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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast stations.)
(Potts Camp and Saltillo, Mississippi))

MM Docket No. 97-107
RM-9023

To: Chief, Allocations Branch

**COMMENTS AND COUNTERPROPOSAL
OF BROADCASTERS & PUBLISHERS, INC.**

Broadcasters & Publishers, Inc., by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its Comments and a counterproposal in response to the Notice of Proposed Rule Making released by the Commission on March 28, 1997 in the above-captioned rulemaking proceeding ("Notice"). In support thereof, the following is shown:

I. Introduction

On January 15, 1997, Olvie E. Sisk ("petitioner"), licensee of Station WCNA(FM), Channel 240C3, Potts Camp, Mississippi, filed a Petition for Rule Making proposing the reallocation of Channel 240C3 from Potts Camp to Saltillo, Mississippi and the modification of petitioner's license to specify Saltillo as Station WCNA(FM)'s community of license. Petitioner is seeking modification of Station WCNA(FM)'s authorization pursuant to the provision of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new

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community of license without affording other interested parties an opportunity to file competing expression of interest.^{1/}

In support of its proposal, petitioner states that Saltillo is a growing and thriving community while Potts Camp is a community in decline. It is the position of Broadcasters & Publishers that the community of Saltillo is deserving of a local broadcast transmission service but not at the expense of removing the community of Potts Camp's only local transmission service. As shown in the attached Technical Statement of Kirk A. Tollett, Broadcasters and Publishers' consulting engineer, Channel 275C3 at Saltillo can be added to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, in compliance with the Commission's minimum distance separation and principal city coverage requirements.

II. The Commission Should Reject Petitioner's Proposal to Eliminate the Sole Existing Local Transmission Service From Potts Camp.

The *Reconsideration Order* in MM Docket No. 88-526 carefully emphasized that the Commission's concern in the Section 1.420(i) reallocation context focuses chiefly on the disruption of service in a community and emphasized the legitimate expectation the public has in continued service. *Id.* at 7097. The Commission

^{1/} See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"). 5 FCC Rcd 7094 (1990).

looks unfavorably on any proposal that would interrupt service from an operating station that local residents have grown accustomed to listening to. Station WCNA is an operating service. Residents of the Potts Camp area have come to rely on WCNA as a "station that can be accessed today simply by turning on a ...radio set." *Id.* at 7096. Thus, its reallocation would immediately interfere with a service currently enjoyed by the local audience in Potts Camp. Moreover, Station WCNA currently provides the exclusive local transmission service in Potts Camp.

In its *Reconsideration Order*, the Commission commented on the scope and applicability of the procedures governing changes in a community of license and clarified the applicability of Section 307(b) of the Communications Act to proceedings to amend the FM Table of Allotments. Specifically, the Commission reemphasized that, even in instances when the new community of license would serve its FM allotment priorities and policies, reallocation would be denied where it would result in the removal of the sole existing local transmission service from the original community of license. *Id.* The Commission stated that this absolute restriction advanced its statutory mandate because "as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied." *Id.*

Although the Commission did provide for waivers of the restriction on removal of a community's sole existing service in rare circumstances, it underscored its view that changes that propose to remove local service "presumptively disserve the public interest." Id. The Commission stated that "[t]he public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removal constitutes a transmission service, a reception service, or both." Id. Indeed, in paragraph 3 of its Notice, the Commission stated it does not believe that the public interest is served by removing a community's sole local transmission service merely to provide a first local transmission to another community.

In its Petition for Rule Making, petitioner cites Noalmark Broadcasting Corp., 50 R.R. 2d 755 (1981) for the proposition that "[t]he Commission has reallocated [sic] channels from one community to another, even where the first community would lose its only local full-time service, in situations in which the first community had suffered a substantial decline in population and prosperity." In stark contrast to Potts Camp, the community involved in Noalmark, namely, Humble City, New Mexico, "has no residents, no business establishment or local government." Id.

at 751. The Commission observed that "it is uncontroverted that Humble City is not a community within the meaning of Section 73.1120(a) of the rules."^{2/}

The Petition for Rule Making cites one other case, Woodville and Liberty, Mississippi; Clayton and Jean, Louisiana, DA 96-542, released April 23, 1996, as precedent for removing a community's only local transmission service where the proposed new community would serve a greater number of people. Unlike the community of Potts Camp which receives service from Station WCNA, the community involved in Woodville "would not be deprived of any existing service, since petitioner has never constructed or placed on the air its previously authorized facilities ." Id at ¶3. In its *Reconsideration Order*, the Commission clarified that "replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be considered, does not adequately cause the disruption to 'existing service' occasioned by removal of an operating station." 5 FCC Rcd at 7096. The Commission observed that "[f]rom the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station

^{2/} Unlike the proposal in this proceeding submitted by Olvie E. Sisk, the petitioner in Noalmark has not proposed to alter any part of its technical operation (except for moving its main studio to Hobbs, New Mexico) and accordingly, no listener would be deprived of service.

that can be accessed today simply by turning on a ...radio set."
Id.

Petitioner describes Potts Camp as a collapsing community with a declining population to support its contention that "it is highly questionable whether Potts Camp could be deemed a community for allotment purposes as it stands today."^{3/}

Petitioner makes a number of assertions which, as we shall show, are not supported by the facts:

Petition: Potts Camp had a 1970 U.S. Census population of 549. By 1980, the population had grown by only 10 persons to 559. In 1990 the U.S. Census population had fallen to 483. The current estimated population is only 450.

Shaw Declaration: As shown in the attached Declaration of Jeffrey H. Shaw, Vice President, Broadcasters & Publishers, Inc., Marie Tate, the Town Clerk of Potts Camp, estimates that the current population of the community is 525 persons.

^{3/} Petitioner does not -- and indeed, cannot -- cite any Commission precedent for the proposition that Potts Camp should not be deemed a community for allotment purposes. Significantly, the Petition for Rule Making does not contain a declaration or an affidavit attesting to the accuracy of petitioner's allegation that "it can only be concluded that there is no interest in maintaining the allotment [at Potts Camp]."

Petition: According to the mayor of Potts Camp, "the town has no doctors based there but only one which [sic] visits once per week."

Shaw Declaration: According to Ernest Cruise, the Mayor of Potts Camp, and the Town Clerk, the community has a full-time medical clinic and a pharmacy.

Petition: Potts Camp has no dentists, no supermarkets, and no more than ten stores, all of which are run down.

Shaw Declaration: The Town Clerk confirms that there are at least ten businesses in Potts Camp, including one grocery store, one convenience store, two video stores, two restaurants, one post office, one bank, three gas stations and one used car lot. Mayor Cruise believes Potts Camp is in better economic condition today than it was five years ago. He points out that Holman Industries, a logging company, opened its business in Potts Camp at the beginning of the year and Car Quest 22, an auto parts store, will be opening in the near future.

Counterproposal

At the conclusion of MM Docket No. 93-259, Broadcasters & Publishers, Inc. was authorized to modify the community of license of Station WWKZ from New Albany, Mississippi to Como, Mississippi. On November 27, 1996, the Commission granted an

application for construction permit filed by Broadcasters & Publishers, Inc. to construct the new facility at Como (BPH-951212IF). As documented in the attached Technical Statement, this move now creates the availability of Channel 275C3 to be used at Saltillo, without the necessity of removing the only local transmission service at Potts Camp. Figure 1 of the Technical Statement is a computer-generated allocation study which shows that the allotment of FM Channel 275C3 at Saltillo meets the Commission's minimum mileage separation requirements. Figure 2 demonstrates there is ample clearance to locate a tower site that would place the required unobstructed city grade signal (70 dBu) over the entire community of Saltillo. Figure 3 demonstrates that the city grade signal of the proposed facility (utilizing a hypothetical tower with a center of radiation 100 meters above average terrain and an effective radiated power of 25 kilowatts) will encompass the community of Saltillo.

The Technical Statement concludes that Channel 275C3 can be added to the Commission's Table of Allotments "without the necessity of any other changes and without the creation of any new preclusion area." Therefore, Broadcasters & Publishers, Inc., respectfully requests that the Commission's Table of Allotments, Section 73.202(b), be amended as follows:

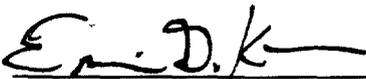
<u>Location</u>	<u>Present</u>	<u>Proposed</u>
Saltillo, Mississippi	None	275C3

If Channel 275C3 is allotted to Saltillo, Broadcasters & Publishers, Inc. will file an application for construction permit for the new facility and upon a grant of the permit, will expeditiously construct and place the Channel 275C3 facility in operation at the earliest possible time.

WHEREFORE, for the foregoing reasons, Broadcasters & Publishers, Inc. respectfully requests that the Commission deny the proposal of Olvie E. Sisk to remove Potts Camp's only local transmission service and grant its proposal to allot Channel 275C3 to Saltillo.

Respectfully submitted,

BROADCASTERS & PUBLISHERS, INC.

By: 

Erwin G. Krasnow
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 15th Street, N.W., Suite 700
Washington, D.C. 20005

Its Attorneys

May 19, 1997

**DECLARATION OF
JEFFREY H. SHAW**

Jeffrey H. Shaw, under penalty of perjury, deposes and declares as follows:

I am Vice President of Broadcasters & Publishers, Inc.

I talked by telephone with Marie Tate, the Town Clerk of Potts Camp, Mississippi. Ms. Tate estimated that the current population of Potts Camp is 525 persons. She said that Potts Camp has (a) a full-time medical clinic and a full-time pharmacy that is open each weekday; (b) a city school system; (c) a police department (consisting of one full-time and one part-time police officer); and (d) over ten retail businesses, including a grocery store, a convenience store, two video stores, two restaurants, a post office, a bank, three gas stations and one used car lot. Ms. Tate was not aware of the presence in Potts Camp of Station WCNA (the station's main studio is located in New Albany, Mississippi). However, she expressed confidence that local businesses would purchase advertising time on a Potts Camp radio station.

I also talked with Ernest Cruise, the Mayor of Potts Camp. He pointed out that Potts Camp has a medical clinic and that the town is in a growth phase. In his view,

the community of Potts Camp is in better shape economically today than it was five years ago. He pointed out that Holman Industries, a logging company, started doing business in Potts Camp at the beginning of the year and that Car Quest, an auto parts store, will be opening soon. As part of Potts Camp's growth, Mr. Cruise pointed out that 95% of the city streets have been repaved recently.

A handwritten signature in black ink, appearing to read "Jeffrey M. Stewart". The signature is written in a cursive style with a large initial "J" and "S".

Prepared by:
Kirk A. Tollett
Commsouth Media, Inc.
P.O. Box 810
Crossville, Tennessee 38557

Prepared for:
G. Dean Pearce
Broadcasters & Publishers, Inc.
4307 Highway 39 North
Meridian, Mississippi 39301

Technical Statement

Counter Proposal

Saltillo, Mississippi

TECHNICAL STATEMENT
In support of
Comments and Counterproposal
MM Docket 97-107, RM-9023
Broadcasters & Publishers, Inc.
Saltillo, Mississippi

INTRODUCTION

This technical statement has been prepared on behalf of Broadcasters & Publishers, Inc., ("BPI"), licensee of Radio Station WWKZ at New Albany, Mississippi. This statement is provided in support of its Comments and Counterproposal offered in response to MM Docket 97-107.

COMMENTS

The initial petitioner in MM Docket 97-107, Ovie E. Sisk ("petitioner"), licensee of Station WCNA(FM), Channel 240C3, Potts Camp, Mississippi had requested the reallocation of FM Channel 240C3 to the community of Saltillo, Mississippi and the modification of petitioner's license accordingly. BPI feels the community of Saltillo, Mississippi is deserving of a local broadcast transmission service, but not at the expense of the only local transmission service in the community of Potts Camp, Mississippi.

COUNTERPROPOSAL

BPI, pursuant to Section 1.415 of the Commission's Rules, herewith is submitting a Counterproposal in response to the Commission's Notice of Proposed Rulemaking (MM Docket 97-107), requesting a change in the FM Table of Assignments, Paragraph 73.202(b) of the FCC Rules as follows:

Location	Present	Proposed
Saltillo, Mississippi	None	275C3

Saltillo, Mississippi is an incorporated City located in the central portion of Lee County, in Northeast Mississippi. 1990 U.S. Census figures for the City of Saltillo was 1,782 persons. The 1990 Census figures for Lee County were 65,581 persons. No local broadcast service is currently available to the City of Saltillo, Mississippi.

At the conclusion of FCC MM Docket 93-259, BPI was authorized to modify the community of license for WWKZ from New Albany, Mississippi to Como, Mississippi. On November 27, 1996 the Federal Communications Commission granted BPI's application for construction permit, FCC file number BPH-951212IF, to construct its new facility at Como, Mississippi. This move now creates the availability of Channel 275C3 to be used a Saltillo, Mississippi without the necessity of removing the only local service at Potts Camp, Mississippi.

Figure 1, is a computer generated allocation study using the Commission's specified method of distance computations, demonstrating the assignability of FM Channel 275C3 to Saltillo, Mississippi. The information contained in Figure 1, was utilized in preparation of the pertinent arcs contained in Figure 2.

Figure 2 is a full scale reproduction of a portion of a USGS 1:250,000 scale map entitled "Tupelo, Miss.; Ala.; Tenn.". Upon it has been superimposed a cross mark which represents the coordinates utilized in the preparation of this Report. The geographic coordinates selected for this study were:

N 34° 24' 09"

W 88° 33' 25"

Figure 2, details the area of Saltillo, Mississippi and the pertinent arcs from all co-channel as well as adjacent channel facilities, allocated, assigned or operational within 200 miles of the proposed allocation. Figure 2 demonstrates there is ample clearance to locate a tower site that would place the required unobstructed city grade signal, (70 dBu), over the entire City of Saltillo, Mississippi. It can be determined from Figure 2, that Channel 275C3 can be allocated to Saltillo, Mississippi with a site restriction of 12.2 kilometers to

the east-northeast. Figure 3 contains a NOAA 1:500,000 scale map entitle "Memphis" upon which has been superimposed the predicted 70 dBu city grade contour of the proposed facility from the referenced site. Figure 3 clearly demonstrates the city grade signal of the proposed facility utilizing a hypothetical tower, with a center of radiation 100 meters above average terrain and an effective radiated power of twenty five kilowatts will encompass the community of Saltillo, Mississippi.

CONCLUSION

As can be gleaned from the attached figures, Channel 275C3 can be added to the Federal Communications Commission Table of Assignments with out the necessity of any other changes and without the creation of any new preclusion area. Based on this information, and the figures that are included in this Report, we believe that the proposed assignment would be in full compliance with the Federal Communications Commission's Rules, and that Channel 275C3 could be assigned to Saltillo, Mississippi as that communities first local broadcast service.

Therefore, Broadcasters & Publishers, Inc., respectfully requests amendment of the Commission's Table of Assignments, Section 73.202(b), and will promptly apply for a construction permit, should the Federal Communications Commission make the requested assignment.

Respectfully,

Kirk A. Tollett
Consultant to Broadcasters & Publishers, Inc.
May 13th, 1997

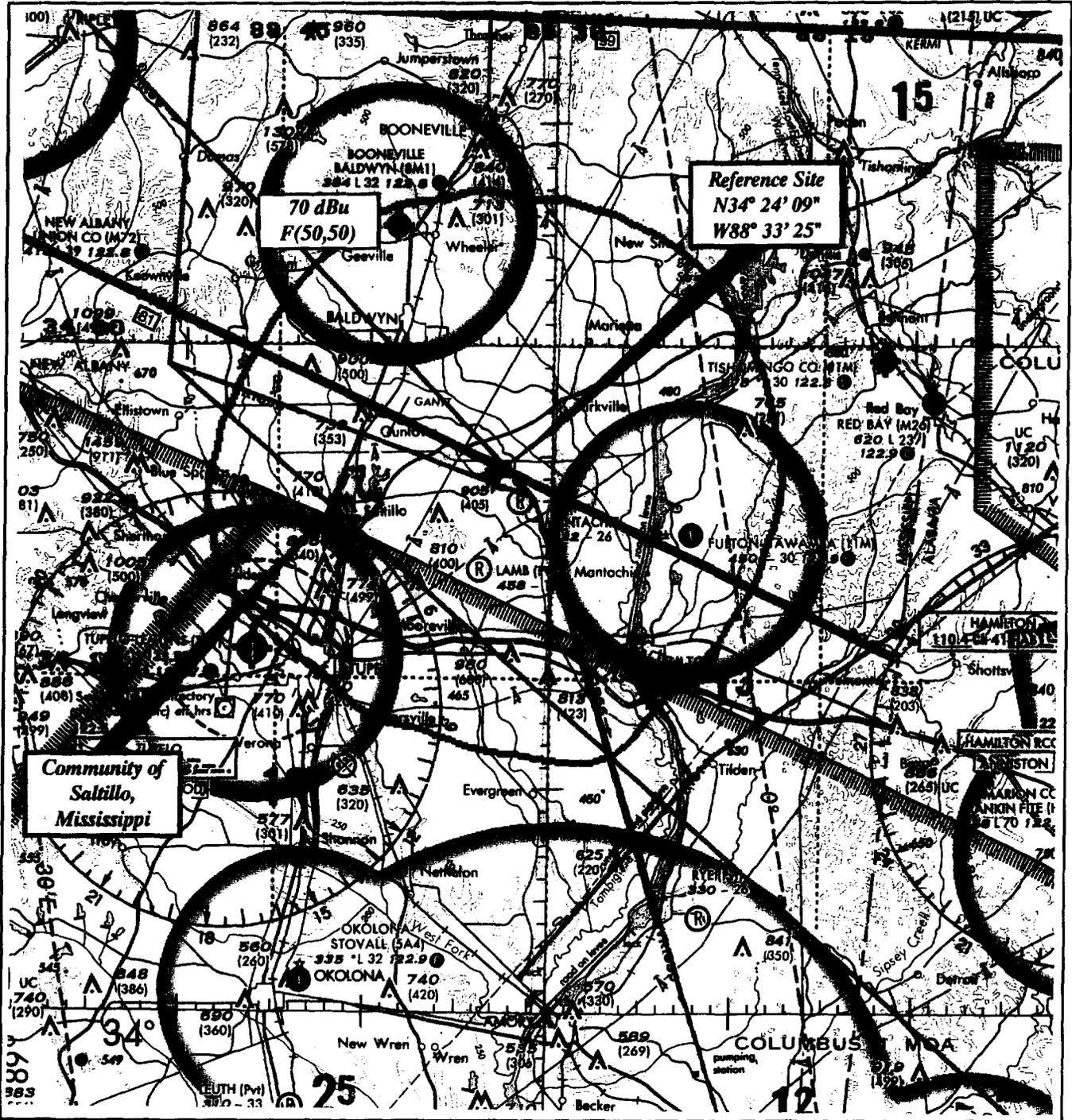
FIGURE 1
FM SEPARATION STUDY
BROADCASTERS & PUBLISHERS, INC.
NEW FM CHANNEL 275 CLASS C3
SALTILLO, MISSISSIPPI

FM search of channel 275C3 (102.9 MHz), at N. 34 24 9, W. 88 33 25.

Searching Channel 275C3 (102.9 MHz):

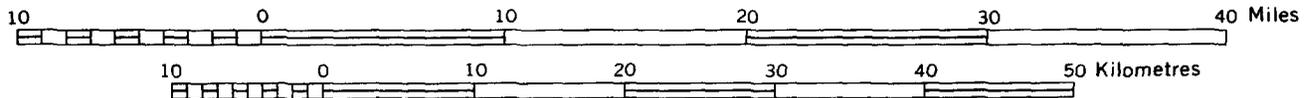
CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Hamilton	AL	221	A	U	61.0	12.0	121.3°	49.0
WERHFM	Hamilton	AL	221	A	L	61.0	12.0	121.3°	49.0
ALC	University	MS	221	A	U	89.9	12.0	273.4°	77.9
WUMS	University	MS	221	A	L	77.8	12.0	270.1°	65.8
WUMS	University	MS	221	A	C	77.8	12.0	270.1°	65.8
ALC	Ripley	MS	272	A	U	42.3	42.0	321.6°	0.3
ALC	Calhoun City	MS	272	A	V	92.4	42.0	228.9°	50.4
NEW	Calhoun City	MS	272	A	A	85.3	42.0	231.7°	43.3
WKZU	Ripley	MS	272	A	A	42.3	42.0	321.6°	0.3
WKZU	Ripley	MS	272	A	L	42.3	42.0	321.6°	0.3
ALC	Jasper	AL	273	C	U	147.9	96.0	133.7°	51.9
WOWC	Jasper	AL	273	C	L	147.9	96.0	133.7°	51.9
ALC	St. Florian	AL	274	A	A	102.5	89.0	53.5°	13.5
ALC	Memphis	TN	274	C1	U	145.2	144.0	306.5°	1.2
WEGR	Memphis	TN	274	C1	L	145.2	144.0	306.5°	1.2
ALC	Linden	AL	275	C2	U	231.3	177.0	158.1°	54.3
WKXX	Attalla	AL	275	A	L	221.8	142.0	102.4°	79.8
WNPTFM	Linden	AL	275	C2	L	233.9	177.0	157.0°	56.9
ALC	Jackson	MS	275	C	U	296.4	237.0	215.0°	59.4
WMSI	Jackson	MS	275	C	L	296.4	237.0	215.0°	59.4
ALC	Shelbyville	TN	275	C1	U	234.9	211.0	48.7°	23.9
WZPC	Shelbyville	TN	275	C1	L	234.9	211.0	48.7°	23.9
WZPC	Shelbyville	TN	275	C1	C	234.9	211.0	48.7°	23.9
ALC	Moulton	AL	276	A	U	119.6	89.0	83.8°	30.6
WXKI	Moulton	AL	276	A	L	123.2	89.0	83.1°	34.2
WMBCFM	Columbus	MS	276	C2	L	117.4	117.0	179.5°	0.4
ALC	Jackson	TN	276	C2	U	124.3	117.0	348.3°	7.3
WMXXFM	Jackson	TN	276	C2	L	128.4	117.0	350.5°	11.4
ALC	Como	MS	278	C1	U	68.8	76.0	283.7°	-7.2
WWKZ	Como	MS	278	C1	C	131.5	76.0	292.8°	55.5
WWKZ	New Albany	MS	278	C	L	30.1	96.0	269.0°	-65.9

FIGURE 3
CITY GRADE COVERAGE CONTOURS
BROADCASTERS & PUBLISHERS, INC.
NEW FM CHANNEL 275 CLASS C3
SALTILLO, MISSISSIPPI



Scale 1:500,000

1 inch equals approximately 8 miles



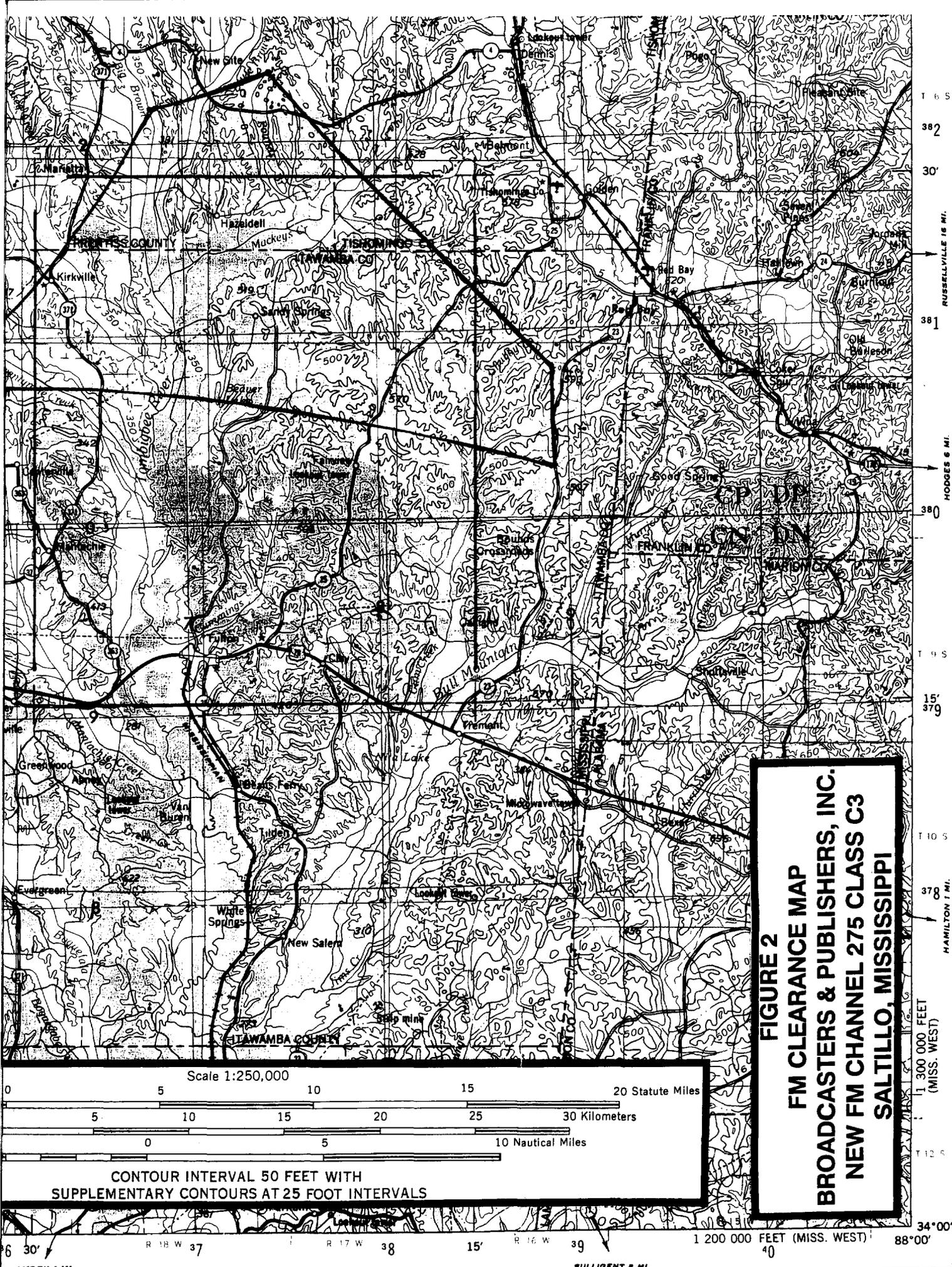
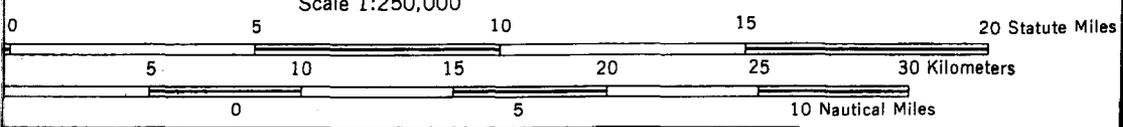


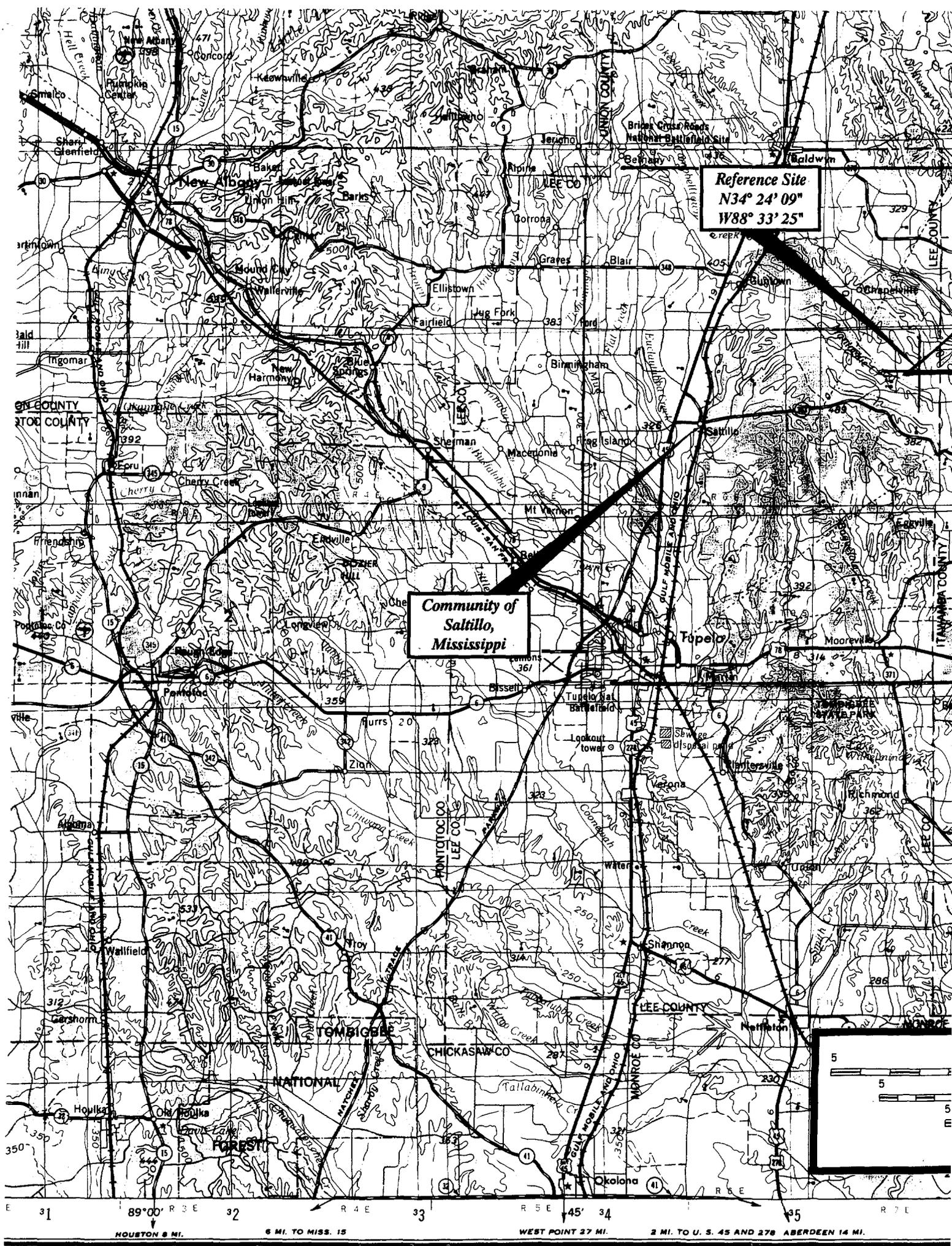
FIGURE 2
FM CLEARANCE MAP
BROADCASTERS & PUBLISHERS, INC.
NEW FM CHANNEL 275 CLASS C3
SALTILLO, MISSISSIPPI

Scale 1:250,000



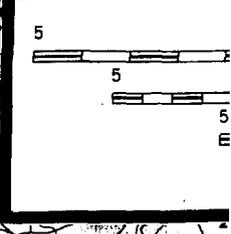
CONTOUR INTERVAL 50 FEET WITH
 SUPPLEMENTARY CONTOURS AT 25 FOOT INTERVALS

6 30' R 18 W 37 15' R 17 W 38 15' R 16 W 39 1 200 000 FEET (MISS. WEST) 88° 00'



Reference Site
 N34° 24' 09"
 W88° 33' 25"

Community of
Saltville,
Mississippi



Scale 1:250,000

20 Statute Miles

LOCATION DIAGRAM

HOUSTON 8 MI. 6 MI. TO MISS. 15 WEST POINT 27 MI. 2 MI. TO U. S. 45 AND 278 ABERDEEN 14 MI.

CERTIFICATION

Kirk A. Tollett hereby certifies that;

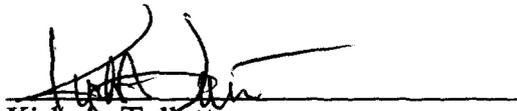
He is owner of Commsouth Media, Inc., a broadcast consulting firm based in Crossville, Tennessee;

His qualifications in broadcast matters are a matter of record before the Federal Communications Commission having been presented and accepted on many occasions over the past;

That he has been retained by Broadcasters & Publishers, Inc., for the purpose of developing technical exhibits and analyses for the instant filing;

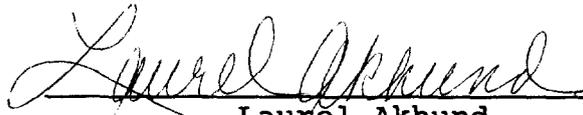
That the accompanying technical report and exhibits were developed by him personally or under his immediate supervision and that all the information presented therein is true and correct to the best of his knowledge and belief.

Signed and dated this 13th day of May, 1997


Kirk A. Tollett
Commsouth Media, Inc.
P.O. Box 810
Crossville, Tennessee 38557-0810
(615)456-4656

CERTIFICATE OF SERVICE

This is to certify that I, Laurel Akhund, have filed the foregoing Comments and Counterproposal of Broadcasters & Publishers, Inc. with the Federal Communications Commission on this 19th day of May, 1997, and that a copy has been served by way of U.S. mail, postage pre-paid, upon Frank R. Jazzo, Esq., Anne Goodwin Crump, Esq., of the law firm of Fletcher, Harold & Hildreth, P.L.C., Eleventh Floor, 1300 North 17th Street, Rosslyn, Virginia 22209, Counsel for Olvie E. Sisk.



Laurel Akhund