

Before the
Federal Communications Commission

Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),)
)
Table of Allotments,)
FM Broadcast Stations)
(Rose Hill, Trenton, and Aurora)
North Carolina))

MM Docket No. 95-88
RM-8641
RM-8688

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: Chief, Allocations Branch

RESPONSE TO COMMENTS OF MUSICRADIO OF NORTH CAROLINA, INC.

Aurora Broadcasting ("AB") herewith respectfully responds to the "Comments" of MusicRadio of North Carolina, Inc. ("MusicRadio") filed September 5, 1995, in the above docketed rule making proceeding.¹

Background

By Notice of Proposed Rule Making, Rose Hill and Trenton, North Carolina ("NPRM"), 10 FCC Rcd 6611 (1995), the Commission proposed the reallocation of FM Channel 284A from Rose Hill to Trenton, North Carolina, as a Class C2 allotment, with the modification of the license of WBSY, Rose Hill, to operate at Trenton on Channel 284C2. On August 10, 1995, the date established by the Commission for filing comments, AB filed "Comments and Counterproposal of Aurora Broadcasting," proposing to allot Channels 283A

¹ Since this pleading is not automatically authorized by the Rules, AB is today filing a Motion to Accept Responsive Pleading. This pleading is being filed within 10 days (plus three days for mailing) of the filing of MusicRadio's Comments.

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to Aurora, North Carolina, instead of the allotment of Channel 284C2 to Trenton.² By Public Notice, Report No. 2092, released August 21, 1995, the Commission gave public notice of AB's Counterproposal and afforded the public 15 days within which to submit replies. On September 5, 1995, MusicRadio of North Carolina, Inc. ("MusicRadio"), licensee of WMSQ(FM), Havelock, North Carolina, and Duplin Conty Broadcasters filed replies to AB's Counterproposal. DCB proposed the alternative allotment of Channel 221A to Aurora in lieu of Channel 283A as requested by AB. AB is today filing a separate response to demonstrate that DCB's proposal is not technically feasible. The purpose of the instant pleading is to respond to the matters raised by MusicRadio.

MusicRadio's Concerns Are Unfounded

MusicRadio is concerned that the allotment of Channel 283A at Aurora, North Carolina, will restrict the area available for it to locate a new transmitter site for WMSQ. MusicRadio's concerns are unfounded. As demonstrated in the attached Technical Comments, there will be more than adequate area for MusicRadio to locate a new transmitter site. According to AB's calculations, the usable area for WMSQ will only be reduced by about one third. This is hardly a "further serious restriction" on the usable area as claimed by MusicRadio. Furthermore, MusicRadio argued that the usable area for WMSQ is "further restricted by aeronautical considerations, large areas of marsh and tidal areas, and the urbanized area surrounding Morehead City." (See the technical narrative attached to

² Also on August 10, 1995, "Comments and Counterproposal of JEE Broadcasting, Inc., L.P.", was filed seeking the allotment of Channel 284C3 to Ocracoke, North Carolina, but the counterproposal was subsequently withdrawn. DCB filed supporting comments. W&B Media, Inc., and Topsail Broadcasting, Inc., filed comments in opposition to DCB's proposal.

MusicRadio's Comments at p. 2.) However, MusicRadio provided no other evidence that it will encounter aeronautical and environmental difficulties in locating a site in the remaining two thirds of the usable area. As such, MusicRadio's concerns are mere speculation and must be dismissed.³

Conclusion

If the Commission grants AB's Counterproposal and allots Channel 283A to Aurora, North Carolina, there will remain about two thirds of the usable area wherein MusicRadio may locate a transmitter site for WMSQ. In addition, MusicRadio has unreasonably restricted its choice of transmitter sites to those sites which would provide full contour protection under §73.207 of the Commission's rules. MusicRadio does not even discuss whether it may be able to employ the contour protection provisions of §73.215 to specify a different transmitter site for WMSQ. Since, there is more than adequate area for WMSQ to locate a new site, MusicRadio's concerns are unfounded and should not prevent the Commission from allotting Channel 283A to Aurora.

WHEREFORE, the above facts considered, Aurora Broadcasting, hereby respectfully requests that the Commission make the following change to the FM Table of Allotments:

| <u>Community</u> | Channel No. | |
|------------------------|----------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Aurora, North Carolina | ---- | 283A |

³ Contrary to MusicRadio's belief, Morehead City is not located in an "urbanized area" or a part of an "urbanized area" according to the U.S. Census Bureau. See Technical Comments at p.2. Furthermore, Commission policy does not restrict the location of a broadcast tower based on the fact that it is located in an "urbanized area."

Respectfully submitted,

AURORA BROADCASTING

By:  _____

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September 20, 1995

**RESPONSE TO REPLY COMMENTS
MM docket No. 95-88; RM-8641
Assignment of Channel 283A
Aurora, North Carolina
September 1996**

INTRODUCTION

These Technical Comments support the Counter Proposal by Aurora Broadcasting ("AB") to assign Channel 283A to Aurora, North Carolina. MusicRadio of North Carolina, licensee of WMSQ at Havelock, North Carolina ("WMSQ"), has been ordered to Channel 288C2 per MM Docket 86-85.

WMSQ filed reply comments to the counter proposal in MM Doc. 95-88; RM-8641 by AB to assign Channel 283A to Aurora, North Carolina. WMSQ commented that the AB proposal *"...imposes a further serious restriction on the area available to MusicRadio for a transmitter site"*. WMSQ included a tabulated allocation and a usable area map. The usable area map shows the constraints to Channel 288C2. This map shows the proposed Channel 283A constraint from Aurora. According to the WMSQ map (their Figure 1) the AB proposal will decrease the overall usable area for WMSQ by about one third

WMSQ went on to say the usable area *"...is further restricted by aeronautical considerations, large areas of marsh and tidal areas, and the urbanized area surrounding Morehead City"*. Other than this general statement WMSQ did not show or reference any studies such as aeronautical and environmental as to why the remaining two thirds of the usable area was not available to WMSQ. It should be noted that Morehead City is not in an

"urbanized area" or a part of any other "urbanized area" according to the U.S. Census Bureau. Moreover there is no known prohibition to locating broadcast towers in an "urbanized area".

In summary the AB proposal did not shortspace the WMSQ Channel 286C2 allocation site or application site. The assignment of Channel 283A at Aurora will leave about two thirds of the original WMSQ usable area. WMSQ did not claim the lack of a suitable site in the revised usable area. The WMSQ studies only consider locating a site under Section 73.207. No study was included utilizing the provisions of Section 73.215. Therefore, AB feels the WMSQ comments are not relevant to this proceeding since the restriction on the usable area by the AB proposal leaves more than adequate areas where WMSQ can locate their site.

BROMO COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "William G. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

William G. Brown

CERTIFICATE OF SERVICE

I, Denise L. Felice, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 20th day of September, 1995, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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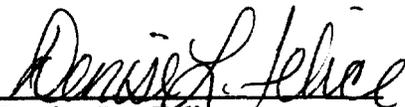
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