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November 25, 1994

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NOV 25 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

RE: MM Docket No. 94-115

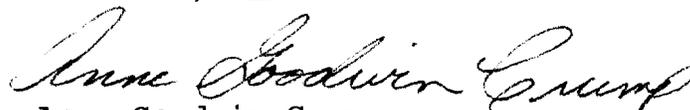
Dear Mr. Caton:

Transmitted herewith, on behalf of Gary P. Alvarez are an original and four copies of its Comments and Counterproposal in the above referenced proceeding.

Should any additional information be necessary, please contact the undersigned.

Very truly yours,

FLETCHER, HEALD & HILDRETH



Anne Goodwin Crump  
Counsel for  
Gary P. Alvarez

AGC/rhw  
Enclosure

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM DOCKET NO. 94-115
Table of Allotments,	)	RM-8508
FM Broadcast Stations.	)	
(Woodville, Mississippi;	)	
Clayton and Jena, Louisiana)	)	

Directed to: Acting Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL

Gary P. Alvarez, by his attorney, hereby respectfully submits his Comments and Counterproposal in the above-referenced proceeding. With respect thereto, the following is stated:

1. In its Notice of Proposed Rule Making and Order to Show Cause, DA 94-1047, released October 4, 1994, the Commission sought comment on the following proposed changes to the FM Table of Allotments:

	Channel No.	
City	Present	Proposed
Woodville, Mississippi	299A	299C3
Jena, Louisiana	257A	274A
Clayton, Louisiana	300A	257A

Alvarez now proposes that, in lieu of the above proposed changes,

that the Commission adopt the following changes to the FM Table of Allotments:

City	Channel No.	
	Present	Proposed
Woodville, Mississippi	299A	-----
Liberty, Mississippi	-----	299C3
Jena, Louisiana	257A	257A
Clayton, Louisiana	300A	300A

Alvarez submits that this Counterproposal would result in a superior allotment scheme. Channel 299C3 could be allotted to Liberty at the co-ordinates specified in the attached Engineering Statement (31° 13' 34" North Latitude, 90° 49' 06" West Longitude) in accordance with the Commission's spacing requirements.

2. The Commission's proposal to substitute Channel 299C3 for Channel 299A at Woodville is based upon the assumption that the proponent, PDB Broadcasting Company, still retains the construction permit for Station WLGG(FM), Woodville, on Channel 299A. In point of fact, however, the Commission cancelled PDB's construction permit and deleted the call letters WLGG(FM) on August 12, 1994. (See, Public Notice, Report No. 15878, August 19, 1994.) The PDB permit expired by its own terms on June 13, 1994, over thirty (30) days prior to the filing of PDB's "Petition for Rule Making." By letter dated August 12, 1994, Reference 1800B-JDB, having not heard from PDB within thirty (30) days, the Commission notified PDB that the construction permit was cancelled and the call letters deleted as of the expiration date. See 47 C.F.R. Section 73.3599. Public notice of that

action was given on August 19, 1994, as noted above. It was not until September 30, 1994, more than forty (40) days after that public notice and over ninety (90) days after expiration that PDB sought reinstatement. It is evident that the permit has expired and is beyond reinstatement. The Commission's action of cancelling the construction permit had become a final action before PDB sought reinstatement of the permit.

3. Accordingly, at this time, Alvarez requests that the allotment of Channel 299A at Woodville be deleted and that Channel 299C3 instead be allotted to Liberty to provide first local service. Liberty is the county seat of Amite County, Mississippi. Liberty currently has no local broadcast service. See, Engineering Statement, attached hereto. As a county seat, Liberty is deserving of a wide coverage area FM service and first local service. Moreover, Channel 299C3 at Liberty would be able to provide service to a considerably greater number of people than would either Channel 299A or Channel 299C3 at Woodville. PDB's proposed operation on Channel 299C3 at Woodville would provide service to only 32,364 people. Id. In contrast, Channel 299C3 at Liberty would provide service to 57,998, an increase of approximately 69 percent. Id. Although Woodville would no longer have a local allotment, the overall number of people who would receive new service would be significantly greater, more than half again as many. Further, Woodville would not be deprived of any existing service, since PDB has never constructed or placed on the air its previously authorized facilities.

4. Additionally, Liberty is located in a county better able to support a radio station economically and more in need of local service. As stated above, Liberty is the county seat of Amite County, which had a 1991 estimated population of 13,300. Rand McNally 1993 Commercial Atlas and Marketing Guide at 114. Woodville is the county seat of Wilkinson County, which had a 1991 estimated population of 9,500. Id. In 1991, Amite County had 4,800 households with a median household income of \$17,795. Id. at 71. In contrast, Wilkinson County had only 3,300 households with a median household income of \$13,217. Id. at 72. Similarly, Amite County had an effective buying income of \$116,177,000 and total retail trade of \$31,246,000. Id. at 71. Wilkinson County, on the other hand, had an effective buying income of \$63,617,000 and total retail trade of \$26,762,000. Id. at 72. Clearly, therefore, Amite County is a much more thriving and economically active county. As the center of greater business activity, Amite County and its county seat, Liberty, are in greater need of local broadcast service. Furthermore, the greater prosperity of Amite County makes it more likely that a station located in Liberty would be able to attract advertisers in sufficient number for the station to survive economically. Thus, if the Commission were to place the allotment at Liberty rather than Woodville, it would have a greater assurance that the station to operate there would be able to continue to provide service to the public, instead of going dark and causing the channel to again sit idle.

5. Further, the proposed change allotment of Channel 299C3 at Liberty would be less disruptive to the Commission's overall table of allotments than the upgrade to Channel 299C3 at Woodville. The Woodville upgrade would require two additional channel changes, one involving a licensed station and the other involving a pending application. In contrast, if Channel 299C3 is allotted to Liberty, no further changes would be required.

6. Furthermore, it has become clear that the prospects that the Woodville station will ever be constructed and placed on the air are quite slim. PDB's construction permit was originally granted on October 16, 1991. PDB has yet to begin installation of any equipment, according to PDB's September 30, 1994, application for reinstatement of its construction permit. That application is PDB's third request for an extension of time to construct. Although PDB states in its reinstatement application that one reason for the delay was that it was involved in negotiations to move its transmitter site to accommodate another station, by its own admission, that matter was fully resolved by mid-1993. PDB apparently has made no further progress toward construction since that time. Further, PDB allowed its construction permit to expire and took no action whatsoever to seek reinstatement of its permit until some forty-two (42) days after public notice of the Commission's cancellation of the construction permit and deletion of the call sign. This was 109 days after the construction permit expired. This long lapse of time without taking any action does not reflect any diligence on

the part of the former permittee. Rather, the delay is indicative of a lack of any true commitment to building the station and placing it on the air.

7. Alvarez hereby expresses his intention, if Channel 299C3 is allotted to Liberty, to promptly file an application for construction permit for the channel and, upon grant of the construction permit, to expeditiously construct the authorized facilities.

WHEREFORE, the premises considered, it is respectfully requested that the Commission allot Channel 299C3 to Liberty, Mississippi and delete the allotment of Channel 299A at Woodville, Mississippi.

Respectfully submitted,

GARY P. ALBAREZ

By:   
Vincent J. Curtis, Jr.  
Anne Goodwin Crump

His Attorneys

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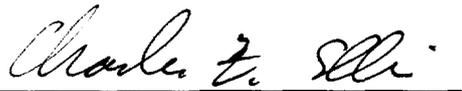
November 25, 1994

**Engineering Statement  
in Support of New Class C3 FM  
Allocation to Liberty, MS**

Woodville, MS is presently allocated a Class A FM radio station. PDB Broadcasting formerly held a construction permit for this Class A allocation. PDB Broadcasting has a request to upgrade this Class A to Class C3 status through the standard rulemaking procedure.

This document supports deleting Channel 299A from Woodville, MS, and denying the proposed C3 allocation for Woodville, MS.

In this counterproposal, a request is made to grant a mutually exclusive C3 Channel 299 to Liberty, MS. This county seat is presently without local AM or FM service. Table 1 demonstrates the proposed allocation situation. The Liberty, MS C3 would serve far more people than the present allocation situation allows. The Class A construction permit for Woodville covers a population of 10,869. The proposed C3 for Woodville will cover a population of 32,364. The proposed mutually exclusive C3 for Liberty, MS will cover a population of 57,998. Tables 2A, 2B, and 2C give the distance to various contours and the population and area for each allocation situation. Figure 1A demonstrates that the 70 dbu contour of the proposed C3 will more than cover the proposed city of license. Figure 1B demonstrates that there is usable area for the proposed tower. The area is farmland and wilderness and is not zoned.



Charles F. Ellis, P.E.

# Table 1

Ellis Engineering  
1103 LaNeuville Road-Lafayette LA 70508

Liberty, MS C3  
Liberty, MS

REFERENCE		DISPLAY DATES
31 13 34 N	CLASS C3	DATA 11-23-94
90 49 06 W	Current rules spacings	SEARCH 11-23-94
----- CHANNEL 299 -107.7 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD299 AD	299C3 31 13 43	Woodville 91 07 22	MS 0.000 kW	270.5 0M	29.01 18.0	153.0 95.1	-123.99 *
	PDB Broadcasting				RM8375		931018
WLGG.C CP CN	299A 31 07 13	Woodville 91 20 32	MS 3.000 kW	256.8 100M	51.30 31.9	142.0 88.3	-90.70 *
	PDB Broadcasting Company				BPH890712MH		
DE299 DE	299A 31 07 13	Woodville 91 20 32	MS 0.000 kW	256.8 0M	51.30 31.9	142.0 88.3	-90.70 *
	PDB Broadcasting				RM8375		931018
>PRM							
AD300 AD	300C 30 44 48	Bay St. Louis 89 03 30	MS 0.000 kW	107.5 0M	176.32 109.6	176.0 109.4	0.32 <
	Dowdy & Dowdy Partnership				RM7170		
>PRM							
WZKX LI CY	300C 30 44 48	Poplarville 89 03 30	MS 100.000 kW	107.5 445M	176.32 109.6	176.0 109.4	0.32 <
	Johnnie Dale Griffin, Executo				BLH870401KB		
DE300 DE	300C 30 44 48	Poplarville 89 03 30	MS 0.000 kW	107.5 0M	176.32 109.6	176.0 109.4	0.32 <
	Dowdy & Dowdy Partnership				RM7170		
>PRM-Change the Community of License							
ALOPEN AL N	300A 31 44 42	Clayton 91 32 54	LA 0.000 kW	309.7 0M	90.12 56.0	89.0 55.3	1.12 <
	91-247	WO= 920114					920213
>First Come/First Served Allotment							
>Site Restricted-Effective 1-13-92							
DE300 DE	300A 31 44 42	Clayton 91 32 54	LA 0.000 kW	309.7 0M	90.12 56.0	89.0 55.3	1.12 <
	PDB Broadcasting				RM8375		931018
>PRM							

Table 1 (con't)

Ellis Engineering  
1103 LaNeuville Road-Lafayette LA 70508

CLASS C3

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AP300	300A	Clayton	LA	309.8	93.88	89.0	4.88
AP CN	31 46 05	91 34 39	6.000 kW	100M	58.3	55.3	
Clayton FM Partnership					BPH940113MD		940610
WXXIFM	298C1	Magee	MS	40.4	150.30	144.0	6.30
LI CY	32 15 28	89 47 22	100.000 kW	290M	93.4	89.5	
CSB Communications, Inc.					BLH880802KZ		
KPEL	299C3	Erath	LA	220.9	172.67	153.0	19.67
LI ZEN	30 02 54	91 59 49	10.000 kW	143M	107.3	95.1	
Radio KPEL-FM, Inc.					BLH930413KA		
>From Channel 299A Per D90-127							
WBBU.C	297A	Baker	LA	206.3	74.54	42.0	32.54
CPM CN	30 37 24	91 09 50	2.200 kW	114M	46.3	26.1	
BEBE-F Broadcasting Corp.					BMPH940303IB		
KFNVFM	296C3	Ferriday	LA	301.3	80.37	43.0	37.37
LI ZCN	31 36 08	91 32 27	18.500 kW	71M	50.0	26.7	
Big River Broadcasting Co.					BLH921207KE		
WHMD	296A	Hammond	LA	159.4	85.00	42.0	43.00
LI CN	30 30 31	90 30 18	3.000 kW	100M	52.8	26.1	
Airweb, Inc.					BLH850207LP		
KXKZ	298C	Ruston	LA	307.0	224.40	176.0	48.40
LI CY	32 26 38	92 42 42	100.000 kW	325M	139.5	109.4	
Ruston Broadcasting Company,					BLH880324KB		

## Table 2A

### Distance To Contours

Station: WLGG Class A CP\*  
Channel: 299A  
City: Woodville  
State: MS  
File Number: BPH890712MH  
North Latitude: 31 07 13  
West Longitude: 91 20 32  
Population within 60 dbu: 10,869  
Area within 60 dbu: 2,499.8 Square Kilometers

### F(50,50) Curves

#### Distance In Kilometers

AZ (degs)	HAAT (m)	ERP (kW)	CONTOUR LEVELS (dBu): 60.0
.0	127	6.0000	31.4
45.0	113	6.0000	29.9
90.0	89	6.0000	26.8
135.0	80	6.0000	25.5
180.0	87	6.0000	26.5
225.0	77	6.0000	25.0
270.0	102	6.0000	28.6
315.0	124	6.0000	31.2

\* Maximum Facility C3 Contours  
at Proposed CP Site

## Table 2B

### Distance To Contours

Station: WLGG C3 Add\*  
Channel: 299C3  
City: Woodville  
State: MS  
File Number: RM8375  
North Latitude: 31 13 43  
West Longitude: 91 07 22  
Population within 60 dbu Contour: 32,364  
Area within 60 dbu Contour: 4728.2 Square Kilometers

### F(50,50) Curves

#### Distance In Kilometers

AZ (degs)	HAAT (m)	ERP (kW)	CONTOUR LEVELS (dBu): 60.0
.0	124	25.0000	42.5
45.0	98	25.0000	38.7
90.0	65	25.0000	32.1
135.0	75	25.0000	34.4
180.0	86	25.0000	36.6
225.0	113	25.0000	41.0
270.0	134	25.0000	43.8
315.0	106	25.0000	40.0

\*Contours for Maximum Facility  
Station and C3 Reference Site

## Table 2C

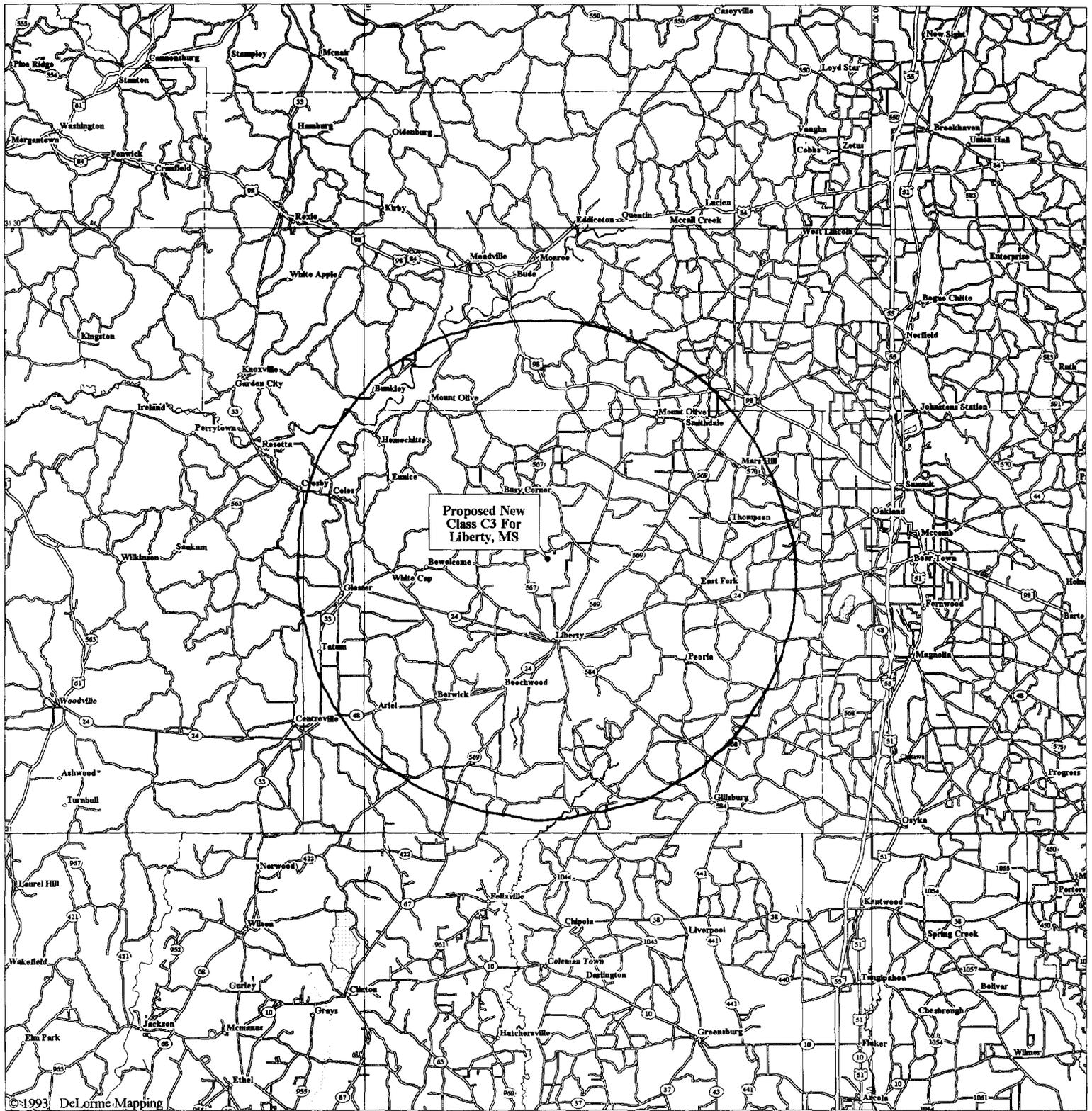
### Distance To Contours

Station: Liberty, MS C3  
Channel: 299C3  
City: Liberty  
State: MS  
File Number: N/A  
North Latitude: 31 13 34  
West Longitude: 90 49 06  
Population within 60 dbu Contour: 57,998  
Area within 60 dbu Contour: 4789.0 Square Kilometers

### F(50,50) Curves

#### Distance In Kilometers

AZ (degs)	HAAT (m)	ERP (kW)	CONTOUR 70.0	LEVELS (dBu): 60.0
.0	90	25.0000	22.0	37.2
45.0	89	25.0000	21.9	37.1
90.0	99	25.0000	23.2	39.0
135.0	106	25.0000	23.9	40.0
180.0	109	25.0000	24.2	40.5
225.0	110	25.0000	24.3	40.6
270.0	99	25.0000	23.2	39.0
315.0	99	25.0000	23.1	38.8



Proposed New  
Class C3 For  
Liberty, MS

LEGEND

- Population Center
- State Route
- Geo Feature
- Town, Small City
- Interstate, Turnpike
- US Highway
- County Boundary
- Major Street/Road

- State Route
- Interstate Highway
- US Highway
- River
- Airfield
- Open Water

Scale 1:500,000 (at center)

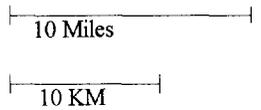
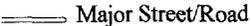


Figure 1A  
Mag 11.00  
Wed Nov 23 07:36:46 1994



LEGEND

-  State Route
-  Street, Road
-  Major Street/Road
-  State Route
-  River

Scale 1:25,000 (at center)

 2000 Feet

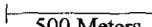
 500 Meters

Figure 1B

Mag 15.00

Wed Nov 23 07:35:01 1994

**AFFIDAVIT AND QUALIFICATIONS OF  
C. F. ELLIS**

State of Louisiana     )  
Lafayette                )  
Parish of Lafayette    )

Charles F. Ellis affirms that he is a consulting radio and electronics engineer; that he is a professional engineer registered in the State of Louisiana: that the foregoing report was prepared by him or under his direction; and that the statements contained therein are true to his own personal knowledge except those stated to be on information and belief, and as to those statements, he verily believes them to be true.



C. F. Ellis, P.E.  
Affiant  
November 23, 1994

**CERTIFICATE OF SERVICE**

I, Roberta Wadsworth, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Comments and Counterproposal" were sent this 25th day of November, 1994, by first-class United States mail, postage prepaid, to the following:

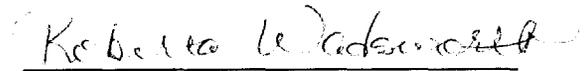
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Roberta Wadsworth