

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUL 15 1996

Federal Communications Commission
Office of Secretary

In the Matter of)
)
 Amendment of Section 73.202(b),) RM-8793
 Table of Allotments,) MM Docket No. 96-105
 FM Broadcast Stations.)
 Ely, Hermantown and Pine City, MN)

To: Chief, Allocations Branch

REPLY COMMENTS IN SUPPORT OF RULE MAKING

Harbor Broadcasting, Inc. (HBI), by its attorney, hereby submits reply comments concerning the Commission's May 7, 1996 Notice of Proposed Rule Making and Order to Show Cause (Notice), DA 96-618. In support whereof, the following is respectfully submitted:

1) Phillips Broadcasting Company, Inc.'s (Phillips) Comments and Counterproposal proposes to upgrade its Channel 221C3 at Menomonie, WI to Channel 221C2 (Station WMEQ-FM). Phillips upgrade "is made possible by the substitution of Channel 265A for Channel 221 A at Pine City," MN which was proposed in the Notice. Phillips Comments at 1. Phillips' proposal does not conflict with HBI's proposal. Moreover, the upgrade potential for Station WNEQ-FM provides an additional public interest reason for approving the rule changes proposed by HBI.¹

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¹ As noted in the engineering statement attached hereto, because the Phillips Comments do not propose any change which conflicts with HBI's rule making request perhaps the Phillips Comments do not constitute a "counterproposal." Engineering Statement at 3. However, Phillips' opportunity to upgrade its facility as a result of HBI's proposed rule change benefits the public interest by providing expanded service to the Menomonie area.

2) Granite Broadcasting Corporation (Granite) filed a pleading which "takes no position on whether Harbor's Petition is in the public interest." Granite Comments at 3. However, Granite expresses a concern that HBI's proposed upgraded operation "will cause interference to Station KBJR(TV)" and suggests that the spectrum for public broadcast stations may be reduced. Granite Comments at 3.

3) Because Granite does not consider the issues it raises to affect the public interest, Granite's Comments do not raise any matters which require consideration in the instant proceeding. Moreover, HBI's Petition for Rule Making demonstrates that there is no preclusionary impact from the allotment of Channel 221C3 at Hermantown and Granite does not challenge that demonstration. Finally, as noted in the Engineering Statement attached hereto, Granite's concern about blanketing interference is properly addressed at the application stage and Granite's proposed condition to HBI's upgraded construction permit merely would recite the requirements of §73.318 of the Commission's Rules. Engineering Statement, at 2-3.

4) Badger Broadcasting Corporation (Badger) may have timely submitted a timely counterproposal in the instant proceeding. However, after examining the Commission's records, undersigned counsel was unable to confirm that Badger's Petition for Rule Making for New FM Assignment at Siren, Wisconsin was timely filed.² If Badger's Petition was not timely filed by the June 28, 1996

² Counterproposals and conflicting rulemaking requests were required to be filed with the Commission by June 28, 1996.

filing deadline, then the Commission should disregard Badger's Petition and HBI's comments below relating to Badger's Petition.

5) If Badger's Petition were timely filed, the Commission should consider that portion of the attached Engineering Statement which demonstrates that an allocation of Channel 289A to Siren, WI, rather than Badger's requested Channel 265A, would provide Badger with a channel while permitting HBI's upgrade, and related channel substitutions, to proceed.³ Because Badger's request for a channel at Siren, WI and HBI's rule making may both be granted if Channel 289A is allocated to Siren, WI, the public interest would be served by allocating Channel 289A to Siren, WI and by granting HBI's requests for allocations as discussed in its Petition.

Respectfully submitted,
HARBOR BROADCASTING, INC.

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July 15, 1996


Timothy E. Welch
Its Attorney

³ If timely filed, Badger's request for Channel 265A at Siren, WI would conflict with HBI's request in which Channel 265A would be substituted for Channel 221A at Pine City, MN.

ENGINEERING STATEMENT IN
SUPPORT OF REPLY COMMENTS

MM DOCKET 96-105

CHANNEL 221C3 - HERMANTOWN, MN

Harbor Broadcasting, Inc.
Hermantown, MN

July 12, 1996

Prepared for: Mr. Tom Lijewski
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CARL E. SMITH CONSULTING ENGINEERS

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Roy P. Stype, III

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ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Harbor Broadcasting, Inc., permittee of FM station WWAX(FM) - Hermantown, Minnesota, and proponent of MM Docket 96-105, which proposes to upgrade WWAX to a Class C3 facility. It supports reply comments in this rulemaking proceeding.

WWAX presently is operating on Channel 221A with the facilities authorized in its construction permit under the automatic program test authority provisions of Section 73.1620 of the FCC Rules. A license application has been filed to cover this construction permit. The above referenced rulemaking proceeding proposes to substitute Channel 221C3 for Channel 221A in Hermantown, and modify the authorization for WWAX to specify operation on Channel 221C3. In order to accommodate this upgrade for WWAX, it is also proposed to substitute Channel 233A for Channel 221A in Ely, Minnesota, and modify the construction permit for WELY-FM to specify operation on Channel 233A and to substitute Channel 265A for Channel 221A in Pine City, Minnesota, and modify the license of WCMP-FM to specify operation on Channel 265A.

The Badger Broadcasting Corporation filed a rulemaking petition which constitutes a counterproposal in this proceeding, proposing to allot Channel 265A to Siren, Wisconsin, as its first local service. The proposal to allot Channel 265A to Siren conflicts with the proposal in this proceeding to substitute Channel 265A for Channel 221A in Pine City, Minnesota, for use by WCMP-FM. As outlined below, however, it will not be necessary to comparatively evaluate these two proposals, since there is an alternate channel which can be allotted to Siren in lieu of Channel 265A, permitting all of the proposals in this proceeding to be granted.

The geographic coordinates for Siren, as outlined in the Badger counterproposal, are:

NL - 45° 47' 00"
WL - 92° 22' 50"

Table 1.0 is an FM spacing study for Channel 289A, which was conducted from a site 9.2 kilometers northwest of Siren:

NL - 45° 50' 00"
WL - 92° 28' 30"

An examination of this table shows that operation on Channel 289A from this site would meet the spacing requirements to all other stations requiring protection consideration. It should be noted that, under the rounding provisions of Section 73.208(c)(8) of the FCC Rules, the 141.77 kilometer spacing to the authorized facilities of WCFW - Chippewa Falls, Wisconsin, on Channel 289C3 complies with the required spacing of 142 kilometers.

Figure 1.0 is a map exhibit depicting the predicted 3.16 mV/m (city grade) contour for operation on Channel 289A from the site specified above. This contour was projected assuming maximum Class A facilities of 6 kilowatts effective radiated power at 100 meters above average terrain utilizing terrain data from the NGDC 30 second terrain database. As shown in this figure, operation on Channel 289A from this site will provide city grade service to all of Siren.

Comments were also filed in this proceeding by KBJR(TV) - Superior, Wisconsin, which operates on Channel 6. The KBJR comments address the potential for interference to KBJR from the upgraded operation of WWAX on Channel 221C3 and request that conditions be imposed on this upgrade requiring that WWAX satisfy all complaints of blanketing interference, as required by Section 73.318 of the FCC Rules. Such a

request is premature, since such a condition would be appropriate at the application stage following the conclusion of this proceeding if Channel 221C3 is ultimately allotted to Hermantown for use by WWAX. Furthermore, such a condition, even at the application stage, would also be redundant, since Section 73.318 of the FCC Rules already requires that a station satisfy all complaints of blanketing interference for a period of one year following the commencement of operation with modified facilities, which duplicates the condition requested by KBJR.

Finally, comments and a "counterproposal" were also filed in this proceeding by WMEQ-FM - Menomonie, Wisconsin, which presently operates on Channel 221C3, proposing the substitution of Channel 221C2 for Channel 221C3 in Menomonie for use by WMEQ-FM. The WMEQ-FM proposal does not conflict with any of the proposals in this proceeding. Instead, it is contingent upon the proposed substitution of Channel 265A for Channel 221A in Pine City, Minnesota. Accordingly, it does not appear to actually constitute a counterproposal, but can more accurately be characterized as a contingent proposal which could be implemented upon the conclusion of this proceeding either through a separate rulemaking proceeding or a "one step" upgrade application if the proposed Pine City channel substitution is adopted.

In summary, the conflict between the proposed substitution of Channel 265A for Channel 221A in Pine City Minnesota, for use by WCMP-FM and the counterproposal to allot Channel 265A to Siren, Wisconsin, as a first local service can be resolved by allotting Channel 289A to Siren in lieu of Channel 265A, permitting all proposals in this proceeding to be accommodated. Furthermore, the condition requested by KBJR on the WWAX upgrade is not appropriate for consideration at the rulemaking stage and duplicates requirements already imposed on WWAX by Section 73.318 of the FCC

Rules. Finally, the "counterproposal" proposing to substitute Channel 221C2 for Channel 221C3 in Menomonie, Wisconsin, for use by WMEQ-FM should not be considered as a counterproposal, since it does not directly conflict with any of the allotment proposals in this proceeding, but, instead, is contingent on the outcome of this proceeding.

TABLE 1.0

FM ALLOCATION STUDY - CHANNEL 289A (105.7 MHz) - SIREN, WI

 HARBOR BROADCASTING, INC.
 HERMANTOWN, MN

STUDY COORDINATES: 45/50/00 92/28/30

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
-----	-----	-----	-----	-----	-----	-----
KQDSFM	Duluth, MN	235	C1	110.35	22.0	
WQRB	Bloomer, WI	236	C3	124.28	12.0	
KKCB	Duluth, MN	286	C1	109.82	75.0	
WREVFM	Cambridge, MN	287	C3	64.29	42.0	
WCFW	Chippewa Falls, WI	288	A	141.77	72.0	
BPH950413MJ	Deer River, MN	288	C1	161.71	133.0	7
KASFM	Albany, MN	288	A	166.92	72.0	
KASFM	Albany, MN	288	A	166.92	72.0	2
BPH950417MI	Deer River, MN	288	C1	181.71	133.0	7
ALLOTMENT	Deer River, MN	288	C1	186.39	133.0	12
KCFE	Eden Prairie, MN	289	A	127.04	115.0	1
WCFW	Chippewa Falls, WI	289	C3	141.77	142.0	2
KWNG	Red Wing, MN	290	C3	144.09	89.0	1
WEGZ	Washburn, WI	290	C1	149.00	133.0	
KKWS	Wadena, MN	290	C1	205.67	133.0	
WQPMFM	Princeton, MN	291	C2	108.44	55.0	1
BPH941118MA	Spooner, WI	292	A	39.37	31.0	7
BPH941121MF	Spooner, WI	292	A	43.60	31.0	7
BPH941118MC	Spooner, WI	292	A	44.44	31.0	1, 7
BPH941117MA	Spooner, WI	292	A	44.55	31.0	7
ALLOTMENT	Spooner, WI	292	A	44.70	31.0	12
WEVRFM	River Falls, WI	292	A	105.90	31.0	

* Required Spacing Per Section 73.207 of The FCC Rules

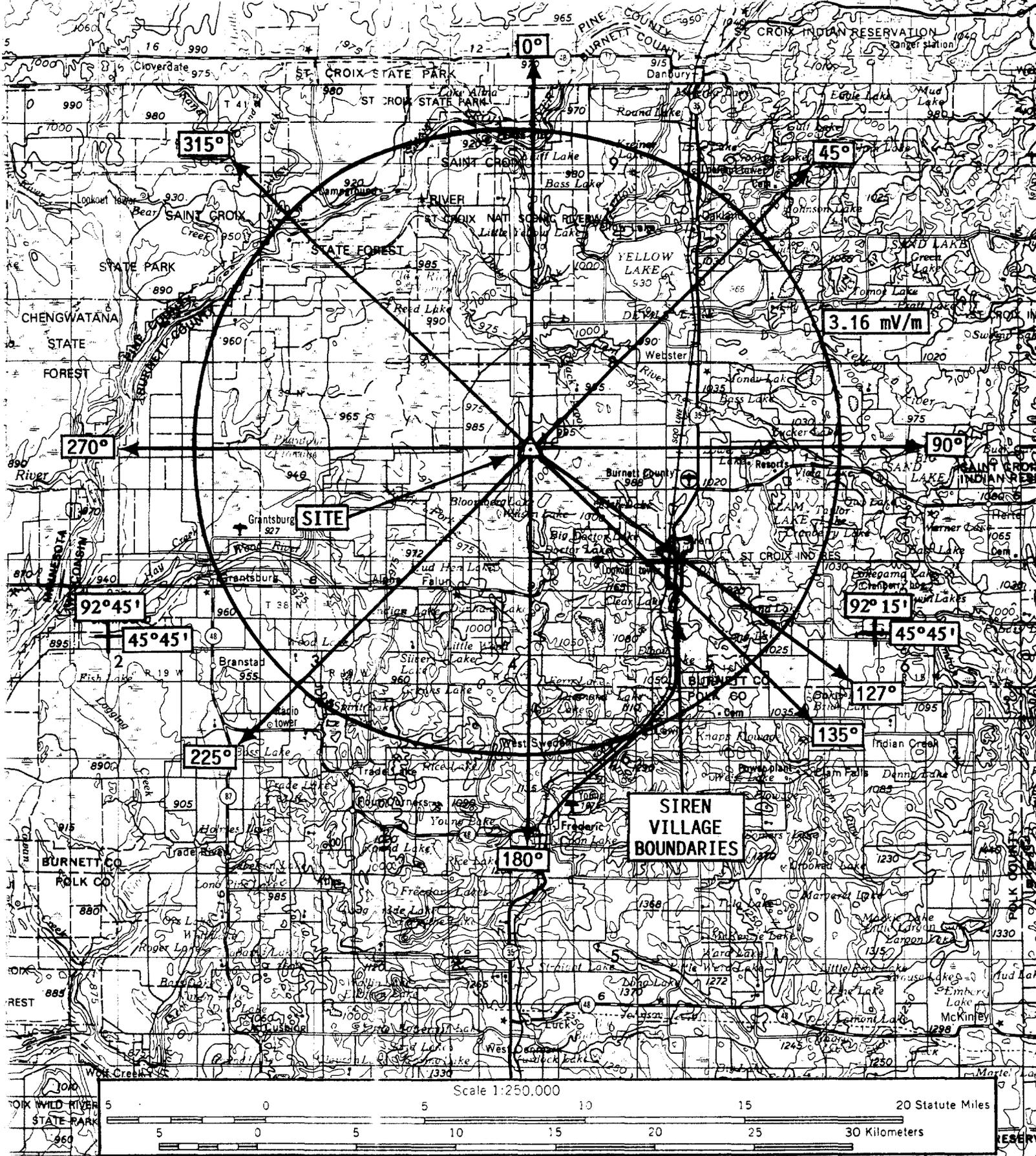
TABLE 1.0 (cont'd)

FM ALLOCATION STUDY - CHANNEL 289A (105.7 MHz) - SIREN, WI

HARBOR BROADCASTING, INC.
HERMANTOWN, MN

Notes:

- | | |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application |
| 2 - Construction Permit | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed | 9 - Proposed Rulemaking |
| 4 - Move From This Channel Ordered | 10 - Rulemaking Petition |
| 5 - Move to This Channel Ordered | 11 - Short-Spaced |
| 6 - One Step Reference Site | 12 - Vacant Allotment |



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FIG. 1.0
PREDICTED CITY GRADE CONTOUR
CHANNEL 289A - SIREN, WI
 Harbor Broadcasting, Inc.
 Hermantown, MN

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of July 1996 mailed a copy of the foregoing REPLY COMMENTS IN SUPPORT OF RULE MAKING to the following by First-Class United States mail, postage prepaid:

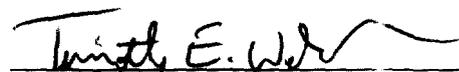
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