

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)
In The Matter Of)
)
Amendment of Section 73.606 (b))
Table of Allotments)
Television Broadcast Stations)
(Plaquemine, Louisiana))
_____)

MM Docket No. _____

RM No. _____

To: Chief, Allocations Branch

AMENDMENT TO PETITION FOR RULE MAKING

Fant Broadcast Development, L.L.C.

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Dated: July 12, 2000

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SUMMARY

Fant Broadcast Development, L.L.C. ("Fant") amends its pending petition for rule making to allot a new NTSC television channel at Plaquemine, Louisiana to substitute channel 57 for channel 50 in Fant's original petition. This proposal would enable the Commission to allot the first local television service to Plaquemine and to foster the creation of competitive national television networks, such as the WB Television Network, which has expressed a willingness to enter into an affiliation agreement with Fant for this channel.

This amendment is necessary because Fant's original proposal would substantially interfere with three digital television stations. This amended proposal is fully-spaced to NTSC stations, but is short-spaced to two digital television stations by 1.19 and 21.11 kilometers. However, Fant shows herein that no interference would be caused or received to or from one of the two digital stations, and the interference to the other station would be less than .5% and, thus, should be ignored.

The Commission should waive the policy it announced in Public Notice, 14 FCC Rcd 19559 (1999) that an amendment such as this one comply with the minimum separations to DTV stations in §73.623(d) (and, although §73.623(d) does not impose such a requirement on NTSC proposals, the Commission should to the extent necessary waive that regulation itself) and grant this proposal. It represents the best way to bring the first local television service to the residents of Plaquemine and to carry out the Commission's longstanding policy goal of fostering the emergence of new networks. There will be substantial public interest benefits from a grant of this proposal, with no corresponding harm to the public.

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To: Chief, Allocations Branch

AMENDMENT TO PETITION FOR RULE MAKING

Fant Broadcast Development, L.L.C. ("Fant"), by its attorneys, hereby submits this amendment to its pending petition for rule making to amend the TV Table of Allotments to allot channel 50 to Plaquemine, Louisiana. By this amendment, Fant proposes instead that channel 57 be allotted to Plaquemine, Louisiana. Thus, Fant's proposal, as amended, is to amend Section 73.606(b) of the Commission's rules as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Plaquemine, Louisiana	---	57

I. Background

On July 23, 1996, Fant filed a petition for rule making to allot to amend the TV Table of Allotments by allotting channel 50 to Plaquemine, Louisiana.¹ That proposal was within the

¹Fant also filed an application for a construction permit for channel 50 at Plaquemine, LA on July 23, 1996. Consistent with the Window Notice, Fant will amend its application to specify channel 57 at Plaquemine, LA as directed in an allotment Report and Order adding the channel to the TV Table of Allotments.

freeze zone established by Advanced Television Systems and Their Impact on the Existing Television Service, 52 Fed. Reg. 28346 (July 29,1987), and, thus, has not been processed, despite Fant's request for a waiver of the freeze based upon Fant's proposal to bring a first local television service to Plaquemine and the Commission's interest in fostering the emergence of competitive national television networks since the WB Television Network has indicated a willingness to enter into an affiliation agreement with Fant for Plaquemine.

Fant is filing this amendment to its petition for rulemaking pursuant to the Commission's Public Notice, 14 FCC Rcd 19559 (1999) ("Window Notice") announcing the opening of a window for the filing of, among other things, amendments to pending rule making petitions to amend the TV Table of Allotments to add new NTSC television channels.

As the attached Engineering Statement of Pete E. Myrl Warren, III of WES, Inc. explains, operation on channel 50 in Plaquemine would be substantially short-spaced (short spacing of 149.19 kilometers, 61.08 kilometers, and 61.03 kilometers) to three digital tv channels: digital channel 50 at New Orleans, digital channel 42 at Baton Rouge, and digital channel 46 at Baton Rouge, respectively. As a result, Fant proposes to amend its proposal by specifying NTSC channel 57 rather than channel 50, as is permitted under the Window Notice.

The attached Engineering Statement demonstrates that this allotment proposal complies with the minimum distance separations between NTSC stations in accordance with 47 C.F.R. § 73.610. The proposal will result in slight short-spacing to DTV channel 50 at New Orleans (1.19 kilometers) and short-spacing to DTV channel 57 at Columbia (21.11 kilometers). However, this amendment includes a waiver request. Fant will not cause or receive any interference from DTV channel 50 at New Orleans and the only interference to DTV channel 57 at Columbia will be less

than .5% (within rounding error) and must be ignored. See Establishment of a Class A Television Service, FCC 00-115, 2000 FCC Lexis 1746, *93 (March 28, 2000).

The attached Engineering Statement uses the coordinates of Fant's proposed transmitter site as the reference coordinates, pursuant to 47 C.F.R. §73.611(a)(4), because the proposed transmitter site is available. Specifically, there is an existing tower on the site, and Fant has obtained a letter of reasonable assurance for use of the site and the tower. Thus, this proposal should be assessed by using Fant's proposed site as the reference point under 47 C.F.R. §73.611(a)(4). And, with the proposed site as the reference point, Fant's proposed allocation is not short-spaced to any NTSC allocation and is short-spaced to just two DTV allotments, as already noted.

No NTSC allocation for Plaquemine that would be fully-spaced to DTV stations was possible. The proposed allocation is the best available.

II. The Public Interest Compels Grant of This Petition

Fant seeks to amend its proposal for an allotment to Plaquemine, Louisiana in accordance with the Window Notice so that a first local television service can be brought there. Fant filed its petition for rule making for the allotment almost four years ago, but no action could be taken because of the freeze. Now, in light of the Window Notice, this amendment to Fant's petition is the last opportunity for the allotment of a first local commercial television service to Plaquemine. There is no DTV allotment for Plaquemine. The residents of Plaquemine need a NTSC allotment if they are to receive a first local NTSC commercial television service. The public interest compels a grant of this petition under these circumstances to fulfill the Commission's

duty under section 307(b) of the Communications Act. See National Broadcasting Co. v. U.S., 319 U.S. 190, 217 (1943); FCC v. Allentown Broadcasting Co., 349 U.S. 358, 359-62 (1955).

As set forth in the accompanying waiver request, a grant of this petition will also serve the public interest because it will foster the development of a competitive national television network in the top 100 markets. For all of these reasons, more fully set forth below, the Commission should grant this petition, as amended.

III. Request for Waiver

A. Introduction

Fant hereby requests a waiver of the policy announced in Public Notice, 14 FCC Rcd 19559 (1999) (the "Window Notice") providing that amendments to existing petitions to add a new NTSC channel allotment must meet the minimum distance separations to DTV stations as provided in 47 C.F.R. §73.623(d), and to the extent necessary, a waiver of §73.623(d) itself. As shown in the attached Engineering Statement, the instant amendment to Fant's pending petition to add new NTSC channel at Plaquemine, Louisiana (which would allot channel 57 to Plaquemine rather than channel 50 in Fant's original petition for rule making) proposes a NTSC channel that is short-spaced to two DTV stations. The proposed allocation is short-spaced by 1.19 kilometers to digital channel 50 in New Orleans, Louisiana and 21.11 kilometers to digital channel 57 in Lafayette, Louisiana.

The public interest compels grant of a waiver here. Grant of Fant's petition will foster the emergence of a new national television network by establishing an outlet in a top 100 television market within which a new network, the WB Television Network ("WB"), has indicated a willingness to enter into an affiliation agreement with Fant for the station if this petition is

granted and Fant's application is granted. The WB needs new allotments, such as the one proposed here by Fant, if the WB is to become a strong competitive alternative to the four major television networks in all of the top 100 markets. This matter has been before the Commission since 1996; the residents of Plaquemine should not have to wait any longer for the new competitive service that Fant could provide.

Indeed, this petition is the last opportunity to provide this competitive alternative via NTSC service. Thus, a grant of this petition will not create any troublesome precedent. Rather, the petition should be granted because the citizens of Plaquemine should not have to wait indefinitely before getting their first local television service. As soon as the transition to DTV is completed and Fant can move to a fully-spaced DTV channel, it will do so.

B. Legal Standards

The Commission has long held that it will waive the NTSC minimum distance separations when the public interest will be better served by a waiver instead of insisting on strict compliance with the rules, E.g., K-W TV, Inc., 7 FCC Rcd 3617, 3618 (1992). While the Commission has in the past applied a stricter standard for a waiver at the allotment stage (a waiver of §73.610) than in an application, there is no precedent for the standard the Commission should use in weighing a waiver request, such as Fant's, which comes at the last opportunity to add NTSC allotments. Moreover, Fant is filing this amendment as the Commission has ordered the reallocation of channels 60-69 to public safety services, thereby limiting Fant's options in identifying a suitable NTSC channel. Under all of these circumstances, Fant submits that in weighing this waiver request, the Commission should apply a more lenient standard than it would if this were just a run-of-the-mill short-spaced allocation.

Under §73.610, the Commission would grant a waiver if the applicant showed that the public interest would be better served by grant of a waiver, but the Commission would only grant a waiver at the allotment stage based upon an extraordinary situation, special justification, or compelling need, E.g., K-W TV, Inc., 7 FCC Rcd at 3618; Portland, Tennessee, 35 FCC 2d 601, 602 (1972); Toms River, New Jersey, 43 FCC 2d 414, 417-418 (1973). The Commission did grant such waivers in the VHF Drop-In Proceeding, 81 FCC 2d 233 (1980), in which the Commission stated that the basic issue was whether the benefits of added competition, diversity, and service outweigh claims of potential harm.

Here, the benefits of added competition, diversity and service from a grant of this petition far outweigh any claim of potential harm. This is especially true because Fant's petition is fully in keeping with well-established Commission policy to foster the emergence of new national television networks, such as the network that has expressed a willingness to sign an affiliation agreement with Fant, the WB, See, e.g., VHF-Drop-In Proceeding, 81 FCC 2d at 253.

Accordingly, the circumstances surrounding this amendment do represent an extraordinary situation and evidence a compelling need. As already shown, the potential interference that will result is minor, and providing the citizens of Plaquemine with the potential for enjoying a competitive alternative to the big four television networks (and the town's first local television service) will be a substantial public benefit.

C. The Public Interest Compels Grant of This Request

The Commission previously has waived the distance separation requirements to permit the allotment of new television stations in an effort to foster the development of new networks in Docket No. 13340, Interim Policy on VHF Television Channel Assignments, 21 RR 1695 (1961),

recon. denied, 21 RR 1710a (1961) ("Interim Policy"). The Commission instituted a rulemaking proceeding in an effort to find a means of alleviating the need for additional channel assignments in the larger television markets in order to foster the development of a nationwide competitive television system.

The Commission concluded that the most efficient means of accomplishing its objective would be to permit, under limited circumstances, channel assignments at substandard spacings. The short-spaced allotments were authorized subject to the requirement that the new stations provide protection to the existing short-spaced stations to assure that they would not receive interference in excess of the amount they otherwise would receive from a co-channel station operating with maximum facilities at full distance separation. The Commission designated ten markets in which such a "squeeze in" procedure would be considered. Many of these proposals, as well as those which arose out of the Commission's Interim Policy, involved a third commercial VHF allotment in a market that was designed to provide an additional broadcast outlet which was critical to the establishment of a third competitive network. See, e.g., Grand Rapids, Michigan, 21 RR 1737 (1961) (Commission assigned a second VHF channel to Grand Rapids and a third to the Grand Rapids-Kalamazoo market),² Rochester, New York, 21 RR 1748a (1961)(same).

The same considerations warrant grant of a waiver here for Fant. There is no outlet for an affiliate of a fourth network in the area surrounding Plaquemine (including Baton Rouge). The

² In Grand Rapids, the Commission allotted Channel 13 to Grand Rapids, which required the substitution of Channel 9 for Channel 13 at Cadillac, Michigan, and the substitution of channel 7 for a Channel 9 allotment at Alpena, Michigan. Id. at 1745. The Commission's action was designed to alleviate the "critical shortage of competitively comparable facilities in major markets. . . ." 21 RR at 1745.

Engineering Statement demonstrates that Fant's proposed allotment will not receive excessive interference.

After issuing the Interim Policy, the Commission later extended its policy of waiving its spacing provisions in appropriate circumstances to permit "move-in" applications. In New Orleans Television Corp., 23 RR 1113, 1115 (1962), a New Orleans station, filed an application to move closer to its community of license to a site 30 miles short-spaced to a co-channel station in Jackson, Mississippi. The applicant requested a waiver of the mileage separation requirements and proposed to provide equivalent protection to the co-channel station. In reviewing the application, the Commission noted that its long-standing policy of fostering the development of "at least three" competitive television networks had often been frustrated by its inability to assign a third competitive commercial VHF channel. Id. at 1115. The Commission also expressly stated the rationale which it used to adopt the Interim Policy:

The problem with which the Commission grappled in Docket No. 11340 was the fostering of a nationwide competition network situation. To accomplish this purpose it is necessary to assure the availability of competitive facilities to the networks within the major markets, for the economic ability of a network to survive and furnish the public with the benefits of its operation hinges ultimately on its access to competitive facilities within the major markets. By assuring the existence of a third competitive station in New Orleans, the Commission benefits not only the viewing public of that city but, ultimately, the public of the entire nation. We believe that the benefits to be derived from furtherance of this policy justify the use of Channel 12 in New Orleans at substandard spacings.

Id. at 1117 (initial emphasis added), citing Interim Policy 21 RR at 1710.

Thus, in granting the short-spaced application, the Commission not only provided a third competitive station in New Orleans, but the public interest benefits resulting from the grant of the short-spaced application extended to the entire country due to the Commission's effort to foster

the emergence of a third national network. Id. at 1117. This same rationale supports grant of a waiver to Fant here, based upon the public interest benefits that will accrue from fostering an additional national television network.

Similarly, in Television Broadcasters, Inc., 4 RR 2d 119 (1965), an ABC affiliate sought to move its transmitter to a location which was 18.8 miles short-spaced to a co-channel station. The applicant proposed to provide equivalent protection to the co-channel station by directionalizing its signal away from the short-spaced station, and requested a waiver of Section §73.610 of the rules. Id. at 121. In support of its waiver request, the applicant claimed that, from its existing transmitter site, it could not effectively compete with the local CBS and NBC affiliates which served essentially the same area, and was operating at a substantial loss. Id. at 121.

The applicant contended that a grant of its application would enhance its competitive position as well as that of ABC vis-a-vis the other stations and networks in the market, and would provide its coverage area with a third competitive network television service. Id. at 123. In granting the application and accompanying request for waiver of Section §73.610 of the rules, the Commission stated:

While it is neither our purpose nor function to assure competitive equality in any given market, we have a duty at least to take such actions as will create greater opportunities for more effective competition among the networks in major markets.

Id. at 123, citing Peninsula Broadcasting Corporation, 3 RR 2d 243 (1964).³ Fant asks the Commission to follow this same duty here and provide for “more effective competition among the networks” in the Plaquemine, Louisiana area.

Furthermore, in the VHF Drop-In Proceeding, the Commission granted requests for waiver of Section §73.610 to permit the allotment of new short-spaced VHF assignments to Charleston, West Virginia; Johnstown, Pennsylvania; Salt Lake City, Utah; and Knoxville, Tennessee. Each short-spaced allotment was subject to the condition that the new station provide equivalent protection to the existing station to which it was short-spaced. Id. at 234.

In granting the waiver requests, the Commission recognized that the four VHF drop-ins represented a significant departure from Commission precedent.⁴ Nevertheless, the Commission concluded that the new VHF allotments would serve important public interest objectives such as providing new local service, the promotion of additional networks, and increased competition in advertising markets. The Commission found these to be substantial contributions to the public interest. Id. at 253. Moreover, on reconsideration, the Commission observed that application of

³ In Peninsula Broadcasting, the applicant alleged that a grant of its application was warranted in order to provide three competitive network services in the Norfolk, Virginia, television market. In granting the application and the accompanying short-spacing waiver request, the Commission stated:

{We have} long been concerned with the problem of making three truly competitive network services available to the public in major markets and where the opportunity is presented to achieve this objective without detriment to anyone and with benefit to many, we think . . . it is clear that a grant of the application would be warranted.

⁴ Despite the Commission’s Interim Policy, there had been no short-spaced VHF allotments in the continental United States prior to its decision in VHF Top 100 Markets. 81 FCC 2d at 239.

the distance separation rules would achieve a result contrary to the public interest by preventing new and needed television services, and that a waiver of the rules would not undermine the policy behind them as set forth in the Sixth Report and Order in Docket Nos. 8736 *et. al.*, Amendment of Section 3.606 of the Commission's Rules and Regulations, 41 FCC 148 (1952) ("Sixth Report and Order").

The public interest benefits that would result from a grant of Fant's petition, as amended, are the same public interest objectives which the Commission sought to achieve in the Interim Policy and the VHF Drop-In Proceedings. Indeed, this amended rule making petition and accompanying request for waiver of the Commission's distance separation requirements would provide the same, if not greater, public interest benefits that the Commission previously found sufficient to justify waiving its distance separation requirements. As stated above, the allotment of Channel 57 provide Plaquemine, Louisiana with its first local television service, which will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of television broadcast stations among the various states and communities. 47 U.S.C. §307(b). See National Broadcasting Co. v. U.S., 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States")' FCC v. Allentown Broadcasting Co., 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression"). In addition, the proposed allotment will promote the second television allotment priority established in the Sixth Report and Order of providing each community with at least one television broadcast station. 41 FCC at 167.

As the Commission is well aware, almost two-thirds of all television markets have only four commercial stations. As a result, it is extremely difficult for any new network, including The WB, the United Paramount Network (“UPN”), or Paxson Network (“Paxnet”) to find affiliates in the major markets. The WB generally has been the fifth, and often the sixth, network to enter those top 100 markets in which it has an affiliate. Indeed, the WB has explained to the Commission in a variety of proceedings that its primary challenge in establishing itself as a nationwide network has been finding a sufficient number of stations with which to affiliate.⁵

Thus, a grant of this waiver request and the allotment of Channel 57 to Plaquemine would provide critical assistance in fostering the development of new national networks by helping to alleviate the need for additional broadcast outlets. Specifically, a grant of this waiver request would permit the allotment of new television station in a top 100 market with which the WB (or another emerging network) could affiliate, and thereby make progress towards achieving national penetration and a competitive stronghold with the established for networks. Although there is no guarantee that Fant will obtain the construction permit for the proposed new television station at Plaquemine, or that the station will affiliate with the WB, the allotment of Channel 57 to Plaquemine would provide an additional broadcast outlet for all of the new networks to have the

⁵ See, e.g., Comments of The WB Television Network, Establishment of a Class A Television Service, MM Docket No. 00-10 (filed Feb. 10, 2000); Comments and Reply Comments of The Warner Bros. Television Network, Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Network and Affiliates, MM Docket No 95-92 (filed Oct. 30, 1995, Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, Reexamination of The Policy Statement in Comparative Broadcast Hearings, GC Docket No. 92-52 (filed Aug. 22, 1994). UPN has expressed similar difficulties in attempting to establish a nationwide presence. See Comments of the UPN, Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Network and Affiliates, MM Docket No. 95-92 at 21-22 (filed Oct. 30, 1995).

opportunity to gain an affiliation and thereby strengthen their effort to obtain a nationwide audience.

By waiving the DTV minimum distance separation requirements and allotting Channel 57 to Plaquemine, the Commission can provide an additional broadcast outlet in a major market and thereby foster the development of a new national network.

D. A Grant of the Requested Waiver Would Not Undermine the Commission's General Policy Regarding Short-Spaced Allotment

The full Commission recently stated its policy regarding short-spaced allotments in Pueblo, Colorado 16 Comm. Reg. (P&F) 610 (1999) (Memorandum Opinion and Order on Remand):

{B}y maintaining strict adherence to a fully-spaced allotment scheme, we preserve the capacity to permit necessary adjustments to spacing where the construction of actual facilities so requires, while minimizing potential adverse interference effects from such adjustments. This is because, when a party files a petition for rulemaking to amend the Table of Allotments, a hypothetical set of reference coordinates are used for purposes of making the allotment. The petitioner is not required to specify an actual transmitter site where the station will be operated, only a theoretical fully-spaced transmitter site location. At this point, the Commission disfavors making a short-spaced allotment because it does not want to begin the process with a substandard allotment. In order to protect the integrity of the Table, the Commission demands that the process of creating a new station begin with an allotment that is not already short-spaced. However, later, when a party files an application to construct its actual transmitter site, and the Commission examines the actual facilities that will be constructed to operate the station, it may be determined that no fully-spaced transmitter sites are available. At that later point in the process, the Commission may allow a deviation of its spacing rules when it is demonstrated that the public interest benefits are great enough to support a waiver.

Id. at 616, ¶23. The full Commission has also stated that “{s}trict adherence to the spacing requirements set forth in the Table of Allotments is necessary . . . in order to provide a consistent,

reliable and efficient scheme of (allotments).” Chester and Wedgefield, South Carolina, 5 FCC Rcd 5572 (1990).

By requiring that a proposed allotment be fully-spaced at the outset, the Commission’s policy is designed to “minimiz{e} potential adverse interference effects” that may result from “necessary adjustments” in the event no full-spaced transmitter sites are available at the application stage. This general allotment policy should not be applied here. The substantial public interest benefits that would result from the proposed allotment substantially outweighs the commission’s general regulatory interest in protecting the “integrity of the Table of Allotments,” especially when the proposed allotment would subject the short-spaced station to no greater interference than any fully-spaced allotment.

Moreover, as noted supra, the Commission’s interest in maintaining the “integrity of the Table of Allotments” and providing “a consistent, reliable and efficient” allotment scheme should be given diminished consideration with respect to the rulemaking petitions and amended petitions filed in response to the Window Notice because this is the last opportunity to amend the NTSC Table of Allotments. The deadline for filing allotment rulemaking petitions for new NTSC stations expired on July 25, 1996.⁶ Upon the close of this window filing period on July 17, 2000, there will be no further opportunity amend the NTSC Table of Allotments. Therefore, because the allotment proposals filed during this window represent the last NTSC rulemaking petitions that will ever be filed with the Commission, a waiver of the Commission’s distance separation requirements pursuant to the policy objectives set forth in the Interim Policy and VHF

⁶ See Sixth Report and Order in MM Docket No. 87-268, Advanced Television Systems and Their Impact Upon the Existing Broadcast Service, 12 FCC Rcd 14588, 14635-36 (1997) (“DTV Proceeding”).

Drop-Ins would not open the floodgates to similar waiver requests in the future. As in VHF Drop-Ins, the Window Notice provides a limited filing opportunity during which there can be only a small, finite number of short-spaced allotment proposals that would provide sufficient public interest benefits to warrant a waiver of the spacing rules.

E. The FCC Must Give This Waiver Request the Requisite “Hard Look”

It is well established that the Commission is “required to give waiver requests a ‘hard look’ and may not treat well-pleaded waiver requests in a perfunctory manner.” VHF Top 100 Markets, 90 FCC 2d 160, 166 (1982) (reconsideration order), citing WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Indeed, as the D.C. Circuit has made clear in WAIT Radio:

. . . {A} general rule, deemed valid because its overall objectives are in the public interest, may not be in the “public interest” if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.

IV. Conclusion

For all of the reasons set forth herein, the Commission should grant Fant a waiver and adopt the proposal set forth herein.

Respectfully submitted,

By:  _____

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505-589-2224

**ENGINEERING EXHIBIT
PETITION TO MODIFY THE TABLE OF
ALLOTMENTS TO SPECIFY A
DISPLACEMENT CHANNEL TO
SUBSTITUTE FOR PLAQUEMINE, LA
CHANNEL 50**

June 23, 2000

ENGINEERING STATEMENT

Wes, Inc.

DECLARATION

I, Pete E Myrl Warren, III, declare and state that I am a Certified Broadcast Engineer, by the National Association of Radio and Television Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of Wes, Inc., and that the firm has been retained to prepare an engineering statement on behalf of Fant Broadcasting Development.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.



Pete E Myrl Warren, III

Executed on the 23rd day of June, 2000

Narrative Statement

I. GENERAL

This engineering report has been prepared on behalf of Fant Broadcasting Development, in support of its request for a displacement channel (Channel 57) for its pending application for Channel 50 in Plaquemine, LA.

II. ENGINEERING DISCUSSION

The applicant originally applied for a construction permit for channel 50 in Plaquemine, LA. The applicant is precluded from going on channel 50 due to interference to several short-spaced digital allotments as outlined in Exhibit RM-1

The applicant proposes the allocation site at the same site as its concurrent application amendment and as its previous application

North Latitude: 30° 24' 06"

West Longitude: 90° 50' 43"

It is proposed to amend Section 73.606(b) of the Commission's rules, NTSC Table of Allotments, to allot Channel 57 (728-734 MHz) for the NTSC television operation at Plaquemine, LA. As demonstrated below, the proposed Channel 57 NTSC operation at Plaquemine, LA, would not cause any harmful interference to any other analog NTSC or DTV station or allotments exceeding the Commission's guidelines. Plaquemine, LA Channel 57 would provide additional service to a population of 558,366 people.

The proposed NTSC Channel 57 has site availability and can operate and from the proposed antenna site with 2000 kW omni-directional ERP and 302 meters HAAT without adversely impacting other TV operations. The proposed Channel 57 would serve all of Plaquemine within its 80 dBu contour.

Analog NTSC TV Allocation Situation

The attached Exhibit RM-2 demonstrates that Channel 57, Plaquemine, LA, **is free of all short-spacing to NTSC.**

DTV Allocation Situation

The attached Exhibit RM-3 lists all digital allotments that must be considered within 429 kilometers of the proposed rule-making. The applicant will not cause or receive any interference from New Orleans digital channel 50. The attached exhibit FLR-1 demonstrates what interference Columbia, LA DTV 50 receives at present and with the addition of Plaquemine, LA, Channel 57 as specified in the concurrent modification application by Fant Broadcast Development. The interference accepted by each of this station is less than 0.5% and is therefore considered negligible and acceptable.

III. Class A

There is no predicted interference from the proposed Channel 57 to any Class A LPTV stations.

IV. Summary

The applicant must change channel from Channel 50 in Plaquemine, LA, to channel 57 in order to avoid interference to digital television. On channel 57, Plaquemine will not cause any interference to any NTSC stations and less than 0.5% interference to any Digital stations.



**Exhibit RM-1
Plaquemine, LA**

June 23, 2000

by WES, Inc. Broadcast Consultants

Spacing study to Digital TV on Plaquemine's original channel 50

Study Location:
Plaquemine, LA Channel 50

NTSC Study Station, Transmitter Coordinates: 30-24-6 N 90-50-43 W

Study distance: 429 km

NTSC TO DTV STUDY RESULTS

City of License	ST	Chan	Bearing	Distance	Req. Dist	Diff.
Baton Rouge	LA	42	250.92	35.52	96.60	-61.08
Baton Rouge	LA	46	263.64	35.57	96.60	-61.03
New Orleans	LA	43	120.34	99.05	96.60	2.45
New Orleans	LA	50	124.05	95.41	244.60	-149.19
Jackson	MS	51	12.40	205.59	88.50	117.09
Natchez	MS	49	330.09	162.07	88.50	73.57
Beaumont	TX	50	265.43	293.41	244.60	48.81

Station is short-spaced to 3 stations.

**Exhibit RM-2
Plaquemine, LA**

June 23, 2000

by WES, Inc. Broadcast Consultants

Spacing study to NTSC TV on channel 57

***** TV CHANNEL SPACING STUDY *****

Job title: Plaquemine, LA

Latitude: 30 24 6

Channel: 57

Longitude: 90 50 43

Database file name: tv000117.edx

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
62+	NEW	5557	HAMMOND	LA	3	A	276.0	32.8	31.4	1.4
42+	NEW	5564	NATCHEZ	MS	3	A	336.7	133.9	119.9	14.0

***** End of channel 57 study *****

**Exhibit RM-3
Plaquemine, LA**

June23, 2000

by WES, Inc. Broadcast Consultants

Spacing study to Digital TV on channel 57

Study Location:

Plaquemine, LA Channel 57

NTSC Study Station, Transmitter Coordinates: 30-24-6 N 90-50-43 W

Study distance: 429 km

*****NTSC TO DTV STUDY RESULTS*****

City of License	ST	Chan	Bearing	Distance	Req. Dist	Diff.
Columbia	LA	57	325.12	223.49	244.60	-21.11
Lafayette	LA	56	266.56	147.62	88.50	59.12
New Orleans	LA	50	124.05	95.41	96.60	-1.19
Hattiesburg	MS	58	54.10	189.81	88.50	101.31
Tupelo	MS	57	23.80	411.16	244.60	166.56

Station is short-spaced to 2 stations.

**Exhibit FLR-1
Plaquemine, LA Channel 57
June 23, 2000**

**Fortran Longley-Rice Interference Study
by WES, Inc. Broadcast Consultants**

Study not including Plaquemine, LA Channel 57:

Run begins Fri Jun 23 20:22:42 2000, host providence

Analysis of: 57A LA COLUMBIA

HAAT 520.0 m, ATV ERP 1000.0 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	558769	34069.2
not affected by terrain losses	558366	34016.7
lost to NTSC IX	0	0.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	0	0.0

Finished Fri Jun 23 20:26:49; run time 0:03:00

10611 calls to Longley-Rice; path distance increment 1.00 km

Plaquemine, LA Channel 57 included 2MW omni-directional:

Run begins Fri Jun 23 20:43:29 2000, host providence

Analysis of: 57A LA COLUMBIA

HAAT 520.0 m, ATV ERP 1000.0 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	558769	34069.2
not affected by terrain losses	558366	34016.7
lost to NTSC IX	1056	32.3
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	1056	32.3

Finished Fri Jun 23 20:50:06; run time 0:05:19

17667 calls to Longley-Rice; path distance increment 1.00 km

CERTIFICATE OF SERVICE

I, Dean R. Brenner, do hereby certify that a true and correct copy of the foregoing "PETITION FOR RULE MAKING" was served by mail this 12~~1~~ day of July 2000, to:

John Karousos
Federal Communications Commission
Room 2-C207
445 12th Street, S.W.
Washington, D.C. 20554

Roy Stewart
Federal Communications Commission
Room 2-C347
445 12th Street, S.W.
Washington, D.C. 20554

Barbara Kriesman
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Room 2-A665
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Keith Larson
Federal Communications Commission
Room 2-C420
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Dean R. Brenner