

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

In the Matter of)	MM Docket No. 95-46
)	
Amendment of Section 73.202(b).)	RM-8594
Table of Allotments.)	
FM Broadcast Stations.)	
(Edenton, Columbia and Pine Knoll)	
Shores, North Carolina))	

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OFFICE OF SECRETARY

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To: Acting Chief,
Allocations Branch

COMMENTS AND REQUEST FOR DELETION OF CHANNEL

Atlantic Ridge Telecasters, Inc. ("Atlantic Ridge"), by its attorneys, submits its Comments in response to the Notice of Proposed Rule Making ("Notice"), released April 18, 1995, in the above-captioned proceeding. That rulemaking principally concerns a proposal to upgrade the channel used by FM station WERX-FM, currently licensed to Edenton, North Carolina. While Atlantic Ridge has no objection to that upgrade, it does object to the Notice's proposal to substitute FM Channel 290A for unoccupied but applied for Channel 272A at Pine Knoll Shores, North Carolina. That action would be completely contrary to Commission policy and practice since neither that channel, nor the currently allotted channel, can provide a city-grade signal over all Pine Knoll Shores. Thus, the Pine Knoll Shores channel should be deleted, which would still allow for the upgrade of WERX-FM.

BACKGROUND

Atlantic Ridge is the licensee of WTKF (FM), Atlantic, North Carolina. In MM Docket No. 88-40, the Commission allotted FM Channel 272A to Pine Knoll Shores. In a Petition for

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Reconsideration of that action, filed on May 7, 1992 by Down East Radio ("Down East"), which was then the permittee of WTKF (FM), it was demonstrated that Channel 272A could not provide the requisite city-grade service to Pine Knoll Shores. Down East also petitioned the Commission to stay the allotment's effective date and application filing window. Neither of Down East's filings have been addressed by the Commission. Now, in Docket No. 95-46, the Commission proposes to substitute Channel 290A for 272A to accommodate the allotment of Channel 273C1 to Columbia. As set forth in more detail below, the proposed substitute channel suffers from the same problems as did the original Pine Knoll Shores channel. Thus, the Commission's only alternative is to delete the allotment at Pine Knoll Shores.

THE PINE KNOLL SHORES CHANNEL SHOULD BE DELETED

During the channel allotment process, the Commission requires that the entire city of license will receive a city-grade signal. See, e.g. Wadley and Dadeville, Alabama, 60 RR2d 1462, 1464 (M.M. Bur. 1986); Athens and New Boston, Ohio, 48 RR2d 1628, 1632 (B'cast. Bur. 1981); Attica and Warsaw, New York, 54 FCC2d 1137, 1139 (1975). The original allotment of Channel 272A to Pine Knoll Shores violates this standard. As demonstrated in Down East's Petition for Reconsideration in MM Docket No. 88-40, much of the area within the boundaries of Pine Knoll Shores will not receive a city-grade signal from the proposed transmitter site coordinates. Thus, the existing channel can be deleted, eliminating any preclusive effect it may have on the proposed upgrade of WERX-FM.

Moreover, the substitute channel proposed in the instant proceeding does not resolve the problem with the Pine Knoll Shores allotment. The attached engineering statement (Exhibit A) shows that Channel 290A fails to cover even sixty percent of Pine Knoll Shores from the proposed coordinates. The engineering statement makes clear the allocation cannot be moved any closer to the city of license without creating new short-spacings. Thus, the allotment of Channel 290A at Pine Knoll Shores cannot be made.

In short, neither Channel 272A nor 290A operating at maximum power and tower height can provide city-grade service to Pine Knoll Shores as required by 47 C.F.R. § 73.315 (a) (1994) (“a minimum field strength of 70 dB above one uV/m (dBu), or 3.16 mV/m, will be provided over the *entire* principal community to be served”) (emphasis added). This conclusion has been reached by the sole applicant for this channel as well. In its application for Channel 272A, WMBL’s engineering statement, at page three, concedes that “[a]fter thorough research by the applicant . . . the applicant has determined that no fully spaced (73.207 or 73.215) site is available which would meet the requirements of 73.315 (a)(b).” The Commission does not waive the requirement that, at the allotment stage, an allotment cover the entire city of license. See, FM Table of Allotments, (Greenwood, S.C. *et. al.*), 63 RR2d 251, 258 (1987). Therefore, as this deficiency cannot be cured, Channel 272A, which should never have been allotted, must now be deleted, and Channel 290A cannot be allotted as it suffers from the same deficiencies as does Channel 272A.

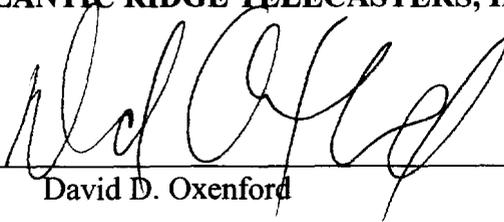
CONCLUSION

The allotment of Channel 272A to Pine Knoll Shores should never have been made. The Commission’s mistaken belief that this channel allotment complied with its regulations cannot be

remedied by substituting Channel 290A; neither channel comes close to meeting the standards demanded by the Commission's regulations. Thus, rather than substituting one technically flawed channel for another, the Commission should delete the Pine Knoll Shores channel entirely.

Respectfully submitted,

ATLANTIC RIDGE TELECASTERS, INC.

By: 
David D. Oxenford

Its Attorneys

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Dated: June 9, 1995

**Engineering Statement
Regarding the Substitution of Channel 290A for 272A
in Pine Knoll Shores, NC**

The Commission has proposed the substitution of channel 290A for 272A currently allocated to Pine Knoll Shores, NC following the petition of Lawrence Loesch. It is necessary for 272A to be deleted as the allocation to Pine Knoll Shores in order for Loesch to substitute channel 273C1 in Columbia, NC for channel 273C2 in Edenton, NC. Channel 290A can be placed at the same coordinates specified by the applicant for 272A in Pine Knoll Shores.

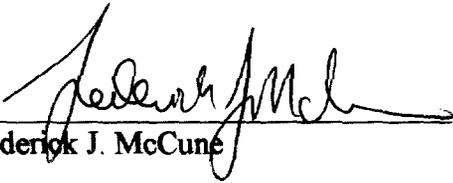
A review of the coverage contours of channel 272A or channel 290A at the coordinates specified by the pending Pine Knoll Shores application (N 34 42 38 W 76 37 52) shows that neither class A allocation will provide city grade service over the entire city of license as required by FCC Rules part 73.315 (a,b). Even operating at maximum power and height from this site with a maximum city grade coverage contour of 16.6 km, both 272A and 290A fail to cover even 60% of the city of Pine Knoll Shores, NC (see map). Channel 290A can theoretically be located almost 7/10th of a kilometer further west of the referenced site, but all the area west of the site and south of the railroad is in the city limits of Beaufort and is zoned residential where structures such as 100 meter towers are prohibited. Even with a tower at the most westerly point permitted under FCC channel spacing rules, the channel 290A allocation still fails to cover 60% of the city of Pine Knoll Shores with a city grade contour assuming maximum permitted facilities.

Neither channel 272A nor 290A operating a maximum power and tower height can be located to provide city grade coverage to the entire city limits of Pine Knoll Shores. The current applicant for channel 272A, whose application has been pending since 1992, has also acknowledged this deficiency. Neither channel meets the requirements of the Commissions Rules and Regulations and therefore neither should be allocated to Pine Knoll Shores.

Frederick J. McCune has been a consulting engineer for radio and television stations over the past 20 years. He holds an FCC General Radiotelephone license and has prepared FCC applications for radio, television, LPTV and MMDS facilities. He has consulted and has constructed various radio and television facilities in North Carolina.

Declaration

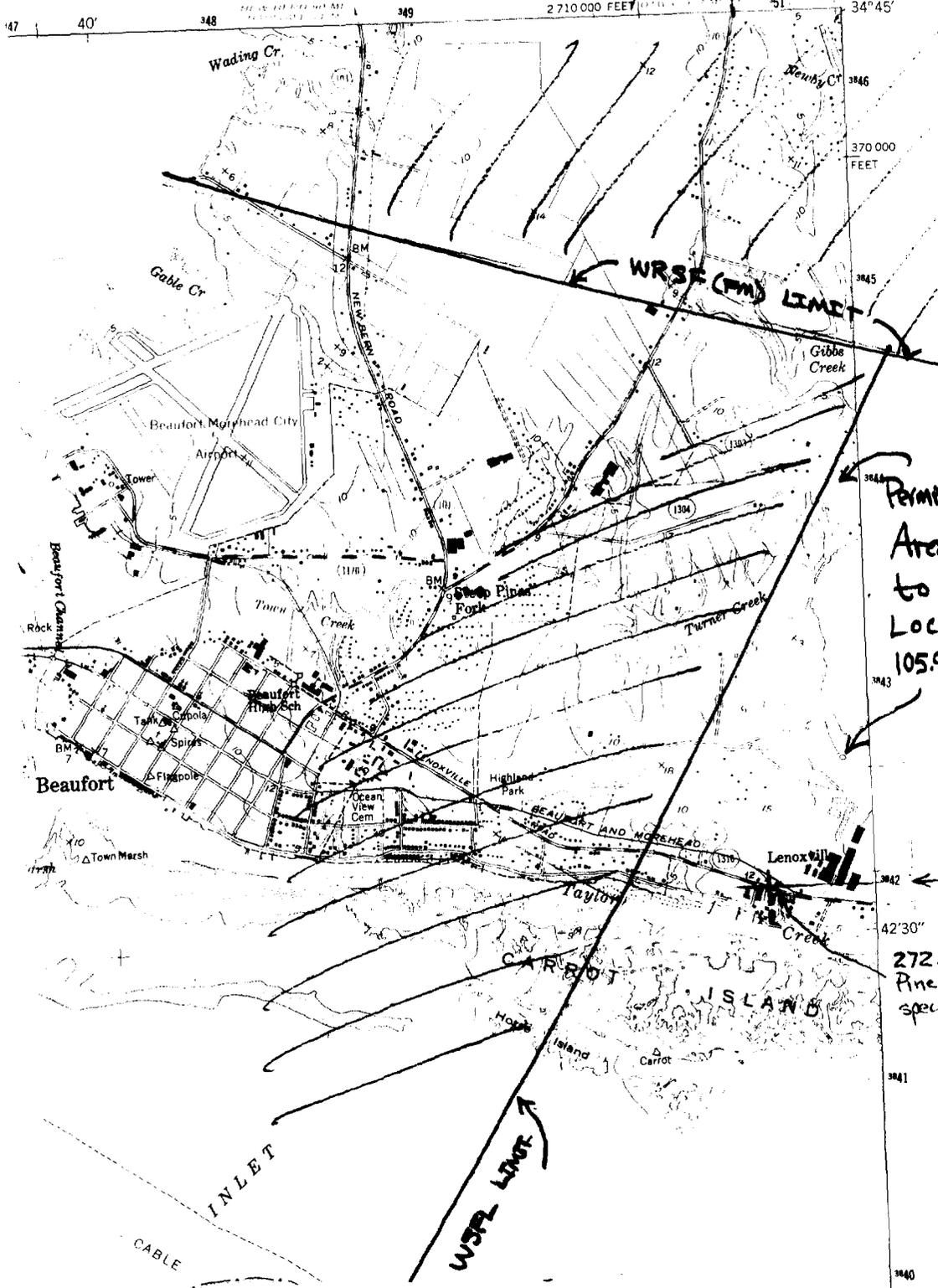
I, Frederick J. McCune, hereby declare under penalty of perjury, that the attached engineering statement is correct to the best of my knowledge and belief.


Frederick J. McCune

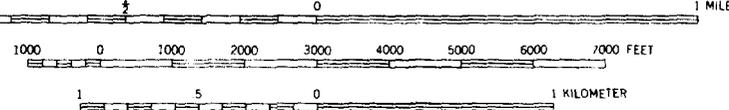
June 7, 1995

BEAUFORT QUADRANGLE
 NORTH CAROLINA-CARTERET CO.
 7.5 MINUTE SERIES (TOPOGRAPHIC)

5831 I SE
 (WILKINSON)



SCALE 1:24000

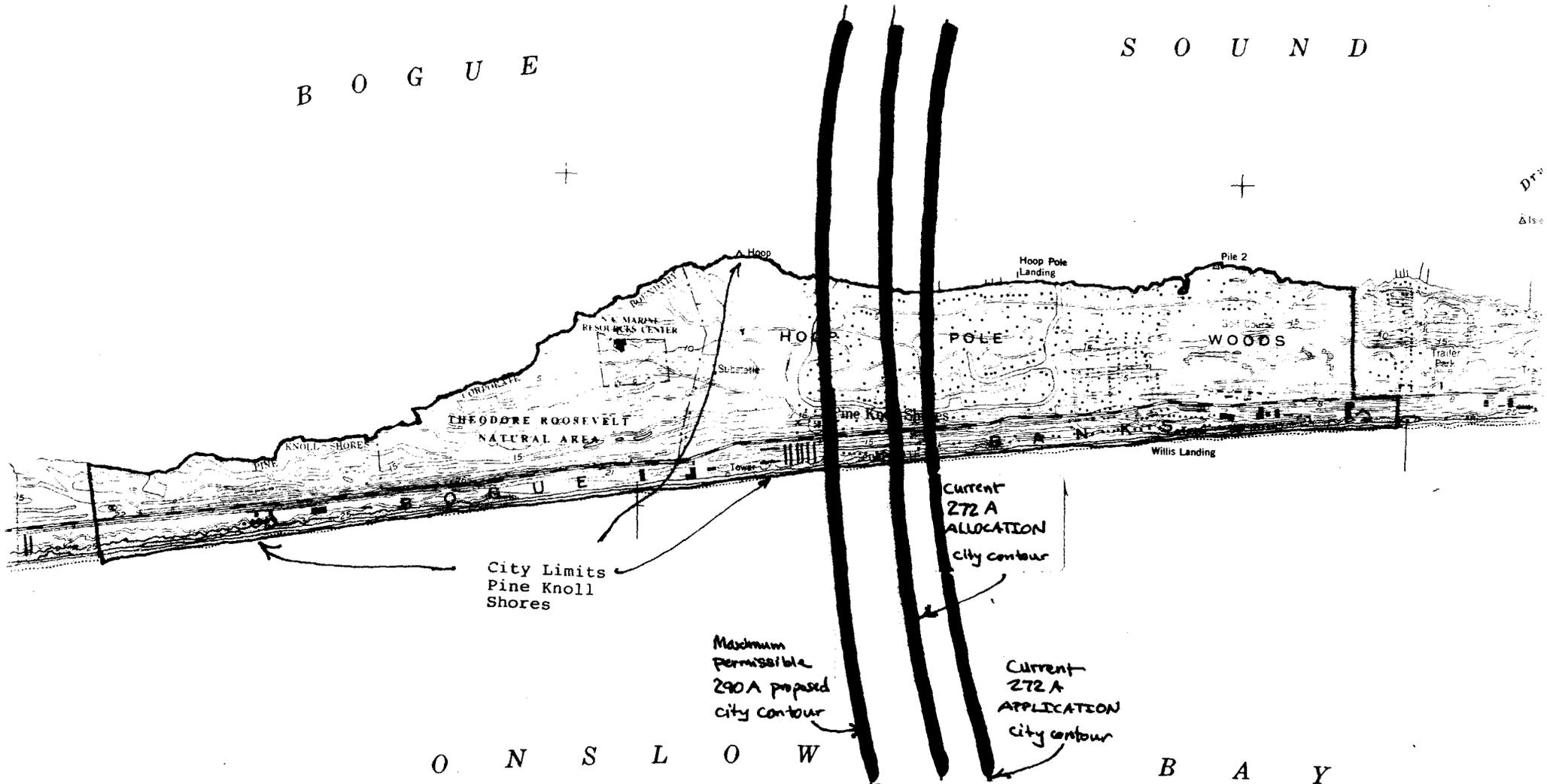


CONTOUR INTERVAL 5 FEET
 NATIONAL GEODETIC VERTICAL DATUM OF 1929
 SHORELINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER
 THE AVERAGE RANGE OF TIDE IS APPROXIMATELY 25 FEET

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
 FOR SALE BY U. S. GEOLOGICAL SURVEY, RESTON, VIRGINIA 22092
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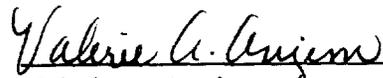
CERTIFICATE OF SERVICE

I, Valerie A. Anyim, do hereby certify that I have this 12th day of June, 1995, mailed by first-class United States mail, postage prepaid, copies of the foregoing "**Comments and Request for Deletion of Channel**" to the following:

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***Hand Delivery**