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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 9, 1997

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket 95-88
RM-8641, RM-8688, RM-8689

Dear Mr. Caton:

Transmitted herewith, on behalf of Bruce S. Cotton, are an original and four copies of his "Request for Leave to File Response and Response to Supplement to Petition for Reconsideration" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Bruce S. Cotton

Enclosures

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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JUL - 9 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM DOCKET NO. 95-88
)	
Amendment of Section 73.202(b),)	RM-8641
Table of Allotments,)	RM-8688
FM Broadcast Stations.)	RM-8689
(Rose Hill, Trenton, Aurora, and)	
Ocracoke, North Carolina))	

Directed to: Chief, Allocations Branch

**REQUEST FOR LEAVE TO FILE RESPONSE AND
RESPONSE TO SUPPLEMENT TO PETITION FOR RECONSIDERATION**

Bruce S. Cotton, by his attorneys, hereby respectfully submits his Response to the "Supplement to Petition for Reconsideration" filed in the above-captioned proceeding by Conner Media Corporation ("CMC") on July 3, 1997. Cotton respectfully requests that his Response be accepted and considered in the above-captioned proceeding. With respect thereto, the following is stated:

1. Cotton is the proposed assignee of the construction permit for WAHL(FM), Ocracoke, North Carolina. CMC's "Supplement to Petition for Reconsideration" consists of a copy of the letter ruling of the Assistant Chief, Audio Services Division, Reference 1800B3-DK, which denies the application for extension of the WAHL(FM) construction permit (File No. BMPH-970113JA) and dismisses the application for assignment of the WAHL(FM) permit to Cotton (File No. BAPH-970121GS). CMC also argues that the letter ruling clears the way for the allotment of Channel 221A at Aurora, North Carolina. This contention is inaccurate. Therefore,

in order to set the record straight as to the letter ruling and to provide further information needed to evaluate the significance of the letter, Cotton hereby respectfully requests that his Response be accepted and considered.

2. CMC previously had requested that Channel 221A be allotted to Aurora in lieu of Channel 283A in order to eliminate a conflict with its own proposal to substitute Channel 284C2 for Channel 284A at Rose Hill, North Carolina, and then to reallocate the channel to Trenton, North Carolina. In the Commission's Report and Order in the proceeding, DA 96-2062, released December 13, 1996, the Commission denied CMC's request based in large part upon the fact that the proposed Aurora allotment was short-spaced to the reference co-ordinates for WAHL(FM). In its "Supplement to Petition for Reconsideration," CMC argues that Channel 221A may now be allotted to Aurora in light of the letter ruling denying the extension of WAHL(FM)'s construction permit. CMC's argument is both factually premature and legally erroneous.

3. First, it should be noted that the Commission's letter ruling is not yet final. Cotton and the permittee, Ocracoke Broadcasters, now have the opportunity to seek reconsideration from the Commission's staff. Thereafter, depending upon the outcome of any petition for reconsideration, they or any of the objectors may file an application for review with the Commission. It is entirely possible that the staff may reconsider its previous decision, or that the Commission may overturn the staff's decision. Thus, it cannot be assumed, simply because a letter ruling was issued less than a week prior to CMC's filing, that the initial denial of the extension of the WAHL(FM) construction permit will be the final outcome. Thus, CMC's assertion that the Commission no longer must take the WAHL(FM) construction permit into consideration is premature at best.

4. Secondly, CMC ignores that the cancellation of the WAHL(FM) construction permit has no effect upon the underlying allotment. Pursuant to Section 73.207(a) of the Commission's Rules, CMC is required to protect allotments as well as stations assigned to allotments. The Table of Allotments for FM Broadcast Stations shows that Channel 224C1 is allotted to Ocracoke. The allotment reference co-ordinates as specified in the Commission's FM Engineering Database and in Ocracoke Broadcasters' one-step upgrade application which led to the allotment are $34^{\circ} 51' 32''$ North Latitude, $76^{\circ} 25' 00''$ West Longitude. Use of a distance calculation program shows that, according to Commission methodology, the distance between the Ocracoke allotment reference co-ordinates and the Aurora reference co-ordinates proposed by CMC is 51.17 kilometers. As set forth in Section 73.207(b)(1), the required separation is 75 kilometers. Thus, the proposed Aurora allotment remains short-spaced to the Ocracoke allotment by 23.83 kilometers.

5. The only ways for CMC's short-spacing difficulties to be eliminated are either to eliminate or downgrade the Ocracoke allotment or to impose a severe short-spacing on the Ocracoke allotment. Cotton would strenuously object to both possibilities. First and foremost, it must be remembered that the Ocracoke allotment represents that community's first local aural transmission service. If the decision cancelling the WAHL(FM) construction permit does become final at some future date, it is the practice of the Commission thereafter to issue a window notice inviting applications for the vacant allotment. In the event of the issuance of such a notice, Cotton would seriously consider filing such an application. As such, Cotton would strongly object to any action which could limit the usefulness of the Ocracoke allotment. Setting a severe site restriction, on the order of 24 kilometers, could effectively preclude Ocracoke from

ever obtaining its first local station. Likewise, downgrading the allotment would severely limit the viability of a first local service for Ocracoke.

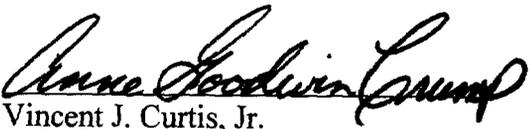
6. Moreover, no change in the Ocracoke allotment has ever been explicitly proposed in the above-captioned proceeding. Thus, at a minimum, the Commission would be required to issue a Further Notice of Proposed Rule Making prior to eliminating or downgrading the Ocracoke allotment.

7. Thus, CMC cannot simply brush aside the severe short-spacing with the Ocracoke allotment. Even if WAHL(FM) ultimately ceases to exist, the Ocracoke allotment will remain. Moreover, Cotton has demonstrated his interest in the allotment and his desire to construct a new station to provide first local service to Ocracoke.

Respectfully submitted,

BRUCE S. COTTON

By:


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July 9, 1997

CERTIFICATE OF SERVICE

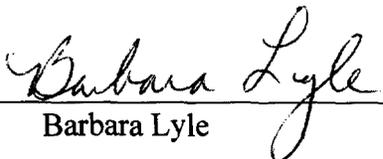
I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Request for Leave to File Response and Response to Supplement to Petition for Reconsideration" was sent this 9th day of July, 1997, by first-class United States mail, postage prepaid to:

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