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

Federal Communications Commission
Washington, D.C.

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotment)	MM Docket No. 94-155
FM Broadcast Stations)	
Big Pine Key, Key Colony Beach,)	
Naples, Tice, etc., Florida)	RM-8468 and RM-8802
)	
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

JOINT PETITION FOR APPROVAL OF AGREEMENT

Palm Beach Radio Broadcasting, Inc., licensee of Station WPBZ, Indiantown, Florida, and Sterling Communications Corp., licensee of Station WSGL, Naples, Florida, by their respective attorneys, hereby request approval of the attached **AGREEMENT**, and consistent therewith, dismissal of Sterling's Application BPH-960613IC to modify WSGL's facilities through a one-step up-grade from Channel 276C3 to Channel 276C2, submitted as a Counterproposal herein.

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I. Background

This rule-making proceeding presents, in its most recent iteration, requests to modify the allotments of several Florida FM broadcast stations. As relevant to the instant Petition, the May 15, 1996 "Supplement to Joint Reply Comments . . ." of WPBZ and Gulf Communications Partnership, permittee of Station WAAD, Tice, Florida, proposed inter alia that Station WPBZ be changed from Channel 276C2 to Channel 276C1; and that co-channel Station WSGL's allotment be changed from Channel 276C3 to Channel 284C3.

On June 10, 1996, Sterling filed comments opposing any change in its allotment, and stating its intention to file an application to upgrade the WSGL facility to Channel 276C2. Such an application was filed three days later. Palm Beach and Gulf have sought the dismissal of the WSGL application, and Sterling has filed responsive pleadings.

By the attached AGREEMENT, Palm Beach and Sterling have resolved their differences, and have agreed upon

(a) dismissal of Sterling's WSGL counterproposal/application;

(b) the substitution of Channel 284C3 for Channel 276C3 at Naples, and the modification of the WSGL license consistent therewith; and

(c) Palm Beach's reimbursement of Sterling's prudent and legitimate expenses incurred in connection with the preparation, filing, and prosecution of the WSGL application, and Sterling's projected expenses to be incurred in implementing the change in frequency of Station WSGL to Channel 284C3, subject to a cap of \$35,000.

II. Approval of the AGREEMENT Is Consistent
With Commission Rules and Policies

As set forth above, the AGREEMENT contemplates both the dismissal of Sterling's WSGL Counterproposal Application for Channel 276C2, and Sterling's acceptance of a modification of its license to specify operation on Channel 284C3, in return for Palm Beach's reimbursement of up to \$35,000 to cover both (a) the costs incurred by Sterling in the preparation, filing, and prosecution of its application, and (b) its projected costs of changing WSGL's operation to Channel 284C3.

Attached hereto as Exhibit B is the Declaration of Bruce B. Timm, Sterling's President, itemizing Sterling's actual expenses incurred with respect to its pending application, totalling \$13,906; and its projected costs of implementing the change to Channel 284C3, totalling approximately \$45,000. As Mr. Timm notes, Sterling will not realize a profit, but will incur a loss (of nearly \$24,000) as a result of implementation of the AGREEMENT.

Neither Section 73.3525 of the Commission's Rules (governing agreements between mutually exclusive applicants) nor Section 1.420(j) (governing agreements for the withdrawal of an "expression of interest" in a rule making proceeding) specifically covers the instant situation, which involves neither case.

Moreover, while the Commission requires that a proponent of a channel change by another licensee agree to reimburse such licensee its expenses incurred in implementing the requested change, the Commission does not require that the licensee's expenses be approved by it as a prerequisite to their reimbursement: The Commission is involved in reviewing such expenses only when the parties are unable to agree upon the matters to be reimbursed; See, e. g., Circleville, Ohio, 8 FCC 2d 159 (1967); Othello, East Wenatchee & Cashmere, WA, and Wallace, Idaho, 6 FCC Rcd 6476 (1991).¹

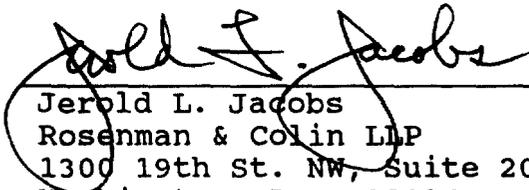
Nonetheless, because the spirit underlying the cited rules appears to extend to the instant situation, the AGREEMENT is submitted for Commission approval. The parties respectfully urge such approval, as providing a means of bringing the instant rule

¹ "The exact amount of such reimbursement is generally left to the good faith negotiation of the parties." Clewiston, . . . FL, 10 FCC Rcd 6548, at 6549 (1995).

making proceeding to an expeditious conclusion, while not according Sterling any profit as a result of its counterproposal application: Indeed, as shown above, Sterling will incur a significant loss in moving to Channel 284C3, notwithstanding the committed payment to it by Palm Beach.

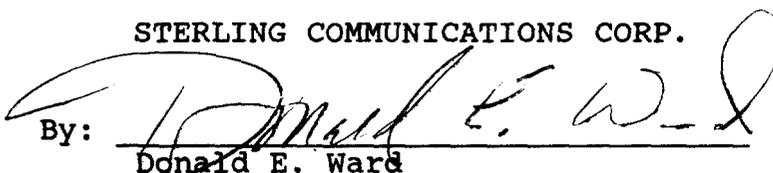
Respectfully submitted,

PALM BEACH RADIO BROADCASTING, INC.

By: 
Jerald L. Jacobs
Rosenman & Colin LLP
1300 19th St. NW, Suite 200
Washington, D.C. 20036
(202) 463-4644

Its Attorney

STERLING COMMUNICATIONS CORP.

By: 
Donald E. Ward
Law Offices of Donald E. Ward
1201 Pennsylvania Ave., N.W.
Fifth Floor
Washington, D. C. 20004
(202) 626-6290

Its Attorney

March 19, 1997

AGREEMENT

Agreement made this 11~~th~~ day of March, 1997, by and between **Sterling Communications Corp.** ("Sterling") and **Palm Beach Radio Broadcasting, Inc.** ("Palm Beach") (hereinafter referred to as "the parties").

WHEREAS, Sterling is licensee of Station WSGL(FM), Naples, Florida, licensed to operate on FM Channel 276C3; and

WHEREAS, Palm Beach is licensee of Station WPBZ(FM), Indian-town, Florida; and

WHEREAS, Palm Beach has filed pleadings in an FM channel rulemaking proceeding in MM Docket No. 94-155 ("Docket 94-155"), which is currently pending before the Federal Communications Commission ("FCC"), in which Palm Beach proposes, inter alia, that the frequency of Station WPBZ(FM) be changed from Channel 276C2 to Channel 276C1 and that the frequency of Station WSGL(FM) be changed from Channel 276C3 to Channel 284C3; and

WHEREAS, on June 10, 1996, Sterling filed "Comments of Sterling Communications" in Docket 94-155 and on June 13, 1996, Sterling filed a "one-step" FCC Form 301 application, both of which propose to upgrade Station WSGL(FM) to Channel 276C2 at Naples, Florida (File No. BPH-960613IC) (together, "counterproposal/application"); and

WHEREAS, on October 2, 1996, Palm Beach and Gulf Communications Partnership, permittee of Station WAAD(FM), Tice, Florida, filed a "Motion to Dismiss or Strike Sterling Communications Corp.'s Defective Counterproposal/Application";

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. FCC Approval. This Agreement is expressly entered into subject to the prior approval of the FCC.

2. Joint Request for FCC Approval. The Parties shall file with the FCC, within five (5) business days after execution of this Agreement, a joint request for approval of this Agreement ("Joint Request"), pursuant to §1.420(j) of the FCC's Rules, seeking the following relief:

- (a) Approval of this Agreement;
- (b) Dismissal of Sterling's counterproposal/application; and
- (c) FCC approval of the substitution of Channel 284C3 for Channel 276C3 at Naples, Florida without the FCC having to issue an Order to Show Cause to Sterling (since Sterling hereinbelow agrees to accept that frequency change) and any other channel substitutions being proposed by Palm Beach for any other FM stations in Docket 94-155.

3. Reimbursement of Expenses. Palm Beach agrees to pay Sterling, by cashier's check, the sum of THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) as payment for Sterling's legitimate and prudent expenses in connection with the proposed frequency change of Station WSGL(FM) and the preparation, filing, and advocacy of Sterling's counterproposal/application, or such lesser amount as may be approved by the FCC. Payment shall take place within five (5) business days after the date(s) upon which FCC approval of the Joint Request and of Palm Beach's proposed upgrade to Class C1 for

Station WPBZ(FM) and Sterling's frequency change to Channel 284C3 have each become a Final Order. An Order shall be final forty (40) days after release of the relevant public notice or full text of the FCC approval, as defined in §1.4 of the FCC's Rules, if no appeal, review, or reconsideration of such approval has been timely requested within that 40-day period and the FCC has not decided to review the approval on its own motion.

4. Withdrawal of Sterling Pleadings. At the time of execution of this Agreement, Sterling will deliver to Palm Beach an executed pleading, in a form acceptable to Palm Beach, requesting the FCC to dismiss Sterling's counterproposal/application, and advising the FCC that Sterling agrees to accept a change of Station WSGF(FM)'s frequency from Channel 276C3 to Channel 284C3 in Docket 94-155. That pleading shall be included in the Joint Request.

5. Cooperation. The Parties shall cooperate in the diligent preparation and filing of all documents that are necessary or appropriate to secure FCC approval of this Agreement. The Parties shall respond promptly and fully to any requests by the FCC for information relating to this Agreement or to the Joint Request, and agree to provide the FCC with such information within seven (7) days after each such request. Each party shall bear all of its own expenses incurred in connection with preparing, filing, and prosecuting this Agreement and the Joint Request. Sterling agrees that it will not file directly or indirectly, or cause or encourage any other person or entity to file directly or indirectly, any petition, objection, or other submission before the FCC which opposes, delays, or impairs FCC approval of the substitution of

Channel 284C3 for Channel 276C3 at Naples, Florida, or any other channel substitutions being proposed by Palm Beach for any other FM stations in Docket 94-155.

6. Default and Remedies. If either party, or any of their respective principals, subsidiaries, affiliates or agents, fails to abide by the provisions of Paragraphs 1 through 3 hereof, the injured party will be free to pursue any and all remedies available to it before the FCC and/or the courts.

7. Authority. Each party hereto warrants and represents that it has full legal authority to enter into, execute, and effectuate this Agreement.

8. Successors and Assigns. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns.

9. Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, or sent by commercial courier service or registered or certified U.S. mail, return receipt requested, postage prepaid, (c) deemed to have been given on the date of personal delivery or the date set forth in the records of the courier service or on the return receipt, and (d) addressed as follows:

If to Sterling: Mr. Bruce B. Timm
 Sterling Communications Corp.

with a Copy to: Donald E. Ward, Esq.
Law Offices of Donald E. Ward
1201 Pennsylvania Ave., N.W.
Fifth Floor
Washington, D.C. 20004

If to Palm Beach: Patricia Larschan, Vice President
Palm Beach Radio Broadcasting, Inc.
c/o WHLG(FM)
1000 N.W. Alice Avenue
Stuart FL 34994

with a Copy to: Jerold L. Jacobs, Esq.
Rosenman & Colin LLP
1300 19th St., N.W.
Suite 200
Washington, D.C. 20036

or to any other or additional person and/or addresses as the parties may from time to time designate in a writing delivered in accordance with this Paragraph.

10. Headings. The headings contained in this Agreement have been inserted for the purposes of convenience only and shall be given no effect in the construction or interpretation of this Agreement.

11. Governing Law. This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to the choice of law provisions thereof) and the Communications Act of 1934, as amended, and the rules, regulations and policies promulgated thereunder.

12. Entire Agreement. This Agreement constitutes the full and entire understanding between the parties and all of the terms and conditions agreed upon with respect to the subject matter

hereof. This Agreement cannot be amended or modified except by a written instrument executed by both parties.

13. Severability. Should any provision herein be held by any court of competent jurisdiction to be invalid or unenforceable for any reason, it shall be deemed modified to the extent necessary to cause such court to consider it valid or enforceable or, if such modification is not possible, it shall be deemed deleted from this Agreement but, in either case, all other provisions contained in this Agreement shall remain in full force and effect.

14. Execution and Counterparts. This Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument. This Agreement shall come into effect upon the exchange of executed signature pages by the legal counsel of the parties. The date of such exchange of executed signature pages shall be deemed the date of execution of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

STERLING COMMUNICATIONS CORP.

By: *Bruce B. Tinn*, PRESIDENT
Bruce B. Tinn

PALM BEACH RADIO BROADCASTING, INC.

By: _____
Patricia Larachan
Vice President

hereof. This Agreement cannot be amended or modified except by a written instrument executed by both parties.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

STERLING COMMUNICATIONS CORP.

By: _____
Bruce B. Timm

PALM BEACH RADIO BROADCASTING, INC.

By: Patricia A. Larschan
Patricia Larschan
Vice President

EXHIBIT BDECLARATION OF BRUCE B. TIMM

I, Bruce B. Timm, hereby make the following Declaration under penalty of perjury, in support of the Joint Petition for Approval of Agreement between Sterling Communications Corp., licensee of Station WSGL(FM), Naples, Florida, and Palm Beach Radio Broadcasting, Inc., licensee of Station WPBZ(FM), Indiantown, Florida.

1. I am President of Sterling Communications Corp.

2. Sterling has incurred expenses totalling \$13,906.23 in connection with the preparation, filing, and prosecution of its application for a "one-step" upgrade to Channel 276C2 (File No. BPH-960613IC), which application is to be dismissed pursuant to the AGREEMENT dated March 11, 1997, between Sterling and Palm Beach, as follows:

(a) Engineering fees of Richard L. Vega Group totalling \$6,416.23;

(b) Legal fees of the Law Offices of Donald E. Ward totalling \$6,840.00;

(c) FCC Filing fee of \$650.00.

3. Pursuant to the AGREEMENT, Sterling has agreed to accept the modification of its license to operate on Channel 284C3. Sterling estimates that its reasonable costs of implementing such a modification will approximate \$45,000. The cost of a replacement antenna will be \$8,000; installation thereof will cost approximately \$3,000; Engineering costs incident to such modification are estimated to be \$5,000; and the costs of replacing stationery, media kits, contracts, invoices, station jingles, billboards, and

various signs (banners, studio building, van, remote broadcast canopy and signs) with identification of the new frequency are projected to exceed \$11,000; and newspaper, TV, and cable TV advertisements promoting WSGL's new frequency are budgeted at approximately \$18,000.

4. Thus, Palm Beach Broadcasting's agreement to reimburse Sterling Communications in the amount of \$35,000 to secure the dismissal of WSGL's upgrade application and the agreement to accept modification of the WSGL license will not result in any profit to Sterling; to the contrary, Sterling will experience a financial loss as a result of the implementation of the AGREEMENT.


Bruce B. Timm

**DECLARATION OF
PATRICIA LARSCHAN**

I, PATRICIA LARSCHAN, hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge, information, and belief:

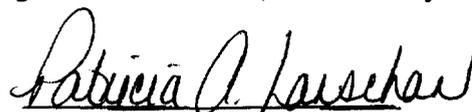
1. I am Vice President of Palm Beach Radio Broadcasting, Inc. ("Palm Beach"), licensee of Station WPBZ(FM), Indiantown, Florida. In an FM rulemaking proceeding in MM Docket No. 94-155 ("Docket 94-155"), Palm Beach proposes, *inter alia*, that the frequency of Station WSGL(FM), Naples, Florida, be changed from Chan. 276C3 to Chan. 284C3.

2. Sterling Communications Corp. ("Sterling") is licensee of Station WSGL(FM). On June 10, 1996, Sterling filed "Comments of Sterling Communications" in Docket 94-155 and on June 13, 1996, Sterling filed a "one-step" FCC Form 301 application, both of which propose to upgrade Station WSGL(FM) to Chan. 276C2 at Naples (File No. BPH-960613IC)(together, "counterproposal").

3. Palm Beach and Sterling have entered into an "Agreement" under which, in return for monetary consideration in the amount of \$35,000 (or such lesser amount as may be approved by the FCC), Sterling will request dismissal of its counterproposal and will join Palm Beach in seeking approval of the substitution of Chan. 284C3 for Chan. 276C3 at Naples without the FCC having to issue an Order to Show Cause to Sterling (since Sterling agrees to accept that frequency change).

4. Neither Palm Beach nor any of its principals has paid or will pay money or other consideration to Sterling in this matter in excess of \$35,000. Upon information and belief, that amount does not exceed Sterling's legitimate and prudent expenses in connection with its withdrawn expression of interest and its frequency change to Chan. 284C3 (as itemized by Sterling).

Dated: 3-13-97


Patricia Larschan

Certificate of Service

I, Jerold L. Jacobs, hereby certify that on this 19th day of March, 1997, I have served the foregoing "Joint Petition" by placing copies thereof in the U.S. Mail, postage prepaid, and addressed to the following:

John A. Karousos, Chief
Andrew J. Rhodes, Esq.
Ms. Kathleen Scheuerle
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications
Commission
2000 M Street N.W., Room 554
Washington, DC 20554

William D. Silva, Esq.
Law Offices of William D.
Silva
5335 Wisconsin Ave. N.W.,
Suite 300
Washington, D.C. 20015-2003

Linda Blair
Dennis Williams
Robert J. Greenberg
Audio Services Division
Mass Media Bureau
Federal Communications
Commission
1919 M Street N.W., Room 302
Washington, DC 20554

Richard J. Bodorff, Esq.
Wiley, Rein & Fielding
1776 K Street NW
Washington, DC 20006

Nancy L. Wolf, Esq.
Levanthal, Senter & Lerman
2000 K Street NW, Suite 600
Washington, D.C. 20006-1809

Richard M. Riehl, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive,
Suite 900
Arlington, VA 22203-1633

Howard M. Weiss, Esq.
Fletcher, Heald & Hildreth,
P.L.C.
1300 North 17th St., 11th Flr.
Rosslyn, VA 22209

Mr. Jack Linn
12995 South Cleveland Avenue,
Suite 258
Ft. Myers, FL 33907

Mr. Howard Goldsmith
GGG Broadcasting Inc.
6699 North Federal Highway,
Suite 200
Boca Raton, FL 33487

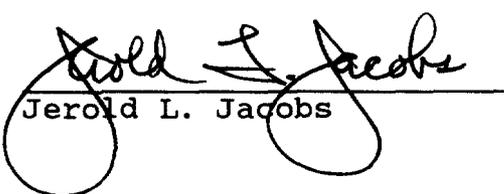
Mr. Robert Costellanos
116 Comercio Street
Clewiston, FL 33440

Joseph A. Belisle, Esq.
Leibowitz & Associates, P.A.
One S.E. Third Avenue, # 1450
Miami, FL. 33131-1715

Bruce A. Eisen, Esq.
James M. Weitzman, Esq.
Kaye, Scholer, Fierman, Hays
& Handler, LLP
901 15th Street N.W., # 1100
Washington, D.C. 20005

Dan J. Albert, Esq.
2120 N. 21st Road, # 400
Arlington, VA 22201

James M. Johnson, V.P.
Keys Media Co., Inc.
3790 Dogwood Avenue
Palm Beach Gardens, FL 33410


Jerold L. Jacobs