

ORIGINAL  
FILE

RECEIVED

FEB 24 1992

WILLIAM J. PENNINGTON, III  
ATTORNEY & COUNSELOR AT LAW

2426 CONFEDERATE DRIVE  
POST OFFICE BOX 4203  
WILMINGTON, NORTH CAROLINA 28406  
TELEPHONE 919 - 762-7897

Federal Communications Commission  
Office of the Secretary

February 17, 1992

RECEIVED

FEB 24 1992

FCC MAIL BRANCH

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, DC 20554

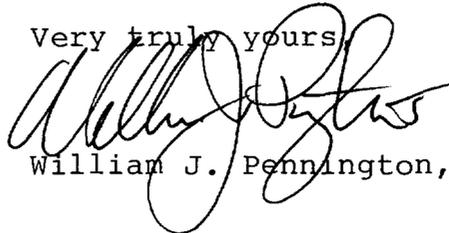
RE: Rule Making Petition for proposed  
upgrade at Hatteras, NC

Dear Ms. Searcy:

Transmitted herewith, on behalf of Hurricane Communications, permittee of a new FM Broadcast Station on Channel 232A at Hatteras, North Carolina, are an original and four copies of a Petition for Rule Making requesting a change in operating frequencies and upgrade in facilities.

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

Very truly yours,



William J. Pennington, III

WJP/tlt  
Enc.

No. of Copies rec'd  
List ABCDE

044

RECEIVED

FEB 24 1992

Federal Communications Commission  
Office of the Secretary

ORIGINAL  
FILE

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

RECEIVED

FEB 24 1992

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	RM
FM Table of Allotments	)	
(Hatteras, North Carolina)	)	

FCC MAIL BRANCH

To: Chief, Policy and Rules Division

PETITION FOR RULE MAKING

Hurricane Communications ("Hurricane"), permittee of a new FM broadcast station at Hatteras, North Carolina (BPH-910305MA), authorized to operate on Channel 232A, by its attorney, hereby respectfully requests that the Commission amend Rule 73.202(b), the FM Table of Allotments, to substitute Channel 233C1 for Channel 232A at Hatteras. Hurricane further requests that its construction permit be modified to specify operation on Channel 233C1. In support, the following is respectfully submitted:

1. The attached spacing study (Exhibit 1) shows that Channel 233C1 can be substituted for Channel 232A at Hatteras consistent with all the minimum separation requirements to both existing and proposed allocations. Robert L. Purcell ("Purcell") as part of MM Docket No. 91-358 requested in his initial rule making petition that Channel 233A be substituted for Channel 297A at Atlantic, North Carolina, so as to allow the allotment of Channel 297C1 to Atlantic Beach, North Carolina.

In this same docket, Purcell requested the substitution of Channel 268A for Channel 232A at Hatteras so as to allow the use of Channel 233A at Atlantic. In Reply Comments, Purcell withdrew his initial request that Channel 233A be substituted for Channel 297A at Atlantic and Channel 268A be substituted for Channel 232A at Hatteras. Purcell proposed the substitution of Channel 282A for Channel 297A at Atlantic as it would provide a much larger area for antenna site location and be removed from environmentally sensitive areas. A copy of Purcell's Reply Comments in MM Docket No. 91-358 is attached herein as Exhibit 2. The proposed substitution of Channel 282A for Channel 297A at Atlantic would not require a substitution of channels at Hatteras. Thus, Channel 233C1 is available for use at Hatteras, and does not conflict with any proposal supported by any party in MM Docket No. 91-358.

2. Technical studies show that Channel 233C1 can be used at Hurricane's permitted antenna location for operation on Channel 232A, North Latitude 35-15-38, West Longitude 75-3502. This petitioner's preferred site is close enough to Hatteras so that a station operating on Channel 233C1 would have no difficulty placing a 70 dBu contour over the entire community of Hatteras.

3. The substitution of Channel 233C1 for Channel 232A at Hatteras, and the modification of Hurricane's construction permit to specify operation thereon, will permit Hurricane to serve a much larger area, thereby increasing the number of broadcast signals available to the public as well as create a more

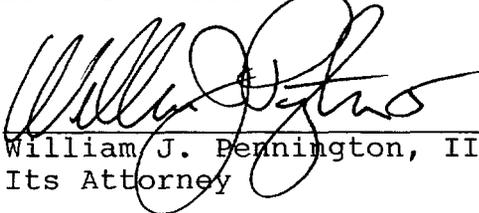
efficient use of the spectrum, both of which provide public interest benefits. See Report and Order in MM Docket No. 85-313, 60 RR 2d 114, 118 (1986). Thus, Hurricane's proposal would serve the public interest.

4. Because Channel 233C1 would not be available to a third party for use at Hatteras, Hurricane's construction permit may be modified to specify operation on the higher class channel pursuant to Rule 1.420(g). Upon grant of this request, Hurricane will proceed promptly with construction of its upgrade.

5. Based on the foregoing, Hurricane hereby requests that the Commission modify its FM Table of Allotments to substitute Channel 233C1 for Channel 232A at Hatteras and modify Hurricane's construction permit for a new FM station at Hatteras to specify operation on the new channel with full class C1 facilities.

Respectfully submitted,

**HURRICANE COMMUNICATIONS**

By:   
William J. Pennington, III  
Its Attorney

Post Office Box 4203  
Wilmington, NC 28406  
(919) 762-7897

February 17, 1992

ROBERT L. PURCELL  
REPLY COMMENTS  
ATLANTIC BEACH, NORTH CAROLINA  
MM DOCKET #91-358 RM 7867  
FEBRUARY, 1992

I. INTRODUCTION

This statement and attached exhibits support the reply comments associated with MM Docket #91-358 and are submitted on behalf of Robert L. Purcell ("Purcell"), the Petitioner. Purcell proposes a new Cl allotment to Atlantic Beach, North Carolina, as that community's first local service. In order to accommodate his request, Purcell further requested that Channel 233A be substituted for Channel 297A at Atlantic, North Carolina; and Channel 268A be substituted for Channel 232A at Hatteras, North Carolina.

II. BACKGROUND

In determining substitutive channels for Atlantic Beach, one was selected which could be allocated in close proximity to the community itself, rather than at a site restricted set of geographic coordinates. Thus, Channel 233A was selected since it could be allocated in close proximity to the community of license.

In order to accommodate an allocation of Channel 233A to Atlantic, it was necessary to request the substitution of a channel at Hatteras, North Carolina, to make available Channel 233A for Atlantic, North Carolina. It was determined that Channel 268A could be allocated to Hatteras, North Carolina, in substitution for Channel 232A and that the proposed Channel 268A would not only substitute at the allocation coordinates at Hatteras, but also at the site specified in the application of Hurricane Communications, File BPH-910305MA, the lone applicant for the Hatteras channel.

During the comment period of MM Docket #91-358, two other parties, excluding the petitioner, filed Comments and Counterproposals. The first was filed by Down East Radio ("Down East"), the remaining applicant for Channel 297A at Atlantic, North Carolina. The second was filed by WMXS, Inc. ("WMXS"), licensee of WMXS (FM), Clinton, North Carolina. Down East objected to the substitution of channels at Atlantic and instead proposed that Channel 297C3 be allocated to Atlantic, North Carolina; Channel 268A be allocated to Engelhardt, North Carolina; and Channel 272A be allocated to Atlantic Beach, North Carolina. Down East's comments were made jointly with Matthew L. Fulcher, III<sup>(1)</sup> who

(1) Mr. Fulcher has not certified that he would apply for Channel 272A, but has only "piggy backed" the Down East comments and counter proposals.

reportedly is a local resident of Atlantic Beach and has expressed an interest in the potential allotment of Channel 272A to that community.

WMXS's Counterproposal suggested that Channel 296C1, rather than 297C1, be allocated to Atlantic Beach in order to accommodate its requested upgrade of its facilities at Clinton, North Carolina, from Channel 296A to Channel 297C3. WMXS does not propose any other changes to Purcell's original request other than the alternative C1 channel at Atlantic Beach. WMXS further requested the upgrade of its facilities at Clinton and the substitution of Channel 299A for Channel 297A to St. Pauls, North Carolina, in order to accommodate its Clinton upgrade.

#### DISCUSSION

On January 31, 1992, Down East's application was granted for Channel 297A at Atlantic, North Carolina. However, that permit was specifically conditioned on the outcome of this instant proceeding. Since Down East was an applicant at the time the proceeding was initiated, the site which they specified in their then pending application was a "site of mere preference" and should be considered as such. It should not be treated as a hindrance to the institution of a first local service to Atlantic Beach. Their requested upgrade of the Channel 297A allotment as Atlantic should be compared to the Atlantic proposal under the Commission's standard allotment criteria which generally favors the institution of new local service over an upgrade to an existing allotment.

Down East proposes an alternative channel for Atlantic Beach, Channel 272A. Purcell has requested a C1 allotment for Atlantic Beach and has no interest in a Class A allotment in that community. Further, Channel 272A, as Down East notes, is presently under consideration for allotment at Pine Knoll Shores, North Carolina. It is an alternative channel to the initially proposed Channel 261A. The comment and reply period in that proceeding has long since closed and the availability of Channel 272A for an allotment of that channel to Atlantic Beach is highly questionable, even if the petitioner was interested in a Class A channel in that community, which he is not.

Down East also objects to the potential substitution of Channel 233A for Channel 297A at Atlantic, noting among other things that there is, in fact, no usable area due to FAA and environmental concerns in the immediate vicinity of the referenced coordinates proposed by Purcell. With this in mind, an alternative Class A channel has been located which is available for allotment to Atlantic, North Carolina, with a site restriction south-southwest of the community at a site which is readily available for use by Down East. As demonstrated on Exhibit #1, Channel 282A can be allotted to Atlantic, North Carolina, at reference coordinates North Latitude 34 48' 78" and West Longitude 76 27' 13". This is the same site on which Barbara D. Purcell proposed her Atlantic, North Carolina, facility. A deter-

mination of No Hazard from the FAA was received for this location for use as a maximum Class A facility. A copy of that determination is attached as Exhibit #2.

The use of Channel 282A at Atlantic, North Carolina, does not require the substitution of channels at Hatteras, North Carolina. Therefore, the petitioner respectfully requests that portion of its initial request be withdrawn. With this change, Channel 268A could potentially be allocated to Engelhardt, North Carolina, as requested by Down East. Purcell, although noting its availability, does not express an interest in applying for a channel at Engelhardt.

Down East also raises some additional issues involving among other things, site availability for a C1 allotment to Atlantic Beach, and the rationale that the petitioner used in proposing this channel. The reference coordinates selected for the Channel 297C1 allotment were those of a known available site and were used due to this site availability. There is an additional area to locate a tower for a C1 facility at Atlantic Beach. Further, the usable area for Channel 296C1, which was counter proposed by WMXS, Inc. allows for even further movement to the west and a substantial increase of the potential usable area.

Down East has categorized the proposal set forth in this proceeding by the Petitioner as a "strike application", a very serious charge levied against any participant in a Commission proceeding. Purcell, as the consulting engineer of record on behalf of Barbara D. Purcell, prepared an application for Channel 297A at Atlantic, North Carolina. Due to circumstances beyond its control, that application was dismissed by the Commission for failure to prosecute based on its non-payment of the hearing fee in order to remain in that proceeding. In reality Purcell had sought a settlement agreement with the two other Atlantic participants, seeking to attain a construction permit, on behalf of his wife. One of the two applicants, Core Sound Broadcasters, had verbally agreed to a settlement. So its interest in a channel in this particular area is clear. Since, the Petitioner has an ongoing interest for an allotment in this area this was and is reason behind filing this instant Petition for Rule Making.

WMXS has counterproposed an alternative channel for Atlantic Beach, channel 296C1. This alternative channel would allow WMXS the opportunity to upgrade its facilities at Clinton, North Carolina. It does not impact on any of the other initial substitutions requested by Purcell in its petition. Therefore, Purcell does not object to Channel 296C1 for Atlantic Beach and supports it since it will enable WMXS to upgrade its facilities at Clinton, North Carolina. However, should WMXS's counterproposal not be acceptable as an alternative, Purcell still requests that Channel 297C1 be allotted to Atlantic Beach. In the event the Commission decides to allot channel 296C1 to Atlantic Beach, North Carolina, Purcell herein proposes an alternative set of reference coordinates further away from

the potentially environmentally sensitive area noted by Down East. Although Purcell recognizes that Channel 296C1 could be allocated at the Coordinates it requested for the allocation of Channel 297C1. Alternative coordinates for Channel 296C1 are North Latitude 34 52' 11" and West Longitude 76 28' 29". Exhibit #3 demonstrates that Channel 296C1 at these coordinates will be clear of all other co-channel and adjacent channel frequencies which impact its use at Atlantic Beach. This detailed study assumes that Channel 282A is substituted for Channel 297A at Atlantic. Exhibit #3 is an allocation study for Channel 296C1 at Atlantic Beach.

A C1 allotment to Atlantic Beach, North Carolina, at the Channel 296C1 allocation coordinates would provide service to some 152,053 persons based on the 1990 census. This, in comparison, to a hypothetical C3 facility allocated to Atlantic as requested by Down East, which would provide service to only 72,766 persons, also based on the 1990 census. Since the availability of Channel 272A as a potential alternative Channel to Atlantic Beach is at best in question a comparison to this inferior channel will not be made. Therefore, a C1 allotment to Atlantic Beach would provide service to 79,287 more persons over an upgraded facility at Atlantic, North Carolina, as proposed by Down East. Further, there is no alternative C1 channel for Atlantic Beach, therefore, Down Eats's counterproposal involving Atlantic and Atlantic Beach, North Carolina, should be denied.

### III. CONCLUSION AND SUMMARY

The following changes to the FM Table of Allotments are requested:

Atlantic Beach, North Carolina	
Present	Proposed
None	296C1 or 297C1

Atlantic, North Carolina	
Present	Proposed
297A	282A

Hatteras, North Carolina	
Present	Proposed
232A	232A

Engelhardt, North Carolina	
Present	Proposed
None	263A*

Clinton, North Carolina	
Present	Proposed
296A	297C3

St. Pauls, North Carolina	
Present	Proposed
297A	299A

\*As requested by Down East.

When Channel 296C1 (the only alternative is Channel 297C1) is allocated to Atlantic Beach, Purcell will file an application for construction permit seeking authority to build a new FM station at Atlantic Beach, North Carolina and the C1 channel. The understanding certifies that all statements made in these reply comments are true accurate to the best of his belief and knowledge.

Dated February 14, 1992

  
Robert L. Purcell

ROBERT L. PURCELL  
ATLANTIC BEACH, NORTH CAROLINA  
EXHIBIT 1

ALLOCATION STUDY  
ATLANTIC, NORTH CAROLINA

CLASS A  
CURRENT RULES SPACINGS  
CHANNEL 282-104.3 MHz

CALL	CH#	CITY	STATE	BEAR	D-KM	R-KM	MARGIN
WCAS	282C1	Tarboro	NC	313.2	200.27	200.0	0.27
WXAI.C	281C1	Kill Devil Hills	NC	31.2	139.56	133.0	6.56
AP281	281C1	Kill Devil Hills	NC	18.8	163.81	133.0	30.81
WHTF	279C1	Williamston	NC	338.3	130.32	75.0	55.32
AD280	280C3	Topsail Beach	NC	250.9	99.51	42.0	57.51
AD283	283A	Wilmington	NC	246.8	150.13	72.0	78.13
WZXS.C	280A	Topsail Beach	NC	248.9	110.50	31.0	79.50
DE280	280A	Topsail Beach	NC	248.9	110.50	31.0	79.50
AD285	285C2	Hertford	NC	359.3	148.71	55.0	93.71

Reference Coordinates:

North Latitude 34° 48' 17"  
West Longitude 76° 27' 13"



U.S. Department  
of Transportation

**Federal Aviation  
Administration**

Southern Region

P. O. Box 20636  
Atlanta, Georgia 30320

ACKNOWLEDGEMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

CITY	STATE	LATITUDE/LONGITUDE		MSL	AGL	AMSL
DAVIS	NC	34-48-17.00	076-27-13.00	3	338	341

BARBARA D. PURCELL  
15010 CARROLTON RD.  
ROCKVILLE, MD 20853

AERONAUTICAL STUDY  
No: 90-ASO-1852-OE

Type Structure: ANTENNA TOWER 107.3 MHZ 6 KW ERP

The Federal Aviation Administration hereby acknowledges receipt of notice dated 09/10/90 concerning the proposed construction or alteration contained herein.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction would not exceed FAA obstruction standards and would not be a hazard to air navigation. However, the following applies to the construction proposed:

The structure should be obstruction marked and lighted per FAA Advisory Circular AC 70/7460-1, 'Obstruction Marking and Lighting'. CHAPTERS: -3 -4 -5 -6 -7 -8 -9.

Supplemental notice is required at least 10 days before the start of construction and within five days after construction reaches its greatest height (use the enclosed FAA form).

This determination expires on 06/13/91 unless application is made, (if subject to the licensing authority of the Federal Communications Commission), to the FCC before that date, or it is otherwise extended, revised or terminated.

If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED

SIGNED Kenneth R. Patterson Specialist, Systems Management Branch  
Kenneth R. Patterson (404) 763-7646

ISSUED IN: East Point, Georgia

ON 12/12/90

ROBERT L. PURCELL  
ATLANTIC BEACH, NORTH CAROLINA  
EXHIBIT 3

ALLOCATION STUDY  
ATLANTIC BEACH, NORTH CAROLINA

CLASS C1  
CURRENT RULES SPACINGS  
CHANNEL 296-107.1 MHz

CALL	CH#	CITY	STATE	BEAR	D-KM	R-KM	MARGIN
WRHT.C	242C1	Morehead City	NC	244.7	34.06	34.0	0.06
WSFLEM	293C1	New Bern	NC	283.3	82.44	82.0	0.44
WAFX	295C	Suffolk	VA	353.3	216.15	209.0	7.15
WRHT	242C2	Morehead City	NC	250.7	39.54	27.0	12.54
WMXS	297C3	Clinton	NC	275.9	182.21	144.0	38.21
WFXC.C	296A	Durham	NC	300.0	245.65	200.0	45.65
WFXC	296A	Durham	NC	300.0	245.65	200.0	45.65
WIOZ	296A	Southern Pines	NC	277.0	270.82	200.0	70.82
WVRS.C	297C2	Warrenton	NC	325.7	229.16	158.0	71.16
WCIG	296A	Mullins	SC	253.9	271.42	200.0	71.42
WSFM	298C2	Southport	NC	236.3	163.62	79.0	84.62
AD294	294A	Carolina Beach	NC	233.1	165.39	75.0	90.39
ALOPEN	297A	St. Pauls	NC	265.7	226.95	133.0	93.95
AP295	295A	St. Pauls	NC	265.7	226.95	133.0	93.95

Reference coordinates:

North Latitude 34° 52' 11"  
West Longitude 76° 27' 13"