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NOV - 8 1996
Federal Communications Commission
Office of Secretary

November 8, 1996

BY HAND

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

Re: MM Docket No. 94-155
FM Table of Allotments
Big Pine Key, Keuy Colony Beach,
Naples, and Tice, Florida

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of Palm Beach Radio Broadcasting, Inc. and Gulf Communications Partnership, are an original and four (4) copies of their "**REPLY TO OPPOSITION TO MOTION TO DISMISS OR STRIKE STERLING COMMUNICATIONS CORP.'S DEFECTIVE COUNTERPROPOSAL/APPLICATION**" in the above-referenced matter.

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

Very truly yours,

Jerold L. Jacobs

Jerold L. Jacobs

Enc.

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

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NOV - 8 1996

Federal Communications Commission
Office of Secretary

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

In the Matter of	)
	)
Amendment of Section 73.202(b),	) MM Docket No. 94-155
Table of Allotments,	)
FM Broadcast Stations	)
(Big Pine Key, Key Colony Beach,	) RM-8468
Naples, Tice, Indiantown, Fort Myers	) RM-8802
Villas, Clewiston, and Jupiter,[1] Florida)	) RM-8803
	)
and	)
	)
In re Application of	)
	)
STERLING COMMUNICATIONS CORP.	) File No. BPH-960613IC
Station WSGL(FM), Naples, Florida	)
	)
For Construction Permit To Modify	)
Licensed Facilities (One-Step Upgrade)	)

To: Chief, Allocations Branch[2]

REPLY TO OPPOSITION TO MOTION TO DISMISS OR STRIKE
STERLING COMMUNICATIONS CORP.'S
DEFECTIVE COUNTERPROPOSAL/APPLICATION

PALM BEACH RADIO BROADCASTING, INC. ("Palm Beach"), licensee of Station WPBZ(FM), Indiantown, Florida, **and GULF COMMUNICATIONS PARTNERSHIP** ("Gulf"), permittee of Station WAAD(FM), Tice, Florida (together, "the Parties"), by their attorneys, pursuant to §1.45(b) of the Commission's Rules, hereby reply to the October 29, 1996 "Opposition" by Sterling Communications Corp. ("WSGL"), licensee of Station WSGL(FM), Naples, Florida, to the Parties' Motion that WSGL's untimely counterproposal/application filed

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[1] The communities of Indiantown, Fort Myers Villas, Clewiston, and Jupiter, Florida have been added to the caption.

[2] Because the subject counterproposal has also been filed as an FCC Form 301 one-step upgrade application, this Reply is being separately and simultaneously addressed to the Chief, Audio Services Division, Mass Media Bureau, for coordinated action with the Chief, Allocations Branch, pursuant to §1.44(c) of the Commission's Rules.

in this proceeding be dismissed or stricken as procedurally and technically defective and be given no consideration as either a counterproposal or a one-step upgrade application. In support whereof, the Parties show the following:

1. WSGL's Opposition (at 2-6) raises certain due process objections to the Parties' contention that its counterproposal/application is fatally defective procedurally. Essentially WSGL urges that it has a "right to present an upgrade on its existing channel as an alternative to...[the Parties'] counterproposal change for WSGL" (id. at 5) because of an alleged error in the May 24, 1996 Public Notice (Report No. 2134, "Petitions for Rulemaking Filed"), which announced the Parties' "amendment and joint resolution" to their previous counterproposals, and because of the Commission's failure, to date, to issue an Order to Show Cause why WSGL's frequency should not be changed from Channel 276C3 to Channel 284C3. The Parties disagree.

2. First, it is clear from WSGL's erroneous description of the Public Notice in footnote 4 of its Opposition that it is working with a defective copy. Attached hereto as Exhibit A is a complete copy of the three-page Public Notice. Page 2 (unnumbered) clearly indicates that Gulf was not the "only" Petitioner in this matter and clearly sets forth the fact that the "amendment and joint resolution" upon which comment is sought was filed on May 15, 1996. Thus, the Parties urge that the Public Notice was complete and created no special filing rights, apart from the right to comment on its contents.

3. The Parties agree with WSGL that, under §316 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §316, and §1.87 of the Rules, the Commission is required to issue an Order to Show Cause against WSGL in this proceeding. However, it is clear from recent Commission case precedent, especially Order to Show Cause in MM Docket No. 91-259 (Canovanas, P.R. et al.), 11 FCC Rcd 9871, 9872 ¶4 (Mass Media Bur. 1996), that

the Commission is very aware of that obligation in FM channel rulemaking proceedings. Hence, the Parties are confident that the Commission will eventually issue an Order to Show Cause against WSGL. However, the Parties respectfully urge that the Order to Show Cause should be issued as soon as possible to aid expedited action in this proceeding.

4. Nevertheless, the Parties vigorously deny that WSGL's counterproposal/application is a procedurally proper response to an Order to Show Cause. Section 316(a)(1) of the Act and §1.87(a) of the Rules use identical language to allow stations to "protest such proposed order of modification". However, WSGL has cited no case precedent to support its view that a "protest" includes the right to "present an upgrade...as an alternative" -- and there is no such right. Simply stated, the Act and the Rules permit an affected station to object to a proposed channel substitution and to urge that it be allowed to remain on its present channel, but they do not allow the station to make an untimely channel upgrade proposal, which is what WSGL has done. Such an alternative proposal is clearly a "counterproposal," see FM Channel and Class Modifications, 7 FCC Rcd 4943, 4943 ¶2 (1992) (counterproposals are suggestions for alternate, mutually exclusive uses of the spectrum), and untimely counterproposals are not accepted. See, e.g., FM Table of Allotments (Chico CA), 6 FCC Rcd 4292, 4294 n.1 (Mass Media Bur. 1991) (late-filed counterproposals are prohibited by §1.420(d) of the Rules and NPRM's Appendix). Therefore, WSGL's one-step upgrade application should be dismissed as an untimely counterproposal and should be given no consideration in MM Docket No. 94-155.

5. Next, WSGL's Opposition (at 6-7) maintains that the technical defects in WSGL's one-step application, which were noted in the Parties' Motion, can be cured by amendment, and WSGL simultaneously filed such an Amendment on October 29, 1996, which purports to identify "reference coordinates for a suitable site meeting the allotment standards for the proposed

channel and class category" (WSGL Amendment, Engineering Statement at 1). Whether or not WSGL's application defects normally could be cured by amendment in the application process, it is clear that the defects are fatal to WSGL's Channel 276C2 upgrade proposal when it is treated as a counterproposal. Counterproposals must be technically correct and substantially complete when filed, see, e.g., FM Table of Allotments (Fort Bragg CA), 6 FCC Rcd 5817, 5817 n.2 (Mass Media Bur. 1991), and WSGL's original filing was not technically correct.

6. Moreover, even viewing WSGL's counterproposal/application strictly as a one-step upgrade application filed outside of the MM Docket No. 94-155 rulemaking proceeding, it continues, as amended, to be fatally defective on technical grounds. Attached hereto as Exhibit B is an Engineering Statement by Clarence M. Beverage of Communications Technologies, Inc. ("Beverage Statement"). Mr. Beverage has reexamined WSGL's application in light of its October 29 amendment and related inquiries with local zoning officials and the Federal Aviation Administration ("FAA"). From those inquiries, he concludes that: (1) the allotment reference site proposed by WSGL is not viable, because of its location in a posh residential neighborhood which has "strict adherence to zoning and land use standards that prohibit small receiving antennas, much less 525' transmitting towers" (id. at 3); and (2) WSGL's application has serious and still-unresolved FAA problems (id.).

7. Specifically, by letter dated July 29, 1996 (Exhibit II of Beverage Statement), the FAA advised WSGL that its proposed tower height of 525 feet would pose a hazard to air navigation (id. at p. 2), and that its proposal also posed an EMI problem (id.). Moreover, by letter dated August 28, 1996 (Exhibit III of Beverage Statement), WSGL told the FAA that it agreed to reduce its tower height to 500 feet but, to date, has filed no such amendment with the Commission. Finally, in its August 28, 1996 letter, WSGL also proposed to resolve its EMI

problem, but, to date, the FAA does not appear to have responded to WSGL's Letter. See Beverage Statement at 4. Mr. Beverage concludes that, based on his experience with the FAA and EMI computer analysis, WSGL will need to reduce its ERP to the level required to remove interference and/or propose a directional antenna. Id. Again, to date, WSGL has filed no such amendment. Under these circumstances, Mr. Beverage reaches the overall conclusion (id.), which the Parties fully endorse, that WSGL's application should be dismissed as unacceptable for filing because of lack of allotment reference site availability and unresolved FAA problems.

8. Finally, the Parties note that the Opposition does not at all address the Motion's showing that if the Commission substitutes Channel 284C3 for Channel 276C3 in MM Docket No. 94-155, as proposed in the "amendment and joint resolution," WSGL can file a one-step application to upgrade to Channel 284C2 at a later date. Indeed, operating on Channel 284C2 would give WSGL an approximately 20% larger potential audience than it presently has (194,977 persons versus 164,025). The Opposition's silence on these matters should be interpreted as a concession that the Parties' analysis is correct. Put differently, as Mr. Beverage states in his conclusion (Beverage Statement at 4): "Given the fact that there is no corresponding site area for Channel 276C2, and the hurdles which WSGL has yet to overcome with the FAA, there truly is no reason for WSGL to oppose use of Channel 284C2".

9. In sum, Commission precedent clearly favors channel allotment resolutions which maximize the number of communities that will have upgraded facilities. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (May 30, 1986) (public interest is better served by granting proposals to serve three communities instead of one). Moreover, the five upgrades proposed by the Parties will result in the availability of upgraded radio service to at least an additional 1,229,204 persons in the State of Florida, compared to

76,656 persons under WSGL's proposal. WSGL's counterproposal/application is procedurally and technically defective and would not provide nearly the same upgrade and increased audience advantages as the "amendment and joint resolution".

WHEREFORE, in view of the foregoing, the Parties respectfully ask the Commission to dismiss WSGL's defective counterproposal/application and to issue an Order to Show Cause to WSGL on an expedited basis concerning the Parties' proposal that WSGL's frequency be changed to Channel 284C3.

Respectfully submitted,

PALM BEACH RADIO BROADCASTING, INC.

By _____
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
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(202) 463-4640

Its Attorneys

GULF COMMUNICATIONS PARTNERSHIP

By _____
Howard M. Weiss

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(703) 812-0400

Its Attorneys

Dated: November 8, 1996

PUBLIC NOTICE

Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

News media information 202 / 418-0500
Fax-On-on-Demand 202 / 418-2830
Internet: http://www.fcc.gov
ftp.fcc.gov

63110

REPORT NO. 2134 May 24, 1996

OFFICE OF PUBLIC AFFAIRS
REFERENCE OPERATIONS DIVISION
PETITIONS FOR RULEMAKING FILED

RM NO.	RULES SEC.	PETITIONER	DATE REC'D	NATURE OF PETITION
8802*	73.202(b)	Gulf Communications Partnership (Filed by Howard M. Weiss, Kathleen Victory and James A. Cassey, Attorneys Fletcher, Heald & Hildreth, P.L.C. 1300 N. 17th Street 11th Floor Rosslyn, VA 22209)	02/17/95	Request Amendment of FM Table of Allotments to request channel changes in the following Florida communities: Tice, Estero, Big Pine Key, Key Colony Beach and Naples.

EXHIBIT A

RM NO.	RULES SEC.	PETITIONER	DATE REC'D	NATURE OF PETITION
8803*	73.202(b)	Amaturo Group, Ltd. WSUV, Inc. GGG Broadcasting, Inc. Glades Media Company (Filed by Robert J. Rini, Evan D. Carb and David G. O'Neil, Attorneys Rini & Coran, P.C. 1350 Connecticut Ave., NW Suite 900 Washington, DC 20036)	02/17/95	Request Amendment of the Commission's Rules to to request channel changes: **Alternate Plan 1** proposes changes in the following Florida communities: Indiantown, Naples, Big Pine Key, Key West, Key Colony Beach, Fort Myers Villas, Avon Park, Clewiston, Jupiter and Fort Myers Beach: **Alternate Plan 2** proposes changes in the following Florida communities: Indiantown, Naples, Big Pine Key, Key West, Key Colony Beach, Fort Myers Villas, Clewiston, Jupiter, Palm River, and Fort Myers Beach.

On May 15, 1996, counsel for Palm Beach Radio Broadcasting, Inc., licensee of Station WPBZ(FM), Indiantown, Florida, and Gulf Communications Partnership, permittee of Station WAAD(FM), Tice, Florida, filed the following amendment and joint resolution to the counterproposals filed in this proceeding for which we now solicit comments.

Amaturo Group, Ltd. was the previous licensee of Station WPBZ(FM), Indiantown. Counsel for Palm Beach Radio Broadcasting, Inc.:

Howard J. Braun
Jerold L. Jacobs
Rosenman & Colin LLP
1300 - 19th Street, N.W.
Washington, D.C. 20036

RM NO.	RULES SEC.	PETITIONER	DATE REC'D	NATURE OF PETITION
				Substitute Channel 276C1 for Channel 276C2 at Indiantown, FL and modify the license for Station WPBZ(FM) at coordinates 26-56-22 and 80-07-04; substitute Channel 284C3 for Channel 276C3 at Naples, FL and modify the license for Station WSGL at coordinates 26-07-33 and 81-43-17; substitute Channel 281C1 for Channel 284C at Big Pine Key, FL and modify the license for Station WWUS at coordinates 24-39-38 and 81-25-10; substitute Channel 267C2 for Channel 280C2 at Key Colony Beach, FL and modify the construction permit for Station WKKB at coordinates 24-42-25 and 81-06-17; substitute Channel 275C2 for Channel 292A at Fort Myers Villas, FL and modify the license for Station WROC at coordinates 26-29-06 and 82-00-36; substitute Channel 258C3 for Channel 292A at Clewiston, FL and modify the license for Station WAFC at coordinates 26-41-00 and 80-46-00; substitute Channel 292C3 for Channel 258A at Jupiter, FL and modify the license for Station WJBW at coordinates 26-51-30 and 80-06-00; substitute Channel 292C2 for Channel 229A at Tice, FL and modify the construction permit for Station WAAD at coordinates 26-29-24 and 81-50-08.

* THE ABOVE PETITIONS FOR RULE MAKING WILL BE TREATED AS COUNTERPROPOSALS IN MM DOCKET 94-155. REPLY COMMENTS TO THE AMENDMENT AND JOINT RESOLUTION TO THE COUNTERPROPOSALS SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.

EXHIBIT B

ENGINEERING STATEMENT PREPARED ON BEHALF OF PALM BEACH RADIO BROADCASTING, INC. IN RESPONSE TO APPLICATION OF STERLING COMMUNICATIONS, INC. FOR ONE STEP UPGRADE OF WSGL(FM), NAPLES, FL AND ASSOCIATED COUNTERPROPOSAL IN MM DOCKET NO. 94-155

NOVEMBER 1996

ENGINEERING STATEMENT PREPARED ON BEHALF OF PALM BEACH RADIO BROADCASTING, INC. IN RESPONSE TO APPLICATION OF STERLING COMMUNICATIONS, INC. FOR ONE STEP UPGRADE OF WSGL(FM) NAPLES, FLORIDA AND ASSOCIATED COUNTERPROPOSAL IN MM DOCKET NO. 94-155

NOVEMBER, 1996

SUMMARY

The following engineering statement has been prepared on behalf of **Palm Beach Radio Broadcasting, Inc. ("Palm Beach"),** in regard to MM Docket No. 94-155, RM-8485, RM-8802 and RM-8803, Amendment to *Section 73.202(b), Table of Allotments* for Big Pine Key, Key Colony Beach, Naples, Tice, Indiantown, Fort Myers Villas, Clewiston and Jupiter, Florida.

On June 13, 1996, Sterling Communications Corp., licensee of WSGL(FM), Naples, Florida, filed a 301 Application for Construction Permit which requested a One-Step upgrade for WSGL on Channel 276C2. WSGL is currently licensed on Channel 276C3. On October 7, 1996, **Palm Beach** filed a Motion to Dismiss the WSGL 301 application citing a violation of Commission practice and procedure for One-Step upgrade applications and the untimely nature of the application in the context of the ongoing Rule Making proceeding noted above. On October 30, 1996, WSGL responded to **Palm Beach** by amending its 301 application and also filing an Opposition to a Motion to Dismiss filed by **Palm Beach.** This statement responds to the technical issues raised in Sterling's filings.

SUITABILITY OF PROPOSED ALLOTMENT SITE

The process to be followed in filing One-Step upgrade applications is fully set out in MM Docket No. 92-159, 8 FCC 2nd 4736 (released July 13, 1993). The Docket requires several showings including, "a statement that the proposed allotment site is suitable for tower

construction." The October 29, 1996 engineering statement submitted by WSGL states at (Page 3) that: "...there is a fully spaced reference site location that is suitable for tower construction....". **Palm Beach** has researched the nature of the allotment site proposed by WSGL and researched local and regional planning and zoning restrictions which would impact the construction of a 525' tower (HAAT of 492' plus 33 feet for antenna and beacon assembly).

The allotment site proposed by WSGL (WSGL engineering Exhibit 3) is located in the city of Naples, Florida, at the intersection of Half Moon Walk and Anchorway. The allotment site and the entire non-short spaced site area (as defined by WSGL) is located in a residential area described by many as "the most expensive land in Florida" where homes sell for $500,000.00 to $17,000,000.00 and a 100 foot wide, undeveloped lot can sell for $3,000,000.00.

Naples city is located in Collier County. Affiant spoke with Fred Reischl, a planner with the County familiar with land use regulations and tower restrictions. Reischl states that towers are a permitted use in agricultural and industrial zones in the County and a conditional use in heavy commercial areas in the County. The maximum tower height in the County is 185 feet absent a showing of special need. Reischl acknowledged that towers are still being built in the County, but only in the specified areas which do not include the city of Naples.

Affiant spoke with Jennifer House, and separately with John Singerling, at the city of Naples Building and Zoning department. A copy of Section 110-48 of the code governing towers and masts was supplied by the city and attached herein as Exhibit I. The zoning standard was clarified with Mr. Singerling when he stated that "<u>the maximum structure height allowed in the</u>

R1-10 zone specified by WSGL is 30 feet and that no antenna structure will be allowed that exceeds that height." Mr. Singerling went on to explain that the regulation is intended to control small antennas such as satellite dishes with a 24" maximum dimension and FM and TV receiving antennas. The code does not anticipate any height associated with transmission facilities since they are not an allowed use. Mr. Singerling put his analysis into perspective by stating that there are not even modest structures in the city of Naples, such as cellular or PCS monopoles. They are simply not allowed and are located instead in the County in locations properly zoned for that use.

Palm Beach believes that WSGL has failed to meet the burden of demonstrating site availability, given the highly residential and pristine nature of the area depicted by WSGL as the available, non-short spaced site area, and the strict adherence to zoning and land use standards that prohibit small receiving antennas, much less 525' transmitting towers.

FAA ISSUES

WSGL's amendment to its application for CP purportedly addresses the allotment matter but fails to reveal the fact that its proposed tower height of 525' would constitute a Hazard to Air Navigation (see Exhibit II, FAA letter dated July 29, 1996). Perhaps even more debilitating is the FAA statement that the proposed 50 kW signal on 103.1 mHz would involve hazardous two signal/third order intermodulation interference to navigation receivers.

WSGL responded to the FAA by letter dated August 28, 1996 (Exhibit III, attached). In its letter, WSGL stated that it would reduce the proposed tower height to 500' from the proposed 525', and that it wished to resolve the third order intermodulation product interference issue. To date, the FAA appears not to have responded to WSGL's letter. The lack of FAA response may not be entirely surprising. Based on the affiant's experience with the FAA and EMI computer analysis, there are only two options available to the applicant. They are, 1) reduce the ERP to the level required to remove the interference; and/or, 2) propose a directional antenna pattern. Obviously, one cannot state with certainty how the FAA will proceed with this particular matter. In affiant's experience, the FAA will view the WSGL request for a conditional grant with a negative response and require that the applicant take one of the steps indicated above if WSGL wishes to receive a No Hazard determination.

CONCLUSION

It is the belief of **Palm Beach** that the allotment site area is totally unusable and that the site area is not available. On this basis alone, the WSGL One-Step application should be dismissed as unacceptable for filing. In its October, 1996 filing, **Palm Beach** demonstrated that Channel 284C2 could be allotted to Naples for use by WSGL rather than Channel 276C2. The Channel 284C2 allotment site area is large and on land, not on a densely populated peninsula. Given the fact that there is no corresponding site area for Channel 276C2, and the hurdles which WSGL has yet to overcome with the FAA, there truly is no reason for WSGL to oppose the use of Channel 284C2. The public interest is best served by the multiple upgrades associated with MM Docket No. 94-155, and a Channel 284C2 upgrade for WSGL, rather than a highly suspect Channel 276C2 allotment for WSGL alone.

The foregoing was prepared by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By _____

Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me,

this 6 th day of November, 1996,

Esther G. Sperbeck, NOTARY PUBLIC

ESTHER G. SPERBECK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT 15, 1997

(2) Owners of waterfront property shall also place the required numerals on a dock, seawall or separate post adjacent to the waterway.

(3) Any owners of such premises failing to properly number their improved property as required herein shall be cited with a notice to appear before the city code enforcement board.

(4) Prior to issuance of a certificate of occupancy or final inspections, whichever is applicable, all occupancies must be numbered in accordance with this section.

(Comp. Dev. Code 1990, § 9-1-15)

Sec. 110-48. Satellite antennas, towers and masts.

(a) *Purpose.* This section is hereby declared remedial and is enacted to secure the public safety, health and general welfare through structural strength and stability and for safety to life and property from fire or other hazards incident to the construction, repair and use of television masts and antennas; to maintain and enhance the attractive appearance of the city; to carry out the community goals and objectives expressed in the comprehensive plan; to protect and enhance the city's appearance and the city's natural amenities; and in recognition of the open, extensive lawn areas which are not conducive to the indiscriminate placement of antennas.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Antenna means any device or array of elements used in the reception or distribution of television signals, including, without limitation, microwave and satellite earth station (dish) antennas.

Tower means any upright support or mast for an antenna, whether using self-supporting or guyed construction.

(c) *Materials and structure.* Towers, masts and antennas shall be of noncombustible and corrosion-resistant material; shall not be bright, shiny, garish or reflective of light; and shall be designed and installed to withstand a wind load of 110 miles per hour. All applications for the installation of satellite dish antennas shall include certification from an engineer licensed in the state that such installation will meet this structural requirement.

(d) *Insurance for installers.* Liability and property damage insurance in the minimum amount of $300,000.00 combined single limit liability shall be carried by any person licensed to install antennas in the city to cover any losses occasioned by the licensees.

(e) *Stop work orders.* Upon notice from the building official that work on any structure is being done contrary to the provisions of this section or in a dangerous or unsafe manner, such work shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed. Where an emergency exists, no written notice shall be required to be given by the building official.

(f) *Correction of unsafe conditions.* All towers, masts and antennas which are unsafe, or which constitute a fire hazard or are otherwise dangerous to human life by reason of inadequate maintenance, dilapidation or abandonment, are hereby declared illegal and shall be abated by repair or demolition in accordance with the following procedure:

(1) A ten-day notice shall be given to the owner of the tower, mast or antenna which is in violation of this subsection to correct the violation within the ten-day period or to remove it from the property.

(2) Failure to do this will subject the owner to the penalties provided in section 86-210. In addition thereto, the city may forthwith declare the structure to be a nuisance and proceed to abate the nuisance as provided by law.

(g) *Location.*

(1) No antenna shall be installed or replaced on the street or beach side of any lot.

(2) No dish antenna larger than three feet in diameter shall be mounted on a roof in any single-family residential zone district.

(3) A dish antenna larger than three feet in diameter may only be mounted on a roof in a commercial or multifamily residential zone district if it is shielded from ground level view within 1,000 feet of the building.

(4) All components of an antenna shall conform to the building setbacks required in the zone district in which it is located.

(h) *Advertising.* Advertising or identification on an antenna shall be limited to a manufacturer's nameplate not to exceed 18 square inches in area.

(i) *Screening.* An antenna, including supporting structures, accessory equipment and the like, shall be located and designed so as to minimize the visual impact on adjacent properties and from public streets, rights-of-way, beaches, canals and bodies of water. The antenna shall be screened by the use of landscaping or architectural features which harmonize with the elements and characteristics of the lot or parcel on which it is located and the adjacent properties.

(1) All antennas and support structures shall be completely screened from ground level view from adjacent water bodies, canals, beaches, rights-of-way and properties when such screening will not prevent signal reception. Low-profile screening material or landscaping shall be utilized along those reception axes where complete screening would interfere with reasonable signal reception.

(2) When landscaping material is used as a screening device, hedges, shrubs and trees shall be provided as appropriate, in such quantity so as to form a continuous, unbroken, solid visual screen within one year from the date of installation.

(3) All antennas shall be a flat, nonreflective color which blends with their background.

(4) No screening requirements shall be imposed upon an antenna installation which will act to prevent reasonable signal reception.

(j) *Height.*

(1) No antenna shall be higher than the minimum height necessary for it to function.

(2) In no case shall a dish antenna be higher than the highest point of the principal structure on the subject property in a residential zone district.

(3) Dish antennas in commercial and multifamily zone districts and all other antennas in any zone district may only extend a maximum of ten feet above the highest point of the main building, but in no case shall the antenna extend more than ten feet above the maximum permitted height in any particular zone district.

(k) *Permit for construction or alteration.* Any owner, authorized agent or contractor who desires to construct or alter any mast, tower, antenna or related structure which is regulated by this section shall first make application to the building official and obtain the required permit therefor. Application for a permit with the required fee shall be filed with the building official on a form furnished by him and shall contain a general description of the proposed work, its location and sufficient information to determine compliance with the requirements of this section.

(l) *Enforcement.* Responsibility for the enforcement of this section shall be the duty of the building official.

(m) *Location permit* In those instances where compliance with the location or height requirements of this section will prevent reasonable signal reception, an exception to the regulations of this section may be requested through the submission of an antenna location permit. Exceptions to the height and location requirements of this section shall be considered only when it is demonstrated that reception will be impaired across a broad range of transmission sources. The inability to receive signals from a specific source shall not be considered adequate justification for an exception from this section.

(1) *Required submittals.* All antenna location permit applications shall include:

a. A completed application form;

b. A site plan indicating the location of the antenna as well as all structures and vegetation both on and off the site which have an impact on the antenna location requirements.

c. A landscape and screening plan indicating materials, sizes and location of plantings or shielding material in sufficient detail to determine compliance with the complete shielding requirements of this section.

d. A description of the height, style, color and orientation requirements of the proposed antenna.

e. The required application fee.

(2) *Public hearing required.* Following the submittal of a complete application package, the planning director shall schedule a public hearing regarding the antenna location permit for the next available planning advisory board meeting.

a. Notice of hearing.

b. Notice of the public hearing shall be published in a newspaper of local circulation not less than 15 days in advance of the meeting date.

c. In addition, letters shall be sent to all adjacent property owners and applicable property owners' associations, not less than 15 days in advance of the meeting date, notifying them of the purpose, date, time and location of the public hearing.

(3) *Method of approval.* Following the public hearing, the planning advisory board may vote to deny, approve, or approve with conditions any application for an antenna location permit through a majority vote of the members present. The planning advisory board action shall be final unless an appeal is filed by the applicant or a neighboring property owner with the planning director within ten days of the planning advisory board action.

(4) *Appeal.* In the case of an appeal, the city council shall hold a public hearing to review the planning advisory board's decisions regarding antenna location permits and render a final decision. In case of such an appeal, notification letters in accordance with subsection (m)(2)c of this section shall be sent to all adjacent property owners.

(5) *Criteria for approval.* An antenna location permit shall be granted only in those instances where the applicant demonstrates that:

a. Reasonable reception cannot be achieved within the height and location requirements contained within subsections (g) and (j) of this section;

b. The reasons why reasonable reception cannot be achieved within the required height and location requirements of this section are beyond the control of the applicant;

c. The exception from location and height requirements is the minimum required for reasonable reception and produces the least visual intrusion on adjacent properties, public rights-of-way, canals and water bodies of all technically acceptable alternatives; and

d. The proposed installation is safe.

Antenna location permits shall be issued for specific antennas in specific locations. Such permits may be revoked if circumstances change so as to negate the need for exceptions to location and screening requirements to facilitate adequate reception.

(Comp. Dev. Code 1990, § 9-1-16)

Sec. 110-49. Street frontage required.

Except as may be permitted by other provisions of this comprehensive development code, no building permit shall be issued for any structure unless the site thereof abuts, for at least 20 feet, on a city council approved vehicular access easement or on a public street right-of-way. A site that fronts only on a public alley shall also require city council approval.

(Comp. Dev. Code 1990, § 9-1-17)

EXHIBIT II

U.S. Department of Transportation
Federal Aviation Administration

Southern Region

P. O. Box 20636
Atlanta, Georgia 30320

July 29, 1996

Sterling Communications Corp.
368 Goodlette Road, Suite 522
Naples, Florida 33940

Re: Aeronautical Study No. 96-ASO-3030-OE
East Naples, Florida

A study of your proposal for an antenna tower (518'AGL/525'AMSL) near East Naples, FL, has been completed. Based on an internal study, the proposal was found to have substantial adverse effects on aeronautical operations in the vicinity of the structure and, as such, public circularization is not deemed necessary.

The review revealed an Electromagnetic Interference (EMI) problem with respect to the Naples Municipal Airport, Runway 22 VOR Landing System.

The analysis of the Spectrum Management and Systems Support Section evaluation report is indicated below. Unless the potential EMI problem can be resolved, this would have a substantial adverse effect upon aeronautical operations.

Our analysis indicate that aircraft operating in the frequency protect service volume (FPSV) making a VOR approach to Runway 22, at the Naples Municipal Airport will be subject to hazardous two signal/third order intermodulation interference of the type (A) f1 + f2 - f3 resulting in navigation receiver overload. This interference would be caused by the proposed frequency in combination with existing stations as follows:

Type (B):

VRSW (111.8 MHz) + WORC (106.3 MHz) - Proposed (103.1 MHz) = FAA/VOR (108.6 MHz)

Intermodulation interference occurs whenever two or more signals or their integer multiples combine in such a manner that the product is the frequency to which the receiver is tuned. These signals combine in the nonlinear external devices to produce sum and difference frequencies through heterodyne action.

Further evaluation of this proposal predicts in-band signals as indicated below for various frequency ranges. The additional attenuation required to reduce in-band spurious signal levels is also tabulated to reduce the maximum allowable level to -104 dBm. This level was established and agreed upon by the FCC and FAA in 1981 to eliminate the harmful interference to FAA facilities. The last column shows the total amount by which the spurious radiation must be attenuated below the unmodulated R.F. carrier for the frequency range specified.

Location	Frequency Range (MHz)	Spurious Level	Additional Attenuation Required	Total Attenuation Required Below R.F. Carrier
Naples,FL	121.5MHz	-94.6dBm	9.4dB	69.4dB

Administrative procedures of Federal Aviation Regulations, Part 77, require that we issue a formal Determination of Hazard or No Hazard following the conclusion of the study.

For any proposed solution to the above problem, please contact Freddie Massey at (404) 305-6670, as it will require the concurrence and approval of his office relating to any acceptable solution.

An additional issue not related to the EMI problem is that the aeronautical study for Instrument Flight Rules (IFR) effect disclosed that the proposal would necessitate the following restrictions at the Naples Municipal Airport:

> Increase the VOR Runway 22 straight-in instrument approach Minimum Descent Altitudes (MDA) from 520 to 540 feet for all category of aircraft, and establish a departure restriction for Runway 13 that would require aircraft to climb at 250 feet per nautical mile until reaching 600 feet.

The MDA is the minimum altitude to which an aircraft may descend while on the approach to the airport during periods when reduced visibility and/or low cloud ceiling conditions exist. If the pilot cannot achieve visual reference to the ground upon reaching the MDA, the approach must be abandoned. This results in the aircraft having to proceed to an alternate airport or waiting in a holding pattern for improved weather conditions.

Any increase to the MDA would have significant adverse effect on the benefit derived from the instrument approach procedure.

The proposal's substantial IFR adverse effect will warrant a Determination of Hazard to Air Navigation. Alternatives include reducing the proposed structure to 500 feet AGL/507 feet AMSL with a 2C survey (+/-50'lateral, +/- 20'vertical), or relocating the proposal to a new location. Any new site will require a new study.

Since airspace determinations are widely disseminated we shall withhold final processing of this aeronautical study until you have had time to review and reconsider all the pertinent facts and possible solution in regard to your proposal. If we do not hear from you in writing regarding this aeronautical study by August 30, 1996 we will proceed with issuing a Determination of Hazard or terminating the study, as appropriate.

Sincerely,

Armando Castro
Airspace Specialist
Operations Branch
Air Traffic Division

cc: Representative

EXHIBIT III

THE RICHARD L. VEGA GROUP, INC.

Telecommunications Engineers/Consultants

1245 W. Fairbanks Avenue, Suite 380
Winter Park, Florida 32789-4878
(407) 539-6540 • Fax: (407) 539-6547 • email: vega@magicnet.net

August 28, 1996

Mr. Armando Castro
Airspace Specialist
Federal Aviation Administration
Southern Regional Office
Operations Branch
Air Traffic Division, ASO-530
P.O. Box 20636
Atlanta, GA 30320

SEP 4 1996

RE: 96-ASO-3030-OE
Sterling Communications Corp.
WSGL Naples, FL - FM Radio Station

Dear Mr. Castro:

I am responding on behalf of Sterling Communications to FAA Aeronautical Study No. 96-ASO-3030-OE. We request that the aeronautical study not be dismissed or determined a hazard, but that Sterling Communications seeks to resolve the issues of concern.

WSGL in Naples, FL is an existing FM station proposing to upgrade EIRP and tower height. The FAA apparently determined that the proposed tower height was 18 feet too high. Sterling Communications agrees to this reduction, to a proposed maximum tower height of 500 feet AGL.

Sterling Communications further seeks to resolve the third order intermodulation interference relating to the proposed EIRP increase. I have contacted Freddie Massey and Ben Phimsouthal to attempt to resolve this issue, however, to date no response from the FAA has been made regarding these technical parameters. Sterling Communications agrees to attenuate the required 69.4 dB below the R.F. carrier to reduce spurious emissions to an acceptable level.

Please accept this letter as a formal offering of our desire to resolve any interference issues pertaining to the above referenced FAA study number. I look forward to hearing from you. Should the Administration have any questions concerning these matters, please contact the undersigned.

Sincerely,

John R. Kuehne
Systems Engineer

JRK/jt

cc: Sterling Communications Corporation

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 8th day of November, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing **"REPLY TO OPPOSITION TO MOTION TO DISMISS OR STRIKE STERLING COMMUNICATIONS CORP.'S DEFECTIVE COUNTERPROPOSAL/ APPLICATION"** to the following:

Linda Blair, Chief*
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 302
Washington, D.C. 20554

Dennis Williams, Assistant Chief*
Audio Services Division
Mass Media Bureau
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Ms. Kathleen Scheuerle*
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Counsel for Crain Broadcasting, Inc. (WWUS)
and Sarasota-FM, Inc. (WSRZ)

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Law Offices of Donald E. Ward
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5th Floor
Washington, D.C. 20004
Counsel for Sterling Communications Corp. (WSGL)