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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 25 1998

FEDERAL MAIL ROOM

In the Matter of )  
 )  
Amendment of Section 73.202 )  
FM Table of Assignments )  
(Macon, Mississippi) )

MM Docket No. 97-188  
RM-9137

To: Chief, Policy and Rules Division

PETITION FOR RECONSIDERATION IN PART

Colon Johnston ("Johnston") by counsel, pursuant to Section 1.415 of the Commission's Rules, herewith submits his petition for reconsideration in part of the Commission's action pursuant to delegated authority in the above referenced proceeding by Report and Order (DA 98-812), released May 1, 1998. 1/

In support whereof the following is shown:

BACKGROUND

1. On May 5, 1997, Team Broadcasting Company filed a Petition for Rulemaking, seeking the allotment of FM Channel 244A to Macon, Mississippi. On June 23, 1997 Johnston filed a Petition for Rulemaking, seeking the allotment of FM Channel 244C2 to Walnut Grove, Mississippi. The allotments requested in the two petitions were mutually exclusive.

2. Subsequently, on June 25, 1997, Autauguaville Radio, Inc. filed a one-step modification application (File No.

1. Contrary to the requirements of the Commission's Rules, a copy of the Report and Order was not served upon Johnston or his undersigned counsel.

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BMPH-970625IE), seeking to modify its existing construction permit for unbuilt station, WKXK(FM), to specify operation on FM Channel 244C2 at Pine Hill, Alabama.

3. By Notice of Proposed Rulemaking (DA 97-1846), released August 29, 1997, the Commission, proposed to allot FM Channel 244A to Macon, Mississippi, in response to the Petition for Rulemaking, filed by Team Broadcasting Company.

4. Johnston filed timely Comments in response to the Commission's Notice of Proposed Rulemaking (DA 97-1846), reiterating the request advanced in his Petition for Rulemaking, filed June 23, 1997, that the Commission assign FM Channel 244C2 to Walnut Grove, Mississippi, in lieu of the proposed assignment of Channel 244A to Macon, Mississippi, and reiterating his pledge to file the necessary application for construction permit upon issuance of an order, implementing the requested assignment of Channel 244C2 at Walnut Grove, Mississippi, and to construct the proposed station upon receipt of authorization to do so.

5. The Petitioner, Team Broadcasting Company, filed a "Request to Dismiss Petition for Rulemaking", withdrawing its previously submitted expression of interest.

6. Metro Radio, Inc. submitted timely Comments in support of the proposal advanced in the Notice of Proposed Rulemaking (DA 97-1846, including an expression of interest in filing for and constructing a new FM broadcast station to serve Macon, Mississippi. No other comments or counterproposals were timely submitted.

7. By Report and Order (DA 98-812), released May 1, 1998, the Commission, acting pursuant to delegated authority, allotted Channel 263A to Macon, Mississippi, in order to obviate the mutual exclusivity between the use of Channel 244A at Macon, Mississippi, and the above referenced one step modification application of WKXX(FM) at Pine Hill, Alabama.

8. In the Report and Order (DA 98-812) the Commission simultaneously rejected and refused to treat Johnston's Petition for Rulemaking as a counterproposal in this proceeding. In that regard the Commission asserted that:

[t]he proposed allotment of Channel 244C2 to Walnut Grove was short-spaced to the reference coordinates, as well as to the pending application of Station WKXX for Channel 244C3 (BPH-950608MF) at Pine Hill, Alabama, and to a new one-step upgrade application (BMPH-970625IE) for Channel 244C2 also at Pine Hill. Report and Order at Note 1.

9. The Commission's determination with respect to the proposal advanced in Johnston's Petition for Rulemaking was erroneous. Accordingly, for the reasons set forth below, Johnston petitions for reconsideration of the Commission's action, rejecting his Petition for Rulemaking, and its failure to treat said Petition as a counterproposal and allot Channel 244C2 to Walnut Grove, Mississippi in its Report and Order in the above proceeding. However, Johnston does not seek reconsideration of the Commission's action, allotting Channel 263A to Macon, Mississippi, which action would have no negative impact upon and is entirely compatible with the allotment of Channel 244C2 to Walnut Grove, Mississippi.

## ARGUMENT

10. As an initial matter, the Commission's contention that the proposed allotment of FM Channel 244C2 to Walnut Grove, Mississippi at the coordinates specified in Johnston's Petition for Rulemaking would be shortspaced to the reference coordinates for the allotment of Channel 244C3 at Pine Hill, Alabama, is erroneous. By Report and Order (DA 95-840), released May 24, 1995, 10 FCC Rcd. 4437, the Commission allocated Channel 244A to Pine Hill, Alabama at the following coordinates:

North Lat.: 32-01-38; West Long.: 87-37-23.

As reflected in the attached Technical Report of Olvie E. Sisk, the proposed allotment of FM Channel 244C2 to Walnut Grove, Mississippi at the coordinates specified in Johnston's Petition for Rulemaking are fully spaced from the reference coordinates for the allocation at Pine Hill, Alabama. <sup>2</sup>/

11. With regard to the Commission's contention that the proposed allotment of FM Channel 244C2 to Walnut Grove, would be shortspaced to "the pending application of Station WKXX for Channel 244C3 (BPH-950608MF)", this contention is both erroneous and irrelevant in any event. In that regard, the referenced application (File No. BPH-950608MF) specified Class A, not Class C3 facilities. See: Public Notice Report No. 23534, released June 22, 1995. Furthermore, as reflected in the attached Technical Report of Olvie E. Sisk, the proposed allotment of FM Channel

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2. No protection is required to the coordinates (32-03-00; 87-46-24) for the used C3 allocation.

244C2 to Walnut Grove, Mississippi at the coordinates specified in Johnston's Petition for Rulemaking would be fully spaced to the coordinates specified in BPH-950608MF (32-04-24; 87-35-27), even as a Class C3, by more than 7.0 kilometers. Finally, clearance with respect to BPH-950608MF is irrelevant in any event, inasmuch as that application/permit was superseded by a subsequent application/permit, identified by File No. BMPH-960528IF.

12. As reflected in the attached Technical Report of Olvie E. Sisk and as previously demonstrated by Johnston in his Petition for Rulemaking and Counterproposal, the proposed allotment of FM Channel 244C2 to Walnut Grove, Mississippi at the coordinates specified in Johnston's Petition for Rulemaking would be fully spaced to the coordinates (32-04-24; 87-35-27), specified in WKXK(FM)'s outstanding construction permit (File No. BMPH-960528IF) by more than 7.0 kilometers.

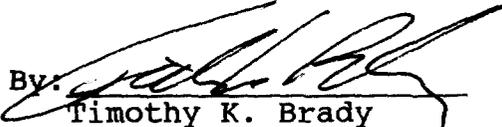
13. With regard to the Commission's contention that the proposed allotment of FM Channel 244C2 to Walnut Grove, Mississippi at the coordinates specified in Johnston's Petition for Rulemaking would be shortspaced to "a new one-step upgrade application (BMPH-970625IE) for Channel 244C2 also at Pine Hill", this contention, likewise, is irrelevant, inasmuch as that application was not on file as of the date of the filing of Johnston's Petition for Rulemaking (June 23, 1997). Accordingly, the proposal advanced in Johnston's Petition for Rulemaking is not required to provide clearance to BMPH-970625IE and takes

precedence over and precludes the grant of that application, as filed.

14. Accordingly, inasmuch as the each of the bases of the Commission's rejection of Johnston's Petition for Rulemaking and its failure to treat said Petition as a counterproposal and allot Channel 244C2 to Walnut Grove, Mississippi in its Report and Order in the above proceeding were erroneous, reconsideration is warranted. Inasmuch as the requested allocation of Channel 244C2 to Walnut Grove, Mississippi would comply fully with the Commission's Rules and all applicable spacing requirements, and, accordingly, was entitled to be treated as a counterproposal and implemented in the above proceeding, the Commission must reverse its action in that regard and amend Section 73.202 of its Rules by allocating FM Channel 244C2 to Walnut Grove, Mississippi, as requested.

Respectfully Submitted,

COLON JOHNSTON

By: 

Timothy K. Brady  
His Attorney

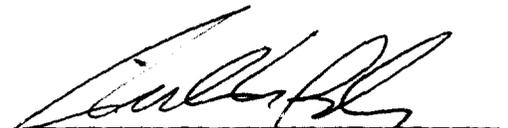
P.O. Box 986  
Brentwood, TN 37027-0986  
(615) 371-9367

May 25, 1998

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have, this 22nd day of May, 1998 served a copy of the foregoing Petition for Reconsideration in Part by First Class mail, postage prepaid upon the following:

Frank R. Jazzo, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street, 11th Floor  
Rosslyn, VA 22209  
(Counsel for Metro Radio, Inc.)

  
Timothy K. Brady

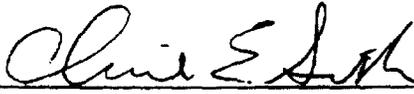
## **Engineering Statement**

These engineering exhibits have been prepared by Olvie E. Sisk, of Sisk Engineering Inc., of Tupelo Mississippi, whose experience and educational background is a matter of record with the Federal Communications Commission.

Exhibit 1 is a computer generated allocation study which shows that the proposal for Walnut Grove, Mississippi, does meet the requirements of 73:202 in regards to the new station at Pine Hill, Alabama, as a C3.

Exhibit 2 is also a generated allocation study which illustrates and shows in detail that the proposal for Walnut Grove does comply with 73:202 in regards to the reference coordinates assigned to Pine Hill, Alabama.

These two exhibits have been prepared under the direct supervisor of Olvie E. Sisk.

Signed this date, May 22, 1998  Olvie E. Sisk

GENE SISK - SISK ENGINEERING  
 HWY. 25 S. - RADIO BUILDING - FULTON MS 38843

REFERENCE		CLASS C2	DISPLAY DATES
32 42 50 N		Current rules spacings	DATA 03-31-98
89 23 48 W		CHANNEL 244 - 96.7 MHz	SEARCH 05-22-98

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
WOKK	246C1	Meridian	MS	122.9	79.33	79.0	0.33 <
WFFFFM	244A	Columbia	MS	194.7	166.44	166.0	0.44 <
WTCD.C	245C2	Indianola	MS	316.3	132.29	130.0	2.29 <
WJDX	242C	Jackson	MS	241.0	108.28	105.0	3.28
WJDX.C	242C	Jackson	MS	239.6	110.87	105.0	5.87
CP244	244C3	Pine Hill	AL	112.7	184.16	177.0	7.16
KWCLFM	244C3	Oak Grove	LA	275.0	184.26	177.0	7.26
WSELFM	244A	Pontotoc	MS	13.4	175.44	166.0	9.44
WTCD	245C3	Indianola	MS	312.4	144.63	117.0	27.63
WFMN	247C3	Flora	MS	250.5	85.86	56.0	29.86
WKXIFM	298C1	Magee	MS	216.1	62.62	27.0	35.62
WLZA	241C2	Eupora	MS	19.0	97.76	58.0	39.76

REFERENCE  
 32 42 50 N  
 89 23 48 W

DISPLAY DATES  
 DATA 05-19-98  
 SEARCH 05-22-98

Current Spacings  
 ----- Channel 244 - 96.7 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
WOKK	LI 246C1	Meridian	MS	79.33	122.9	79.0	0.33
WFFFEM	LI 244A	Columbia	MS	166.44	194.8	166.0	0.44
WTCD.C	CP 245C2	Indianola	MS	132.29	316.7	130.0	2.29
WJDX	LI 242C	Jackson	MS	108.28	241.2	105.0	3.28
WJDX.C	CP 242C	Jackson	MS	110.87	239.8	105.0	5.87
WKXK.C	CPM 244C3	Pine Hill	AL	184.16	112.3	177.0	7.16
KWCLFM	LI 244C3	Oak Grove	LA	184.26	275.6	177.0	7.26
WSELFM	LI 244A	Pontotoc	MS	175.44	13.2	166.0	9.44
ALOPEN	AL 244A	Pine Hill	AL	183.47	114.1	166.0	17.47
WTCD	LI 245C3	Indianola	MS	144.63	312.8	117.0	27.63
WFMN	LI 247C3	Flora	MS	85.86	250.7	56.0	29.86
WKXIFM	LI 298C1	Magee	MS	62.62	216.1	27.0	35.62
WLZA	LI 241C2	Eupora	MS	97.76	18.8	58.0	39.76
WXHB	LI 243A	Richton	MS	156.09	165.6	106.0	50.09
WMJJ	LI 243C	Birmingham	AL	248.57	70.2	188.0	60.57