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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of)	
)	
Amendment of Rule 73.202(b))	MM Docket No. 93-136
Table of Allotments)	RM-8161
FM Broadcast Stations,)	
Key Colony Beach, Key Largo, and)	
Marathon, Florida)	

TO: Chief, Allocations Branch

JOINT OPPOSITION TO MOTION FOR LEAVE TO FILE COMMENTS

Okeechobee Broadcasters, Inc., licensee of WOKC-FM, Okeechobee, Florida; WSUV, Inc., licensee of WROC-FM, Fort Myers Villas, Florida; and Jupiter Broadcasting Corporation, permittee of WADY(FM), Jupiter, Florida (collectively "Commenters"), by their attorneys, hereby oppose the Motion for Leave to File Comments filed by Gulf Communications Partnership ("Gulf") in the above-captioned proceeding.

By its Motion, Gulf seeks acceptance and consideration by the Commission of comments which are, in effect, a counterproposal tendered far beyond the deadline for submission of such proposals in this proceeding. Section 1.415 of the Commission's Rules states that periods for filing comments and reply comments in rule making proceedings shall be set out in the Notice of Proposed Rule Making, and that after such specified dates, additional comments will be considered only upon specific authorization. Pursuant to the Commission's Notice of Proposed Rule Making in this proceeding and an extension of time later

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granted by the Commission,¹ the established pleading cycles in this proceeding, and the opportunity for counterproposals, ended upon the reply comment filing date, August 23, 1993.

By its comments, Gulf seeks to inject into this proceeding considerations which are germane to another station upgrade which it only recently initiated² and which has yet to be designated for rule making by the Commission. Gulf seeks in its comments to either 1) preserve the status quo of the allotment at Key Colony Beach, Florida; or 2) substitute a channel not proposed or considered in the record of this proceeding, Channel 237C2, for existing Channel 288C2 at that location. Pursuant to the Commission's established procedures, filing of additional counterproposals is now "cut off" in this proceeding, and considerations and determinations in the instant proceeding take precedence over consideration of matters in any rule makings instituted after the reply comment date. Gulf's attempt to bootstrap consideration of its recently-filed Petition for Rulemaking into this proceeding through its attempted counterproposal should be denied.

Beyond the procedural impropriety of Gulf's submission, the import of its comments--that the allotment at Key Colony Beach should remain unchanged or be changed to Channel 237C2--fails to

¹ Notice of Proposed Rule Making, DA 93-532, released June 3, 1993; Public Notice, FCC Report No. 1958, released August 6, 1993.

² See Gulf's Petition for Rulemaking to Amend the Table of Allotments, Tice Florida, filed on March 31, 1994.

take into account the overall solution previously proposed by Commenters in this proceeding which would satisfy all of the parties' interests.³ Either of Gulf's alternatives would prevent this arrangement and deprive the public of the possible new service and service improvements which have been identified.

In the interests of yet again finding a global solution meeting the objectives of all of the parties as well as Gulf, Commenters have commissioned further engineering study. As shown in the attached Affidavit and Engineering Exhibit of James M. Johnson, the desire of Gulf can be achieved in harmony with an overall solution in this proceeding by placing Channel 269C2 at Key Colony Beach (rather than Channel 237C2 as Gulf urges). In the alternative, substitution of Channel 267C2 also appears to meet all objectives.⁴ Should the Commission entertain Gulf's

³ Commenters' proposed solution, identified in their Joint Reply Comments filed August 23, 1993, was as follows:

	<u>Present</u>	<u>Proposed Solution</u>
Key Colony Beach	288C2	280C2
Key Largo	280C2	288C2
Marathon	292A	237C2
Indiantown	276C2	276C1
Naples	276C3	292C3
Fort Myers Villas	292A	275C2
Clewiston	292A	258A
Jupiter	258A	292C3

⁴ In its comments, Gulf identifies these alternatives in addition to the channel it suggested, stating that "[c]onstruction and operation of WKKB from its existing transmitter site on any of these three channels would provide city grade coverage to its community of license and meet the Commission's minimum spacing requirements as to all other licensed, authorized or requested

interests in this proceeding, Commenters urge the Commission to preserve the viability of the overall solution previously detailed by Commenters by amending Channel 288C2 at Key Colony Beach to either of Channel 269C2 or 267C2.

WHEREFORE, Commenters respectfully request that the Commission deny the Motion for Leave to File Comments of Gulf or, in the alternative, make the alternative allotment substitutions at Key Colony Beach as detailed above.

Respectfully submitted,

OKEECHOBEE BROADCASTERS, INC.
WSUV, INC.
JUPITER BROADCASTING CORPORATION



By: _____
Robert J. Rini



By: _____
Evan D. Carb

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Their Attorneys

May 23, 1994

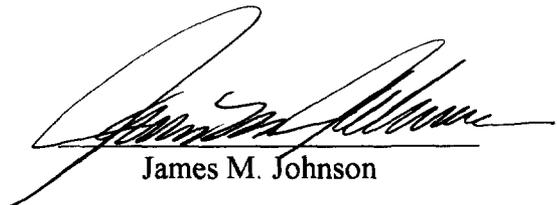
facilities." Comments of Gulf at 4 (emphasis in original).

AFFIDAVIT

State of Florida)
) SS:
County of Highlands)

James M. Johnson, having been duly sworn, deposes and says that:

1. He is a Broadcasting Consultant practicing in the City of Sebring, Florida, and his qualifications are a matter of record with the Federal Communications Commission.
2. He has been retained by Sunshine Broadcasting, Inc., Okeechobee Broadcasters, Inc. and Jupiter Broadcasting Corporation to prepare the attached Engineering Exhibit.
3. He has prepared, or caused to be prepared under his immediate supervision, the accompanying exhibits which are attached to and form part of this affidavit.
4. The foregoing statements and the aforementioned exhibits are true to the best of his knowledge and belief.


James M. Johnson

Subscribed and sworn to this 20th day of May, 1994.


Notary Public
Notary Public, State of Florida At Large
My Commission Expires 03-31-1994
KAREN T. SASNOW

ENGINEERING STATEMENT

I have examined the FM Broadcast Band to determine if Channels other than 237C-2 could be used as a substitute at Key Colony Beach, Florida. Either Channel 267C-2 or 269C-2 could be used while meeting the Commission's spacing requirements from the present WKKB C.P. site.

The use of either 267C-2 or 269C-2 would not impact any of the proposals in Docket 93-136.

KEY COLONY BEACH, FLORIDA
ALTERNATE CHANNEL

REFERENCE		CLASS C2	DISPLAY DATES
24 42 25 N		Current rules spacings	DATA 03-27-94
81 06 17 W		CHANNEL 269 -101.7 MHz	SEARCH 05-19-94

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WLYF	268C1	Miami	FL	32.8	165.94	158.0	7.94
LI CN	25 57 59	80 12 44	100.000 kW	247M	103.1	98.2	
		Jefferson-Pilot Broadcasting			BLH5032		
WHEW	270C	Fort Myers	FL	344.8	196.99	188.0	8.99
LI CN	26 25 23	81 37 07	100.000 kW	302M	122.4	116.8	
		Robert Hecksher			BLH870601KA		
WKLG	271C2	Rock Harbor	FL	57.5	79.21	58.0	21.21
LI CN	25 05 29	80 26 37	50.000 kW	71M	49.2	36.0	
		WKLG, Inc.			BLH891026KB		

CERTIFICATE OF SERVICE

I, Rhonda Parrish, a secretary with the law firm of Rini & Coran, do hereby certify that I caused a copy of the foregoing "Joint Opposition To Motion For Leave To File Comments" to be mailed, first-class, postage prepaid this 23rd day of May, 1994 to the following:

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Rhonda R. Parrish
Rhonda R. Parrish

* Via Hand-Delivery