

Before the
Federal Communications Commission

Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b))
(Table of Allotments))
FM Broadcast Stations)
)
Charlotte Amalie, Virgin Islands)

MM Docket No. 92-244
RM-8027

RECEIVED

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS

Robert E. Miller, Jonathan Cohen, and Arthur V. Belendiuk, d/b/a Calypso Communications ("Petitioner"), permittee of a new FM station at Charlotte Amalie, Virgin Islands, hereby files its Reply Comments in the above-captioned rule making.¹

I. REPLY TO PARADISE BROADCASTING CORPORATION'S COMMENTS AND COUNTERPROPOSAL

Paradise Broadcasting Corporation ("Paradise") proposes that instead of substituting Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands, the Commission should amend the FM Table of Allotments to substitute Channel 267B

¹ Reply Comments were originally due January 19, 1993. Petitioner requested that the Commission grant it a two week extension of time to February 2, 1993, to file Reply Comments. See Motion for Extension of Time filed January 15, 1993. Subsequently, the Allocations Branch of the Commission orally notified Petitioner's counsel that it would extend Petitioner's time to file Reply Comments until February 2, 1993, or fifteen days from the date that reply counterproposals were put on public notice; whichever date was later. As of the filing of this pleading, the counterproposals have not been placed on public notice.

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for Channel 222B at Cruz Bay, Virgin Islands, and to modify Paradise's construction permit for WDCM(FM) to specify operation on Channel 267B. Paradise argues that its current allotment, Channel 222B, faces the same harmful electrical interference problem with the allotment in Tortola, British Virgin Islands as does Petitioner. However, Paradise distinguishes itself from Petitioner by arguing that if its proposed substitution is not granted and construction is prevented at Cruz Bay, Cruz Bay will be deprived of its sole broadcast aural transmission service. In contrast, Paradise notes that if Petitioner's request is granted, Charlotte Amalie will have a total of nine radio stations licensed to it.

Paradise disingenuously argues that there are no other AM or FM allotments at Cruz Bay, and that its only alternative would be the substitution of Channel 267B for Channel 222B at Cruz Bay. Paradise states that no other Class B channel is available for use at Cruz Bay, but Paradise also offers no justification for the use of a Class B channel at Cruz Bay.

Petitioner's engineers have determined that Cruz Bay, as a result of its population and land area, would be adequately served by a Class A station. Cruz Bay has a population of 1,928 and is located on the island of St. John, which has a total population of 2,472. The island has a land area of 51 square kilometers. A Class A station

would provide more than ample coverage to not only Cruz Bay, but the entire island of St. John. Figures 1 and 1A of Petitioner's Engineering Report shows that at least two Class A channels could be allocated for use at Cruz Bay, using the coordinates of the construction permit granted to Paradise for WDCM(FM). Channels 275A, 102.9 MHz, and 296A, 107.1 MHz both meet the requirements for allotment when Channel 222 is deleted as proposed.

The fact that Paradise has excluded these alternatives from its proposal is consistent with other actions that Paradise's engineer has taken in this rule making.² Based on the foregoing, the request by Paradise for the use of Channel 267B at Cruz Bay, Virgin Islands should be rejected, should be viewed as disingenuous, and the Commission should substitute either Channel 275A or Channel 296A for Paradise's current channel, Channel 222B.

II. EL MUNDO BROADCASTING CORPORATION'S
COMMENTS AND COUNTERPROPOSAL

El Mundo Broadcasting Corporation, licensee of WKAQ-FM, San Juan, P.R., ("WKAQ"); Estereotempo, Inc., licensee of WIOC-FM, Ponce, P.R. ("WIOC"); Radio Redentor, Inc., licensee of WERR-FM, Utuado, P.R. ("WERR"); and Aurio Matos,

² In its Petition for Rulemaking, Petitioner's engineer, Richard L. Biby, supplied the data to support Petitioner's proposal to substitute Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands. However, Mr. Biby, without authorization, also provided engineering services for Paradise in its Comments resulting in Petitioner having to retain new engineering counsel to assist it in formulating a proper response.

licensee of WNNV-FM, Aguada, P.R. ("WNNV") (collectively as "Joint Commenters") submitted their Comments and Counterproposal in response to the Notice of Proposed Rule Making ("NPRM").³

The Joint Commenters propose as an alternative to Petitioner's proposal, the substitution of Channel 298B for Channel 246B and to modify the permit of WVN(FM) ("WVN") to specify operation on Channel 298B. The Joint Commenters argue that although Channel 267B is an acceptable substitute for Channel 246B, Channel 298B would also be an acceptable substitute. Furthermore, assigning Channel 298B to Charlotte Amalie would allow the Joint Commenters' counterproposal to be facilitated. The Joint Commenters contend that if its counterproposal is adopted, it would provide a first local service to Gurabo, P.R., and allow WNNV(FM), Aguada, P.R., to provide enhanced service to that community by allowing the station to upgrade from a Class A to a Class B1 facility. However, as Carlos J. Colon Ventura ("Colon"), licensee of FM station WSAN, Vieques, P.R., submitted in his Reply Comments, the Joint Commenters Counterproposal does not provide a first local aural transmission service at Gurabo, P.R.

Pursuant to Section 1.420(i) of the Commission's Rules, the Joint Commenters propose allotting Channel 281B to Gurabo, P.R., and deleting the allotment of that same

³ DA 92-1370, released November 10, 1992

channel to Utuado, P.R., and allowing WERR-FM to change its community of license from Utuado, P.R., to Gurabo. The Joint Commenters argue that from this new site, WERR-FM would place a 1.0 mV/m signal over Utuado, P.R., and provide city-grade coverage to Gurabo, P.R., providing that community's first local service. The Joint Commenters also assert that Utuado, P.R., would continue to receive full-time local service from AM station WUPR, which is licensed to Utuado, P.R.

However, as Colon points out, both the 1980 and 1990 U.S. Census Urbanized Area Map show that Gurabo is a part of the Caguas Urbanized Area. The Caguas Urbanized Area already has at least four licensed aural transmission services. Therefore, instead of the proposed change in community of license resulting in a first local aural transmission service at Gurabo, the proposed relocation of WERR-FM would constitute at least a fifth local aural transmission service for the Caguas Urbanized Area. Therefore, Gurabo would not be entitled to a first local service preference. In addition, as Colon argues in his Reply Comments, Caguas is part of the San Juan-Caguas Standard Consolidated Statistical Area and the Caguas Urbanized Area joins the San Juan Urbanized Area. As a result, combining the San Juan and Caguas Urbanized Areas shows that this area is already well-served and the proposed

relocation of WERR-FM would not achieve the desired result as the Joint Commenters have proposed.

Even assuming arguendo that WERR-FM did relocate to Gurabo, P.R., Utuado would be left with only one AM daytime station for local transmission service serving a community that is significantly larger than the population of Gurabo. As Colon correctly concludes, the proposed relocation of WERR-FM to Gurabo does not result in a "preferential arrangement of allotments" as contended by the Joint Commenters. Therefore, Petitioner's proposed substitution of Channel 267B for Channel 246B is in the public interest and accordingly, WVN(FM)'s construction permit should be modified to specify operation on Channel 267B.

III. REPLY TO COMMENTS OF VIRGIN ISLAND
STEREO COMMUNICATIONS

Virgin Island Stereo Communications ("VISC") opposes the substitution of Channel 267B for Channel 246B based on terrain obstructions between the reference point chosen for the allotment and the city of license. An alternate to Channel 267B, Channel 298B, would also suffer from this limitation at the originally specified reference. However, Petitioner's engineering shows that there are locations that exist for the allotment of either channel to Charlotte Amalie without terrain shadowing limitations. Petitioner's engineering specifically points to a location where site space is known to be available and at that site either Channel 267B or Channel 298B may be allocated to Charlotte

Amalie at these coordinates.⁴ Therefore, the argument by VISC is without merit.

IV. CONCLUSION

Petitioner's proposed substitution should be granted by the Commission. The public interest would be served by granting Petitioner's request because it would eliminate any possible interference with Channel 247 in Tortola, British Virgin Islands. In addition, the proposed substitution would allow prompt construction of the station and provide another aural service to the Charlotte Amalie community.

The Comments and Counterproposals of the opposing parties have no merit. Paradise's proposal is faulty because it does not indicate that at least two Class A FM stations could be allocated given the island area and population of Cruz Bay. Therefore, Paradise's assertion that there are no other channels available lacks candor. The Joint Commenters' counterproposal is without merit because the proposed relocation of WERR-FM would not provide a first aural service to Gurabo, P.R., and thus its "preferential arrangement of allotments" argument falls flat. Additionally, VISC's terrain shadowing objections are without merit because Petitioner's engineering shows that a

⁴ See "Discussion" section of Engineering Report. The Engineering Report makes reference to a location where site space is known to be available: NL 18° 21' 26", WL 64° 56' 50".

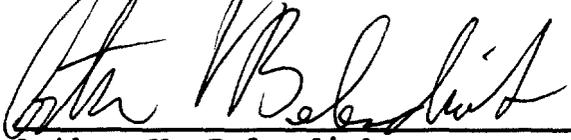
location exists for the allotment of Channel 267B without terrain shadowing limitations.⁵

WHEREFORE, in light of the foregoing, Petitioner requests that its proposal be granted and that the opposing comments and counterproposals be dismissed.

Respectfully submitted,

CALYPSO COMMUNICATIONS

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February 8, 1993

CALYPSO/PN/REPLY.COM

⁵ An alternate channel, Channel 298B, can also be allocated at Charlotte Amalie without terrain shadowing limitations.

ENGINEERING REPORT

RESPONSE TO COMMENTS

In NM Docket No. 92-244

On Behalf Of

WVNX-FM

February, 1993

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E. HAROLD MUNN, JR. & ASSOCIATES, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

CERTIFICATION OF CONSULTANT

The firm of E. Harold Munn, Jr. & Associates, Inc., Broadcast Engineering Consultants, with offices at 100 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data submitted in this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of those data errors or omissions.

The report has been prepared by or under the direction of the undersigned, whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

E. Harold Munn, Jr. & Associates, Inc.

February 05, 1993

by Virgil M. Royer
Virgil M. Royer, Project Engineer
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DISCUSSION

This firm was retained to prepare a special engineering study in relationship to comments filed in MM Docket No. 92-244. This proceeding requests an amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, reference Charlotte Amalie, Virgin Islands.

Specifically requested was the substitution of FM Channel 267B for Channel 246B.

Terrain Shadowing Objections:

Comments in the proceeding by Virgin Islands Stereo Communications ("VISIC"), have opposed the allotment of Channel 267B to Charlotte Amalie based on terrain obstructions between the reference point chosen for the allotment and the city of license.

An alternate channel to 267B, 298B would also suffer the same limitation at the originally specified reference.

Study shows, however, that locations exist for the allotment of either channel to Charlotte Amalie without terrain shadowing limitations. A specific location was studied where site space is known to be available. This is NL 18°21'26"; WL 64°56'50". Either Channel 267B or Channel 298B may be allocated at Charlotte Amalie at these coordinates, in conformance with the various proposals advanced in this proceeding. Therefore, the argument by VISIC is without merit. Coverage of the community is properly addressed at the application stage where certification must be made that the 3.16 mV/m contour of the facility serves the community without major terrain obstruction.

Request for Channel 267B at Cruz Bay, VI:

Paradise Broadcasting Corporation ("Paradise") by its attorneys requested that the Commission deny the WVN(FM) request for the use of Channel 267B, and instead substitute Channel 267B for Channel 222B at Cruz Bay, VI. Paradise pleads that no other Class B channel is available for use at Cruz Bay, except the possibility of Channel 298B. Paradise offers no justification for the use of a Class B channel at Cruz Bay.

Cruz Bay (population 1,928) is located on the island of St. John, which has a total population of 2,472. The island has a land area of 51.8 km². This island area and population would be adequately served by a Class A station which, in the Virgin Islands has an ERP of 6 kW, at an antenna height above average terrain of 240 meters. The 1.0 mV/m service contour from a Class A facility extends 42 km from the transmitter site, serving an area of 5,542 km².

Figure 1 and 1A of this report shows that at least two (2) Class A channels could be allocated for use at Cruz Bay, using the coordinates of the construction permit granted to Paradise for WDCM(FM). Channel 275A, 102.9 MHz, and Channel 296A, 107.1 MHz both meet the requirements for allotment when Channel 222 is deleted as proposed.

Based on the forgoing, the request by Paradise for the use of Channel 267B at Cruz Bay, VI should be rejected, and Channel 275A or Channel 296A substituted for Channel 222B.

In the event Channel 298B would be added for use at Charlotte Amalie, as suggested in other comments filed in this proceeding, Channel 296A would not be available for allotment at Cruz Bay, but there is no impediment to the allotment of Channel 275A.

FIGURE 1

E. HAROLD MUNN JR & ASSOCIATES
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WDCM, CRUZ BAY, VI
ALTERNATE CHANNEL AT C.P. SITE

REFERENCE		CLASS A	DISPLAY DATES
18 20 17 N		Current rules spacings	DATA 01-04-93
64 43 40 W		CHANNEL 275 -102.9 MHz	SEARCH 02-03-93

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WDCM.C CPM CY	222B 18 20 17	CrUZ Bay 64 43 40	VI 50.000 kW	0.0 397M	0.00 0.0	15.0 9.3	-15.00 *
		Paradise Broadcasting Corpora				BMPH901214IH	
DE222 DE	222B 18 20 59	CrUZ Bay 64 44 23	VI 0.000 kW	315.6 OM	1.81 1.1	15.0 9.3	-13.19 *
		Commission					
ALLOC	222B1 18 25 00	Tortola British 64 38 00	VI VI 25.000 kW	48.9 100M	13.24 8.2	12.0 7.5	1.24 <
							930121
AD278 AD	278A 17 43 00	Frederiksted-St. 64 42 30	C VI 0.000 kW	178.3 OM	68.80 42.8	31.0 19.3	37.80
		Judith Mendez					
WCHQFM LI CN	275B 18 28 49	Camuy 66 51 14	PR 50.000 kW	274.0 18M	225.20 140.0	178.0 110.6	47.20
		HQ 103, Inc.					BLH810107AE

FIGURE 1A

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WDCM, CRUZ BAY, VI
ALTERNATE CHANNEL AT C.P. SITE

REFERENCE		CLASS A	DISPLAY DATES
18 20 17 N		Current rules spacings	DATA 01-04-93
64 43 40 W		CHANNEL 296 -107.1 MHz	SEARCH 02-03-93

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WMEG LI CY	295B 18 06 48	Guayama 66 03 07	PR 25.000 kW	259.9 594M	142.25 88.4	113.0 70.2	29.25
		Guayama Broadcasting Co.				BLH830628AK	
AP293 AP CN	293A 18 19 39	Culebra 65 18 05	PR 6.000 kW	268.9 202M	60.65 37.7	31.0 19.3	29.65
		Aurio A. Matos				BPH911114MS	920414
DE293 DE	293A 18 18 18	Culebra 65 18 06	PR 0.000 kW	266.5 OM	60.78 37.8	31.0 19.3	29.78
		V.I. Stereo Communications				RM7942	
		>Petition for Reconsideration					
DE293 DE	293A 18 18 18	Culebra 65 18 06	PR 0.000 kW	266.5 OM	60.78 37.8	31.0 19.3	29.78
		V.I. Stereo Communications				RM7942	
		>Counterproposal					
ALOPEN AL N	293A 18 18 18	Culebra 65 18 06	PR 0.000 kW	266.5 OM	60.78 37.8	31.0 19.3	29.78
		89-495					
		WO= 911016					911115
		>Effective 10-14-91					
AP293 AP CN	293A 18 18 12	Culebra 65 18 09	PR 6.000 kW	266.4 25M	60.88 37.8	31.0 19.3	29.88
		Lloyd Santiago-Santos & Lourd				BPH911115MP	920414
AD298 AD	298A 17 42 48	Frederiksted 64 53 00	VI 0.000 kW	193.4 OM	71.08 44.2	31.0 19.3	40.08
		Jose J. Arzuaga				RM8026	

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 9th day of February, 1993, copies of the foregoing were mailed, postage prepaid, to the following:

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