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March 30, 1992

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

RECEIVED

MAR 31 1992

Federal Communications Commission
Office of the Secretary

Re: MM Docket No. 92-7

Dear Ms. Searcy:

Transmitted herewith, on behalf of WYAL Radio, Inc., permittee of Radio Station WWRT(FM), Scotland Neck, North Carolina, is an original and four copies of "Reply Comments of WYAL Radio, Inc." in the above-captioned proceeding.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with this office.

Very truly yours,

THARRINGTON, SMITH & HARGROVE



Mark J. Prak
Counsel to
WYAL Radio, Inc.

MJP/kf
Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter of)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
)
(Scotland Neck, North Carolina and)
Pinetops, North Carolina))

MM Docket No. 92-7

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To: The Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

MAR 31 1992
Federal Communications Commission
Office of the Secretary

**REPLY COMMENTS
OF
WYAL RADIO, INC.**

WYAL Radio, Inc. ("WWRT"), permittee of Radio Station WWRT(FM), Scotland Neck, North Carolina, by its attorneys and pursuant to Section 1.415 of the Commission's Rules and the Commission's Notice of Proposed Rule Making ("Notice") (Released: January 22, 1992), hereby submits its Reply Comments in support of the Petition for Rule Making and in opposition to the Comments of Radio Triangle East Company ("RTEC"), licensee of WSAY-FM, Rocky Mount, North Carolina.

WWRT's petition requests the substitution of Channel 238 C3 for Channel 238A at Scotland Neck, North Carolina, the reallocation of Channel 238 C3 to Pinetops, North Carolina, as the community's first local aural transmission service, and the modification of WWRT's construction permit to specify Pinetops as the station's

community of license. On March 16, 1992, RTEC filed comments opposing the petition claiming that its implementation would result in a reallocation of a channel from a rural community to one that is designed to provide service to an urbanized area. These Reply Comments and the attached Engineering Statement of WWRT's technical consultants, together with WWRT's petition, demonstrate that the purported premise of RTEC's comments -- that Pinetops is an adjacent suburb of Rocky Mount -- is a wholly inaccurate portrayal of that community.

Pinetops, North Carolina is not part of Rocky Mount, nor is it adjacent to Rocky Mount. Pinetops is 23.3 kilometers (14.5 miles) southeast of Rocky Mount. RTEC initially states that WWRT's proposed Pinetops transmitter site is "very close to the Rocky Mount Urbanized Area," while acknowledging that the Bureau was correct in its statement that Pinetops is not located within an urbanized area.¹ "In situations where a petitioner proposes to relocate a station from a rural to an urbanized area the Commission will examine evidence adduced pursuant to several well-articulated factors in order to determine whether the suburban community should be denied a first local service preference." RTEC Comments, p.4 citing, Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd. 7094, 7096-97 (1990). Since Pinetops is not in an urbanized area, WWRT's proposed relocation to Pinetops would not constitute a

¹ As noted in the attached Engineering Statement of WWRT's Consulting Engineer, Jefferson G. Brock, the area available to locate a transmitter site on Channel 283 C3 is small and the specified location was based on the location of adjacent channel stations. These are factors clearly beyond the control of WWRT. See also, Notice at ¶ 3.

relocation to an urbanized area. RTEC's argument is simply inapplicable to these circumstances. RTEC nevertheless attempts to close the gap between the communities by inaccurately categorizing Pinetops as an adjacent suburban community.

RTEC makes much of the fact that WWRT made use of 1980 Census data in its petition. In fact, "1980" as used on page four of WWRT's petition, was a typographical error. The Pinetops population figure of 1581 persons, cited in WWRT's petition, was provided by the Town Clerk of Pinetops in a telephone interview conducted by WWRT's counsel. Even so, RTEC's suggestion that WWRT somehow used 1980 census figures to mislead the Commission into thinking Rocky Mount was not an urbanized area is a desperate stretch indeed. The 1990 Census designates Rocky Mount and the area in the immediate vicinity of the city as an Urbanized Area. However, Pinetops is not located within this area, nor is it immediately adjacent to it.

RTEC's unilateral attempt to "annex" Pinetops to Rocky Mount does not square with the facts. As noted in WWRT's petition, Pinetops is an incorporated community with its own local government, businesses, churches, library and police and fire services. Reallotment of the channel from Scotland Neck to Pinetops is reallotment from one rural community to another rural community. Under applicable precedent, Pinetops qualifies as a community for Section 307(b) purposes. Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments, 67 RR 2d 610 (1990). As the Commission staff correctly observed, the relocation to

Pinetops will not result in the relocation from a rural to an urbanized area. See Notice,

¶ 3. In addition to providing a first local transmission service to Pinetops, allotting Channel 283 C3 at Pinetops would provide for greater area-wide service than would WWRT's operation on 238A at Scotland Neck.

WWRT's petition complies with the Commission's rules regarding the modification of FM authorizations to specify a new community of license. The requested reallocation is mutually exclusive with the present Class A allotment at Scotland Neck. Scotland Neck will continue to possess a local transmission service in WYAL(AM). The requested reallocation will not result in the relocation from a rural to an urbanized area. WWRT proposes that an improved WWRT(FM) at Pinetops is, given the foregoing, the preferential arrangement of allotments. See Amendment of Commission Rules Regarding Modification of FM and TV Authorizations To Specify a New Community of License, 4 FCC Rcd 4870 (1989), clarified at 5 FCC Rcd 7094 (1990).

CONCLUSION

It is respectfully requested that the Commission amend the FM Table of allotments as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Scotland Neck, NC	238A	--
Pinetops, NC	--	238 C3

It is also requested that the construction permit of Radio Station WWRT(FM) be modified to specify operation on Channel 238 C3 at Pinetops, North Carolina.

Respectfully submitted,

WYAL RADIO, INC.

A handwritten signature in black ink, appearing to read "Daniel W. Clark", written over a horizontal line.

Mark J. Prak
Daniel W. Clark

Its Attorneys

March 30, 1992

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ENGINEERING STATEMENT

**Jefferson G. Brock
Engineering Consultant To
WYAL Radio, Inc.**

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

FCC ORIGINAL FILE COPY

One (1) original with two (2) copies
to be filed with the FCC

original signatures
site maps (where applicable)

NOTE: Applicant must assure that all required non-technical portions of the application form are attached to this copy (Technical Amendments Only require a letter of transmittal signed by a principal)

prepared by:

BROMO
COMMUNICATIONS
BROADCAST
TECHNICAL CONSULTANTS
Inc.

REPLY COMMENTS
MM DOCKET #92-7
WYAL RADIO, INC.
ALLOT CHANNEL 238C3
PINETOPS, NORTH CAROLINA
March 1992

Technical Exhibit
TE-1

Bromo Communications, Inc.
P.O. Box M - 1331 Ocean Boulevard, Suite 201
St. Simons Island, Georgia 31522
(912) 638-5608

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REPLY COMMENTS
MM DOCKET #92-7
WYAL RADIO, INC.
ALLOT CHANNEL 238C3
PINETOPS, NORTH CAROLINA
March 1992

TECHNICAL STATEMENT

1. This Technical Statement was prepared on behalf of WYAL Radio, Inc. ("Radio"), permittee of station WWRT, Channel 238A, Scotland Neck, North Carolina, and petitioner in the above noted docket. Radio responds to the comments filed in this docket by Radio Triangle East Company ("RTEC"), licensee of WSAY-FM, Channel 253A, Rocky Mount, North Carolina.

BACKGROUND

2. Radio has requested an upgrade to the facilities of WWRT by substituting Channel 238C3 for Channel 238A. Further, Radio requests the re-allotment of the improved channel to Pinetops, North Carolina. In its petition, Radio noted that the removal of Channel 238A from Scotland Neck would not deprive the community of its only local service since co-owned station WYAL (AM) would remain in Scotland Neck. An improved WWRT would also continue to provide service greater than 1.0 mV/m to Scotland Neck.

3. Pinetops is an incorporated town (incorporated in 1903), located in southern Edgecombe county and is listed in

the 1980 census as having population of 1,465 persons. Pinetops presently does not have any local broadcast outlet, thus Channel 238C3 would provide first local service.

4. In its comments, RTEC objects to the allocation of Channel 238C3 to Pinetops and the removal of service from Scotland Neck. RTEC contends that the request is "solely to enable the petitioner to serve an urbanized area.....(Rocky Mount, North Carolina)". RTEC also categorizes Radio's request as the relocation of a station from a rural to urbanized area, in contravention to the Commission's rules which allow stations to change communities of license. Further, due to the location of the usable area for Radio's proposal "located very close to the city limits of Rock Mount", RTEC contends that the available services in Rocky Mount should be attributed to Pinetops and those services then compared to the presently available service from Scotland Neck. Finally, RTEC also claims that Radio "elected to rely on data from the 1980 U.S. census", rather than using 1990 figures, which reflect Rocky Mount's designation as an urbanized area.

DISCUSSION

5. Pinetops, North Carolina is located 23.3 kilometers (14.5 miles) southeast of Rocky Mount, North Carolina. Radio has requested that Channel 238C3 be allotted to Pinetops, North Carolina, not Rocky Mount. Although Rocky Mount and

the area in the immediate vicinity of the city was designated in the 1990 Census as an Urbanized Area, Pinetops is not within this area, nor is it immediately adjacent to it. Pinetops, North Carolina, is a community for allotment purposes. Pinetops has a Mayor, five town Commissioners and a Town Administrator. The town has numerous businesses and local churches. Pinetops Library, a branch of the Edgecombe County library (not Rocky Mount) is located in the town. The town provides its own fire and police services. Pinetops is not located adjacent to the Rocky Mount Urbanized area, and it, therefore, should not be credited with any of the local services attributable to the urbanized area of Rocky Mount. Pinetops is an independent community.

6. When Radio prepared its petition for Rule Making, it relied on census data which was readily available, in text form, for the Pinetops area. The 1990 census data, while being available in a computer data format, was not readily available in hard copy form. Since Radio's interest was determining the population of Pinetops, North Carolina, its use was not inappropriate. Rocky Mounts' designation as an urbanized area in the 1990 Census in no way impacts this proposal.

7. The location of the Channel 238C3 usable area is not significant. This instant proposal seeks to allot Channel 238C3 to Pinetops, North Carolina. A site restriction was necessary in order to prevent shortspacing two other

Commission licensed facilities (WRNS, Channel 236C, Kinston, North Carolina, and WKML, Channel 239C, Lumberton, North Carolina). The actual amount of area to locate a transmitter site on Channel 238C3 is small. Its proximity being 8.0 kilometers (5.0 miles) east of Rocky Mount is based solely of the adjacent channel stations beyond the control of the petitioner. The ability of the improved channel to serve Rocky Mount is not in question. The presently authorized WWRT Class A facility also provides service to a large portion of Rocky Mount.

8. The re-allotment of Channel 238 from Scotland Neck, a rural community outside the Rocky Mount Urbanized area, to Pinetops, another rural community also outside the Rocky Mount Urbanized area, is in accord with the Commission's criteria for changing communities of license. According to the 1990 census, Pinetops' population is 1,514. This represents a three percent increase over the 1980 figures. Further, in the last thirty years, Pinetops has continued to show a population growth, albeit modest. Scotland Neck is listed in the 1990 census as having a population of 2,575. This represents a loss of 259 persons over the 1980 figures or a loss of nearly ten percent. There are small losses to Scotland Neck's population noted in the previous two census'.

9. Based on 1990 Census figures, the authorized WWRT Class A construction permitted facilities would provide service to 84,699 persons, in 2,389.3 square kilometers. An

improved WWRT, operating from the proposed Channel 238C3 reference site, would provide service to 216,474 persons, in 4,789.1 square kilometers. This represents an overall gain of 131,775 persons.

SUMMARY

10. The Radio proposal is in compliance with the Commission's rules regarding the modification of FM authorizations to specify a new community of license. First, the proposed allotment is mutually exclusive with the present Class A allotment at Scotland Neck. The removal of this channel from Scotland Neck will not deprive the community of its only local broadcast service. Based on the 1990 census, Pinetops, North Carolina, is not located in any urbanized areas and is an independent community. Therefore, this proposal does not represent a migration of service from a rural area to an urbanized area.

11. Radio asks that its requests to upgrade WWRT to a C3 facility and change its community of license to Pinetops be activated. When Channel 238C3 is allotted to Pinetops, Radio will file, on a timely basis, an application to modify its outstanding construction permit to specify operation on Channel 238C3 at Pinetops, North Carolina.

12. This technical statement was prepared on behalf of WYAL Radio, Inc. by Bromo Communications, Inc., its Technical

Consultants. All of the information contained herein is true and accurate to the best of our belief and knowledge. Should questions arise during consideration of these comments, we would welcome the opportunity to discuss the matter by phone at (912) 638-5608.

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK being duly sworn, deposes and says that he is an officer of Bromo Communications, Inc. Bromo has been engaged by WYAL Radio, Inc., permittee of WWRT, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

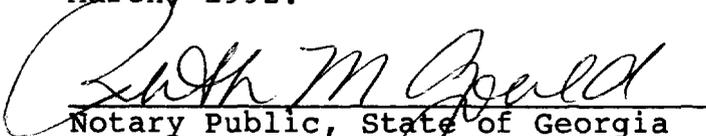
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 25th day of March, 1992.

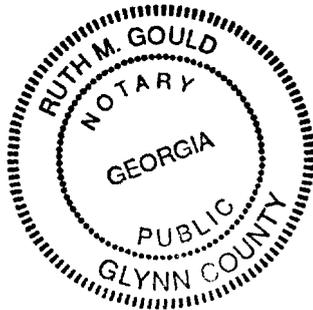


Jefferson G. Brock
Affiant

Sworn to and subscribed before
me this the 25th day of
March, 1992.



Notary Public, State of Georgia
My Commission Expires: August 21, 1995



CERTIFICATE OF SERVICE

I, Kathryn P. Freese, with the law firm of THARRINGTON, SMITH & HARGROVE, hereby certify that a copy of the foregoing Reply Comments was this day served upon the parties listed below in the manner indicated:

Hand-Delivered to:

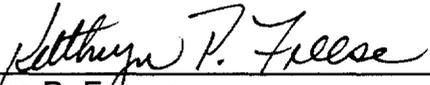
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This the 31st day of March, 1992.



Kathryn P. Freese