

FCC MAIL SECTION

Federal Communications Commission

DA 98-1629

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DISP TO [unclear]

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

In the Matter of)	
Amendment of Section 73.202(b),)	MM Docket No. 94-155
Table of Allotments,)	RM-8468
FM Broadcast Stations.)	RM-8802
(Big Pine Key, Clewiston, Ft. Myers)	
Villas, Indiantown, Jupiter, Key Colony)	
Beach, Naples and Tice, Florida) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 5, 1998

Released: August 14, 1998

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making and Order to Show Cause, 10 FCC Rcd 24 (1995), issued in response to a petition filed by Gulf Communications Partnership ("Gulf"), permittee of Station WAAD, Channel 229A, Tice, Florida. Gulf requested the substitution of Channel 229C2 for Channel 229A at Tice, Florida, and modification of its construction permit to specify operation on the higher class channel. In order to accomplish the upgrade at Tice, Gulf also requested the substitution of Channel 283C for Channel 284C at Big Pine Key, Florida, and modification of the license for Station WWUS, substitution of Channel 267C2 for Channel 280C2 at Key Colony Beach, Florida, and modification of the construction permit for Station WKKB to specify operation on Channel 267C2, and substitution of Channel 284A for Channel 228A at Naples, Florida, and modification of the license for Station WNOG to specify operation on Channel 284A.

2. In response to the Notice, comments were filed by The Palmer Broadcast Group ("Palmer"), licensee of Station WNOG, Channel 228A, Naples, Florida. Gulf filed comments and a counterproposal. Joint comments and a counterproposal were filed by Amaturio Group, Ltd. ("Amaturio"), licensee of Station WPBZ, Channel 276C2, Indiantown, Florida, WSUV, Inc. ("WSUV"), licensee of Station WROC, Channel 292A, Ft. Myers Villas, Florida, Glades Media Company ("Glades"), licensee of Station WAFC, Channel 292A, Clewiston, Florida, and GGG Broadcasting, Inc., ("GGG"), licensee of Station WJBW, Channel 258A, Jupiter, Florida, ("Joint

¹ The caption has been amended to include the communities of Clewiston, Fort Myers Villas, Indiantown and Jupiter, Florida.

Counterproponents").² Reply comments were filed by Palmer, Joint Counterproponents and Gulf. On May 15, 1996, Palm Beach and Gulf filed a supplement to joint reply comments.

3. Palmer, licensee of Station WNOG, Naples, Florida, opposes the substitution of Channel 284A for Channel 228A at Naples. Palmer states that although it acquired Station WNOG in 1993, the station has been in operation since December 1, 1971, providing a variety of informational programming as well as keeping the citizens of Collier County informed of foul weather warnings. Palmer acknowledges that the Notice contends that the channel change will enable Station WNOG to operate as a six kilowatt station. Palmer points out, however, that an increase from three kilowatts to six kilowatts will not improve the station coverage as Station WNOG currently provides the required coverage of Naples. Palmer argues that if Station WNOG is forced to change frequency, it may be required to reduce power to comply with FAA regulations and could actually reduce its service to current listeners. Palmer strongly objects to any proposed frequency change which could result in a total loss or reduction in service for Station WNOG.

4. Gulf counterproposed the substitution of Channel 229C2 for Channel 229A at Tice, Florida, and reallocation of the channel from Tice to Estero, Florida. According to Gulf, the upgrade and reallocation can be made in compliance with the Commission's separation requirements, consistent with other channel modifications specified in the Notice. Gulf states that the allotment of Channel 229C2 will provide a first local service to Estero which is a Census Designated Place located in Lee County, Florida, and that the 1990 Census credited Estero with a population of 3,177 people. Gulf further provides that Estero has its own civic association, provides local fire service to the community, is represented at the County Government level by its own Commissioner, has its own churches, residential areas, an elementary and high school and numerous businesses such as Estero Bay Properties, Inc. and Estero Tropical Fruits and Gifts. Gulf believes that Estero clearly qualifies as an independent community deserving of its own local radio service. Gulf argues that although Tice will not have a local transmission service, the community will experience no loss of reception service because deletion of an unbuilt construction permit from a community does not constitute a loss of existing service. Thus, the Commission's policy against allowing deletion of a community's only local transmission service is not implicated. Gulf pledges that, in the event the Commission adopts Gulf's counterproposal or the proposal set forth in the Notice, it will reimburse the licensees of Station WNOG, Naples and WWUS, Big Pine Key, and to the extent requested, the permittee of Station WKKB, Key Colony Beach, for the reasonable costs associated with the modification of their existing facilities.

5. The counterproposal filed by Amaturro, WSUV, GGG and Glades ("Joint Counterproponents") provides two alternative proposals for upgrading four stations and the addition of a new first local service. The Joint Counterproponents point out that Gulf's

² The counterproposals filed by Gulf (RM-8802) and Joint Counterproponents (RM-8803) were put on public notice on May 24, 1996, Report No. 2134.

proposal will provide an upgrade for only one station, resulting in expanded service for 247,873 people while either of their proposals will provide expanded service to over 724,000 people.

FIRST ALTERNATIVE

Community	Present Channel	Proposed Channel	Call Sign
Indiantown	276C2	276C1	WPBZ
Naples	276C3	284C3	WSGL
Big Pine Key ³	284C	281C	WWUS
Key Colony Beach	280C2	267C2	WKKB
Ft. Myers Villas	292A	292C2	WROC
Clewiston ⁴	292A	258C3	WAFC
Jupiter	258A	292C3	WJBW
Avon Park	292A	256A	WVOJ

SECOND ALTERNATIVE

Indiantown	276C2	276C1	WPBZ
Naples	276C3	284C3	WSGL
Big Pine Key	284C	281C	WWUS
Key Colony Beach	280C2	267C2	WKKB
Palm River ⁵	-----	292A	-----
Ft. Myers Villas	292A	275C2	WROC
Clewiston	292A	258C3	WAFC
Jupiter	258A	292C3	WJBW

6. The **first alternative** proposes a co-channel upgrade for Station WPBZ, Indiantown, Channel 276C2 to Channel 276C1, which requires the substitution of Channel 284C3 for Channel 276C3, WSGL, Naples. To accommodate Indiantown and Naples, it is necessary to substitute Channel 281C for Channel 284C, WWUS, Big Pine Key, which requires a site change for Channel 228C, WKRY, Key West, to eliminate potential IF interference. Key Chain Broadcasting, Inc., licensee of Station WKRY, has agreed to change its transmitter site. Additionally, the substitution of Channel 267C2 for Channel 280C2 at Key Colony Beach, Station WKKB, eliminates the short spacing between Stations WWUS, Big Pine Key, and WKKB, Key Colony Beach. This allows Station WNOG, Naples, to remain on Channel 228A.

³ The substitution of Channel 281C is possible because of Channel changes for WZMQ, Key Largo, Florida, from Channel 280C2 to Channel 292C2 and WAVK, Marathon, Florida, from Channel 292A to Channel 288C2. See 9 FCC Rcd 4051 (1994).

⁴ An incompatible channel swap occurs between Station WAFC, Clewiston, and Station WJBW, Jupiter.

⁵ Joint Commenters request an allotment at Palm River but indicate that other neighboring communities such as East Naples or Estero, Florida, would also be suitable for a new allotment.

The first alternative also proposes an upgrade for Station WROC from Channel 292A to Channel 292C2 at Fort Myers Villas, Florida. The substitution of Channel 292C2 for Channel 292A, Station WROC, Fort Myers Villas, creates a short spacing to Station WAFC, Channel 292A, Clewiston, which is eliminated if Station WAFC moves to Channel 258C3. The Joint Counterproponents point out that Station WAFC, Clewiston, may upgrade on Channel 258C3 without accepting competing expressions of interest because it involves an incompatible channel swap with Station WJBW, Jupiter, which has agreed to the swap. The substitution at Clewiston requires a change in transmitter site for Station WJBX, Channel 257C2, Fort Myers Beach. Schefflera, Inc., licensee of Station WJBX, has agreed to the change in transmitter site. Finally, the substitution of Channel 292C2 for Channel 292A, WROC, Fort Myers Villas, requires the substitution of Channel 256A for Channel 292A, Avon Park, Florida, Station WWOJ, and Channel 293A for Channel 292A, Sarasota, Florida, Station WSZR. The substitutions at Avon Park and Sarasota have been granted. See 7 FCC Rcd 2557, 2558 (1992). This first alternative conflicts with Gulf's original rulemaking proposal because the Joint Counterproponents' proposed use of Channel 284C3 for Station WSGL, Channel 276C3, at Naples is mutually exclusive with Gulf's proposal to substitute Channel 284A for Channel 228A at Station WNOG, to accommodate the Tice upgrade.

7. The **second alternative** proposes channel changes for WPBZ (Indiantown), WSGL (Naples), WWUS (Big Pine Key) and WKKB (Key Colony Beach) identical with those proposed in the **first alternative**. The **second alternative** also proposes the allotment of Channel 292A at Palm River, Florida, as a first local service. The proposed allotment at Palm River is short spaced to Channel 292A, Station WROC, Fort Myers Villas and to Channel 292A, Station WAFC, Clewiston. To eliminate the short spacing, the Joint Counterproponents propose the allotment of Channel 275C2 at Ft. Myers Villas and Channel 258C3 at Clewiston as incompatible channel swaps. The substitution at Clewiston requires the substitution of Channel 292C3 for 258A, Station WJBW, Jupiter. In addition, the substitution of Channel 258C3 at Clewiston requires a change in the transmitter site for Station WJBX, Channel 257C2, Fort Myers Beach for which consent has been obtained. The second alternative of the Joint Counterproponents conflicts with Gulf's rulemaking proposal in the same way as the first alternative.

8. The Joint Counterproponents, as beneficiaries of the substitutions required to accommodate a grant of either alternative proposal, state that they are aware of and will honor their obligations under Commission policy to compensate the permittees and licensees of stations for making channel substitutions, in accordance with Circleville, Ohio, 8 FCC 2d 159 (1967), should their counterproposal be adopted. Further, Joint Counterproponents contend that each alternative proposal requires at most two involuntary channel changes to operating stations and therefore complies with the requirements of Columbus, Nebraska, 59 RR 2d 1184 (1986). All the other stations have consented. Specifically, both alternatives require involuntary channel changes of operating stations WSGL, Channel 276C3, Naples, Florida, and WWVS, Channel 284C, Big Pine Key, Florida. While Station WKKB, Channel 280C2, Key Colony Beach, is required to change channels, it is unbuilt, and, as a result consent is not required. See *NPRM* in this proceeding. The Joint Counterproponents argue that either of their proposals

better serves the public interest and goals of Section 307(b) of the Communications Act than the Gulf proposal and that the Commission should grant alternative one or two of their counterproposal.

9. Palmer, in reply comments, continues to oppose the channel substitution proposed by Gulf for Palmer's Station WNOG, Naples, restating its concerns over complete loss or drastic curtailment of service by its station which would disserve the public interest. Palmer does support the Joint Commenters' counterproposals for upgrading four stations. Palmer urges the Commission to adopt one of the alternative counterproposals as either proposal will further the public interest by allowing Station WNOG to remain on its current channel and continue to provide vital programming without disruption to the citizens of Naples.

10. Joint Counterproponents and Gulf filed joint reply comments proposing a joint resolution to the pending proposal and counterproposals, allowing each party requesting an upgrade in this proceeding to upgrade its facilities and permitting five stations to provide wide area service to 1,229,204 persons.⁶ Gulf also filed reply comments in response to Palmer's objection to the Order to Show Cause, stating that Palmer has provided no substantial evidence supporting a denial of the channel change at Naples, Florida. Gulf argues that Palmer's arguments are irrelevant to the instant proceeding and are insufficient to merit a reversal of the Commission's initial finding that the proposed channel substitutions would be in the public interest. Furthermore, Gulf states that it is aware of its obligation to reimburse Palmer for its reasonable expenses and is prepared to meet that obligation. On May 15, 1996, Key Chain, Inc., licensee of Station WKRY, Key West, Florida, withdrew its consent to relocate the transmitter for Station WKRY in connection with the Joint Counterproponent's proposal.⁷ Palm Beach Radio

⁶ Specifically, this joint resolution proposed the following allotments:

Community	Present Channel	Proposed Channel	Call Sign
Indiantown	276C2	276C1	WPBZ
Naples	276C3	284C3	WSGL
Big Pine Key	284C	281C1	WWUS
Key Colony Beach	280C2	267C2	WKKB
Naples	228A	292A	WNOG
Ft. Myers Villas	292A	275C2	WROC
Clewiston	292A	258C3	W AFC
Jupiter	258A	292C3	WJBW
Tice	229A	-----	-----
Estero		229C2	WAAD

⁷ The site change for Station WKRY, Key West, was required to allow for the substitution of Channel 281C for Channel 284C at Big Pine Key, and modification of the license for Station WWUS accordingly. On January 11, 1995, by Letter Order, the Mass Media Bureau, Audio Services Division, dismissed Crain Communications, Inc.'s, Petition for Reconsideration and affirmed dismissal of its pending broadcast application (File No. BPH-870302MQ) to retain full Class C FM facilities for Station WWUS on Channel 284 at Big Pine Key, Florida. Crain has requested the Commission to dismiss the pending Motions and has advised the Commission that it will accept

Broadcasting, Inc., permittee of Station WPBZ, Indiantown, Florida, states that Key Chain's withdrawal has no impact on the technical viability of the joint counterproposal as Station WWUS, Big Pine Key, has been downgraded from a Class C facility to a Class C1 facility, which no longer requires a site change at Key West.⁸

11. On May 15, 1996, Palm Beach Radio Broadcasting, Inc. permittee of Station WPBZ, Indiantown, Florida, and Gulf Communications Partnership, permittee of Station WAAD, Tice, Florida, filed an amendment and joint resolution to the counterproposals filed in this proceeding.⁹ The revised joint resolution provided the following solution to accommodate the parties in this proceeding:

Community	Present Channel	Proposed Channel	Call Sign
Indiantown	276C2	276C1	WPBZ
Naples	276C3	284C3	WSGL
Big Pine Key	284C	281C1	WWUS
Key Colony Beach	280C2	267C2	WKKB
Fort Myers Villas	292A	275C2	WROC
Clewiston	292A	258C3	WAFC
Jupiter	258A	292C3	WJBW
Tice	229A	292C2	WAAD

12. In response to our public notice, three parties objected to the revised joint resolution. First, WSUV, Inc. ("WSUV"), licensee of Station WJST, formerly Station WROC, Fort Myers Villas, Florida, strongly opposes adoption of the revised joint resolution proposing the substitution of Channel 275C2 for Channel 292A at Fort Myers Villas because this would require a change of its transmitter site and because its current Channel 292 would be given to an unbuilt competitor in the same market (Station WAAD, Tice) for its upgrade.¹⁰ As an alternative, WSUV suggests using the allotments proposed in the revised joint resolution with two changes: upgrade Station WAAD, Tice, on Channel 275C2 and upgrade WJST, Fort

an automatic downgrade of Station WWUS's frequency from Channel 284C to Channel 284C1.

⁸ On June 30, 1995, Palm Beach Radio Broadcasting, Inc. and Amaturto Group, Ltd. consummated an assignment of license for Radio Station WPBZ, Indiantown, Florida, from Amaturto to Palm Beach (BALH-950223GN).

⁹ Public notice of the counterproposals and the revised joint resolution was given on May 24, 1996, Report No. 2134 (RM-8802).

¹⁰ WSUV acknowledges that it had consented to change transmitter sites as part of the original joint resolution, but WSUV states that its consent was premised on Channel 292 not being reallocated in the same market.

Myers Villas to Class C2 on existing Channel 292.¹¹ Second, Spanish Broadcasting Systems of Florida, Inc. ("SBS"), licensee of Station WZMQ, Key Largo, Florida, argues that the Commission should issue a Further Notice of Proposed Rule Making with regard to the communities and channels advanced in the public notice of May 24, 1996, to allow for additional comments and consideration because the 15-day comment period did not provide a "meaningful opportunity" for comment under the Administrative Procedures Act and because the use of channel 292C2 at Tice precludes Spanish from upgrading its station WZMQ, Key Largo, from Channel 292C2 to Channel 292C1. To alleviate this problem, SBS proposes one additional change to the joint resolution by requesting the substitution of Channel 292C3 for Channel 229A at Tice, Florida, which would allow Station WZMQ, Key Largo, to file an application for a one-step upgrade from Channel 292C2 to Channel 292C1.¹² Third, Sterling Communications Corporation ("Sterling"), licensee of Station WSGL, Naples, Florida, objects to the substitution of Channel 284C3 for Channel 276C3 at Naples. According to Sterling, the proposed substitution will prevent further upgrade of its facilities. Sterling states that it has had an application prepared to upgrade to Channel 276C2 at its present site which will be filed with the Commission.¹³

13. By way of contrast, the following six parties supported the revised joint resolution. Meridian Broadcasting, Inc. ("Meridian"), proposed assignee of Station WNOG, Naples, Florida, states that it has no objection to the proposed change of channels from 228A to 292A. Meridian supports the resolution of this proceeding in a manner that changes the WNOG operating frequency to Channel 292A.¹⁴ Key Media Company, Inc. ("Key") permittee of Station WKKB, Key Colony Beach, Florida, supports the allotment of Channel 267C2 in place of Channel 280C2 at Key Colony Beach. According to Key, operation on Channel 267C2 will not impact in a negative way on any parties to this or any other proceeding and that Key would like to begin operation as soon as possible. GGG Broadcasting, Inc., licensee of Station WJBW, Jupiter, Florida, and Glades Media Company, licensee of Station WAFC, Clewiston, Florida ("GGG and Glades") state that the joint resolution which proposes to upgrade Stations WJBW and WAFC from Class A to Class C3 service would generally result in improved service for the affected stations and would overall serve the public interest. In the absence of

¹¹ Alternatively, WSUV also proposes another allotment scheme under which the Tice and Fort Myers Villas stations could upgrade on their existing channels, the Jupiter and Clewiston stations could upgrade on Channels 292C3 and 258C3, but the Indiantown station would not be able to upgrade. See WSUV's Reply Comments, filed June 10, 1996 at 9.

¹² The Channel 292C2 allotment at Key Largo, Florida, was approved in MM Docket No. 93-136, effective September 30, 1994 (see 10 FCC Rd 6548 (1995)). That proceeding, initiated by Spanish Broadcasting, substituted Channel 292C2 for Channel 280C2, Key Largo, substituted Channel 280C2 for Channel 288C2, Key Colony Beach and substituted Channel 288C2 for Channel 292A, Marathon

¹³ The application was filed June 13, 1996 (BPH-960613IC).

¹⁴ An application proposing assignment of Station WNOG to Meridian was sent to the FCC on June 7, 1996 (BALH-960607HS).

approval for all the changes outlined in this proceeding, GGG and Glades urge the Commission to approve the channel swap between Stations WJBW and WAFC. Palm Beach Radio Broadcasting, Inc. ("Palm Beach") and Gulf Communications Partnership ("Gulf") fully support the counterproposal and joint resolution given public notice on May 24, 1996.

14. Conflicting proposals, such as have been filed in this proceeding, are comparatively considered under the guidelines set forth in Revision of FM Assignment and Policies and Procedures, 90 FCC 2d 88 (1982).¹⁵ However, since several parties have filed supplemental comments which assist in resolving the proceeding without prejudicing any stations not directly involved in this rule making, there is no need to perform such an analysis. Beasley Radio, Inc. ("Beasley"), assignee of Station WJST (formerly WROC), Fort Myers Villas, filed clarifying comments requesting that they be considered.¹⁶ Beasley states that it supports WSUV's proposed change to the revised joint resolution-i.e., the allotment of Channel 275C2 at Tice for Station WAAD and the allotment of Channel 292C2 at Fort Myers Villas for Station WJST. Beasley adds that it has been authorized by Gulf, in the interest of resolving this proceeding, to state that Gulf no longer prefers Channel 229C2 or Channel 292C2 and fully endorses the allotment of Channel 275C2 at Tice (WAAD) and the allotment of Channel 292C2 at Fort Myers Villas (WJST). In a further attempt to resolve this proceeding, Palm Beach Radio Broadcasting, Inc., licensee of Station WPBZ, Indiantown, Florida, and Sterling Communications Corp., licensee of Station WSGL, Naples, Florida, filed comments and an agreement which dismisses Sterling's one-step application (BPH-960613IC) to substitute Channel 276C2 for Channel 276C3 at Naples.¹⁷ Sterling has consented to the substitution of Channel 284C3 for Channel 276C3 at Naples. Sterling's consent removes the need for issuance of an Order to Show Cause to be directed to Sterling Communications Corp.

15. In view of the above, we believe that the public interest would be served by adopting the revised joint resolution along with WSUV/Beasley's proposed changes at Tice and Fort Myers Villas because this allotment scheme enables five stations to upgrade and expand their service areas. Specifically, we shall substitute Channel 276C1 for Channel 276C2 at

¹⁵ The priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [co-equal weight given to priorities (2) and (3).]

¹⁶ The assignment of license for Station WJST from WSUV, Inc. to Beasley Radio, Inc. was consummated on February 11, 1998. A Form 316 application is pending for a voluntary assignment of license from Beasley Radio, Inc. to WJST License Limited Partnership (BALH-980514GF).

¹⁷ Palm Beach Radio Broadcasting, Inc. and Sterling Communications Corp. filed an agreement which dismissed Sterling's Application BPH-960613IC to modify WSGL's facilities through a one-step application from Channel 276C3 to Channel 276C2. Sterling has agreed to the substitution of Channel 284C3 for Channel 276C3 at Naples and modification of the license for Station WSGL. Palm Beach has agreed to reimburse Sterling for its expenses incurred in connection with the preparation, filing and prosecution of the 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, in compliance with Section 1.420(j) of the Commission's Rules.

Indiantown, Florida, and modify the construction permit for Station WPBZ accordingly.¹⁸ To accommodate the allotment of Channel 276C1 at Indiantown, we shall substitute Channel 284C3 for Channel 276C3 at Naples, Florida, and modify the license for Station WSGL to specify operation on the new channel.¹⁹ To accommodate Channel 284C3 at Naples, we shall substitute Channel 281C1 for Channel 284C1 at Big Pine Key, Florida, and modify the license for Station WWUS to reflect the new channel.²⁰ The licensee at Big Pine Key was issued an order to show cause and did not respond. Under these circumstances, it is deemed to have consented to a change of channels. The allotment of Channel 284C1 at Big Pine Key requires the substitution of Channel 267C2 for Channel 280C2 at Key Colony Beach, Florida, and modification of the construction permit for Station WKKB to specify operation on Channel 267C2.²¹ Key Media, licensee of Station WKKB, has consented to this channel change. As requested by Beasley Radio, Inc., we shall substitute Channel 292C2 for Channel 292A at Ft. Myers Villas, Florida, and modify the license of Station WJST accordingly.²² Station WAFC, Clewiston, Florida, Channel 292A, and Station WJBW, Jupiter, Florida, Channel 258A, have agreed to swap channels to accommodate Station WJST, Ft. Myers Villas.²³ The swap of channels allows Station WAFC and Station WJBW to increase their respective facilities from Class A to Class C3. Station WJBX, Ft. Myers, Florida, has agreed to a site change for Channel 257C2 to accommodate the allotment of Channel 258C3 at Clewiston.²⁴ And, finally, as requested, we shall substitute Channel 275C2 for Channel 229A at Tice, and modify the construction permit for Station WAAD to specify operation on the new channel.²⁵

16. While Spanish Broadcasting objected to the allotment of Channel 292C2 at Tice as proposed in the revised joint resolution, we note that under the allotment scheme we are adopting, Channel 292C2 is being allotted to Fort Myers Villas instead of Tice, permitting Station WJST, Fort Myers Villas, to upgrade on its existing channel, as proposed in the Joint Commenter's original counterproposal. As a result, we need not solicit further comment on Spanish Broadcasting's proposal to upgrade the Tice station on Channel 292C3 instead of

¹⁸ The coordinates for Channel 276C1 at Indiantown are 26-56-22 and 80-07-04.

¹⁹ The coordinates for Channel 284C3 at Naples are 26-07-33 and 81-43-17.

²⁰ The coordinates for Channel 281C1 at Big Pine Key are 24-39-38 and 81-25-10.

²¹ The coordinates for Channel 267C2 at Key Colony Beach are 24-42-25 and 81-06-67.

²² The coordinates for Channel 292C2 at Ft. Myers Villas are 26-30-18 and 81-51-14.

²³ The coordinates for Channel 258C3 at Clewiston are 26-41-00 and 80-46-00. The coordinates for Channel 292C3 at Jupiter are 26-51-30 and 80-06-00. Our staff engineering analysis has confirmed that the exchange of channels is an "incompatible channel swap." *See supra para 6.*

²⁴ The new site for Channel 257C2 at Ft. Myers is 26-27-30 and 81-56-40.

²⁵ The coordinates for Channel 275C2 at Tice are 26-29-09 and 82-00-24.

Channel 292C2, which would facilitate the filing of a one-step upgrade application by Spanish Broadcasting for its Station WZMQ, Key Largo, Florida, from Channel 292C2 to Channel 292C1. Furthermore, we disagree with Spanish Broadcasting that our public notice of May 24, 1996, announcing the counterproposals and the revised joint resolution, did not provide a "meaningful opportunity" for comment under the Administrative Procedure Act. We believe that the 15 days provided for comment is sufficient and note that this is the same amount of time that we provide for comment on counterproposals in all allotment proceedings.

17. Pursuant to Commission policy, reimbursement to Stations WSGL, Naples, WWUS, Big Pine Key, WKKB, Key Colony Beach, and Station WJBX, Fort Myers Beach, for the reasonable costs of changing frequencies or sites will be governed by Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). In response to concerns raised in comments, we expect the parties to negotiate in good faith, subject to Commission review only in the event of disagreement. See Mayfield and Wickliff, Kentucky, 48 RR 2d 1232 (1981). Gulf Communications Partnership and the Joint Counterproponents have acknowledged responsibility to reimburse Stations WSGL, WWUS, WKKB, and WJBX for the reasonable costs in changing frequencies or sites.

18. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 28, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Indiantown, Florida	276C1
Naples, Florida	228A, 233C, 284C3
Big Pine Key, Florida	281C1
Key Colony Beach, Florida	267C2
Ft. Myers Villas, Florida	292C2
Clewiston, Florida	258C3
Jupiter, Florida	288C3, 292C3
Tice, Florida	275C2

19. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Division, shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Sterling Communications Corp.
Station WSGL (Naples)
P. O. Box 14369
Tallahassee, Florida 32317

Crain Broadcasting, Inc.
Station WWUS (Big Pine Key)
1400 Woodbridge Avenue
Detroit, Michigan 48207

Keys Media Company, Inc.
Station WKKB (Key Colony Beach)
116 Commercio Street
Clewiston, Florida 33440

Beasley Radio, Inc.
Station WJST (Ft. Myers Villas)
330s Riviera Dr., Suite 200
Naples, Florida 33940

Glades Media Company
Station WAFC (Clewiston)
116 Commercio Street
Clewiston, Florida 33440

GGG Broadcasting, Inc.
Station WJBW (Jupiter)
6699 N. Federal Highway
Boca Raton, Florida 33487

Dillion Lic. Lim. Partnership
Station WJBX (Fort Myers Beach)
P. O. Box 2563
Fayetteville, North Carolina 28302

20. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station WPBZ, Indiantown, Florida, IS MODIFIED to specify operation on Channel 276C1 in lieu of Channel 276C2; the license for Station WJST, Ft. Myers Villas, Florida, IS MODIFIED to specify operation on Channel 292C2 in lieu of Channel 292A; the license for Station WAFC, Clewiston, Florida, IS MODIFIED to specify operation on Channel 258C3 in lieu of Channel 292A; the license for Station WJBW, Jupiter, Florida, IS MODIFIED to specify operation on Channel 292C3 in lieu of Channel 258A; and the construction permit for Station WAAD, Tice, Florida, IS MODIFIED to specify operation on Channel 275C2 in lieu of Channel 229A, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program

tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

21. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station WSGL, Naples, Florida, IS MODIFIED, to specify operation on Channel 284C3 in lieu of Channel 276C3; the license of Station WWUS, Big Pine Key, Florida, IS MODIFIED, to specify operation on Channel 281C1 in lieu of Channel 284C1; and the construction permit for Station WKKB, Key Colony Beach, Florida, IS MODIFIED, to specify operation on Channel 267C2 in lieu of Channel 280C2, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the license for Station, WSGL, Naples, Station WWUS, Big Pine Key, or the construction permit for Station WKKB, Key Colony Beach, Florida, except for the channels as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the license for Station WSGL, Naples, Station WWUS, Big Pine Key, or with the construction permit for Station WKKB, Key Colony Beach, Florida, except for the channels as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

22. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Gulf Communications Partnership, permittee of Station WAAD, Tice, Florida, Palm Beach Radio Broadcasting, Inc., permittee of Station WPBZ, Indiantown, Florida, Beasley Radio, licensee of Station WJST(FM), Ft. Myers Villas, FL, Glades Media Co., licensee of Station WAFC(FM), Clewiston, FL, and GGG Broadcasting, Inc., licensee of Station

WJBW(FM), Jupiter, FL are required to submit rule making fees in addition to the fees required for the applications to effect the upgrades at Tice, Florida, and Indiantown, Florida, Ft. Myers Villas, Florida, Clewiston, Florida, and Jupiter, Florida.

23. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

24. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau