

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)

REPLY COMMENTS

Paradise Broadcasting Corporation ("Paradise"), by its attorneys and pursuant to Sections 1.401 and 1.420 of the Commission's Rules, hereby submits its reply in the above-captioned proceeding.

1. For the reasons stated in Paradise's "Comments and Counterproposal" filed in this proceeding on January 4, 1993, Paradise herein reiterates its request that the Commission: (1) deny the request of Robert E. Miller, Jonathan Cohen and Arthur V.

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

2. Paradise has set forth its proposal concerning substitution of Channel 267B at Cruz Bay in its "Comments and Counterproposal." Upon acceptance of the counterproposal by the Commission, Paradise intends to file comments to reaffirm its interest in the channel substitution Paradise has proposed.

3. **ALTERNATIVE 1:** Paradise notes that at least one party other than itself has filed a counterproposal in this proceeding. El Mundo Broadcasting Corporation, et al., ("El Mundo") has proposed a reallocation scheme that would allow upgrades for several Puerto Rico stations, and would substitute Channel 298B for Calypso's Channel 246B at Charlotte Amalie ("El Mundo Proposal 1"). Paradise submits that should the Commission find that El Mundo Proposal 1 conforms with its rules and is an acceptable counterproposal,¹ then Paradise would support the proposal **provided**

¹El Mundo Proposal 1 involves multiple voluntary channel changes and two forced channel changes.

that Channel 298B is substituted for Paradise's channel at Cruz Bay rather than for Calypso's channel at Charlotte Amalie.² As set forth in Paradise's "Comments and Counterproposal" in this proceeding, preservation of first local aural service at Cruz Bay must be preferred over preservation of a ninth such service at Charlotte Amalie.

4. **ALTERNATIVE 2:** Paradise understands that El Mundo is advancing a second counterproposal ("El Mundo Proposal 2") in its Reply Comments in this proceeding. Paradise understands that El Mundo Proposal 2 involves channel substitutions that would provide both Paradise and Calypso with substitute Class B channels, as well as satisfy the El Mundo Joint Commenters.³ However, in order to accomplish the complicated feat of providing all parties to this proceeding with usable channels, El Mundo Proposal 2 involves a total of four forced channel changes. Yet one of those changes does not involve an existing station, but a new Class A station that is currently open for applications. See Frederiksted, Virgin Islands, 7 FCC Rcd 7318 (MMB 1992). Moreover, under the unique

²Paradise would prefer that, if El Mundo Proposal 1 is adopted, Channel 267B be substituted at Cruz Bay (as originally proposed by Paradise) and Channel 298B be substituted for Channel 282B (WIYC) at Charlotte Amalie. As set forth in the attached engineering study, either channel may be substituted at either community consistent with the Commission's rules. See Exhibit E.

³Specifically, El Mundo Proposal 2 would involve amending the FM Table of Allotments by substituting Channel 224B for 236B at Christiansted and substituting Channel 269A for Channel 278A at Frederiksted. These two substitutions would make Channel 237B available for substitution at Charlotte Amalie or Cruz Bay.

circumstances of this case the fact that the proposal involves even three forced changes should not bar Commission consideration of El Mundo Proposal 2, which could resolve a difficult allocations dilemma by providing maximum service to the public. See Kaukauna and Cleveland, Wisconsin, 6 FCC Rcd 7142 at n. 2 (MMB 1991) (Commission may entertain proposals that involve more than two substitutions of channels occupied by existing stations where there are special factors involving significant public interest benefits). Thus Paradise likewise supports El Mundo Proposal 2 should the Commission find it to be an acceptable counterproposal in this proceeding.⁴

5. All of the above-described resolutions to the instant rulemaking involve substitution of a non-adjacent channel for Paradise's current allotment at Cruz Bay. This is because the conflict with British allotments, described in Paradise's "Comments and Counterproposal," precludes substitution of an adjacent channel at Cruz Bay. Fundamental fairness dictates that Paradise be afforded an automatic channel substitution, even though it has proposed the use of a non-adjacent channel, because of Paradise's unique predicament -- international channel usage has precluded the substitution of an adjacent channel at Cruz Bay. Thus, Paradise herein reaffirms its position that upon the substitution of an

⁴Should the Commission adopt El Mundo Proposal 2, Paradise submits that Channel 267B should be substituted for Channel 222B at Cruz Bay, Channel 298B should be substituted for Calypso's Channel 246B at Charlotte Amalie, and Channel 237B should be substituted for WIYC's Channel 282B at Charlotte Amalie.

alternate channel at Cruz Bay, Paradise's authorization should be modified automatically to specify operation on the new channel, without the opportunity for competing applications.

6. Finally, Paradise submits that any resolution of the instant rulemaking must favor a channel substitution for Paradise's allotment at Cruz Bay over a substitution for Calypso's allotment at Charlotte Amalie, if a choice between the two must be made. As demonstrated in Paradise's pleadings in this proceeding, preservation of the first local aural service at Cruz Bay must be preferred over preservation of a ninth service at Charlotte Amalie.

7. Likewise substitution of a viable channel at Cruz Bay must be preferred over both of the El Mundo proposals, if a choice must be made. The El Mundo proposals involve multiple station upgrades, which under the Commission's rules are of lower priority than provision of a first local service at Cruz Bay. See Revision of FM Allotment Policies and Procedures, 90 FCC 2d 88 (1982). Although El Mundo also proposes a first local service at Gurabo, Puerto Rico, this would be accomplished through **deletion** of a station at Utuado, Puerto Rico. Thus a service already being provided to Puerto Rico residents would simply be moved to a new community of Puerto Rico residents. In contrast, a channel substitution at Cruz Bay is of a higher priority and is critical to ensuring the preservation of the first aural service not only at Cruz Bay, but on the entire island of St. John. Clearly

preservation of Cruz Bay's and St. John's sole aural service must be considered of paramount importance in any proposed resolution of this proceeding.

8. Whatever solution it adopts, the Commission should proceed as quickly as possible in the instant proceeding to ensure that service on the channels being considered herein will not be lost entirely to mutually exclusive British stations. In the past service has been on a first-come, first-served basis, and delay in resolution of this matter could result in the British commencing operation on the channels involved, thereby precluding U.S. operation altogether.

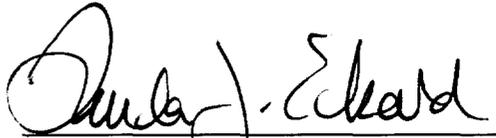
9. In conclusion, Paradise Broadcasting Corporation hereby reaffirms the counterproposal set forth in its "Comments and Counterproposal" filed in this proceeding on January 4, 1993. In the alternative, should the Commission adopt an alternate counterproposal whereby Paradise would similarly be ensured allotment of a viable substitute channel, Paradise would support such a proposal.⁵ In any case, the substitution should be automatic, without the opportunity for competing applications, both

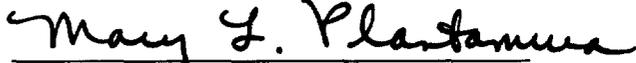
⁵If an alternate allocations scheme is adopted, Paradise's order of preference for its substitute channel is as follows: Channel 267B; Channel 237B; Channel 298B. Additionally, if an alternate allocations scheme is adopted Paradise should not be required to reimburse any party for the costs associated with channel substitutions, as Paradise has not proposed any substitutions, other than its own, in its counterproposal in this proceeding.

because of Paradise's unique predicament in this proceeding and in order to ensure the preservation of a first local aural service at Cruz Bay at the earliest possible time.

Respectfully submitted,

PARADISE BROADCASTING CORPORATION

By: 
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Mary L. Plantamura

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Its Attorneys

January 19, 1993

Exhibit E
Engineering Statement in Re: MM Docket 92-244
Reply Comments for 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 therefore submitted a counterproposal to RM-8027 proposing to allot Ch. 267B to Cruz Bay in order to maintain a first local service to its community of license. During the Comment period for RM-8027, El Mundo et al, ("Joint Commenters") submitted another counterproposal which involves many substitutions and, for RM-8027, proposed that Calypso Communications use an alternative channel, Ch. 298B, so that it might displace WIYC from Ch. 282B at Charlotte Amalie and move it to Ch. 267B. The Joint Commenters have since determined that both Calypso and Paradise can be moved to alternative channels with a minimal effect to other broadcasters. Paradise respectfully requests that the Commission substitute either Ch. 267B, Ch. 237B. or Ch. 298B for Ch. 222B at Cruz Bay, in the U.S. Virgin Islands in order to allow a first local service to Cruz Bay to survive.

The swaps proposed by the Joint Commenters, as understood by Paradise, appear to necessitate some consolidation of attention with respect to a few FM rulemaking dockets which are on closely similar time schedules (MM Dockets 92-244, 92-245, and 92-247). The resolution proposed by the Joint Commenters will result in alternative frequencies for several current allotments or proposed allotments, and a minimal number of changes in operating frequency for FM Broadcast stations not already party to the instant proceedings. The unforeseen operation of Channels 219C, 222B1, and

246C at Tortola in the British Virgin Islands, unbeknownst to Paradise, has wreaked havoc on existing plans for construction and on the Commission's existing allotment scheme for the U.S. Virgin Islands - Puerto Rico region. Because of the overall benefit to the public, and because this resolution would permit the implementation of service akin to allotments previously ruled on by the Commission, Paradise respectfully requests that the Commission make an exception to its policy with respect to the number of forced changes to FM Broadcast stations it allows to be affected by a given rulemaking.

Joint Commenters

The Joint Commenters counterproposal, as modified to accommodate both Paradise and Calypso, requires the use of Channels 237B, 267B, and 298B, interchangeably, for the licensed facility WIYC (282B-Charlotte Amalie), WDCM(CP) (Ch. 222B-Cruz Bay), and WVN(X)(CP) (Ch. 246B-Charlotte Amalie). Paradise's consulting engineer has reviewed the changes and agrees that the following substitutions would resolve all conflicts in frequency allotment and desired upgrades identified to date. (So long as the Commission sees fit to make an exception regarding the number of forced changes to other FM stations if it is deemed necessary.)

Ch. 237B for Cruz Bay or Charlotte Amalie

Exhibits E-1(A-C) provide tables which illustrate that Ch. 237B might be used from Paradise's proposed reference point (North Latitude 18° 21' 31" West Longitude 64° 58' 21") with changes to certain other allotments: WJKC (Ch. 236B-Christiansted) would have to move to Ch. 224B; and the proposed allotment of Ch. 278A at Fredriksted (Judith Mendez) would have to move to Ch. 269A. Attached as Exhibits E-1A, E-1B, and E-1C are tables illustrating that the use of Ch. 237B at Cruz Bay, 224B at WJKC-Christiansted, and Ch. 269A at Fredriksted meet all of the minimum distance separation requirements of the Commission's rules and do not require any change to the existing licensed or proposed reference points.

Ch. 267B for Cruz Bay or Charlotte Amalie

Exhibit E-2 reiterates the table submitted with Paradise's original counterproposal and illustrating that Ch. 267B might be used from Paradise's proposed reference point (North Latitude 18° 21' 31" West Longitude 64° 58' 21"). No additional changes to other facilities are necessary for the use of Ch. 267B for Cruz Bay or Charlotte Amalie.

Ch. 298B for Cruz Bay or Charlotte Amalie

Exhibits E-3(A-D) provide tables which illustrate that Ch. 298B might be used from Paradise's proposed reference point (North Latitude 18° 21' 31" West Longitude 64° 58' 21") with changes to certain other allotments: WVOZ (Ch. 299B-Carolina, PR) would have to move to Ch. 300B; the proposed allotment of Ch. 298A at Fredriksted (RM-8026 - Jose Arzuaga) would have to move to Ch. 282A, and the proposed allotment of Ch. 285A at Christiansted (RM-8098 - Clayton Knight) would have to be moved to Ch. 274A. Attached as Exhibits E-3A, E-3B, E-3C, and E-3D are tables illustrating that the use of Ch. 298B at Cruz Bay, Ch. 282A at Fredriksted, Ch. 274A at Christiansted, and Ch. 300B for WVOZ-Carolina, PR, meet all of the minimum distance separation requirements of the Commission's rules and do not require any change to the existing licensed or proposed reference points.

Summary

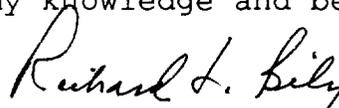
Paradise has determined that it can not construct the facilities authorized for WDCM by Construction Permit on Ch. 222B or Ch. 224B because of facilities subsequently constructed at Tortola in the British Virgin Islands. Initially, Paradise believed that the only identifiable alternative channel was Ch. 267B, to which Calypso Communications holds no mutually exclusive right. The Joint Commenters have identified an alternative which involves changes to only three existing

facilities: WIYC; WJKC; and WVOZ. These licensees are not yet parties in this proceeding.

Paradise ultimately seeks to ensure that a first local Class B service to Cruz Bay survives. Any of the three channels might be used to provide this service to Cruz Bay, with the caveats described herein. With the use of all three Channels, as described herein, it is no longer necessary for the Commission to choose between a first local service for Paradise at Cruz Bay or a ninth local service for Calypso at Charlotte Amalie. All of the allotment conflicts appear to be resolved by this solution.

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
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Exhibit E-3C
Tabulation of Pertinent FM Facilities with Distance
Computations and Separation Requirements

Ch. 274A To Be Substituted For Ch. 285A for
RM-8098 Clayton Knight at Christiansted, USVI

North Latitude 17° 45' 00" West Longitude 64° 46' 50"

to enable use of Ch. 298B at Cruz Bay, USVI
and substitution of Ch. 282A for 298A for RM-8026
Reply Comments for RM-8027 (MM Docket 92-244)
(Calypso Communications Ch. 267B - Charlotte Amalie)
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Prepared on Behalf of Paradise Broadcasting Corporation
WDCM(FM) - Cruz Bay, USVI

<u>Call</u>	<u>Location</u>	<u>Channel & Class</u>	<u>Separation (km)</u>	<u>Required* (km)</u>
WTBN	Charlotte Amalie, VI	271B	70.4	69
WIAC-FM	San Juan, PR	273B	136.6	113
WVPJ-FM	Caguas, PR	277B	127.7	69

* All distance separation requirements are per 47 CFR §73.207

Note: Stations exceeding distance separation requirements
by more than 50 km are not listed above.

Prepared By Richard L. Biby
Communications Engineering Services, P.C.
Falls Church, Virginia January, 1993

CERTIFICATE OF SERVICE

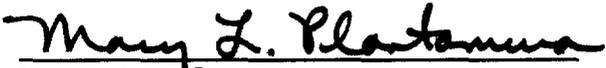
I, Mary L. Plantamura, certify that a copy of the foregoing "Reply Comments" was mailed this nineteenth day of January, 1993, by first class U.S. mail, postage prepaid, to the following:

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