected to activation of this allotment by simply refusing to issue a determination of "no hazard" on the basis of possible electromagnetic interference (EMI) to the Jacksonville International Airport Runway 13 localizer facility (I-CZH), 108.9 MHz. The FAA alleges that there is a potential mix of Channel 289 with the existing operation of WCRJ-FM, Jacksonville, Fl, Channel 297C1 (107.3 MHz). The FAA postulates a mix between the Baldwin fundamental frequency and the second harmonic of WCRJ-FM.

A review has been made, moving the theoretical site for the Baldwin station a maximum distance from the city in terms of 70 dBu coverage for the city of license and in terms of distance from the I-CZH facility. Figure 1 of this report is a plot of the results of running the FAA's computer program under this assumption. Clearly it is seen that theoretical interference would result in a substantial portion of the ILS envelope.

Thus, there is no transmitter site location within the "open area" from which the required city coverage of Baldwin can be attained that does not result in theoretical interference to the referenced FAA facility.

It is seen that given the extreme of relocation, the FAA EMI standard is not met, considering its assumptions. While the FAA program may be questioned (and quite properly so), it still illustrates the fact that notification must be given to that Agency of any proposed use of Channel 289 for FM broadcast service in the Baldwin area under the allotment made by the FCC.

CERTIFICATION

I hereby certify, under penalties for perjury, that the contents of this Engineering Statement are true and accurate to the best of my knowledge and belief.

E. HAROLD MUNN, JR. & ASSOCIATES, INC.

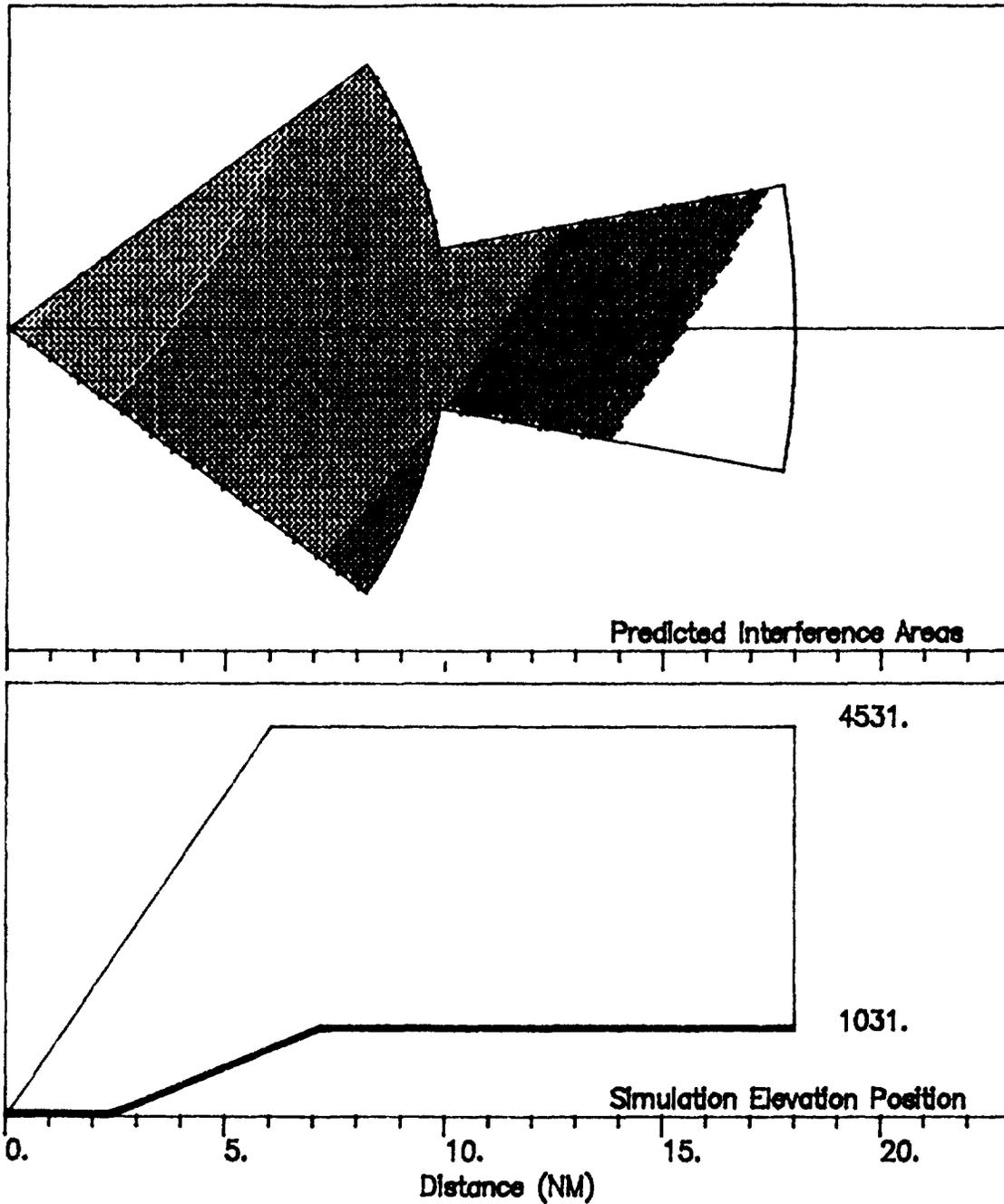
BY 

E. Harold Munn, Jr., President

March 6, 1991

100 Airport Drive
Coldwater, MI 49036

(517) 278-7339



Airspace case #: 89-ASO-2566-OE Site: BALDWIN FL
Date: 03/05/91 Plot filename: PROP40_...plt Service Volume Bottom
Intermodulation (B1) plot: PROP (51) & WCRJ (64)
Frequencies: PROP = 105.70 MHz WCRJ = 107.30 MHz
Navaid: CZH Frequency: 108.90 MHz Elevation (Ft. MSL): 31.
Runway heading: 131.0

ATTACHMENT B

CORRECTED COPY
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
OE Docket Number 89-AWA-OE-63

Anne M. Counihan
Pelican Rapids, Minnesota

REVIEW AND REVERSAL OF
DETERMINATION OF HAZARD TO AIR NAVIGATION

The Federal Aviation Administration's (FAA) Great Lakes Region issued a Determination of Hazard to Air Navigation under Aeronautical Study Number 88-AGL-338-OE November 7, 1989. The determination concerned a proposal by Ms Anne M. Counihan to construct an antenna tower 215 feet above ground level, 1262 feet above mean sea level, location at latitude 44° 55' 20" N., and longitude 93° 28' 08" W., near Pelican Rapids, Minnesota, operating on frequency 105.7MHz, with a power output of 3kw.

On November 13, 1989, A. Wray Fitch, counsel for Ms. Counihan, petitioned FAA headquarters for discretionary review of the hazard determination. The petition was based, in part, on the fact that on September 8, 1988, the FAA had issued an Acknowledgment of Notice of Proposed Construction or Alteration that had stated that the agency had no problem with the proposal. That acknowledgment was followed by a letter terminating the former on October 13, 1989, due to application of a new computer model used by the FAA for predicting electromagnetic interference (EMI). Thus, the standard utilized by the FAA had changed, not the proposal itself, it was therefore not reasonable vis a vis

CORRECTED COPY

this proponent to apply a new or different assessment model.

At the time of the aeronautical study that led to the initial decision, the FAA was using the Venn Diagram to predict EMI from FM stations. Subsequent to that date the agency discontinued use of the Venn Diagram and began using the Airspace Analysis Model (AAM).

As a result of this review it has been determined that the Great Lakes Region properly applied both assessment tools and reached the appropriate decision in each case.

The findings of this review are based on FAA policy in the assessment of EMI impacts on air navigation and communication aids from commercial broadcast sources. Since the filing of the above referenced petition, other proposals under near identical circumstances have come to the attention of the agency. This led to a review by the FAA regarding the appropriate application of the two models. The agency has determined that under certain circumstances when the Venn Diagram had already been applied and agency approval given but was subsequently reversed due to application of the AAM, conditional no hazard determinations may be issued during this period of transition.

In such cases, when public notice has been given and public comments resolved, or if notice is not required due to the nature of the proposal, it is the further intent of the FAA to grant

review with an immediate reversal. In the instant case, notice is not required due to the nature of the proposed structure.

Based on this discretionary review, it is the finding of the FAA that the proposed structure would have no substantial adverse effect on the safe and efficient utilization of navigable airspace by aircraft or on the operation of air navigation facilities, and therefore, would not be a hazard to air navigation provided the following conditions are met:

1. The following statement is included on the proponent's construction permit and/or license to radiate:

Conditional Statement

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after 1 year of interference-free operation.

2. If temporary construction equipment is used during the actual construction of the proposed tower and that equipment has a height that would exceed the notice standards of the Federal Aviation Regulations (FAR) Part 77, notice is submitted to the FAA's Great Lakes Region, Des Plaines, Illinois.
3. This decision is based solely on the foregoing description of the structure which includes location, height, ERP, and

operating frequency. Notice needs to be given for any future construction or alteration that would exceed the above described height, increase the ERP, alter the transmitting frequency, and/or add other transmitting device(s). Compliance with this condition is in accordance with Section 77.13(a)(4) of the FAR.

4. The construction sponsor files supplemental notice with the FAA's Great Lakes Region, Des Plaines, Illinois, at the time the project is abandoned, or at least 48 hours before the start of construction, and 5 days after the structure reaches its greatest height.

5. The structure is marked and lighted in accordance with FAA Advisory Circular 70/7460-1G, Obstruction Marking and Lighting Chapters 3, 4, 5, and 9.

This decision concerns the effect of the proposed structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local governmental body.

This determination expires on DEC 10 1990 unless an application for a construction permit is made to the Federal Communications Commission (FCC) on or before the above expiration date., In such case the determination expires on the date prescribed by the FCC for completion of construction, or on the date the FCC denies

the application.

There, pursuant to the authority delegated to me by the Administrator, the Determination of Hazard to Air Navigation issued by the Great Lakes Region under Aeronautical Study Number 88-AGL-338-OE is reversed. This Determination of No Hazard to Air Navigation is final and effective upon issuance.

Issued in Washington, D.C., on JUN 8 1990

Harold W Becker

CERTIFICATE OF SERVICE

I, Lisa M. Volpe, a legal assistant in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 11th day of March, 1991, copies of the foregoing were mailed to the following:

Honorable Edward J. Luton*
FCC
Administrative Law Judge
2000 L Street, N.W.
Room 225
Washington, DC 20054

Paulette Laden, Esquire*
FCC
Mass Media Bureau
2025 M Street, N.W.
Room 7212
Washington, DC 20554

Federal Aviation Association
Office of Chief Counsel
AGC-230
800 Independence Ave., S.W.
Washington, DC 20591

Denise B. Molin, Esquire
McCabe & Allen
9105 Owens Drive
P.O. Box 2126
Manassas Park, VA 22111
Counsel for Charley Cecil &
Dianna Mae White d/b/a White
Broadcasting Partnership

David Honig, Esquire
1800 N.W. 187th Street
Miami, Florida 33056
Counsel for Peaches
Broadcasting, Ltd.

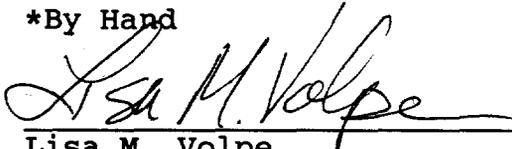
Allan G. Moskowitz, Esquire
c/o Kaye, Scholer, Fierman,
Hays & Handler
901 15th St., N.W., Suite 1100
Washington, DC 20005
Counsel for Sage
Broadcasting Corporation of
Jupiter, Florida

Dennis J. Kelly, Esquire
Cordon and Kelly
1920 N St., N.W.
Second Floor
Washington, DC 20036
Counsel for First Coast
Broadcasting Company

James L. Winston, Esquire
Rubin, Winston & Diercks
1730 M Street, N.W.
Suite 412
Washington, DC 20036
Counsel for Northeast
Florida Broadcasting Corp.

JEM Productions, Limited
Partnership
c/o Joyce E. Morgan
2372 Pacific Silver Dr.
Jacksonville, FL 32216

*By Hand



Lisa M. Volpe