

other applicants were denied permission to specify the Channel 6 site, raising serious questions as to whether Central Florida ever had permission to use the Channel 6 site (without diplexing). The circumstances surrounding this issue are particularly significant in light of the fact that Central Florida's maneuvering appears designed to obtain an unfair advantage over the other applicants in an effort to garner a 307(b) preference in this proceeding.

3. Attached hereto as Exhibit 1 is a letter, dated February 17, 1989, from Robert K. Diehl, Chief Engineer of Channel 6, to the President of Bible Broadcasting Network, one of the other applicants to this proceeding. Significantly, Mr. Diehl informed the applicant in this letter that collocation would serve both Channel 6 and the applicant. Nevertheless, Mr. Diehl indicated in the letter that Channel 6 could not accommodate the request. No mention of diplexing was made.

4. Attached hereto as Exhibit 2 is a similar letter, dated June 29, 1989, in which Mr. Diehl advised Hispanic that it could not collocate "due to the near saturation point of our 1,500 ft. tower." Mr. Diehl further advised that "TV Tower has declined all space requests for some time now for this reason." Again, an offer to diplex went unmentioned.

5. Attached hereto as Exhibit 3 is another letter, dated November 13, 1989, in which Mr. Diehl advised Mr. Augsburg of Southwest Florida Community Radio, Inc. (another applicant to this proceeding) that Southwest could not collocate on the Channel 6 tower because room was not available. Mr. Diehl stated

that "Collocation would be my first choice i[f] the room were available." The offer to diplex off the Channel 6 antenna is absent.

6. In summary, three other applicants in this proceeding proposing similar operation (frequency, HAAT, and power) were all refused space on the TV Six tower on the stated grounds that no space was available. None of the other applicants were afforded the opportunity to diplex until after the B cut-off date, too late to obtain 307(b) parity with Central Florida.

7. Attached hereto as Exhibit 4 is a portion of the engineering statement from the original Central Florida application. In the application Central Florida stated:

... The center of radiation would be at 183 meters above average terrain and would be located on the WCPX TV television tower. The application has been fully coordinated with the licensee of WCPX(TV) to assure that no interference would occur.

...

... The proposed facility will be co-located with WCPX-TV operating on Channel 6. This facility has been designed in cooperation with the Director of Engineering of WCPX(TV). It is through the cooperation of that office that antenna space was found on their tower.

...

It should be emphasized that this application would not be possible without the cooperation of WCPX(TV). The Director of Engineering of that station is working closely with the applicant

8. Thus we have a situation where four applicants sought to collocate on the Channel 6 tower and either Channel 6 gave permission to only one applicant or Central Florida never received permission to locate on the Channel 6 tower (without diplexing). If in fact Channel 6 did give Central Florida permission to

locate on its tower, the result would be that Channel 6 will have decided who is to obtain this permit and not the FCC. By giving only one applicant permission to collocate and coordinating an amendment to "diplex" filed at the B cut-off, while advising all other parties that there is "no room in the inn," Channel 6 has in effect preempted the FCC processes. If, on the other hand, Central Florida was lacking in candor in stating that it had permission from Channel 6 while all other parties were denied permission, Central Florida would have obtained the permit by misleading the Commission. In either case, the processes of the Commission will have been undermined.

9. Confused and frustrated by the above set of circumstances, Hispanic diligently sought to obtain a clarification from Channel 6 as to whether it ever gave permission to Central Florida to locate its antenna on the Channel 6 tower. Channel 6 has refused to provide Hispanic with a definitive statement on that matter "on advice of counsel." In an effort to obtain some type of clarification from Channel 6, Hispanic wrote the letter attached hereto as Exhibit 5 and received the response attached hereto as Exhibit 6.

10. Specifically, Hispanic asked whether Channel 6 would permit Hispanic "or any other applicant" to put a new antenna on the Channel 6 tower. Channel 6 responded by stating that "there is no more room on the WCPX tower...." It further stated that "WCPX is a co-owner of the tower, and must secure the other owner's agreement on all tower matters." Channel 6 indicated that it would be "in principal agreeable to the idea of diplexing

a NCE FM licensee on the existing WCPX antenna."

11. The above correspondence from Channel 6 raises serious questions as to whether Central Florida had "reasonable assurance" of the availability and/or suitability of its proposed transmitter site when it filed its application. Clearly, there is no room on the Channel 6 tower. This has been stated repeatedly and consistently by Channel 6 over the past two years. Although Channel 6 does state that it would be favorably disposed to "diplexing" from its existing antenna, Central Florida did not propose to diplex until the B cut-off date, raising serious questions concerning its original proposal.

12. The letter from Channel 6 intimates that approval of the co-owner would be required on "all tower matters," raising a question as to whether Central Florida could go on the tower even with its B cut-off amendment wherein it modified its proposal to diplex off the Channel 6 antenna.

Legal Argument

13. The instant pleading is filed within fifteen (15) days of the receipt of the July 10, 1992 correspondence from Channel 6 which clarifies that there is no room on the Channel 6 tower and that even the proposal to diplex must be approved by the co-owner of the tower. Therefore, the pleading is timely pursuant to Section 1.229 of the Commission's Rules. Further, the motion raises questions of probable decisional significance and such substantial public interest importance as to warrant consideration even if it were not timely filed.

14. Indeed, Central Florida itself recently filed a peti-

tion to enlarge directed against another applicant in this proceeding in which it argued that the decisional significance of the availability of an applicant's antenna site is well established by Commission precedent. The Commission has declared that "it is elementary that a prospective construction permittee must have, if little else, an antenna site, a technical keystone of the Broadcasting operation." South Florida Broadcasting Co., 99 FCC 2d 840, 941, 57 RR 2d 495, 497 (Rev. Bd. 1984).

15. An applicant must specify a viable antenna site, "otherwise its application [is] substantially incomplete and patently not in compliance with the Commission rules, and [the applicant] would be technically unqualified to be a Commission licensee." Colorado Television, Inc., 56 RR 2d 1080 (Rev. Bd. 1984). Further, an applicant must make efforts to assure that it maintains its site throughout the application process. Alden Communications Corp., 2 FCC Rcd. 3462, 3463 (Rev. Bd. 1987). Berea Broadcasting Co., Inc., 4 FCC Rcd. 8813, 67 RR 2d 405, 406 (Rev. Bd. 1989).

16. Central Florida did not have a viable site when it filed its application. The only way Central Florida could use the Channel 6 site was to diplex which it did not propose doing until its B cut-off amendment. Commission precedent is clear that a proposed site must be "suitable" for the proposed use. See, El Camino Broadcasting Corp., 12 RR 2d 1057 (Rev. Bd. 1968); Braverman Broadcasting Co., Inc., 33 RR 2d 1667 (1975). Since there is no room on the Channel 6 tower and Central Florida did not propose to diplex with the Channel 6 antenna in its original

application, the site as originally proposed was neither suitable nor available, and appropriate issues should be specified.

17. Moreover, Channel 6 stated in its letter of July 10, 1992 that the co-owner of the site would have to approve any proposal to use the tower. Central Florida stated in its application that the proposal had been coordinated with Channel 6 but failed to mention any approval by the co-owner of the tower, thereby raising the question of whether the required approval had ever been obtained.

18. Further, even if Channel 6 did give permission to Central Florida to specify the Channel 6 tower, the facts surrounding the grant of permission to one applicant and denial of three others should be more fully explored in relation to the 307(b) and comparative issues specified in this case since such an action would preempt the Commission as decision-maker in this proceeding. In this regard it is noted that in recent pleadings filed in this proceeding by Channel 6, it is using the same engineering firm as Central Florida, raising a further question as to whether these entities are acting in concert. It is also noted that even if Central Florida merely made a mistake in not proposing to diplex in its original application, it should not be permitted to garner a 307(b) preference from filing an application which could not have been constructed as proposed.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Presiding Judge enlarge the issues to include the following additional issues pertaining to the application of Central Florida Educational Foundation, Inc.:

1. To determine whether Central Florida Educational Foundation, Inc. had reasonable assurance of the availability of the antenna site specified in its application as originally filed.

2. To determine whether the site specified by Central Florida Educational Foundation, Inc. in its original application was suitable as proposed.

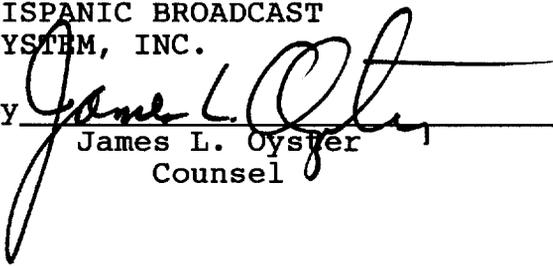
3. To determine what effect the facts relating to the Channel 6 site have on the basic and comparative qualifications of Central Florida and the Section 307(b) analysis in this proceeding.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

HISPANIC BROADCAST
SYSTEM, INC.

By


James L. Oyster
Counsel



February 17, 1989

Mr. Lowell Davey, President
Bible Broadcasting Network
1300 Battlefield Blvd.
Chesapeake, VA 23320

Dear Mr. Davey,

As we discussed a few days ago, TV Tower, Inc. is unable to accommodate your request for space on it's tower located at Bithlo, FL. Collocation on this tower would serve both WCPX, Ch6 in protecting it's aural carrier and allow you a spot in an overcrowded spectrum. It is unfortunate that this plan could not work out, but as we both know, there are many other factors that enter into determining such a decision.

WCPX has no objection to your location on the Gannet Tower, located approximately one and one quarter miles for the WCPX transmitter Bithlo location as long as you cooperate and resolve and all interference problems caused by your new station. Your carrier of 88.3Mhz is very close to WCPX's 87.74 aural carrier. However FM filters on the antenna terminals of TV receivers that are experiencing interference do seem to do a very good job of eliminating the problem.

As long as you assure me that you will be faithful in addressing all TVI problems that your station causes, WCPX has no objections to your going on the air as proposed, and will be more than happy to work with you. I wish you best of luck with your license application.

Best regards,

Robert K. Diehl
Robert K. Diehl
Chief Engineer

copy; Michael J. Schweitzer, G.M., file



June 29, 1989

Mrs. Idalia Arzuaga
Hispanic Broadcast Systems
c/o Bromo Communications, Inc.
1200 18th Street N.W. Suite #206
Washington, D.C. 20036

Dear Mrs. Arzuaga,

Thank you for consulting with WCPX, Ch6, in regard to your seeking of an FM allocation of 88.3 MHz in the Orlando area. I am very concerned of any interference potential that could cause reception problems to our viewers, since our aural carrier is assigned to 87.74 MHz.

As I told you earlier, collocation at our transmitter site cannot happen due to the near saturation point of our 1,500 ft. tower. It presently is accommodating three television and three FM's plus auxiliary equipment for these six operations. This is a jointly owned and operated venture of TV Tower, Inc. TV Tower has declined all space requests for some time now for this reason.

The Gannet tower, which you propose going on is approximately one and one quarter miles from WCPX's transmitter site. While this does not fall under the Commission's guidelines to satisfy co-location, I feel that it is a workable situation. WCPX is willing to cooperate with you on this, as long as you assure me that you will address and solve any and all interference problems that your 88.3 MHz Station may cause to WCPX viewers. The area around the Gannet Tower is sparsely populated and I don't see much of an interference potential at the present time. However, with the growth rate that we are experiencing in the Orlando area, a few years from now this area may become populated.

WCPX is happy to cooperate with you on seeking your license. Best of luck to you on your application.

Respectfully,

Robert K. Diehl
Chief Engineer

copy; Michael J. Schweitzer, G.E., file



November 13, 1989

Mr. Bob Augsborg
WAYJ-FM
P.O.Box 061275
Fort Myers, FL 33906

Dear Mr. Augsborg,

I received your letter requesting WCPX's cooperation in your seeking of a license for 88.3MHz, Channel 202.

As I explained on the phone, co-location with the WCPX, Ch 6 transmitter is not possible due to the present lack of space on our tower. This tower is jointly owned by WCPX and WFTV and has other broadcasters on it, virtually filling the tower to capacity. Co-location would be my first choice if the room were available.

If you secure a position on the Gannet tower, which is approximately one and one quarter miles from the WCPX transmitter, and intend to cooperate on any and all 88.3MHz induced interference problems, WCPX is more than willing to cooperate with you on your license seeking.

My experience has been that proper receiver antenna installations and FM trap filters can do a lot to eliminate TVI problems. In an already crowded spectrum, cooperation is the only way we can all exist.

Respectfully,

A handwritten signature in black ink that reads 'Robert K. Diehl'.

Robert K. Diehl
Chief Engineer

copy:Michael Schweitzer, G.M., file

Exhibit 4

APPLICATION FOR CONSTRUCTION PERMIT

The following engineering statement and attached exhibits have been prepared for Central Florida Educational Foundation and are in support of their application for a new non-commercial FM broadcast station to serve Union Park, Florida.

The proposed facility would operate on FM Channel 202 (88.3 MHz.) with 1.9 KW. effective radiated power. The center of radiation would be at 183 meters above average terrain and would be located on the WCPX(TV) television tower. The application has been fully coordinated with the licensee of WCPX(TV) to assure that no interference would occur.

No significant allocation problems exist concerning interference to or from other existing or proposed facilities. The proposed station would not be a significant environmental action as it requires no change in the height or location of an existing tower. In addition, the small amount of radiation involved from the proposed facility will not have any significant impact on the radiation levels on the ground. Therefore, the facility would fully comply with ANSI Standard C95.1-1982.

As no change is required in either the location or height of the existing structure, no FAA Form 7460-1 has been filed with that agency nor is required.

EXHIBIT E-6

The proposed facility will be co-located with WCPX(TV) operating on Channel 6. This facility has been designed in cooperation with the Director of Engineering of WCPX(TV). It is through the cooperation of that office that antenna space was found on their tower.

It is proposed that a two-bay antenna will be utilized for the proposed facility. The vertical pattern of that antenna will not be the same as the vertical pattern of the WCPX(TV) antenna. However, the space which is available on the tower is too limited for a larger number of bays which would be required to match the two antennas themselves.

Any interference to Channel 6 which might result in the immediate vicinity of the tower due to the different vertical radiation factors of the antennas involved will be eliminated by the applicant. This will be done in the normal fashion utilizing filters or traps to eliminate the FM signal. It should be noted that the antenna is well away from heavily populated areas and is primarily surrounded by farm ground. A few areas of housing are within a few miles of the tower but this could not be classified as a heavily populated area. It is respectfully requested that the requirement for absolute pattern matching of the antennas be waived.

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It should be emphasized that this application would not be possible without the cooperation of WCPX(TV). The Director of Engineering of that station is working closely with the applicant and it is not anticipated by either party that any interference problems will result from the proposed facility that cannot be eliminated through further cooperation of the parties involved.

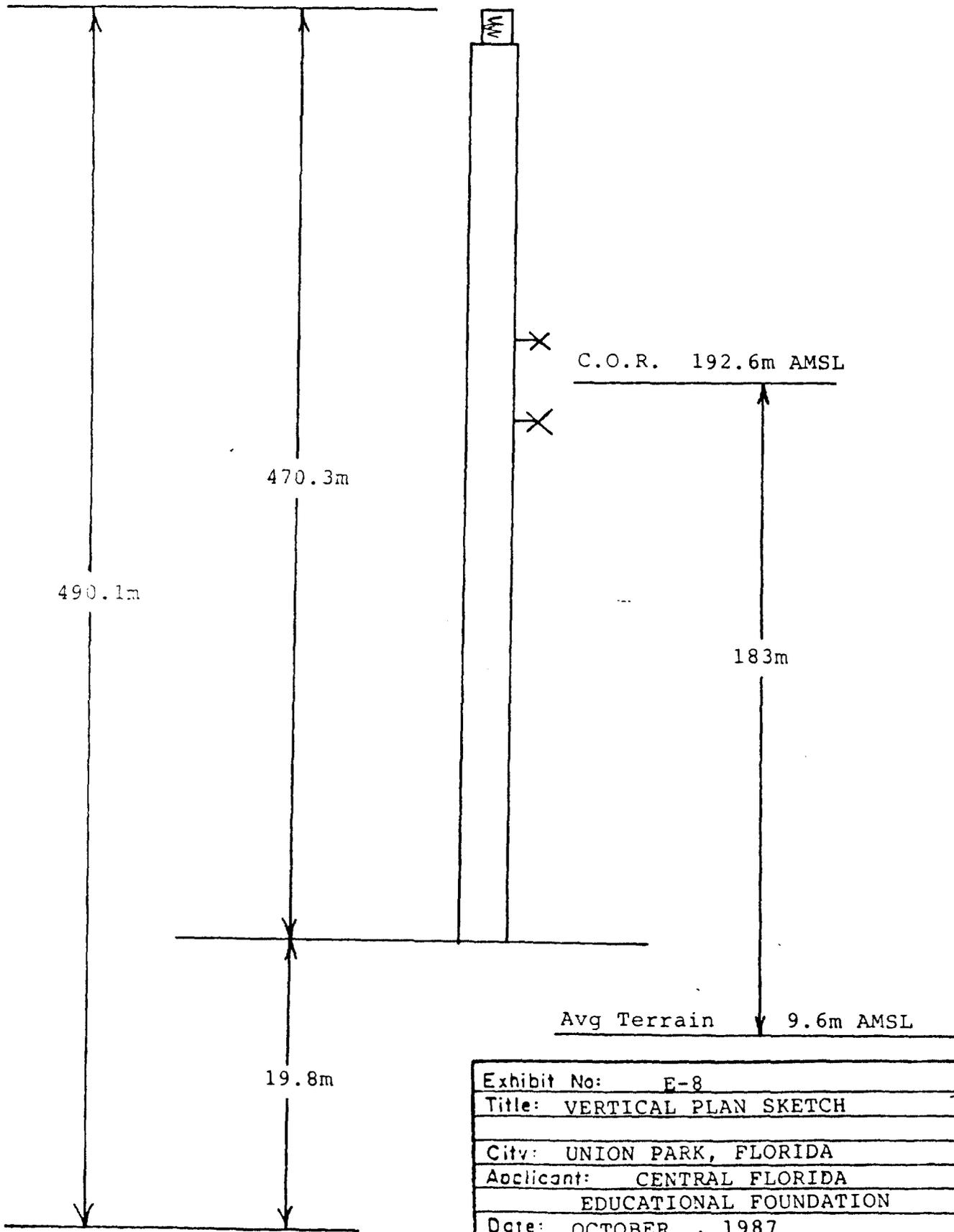


Exhibit No:	E-8
Title:	VERTICAL PLAN SKETCH
City:	UNION PARK, FLORIDA
Applicant:	CENTRAL FLORIDA EDUCATIONAL FOUNDATION
Date:	OCTOBER , 1987
D. L. Markley & Associates, Inc.	

Hispanic Broadcasting System Inc.

Box 4410
Guaynabito, P.R. 00470

Exhibit 5

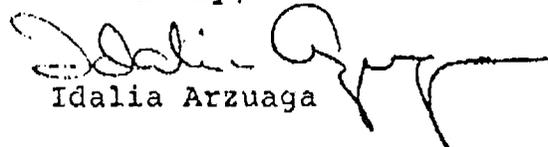
July 10, 1992

Roberto Diehl
WCPX-TV
P.O. Box 606000
Orlando, FL 32860

Dear Mr. Diehl:

We want to know weather you would permit us or any other applicant to put a new antenna on the channel 6 Tower or is your position that you would only permit diplexing into the channel 6 antenna.

Cordially,



Idalia Arzuaga

PD: Please fax as soon as possible as we have to make a decission.



July 10, 1992

Ms. Idalia Arzuaga
Hispanic Broadcasting System, Inc.
WREI-FM
Box 980
Road 2 KM 102.5
Quebradillas, P.R.
00742-0980

Dear Ms. Arzuaga,

It is true that there is no more room on the WCPX tower. At the present time there are three Television and three FM antennas on the tower, along with various two-way radio, microwave and other ancillary equipment. Also, please be aware that WCPX is a co-owner of the tower, and must secure the other owner's agreement on all tower matters.

I am however in principal agreeable to the idea of diplexing a NCE FM licensee on the existing WCPX antenna. This would satisfy the conditions of co-location and prevent interference problems to WCPX, Ch 6.

Respectfully,

Robert K. Diehl
Robert K. Diehl
Chief Engineer

copy: Michael J. Schweitzer, President & General Manager

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CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing MOTION TO ENLARGE ISSUES by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 27TH day of July, 1992, to the following:

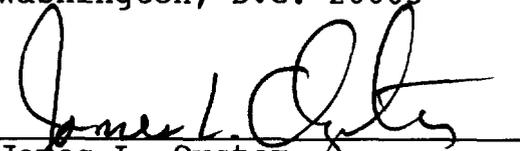
James Shook, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Gary S. Smithwick, Esq.
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