

ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

RECEIVED

SEP 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Kosciusko and Goodman,)
Mississippi))

MM Docket No. _____
RM _____

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

DOCKET FILE COPY ORIGINAL

PETITION FOR RULE MAKING

Rainey Broadcasting, Inc. ("RBI"), applicant for a new FM broadcast station at Kosciusko, Mississippi (BPH-950525MK), by its counsel, hereby requests that the Commission consider reallocating Channel 277C3 from Kosciusko, Mississippi to Goodman, Mississippi as its first local service. RBI also requests modification of the permit it expects to receive as a single applicant for this channel to specify Goodman, accordingly.^{1/} In support hereof, RBI states as follows:

PRELIMINARY MATTER

1. RBI recognizes that the Commission must first issue a permit for Channel 277C3 at Kosciusko to RBI before RBI can be granted a modification of its permit to specify a new community of license. See Section 1.87 and Santa Margarita and Guadalupe, CA 2 FCC Rcd 6930 (1987) rev. denied on other grounds 4 FCC Rcd 7887 (1989). In the Santa Margarita case, the party that had been awarded the channel in an Initial Decision had not been issued a permit at the time of the rule making decision due to an appeal of the hearing decision. Therefore, the Allocations Branch could not approve an upgrade for the

^{1/} Until recently, there was a competing applicant, Boswell Broadcasting Company ("BBC") (BPH-950504MF). However, BBC has voluntarily withdrawn its application. See Exhibit 1.

No. of Copies rec'd
List ABCDE

024

M.M.B

channel without having a permit to modify.

2. Here, RBI is now a single applicant for Channel 277C3 at Kosciusko and the application is ripe for grant. There has been no opposition pleadings filed nor issues raised by the Commission staff. Thus, the Allocations Branch can process this petition and coordinate with Audio Services Division to determine when the permit to RBI for Channel 277C3 at Kosciusko is issued. However, any delay in issuing the permit should not delay the issuance of a Notice of Proposed Rule Making based on the legitimate expectation that a permit will be granted.

CHANGE IN COMMUNITY OF LICENSE

3. RBI applied for Channel 277C3 at Kosciusko and intended to construct and operate a station for the community. However, RBI prefers to serve Goodman, Mississippi and provide a first local service to those residents. RBI hereby states that if the Commission grants this proposal, it will file an application to serve Goodman and construct the facility.

4. This proposal meets the requirements set forth in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989) recons. granted in part 5 FCC Rcd 2094 (1990). Kosciusko (pop. 6,986) (1990 U.S. Census) located in Attala County, is well served by Stations WKOZ(AM), WBKJ(FM) and WJTA(FM). Whereas, Goodman, in Holmes County (pop. 1,256) has no local service. Thus, Goodman would receive a priority for a first local service over a fourth local service to Kosciusko. See Revision of FM Allotment Policies and Procedures 90 FCC 2d 88 (1982).

5. As shown in the attached engineering statement the allotment of Channel 277C3 to Goodman is in conflict with the retention of Channel 277C3 at Kosciusko. Otherwise, the proposed allotment meets the Commission's spacing requirements.

6. Goodman is not located in any urbanized area nor will the proposed 70 dBu coverage area reach any part of an urbanized area. Goodman is an incorporated community with its own post office, zip

code (39079), typical community businesses, governmental services and cultural organizations. See Exhibit 2.

7. Since the channel is currently unused at Kosciusko, despite the change in the proposed transmitter site there will be no actual loss in existing service. See e.g., Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995); Douglas, Tifton and Unionville, GA., 10 FCC Rcd 7706 (1995); Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995). As for the proposed 60 dBu coverage area (Goodman) compared to the applied for 60 dBu coverage area (Kosciusko), there will be a gain in the area and population. See Exhibit 3.

8. Accordingly, Rainey Broadcasting, Inc. proposes to reallocate Channel 277C3 from Kosciusko, Mississippi to Goodman, Mississippi, in order to provide a first local service, and to modify the permit of Rainey Broadcasting, Inc., upon its issuance, accordingly.

Respectfully submitted,

RAINEY BROADCASTING COMPANY, INC.


By: Mark N. Lipp
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 637-9086

Its Counsel

September 17, 1997

PH002.001

::ODMA\PCDOCS\GFBDPCS\8863\1

EXHIBIT 1

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

In Re Application of

Boswell Broadcasting Company

for a New FM station at
Kosciusko, MS

)
)
)
)
)
)

File No. BPH-950504MF

To: Mass Media Bureau

MOTION TO DISMISS

Boswell Broadcasting Company ("Boswell"), by and through counsel and pursuant to Section 73.3568(a) ^{1/} of the Commission's Rules, 47 C.F.R. Sec. 73.3568(a), hereby files a motion to dismiss the above-captioned application. The application has been pending for over two years now, has yet to be designated for hearing and Boswell has decided not to pursue it at this time. See attached Statement of applicant.

WHEREFORE, the premises considered, the above-captioned application should be dismissed.

Respectfully submitted,
BOSWELL BROADCASTING COMPANY

By: /s/ William D. Silva
William D. Silva
Law Offices of William D. Silva
5335 Wisconsin Avenue, N.W.
Suite 400
Washington, D.C. 20015-2003

September 2, 1997

^{1/} This dismissal is not being filed pursuant to Section 73.3525.

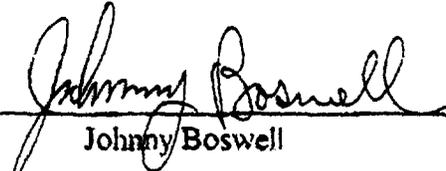
STATEMENT

I, Johnny Boswell, hereby state under penalty of perjury as follows:

1. I am a partner in Boswell Broadcasting Company, which filed an application for a new FM station in Kosciusko, Mississippi (File No. BPH-950504MF) on May 4, 1995.

2. We are no longer interested in prosecuting this application and request that it be returned.

3. This action is being taken voluntarily and unilaterally by Boswell Broadcasting Company.


Johnny Boswell

8/18/1997
Date

CERTIFICATE OF SERVICE

I, William D. Silva, certify that I have, on this 2nd day of September, 1997, caused the foregoing Motion to Dismiss to be mailed, via first class mail, postage prepaid, to the following persons:

Mark Lipp, Esquire
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Rainey Broadcasting

/s/ William D. Silva
William D. Silva

EXHIBIT 2

RAINEY BROADCASTING, INC.
INFORMATION FOR GOODMAN, MS

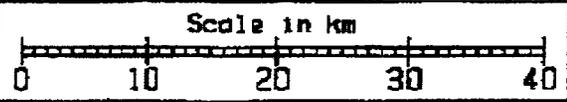
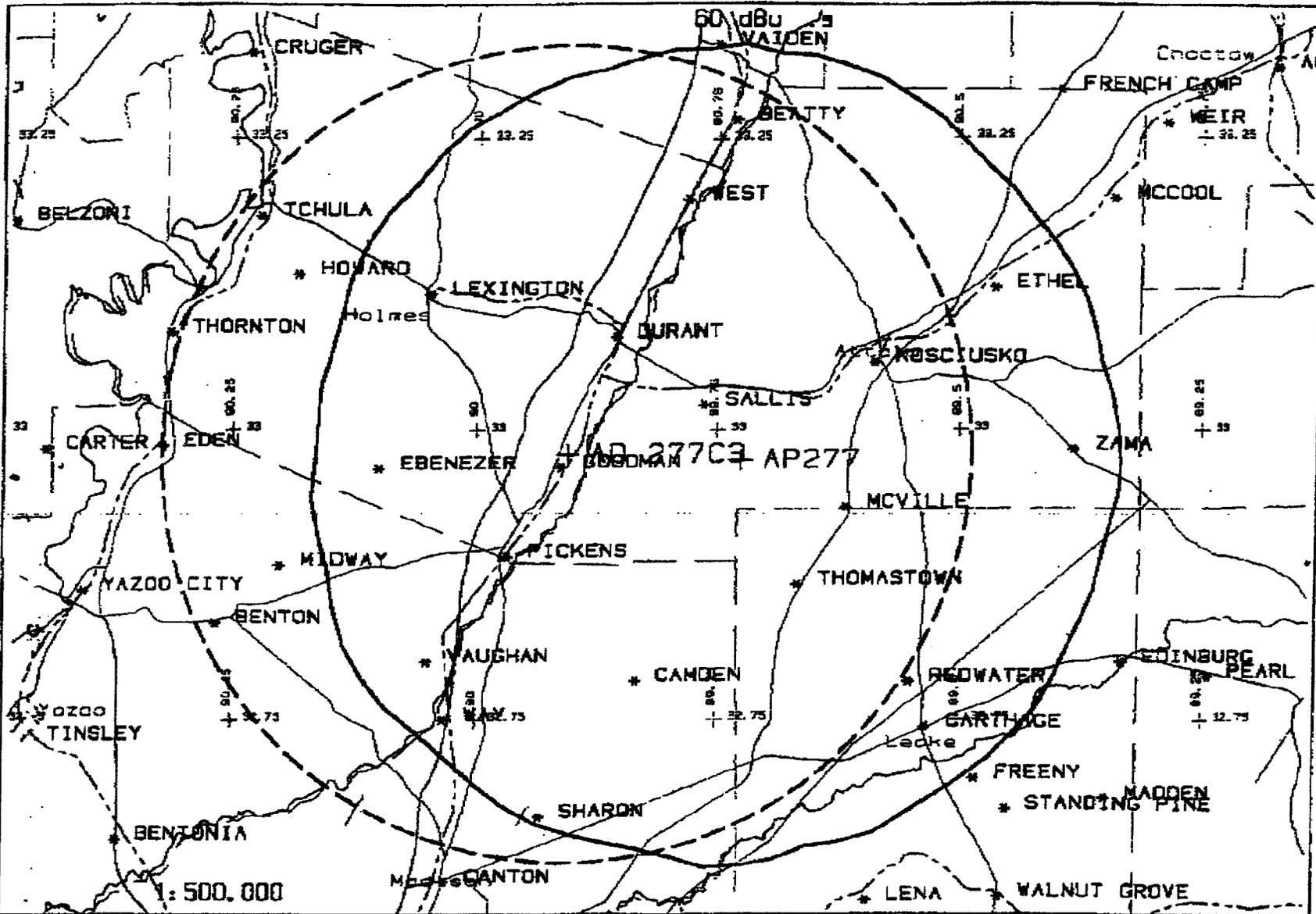
CITY OF GOODMAN, MS
COUNTY OF HOLMES
TOWN HALL
601-472-2263
MAYOR
JOHN ESTEP
BOARD OF ALDERMAN (5)
POPULATION
1,300
INDUSTRY
HOLMES JR. COLLEGE - 1,500 STUDENTS
FARMING
POLICE CHIEF - BILLY FLOYD
FIRE CHIEF - TERRY MOON
NEWSPAPER
WEEKLY - HOLMES COUNTY JOURNAL
GOODMAN MAGNOLIA CLUB
MEETS 3RD MONDAY - SEPT. - MAY
WOMEN'S READING CLUB
MONTHLY MEETINGS
MASONIC LODGE
3RD TUESDAY EACH MONTH
CITIES IN TRADE AREA OF GOODMAN, MS
LEXINGTON, MS
DURANT, MS
PICKENS, MS
TCHULA, MS
WEST, MS

EXHIBIT 3

	Area (in sq. km)	population
AP 277	4,775.3	51,315
AD 277 C3	4,803.8	51,867
overlapped	3,665.4	42,388

AD 277 C3 is 0.6 percent larger in area compared to AP 277 and has 1.1 percent more population.

The overlapped area is 76.8 percent of the area of AP 277 and has 17.4 percent less population.



N. Lat. 32 58 36 W. Lng. 89 49 11

AP277/AL277 COMPAR
REYNOLDS TECHNICAL

ENGINEERING STATEMENT

IN SUPPORT OF A

PETITION FOR RULE MAKING

Channel 277C3 Kosciusko, Mississippi
Rainey Broadcasting, Inc.

GENERAL

The instant engineering statement supports a petition for rule making by Rainey Broadcasting, Inc. ("RAINEY") which is a Mississippi Corporation and an applicant for channel 277C3 at Kosciusko, Mississippi. Rainey is hereby petitioning the Commission to institute a Notice of Proposed Rule Making (NPRM) for the deletion of channel 277C3 at Kosciusko and allocation of the same channel and class to Goodman, Mississippi, as that community's first local service. Rainey has an agreement with the other applicant for channel 277C3 at Kosciusko, Boswell Broadcasting Company, concerning the proposed changes. That agreement is discussed in the legal section of the instant petition.

CHANNEL 277C3 AT GOODMAN QUALIFICATIONS

As shown by the attached channel study, channel 277C3, when allocated to Goodman, appears to have no short spacing to any known licensed facilities, proposed minor changes or proposed rule makings. It also appears that the nearest short spacing concerns are as follows: WMSI(FM), (channel 275C) Jackson, Mississippi, at 207.7° (Degrees) True;

ALOPEN(FM) (channel 278C), Como, Mississippi, at 18.4°(Degrees) True; WWKZ(FM), (channel 278C), New Albany, Mississippi, at 31.1°(Degrees) True; and WMBC(FM), (channel 276C2) Columbus, Mississippi, at 72.3° True. The intersecting of these minimum distance separation contours create the location area (window) for a fully spaced antenna site for channel 277C3 at Goodman.

Exhibit A is an allocations study using a minor site restriction (1.23 km) for a channel 277C3 at Goodman reference site. The allocations study depicts that the proposed channel 277C3 allocation site at Goodman is only 17.19 kilometers from the same channel's reference coordinates at Kosciusko. Therefore, the two allocations are mutually exclusive.

Exhibit B is a computer generated map depicting the allocations window for channel 277C3 at Goodman. The clear spaced location window is depicted as a shaded area. In addition, a class C3 70 dBu contour is shown (23.2 km). The required city grade contour service to the community of license is clearly demonstrated.

PETITION SUMMARIZE

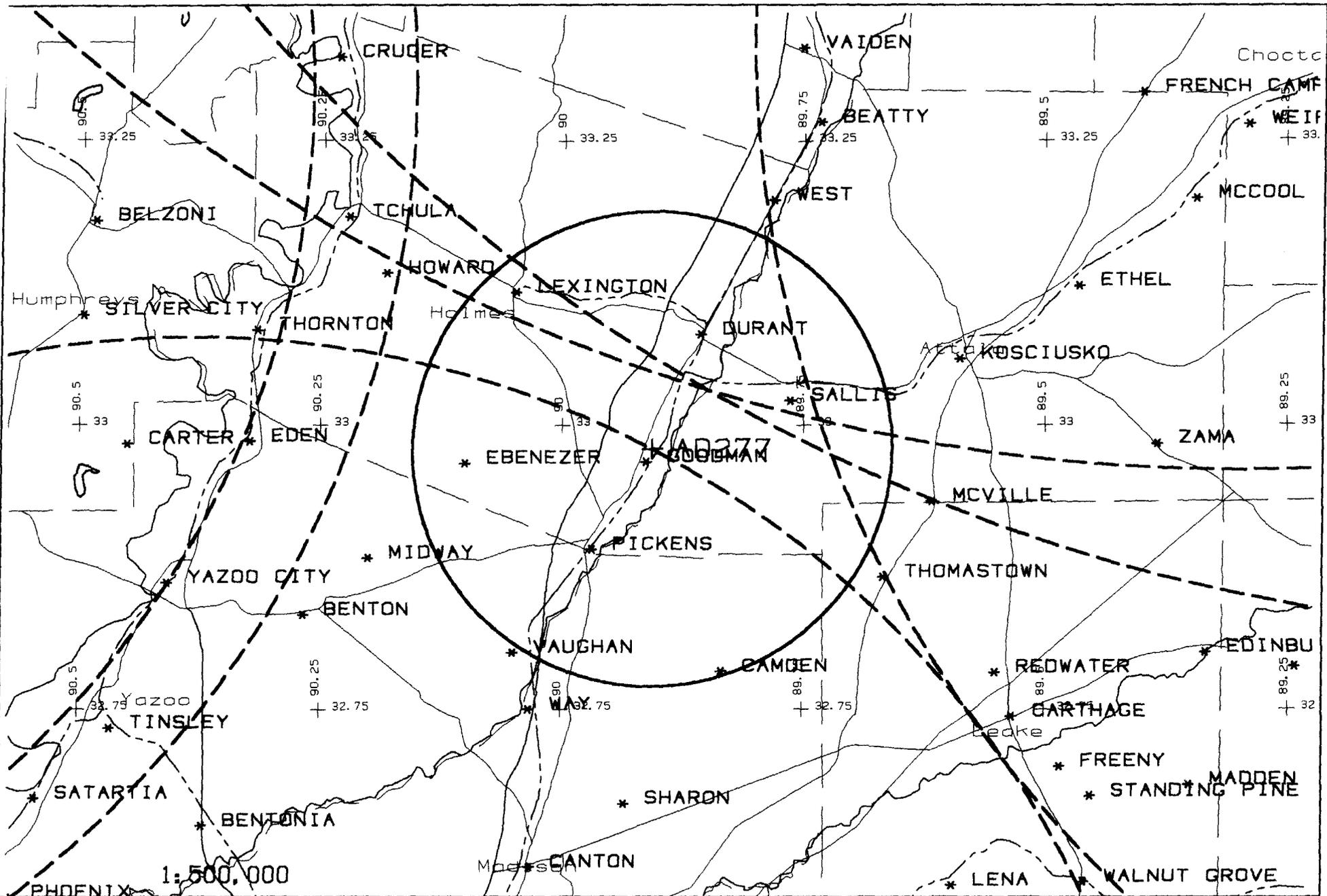
The petition for the allocation of channel 277C3 at Goodman can be SUMMARIZE as follows:

<u>COMMUNITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Kosciusko	286C1 - 277C3	286C1
Goodman	-----	277C3

No substitutions of channels in other markets or interruption of service are necessary for this allocation. Since there are no channel deletions or substitutions necessary for the allocation of channel 277C3 at Goodman, it can be allotted and Rainey can file an application for a construction permit filed immediately.

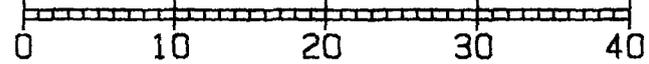
CONCLUSION

RAINEY is petitioning the Commission to institute a Notice of Proposed Rule Making leading to the deletion of channel 277C3 at Kosciusko and the allocation of that same channel at Goodman as that community's first local service. This channel is available for allocation immediately, as it requires no deletions and/or substitutions in other communities.



1:500,000

Scale in km



N. Lat. 32 58 45

W. Lng. 89 54 22

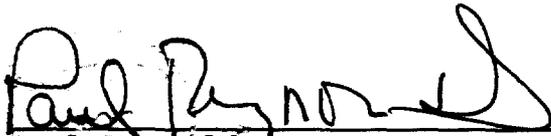
AD 277C3 GOODMAN, N
REYNOLDS TECHNICAL

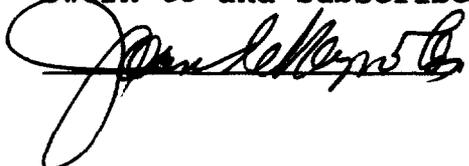
ENGINEERING CERTIFICATION

STATE OF ALABAMA)
BUTLER COUNTY)

Paul Reynolds, being first duly sworn upon oath deposes and says:

- * That he has completed undergraduate studies in the field of communications at the University of Southern Mississippi.
- * That he has completed course requirements for a Masters Degree in communications at the University of Alabama.
- * That he completed basic electronics at DeVry Technical Institute.
- * That he has been operating as an independent communications consultant since 1980.
- * That he is familiar with the Commission's Rules and Regulations.
- * That the engineering information for the instant Rainey Broadcasting, Inc. petition for rule making at Goodman, Mississippi, was prepared by him or under his direct supervision.
- * That all information presented is believed to be true and correct and in full compliance of the technical standards contained in the Commission's Rules and Regulations in affect at the time of the petition's filing date.

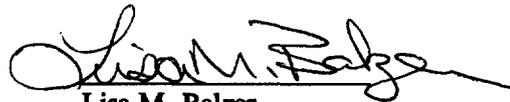

Paul Reynolds

Sworn to and subscribed before, this 7 day of JULY, 1997.
 my commission expires 7-15-2000.

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Ginsburg, Feldman and Bress Chartered, do hereby certify that I have this 17th day of September, 1997, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "PETITION FOR RULE MAKING" to the following:

William D. Silva, Esq.
Law Offices of William D. Silva
5335 Wisconsin Avenue, NW
Suite 400
Washington, DC 20015-2003
(Counsel to Boswell Broadcasting Company)


Lisa M. Balzer