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May 14, 1993

**RECEIVED**

**MAY 14 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: MM Docket No. 92-59

BEFORE THE

**Federal Communications Commission** RECEIVED

WASHINGTON, D.C. 20554

MAY 14 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	MM Docket No. 92-59
Amendment of Section 73.202(b),	)	RM-7923
Table of Allotments,	)	RM-8042
FM Broadcast Stations	)	
(Bradenton and High Point, Florida)	)	

To: Chief, Allocations Branch

**PETITION FOR RECONSIDERATION**

ECI License Company, L.P. ("ECI"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby requests reconsideration of the above-referenced Report and Order, DA 93-343 (released April 14, 1993) ("Report and Order"), by which the Allocations Branch substituted Channel 278C for Channel 277C1 at Bradenton, Florida, and modified the license of Station WDUV(FM) to specify operation on the new channel. Reversal of the decision in this proceeding is appropriate because the licensee of Station WDUV(FM), Sunshine State Broadcasting Company, Inc. ("Sunshine"), lacks any reasonable assurance of the availability of any transmitter site that would comply with the Commission's spacing and coverage requirements. There is no location within the fully-spaced site zone for Channel 278C at Bradenton at which Sunshine would be permitted by the FAA to build a tower of a height sufficient to meet the minimum requirements for such a station. Therefore, the decision to allot the channel despite this deficiency was contrary to Commission precedent, which requires that all channel allotments

be premised upon the ability to comply fully with the FCC's minimum separation and coverage requirements.

### I. INTRODUCTION

On February 12, 1992, Sunshine petitioned the Commission to amend the FM Table of Allotments by substituting Channel 278C for Channel 277C1 at Bradenton, Florida. In its Petition for Rule Making, Sunshine itself noted that "airspace considerations in the Sarasota and Bradenton area are matters of considerable concern." Sunshine Petition for Rule Making at 3. However, Sunshine went on to assert that its chosen reference point was "near where the Federal Aviation Administration has permitted the construction of towers of sufficient height" to permit WDUV's intended upgrade. Id.

In response to the Petition, the Commission released a Notice of Proposed Rule Making, 7 FCC Rcd 2198 (1992) ("NPRM"), in which it stated that the proposed substitution would permit Station WDUV to "locate in an area which will comply with all Commission and FAA restrictions on tall towers." Id. (emphasis added). In response to the NPRM, ECI filed comments demonstrating that this was not the case and, in fact, that FAA air safety considerations would prevent a tower of the requisite height from being located anywhere within the fully-spaced site zone for Channel 278C defined by the Commission's rules. See Comments of ECI, filed May 21, 1992, at 3-7 and Aeronautical

Study attached thereto.<sup>1/</sup> ECI also reported that the site "near" the Sunshine reference coordinates, where tall towers had been allowed by the FCC, was actually more than eight miles from the coordinates designated by Sunshine, in an area outside the permitted site zone. See Comments of ECI at 7-10.

In reply, Sunshine produced its own aeronautical study purporting to refute the demonstration made by ECI that no suitable transmitter site would be available. In fact, however, this study merely asserted that some of the specific factors considered by ECI's aeronautical consultant might either be analyzed somewhat differently or altered in the future by changing airspace considerations -- including, in particular, the planned closure of MacDill Air Force Base. Nowhere did the aeronautical consultant affirmatively conclude that an acceptable transmitter site would be available in the permitted zone. See Consolidated Reply Comments of Sunshine,<sup>2/</sup> Affidavit of John P. Allen at 4-5. Instead of rebutting the showing made by ECI, Sunshine simply attempted to muddle the issues.

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<sup>1/</sup> At the time of that filing, the licensee entity for ECI's stations was Entertainment Communications, Inc. ("Entercom"). Since then, Entercom's licenses have been assigned to ECI pursuant to FCC consent; Entercom is the sole general partner of ECI.

<sup>2/</sup> In its Consolidated Reply Comments, Sunshine also responded to a counterproposal advanced by High Point Broadcast Partners which would have allotted Channel 275A to High Point, Florida as its first local service and permitted Sunshine to operate on Channel 278 either as a Class C station at its existing site or as a Class C1 at the reference coordinates proposed in the NPRM. Subsequently, Sunshine entered into a settlement agreement with High Point, and the counterproposal was dismissed. See Report and Order at 1, n.2.

In supplemental pleadings, ECI bolstered its initial showing by obtaining from the FAA a preliminary determination that a tower located at Sunshine's reference coordinates for the Bradenton allotment "would exceed FAA obstruction standards" and was presumed to be a hazard to air navigation. See ECI Consolidated Opposition To Motion To Strike and Response To Reply, filed September 4, 1992; FAA Determination Letter, attached hereto as Attachment 1. Indeed, the FAA determination

accordance with the Commission's rules. Thus, the Commission's allotment was based on a false premise, and it should be reversed.

## II. DISCUSSION

It is well-established that "[a]ll proposals for channel allotments must meet the minimum distance separations of Section 73.207 of the rules with respect to other existing and prospective stations." Short-Spaced FM, 6 FCC Rcd at 5358. This does not mean that an allotment proponent must establish the definitive availability of a particular site, but simply that it must have reasonable assurance that a usable site exists that complies fully with the minimum separation requirements. See FM Table of Allotments (Key West, Florida), 3 FCC Rcd 6423 (Pol. and Rul. Div. 1988); FM Table of Allotments (Crestview and Westbay, Florida), 7 FCC Rcd 3059 (Alloc. Branch 1992) ("Crestview and Westbay"). However, although the Commission will typically presume at the allotment stage that a theoretically usable site is also available for use, it will take into account a showing that, "in reality, no theoretical site exists because of environmental, air hazard, or other similar considerations." FM Table of Allotments (West Palm Beach, Florida) 6 FCC Rcd 6975, 6976 (Pol. & Rul. Div. 1991) ("West Palm Beach").

It is important in analyzing the Commission's decision in this case to focus on the distinction between the theoretical existence of a zone where location of a station's transmitter site could be permitted, and the availability of a particular site. The Commission has properly avoided inquiring into the



allot a Class C FM based on land use restrictions imposed by the Forest Service).<sup>3/</sup>

As indicated in West Palm Beach, supra, where the Commission held that it would consider potential air safety hazard issues in allotment proceedings, the Commission's disinclination to consider the likely FAA determination with respect to a particular site is not applicable where the same FAA restrictions apply throughout a permitted site zone. This distinction is analogous to that which differentiates the Commission's general refusal to consider specific site availability when many property owners are involved from the Commission's decision in Crestview and Westbay not to make an allotment where all possible sites were precluded because each was located on the grounds of Eglin Air Force Base. In this instance, as in Crestview and Westbay, all sites in the permitted zone are precluded for the same reason -- i.e., because most of the same FAA safety concerns and guidelines that disqualify the referenced site apply everywhere within the permitted site zone.

ECI made a showing equivalent to the circumstances in Crestview and Westbay by demonstrating that the airspace conditions in the Tampa Bay area are such that a tower of the size proposed by Sunshine cannot be located anywhere within the permitted zone. Factors leading to this conclusion include the FAA's criteria relating to visual flight rule routes, which would

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<sup>3/</sup> For similar reasons, an allotment proponent's showing that a "theoretical" site zone existed entirely within the confines of the Florida Everglades National Park would not be accepted at face value by the Commission.

limit a transmitter tower to about 500 feet in height throughout most of the permitted zone, and the radar vectoring altitude of 1600 feet above mean sea level. which applies throughout the zone

Significantly, ECI's concerns could have been answered if Sunshine simply had identified a single currently usable location within the permitted zone from which Sunshine could construct a tower both compliant with the Commission's rules and consistent with aeronautical safety, regardless of the actual availability of the site on other grounds. Sunshine's reference site does not meet this test and it did not even attempt to meet this minimal burden by other means. In approving the allotment, the FCC staff recited, but gave no substantive attention to, ECI's arguments. Despite ECI's compelling showing that air safety considerations would preclude construction of a suitable tower anywhere in the identified site zone, the staff simply presumed that some location would be available even though Sunshine was unable or unwilling to identify and establish the suitability of even a single qualifying site.

In the face of ECI's showing, Sunshine should have been required to meet the burden of establishing that at least one feasible site exists. Proponents of new or changed allotments ought not be permitted to manipulate the Commission's processes by offering the possibility of "theoretical" transmitter sites

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<sup>4/</sup>(...continued)

had pointed to the likely closure of MacDill Air Force Base, and expected accompanying changes in air space use, as justification for ignoring current FAA restrictions in the area. It now is clear, however, that MacDill will remain a working air base for some time to come, while also serving an increased number of civilian aircraft. See David Dahl, MacDill Air Force Base Spared Fate of 31 other Bases: Closure, St. Petersburg Times, March 13, 1993, at 1A, attached hereto as Attachment 3.

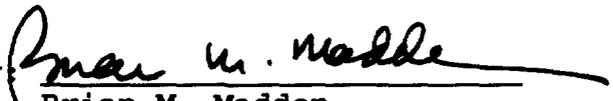
that, in reality, are wholly untenable due to environmental, air hazard, or other pragmatic considerations beyond the scope of FCC rules. The Commission has acknowledged this in West Palm Beach, supra, 6 FCC Rcd at 6976.

Because Commission precedent requires that all channel allotments be made in full compliance with the Commission's minimum separation rules, and ECI has demonstrated that Sunshine cannot comply with those separation rules, the substitution of Channel 278C for 277C1 at Bradenton should not have been made. In making the allotment despite its fatal deficiencies, and without any explanation of its deviation from prior cases, the staff acted contrary to established Commission policy that no allotment will be made for a short-spaced proposal.

### III. CONCLUSION

For the foregoing reasons, ECI respectfully requests that the Allocations Branch reconsider the substitution of Channel 278C for Channel 278C1 at Bradenton, Florida, and rescind its amendment of the Table of Allotments.

Respectfully submitted,  
ECI LICENSE COMPANY, L.P.

By:   
Brian M. Madden  
David S. Keir

Attachment 1

09/03/92 15:03

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AVIATION SYSTEMS PSP DAN 6193289727  
FAA A50-540

P.02  
002



US Department of Transportation

Southern Region

P. O. Box 20438

**INTERMODULATION INTERFERENCE:**

Our analysis indicate that aircraft operating in the frequency protect service volume (FPSV) making an instrument landing system (ILS) approach to Runway 17L at the St. Petersburg Clearwater International Airport, Runway 05 at the Lakeland Linder Regional Airport and Runway 18R at the Tampa International Airport will be subject to hazardous three signal/third order intermodulation interference of the type (B)  $f_1 + f_2 - f_3$  type resulting in navigation receiver overload. This interference would be caused by the proposed frequency in combination with existing stations as follows:

Type (B):

$WLUV(106.3\text{MHz}) + \text{Proposed}(103.5\text{MHz}) - WUSA(109.1\text{MHz}) = \text{PIE}(109.1\text{MHz})$

$WKES(101.5\text{MHz}) + \text{Proposed}(103.5\text{MHz}) - WYNF(94.9\text{MHz}) = \text{LAL}(110.1\text{MHz})$

$WWRM(107.3\text{MHz}) + \text{Proposed}(103.5\text{MHz}) - WRBQ(104.7\text{MHz}) = \text{JRT}(108.5\text{MHz})$

Intermodulation interference occurs whenever two or more signals or their integer multiples combine in such a manner that the product is the frequency to which the receiver is tuned. These signals combine in the nonlinear external devices to produce sum and difference frequencies through heterodyne action.

Attachment 2

# **AVIATION SYSTEMS ASSOCIATES, INC.**

AVIATION CONSULTANTS



ACCIDENT INVESTIGATION  
AVIATION SAFETY STUDIES  
OBSTRUCTION EVALUATION STUDIES  
ENVIRONMENTAL IMPACT STUDIES  
AIRPORT STUDIES

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## **AERONAUTICAL STUDY REGARDING FEASIBILITY OF OBTAINING FAA NO HAZARD DETERMINATION FOR CHANNEL 278C AT BRADENTON, FL**

My name is Daniel G. Tenold. I am an Airspace and Flight Procedures Specialist with Aviation Systems Associates, Inc., (ASA) at 23430 Hawthorne Blvd., Suite 200, Skypark Bldg. 3, Torrance, California, 90505. One of the principal activities of ASA is in the obstruction evaluation (OE) field conducting studies of proposed structures, such as broadcasting towers, cellular telephone towers, high-rise buildings, utility company towers and transmission lines. and other structures. and determining their

Section 77.23(a)(3) by 79' - a height that increases a minimum instrument flight altitude within a terminal area (TERPS criteria.)

Further, the proposed tower at this site would have the following substantial adverse effects upon both instrument flight rule (IFR) and visual flight rule (VFR) operations of aircraft in the area, as well as upon the safe and efficient air traffic control handling of aircraft in the Greater Tampa area.

1. The proposed site is 6.9 NM from the nearest runway at the Peter O'Knight Airport. The proposed site at the height of 1049' AMSL would affect the FAA instrument departure procedure at this airport which is a very active VFR and IFR reliever airport in the Tampa area. The maximum height that would not affect these procedures at this site is 970' AMSL.
  2. The proposed site is within the four statute mile-wide airspace protection areas of several recognized VFR routes used extensively for visual flight through the area. These routes are centered upon Interstate 75 on the East, a contiguous railroad track and coastline highway, on the West and the Tampa Bay coastline. These impacts would limit the structure to 500 Feet above the surface.
  3. The proposed tower would require an adjustment to the minimum radar vectoring altitude (MVA) by increasing a significant amount of airspace from 1600' AMSL to 2000' AMSL. Our firm has considerable obstruction evaluation experience in the Tampa area over the past years and has performed detailed studies of FAA air traffic control operations and radar vectoring for the military departures and arrivals at MacDill AFB and all the surrounding civil airports. This impact would be the most potent and substantial adverse impact. Our experience in plotting hours of the civil and military radar operations for the area over the years has shown us that the FAA cannot and would not amend or increase these radar altitudes due to the close proximity of all the airports within or close to the FCC permissible zone.
- B. I have also done a complete in-house aeronautical study of the remaining permissible site zone for Channel 278C. The results of this study also indicate that the required height of 1,049' AMSL would not be approved by FAA because of the following impacts to Part 77 obstruction standards and to the aircraft operational procedures:
1. Section 77.23(a)(1) by over 500'- a height exceeding 500' above the ground level at any site selected for the proposed tower.

2. Section 77.23(a)(3) by 400'- a height that increases a minimum instrument flight altitude within a terminal area (TERPS criteria).
3. Section 77.23(a)(3) by varying substantial heights, depending on exact location - a height that increases a minimum flight altitude within a terminal area (TERPS criteria).
4. Since the bulk of the FCC permissible zone is over water with small strips of land which support major highways, etc., the FAA criteria which denotes VFR routes would prevent any structure over 500' above ground in most of the zone.
5. In the areas to the south near Sarasota - Bradenton Airport, and at the north end of the permissible zone adjacent to the St. Petersburg Airport, the FAA uses large amounts of the airspace for instrument approaches which limits the heights of any structure to 649' AMSL, at the maximum.
6. The radar vectoring altitude throughout the FCC permissible zone is 1600' AMSL. The proposed structure would increase this altitude to 2000' AMSL. Our experience in plotting hours of the civil and military radar operations for the area over the years has shown us that the FAA cannot and would not amend or increase these radar altitudes due to the close proximity of all the airports within or close to the FCC permissible zone.

In view of the above, it is my professional opinion that a proposal to FAA for a 1,049' AMSL structure anywhere within the FCC permissible area would result in FAA issuing a Determination of Hazard.

  
Daniel G. Tenold  
Aeronautical Consultant



**JULES COHEN & ASSOCIATES, P.C.**  
CONSULTING ELECTRONICS ENGINEERS  
WASHINGTON, D.C. 20036

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**ENGINEERING STATEMENT  
IN SUPPORT OF COMMENTS  
IN THE MATTER OF MM DOCKET NO. 92-59  
AMENDMENT OF SECTION 73.202(b)  
TABLE OF ALLOTMENTS, FM BROADCAST STATIONS  
BRADENTON, FLORIDA**

The instant engineering statement has been prepared on behalf of Entertainment Communications, Inc. (Entercom) licensee of station WYUU(FM), Safety Harbor, Florida. This statement is in support of Comments in the Rule Making proceeding in MM Docket No. 92-59, RM-7923, which looks toward the allotment of channel 278C to Bradenton, Florida, for use by station WDUV(FM). This statement demonstrates that a viable site for Class C operation within the permissible site zone for channel 278 is not available. Hence, the proposed allotment does not fulfill FCC criteria and should not be made.

In the Petition for Rule Making (Petition) to allot channel 278C to Bradenton in substitution for channel 277C, Sunshine State Broadcasting Company, Inc., the Petitioner, requests a specific site for the allotment so as to "permit it [sic] obtain FAA approval for a tower which will exceed the minimum height necessary for a full Class C station".<sup>1</sup>

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<sup>1</sup> The specified geographic coordinates for channel 278C are 27° 49' 20" NL; 82° 21' 50" WL. However, as shown herein, FAA approval for a tower of sufficient height to permit Class C operation at the specified location is not possible. Moreover, no site is available within the channel 278C permissible site zone which will permit use of a tower of sufficient height to conform with Class C requirements.

**JULES COHEN & ASSOCIATES, P.C.**  
**CONSULTING ELECTRONICS ENGINEERS**  
**WASHINGTON, D.C. 20036**

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**Engineering Statement**  
**Safety Harbor, Florida**

**Page 2**

The 1049-foot height above mean sea level elevation was determined to be the approximate minimum practical height that could be employed which would permit attainment of an antenna radiation center height above average terrain of 984 feet.<sup>2</sup> The 1049-foot elevation was based on the following information and assumptions for a practical operation from the specified reference site.

Determination of Operational Facilities  
for Class C Operation

Channel 278C reference site coordinates	27° 49' 20" N. Latitude 82° 21' 50" W. Longitude
3-16 km terrain average for standard eight 45° spaced radials (NGDC 30-second database)	26' AMSL
Site elevation	20' AMSL
Radiation center for 984' HAAT	1010' AMSL or 990' AGL

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<sup>2</sup> In this connection, it is interesting to note that as part of the Engineering Exhibit in support of the Petition, a channel study is included, "FM Channel Study No. 1" which shows calculated distances to contours for a facility at the proposed site based on an antenna radiation center height of 1482.1' (451.7 meters) above average terrain. The 1482.1' height above average terrain value suggests that an overall structure height of 1549' AMSL is contemplated. The 1549' AMSL height corresponds to the height of at least one of the towers at the so-called Riverview antenna farm which can be seen on the map of Figure 1 as being approximately 8.5 miles (14 kilometers) east of the site specified for use in the Rule Making. All the tall towers at Riverview are short spaced with respect to WQOL, Vero Beach, channel 278C, and some are short spaced also with respect to WRUF-FM, Gainesville, channel 279C1.

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CONSULTING ELECTRONICS ENGINEERS  
WASHINGTON, D.C. 20036

Engineering Statement  
Safety Harbor, Florida

Page 4

The combination of a 35- or 40-kilowatt transmitter, with 1050 feet of 4-inch coaxial air dielectric transmission line (Andrew, HJ11-50, or equivalent), and a seven-bay antenna (Dielectric, DCR-C7, or equivalent) is the minimum practical that will yield 100 kilowatts (H&V) effective radiated power as demonstrated below.<sup>3</sup> A Class C station must have an effective radiated power of 100 kW.

Transmitter output power	34.8 kW (requires a 35- or 40-kW transmitter)
Efficiency for 1050' of HJ11-50 transmission line at 103.5 MHz	75.7% (0.115 dB loss/100')

3. For more information on transmission line at 103.5 MHz -

SA 1000

Overall structure height AMSL for side-mounted antenna	
Radiation center AMSL	1010'
Additional antenna height	27'
+ guy wire clearance allowance	6'
+ lighting	3'
Total height	1046'

The foregoing data indicate that a height of as little as approximately 1046 feet above mean sea level could be employed. However, insofar as any FAA consideration is concerned, an elevation of 1046 feet above mean sea level is essentially the same as an elevation of 1049 feet above mean sea level. The 49-foot suffix value is the FAA demarcation for rounding off to the closest 100 feet for certain clearance considerations.

Thus, had an eight-bay or larger antenna been employed, the overall structure height would have exceeded 1049 feet and so would have exacerbated FAA considerations. On the other hand, use of an antenna having a lower gain than that for a seven-bay configuration, even though it would have reduced the overall structure height, could not reduce it sufficiently to alter the conclusion with regard to obtaining FAA approval for a structure having an overall height of 1049 feet AMSL. The example provided is merely to illustrate that from an FAA consideration standpoint, 1049 feet above mean sea level elevation is approximately the lowest height that could be employed that would permit attainment of Class C operation. It is clear that with a maximum permitted height of 649 feet AMSL for any location within the permissible site zone, compliance with the FCC's minimum height above average terrain requirement of 984 feet for a Class C station is not possible.

Any move of the reference site eastward a sufficient distance to avoid VFR and radar vectoring problems will result in a short spacing. Thus, all the Riverview towers are foreclosed from use because they are short-spaced for a channel 278C allotment. Moreover, reliance on the presence of the Riverview towers as a basis for claiming possible success in obtaining clearance for a tall tower at the channel 278C reference site or anywhere within the permissible site zone is not realistic, nor appropriate. A check with the FAA by ASA at the time they conducted their study, disclosed that no request had been filed for approval of a tower of any height at the reference coordinates specified by the channel 278C proponent.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on May 19, 1992.



Bernard R. Segal, P.E.