

fulfillment of each of the conditions set forth in subparagraph (d) of this Paragraph 9 hereof, WGUL shall pay to Roper the sum of Fifty Thousand Dollars (\$50,000.00), or such higher amount as may be required under the provisions of Paragraph 2 hereof.

- (b) WGUL shall pay its consulting engineers and legal counsel for their professional fees and for out-of-pocket expenses for preparing and filing on Roper's behalf, under Roper's supervision and at Roper's direction, the WCAC(FM) Application and the WCAC(FM) Form 302 License Application to cover C.P., and for any necessary engineering work to be performed in Sebring, Florida, in connection with construction of the modified WCAC(FM) technical facilities contemplated hereunder; provided, however, that notwithstanding WGUL's
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Roper for the reasonable professional fees of Roper's attorney which shall have been actually paid for by Roper in connection with the negotiation of this Agreement and the review of any work performed by WGUL's FCC counsel, and also the reasonable professional fees of Roper's consulting engineer which shall have been actually paid for by Roper in connection with the review of the work performed by WGUL's consulting engineer; provided, however, that a condition precedent to such reimbursement shall be the submission to WGUL by Roper of bona fide invoices detailing in each case the dates on which services were provided, the amounts charged for each such service and the identity of each service provider. The obligation of WGUL to pay and/or reimburse the professional and legal fees as provided herein is not conditioned or contingent upon the grant of a C.P. or upon the grant of an unconditional license to WGUL to operate WGUL-FM at the New WGUL Site on Channel 288C2.

- (c) Subject to consultation by Roper with WGUL, and subject to approval by WGUL (which approval shall not be unreasonably withheld),

WGUL will, at its sole expense, reimburse

construction and installation of the  
aforementioned new antenna and tower (subject  
to the supervision, direction, and control of  
Roper), and WGUL shall pay the costs of such  
construction and installation.

- (d) Except as expressly provided otherwise in  
this Paragraph 9, it is expressly understood  
and agreed to by both parties hereto that  
WGUL's obligation to pay the consideration set  
forth in this Paragraph 9 is subject to the  
conditions precedent that: (i) WGUL shall have  
received from the FCC all required  
authorizations and approvals for WGUL-FM to  
transmit, with its new facilities, on Channel  
288C2 at the New WGUL-FM Site pursuant to  
program test authority issued by the FCC,  
without interruption, following completion of  
construction of said new facilities (which  
FCC authorizations and approvals shall  
include, without limitation, a construction  
permit to modify the technical facilities of  
WGUL-FM in the manner contemplated hereunder,  
which construction permit shall contain no  
condition materially adverse to WGUL or WGUL-  
FM, and which construction permit shall have  
become a "Final Order" (i.e., no longer

subject to further timely administrative or judicial review or reconsideration by the FCC or by any court of competent jurisdiction)); and (ii) the FCC shall have granted an unconditional license to WGUL for operation of WGUL-FM at the New WGUL-FM Site, on Channel 288C2, utilizing maximum ERP and HAAT for Class C2 facilities, following completion of construction pursuant to the WGUL-FM C.P.; and (iii) such unconditional license shall have become a "Final Order" as defined above. If the grant by the FCC of program test authority for WGUL-FM to operate on Channel 288C2 at the New WGUL-FM Site is withheld, suspended, or rescinded by the FCC and such withholding, suspension, or rescission is due, directly or indirectly, in whole or in part, to the failure of WCAC(FM) to complete construction pursuant to an FCC construction permit granted as a result of the WCAC(FM) Application and/or FCC Rules and/or the failure of Roper to commence and maintain operations of WCAC(FM) under program test authority consistent with said construction permit and FCC Rules, then, in such events, any further payments required on the part of

WGUL pursuant to this Paragraph 9 shall be immediately suspended until such unlimited WGUL-FM program test authority is restored or the WGUL-FM License Application is granted and has become a Final Order. Furthermore, if, within nine (9) months following the date upon which WGUL's License Application for WGUL-FM to cover the WGUL-FM construction permit is tendered for filing with the FCC, said application has not been granted or has not become a Final Order, and if the delay or failure on the part of the FCC to grant such License Application and/or the failure of such license grant to have become a Final Order is due, directly or indirectly, in whole or in part, to circumstances related to Roper's or WCAC(FM)'s operations or actions or failures to act and/or FCC Rules, further payments by WGUL pursuant to Paragraph 9 of this Agreement shall be suspended until such time as the WGUL-FM License Application shall have been granted by the FCC and until such time as such grant shall have become Final Order.

- (e) Notwithstanding anything contained in this Agreement to the contrary, if, after the C.P. Grant Date (as defined hereinbelow), Roper

completes the construction of the modified technical facilities of WCAC(FM) and otherwise fully performs its obligations hereunder, and if the FCC withholds program test authority from WGUL-FM or does not grant WGUL's License Application solely because of WGUL's default or failure to perform its obligations hereunder, then, in such event, WGUL shall be responsible and obligated to pay to Roper the considerations set forth in this Paragraph 9.

(f) As used in this Agreement, the term "C.P. Grant Date" shall refer to the date upon which the FCC grant of both the WGUL-FM Application and the WCAC(FM) Application shall have become Final Orders, as defined hereinabove.

10. FCC Failure to Grant Both Applications. If the FCC fails to grant both the WGUL-FM Application and the WCAC(FM) Application within two (2) years following the date of execution of this Agreement as first set forth hereinabove, either party hereto may cancel this Agreement upon fifteen (15) days prior written notice to the other party, provided that the party giving such notice is not in default under this Agreement.

11. Class C3 Operations by WCAC(FM). In the event that the FCC, in its presently pending proceeding in MM Docket No. 88-375, authorizes an additional class of FM

stations, to be known as Class C3, and in the event that, operating on Channel 289 in Sebring, Florida, WCAC(FM) would meet all applicable FCC requirements for operation as a Class C3 station on Channel 289 in Sebring, Florida, then, in such events, nothing contained in this Agreement shall be deemed to prohibit or preclude Roper from (i) seeking such FCC authorization as may be required in order for WCAC(FM) to operate as a Class C3 FM station on Channel 289 in Sebring, Florida; or (ii) seeking FCC authorization to operate WCAC(FM) from a transmitter site located on a piece of land other than the New WCAC(FM) Site; provided, however, that, in all events, Roper shall not operate WCAC(FM), nor shall it seek to operate WCAC(FM), nor shall it seek authorization to operate WCAC(FM), in any manner and from any transmitter site which might in any fashion hinder or prevent WGUL from operating or from obtaining all required authorizations to operate, WGUL-FM on Channel 288C2 in New Port Richey, Florida from a transmitter site located at the New WGUL-FM Site, as contemplated by this Agreement.

12. Specific Performance. Roper recognizes that WGUL will be irreparably damaged by Roper's breach of this Agreement or by failure on the part of Roper to perform its obligations hereunder, and that monetary damages would be inadequate to remedy any such breach. Roper, therefore, agrees that, in addition to all other remedies which WGUL may

have at law or in equity, WGUL shall also have the right to specific performance requiring Roper to perform its obligations under this Agreement, and Roper agrees that it will offer no defense to any such action for specific performance.

13. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective personal representatives, successors, and assigns. Until both WGUL and Roper shall have been issued licenses by the FCC covering the C.P.'s described hereinabove, and until the grants of such licenses shall have become Final Orders of the FCC (i.e., no longer subject to further timely administrative or judicial review or reconsideration), neither WGUL-FM nor WCAC(FM) shall be sold nor shall their respective FCC licenses and authorizations be assigned or transferred to any other party unless and until: (a) the express written agreement of the prospective buyer, assignee, or transferee to be bound by all the terms and conditions of this Agreement shall have been obtained; and (b) such written agreement shall have been delivered to both parties hereto.

14. Notices. Any notices or other communications hereunder shall be in writing and shall be considered to have been duly given five (5) days following deposit into First Class Registered U.S. Mail, postage pre-paid, Return Receipt Requested, and addressed as follows:

if to Roper:

Mr. Robert T. Rowland, Jr.  
President  
Roper Broadcasting, Inc.  
Radio Station WCAC(FM)  
P. O. Box 871  
Sebring, Florida 33870

if to WGUL:

Mr. Carl J. Marcocci  
President  
WGUL-FM, Inc.  
7212 U.S. Highway 19  
New Port Richey, Florida 34652

with a copy to:

Irving Gastfreund, Esq.  
Kaye, Scholer, Fierman, Hays,  
& Handler  
901 Fifteenth Street, N.W.  
Suite 1100  
Washington, D.C. 20005

15. Law. This Agreement shall be performed, construed and interpreted solely under the laws of the State of Florida, except that matters pertaining to the regulatory authority of the FCC shall be decided by the FCC.

16. Titles. The titles used in this Agreement are for convenience only and shall not be construed to affect the interpretation of the substantive terms hereof.

17. Further Action. The parties agree to take such further action and to file with the FCC and/or other regulatory bodies and/or courts such further papers as may be reasonably necessary to carry out the terms of this Agreement.

18. Integration. This Agreement embodies the entire and exclusive Agreement between the parties concerning the subject matter hereof and incorporates every understanding, oral and written, between the parties. It may not be revised or modified, nor may its provisions be waived except by a written instrument signed by an executive officer of each party.

19. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instruments.

IN WITNESS WHEREOF, this Agreement has been executed on the date first above written.

ATTEST:

\_\_\_\_\_

WGUL-FM, INC.

By   
Carl J. Marcocci

Title: President

ROPER BROADCASTING, INC.

By \_\_\_\_\_  
Robert T. Rowland, Jr.

Title: President

18. Integration. This Agreement embodies the entire and exclusive Agreement between the parties concerning the subject matter hereof and incorporates every understanding, oral and written, between the parties. It may not be revised or modified, nor may its provisions be waived except by a written instrument signed by an executive officer of each party.

19. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instruments.

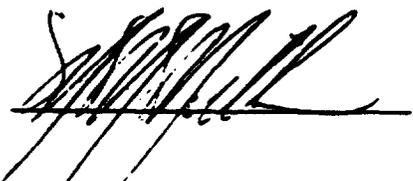
IN WITNESS WHEREOF, this Agreement has been executed on the date first above written.

ATTEST:

WGUL-FM, INC.

By \_\_\_\_\_  
Carl J. Marcocci

Title: President



ROPER BROADCASTING, INC.

By \_\_\_\_\_  
Robert T. Rowland, Jr.

Title: President

CERTIFICATE OF SERVICE

I, Mary Odder, do hereby certify that, on this 16th day of December, 1988, I caused, a copy of the foregoing "Supplement To Petition For Rulemaking and Request For Issuance of Order to Show Cause" to be hand-delivered or sent via first-class mail, postage prepaid, to the following:

Karl A. Kensinger, Esq.  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 8322  
Washington, D.C. 20554

Robert T. Rowland  
14 Castle Court  
Ft. Pierce, Florida 33449

Lowell A. Brubaker  
President  
Christian Fellowship Mission, Inc.  
Radio Station WKZM(FM)  
1004 Ponder Avenue  
Sarasota, Florida 34232

  
Mary Odder

**EXHIBIT 3**

TECHNICAL STATEMENT  
IN SUPPORT OF  
COMMENTS AND A COUNTERPROPOSAL  
MM DOCKET NO. 93-65  
WGUL-FM, INC.  
NEW PORT RICHEY, FLORIDA

This technical statement and associated exhibits have been prepared on behalf of WGUL-FM, Inc. (herein "WGUL-FM"), in support of Comments and a Counterproposal in MM Docket No. 93-65. WGUL-FM is the licensee of station WGUL-FM, channel 288A, New Port Richey, Florida. By a Notice of Proposed Rule Making in MM Docket No. 93-65 (herein "the Notice", Released April 8, 1993), the Commission has proposed the substitution of channel 288C3 for channel 288A at New Port Richey and the modification of the WGUL-FM license accordingly. In order to accomplish this proposed change in accordance with the requirements of 47 CFR 73.207, it has also been proposed in the Notice to substitute channel 282A for channel 288A at Sarasota, Florida and modify the license of station WKZM accordingly. WGUL-FM herein proposes two additional alternatives to the changes proposed in the Notice, either of which would allow WGUL-FM to provide a wider area service than that proposed in the Notice. For reference purposes the two additional alternatives have been identified as "Alternative 1" and "Alternative 2".

Alternatives 1 and 2

WGUL-FM proposes, as "Alternative 1", the substitution of channel 288C1 for channel 288A at New Port Richey. As "Alternative 2", WGUL-FM proposed the substitution of channel 288C2 for channel 288A at New Port

***du Treil, Lundin & Rackley, Inc.***

A Subsidiary of A. D. Ring, P.C.

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New Port Richey, Florida

Richey. Either of these channels can be allotted to New Port Richey, providing two other channel substitutions are made: the substitution of channel 282A for channel 288A at Sarasota (as proposed in the Notice) and the substitution of channel 289A for channel 288A at Sebring, Florida (with the corresponding modification of the license of station WCAC). Although, in footnote 1 of the Notice, the proposed substitution of channel 289A for channel 288A at Sebring was identified as being in conflict with WWOJ, channel 292A, Avon Park, Florida, the substitution of channel 256A for channel 292A at Avon Park has been proposed in MM Dockets Nos. 87-455 and 89-455.

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288C2 for channel 288C3 (and corresponding modification of the construction permit for station WIXI) at Naples Park, Florida is possible. It is understood that Wodlinger Broadcasting of Naples, Inc., licensee of WIXI (channel 288A and permittee of WIXI (channel 288C3), is filing comments in this proceeding requesting the upgrade of its construction permit from channel 288C3 to channel 288C2.<sup>4</sup> This proposed upgrade will not interfere with station WGUL-FM's proposed upgrade to channel 288C2.

Figure 3 contains an allocation study and map showing the area to locate channel 288C1 at New Port Richey. For purposes of the allocation study, the site of WTSP(TV) on channel 10 at St. Petersburg, Florida has been assumed (28°11'04" North, 82°45'39" West). All proposed channel substitutions and proposed upgrades, as detailed above, have been included for study purposes. As can be seen from the allocation study, the proposed channel 288C1 facility meets the minimum separation distances to all stations and allotments. Since the reference distance to the class C1 city-grade contour is approximately 50.1 kilometers, it can be seen from the map that the requisite city coverage of New Port Richey can be met. The city limits of New Port Richey, shown on the map, were obtained from a map contained in the 1990 U.S. Census.

Figure 4 contains an allocation study and map showing the area to locate channel 288C2 at New Port Richey. All proposed channel substitutions and proposed upgrades have been included for study purposes. As can be seen from the allocation study, the proposed channel

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<sup>4</sup>The licensed and authorized WIXI site has been assumed, which is: 26°19'00" North, 81°47'13" West.

288C2 facility meets the minimum separation distances to all stations and allotments. Since the reference distance to the class C2 city-grade contour is approximately 32.7 kilometers, it can be seen from the map that the requisite city coverage of New Port Richey can be met. The city limits of New Port Richey, shown on the map, were obtained from a map contained in the 1990 U.S. Census.

Proposed Changes in FM Table of Allotments

The proposed changes in the FM Table of Allotments (47 CFR 73.202(b)) under Alternative 1 are as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Avon Park, FL	292A	256A
New Port Richey, FL	288A	288C1
Sarasota, FL	273C, 288A, 293C2	273C, 282A or 282C3, 293C2
Sebring, FL	288A	289A or 289C3

The proposed changes in the FM Table of Allotments (47 CFR 73.202(b)) under Alternative 2 are as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
<u>Avon Park, FL</u>	292A	256A

Population and Area

The population and land area within the predicted WGUL-FM 1 mV/m coverage contours for channel 288C2 (assumed 50 kW ERP at 150 m HAAT) and channel 288C1 (assumed 100 kW ERP at 299 m HAAT) facilities at the assumed reference site would be substantially greater than for a channel 288C3 (assumed 25 kW ERP at 100 m HAAT) facility as proposed in the Notice. The following table compares the predicted 1 mV/m coverage areas and populations within these areas for each of the WGUL-FM facilities.

<u>Facility</u>	<u>1 mV/m Coverage</u>	
	<u>Land Area (sq km)</u>	<u>Population</u>
288A (Present 6 kW, 87 m)	1,160	352,500
288C3 (25 kW, 100 m)	2,340	905,700
288C2 (50 kW, 150 m)	4,010	1,734,000
288C1 (100 kW, 299 m)	7,410	2,089,200

Thus it can be seen that either "Alternative 1" or "Alternative 2" will result in a substantial increase in service for WGUL-FM.

Conclusion

Channel 288C1 or channel 288C2 can be substituted for channel 288A at New Port Richey, Florida in compliance with all applicable Commission rules as detailed above. Therefore, WGUL-FM proposes that the Commission adopt the channel changes as proposed. WGUL-FM's preference would be for the channel plan described by

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New Port Richey, Florida

Alternative 1 (channel 288C1). If this is not possible, its second choice is Alternative 2 (channel 288C2). And finally, if Alternatives 1 and 2 are not possible, then the plan contained in the Commission's Notice (channel 288C3) is requested. WGUL-FM also requests the modification of its construction permit (pending license application) to reflect the upgraded channel.

*David E. Dickmann*

David E. Dickmann

du Treil, Lundin & Rackley, Inc.  
240 N. Washington Blvd. Suite 700  
Sarasota, Florida 34236

May 28, 1993

TECHNICAL STATEMENT  
IN SUPPORT OF  
COMMENTS AND A COUNTERPROPOSAL  
MM DOCKET NO. 93-65  
WGUL-FM, INC.  
NEW PORT RICHEY, FLORIDA

Allocation Study

Job Title :WCAC(FM), SEBRING, FL.

Separation Buffer 32 km

FCC DB Date : 04/27/93

Channel 289A (105.7 MHz)

Coordinates : 27-26-25 81-27-00

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
WOMXFM LIC	Orlando FL	BLH820712AI	286C 105.1	100. 399.0	28-36-17 81-05-13	15.3	133.90	95 CLEAR
WCAC LIC	Sebring FL	BLH4041	288A 105.5	3.00 46.0	27-28-06 81-27-03	358.6	3.12	
WCAC CPM	Sebring FL	BMPH920903JZ	288A 105.5	3.00 100.0	27-27-13 81-24-23	71.0	4.57	
WKZM LIC	Sarasota FL	BLH6432	288A 105.5	3.00 55.0	27-19-25 82-27-40	262.8	100.86	72 CLEAR
To Channel 282A								
WKZM CP	Sarasota FL	BPH890929IF	288A 105.5	3. DA 100.0	27-16-30 82-28-54	260.0 SS	103.71	72 CLEAR
To channel 282A								
WIXI PADD	Naples Park FL		288C2 105.5		26-19-00 81-47-13	195.1	128.92	106 CLEAR
WGUL-FM PADD	New Port Richey FL		288C2 105.5		28-11-04 82-45-39	303.0	153.24	106 CLEAR
WGUL-FM PADD	New Port Richey FL		288C1 105.5		28-11-04 82-45-39	303.0	153.24	133 CLEAR
NEW APPD	Englewood FL	BPH870908MX	290A 105.9	3.00 100.0	27-01-07 82-17-10	240.6	95.10	72 CLEAR
AMENDED 880613-COA #91-1186								
NEW APPG	Englewood FL	BPH870910OG	290A 105.9	3.00 100.0	26-57-52 82-19-16	238.6	101.15	72 CLEAR

Job Title :WCAC(FM), SEBRING, FL.

Separation Buffer 32 km

Channel 289A (105.7 MHz)

FCC DB Date : 04/27/93

Coordinates : 27-26-25 81-27-00

15000  
Ft Green    Bowling Green    O'Connell's Lakes    A.M.    15000

TECHNICAL STATEMENT  
IN SUPPORT OF  
COMMENTS AND A COUNTERPROPOSAL  
MM DOCKET NO. 93-65  
WGUL-FM, INC.  
NEW PORT RICHEY, FLORIDA

Allocation Study

Job Title :WWOJ(FM), AVON PARK, FL.

Separation Buffer 32 km

FCC DB Date : 04/27/93

Channel 256A ( 99.1 MHz)

Coordinates : 27-33-37 81-29-36

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
WRWX PADD PRM-Site Restricted 10.9km West	San Carlos Park FL	RM7865	253A 98.5		26-30-02 81-54-16	199.2	124.31	31 CLEAR
WISP CP *To channel 254C3 per D89-424	Holmes Beach FL	BPH861208MW	254A 98.7	3.00 100.0	27-27-49 82-35-32	264.6	109.11	31 CLEAR
WKGR LIC	Fort Pierce FL	BLH800428AB	254C 98.7	100. 421.0	27-07-20 80-23-21	113.8	119.57	95 CLEAR
PADD PRM	Murdock FL	RM6915	255A 98.9		27-00-42 82-08-42	226.7	88.65	72 CLEAR
PADD	Murdock FL		255A 98.9		26-54-50 82-11-40	224.1	99.77	72 CLEAR
Site Restricted 11.9 km Southwest-Counterproposal								
WMMO LIC	Orlando FL	BLH900709KD	255C2 98.9	38. 134.0	28-32-23 81-22-46	5.8 SS	109.12	106 CLOSE
WWOJ PADD	Avon Park FL	Dockey 87-455	256A 99.1		27-33-37 81-29-36	.0	0.0	
WWOJ PADD	Avon Park FL	Docket89-455	256C3 99.1		27-29-05 81-29-23	177.6	8.39	
Site Restricted 12.7km South-Counterproposal								
WEDR LIC	Miami FL	BLH900430KA	256C1 99.1	100. 280.0	25-57-59 80-12-33	144.0	217.95	200 CLEAR