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FILE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

MM Docket No. 92-244

In the Matter of)	
)	
)	
Amendment of Section 73.202(b))	
Table of Allotments)	RM-8027
FM Broadcast Stations)	
(Charlotte Amalie, Virgin Islands))	
)	
)	
To: Chief, Allocations Branch)	

COMMENTS AND COUNTERPROPOSAL

Paradise Broadcasting Corporation ("Paradise"), by its attorneys and pursuant to Sections 1.401 and 1.420 of the Commission's Rules, hereby requests that the Commission: (1) deny the request of Robert E. Miller, Jonathan Cohen and Arthur V. Belendiuk, d/b/a Calypso Communications ("Calypso"), permittee of WVN(X) (FM), to amend the FM Table of Allotments to substitute Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands, and to modify the WVN(X) (FM) construction permit to specify operation on

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Channel 267B; and instead (2) amend the FM Table of Allotments to substitute Channel 267B for Channel 222B at Cruz Bay, Virgin Islands, and modify Paradise's construction permit for WDCM(FM) to specify operation on Channel 267B. In support of this request, Paradise states the following:

1. Paradise is the permittee of Channel 222B (WDCM(FM)) at Cruz Bay, Virgin Islands. By this counterproposal, Paradise petitions the Commission to substitute Channel 267B for Channel 222B at Cruz Bay. The proposed substitution would ensure the provision of a first local aural transmission service at Cruz Bay, and indeed the first such service on the entire island of St. John.

2. In the Notice of Proposed Rulemaking in this proceeding, the Commission noted that Calypso has requested the substitution of Channel 267B at Charlotte Amalie because the current allotment, Channel 246B, would create a harmful electrical interference problem with an allotment in Tortola, British Virgin Islands. The Commission initially observed that it believed that the public interest would be served by proposing the substitution, since it could eliminate the possible interference problem.

3. At its current allotment Paradise faces the very same problem that Calypso does: operation on Channel 222B would create harmful electrical interference with allotments in the British Virgin Islands. See Exhibit E. However, **unlike** Calypso, if

Paradise is precluded from constructing its proposed station then Cruz Bay will be deprived of its sole broadcast transmission service.¹ Charlotte Amalie, by contrast, already has **eight** other (five FM and three AM) radio stations licensed to it.

4. Given the choice between provision of a first local transmission service at Cruz Bay and a ninth local service at Charlotte Amalie, the Cruz Bay proposal must be preferred. Substitution of Channel 267B for Channel 222B at Cruz Bay better meets the Commission's FM allotment priorities than substitution of Channel 267B for Channel 246B at Charlotte Amalie. The Commission's FM allotment priorities are as follows:

- (1) first aural service;
- (2) second aural service;
- (3) first local service;
- (4) other public interest matters.

Co-equal weight is given to priorities (2) and (3). Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 90-93 (1982). Because both Charlotte Amalie and Cruz Bay have more than two aural reception services (See Exhibit E), provision of a first local

¹There are no other AM or FM (or TV) allotments at Cruz Bay. In 1987 Rosidalia Villafane petitioned the Commission to allot a second FM channel, 234A, at Cruz Bay. However, he apparently subsequently advised the Commission that he was no longer interested in pursuing the allotment, and the Commission dismissed the petition. See Cruz Bay, Virgin Islands and Bayamon, Puerto Rico, 2 FCC Rcd 5676 (1987). Paradise understands that although the proposal was dismissed, Channel 234A still appears on the Commission's database. In any case, Channel 234A is not viable at Cruz Bay. See Exhibit E. Paradise's authorization for FM Channel 222B remains the sole broadcast allotment to Cruz Bay.

transmission service (priority 3) is the most significant factor to be considered in this instance.

5. The Commission has long recognized the importance of providing a community such as Cruz Bay with its first local transmission service. See Atchison, Horton and Wathena, Kansas, 7 FCC Rcd 4645 (Mass Med. Bur. 1992) (provision of first local transmission service preferred over provision of second such service); Alegria I, Inc., 61 RR 2d 136 (Rev. Bd. 1986) (to same effect); Caldwell Broadcasting Corp., 100 FCC 2d 115 (Rev. Bd. 1985) (to same effect); Alessandro Broadcasting Corp., 99 FCC 2d 1 (Rev. Bd. 1984) (to same effect). In the above cases the Commission's Allocations Branch and Review Board consistently favored the provision of a first local service over a second local service. Clearly in this case maintaining a **first** local transmission service at Cruz Bay must be preferred over maintaining a **ninth** such service at Charlotte Amalie.²

6. Because Paradise clearly prevails over Calypso with regard to the third allotment priority, further analysis is not required. However, Paradise also prevails over Calypso when analyzing the fourth priority. There are public interest benefits to the substitution of Channel 267B at Cruz Bay that are not associated

²Channel 267B is the only viable allotment for operation at Cruz Bay. Although the Commission had apparently set aside in its database Channel 224B for possible use by Paradise, that channel is unusable at Cruz Bay as well. See Exhibit E.

with the substitution of that channel at Charlotte Amalie. Cruz Bay is the principal city on the island of St. John.³ As such, it is the primary source for local information for island residents. The island's Medical Center, post office, library, government administration offices, telephone company and other utilities offices are located in Cruz Bay, as well as several churches, schools, and most of the island's shopping. Cruz Bay is the primary sea port for the island, and the only one at which cargo and cruise ships dock. Cruz Bay is also the home to numerous civic and social organizations, including the Boy Scouts, Girl Scouts, St. John youth baseball league, St. John Lyons Club, St. John Business and Professional Women's Club, St. John History College (historical society), St. John Taxi Association, St. John School of the Arts, Coral Bay Yacht Club, and St. John Yacht Club. The public interest weighs decisively in favor of preserving the only local transmission service in a community of such significance as Cruz Bay, as compared to a ninth such service to Charlotte Amalie.

7. In sum, Paradise hereby requests that the Commission substitute Channel 267B for Channel 222B at Cruz Bay and modify the authorization of Paradise for Station WDCM(FM) accordingly. Upon grant of this request Paradise will file with the Commission the necessary modification application and, upon grant thereof, will construct and operate Channel 267B at Cruz Bay. Paradise requests

³Cruz Bay is, in fact, the only Census Designated Place on the island of St. John.

that modification of its authorization be conditioned only upon the filing of the necessary modification application with the Commission and that the allotment not be opened for additional applications.

8. There is good cause for modification of Paradise's authorization without opening the channel to competing applications. The Commission's rules permit such modification of an authorization where a permittee is moving to a mutually exclusive higher class adjacent or co-channel 47 C.F.R. 1.420(g)(3). Here, Paradise is requesting a move to a more distant channel only because, as demonstrated herein, there are no other viable channels that may be substituted at Cruz Bay. If Channel 267B is not substituted at Cruz Bay, Paradise will not be able to operate **any** station there and the city, as well as the entire island of St. John, will be deprived of local aural service. Thus Paradise, an existing permittee, is not requesting a channel substitution simply to upgrade or improve facilities; it is requesting the substitution in order to implement a first local aural service to a city and island that the Commission has already determined are deserving of such service.

9. Moreover, modification of Paradise's authorization should be made without the further delay of additional competing applications in order to ensure the provision of service on Channel 267B by a U.S. station. As the Commission has learned from the

instant situations of Paradise and Calypso, operation on U.S. versus British allotments has been on a first-come, first-served basis. If the Commission further delays the opportunity for U.S. operation on Channel 267B by accepting competing applications, there is a possibility that a British station will commence operation on that channel or an adjacent channel in the meantime and thus preclude U.S. operation altogether.

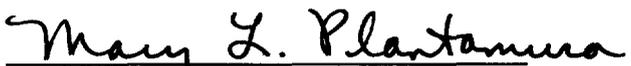
10. The Commission has waived its rules concerning allotment procedures where it has found good cause to do so. In Christiansted, Virgin Islands, 6 FCC Rcd 5215 (1991), the Commission substituted a permittee's channel on its own motion, without opportunity for public notice and comment. It noted that because the matter was resolved through international negotiations, its ordinary allotment procedures would have served no purpose. Likewise in the instant case the Commission's ordinary allotment procedures would serve no worthwhile purpose. Parties interested in this matter will have had an opportunity to be heard in the instant rulemaking proceeding, and there is a serious concern that additional delay could preclude the operation of **any** U.S. station on Channel 267B in the U.S. Virgin Islands. See Paragraph 9 above. Accordingly, Paradise submits that ample good cause exists for substitution of Channel 267B at Cruz Bay and modification of its authorization accordingly.

For the foregoing reasons, Paradise respectfully requests that the Commission substitute Channel 267B for Channel 222B at Cruz Bay, U.S. Virgin Islands, and to modify the authorization of Paradise for Station WDCM(FM) accordingly.

Respectfully submitted,

PARADISE BROADCASTING CORPORATION

By: 
Linda J. Eckard


Mary L. Plantamura

ROBERTS & ECKARD, P.C.
1919 Pennsylvania Avenue, N.W.
Suite 222
Washington, DC 20006

Its Attorneys

January 4, 1993

Exhibit E
Engineering Statement in Re: MM Docket 92-244
A Counterproposal to RM-8027
Use of Ch. 267B in the U.S. Virgin Islands
(Calypso Communications Ch. 267B - Charlotte Amalie)
Petition to Amend §73.202(b) Table of Allotments
Prepared on Behalf of Paradise Broadcasting Corporation

Introduction

Paradise Broadcasting Corporation ("Paradise") holds a construction permit to operate on Ch. 222B to provide Cruz Bay in the US Virgin Islands with its first local service. Because of the allotment of Channels 219C and 222B1 in the British Virgin Islands, Paradise is unable to utilize its current frequency allotment, Channel 222B. Paradise, by its consulting engineer, has conducted an extensive study of the FM Broadcast spectrum to identify any alternative channels which might be used in place of Ch. 222B. Ch. 267 is the only identifiable channel which might be operated to serve Cruz Bay with a Class B facility and meet all of the Commission's Minimum Distance Separation Requirements of Section 73.207.

RM-8027, assigned MM Docket No. 92-244, was released November 10, 1992, as a Notice of Proposed Rulemaking to substitute Ch. 267B for Ch. 246B, as allotted to Charlotte Amalie, and modify the Construction Permit for Calypso Communications (WVNX) to specify operation on Ch. 267B. Paradise is herewith submitting the instant filing as a counterproposal to RM-8027. Paradise respectfully requests that the Commission substitute Ch. 267B for Ch. 222B and allow for the modification of Paradise's Construction Permit for WDCM at the coordinates specified below in order for a first local service to Cruz Bay, USVI, to survive.

Ch. 222B & Ch. 246B Are Too Close to BVI Stations.

Neither Ch. 222B, WDCM, as allotted to Cruz Bay, nor Ch. 246B, WVNX, as allotted to Charlotte Amalie, can operate from their respective Construction Permit Sites and comply with the

Commission's Minimum Distance Separation Requirements with respect to certain FM facilities in the British Virgin Islands.

WDCM, as allotted to Ch. 222B for Cruz Bay, is twelve (12) km distant from a third adjacent Class C allotment to Tortola in the British Virgin Islands (FCC Minimum Separation required - 105 km) and thirteen (13) km distant from a co-channel Class B1 allotment of Ch. 222B1 to Tortola in the British Virgin Islands (FCC Minimum Separation required - 211 km). At some point, the Commission was notified of the addition of Ch. 219C at Tortola and tentatively set Ch. 224B aside for WDCM in its database. However, no formal proceeding or notification regarding the substitution of Ch. 224B for Ch. 222B at Cruz Bay has been identified. With the allotment of Ch. 222B1 at Tortola, BVI, noted for the first time in September, 1992, the tentative allotment of Ch. 224B to Cruz Bay in place of Ch. 222B became untenable. A second adjacent short-spacing of this magnitude would create a heretofore unheard of short-spacing of 198 km and would as well be certain to cause actual interference to the signals of both the BVI station and WDCM.

Use of Ch. 267B to Serve Cruz Bay

Other than WDCM, there are no other broadcast facilities allotted to the community of Cruz Bay or to the island of St. John (save for a 36 Watt VHF-TV Channel 3 Translator serving the crossroads of Coral Bay on the other side of the island). Paradise respectfully requests that the Commission substitute Ch. 267B for Ch. 222B at Cruz Bay and specify the coordinates at which Paradise would construct its facility: North Latitude 18° 21' 31" West Longitude 64° 58' 21". The allotment of Ch. 267B to Cruz Bay, at the coordinates specified above, would meet the Commission's minimum distance separation requirements with respect to all known US allotments and proposed allotments other than RM-8027 and with respect to all known foreign allotments. Attached as Exhibit E-1 is a table of all known pertinent FM broadcast facilities with calculated distances and stated minimum distance separation requirements per Section 73.207 to illustrate this fact.

Paradise also respectfully requests that the Commission act in the most expeditious manner to notify the International Telecommunications Union ("ITU") of its intent to use Ch. 267B in the U.S. Virgin Islands. Paradise and Calypso have both found their construction plans to be in conflict with uncoordinated facilities launched in the British Virgin Islands, just a few miles from the WDCM and WVNK construction permit sites. The longer Ch. 267B remains vacant on the ITU roster, the greater the likelihood that it too may be used without coordination with US allotment plans.

First Local Service to Cruz Bay vs Sixth Service to Charlotte Amalie

Ch. 222 is the only AM, FM, or TV broadcast channel allotted to Cruz Bay.¹ Channel 246 is one of six FM broadcast channels allotted to Charlotte Amalie. (Ch. 241B1, Ch. 250B, Ch. 271B, Ch. 282B, and Ch. 287B are the other allotted channels.) Also allotted to serve Charlotte Amalie are three (3) AM Standard Broadcast stations (1000 kHz, 1090 kHz, and 1340 kHz) and at least two full fledged TV facilities (Ch. 10 and Ch. 12).

Neither 267B as proposed by Calypso, nor Ch. 267B as proposed herein by Paradise, would provide a first through fifth aural service to any area within the 78 km class contour distance from the respective proposed sites. There are five (5) FM facilities, excluding WVNK and WDCM, operating from the island of St. Thomas. (Four of these are Class B stations, one is a Class B1 station.) There are also five (5) Class B stations licensed or authorized to serve Christiansted on the island of St. Croix. To the west, at the periphery of coverage from the St. Croix and St. Thomas

¹ There are no other AM, FM, or TV allotments at Cruz Bay. In 1987 Rosidalia Villafanes petitioned the Commission to allot a second FM channel (to supplement Ch. 222B) at Cruz Bay. The petition was later withdrawn and dismissed. Even though the proposal was dismissed by the Commission, the entry remains in the FCC's FM Engineering Database. As illustrated in Exhibit E-2, Ch. 234A, as set aside in the Database, is significantly short-spaced to a Ch. 232C facility in the British Virgin Islands and to WLDI, on Ch. 234B at Bayamon, PR. Ch. 234A at Cruz Bay is clearly not a viable allotment and should not be considered as a service to Cruz Bay.

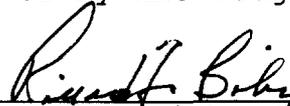
facilities, a multitude of Puerto Rican FM stations, including 234B, 243B, 255B, 277B, and 299B, provide a continuity of more than five aural services. Attached as Exhibit E-3 is a tabulation of the facilities allocated to Charlotte Amalie, Christiansted, and Puerto Rico which collectively provide more than five (5) aural services to all of the area within the 78 km Class B contour distance from either WDCM or WVNxs' proposed reference points for Ch. 267B. Also attached, as Exhibit E-4, is a tabulation of known British Virgin Islands Allotments, as taken from the most recently released edition of the FCC FM Engineering Database.

Summary

Paradise has determined that it can not construct the facilities authorized for WDCM by Construction Permit on Ch. 222B or Ch. 224B because of facilities allotted to Tortola in the British Virgin Islands. The only identifiable alternative channel is Ch. 267B, to which Calypso Communications holds no mutually exclusive right. While Calypso Communications also faces channel utilization problems on its assigned frequency (Ch. 246B) because of a station in Tortola (Ch. 247C), Ch. 246B, WVNx, is one of nine (9) radio stations allotted to Charlotte Amalie. In contrast, Ch. 222B, WDCM, is the only local service allotted to Cruz Bay. The public interest is clearly served better by preserving a first local service to Cruz Bay as compared with saving a ninth service to Charlotte Amalie.

Certification

All technical data herein have been determined in accordance with the existing Regulations of the Federal Communications Commission. Under penalty of perjury, I state that the foregoing is true and correct to the best of my knowledge and belief.



Richard L. Biby
Registered Professional Engineer
District of Columbia Reg. No. 5710E
Commonwealth of Virginia Reg. No. 014018

Exhibit E-1
 Tabulation of Pertinent FM Facilities with Distance
 Computations and Separation Requirements
 Ch. 267B at Cruz Bay, USVI

North Latitude 18° 21' 31" West Longitude 64° 58' 21"

A Counterproposal to RM-8027 (MM Docket 92-244)
 Use of Ch. 267B in the U.S. Virgin Islands
 (Calypso Communications Ch. 267B - Charlotte Amalie)
 Petition to Amend §73.202(b) Table of Allotments
 Prepared on Behalf of Paradise Broadcasting Corporation
 Ch. 267B, Cruz Bay, USVI

<u>Call</u>	<u>Location</u>	<u>Channel & Class</u>	<u>Separation (km)</u>	<u>Required* (km)</u>
WIDA-FM	Carolina, PR	213B	117.4	20
WXYX	Bayamon, PR	264B	128.3	74
WRIO	Ponce, PR	266B	181.6	169
WRIO(APP)	Ponce, PR	266B	186.9	169
WKSA-FM	Isabela, PR	268B	230.0	169
WZAR	Ponce, PR	270B	168.8	74

* All distance separation requirements are per 47 CFR §73.207

Note: Stations exceeding distance separation requirements
 by more than 100 km are not listed above.

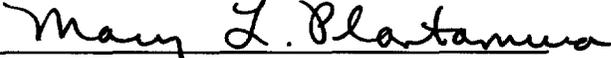
Prepared By Richard L. Biby
 Communications Engineering Services, P.C.
 Falls Church, Virginia December, 1992

CERTIFICATE OF SERVICE

I, Mary L. Plantamura, certify that a copy of the foregoing "Comments and Counterproposal" was mailed this fourth day of January, 1993, by first class U.S. mail, postage prepaid, to the following:

* Michael C. Ruger, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--Room 8322
Washington, DC 20554

Arthur V. Belendiuk, Esq.
Smithwick and Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, DC 20036


Mary L. Plantamura
Mary L. Plantamura

* Hand Delivered