

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

In the Matter of	)	MM Docket No. 97-116
	)	RM-9050
Amendment of Section 73.202(b)	)	RM-9123
(Table of Allotments)	)	
FM Broadcast Stations	)	
	)	
Everglades City, LaBelle, Estero	)	
and Key West, Florida	)	

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**STATEMENT FOR THE RECORD**  
**AND**  
**REQUEST FOR EXPEDITED ACTION**

InterMart Broadcasting West Coast, Inc. ("InterMart"), licensee of WWWD(FM), LaBelle, Florida, by its attorneys, hereby respectfully files this Statement for the Record and Request for Expedited Action in connection with the Commission's *Notice of Proposed Rule Making ("NPRM")*, 12 FCC Rcd 4212 (released April 18, 1997),<sup>1</sup> that proposed to allot Channel 224A to Everglades City, Florida, as its first local service. On June 9, 1997, InterMart counterproposed<sup>2</sup> instead, that the Commission amend Section 73.202(b) of the Rules to (a) delete Channel 223C3 from LaBelle, Florida; (b) add

<sup>1</sup> The counterproposal is mutually exclusive with the proposal to allot Channel 224A to Everglades City. InterMart is separately seeking leave to file this pleading.

<sup>2</sup>The Counterproposal was placed on Public Notice (Report No. 2211, released July 10, 1997).

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Channel 223C3 to Estero, Florida; (c) modify the license for WKZY(FM)<sup>3</sup>, LaBelle, to specify "Estero, Florida" as the Station's city of license, and (d) modify the license of WEOW(FM), Channel 223C1, Key West, Florida, to operate on Channel 224C1 at Key West. The Commission issued an *Order to Show Cause*, DA 97-2238, released October 24, 1997, that directed the licensee of WEOW to show cause why its license should not be modified to accommodate the WWWD proposal. On November 26, 1997, the former licensee of WEOW filed comments supporting InterMart's proposal.

**WBIY, LaBelle, Florida, Has Filed an Application for License to Cover Permit**

One of the two factors that must be demonstrated in order to change a station's community of license in a rule making proceeding is that the rule making must not deprive a community of an existing service representing its only local transmission service. *See Modification of FM and TV Authorizations (New Community of License)*, 4 FCC Rcd 4870 [66 RR 2d 877] (1989). On November 23, 1998, the Commission granted to Toccoa Falls College a construction permit (File No. BPED-970407MF) for a new noncommercial FM station at LaBelle, Florida, to operate on Channel 202A. Call sign "WBIY" has been assigned to the new station. The WBIY facilities have been constructed and Toccoa Falls College has filed an application for license (File No. BLED-990426KE). See FCC Public Notice Report No. 24479, released May 4, 1999 (copy attached). Thus, LaBelle, Florida, will not be deprived of its only local transmission service if WWWD relocates to Estero, Florida. The grant of a covering application for license is generally regarded as a ministerial act, so the Commission can now act on InterMart's request to assign Channel 223C3 to Estero.

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<sup>3</sup> The call sign of WKZY has been changed to WWWD.

### **Request for Expedited Consideration**

InterMart is seeking expedited consideration for this matter. The docket has been active since April 18, 1997 - more than two years. In addition to permitting WWWD to expand its service and provide first local service to Estero, Florida, the approval of InterMart's counterproposal would also permit the assignment of a new noncommercial FM Station at Bayshore, Florida. An application (File No. BPED-960826MK) has been filed by Community Resource Foundation, Inc. ("Community"), for a construction permit for a new noncommercial educational FM station at Bayshore, Florida. On August 29, 1996, InterMart filed an application (File No. BMPH-960829IB) for a minor change to modify its construction permit for WWWD to operate as a Class C3 station. On December 4, 1996, the FCC granted InterMart's application. However, on January 3, 1997, the Commission discovered that the Community application had been filed three days prior to the InterMart application, and accordingly rescinded the grant of the InterMart application, declaring the two applications to be mutually exclusive. InterMart has sought reconsideration of the Commission's action, and the Bayshore application has been accepted for filing. The Commission believes it cannot grant either application until the issues of mutual exclusivity are resolved. Allotting Channel 223C3 to Estero would eliminate the need to resolve this potential mutually exclusive condition, and allow the Community application to be granted when WWWD relocates to Estero. Thus, prompt positive action on InterMart's counterproposal would result in the Commission bringing a first local service to Bayshore, Florida, as well as Estero.

WHEREFORE, InterMart again respectfully requests the Commission promptly to amend Section 73.202(b) of the Commission's Rules, as follows:

Florida

	<u>Present</u>	<u>Proposed</u>
LaBelle	223C3	(202A)*
Estero	----	223C3
Key West	223C1	224C1

Conclusion

- InterMart requests the Commission to (a) allot Channel 223C3 to Estero, Florida, (b) modify the license of WWWD to operate on FM Channel 223C3 at Estero, Florida, (c) modify the license of WEOW to operate on Channel 224C1 at Key West, Florida, and (d) deny the proposal to allot Channel 224A to Everglades City, Florida.

Respectfully submitted,

**INTERMART BROADCASTING  
WEST COAST, INC.**

By: \_\_\_\_\_



Gary S. Smithwick  
Its Attorney

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May 4, 1999

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\*WBIY assigned to this channel - Application for license pending.

**ATTACHMENT A**



# PUBLIC NOTICE

Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 24479

## BROADCAST APPLICATIONS

May 04, 1999

93083

<u>STATE</u>	<u>FILE NUMBER</u>	<u>CALL LETTERS</u>	<u>APPLICANT AND LOCATION</u>	<u>NATURE OF APPLICATION</u>
UHF TRANSLATOR STATION APPLICATIONS FOR RENEWAL ACCEPTED FOR FILING				
NY	BRTT	-990129AX	W59BV TRI-STATE CHRISTIAN TV, INC. ROCHESTER, NY	RENEWAL OF LICENSE
WY	BRTT	-990126AD	K26DK LARRY H. MILLER COMMUNICATIONS CORP. ROCK SPRINGS, WY	RENEWAL OF LICENSE
UHF TV TRANSLATOR LOW POWER BROADCAST APPLICATIONS FOR RENEWAL ACCEPTED FOR FILING				
NJ	BRTTL	-990128AG	W23BA PAXSON COMMUNICATIONS LPTV, INC. EAST ORANGE, NJ	RENEWAL OF LICENSE
NJ	BRTTL	-990129AI	W44AW WLG-TV, INC. MORRISTOWN, NJ	RENEWAL OF LICENSE
NJ	BRTTL	-990129AT	WLBX-LP CRAIG L. FOX ELIZABETH, NJ	RENEWAL OF LICENSE
NY	BRTTL	-990106AA	WNYX-LP ISLAND BROADCASTING COMPANY MINEOLA, NY	RENEWAL OF LICENSE
NY	BRTTL	-990106AB	WNYX-LP ISLAND BROADCASTING COMPANY NEW YORK, NY	RENEWAL OF LICENSE
NY	BRTTL	-990106AC	WXNY-LP ISLAND BROADCASTING COMPANY NEW YORK, NY	RENEWAL OF LICENSE
NY	BRTTL	-990115AA	WAWW-LP EQUITY BROADCASTING CORPORATION ROCHESTER, NY	RENEWAL OF LICENSE
NY	BRTTL	-990115AB	WAWA-LP EQUITY BROADCASTING CORPORATION SYRACUSE, NY	RENEWAL OF LICENSE

## VHF TV TRANSLATOR LOW POWER BROADCAST APPLICATIONS FOR RENEWAL ACCEPTED FOR FILING

NY BRTVL	-990129AK	W13BU	CRAIG L. FOX SYRACUSE, NY	RENEWAL OF LICENSE
NY BRTVL	-990129AL	W40BJ	CRAIG L. FOX DE WITT, NY	RENEWAL OF LICENSE
NY BRTVL	-990201CJ	WPNY-LP	QUORUM OF UTICA LICENSE CORP. LITTLE FALLS, NY	RENEWAL OF LICENSE

## NON-COMMERCIAL EDUCATIONAL FM APPLICATIONS FOR LICENSE OR LICENSE MODIFICATION ACCEPTED FOR FILING

AL BLED	-990427KA	WAKD 89.9 MHZ	AMERICAN FAMILY ASSOCIATION SHEFFIELD, AL	LIC TO COVER
CA BLED	-990426KD	KDVS 90.3 MHZ	REGENTS OF THE UNIV. OF CALIFORNIA DAVIS, CA	LIC TO COVER
CO BLED	-990428KA	KVMT 89.1 MHZ	NORTH FORK VALLEY PUBLIC RADIO, INC MONTROSE, CO	LIC TO COVER
FL BLED	-990426KE	WBIY 88.3 MHZ	TOCCOA FALLS COLLEGE LA BELLE, FL	LIC TO COVER

## FM BROADCAST STATION APPLICATIONS FOR LICENSE OR LICENSE MODIFICATION ACCEPTED FOR FILING

FL BLH	-990421KA	WTLT 93.5 MHZ	MERIDIAN BROADCASTING, INC. NAPLES, FL	LIC TO COVER
GA BLH	-990426KA	WGGF 107.5 MHZ	AUGUSTA RADIO FELLOWSHIP INS., INC. Donalsonville, GA	LIC TO COVER
KY BLH	-990422KC	WKLX 100.7 MHZ	CHARLES M. ANDERSON BROWNSVILLE, KY	LIC TO COVER
LA BLH	-990426KB	KQIS 102.1 MHZ	THIRD PARTNER BROADCASTING, INC. BASILE, LA	LIC TO COVER

**CERTIFICATE OF SERVICE**

I, Angela Y. Powell, a paralegal in the law offices of Smithwick & Belendiuk, P.C.,  
certify that on this 4th day of May 1999, copies of the foregoing were mailed to the following:

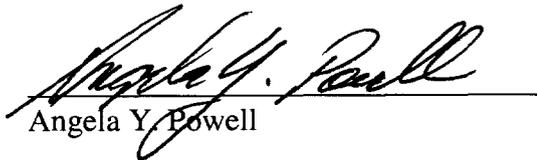
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(\*) by hand