

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),)	MM Docket No. 95-88
)	RM-8641
Table of Allotments,)	RM-8688
FM Broadcast Stations)	RM-8689
(Rose Hill, Trenton, Aurora, and Ocracoke,)	
North Carolina))	

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

OPPOSITION TO PETITION FOR RECONSIDERATION

Aurora Broadcasting ("AB"), hereby submits its opposition to the Petition for Reconsideration ("Petition") filed January 17, 1997, by Conner Media Corporation ("CMC")¹ directed against the Commission's Report and Order, *Rose Hill, Trenton, Aurora, and Ocracoke, North Carolina*, 61 Fed. Reg. 66618, published December 18, 1996 (herein "*R&O*"). The Commission gave public notice (Report No. 2174) of the filing of the petition in the *Federal Register* on January 29, 1997 (62 Fed. Reg. 4287), so this opposition is timely filed within 15 days thereafter (Section 1.4(b)(1)).

Background

In its Notice of Proposed Rule Making, *Rose Hill and Trenton, North Carolina*, 10 FCC Rcd 6611 (1995), the Commission, at the request of Duplin County Broadcasters

¹ CMC reports that it is successor-in-interest to Duplin County Broadcasters ("DCB"), having acquired the license of WBSY from DCB on August 1, 1996 (See BALH-960412GR and *Petition*, ¶1.)

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("DCB"), licensee of WBSY(FM), Rose Hill, North Carolina, proposed the reallocation of FM Channel 284A from Rose Hill to Trenton, North Carolina, as Channel 284C2. The Commission also proposed the modification of WBSY's license to operate on Channel 284C2 at Trenton.

AB counterproposed the allotment of Channel 283A to Aurora, North Carolina, as its first local service, instead of the allotment of Channel 284C2 at Trenton. In the *R&O* the Commission denied the proposal to allot Channel 284C2 at Trenton, adopted AB's counterproposal, allotted Channel 283A to Aurora, and opened a window (that closes February 27, 1997) for filing applications for construction permits at Aurora. The Commission based its decision on the simple fact that Aurora (1990 population 654) is larger than Trenton (1990 population 284) and thus is preferred under *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The Commission rejected DCB's suggestion that Channel 221A is available for allotment at Aurora as an alternative channel. CMC assigns error to this Commission finding and seeks reconsideration of the *R&O*. CMC reasserts its request that Channel 221A be allotted to Aurora so that Channel 284C2 be allotted to Trenton. In the alternative, CMC urges that Trenton should be preferred to Aurora on spectrum efficiency grounds.

CMC's arguments should be rejected and its petition denied. There are numerous reasons to support such action.

**The Bureau Did Not Err in
Rejecting the Alternative
Channel Allotment for Aurora**

CMC urges the Commission to reconsider its denial of the allotment of Channel 221A to Aurora as an alternative allotment. The Commission found that Channel 221A cannot be allotted to Aurora because the use of Channel 221A at Aurora is short-spaced to the outstanding construction permit of WRSV, Channel 221A, Rocky Mount, North Carolina, and to Station WAHL, Channel 224C1, Ocracoke, North Carolina, whose permit is held by Ocracoke Broadcasters ("OB"). In its Petition, CMC argues that the WRSV application was granted in error, but that the conflict can be resolved by allotting Channel 221A to Aurora from coordinates at NL 35° 16' 27", WL 76° 39' 39" that impose a site restriction on the allotment. CMC also argues, vituperatively, that the WAHL construction permit is technically deficient, based on material mistakes of fact, scheduled to expire, and non-extendable.

Initially, it should be noted that AB has never expressed any intention to apply for a construction permit for a station at Aurora other than Channel 283A. AB intends to file an application by the deadline imposed in the *R&O* for Channel 283A. For technical reasons, including, *inter alia*, CMC's proposed site restriction, Channel 221A does not appear to be an acceptable alternative channel to Channel 283A. Although the Commission may lawfully allot a substitute channel at Aurora, there is no guarantee that there would be an applicant for the channel if an alternate is allotted.

CMC urges that deficiencies in the WAHL application for construction permit render it defective; however, a review of the Commission's records reveals that neither DCB nor CMC filed any objections to the grant of the WAHL application. All the alleged deficiencies as to

alleged lack of an appropriate transmitter site and city-grade coverage could have been brought to the Commission's attention prior to the grant of the application on August 13, 1996, the date the application was granted. But the FCC's files do not reveal any such objections. Since CMC apparently slept on its rights, it should not be heard to complain now about the effect of a granted construction permit on its plans to expand service by WBSY. The most serious allegation made by CMC centers on WAHL's alleged failure to place a 70 dBu signal over Ocracoke (*Petition*, ¶9). However, CMC has ignored the showing in WAHL's application that city-grade coverage is provided to Ocracoke through alternative prediction methods. See Technical Comments attached hereto.

As to CMC's argument that the WAHL application is about to expire, it should be noted that on January 13, 1997, the permittee of WAHL, OB, filed an application (File No. BMPH-970113JA) seeking an extension of the construction permit on the ground that, although equipment was ordered and/or on hand, weather concerns had delayed erection of the tower.² Further, an application (File No. BAPH-970121GS) is on file seeking to assign the construction permit to a third party. The papers on file at the FCC indicate that OB is serious about prosecuting the application and so WAHL remains a very real constraint to the allotment of Channel 221A to Aurora. CMC's attempts to persuade the Commission to allot Channel 221A to Aurora as an alternative to Channel 283A must be rejected as too little, coming too late.

² On February 7, 1997, CMC filed an Informal Objection to the extension application. Doubtless, OB will respond to that filing in due course.

Comparative Allotment Considerations

As the Commission recognized, the allotment of Channel 283A to Aurora is preferred over the substitution of Channel 284C2 at Trenton and removal of Channel 284A from Rose Hill. Rose Hill has a population of 1,287 persons while Trenton is a tiny community with a population of only 284 persons. Although the Commission rejected AB's argument that Trenton is a "quiet village," the fact remains that Trenton is just that.³ As AB argued previously, a community such as Trenton with a very small population, ill-defined boundaries and undemonstrated political, economic, and social indicia does not permit CMC's proposal to receive a dispositive §307(b) preference. See, Sunshine Broadcasting, Inc., 2 FCC Rcd 7559, 7560 (1987)(subsequent history omitted).

CMC's claim that its proposal would provide service to 347,989 persons instead of 36,354 must be continue to be evaluated in light of the Technical Study submitted by AB in its previous filing that shows that the extra population comes from counties that are already well served by seventeen (17) FM, eleven (11) AM, and three (3) television stations. Additionally, there are several pending applications seeking construction permits for facilities in the area. The population gain, therefore, would do little more than add an additional FM station to an already well-served area.

Under the precedent in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), Aurora is preferred to Trenton. First local service to Aurora, North Carolina,

³ Under the Commission's "quiet village" doctrine, the Commission will not award a dispositive §307(b) preference to a party proposing first aural service to a town that does not meet the Commission's definition of a "community". See, Reeder v. FCC, 865 F. 2d 1298, 1305. (D.C. Cir. 1989)(per curiam).

is preferred to CMC's plan which would merely improve existing service. Additionally, the public interest is not well-served where CMC's proposal would leave Rose Hill without full time local service. This loss of full time service weighs heavily against the public interest aspects of CMC's proposal.

CMC argues that Trenton is preferred to Aurora because a population difference of 370 is not a meaningful basis for decision making. Where such a differential may not be significant in comparing large cities, CMC ignores the fact that Aurora, although small, is more than twice as populous as Trenton. This factor is definitely of decisional significance. This argument together with CMC's arguments concerning the magnitude of population to be served by the 60 dBu contour of WBSY as a class C2 station, and the fact that Jones County is without local service are irrelevant and unsupported by any case law citation.

The Commission agreed that the allotment of Channel 283A to Aurora would result in first service to a community that is larger than Trenton. Although the FCC found that it is a community for allotment purposes, Trenton's diminutive population and its proximity to nearby New Bern, North Carolina, suggests that it is a mere "isolated population" pocket that is dependent upon a larger, nearby city. See, Faye and Richard Tuck, Inc. 3 FCC Rcd 5374 (1988) and Table of Allotments (Cal-Nev-Ari, Nevada, et. al), supra. AB's proposal will provide first local service to a qualified "community" and will satisfy the Commission's allotment priorities. See, Revision of FM Assignment Policies and Procedures, supra.

Conclusion

As demonstrated herein, CMC's proposed reallocation of Channel 284C2 to Trenton, North Carolina, does not constitute a preferential arrangement of allotments. Trenton, North Carolina, is well served by other stations and does not merit a radio station to serve only 284 persons. AB's proposal to allot Channel 283A to Aurora, North Carolina is a better use of spectrum since it will bring first full time local service to a bona fide community that deserves local service.

WHEREFORE, the above facts considered, Aurora Broadcasting hereby respectfully requests that the Commission deny CMC's Petition for Reconsideration.

Respectfully submitted,

AURORA BROADCASTING

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February 13, 1997

**REPLY COMMENTS
TO PETITION FOR RECONSIDERATION
AURORA BROADCASTING
AURORA, NORTH CAROLINA
February 1997**

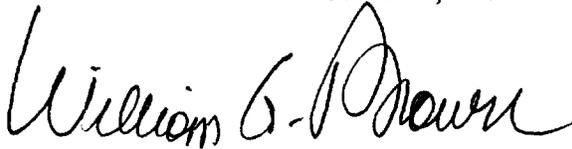
INTRODUCTION

These Technical Comments support the position of Aurora Broadcasting, Petitioner for Channel 283A at Aurora, North Carolina. In the reply comments by Conner Media Corporation ("CMC") it was stated that the Construction Permit site for Ocracoke Broadcasters, permittee of WAHL at Ocracoke, North Carolina could not provide a 3.16 mV/m signal over the WAHL community of license. Figure #3 of the CMC Technical Exhibit shows that the 70 dBu (3.16 mV/m) contour falls short of covering Ocracoke.

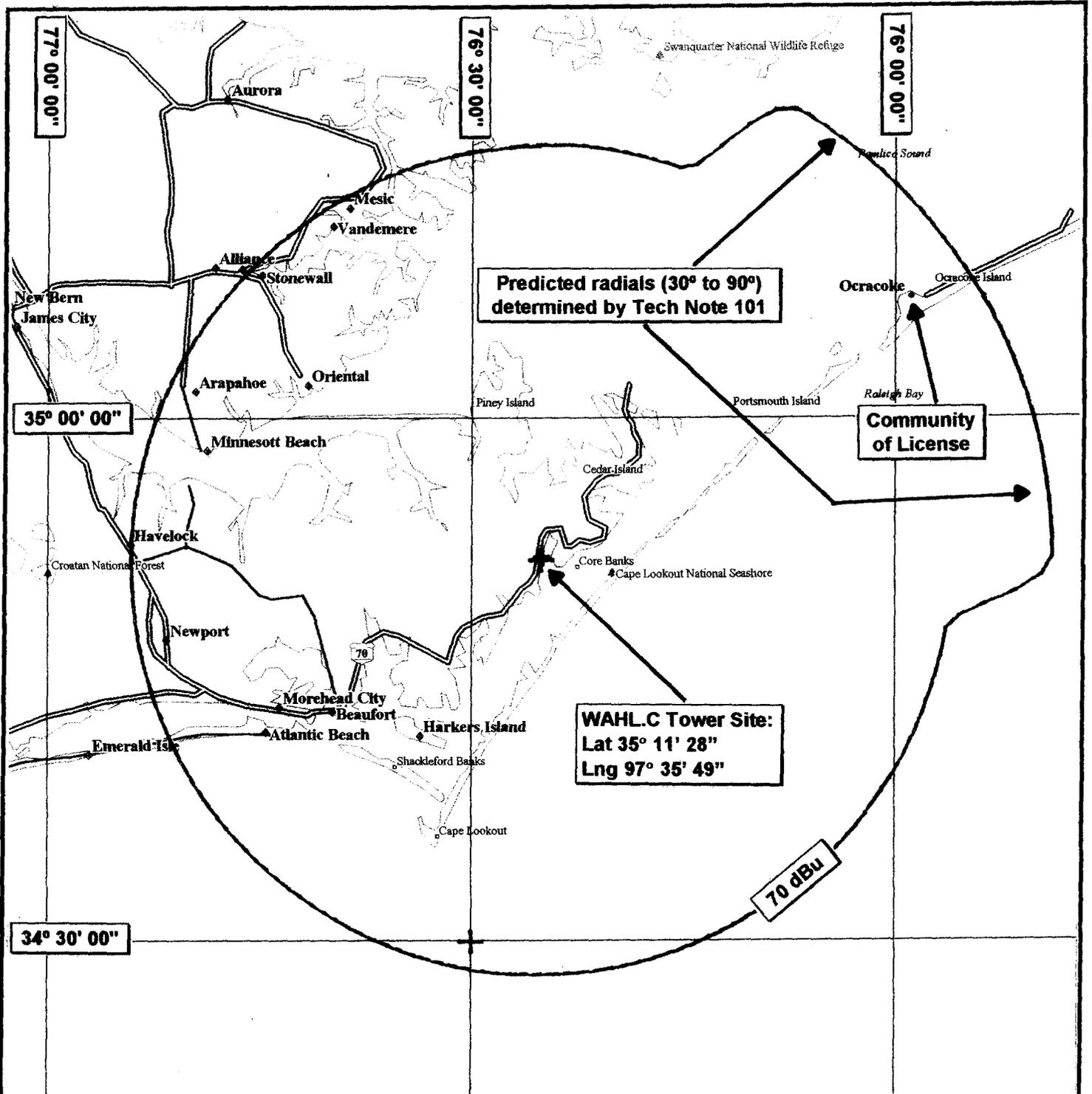
CMC failed to mention that in the WAHL application for the construction permit this matter was discussed. WAHL stated that by using the FCC's methods as prescribed under §73.313, city grade service would not be provided to the community of license. The Commission has a policy of accepting alternate methods of calculating distances to contours; one method is commonly referred to as a Technical Note #101 Study. This study utilizes The Institute for Telecommunications Science (ITS) irregular terrain model (Longley and Rice, 1968; Hufford, Longley and Kissick, 1982). WAHL included this study in their application. We used the results of this Tech Note Study for a pertinent arc from 30° to 90° and have projected the city grade contour for WAHL. It can be plainly seen on Exhibit #1 that the WAHL facilities will provide a 3.16 mV/m contour

over the entire city of license. The Commission's staff obviously took the Tech Note Study into consideration before issuing WAHL a construction permit.

Bromo Communications, Inc.

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

William G. Brown
Consultant to Aurora Broadcasting



City Grade Coverage

Map is State of North Carolina
 Scale 1:600,000
 ©1993 DeLorme Mapping

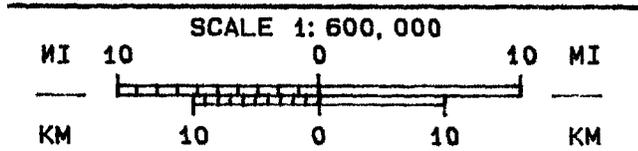


EXHIBIT #1
Reply Comments
to Petition for Reconsideration
Aurora Broadcasting
 Aurora, North Carolina
 February 1997

BROMO BROADCAST
 COMMUNICATIONS TECHNICAL CONSULTANTS

CERTIFICATE OF SERVICE

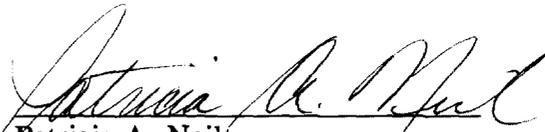
I, Patricia A. Neil, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 13th day of February, 1997, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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