



to Aurora, North Carolina, instead of the allotment of Channel 284C2 to Trenton.<sup>2</sup> 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 DCB filed replies to AB's Counterproposal. MusicRadio complains that the AB Counterproposal will limit the area where MusicRadio can locate a tower for WMSQ. These concerns are addressed in a separate response being filed today. The purpose of the instant pleading is to respond to legal and factual inaccuracies in the DCB Reply.

**There Is No Alternate Allotment Available for Aurora**

DCB claims that Channel 221A can be allotted to Aurora as an alternative to Channel 283A in order to resolve the conflict with DCB's proposal for Channel 284C2 at Trenton. However, the attached Technical Statement demonstrates that DCB is wrong. No other channel is available for allotment to Aurora. As shown, *infra*, DCB's Reply is thus based upon erroneous information and must be disregarded.

**A "One-Step Upgrade" Application of WAHL, Ocracoke, North Carolina, Blocks the Allotment of Channel 221A to Aurora**

The Technical Statement shows that on July 28, 1995, Ocracoke Broadcasters, licensee of WAHL, Ocracoke, North Carolina, filed a one-step upgrade application, File No. BMPH-

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<sup>2</sup> Also on August 10 "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was filed seeking the allotment of Channel 284C3 to Ocracoke, North Carolina, but the counterproposal was subsequently withdrawn.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.

950728IC, to upgrade WAHL to Channel 224C1. The application, filed prior to DCB's Reply suggesting the allotment of Channel 221A to Aurora is mutually-exclusive with DCB's proposal to allot channel 221A to Aurora, and thus DCB's proposal is unacceptable. This results from the Commission's policy to resolve conflicts between applications and petitions for rulemaking as set forth in Conflicts Between Applications and Petitions For Rulemaking, 7 FCC Rcd 4917 (1992). In that decision, the Commission announced that applications for one-step upgrades will be protected from other applications or petitions for rulemaking on the day they are filed. The WAHL application was filed on July 28, 1995 and takes precedence over DCB's alternative allotment proposal filed on September 5, 1995. Neither the Channel 224C1 Ocracoke allocation site nor the WAHL application site for the channel will permit the use of Channel 221A at Aurora.

**DCB's Proposed Change At New Bern Involves A "Major Change"**

DCB provides a copy of a letter agreement with American Family Association ("AFA"), applicant (File No. BPED-950626MA) for a construction permit for a new noncommercial educational FM station at New Bern, North Carolina, whereby AFA would amend its application to Channel 211A in lieu of Channel 220A. However, the DCB's proposal is not as simple as it has led the Commission to believe. DCB ignores Section 73.3573(a)(1) of the FCC's rules which states that, for stations located in the reserved FM band ("noncommercial educational FM stations"), **any change in the frequency** of a station constitutes a "major change." 47 C.F.R. §73.3573(a)(1). Therefore, the change proposed by DCB will constitute a major change for AFA's New Bern application, requiring the application to be re-numbered and re-processed as if it were a new application. If the AFA

application were to appear on a cut-off list, it would have to be dismissed and refiled.

Further, under the Commission's processing rules (§73.3573), the application filed by AFA to implement this change will appear on a Public Notice and will be subject to the filing of mutually exclusive applications.<sup>3</sup> Therefore, AFA's application may never be granted and it may be impossible to allot Channel 221A at Aurora, North Carolina.<sup>4</sup> The fact that AFA's application will be deemed a "major change" and that it may be blocked by other applications further undermines DCB's claim that Channel 221A can be allotted to Aurora.

### **Other Matters**

One other matter should be clarified. The Technical Statement indicates that DCB included in its Reply a study showing six full-time stations providing 1.0 mV/m or greater service to Aurora, and concluded that there is no under-served area in the Aurora proposed coverage area. AB did not claim that its proposal would provide service to any under-served area, but simply stated that AB would provide **first local service** to Aurora, a community

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<sup>3</sup> AFA may not have realized when it signed the letter agreement with DCB that AFA would be proposing a "major change" for its New Bern facility. AFA is not represented by counsel and may not have considered that a major change amendment to an application takes a greater amount of time to process and that construction of the New Bern facility might be inordinately delayed as a result.

<sup>4</sup> DCB cited to the Commission's decision in FM Table of Allotments (Bisbee and Green Valley, Arizona), 6 FCC Rcd 1330 (1991), in support of its claim that a noncommercial FM applicant may change its proposed frequency in order to accommodate a change to the FM Table of Allotments. However, in that proceeding, the Commission recognized that the noncommercial applicant would have to file an application to implement the channel change and **receive authority** from the Commission before the proposed change to the FM Table of Allotments could be granted. Therefore, the Commission recognized the concern raised by AB in this proceeding. The fact that a noncommercial applicant files a major change application to change its channel does not mean that the channel change will be successful.

larger than Trenton without local service at this time, and that WBSY would continue to provide full-time local service to Rose Hill, North Carolina.

**Conclusion**

As demonstrated herein, DCB's proposed alternative allotment of Channel 221A at Aurora is not technically feasible. DCB's technical analysis ignored Commission policy and rules and was flawed. The fact is that Channel 283A is the only available Channel for allotment to Aurora, North Carolina.

**WHEREFORE**, the above facts considered, Aurora Broadcasting, hereby respectfully requests that the Commission deny DCB's Petition For Rulemaking and instead make the following change to the FM Table of Allotments:

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

Respectfully submitted,

**AURORA BROADCASTING**

By:   
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September 20, 1995

**RESPONSE TO REPLY COMMENTS  
MM Docket No. 95-88; RM-8841  
Assignment of Channel 283A  
Aurora, North Carolina  
September 1995**

**INTRODUCTION**

**This Technical Study supports the Counter Proposal by *Aurora Broadcasting*, ("AB") to assign Channel 283A to Aurora, North Carolina instead of the substitution proposed by *Duplin County Broadcasters* ("petitioner") to substitute Channel 284A at Rose Hill, North Carolina for Channel 284C2 at Trenton, North Carolina.**

**In Reply Comments to the AB proposal the petitioner proposed that Channel 221A instead of Channel 283A be assigned to Aurora**

**One major constraint for Channel 221A at Aurora is an application by American Family Association ("AFA") for Channel 220A at New Bern. This channel must be deleted in order to accommodate Channel 221A. The petitioner proposed to substitute Channel 211A for Channel 220A at New Bern. Non-commercial stations are not subject to the commercial allocation process and all non-commercial applications utilize contour to contour spacing. Each non-commercial channel and class is unique and not considered equal as with commercial FM frequencies. In order to change from Channel 220A to Channel 211A, AFA, and not the petitioner, will be required to file an amended FCC Form 341 with an allocation study showing where Channel 211A can be used at the given site, power and height. If Channel 220A has reached cut-off then this amendment will be treated as a major change. The petitioner has made no mention of**

any agreement between the petitioner and AFA. If the AFA application for Channel 220A has not reached cut-off then this counter proposal could be considered mutually exclusive to the AFA application for Channel 220A. Therefore, Aurora believes it is procedurally incorrect to order non-commercial applicants to change channels without the full cooperation of the non-commercial applicant.

**However as we show later in this response the proposal to put Channel 221A in Aurora is not possible, therefore, making the swap from Channel 220A to Channel 211A a moot point.**

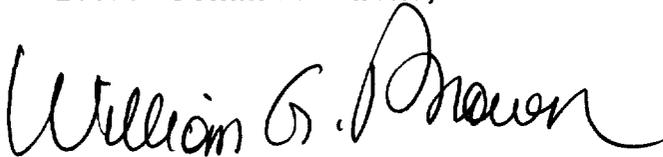
The latest FCC data base indicates that the WQSL Channel 222C2 construction permit referred to by the petitioner at Jacksonville, NC has already been licensed.

We studied the petitioners proposal and found that Channel 221A cannot be assigned to Aurora for yet another reason. **The petitioner's study failed to consider the one step upgrade application (BMPH-950728/C) filed by Ocracoke Broadcasters** licensee of WAHL at Ocracoke, North Carolina. WAHL had a construction permit for Channel 225A at Ocracoke and filed an application in July 1995 to upgrade to Channel 224C1. The WAHL one step application was filed in July which is prior to the petitioners counter proposal. Therefore, the WAHL application will take priority over the petitioner's counter proposal. When combined with the WQSL licensed site **neither the Channel 224C1 Ocracoke, NC allocation site or the WAHL application site**

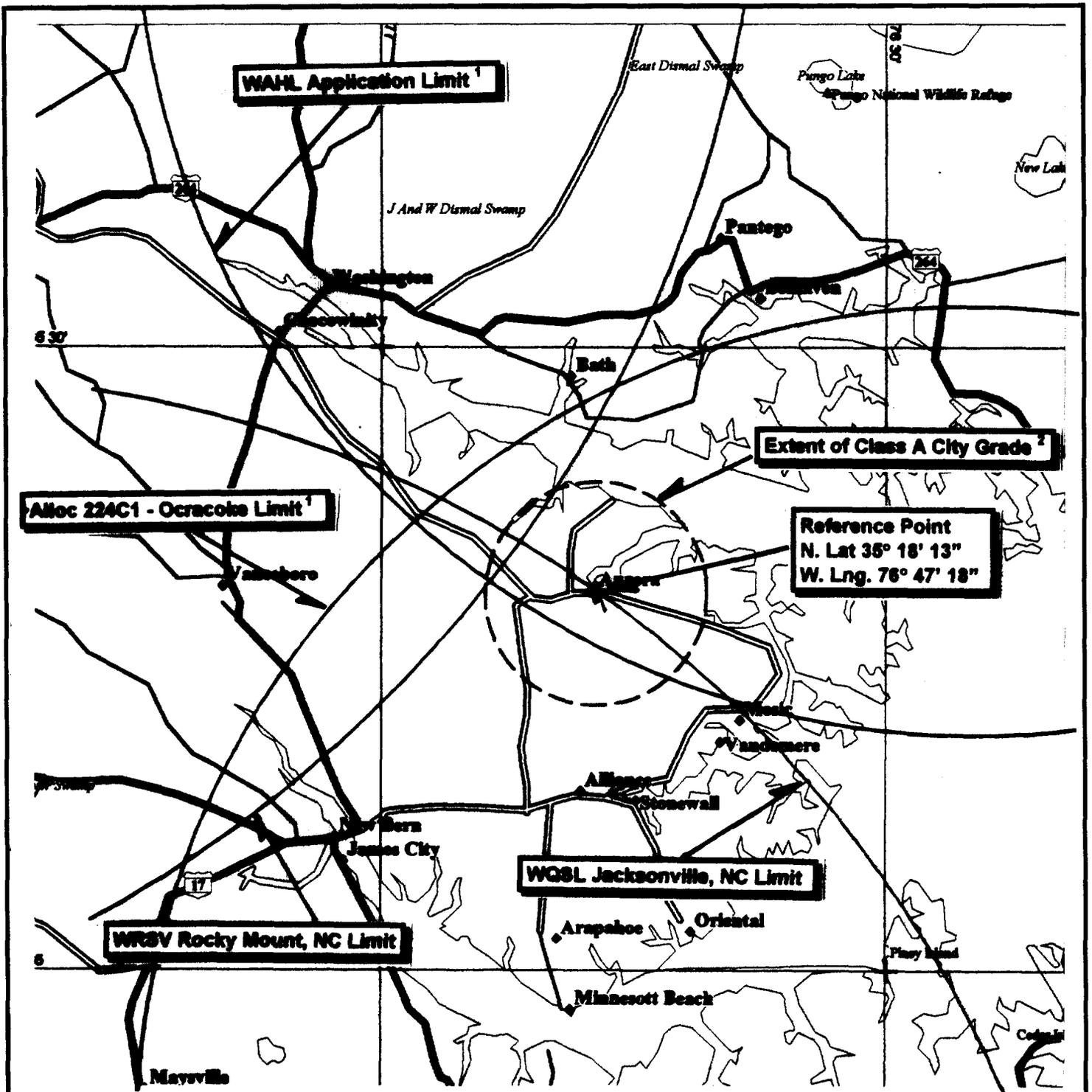
for this channel will allow the use of Channel 221A at Aurora. This is better shown in *Exhibit #1 which is a Usable Area Map and Exhibit #2 a Tabulated Allocation Study.*

Further the petitioner included in his comments a study showing six full-time stations providing 1.0 mV/m or greater service to Aurora. The petitioner stated that there is no under-served area in the Aurora proposed coverage area. AB did not claim any coverage of under-served areas but simply stated their proposal would provide first local service to a community (*Aurora*) larger than Trenton and that WBSY would continue to provide the only full-time local service to Rose Hill, North Carolina.

**Bromo Communications, Inc.**

A handwritten signature in black ink that reads "William G. Brown". The signature is written in a cursive style with a large, prominent initial "W".

**William G. Brown**  
**Consultant to Aurora Broadcasting**



### CHANNEL 221A - USABLE AREA

<sup>1</sup> Either the Allocation Site for Channel 224C1 or the Application Site for WAHL (BMPH-688728C) will limit the "Usable Area" for Channel 221A at Aurora. As can be seen in this exhibit either site will prohibit the use of this channel.

<sup>2</sup> City Grade Contour assumes maximum Class A Facility (6 kW - 100 m HAAT).

**Exhibit #1**  
**RESPONSE TO REPLY COMMENTS**  
**MM Docket No. 95-88; RM-8641**  
**Assignment of Channel 283A**  
**Aurora, North Carolina**  
**September 1995**

**EUROMO** BROADCAST  
**COMMUNICATIONS** TECHNICAL CONSULTANTS

**Exhibit #2**  
**RESPONSE TO REPLY COMMENTS**  
**MM Docket No. 95-88; RM-8641**  
**Assignment of Channel 283A**  
**Aurora, North Carolina**  
**September 1995**

**TABULATED ALLOCATION STUDY**  
**USING PETITIONERS REFERENCE POINT**

REFERENCE		DISPLAY DATES
35 18 13 N	<b>CLASS A</b>	DATA 09-01-95
76 47 18 W	Current rules spacings	SEARCH 09-15-95
----- <b>CHANNEL 221 - 92.1 MHz</b> -----		

CALL	CH#	CITY, STATE	BEAR'	D-KM	R-KM	MARGIN
<sup>1</sup> AP220	220A	New Bern, NC	233.5	27.75	72.0	-44.25 *
<sup>2</sup> ALOPEN	224C1	Ocracoke, NC	145.5	59.86	75.0	-15.14 *
<sup>3</sup> WAHL.A	224C1	Ocracoke, NC	28.3	70.86	75.0	-4.14 *
<sup>4</sup> WQSL	222C2	Jacksonville, NC	214.7	105.83	106.0	-0.17 *
WRSV	221A	Rocky Mount, NC	305.6	123.21	115.0	8.21

<sup>1</sup> Proposed to be changed to Channel 211A by petitioner.  
<sup>2</sup> Allocation Reference Point - NOT CONSIDERED BY PETITIONER  
<sup>3</sup> WAHL Application Site (BMPH-9507281C) - NOT CONSIDERED BY PETITIONER  
<sup>4</sup> Recently licensed site of WQSL

**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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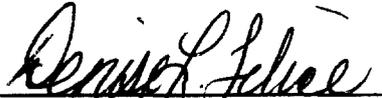
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