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December 15, 1995

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William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

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SPECIAL COUNSEL
JEROLD L. JACOBS

Re: **MM Docket No. 94-116**
FM Table of Allotments
Jefferson City, TN et al.

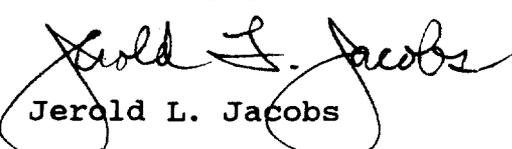
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, Eaton P. Govan III and Berton B. Cagle, Jr., are an original and four (4) copies of its "**PETITION FOR RECONSIDERATION**" in the above-referenced matter.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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

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DEC 15 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Jefferson City, Cumberland Gap)
Elizabethton, Tennessee and)
Jonesville, Virginia))

MM Docket No. 94-116

RM-8507

RM-8567

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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PETITION FOR RECONSIDERATION

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Dated: December 15, 1995

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SUMMARY

Eaton P. Govan, III and Berton B. Cagle, Jr. ("Govan & Cagle"), licensee of Stations WEZG(FM), Jefferson City, Tennessee, and WAEZ(FM), Elizabethton, Tennessee, hereby petition for reconsideration of the Report and Order ("R&O"), DA 95-2237, 60 Fed. Reg. 57,368 (Nov. 15, 1995), in this proceeding.

At Govan & Cagle's request, the original Notice of Proposed Rulemaking herein proposed to substitute Channel 256A for Channel 257A at Jefferson City, reallocate Channel 256A from Jefferson City to Cumberland Gap, Tennessee, modify Station WEZG's license to specify Cumberland Gap as its community of license, substitute Channel 257C2 for Channel 257C3 at Elizabethton, and modify WAEZ's license to specify operation on the higher powered channel. Holston Valley Broadcasting Corporation ("HVBC") counterproposed to allocate Channel 256A at Jonesville, Virginia.

The R&O concluded that the Cumberland Gap proposal violated the line-of-sight service requirement of §73.315(b) of the Rules and therefore adopted HVBC's counterproposal and allocated Channel 256A at Jonesville. Alternatively, the R&O held that, if a comparison had to be made between the Cumberland Gap and Jonesville proposals under the "fair, efficient, and equitable distribution" criteria of FM Channel Policies/Procedures, 90 FCC 2d 88, 91-92 (1982), the Jonesville proposal would be preferred solely because of Jonesville's larger population (927 versus 210).

Govan & Cagle urge that the R&O erred in allocating Channel 256A at Jonesville, instead of Cumberland Gap (thereby also precluding the Elizabethton upgrade) for two reasons:

- First, as Govan & Cagle show herein, aided by an Engineering Statement using Tech Note 101 methodology, their Cumberland Gap proposal fully satisfies the "line of sight" requirement of §73.315(b) and should not have been rejected on that basis; and

- Second, when a comparative analysis of the Govan & Cagle and HVBC proposals is made, using "all public interest factors under Priority 4" of FM Channel Policies/Procedures, supra, the Cumberland Gap proposal should be preferred over HVBC's proposal, because HVBC would provide broadcast service to a much smaller geographic area and many fewer persons (43,406 persons in Jonesville versus either (a) 66,527 persons in Cumberland Gap, (b) a net gain of 50,727 persons from the WEZG and WAEZ allotments, or (c) a total audience of 160,293 persons for WEZG or WAEZ). When the area and population data are combined with the other plus factors noted herein, reallocating Station WEZG to Cumberland Gap on Channel 256A and upgrading Station WAEZ to Channel 257C2 at Elizabethton are clearly a "preferential arrangement of allotments" under the Commission's policies and case precedents, as against allotting Channel 256A to Jonesville. Commission precedent clearly favors channel allotment resolutions, such as Govan & Cagle's, which maximize the number of communities that will have first local outlets and upgraded facilities as a result. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986).

Therefore, Govan & Cagle respectfully request that reconsideration should be granted and that the Table of Allotments should be amended to reallocate Station WEZG to Cumberland Gap on Channel 256A and upgrade Station WAEZ to Channel 257C2 at Elizabethton, instead of allotting Channel 256A at Jonesville.

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

In the Matter of)	
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Amendment of Section 73.202(b),)	MM Docket No. 94-116
Table of Allotments,)	
FM Broadcast Stations)	RM-8507
(Jefferson City, Cumberland Gap)	RM-8567
Elizabethton, Tennessee and)	
Jonesville, Virginia))	
TO: Chief, Allocations Branch		
Policy and Rules Division		
Mass Media Bureau		

PETITION FOR RECONSIDERATION

EATON P. GOVAN, III and BERTON B. CAGLE, JR. ("Govan & Cagle"), licensee of Stations WEZG(FM), Channel 257A, Jefferson City, Tennessee, and WAEZ(FM), Channel 257C3, Elizabethton, Tennessee, by their attorneys, pursuant to §1.429 of the Commission's Rules, hereby petition for reconsideration of the Report and Order ("R&O"), DA 95-2237, 60 Fed. Reg. 57,368 (Nov. 15, 1995), in this proceeding. In support hereof, Govan & Cagle show the following:

I. Background

1. The Notice of Proposed Rulemaking herein, 9 FCC Rcd 5738 (MM Bur. 1994), proposed to substitute FM Channel 256A for Channel 257A at Jefferson City, Tennessee, reallocate Channel 256A from Jefferson City to Cumberland Gap, Tennessee, modify Station WEZG's license to specify Cumberland Gap as its community of license, substitute Channel 257C2 for Channel 257C3 at Elizabethton, Tennessee, and modify WAEZ's license to specify operation

on the higher powered channel. Holston Valley Broadcasting Corporation ("HVBC") counterproposed to allot Channel 256A at Jonesville, Virginia.

2. The rationale for Govan & Cagle's reallocation proposal for Station WEZG was to move the station away from the Knoxville Urbanized Area, thereby giving the station an opportunity for financial stability without the intense competition from the "big city" stations. The proposal would not deprive Jefferson City of its only local radio station, because Jefferson City is also served by Station WJFC(AM), and it would provide Cumberland Gap with its first local aural transmission service. In addition, WEZG's reallocation and frequency change would permit the upgrade of commonly-owned Station WAEZ from Class C3 to Class C2, thereby increasing its coverage area from 4,570 to 8,033 square kilometers.

3. The R&O concluded, by implication (¶2 and footnote 6), that Cumberland Gap is a "community" for allotment purposes. Cumberland Gap is incorporated, had a 1990 U.S. Census population of 210, is governed by a Mayor and a Board of Aldermen, has a town hall, police department, post office, and several churches and retail commercial establishments. Hence, it fully qualifies as a community for channel allotment and licensing purposes. See FM Table of Allotments (Three Lakes, WI, et al.), 8 FCC Rcd 763 (MM Bur. 1993)(listing in U.S. Census and governmental attributes are sufficient to demonstrate community status for allotment purposes); Ruarch Associates, 101 FCC 2d 1358, 1359 & n.5 (1985)(communities with populations of 752 and 2627 are large enough for licensing). However, the R&O concluded (at ¶11) that the Cumberland Gap proposal violated the line-of-sight service requirement of §73.315(b) of the Rules and therefore adopted HVBC's counterproposal and allotted Channel 256A at Jonesville. Alternatively, the R&O held (at footnote 6) that, if a comparison had to be made between the Cumberland Gap and Jonesville proposals under the "fair, efficient, and

equitable distribution" criteria of FM Channel Policies/Procedures, 90 FCC 2d 88, 91-92 (1982), the Jonesville proposal would be preferred because of Jonesville's larger population (927 versus 210).

4. Govan & Cagle urge that the R&O erred in allotting Channel 256A at Jonesville, instead of Cumberland Gap, which thereby also precluded the Channel 257 upgrade at Elizabethton. Thus, upon reconsideration, Govan & Cagle request that the FM Table of Allotments should be amended as follows:

City	Channel Number	
	Present	Proposed
Jefferson City, TN	257A	-
Cumberland Gap, TN	-	256A
Elizabethton, TN	257C3	257C2
Jonesville, VA	-	-

II. The R&O Erroneously Concluded That The Reallotment Proposal Violates §73.315(b)

5. Commission precedent clearly favors channel allotment resolutions, such as Govan & Cagle's, which maximize the number of communities that will have first local outlets and upgraded facilities as a result. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986). Here, HVBC contended that the Cumberland Gap transmitter site proposed by Govan & Cagle would not permit "line-of-sight" to Cumberland Gap, as required by §73.315(b) of the Rules, and the R&O erroneously agreed. Id. at ¶11. Hence, the R&O concluded that Govan & Cagle's Cumberland Gap proposal was technically defective, and granted HVBC's Jonesville proposal instead. As Govan & Cagle will now show, their Cumberland Gap proposal satisfies the "line of sight" requirement of §73.315(b) and should not have been rejected on that basis.

6. Attached hereto as Exhibit EE is an Engineering Statement prepared by John J. Mullaney of Mullaney Engineering, Inc. ("Mullaney") concerning the "line of sight" question. Mullaney has examined HVBC's contentions and the R&O's conclusions in light of a special "Tech Note 101" analysis which he performed, and he concludes (Exh. EE at 7-8) that Govan & Cagle's Cumberland Gap proposal does not violate §73.315(b), because "it is possible to provide compliant city grade coverage to Cumberland Gap, TN, from the petitioners' proposed RM reference point and from a Hypothetical Site 2.7 miles away from the RM Site".

7. Govan & Cagle submit that administrative due process and the public interest requirements of §1.429(b)(3) of the Rules require the Commission to take into account Exhibit EE when ruling on this Petition for Reconsideration. HVBC raised the "line-of-sight" issue in a single page of its November 25, 1994 "Counterproposal and Comments," in which it stated (at 12):

[T]here is a major terrain obstacle between the Channel 256A transmitter site and Cumberland Gap... [A] Channel 256A station at the site proposed by G&C cannot provide line of sight 70 dBu service to Cumberland Gap.

Govan & Cagle rebutted HVBC's meager showing in their December 12, 1994 "Reply Comments" (at 16) with the following appropriately spare rejoinder, which were fully adequate at the time to rebut the conclusory allegations made by HVBC:

A radial is drawn...from the proposed coordinates for Channel 256A at Cumberland Gap...through the city of Cumberland Gap. While this radial crosses Poor Valley Ridge, the highest elevation on the path is 1600 feet AMSL, not 1,700 feet as was stated in the HVBC Comments. Additionally, this ridge is approximately one-half mile farther away from Cumberland Gap than was depicted on the HVBC exhibit, Exhibit E-5, and is therefore no major terrain obstacle. The predicted city-grade (70 dbu F(50,50)) contour was computed according to the Commission's Rules in the relevant directions and is plotted on Exhibit 1 clearly showing that the 70 dBu contour extends beyond the City of Cumberland Gap by more than 4 miles.

However, the R&O (at ¶11) apparently decided the question in HVBC's favor based, at least in part, upon a "staff engineering analysis" and a "terrain profile study" which -- most importantly -- were not submitted to the parties for their comment. Because this procedure denied Govan & Cagle their administrative due process right "to challenge the bases of the Commission's determination," see KIRO, Inc. v. FCC, 438 F.2d 141, 147 (D.C. Cir. 1970)(case remanded where respondent was not given opportunity to comment on Commission staff's adverse engineering study), Govan & Cagle submit that the public interest requires that they should be given an opportunity to respond to the R&O's §73.315(b) determinations through Commission consideration of Exhibit EE, which fully addresses those conclusions.

8. Turning to the merits of the R&O's §73.315(b) ruling, it is important to recognize at the outset that while the R&O (at ¶11) cites three Commission staff decisions for the view that Govan & Cagle's proposal must be denied because they "failed to demonstrate the existence of a site that can provide line-of-sight service to the entire community" (emphasis added), the full Commission held in Rush County Broadcasting Co., 26 FCC 2d 480, 482 (1970), that "it is clear that line-of-sight over the entire community is not an absolute requirement" (emphasis added). In Exhibit EE, Mullaney concedes (at 1) that a break in line of sight does exist between Govan & Cagle's proposed antenna site and Cumberland Gap. However, he concludes (id.) that the break "is not sufficiently large to prevent the required city grade service from reaching Cumberland Gap" Indeed, this result is not surprising, because it is well accepted that "[f]ailure to provide line-of-sight does not necessarily imply deficient coverage". See Margaret C. Schaller, 5 FCC Rcd 5329, 5329 ¶4 (MM Bur 1990), citing Rush County Broadcasting Co., supra.

9. As Mullaney states (Exh. EE at 1-2), since the predicted 70 dBu F(50,50) signal of Channel 256A from Govan & Cagle's proposed reference point toward Cumberland Gap clearly extends well beyond the community's boundaries (see Exh. EE at 3 and 5), §73.313(e) permits the use of an alternative supplemental showing of the expected predicted signal levels in Cumberland Gap. Hence, Mullaney has included Tech Note 101 studies of the areas in question in his Engineering Statement. Use of Tech Note 101 in allocations cases to assist the Commission in making accurate §73.315 determinations is well established. See, e.g., FM Table of Allotments (Sonora, CA), 6 FCC Rcd 6042 (MM Bur. 1991); FM Table of Allotments (Vacaville and Middletown, CA), 6 FCC Rcd 143 (MM Bur. 1991).

10. To demonstrate the adequacy of Govan & Cagle's predicted city grade coverage of Cumberland Gap using Channel 256A, Mullaney presents the results of two Tech Note 101 studies that he conducted using two different transmitter sites in "Area C" (the fully-spaced "allowable area" for Channel 256A transmitters vis-a-vis Cumberland Gap): Govan & Cagle's "RM [rulemaking] site" (Exh. EE at 3-4); and a "Hypothetical Site" located approximately 2.7 miles from the RM site (Exh. EE at 5-6). Based on these Tech Note 101 studies, Mullaney reports that 72.7 percent of the study points for the RM Site exceed the 70 dBu city grade value (Exh. EE at 4) and 76.2 percent of the study points for the Hypothetical Site exceed the 70 dBu city grade value (Exh. EE at 6).

11. Even though showing less than 100 percent city grade coverage, the above data permit Mullaney to reach his ultimate conclusion (Exh. EE at 7-8) that the R&O erred when it held that Govan & Cagle's Channel 256A proposal for Cumberland Gap violates §73.315(b) of the Rules. This is so because where, as here, an alternative coverage showing (Tech Note 101) is used to supplement the Commission's standard F (50,50) propagation curves, it is not

necessary to demonstrate city grade coverage throughout 100 percent of the city. See Pathfinder Communications Corp. (WCUZ-FM), 3 FCC Rcd 4146, 4147 n 3 (1988)(a showing that "at least 50 percent of a community receives a signal of 70 dBu or greater is a reasonable and useful standard for determining adequate community coverage when employing alternative supplemental methods in addition to . . . [the standard Commission] propagation curves"); Exh. EE at 4-5

12. In sum, Govan & Cagle maintain that Exh. EE fully rebuts HVBC's claim (and the R&O's conclusion) that the reallocation of Channel 256A from Jefferson City to Cumberland Gap would violate §73.315(b) of the Rules. Under these circumstances, using the FM allotment priorities of FM Channel Policies/Procedures, supra, the Commission should compare the Govan & Cagle Channel 256A proposal for Cumberland Gap with the HVBC counterproposal for Channel 256A at Jonesville. The R&O's comparative treatment of the proposals is addressed in Section III below

III. Cumberland Gap Is Preferable to Jonesville When All Public Interest Factors Are Considered

13. Footnote 6 of the R&O provides a brief comparative analysis of allotting Channel 256A at Cumberland Gap versus Jonesville. The R&O concludes that, since the Govan & Cagle and HVBC proposals are "tied" under the third allotment priority in FM Channel Policies/Procedures, supra (first local transmission service to their respective communities), HVBC's proposal should be preferred under the fourth priority ("other public interest matters") because of Jonesville's larger population (927 versus 210), citing FM Table of Allotments (Blanchard LA and Stephens AR) ("Blanchard"), 8 FCC Rcd 7083 (MM Bur 1993), rev. denied, 10 FCC Rcd 9828 (1995). As Govan & Cagle will now show, the R&O erred by not providing a full comparative analysis of the "public interest" factors favoring Cumberland Gap over Jonesville

and, instead, focusing solely upon population size. Cumberland Gap is the preferred community under a full comparative analysis.

14. In FM Channel Policies/Procedures, *supra*, 90 FCC 2d at 92 n.8 (emphasis added), the Commission stated that, where an allotment choice must be made under the fourth comparative priority ("other public interest matters"): "[t]his comparison can take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities." Thus, it is clear that the Commission intended that the comparison be all-inclusive -- not limited to any single factor, such as population size.

15. Nevertheless, a body of case precedents has arisen in recent years, including the Blanchard case, relied on in the R&O, which appear to focus strictly on population difference and a comparison of reception services in order to break third priority comparative ties between allotment communities. Moreover, when neither community falls below a threshold level of reception services, "the Commission has based its decision on a straight population comparison". See Blanchard, *supra*, 10 FCC Rcd at 9829. This explains why the R&O so facetiously asserted that Jonesville's population edge alone warranted a decisive comparative preference.

16. However, Govan & Cagle submit that the R&O fatally erred in relying on Blanchard's exclusive population focus, because it neglected to take account of a separate body of allotment cases holding that no "automatic decisional preference [should be given] to small communities under 1,000". See FM Table of Allotments (Seabrook TX et al.) ("Seabrook"), 10 FCC Rcd 9360, 9362 ¶9 (1995), citing Santee Cooper Broadcasting Co., 57 RR 2d 662 (Rev. Bd. 1984)(no dispositive first local service credit to a community of 541 persons); and Ruarch Associates, *supra* (no dispositive first local service credit to a community of 752 persons). In

such under-1000 cases. which include Cumberland Gap and Jonesville, Seabrook declares (id.) that "comparing competing proposals on the basis of all public interest factors under Priority 4 is both consistent with the public interest and Section 307(b) of the Act" (emphasis added).

17. Govan & Cagle recognize that the Seabrook case was decided only two months before the instant case. This may explain why the R&O does not even discuss, let alone implement, the Commission's apparent rejection in Seabrook of Blanchard's population focus where, as here, the populations of the proposals being compared are less than 1,000. Whatever the explanation, Govan & Cagle submit that Seabrook requires a revisiting of the Cumberland Gap and Jonesville comparative analysis. When "all public interest factors under Priority 4" are considered, Govan & Cagle are confident that the Commission will conclude that the paramount public interest warrants preferring the reallocation of Channel 256A to Cumberland Gap and the upgrade of Station WAEZ at Elizabethton over the allotment of Channel 256A to Jonesville.

18. The reasons for the superiority of the Cumberland Gap/Elizabethton proposal are well summarized in Govan & Cagle's November 25, 1994 "Comments" (at 3-6) and their January 4, 1995 "Counterproposal Reply Comments" (at 12-14):

- Reallocating Channel 256A at Cumberland Gap would provide broadcast service to 66,527 persons, and would also allow Station WAEZ to upgrade to Channel 257C2 at Elizabethton, providing a new broadcast service to 93,766 persons. By contrast, the Jonesville counterproposal would only provide service to 43,406 persons, and the WAEZ upgrade is not possible if Channel 256A is allotted to Jonesville:
- The proposed Cumberland Gap allotment would provide broadcast service to over 1.3 million tourists who visit the Cumberland Gap National Historical Park each year. Jonesville does not enjoy a large tourist population:
- The Cumberland Gap area is a vital and growing region with a diverse economic base. Growth potential is very good. Auto traffic along U.S. Highway 25-E at Cumberland Gap is expected to double in the next 10 years. On the other hand, the Jonesville area has very limited retail and commercial activity with little

prospect for improvement. There is substantial doubt that a broadcast station at Jonesville would be economically viable; and

- The combined reallocation of Station WEZG to Cumberland Gap and upgrade of Station WAEZ at Elizabethton would provide broadcast service to a total of 160,293 permanent residents (including a net WEZG/WAEZ audience gain of 50,727 persons) and to over 1.3 million tourists. The HVBC counterproposal would provide new service to only 43,406 persons

The following chart tabulates the area and population gains and losses resulting from the Govan & Cagle and HVBC proposals:

	<u>Station</u>	<u>Area (km.)</u>	<u>Population</u>
A.	WEZG(FM) Ch. 257A Jefferson City, TN	2007	109,566
	WEZG(FM) Ch. 256A Cumberland Gap, TN	2826	66,527
	GAIN/(LOSS)	819	(43,039)
B.	WAEZ(FM) Ch. 257C3 Elizabethton, TN	4570	355,187
	WAEZ(FM) Ch. 257C2 Elizabethton, TN	8033	448,953
	GAIN/(LOSS)	3463	93,766
C.	COMBINED WEZG/WAEZ ALLOTMENT CHANGES	4282	50,727
D.	HVBC Ch. 256A Jonesville, VA	2463	43,406

As shown in "C" above, the combined effect of granting Govan & Cagle's reallocation and upgrade proposals is to increase the combined service areas of Stations WEZG and WAEZ by 4,282 square kilometers and their combined audiences by 50,727 persons. This combination dramatically exceeds the results of HVBC's proposed allotment of Channel 256A at Jonesville

(2463 square kilometers and an audience of 43,406 persons). Govan & Cagle submit that it is appropriate to compare their combined proposal with HVBC because the ultimate comparative question is which proposed change or changes in the FM Table of Allotments -- taken as a whole -- will result in a "fair, efficient, and equitable distribution" of radio stations under the criteria of FM Channel Policies/Procedures, supra. From the outset, Govan & Cagle have proffered a combined allotment proposal affecting Station WAEZ as well as Station WEZG, and the Commission's analysis should not suddenly bifurcate the combined proposal. Instead, Govan & Cagle urge that the Commission should focus on the established allotment policy goal of maximizing the number of communities that will receive first local outlets and upgraded facilities as the result of Commission action. See Archilla-Marcocci Spanish Radio Co., supra.

19. However, most importantly, even if the Commission's comparative analysis focuses only on the Cumberland Gap reallocation versus HVBC's Jonesville proposal, the result favors Cumberland Gap. This is so because, as Govan & Cagle explained in their "Comments" (at 5-6 and Exhibit 5), the area served by Station WEZG's present 1 mV/m contour is entirely encompassed by the 1 mV/m contours of at least six other FM stations -- WIMZ, WIVK, WJXB, and WUOT, all Knoxville, Tennessee; WOKI, Oak Ridge, Tennessee; and WMYU, Sevierville, Tennessee -- and is 50% or more encompassed by the 1 mV/m contours of Tennessee FM Stations WIKQ, Greeneville, WYLV, Alcoa, and WJBZ, Seymour. While the Commission has stated that it carefully considers any reallocation proposal which would result in a loss of existing reception service, its recent decision in FM Table of Allotments (Calabash and Tabor City NC) ("Calabash"), 9 FCC Rcd 7857 (MM Bur. 1994), demonstrates that such a loss does not undermine a reallocation proposal where, as here, other factors offset it. In

Calabash, the Commission permitted the only fulltime radio station in Tabor City¹ to be reallocated to Calabash, a community with a 1990 U.S. Census population of 1,210 persons, even though the move created a reception loss to 25,488 persons, because the move would allow the station to serve an additional 66,240 persons in the Calabash area and because the population within the loss area would continue to receive reception service from a number of other FM stations. Id. at 7857. Similarly, in Cumberland Gap, daytime Station WJFC(AM) will continue to provide local transmission service at Jefferson City. WEZG will serve 66,527 persons from its Cumberland Gap allotment and WAEZ will serve 93,766 new persons with its Elizabethton upgrade, and WEZG's reception service loss of 43,039 persons should have de minimis adverse consequences because those persons will continue to receive six to nine other FM reception services.

20. Thus, applying the teachings of Calabash to the Cumberland Gap and Jonesville allotment proposals, Govan & Cagle urge that their Cumberland Gap proposal should be preferred over HVBC's proposal, because HVBC would provide broadcast service to a much smaller geographic area and many fewer persons (43,406 persons in Jonesville versus either (a) 66,527 persons in Cumberland Gap, (b) a net gain of 50,727 persons from the WEZG and WAEZ allotments, or (c) a total audience of 160,293 persons for WEZG or WAEZ). When the area and population data are combined with the other plus factors outlined in Paragraphs 18 and 19 above, reallocating Station WEZG to Cumberland Gap on Channel 256A and upgrading Station

¹ Although the Commission referred to Tabor City Station WTAB(AM) as "fulltime", it stated in footnote 1 of Calabash that the station operates with only 109 watts at night, which is well below the 250-watt threshold for true nighttime status. See Memorandum Opinion and Order in MM Docket No. 84-231, 59 RR 2d 1221, 1227 n.27 (where nighttime operating authority is less than 250 watts, such service has secondary status, and the licensees are treated as daytime-only stations).

WAEZ to Channel 257C2 at Elizabethton are clearly shown to be a "preferential arrangement of allotments" under FM Channel Policies/Procedures, supra, and Modification of FM and TV Authorizations to Specify a New Community of License (MM Docket No. 88-526) ("Community of License"), 4 FCC Rcd 4870, 4873 ¶25 (1989) recon. granted in part, 5 FCC Rcd 7094 (1990), as against allotting Channel 256A at Jonesville

IV. Conclusion

21. Govan & Cagle have fully demonstrated that the R&O erred in granting HVBC's Jonesville counterproposal in this proceeding. Grant of Govan & Cagle's Cumberland Gap/Elizabethton proposal is fully consistent with the policies and case precedents of FM Channel Policies/Procedures, Community of License, Seabrook, and Calabash, supra, and with the paramount public interest. Therefore, Govan & Cagle respectfully ask the Commission to grant reconsideration of the R&O herein and to amend the FM Table of Allotments as set forth in Paragraph 4, supra.

Respectfully submitted,

**EATON P. GOVAN, III and
BERTON B. CAGLE, JR.**

By 
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Dated: December 15, 1995

MULLANEY ENGINEERING, INC

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GAITHERSBURG, MD 20878

301-921-0111

ENGINEERING EXHIBIT EE:

**PETITION FOR RECONSIDERATION
MM DOCKET 94-116
JEFFERSON CITY, CUMBERLAND GAP,
ELIZABETHTON, TENNESSEE AND JONESVILLE, VIRGINIA**

DECEMBER 12, 1995

ENGINEERING STATEMENT IN SUPPORT OF
ALLOTMENT OF CH. 256A TO CUMBERLAND GAP, TN
AS A SUBSTITUTE FOR THE EXISTING
ALLOTMENT OF CH. 257A AT JEFFERSON CITY, TN
AND THE SUBSTITUTION OF CH. 257C2 FOR 257C3
AT ELIZABETHTON, TN

PREPARED ON BEHALF OF:
EATON P. GOVAN, III AND BERTON B. CAGLE, JR.

**ORIGINAL
SIGNATURE**

MULLANEY ENGINEERING, INC.

ENGINEERING EXHIBIT EE:

**PETITION FOR RECONSIDERATION
MM DOCKET 94-116
JEFFERSON CITY, CUMBERLAND GAP,
ELIZABETHTON, TENNESSEE AND JONESVILLE, VIRGINIA**

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MULLANEY ENGINEERING, INC

DECLARATION

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an engineer in the firm of Mullaney Engineering, Inc., and that firm has been retained by Eaton P. Govan, III and Berton B. Cagle, Jr., to support a petition for reconsideration in MM Docket 94-116.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.


John J. Mullaney

Executed on the 12th day of December 1995.

ENGINEERING EXHIBIT EE:

PETITION FOR RECONSIDERATION
MM DOCKET 94-116
JEFFERSON CITY, CUMBERLAND GAP,
ELIZABETHTON, TENNESSEE AND JONESVILLE, VIRGINIA

NARRATIVE STATEMENT:

I. GENERAL:

This engineering statement has been prepared on behalf of Eaton P. Govan, III and Berton B. Cagle, Jr. ("petitioners"). The purpose of this statement is to support a Petition for Reconsideration of the action taken in MM Docket 94-116 which denied the allotment of Ch. 256A at Cumberland Gap, TN, as a substitute for the existing allotment of Ch. 257A at Jefferson City, TN, while also denying the substitution (upgrade) of Ch. 257C2 for 257C3 at Elizabethton, TN. The Report & Order selected the counterproposal in this proceeding which requested the allotment of Ch. 256A at Jonesville, VA.

The R&O found that the allotment at Cumberland Gap violated Section 73.315(b) in that there was a major terrain obstruction in the line of sight path between the proposed antenna site and Cumberland Gap. The petitioners concede that a break in line of sight does exist; however, as shown herein, that break in line of sight is not sufficiently large to prevent the required city grade service from reaching Cumberland Gap. Since the predicted 70 dBu F(50,50) signal clearly extends well beyond the community boundary, Section 73.313(e) permits the use of an alternative supplemental

showing of the expected predicted signal levels in the relevant areas of concern.

II. ENGINEERING DISCUSSION:

A. Ch. 256A - Allowable Area:

Figures 1 & 1-A are an allowable area map and allocation study for Channel 256A (6 kW) in the vicinity of Cumberland Gap, TN and Jonesville, VA. The map illustrates the required separations to other FM facilities entitled to protection. In addition, the map divides this allowable area into four areas for discussion purposes. The map also shows the theoretical F(50,50) 70 dBu contour and the direct bearing from two potential sites near Cumberland Gap.

Because of the existing operation by WEZG on Ch. 257A at Jefferson City, the only areas that comply with the existing required separations for an operation on Ch. 256A have been illustrated as Area A & Area B on the map submitted as Figure 1. Area A is too far from Cumberland Gap for a Ch. 256A facility to provide city grade service; however, Area B is close enough to Jonesville for a Ch. 256A facility to provide city grade service. Thus, unlike the Cumberland Gap proposal, Jonesville can be allotted without any further changes in the table of allotments. However, it should be understood that a Ch. 256A allotment at Jonesville will preclude the requested upgrade at Elizabethton (see below). Because of the close proximity of Areas A & B operation from one area would preclude operation from the other if the same channel were to be utilized at both locations.

The substitution of Ch. 256A for Ch. 257A at Jefferson City, its re-allotment to Cumberland Gap, and the upgrade of Ch. 257C3 to 257C2 at Elizabethton substantially change the allowable area. With those changes, Area C is the area which would permit an operation on Ch. 256A while Area D is that portion of the area which would be precluded from such use as a result of the upgrade at Elizabethton.

B. Cumberland Gap - RM Site:

The proposed special reference point for Ch. 256A at Cumberland Gap (36-36-56 : 83-31-00) is within Area C (see Figure 1) and, therefore, fully complies with the required separations to other FM facilities. In addition, the allowable area map clearly illustrates that along the direct radial through the city (N-261.5-E) the theoretical F(50,50) 70 dBu contour extends 5 miles (8 km) beyond the western limits of Cumberland Gap.

Figure 2 is a enlarged copy of a 7.5' topographic map which shows the boundaries of Cumberland Gap and three radial bearings (N-260.5/261.5/262.5-E) that extend through the city from the petitioners proposed rule making site. The map also shows the location of 22 points at which the effects of terrain shadowing were computed. These points were spaced symmetrically at 0.1 mile intervals.

Figure 2-A is a plot of the terrain elevations along the N-261.5-E radial using 4/3s earth curvature. The plot clearly shows that line of sight to Cumberland Gap is prevented by a 1700' elevation on the eastern edge of the town. The break in line of sight extends 250 feet to 380 feet above the elevations within Cumberland Gap. The city starts at 8 miles from the rule making site and

continues for approximately 0.7 miles. The terrain along the two adjacent radials is very similar to that shown in Figure 2-A.

Figure 2-B is a summary of the computed field strengths as determined by the method known as "Tech Note 101". The summary indicates that the computed signal level at these 22 locations varies from 49.72 dBu to 93.39 dBu. Of the 22 points, 6 points have signal values less than 70 dBu and 16 points have signal values which exceed 70 dBu. **Consequently, 72.7 percent of the locations exceed the minimum city grade value.**

The computed signal values are based upon an antenna center of radiation of 2006 feet AMSL. Using the eight standard cardinal radials this height will result in an HAAT of 328 feet or 100 meters. An ERP of 6 kW was assumed. The above HAAT will require a tower which is less than 500 feet. After reviewing the aeronautical considerations in the area no objections from the FAA are anticipated.

C. City Grade Coverage Requirement:

The petitioner wishes to point out that the Commission has already determined that it is not necessary for alternative coverage showings (such as Tech Note 101) to demonstrate compliance throughout 100 percent of the city. In fact, the stated policy requires:

"... we find that the criteria utilized in Greater Media, Inc., 38 RR2d 1542 (1978), that at least 50 percent of a community receive a signal of 70 dBu or greater, is a reasonable and useful standard for determining adequate community coverage when employing alternative supplemental methods in addition to our propagation curves".