

ORIGINAL

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),)
Table of Allotments,)
FM Broadcast Stations.)
(Sibley, Iowa and)
Brandon, South Dakota))

MM Docket No. 96-66
RM-8729

DOCKET FILE COPY ORIGINAL

**COMMENTS & COUNTERPROPOSAL
OF
BRANDON BROADCASTERS**

Comes now **Brandon Broadcasters** ("BB"), by Counsel, pursuant to the *Notice of Proposed Rule Making (DA 96-364, released March 29, 1996)* ("*NPRM*"), and hereby respectfully submits these Comments & Counterproposal in the above-captioned Rule Making proceeding. In support hereof, BB submits the following:

Background

1. According to the NPRM, 21st Century Radio Ventures, Inc. ("21st") is the Permittee of Radio Station KAJQ-FM (Channel 262A) at Sibley, Iowa. 21st has requested that the Commission allow it to substitute Channel 261 for Channel 262, change the community of license of KAJQ-FM to Brandon, South Dakota and simultaneously upgrade its channel to Class C3 status on Channel 261C3. 21st states that it will apply for Channel 261C3 at Brandon, if allotted.

024

Counterproposal

2. BB requests that Channel 261A be allotted to the community of Brandon, South Dakota so that that community may receive its first local aural transmission service, and so that the opportunity to initiate such first local aural transmission service is offered to all members of the general public, not just 21st.

3. As the NPRM indicates, Brandon is qualified and deserving to receive the allotment since it is an incorporated community, is governed by elected officials and has its own police and volunteer fire department, among other factors. *See, NPRM at Para. 2.* In addition, Brandon is listed in the 1990 U.S. Census as a "Census Designated Place" ("CDP") with a population of 3,543. Generally if a community is incorporated or is listed in the U.S. Census, the community qualifies for FCC allotment purposes. *See generally, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1992); Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991).*

4. Although BB agrees with 21st that Brandon deserves its first local aural transmission service, BB does not believe that 21st should be the party to provide such service, nor does BB believe that Brandon should receive its first local FM service at the expense of Sibley. Under the proposal set forth herein by BB, Sibley can keep its only local FM service while a new FM channel can be allotted to Brandon and a filing window established so that all members of the general public may apply for the opportunity to provide local aural

transmission service to Brandon.

5. Since BB's counterproposal preserves the only local aural transmission service at Sibley, Commission policy must favor BB's counterproposal over the original proposal proffered by 21st. *See generally, Van Wert, Ohio and Monroeville, Indiana, 7 FCC Rcd. 6519 (1992).*

6. From a technical standpoint, the allotment of Channel 261A to Brandon, South Dakota fully complies with all applicable FCC Rules and Regulations. Attached hereto as **Exhibit No. 1** is a Technical Statement prepared by Jefferson G. Brock of Graham Brock, Inc., wherein it is demonstrated that Channel 261A can be allotted to Brandon at reference coordinates North Latitude 43 - 36 - 02, and West Longitude 96 - 31 - 15. This is the same site proposed in the NPRM for the Class C3 allotment.

7. Mr. Brock has also determined that a maximum Class A station on Channel 261 at Brandon would provide 1.0 mV/m service to 128,305 persons within a 2,492.5 square kilometer area. In so doing, Sibley, Iowa will maintain its only FM facility.

Statement of Interest

8. BB hereby states that, in the event Channel 261A is allotted to Brandon, South Dakota, it will file an FCC Form 301 Application with the Commission for the issuance of an FM Construction Permit for Channel 261A at Brandon, South Dakota.

Conclusion

WHEREFORE, the above premises considered, BB respectfully requests that its Comments and Counterproposal be ACCEPTED and that the Commission AMEND §73.202 of the Commission's Rules, as follows:

<u>City & State</u>	<u>Existing</u>	<u>Proposed</u>	
Sibley, Iowa	262A	262A	[no change]
Brandon, South Dakota	---	261A	

Respectfully submitted,

Brandon Broadcasters

By: 
Cary S. Tepper

Its Attorney

Booth, Freret & Imlay, P.C.
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20554

(202) 296-9100

May 21, 1996

Exhibit No. 1

(Technical Statement of Jefferson G. Brock)

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

COMMENTS AND COUNTERPROPOSAL
MM DOCKET #96-66
BRANDON BROADCASTERS
ALLOT CHANNEL 261A
BRANDON, SOUTH DAKOTA
May 1996

TECHNICAL EXHIBIT

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COMMENTS AND COUNTERPROPOSAL
MM DOCKET #96-66
BRANDON BROADCASTERS
ALLOT CHANNEL 261A
BRANDON, SOUTH DAKOTA
May 1996

TECHNICAL STATEMENT

1. This Technical Statement and attached exhibits were prepared on behalf of Brandon Broadcasters ("BB") who is requesting the allotment of Channel 261A to Brandon, South Dakota, as that community's first local service. This request is mutually exclusive with the proposal of 21st Century Radio Ventures, Inc. ("21st"), in MM Docket #96-66 seeking to allot Channel 261C3 to Brandon.

BACKGROUND

2. 21st is the permittee of radio station KAJQ, Channel 262A, Sibley, Iowa. 21st is requesting an upgrade to its outstanding construction permit at Sibley and a change of community of license from Sibley, Iowa, to Brandon, South Dakota.

PROPOSAL

3. BB herein requests the allocation of Channel 261A at Brandon, South Dakota. That request is mutually exclusive with the 21st request for Channel 261C3 at Brandon. Channel 261A can be allocated to Brandon at geographic coordinates: North Latitude 43° 36' 02" and West Longitude 96° 31' 15". This is the same site proposed in the Notice of Proposed Rule Making for the C3 allocation. This represents a site restriction of 5.4 kilometers east of Brandon

to avoid shortspacing KIKN, Channel 263C1 at Salem, South Dakota. From the reference site a 3.16 mV/m contour can be delivered of all of Brandon. Exhibit #1 is a usable areas map depicting the usable area for Channel 261A at Brandon. Exhibit #2 is a §73.207 spacing analysis for Channel 261A and demonstrates the proposal meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities with the exception of the requested allocation of Channel 261C3 at Brandon. It is noted that Channel 261A at Brandon is fully spaced to the outstanding construction permit for KAJQ, Channel 262A at Sibley, Iowa.

4. BB herein requests the Commission amend §73.202(b) of its rules as follows:

Brandon, South Dakota

Present	Proposed
	261A

Sibley, Iowa

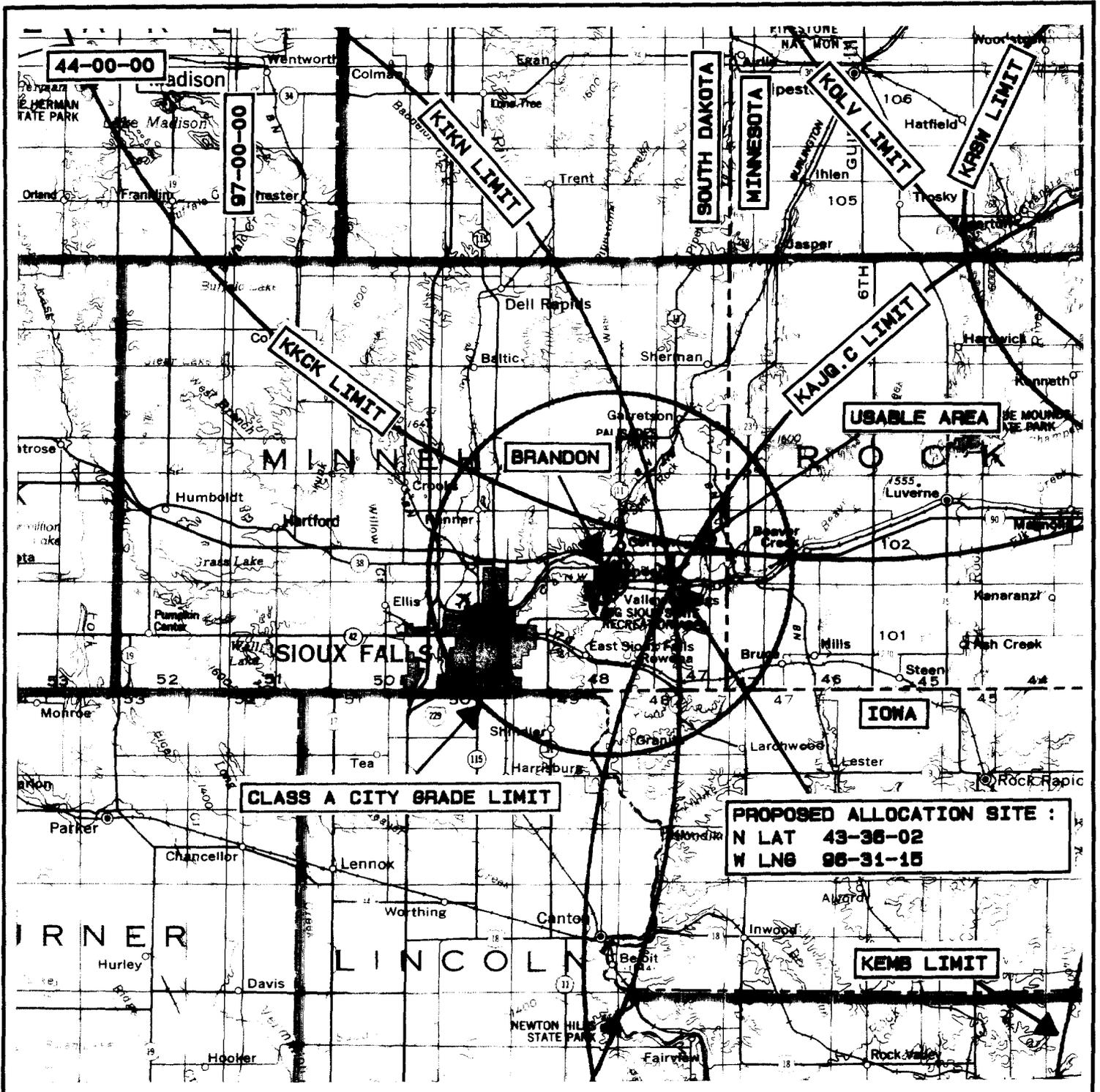
Present	Proposed
262A	262A ¹

5. The Class A allocation at Brandon would allow this community of 3,543 persons (based on 1990 Census) its first locally licensable radio facility. A maximum Class A facility implemented from the reference site indicated above would provide 1.0 mV/m service to 128,305 persons in 2492.5 square kilometers without depriving Sibley of its only FM facility.

1) 21st requested the allocation of Channel 282A to Sibley, Iowa, as an alternate channel. The requested allotment of Channel 261A as proposed by BB has no impact on that portion of the 21st request.

6. Once the Commission allocates Channel 261A to Brandon, South Dakota, BB will, on a timely basis, file an application for construction permit seeking authority to construct a new FM station at Brandon.

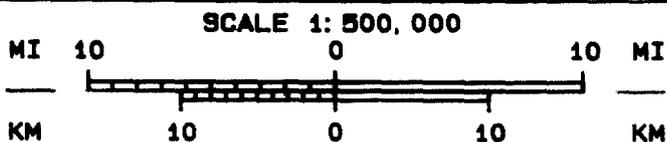
7. The foregoing Technical Statement and attached exhibits were prepared on behalf of Brandon Broadcaster by Graham Brock, Inc., its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to FM allocations was extracted from the NTIA database as updated April 26, 1996. We assume no liability for errors or omission in that database which may be adverse to the requests contained herein.



USABLE AREA CHANNEL 261A

MAP IS A PORTION OF THE 1: 500, 000 SCALE U.S.G.S. BASE MAP OF SOUTH DAKOTA, IOWA AND MINNESOTA.

EXHIBIT #1
COMMENTS & COUNTERPROPOSAL
BRANDON BROADCASTERS
MM DOCKET # 96-66
ALLOT CHANNEL 261A
BRANDON, SOUTH DAKOTA
May 1996



GRAHAM BROCK, INC.
 BROADCAST TECHNICAL CONSULTANTS

ALLOCATION STUDY FOR BRANDON, SOUTH DAKOTA
USING PROPOSED ALLOCATION SITE AS REFERENCE

REFERENCE	CLASS A	DISPLAY DATES
43 36 02 N	Current rules spacings	DATA 04-26-96
96 31 15 W	CHANNEL 261 -100.1 MHz	SEARCH 05-17-96

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD261 AD	261A 43 36 02	Brandon 96 31 15	SD 0.000 kW	0.0 OM	0.00 0.0	115.0 71.5	-115.00
Counterproposal - MM Docket #96-66							
KIKN LI CN	263C1 43 29 18	Salem 97 26 34	SD 100.000 kW	260.8 287M	75.55 47.0	75.0 46.6	0.55
Southern Minnesota Broadcasting BLH-931019KD							
KAJQ.C CP CN	262A 43 17 58	Sibley 95 43 21	IA 6.000 kW	117.2 72M	72.77 45.2	72.0 44.8	0.77
21st Century Radio Ventures, Inc. BPH-930809MA 960504							
KKCK LI CN	259C1 44 16 56	Marshall 96 19 05	MN 100.000 kW	12.0 282M	77.47 48.2	75.0 46.6	2.47
KMHL Broadcasting Company BLH-890627KB							
KRSW LI DCN	207C1 43 53 01	Worthington 95 55 44	MN 100.000 kW	56.3 169M	57.12 35.5	22.0 13.7	35.12
Minnesota Public Radio BLED-941220KA							
KOLV LI CN	261C3 44 45 49	Olivia 94 55 49	MN 10.000 kW	43.9 83M	181.32 112.7	142.0 88.3	39.32
Olivia Broadcasting Co. BLH-950724KF							
KEMB LI ZCN	261A 43 01 26	Emmetsburg 94 41 56	IA 5.000 kW	112.9 82M	161.10 100.1	115.0 71.5	46.10
Jacobson Broadcasting Corporation BLH-930907KC							
KKMA LI CN	258C1 42 28 56	Le Mars 96 15 30	IA 100.000 kW	170.2 241M	126.07 78.3	75.0 46.6	51.07
Klem, Inc. BLH-781206AE							

CHANNEL 261A SPACING STUDY

EXHIBIT #2
COMMENTS & COUNTERPROPOSAL
BRANDON BROADCASTERS
MM DOCKET # 96-66
ALLOT CHANNEL 261A
BRANDON, SOUTH DAKOTA
May 1996

GRAHAM BROCK, INC.
BROADCAST TECHNICAL CONSULTANTS

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

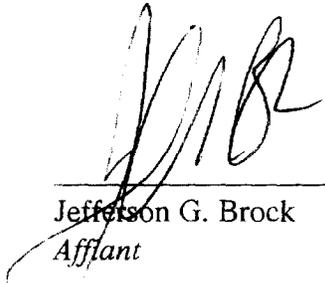
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Brandon Broadcasters to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

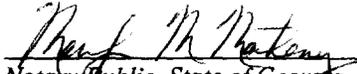
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 17th day of May, 1996.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 17th day of May, 1996*



Notary Public, State of Georgia
My Commission Expires: September 12, 1999

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 21st day of May, 1996, I have served a copy of the foregoing "**Comments & Counterproposal of Brandon Broadcasters**" first-class, postage-prepaid, on the following:

* John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
2020 M Street, N.W.; Room 561
Washington, D.C. 20554

James L. Primm, President
21st Century Radio Ventures, Inc.
530 Wilshire Blvd.
Suite 301
Santa Monica, CA 90401
(Petitioner)



Cary S. Tepper, Esq.

*/ indicates delivery by hand