

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 73.622(b),)
Table of Allotments,)
Digital Television Broadcast Stations.)
(Boca Raton, Florida))

MM Docket No. 00-138
RM-9896

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To: Chief, Video Services Division

SUPPLEMENTAL REPLY COMMENTS

1. Sherjan Broadcasting Co., Inc. ("Sherjan") hereby submits these Supplemental Reply Comments in the above-captioned proceeding. Leave to file Supplemental Reply Comments is being requested simultaneously in a separate pleading.

2. In its initial comments filed on October 10, 2000, Sherjan opposed the proposal to change the digital television ("DTV") allotment for WPPB-TV, Boca Raton, Florida, from Channel *44 to Channel *40 the ground that the change would cause interference, by virtue of prohibited contour overlap, to Sherjan's Station WJAN-CA and to Station WFUN-LP. Furthermore, the proponent did not show that there were any "technical problems" that would justify priority over a WJAN-CA Class A station under the Community Broadcasters Protection Act of 1999 ("CBPA")^{1/} or displacing WFUN-LP under *Advanced Television Systems*, 12 FCC Rcd. 14588, 14671 (1997). Channel 63 of Palm Beach, Inc. ("Channel 63") and Guenter Marksteiner ("Marksteiner") each filed reply comments on October 25, 2000, with the same

^{1/} The CBPA is codified as Section 336(f) of the Communications Act of 1934, as amended.

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engineering showing, disputing Sherjan's arguments on the grounds that the interference WPPB-TV would cause to WJAN-CA will be masked by virtue of interference from WZVN-DT, Naples, Florida, and that there will be no prohibited interference to WJAN-CA or WFUN-LP in any case based on use of the Longley-Rice Method, which they claim is more accurate than the FCC contour prediction method.

3. The Channel 63 arguments are not persuasive for several reasons. First, they assume that any part of WJAN-CA's 74 dBu contour that is overlapped by the 40 dBu contour of WZVN-DT, will receive interference. Attached hereto is an Engineering Statement demonstrating that Channel 63's claim is not valid. Interference will occur only where the undesired-to-desired signal exceeds a certain ratio, and the proposed channel change will cause new interference to 6.9% of the land area and 15.2% of the population served by WJAN-CA that would not receive any other interference, including from WZVN-DT. This amount of interference can under no circumstances be considered *de minimis*.

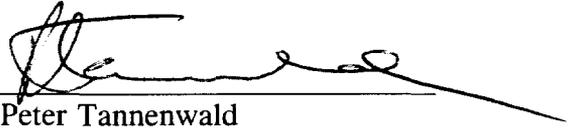
4. In addition, Channel 63's reliance on the "FLR" computer program is misplaced, as that program was not designed to be used under the present circumstances and was expressly not adopted by the Commission as a technique for evaluating interference with respect to Class A television stations. And in any event, use of the FLR program requires a rule waiver which none of the licensees or proposed assignees of WPPB-TV has ever requested.

5. The bottom line is that Channel 63 has not demonstrated any "technical problems" with its existing Channel *44 allotment that justify causing any interference to any other station, particularly a Class A station. In addition, as Sherjan demonstrated in its initial comments, the change from Channel *44 to Channel *40 will make the overall interference situation worse, not

better. Therefore, the proposed change is barred by the CBPA and is in any event not in the public interest.

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Tel. 202-728-0401 ext. 105

Respectfully submitted,



A handwritten signature in black ink, appearing to read 'Peter Tannenwald', is written over a horizontal line. The signature is stylized and extends to the right beyond the end of the line.

Peter Tannenwald

November 23, 2000

Counsel for Sherjan
Broadcasting Co., Inc.

**ENGINEERING STATEMENT IN
SUPPORT OF SUPPLEMENTAL COMMENTS**

MM DOCKET 00-138

DTV CHANNEL 40 - BOCA RATON, FL

**Sherjan Broadcasting Company, Inc.
Miami, FL**

November 21, 2000

**Prepared for: Mr. Sherwin Grossman
Sherjan Broadcasting Company, Inc.
1520 NW 79th Ave.
Miami, FL 33126**

CARL E. SMITH CONSULTING ENGINEERS

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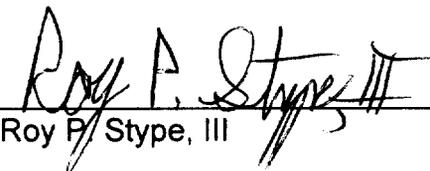
Fig. 1.0 - Detailed Interference Study - WJAN-CA - Miami, FL

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

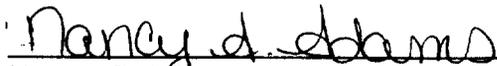
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by the Sherjan Broadcasting Company, Inc., to prepare the attached "Engineering Statement In Support of Supplemental Comments - MM Docket 00-138 - DTV Channel 40 - Boca Raton, FL."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **November 21, 2000**.



Notary Public

/SEAL/

NANCY A. ADAMS, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 5, 2005

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Sherjan Broadcasting Company, Inc., licensee of Class A TV Station WJAN-CA - Miami, Florida. WJAN-CA operates on Channel 41 with a maximum effective radiated power of 101 kilowatts. The Notice of Proposed Rulemaking in MM Docket 00-138 has proposed to substitute DTV Channel 40 for DTV Channel 44 in Boca Raton, Florida for use by WPPB-DT, at the joint request of the former permittee and the present licensee of WPPB-TV. On October 10, 2000, WJAN-CA filed comments in this proceeding documenting that the proposed Channel 40 DTV facilities fail to provide the required protection, pursuant to Section 73.623(c)(5) of the FCC Rules, to both WJAN-CA and WFUN-LP - Miami, etc., Florida, which operates on Channel 48 and has been granted a certificate of eligibility for Class A status.

On October 25, 2000 both Channel 63 of Palm Beach, Inc., the present licensee of WPPB-TV, and Gunter Marksteiner filed essentially identical reply comments¹ in this proceeding. The attached engineering statement is prepared in support of supplemental comments in this proceeding, which are being submitted to clarify several erroneous claims made in the joint engineering statement included in the above referenced reply comments.

The above referenced joint engineering statement, while conceding that the proposed Channel 40 DTV facilities will result in the prohibited contour overlap with WJAN-CA outlined in the WJAN-CA comments in this proceeding, attempts to claim that this overlap is of no concern, due to the fact that the WJAN-CA 74 dBu contour is

¹Both sets of reply comments include the identical engineering statement which was prepared jointly for both parties.

totally encompassed within the 40 dBu interfering contour for the Channel 41 DTV facilities proposed in a timely filed maximization application (BMPCDT-20000501ACP) by WZVN-DT - Naples, Florida. Such a claim is absolutely without merit, however, as this logic would imply that the entire area within the WJAN-CA 74 dBu contour would be subject to interference from the proposed WZVN-DT facilities and, for this reason, no portion of the WJAN-CA service area would be entitled to protection from other stations as a result of this received overlap. This is simply not the case. Instead, this existing overlap will result in predicted interference to WJAN-CA near the perimeter of its 74 dBu contour, but will still leave a portion of the area within this contour predicted to receive interference free service, as outlined below in more detail.

In addition to the WZVN maximization application, WJAN-CA presently also receives grandfathered prohibited contour overlap from the Channel 44 DTV facilities authorized by the WPPB-DT DTV construction permit. Figure 1.0 is a map exhibit depicting the WJAN-CA 74 dBu contour in relation to the predicted 40 dBu interfering contour for the WZVN-DT maximization application facilities and the 108 dBu interfering contour for the facilities authorized by the WPPB-DT Channel 44 construction permit. Also shown in this figure are the areas in which WJAN-CA is predicted to receive interference from each of these stations as a result of this prohibited contour overlap. Pursuant to Section 73.623(c)(2) of the FCC Rules, interference is predicted to WJAN-CA from the WZVN-DT maximization application facilities in any area where the WJAN-CA F(50,50) signal does not exceed the WZVN-DT F(50,10) signal by at least 34 dB. Similarly, interference is predicted to WJAN-CA from the WPPB-DT Channel 44 construction permit facilities in any area where the WPPB-DT F(50,10) signal exceeds the

WJAN-CA F(50,50) signal by 34 dB or more. As shown in this figure, the entire area of predicted interference to WJAN-CA from the WPPB-DT construction permit facilities lies within the area of predicted interference from the WZVN-DT maximization application facilities. This present grandfathered interference encompasses a land area of 553.4 square kilometers within the WJAN-CA 74 dBu contour (51.2% of the land area within this contour) containing a population of 598,585 persons (35.7% of the population within this contour).²

Figure 1.0 also depicts the 88 dBu interfering contour for the Channel 40 DTV facilities proposed in the WPPB-DT rulemaking petition, as well as the area of predicted interference to WJAN-CA which will result from the prohibited overlap between this contour and the WJAN-CA 74 dBu contour. In this case, pursuant to Section 73.623(c)(2) of the FCC Rules, interference to WJAN-CA is predicted in any area where the F(50,10) signal for the proposed Channel 40 DTV facilities exceeds the F(50,50) signal for WJAN-CA by 14 dB or more. As shown in this figure, while a portion of this area of predicted interference from the proposed Channel 40 DTV facilities is already predicted to receive interference from WZVN-DT, and thus could be considered to be masked, a significant portion of this area of predicted interference from the proposed Channel 40 DTV facilities occurs over an area to which WJAN-CA is presently predicted to provide an interference free signal. This area of new interference encompasses a land area of 74.6 square kilometers within the WJAN-CA 74 dBu contour (6.9% of the land area within this contour) containing a population of 254,964 persons (15.2% of the population within the WJAN-CA 74 dBu contour).

²All population data in this engineering statement is extracted from the 1990 U. S. Census.

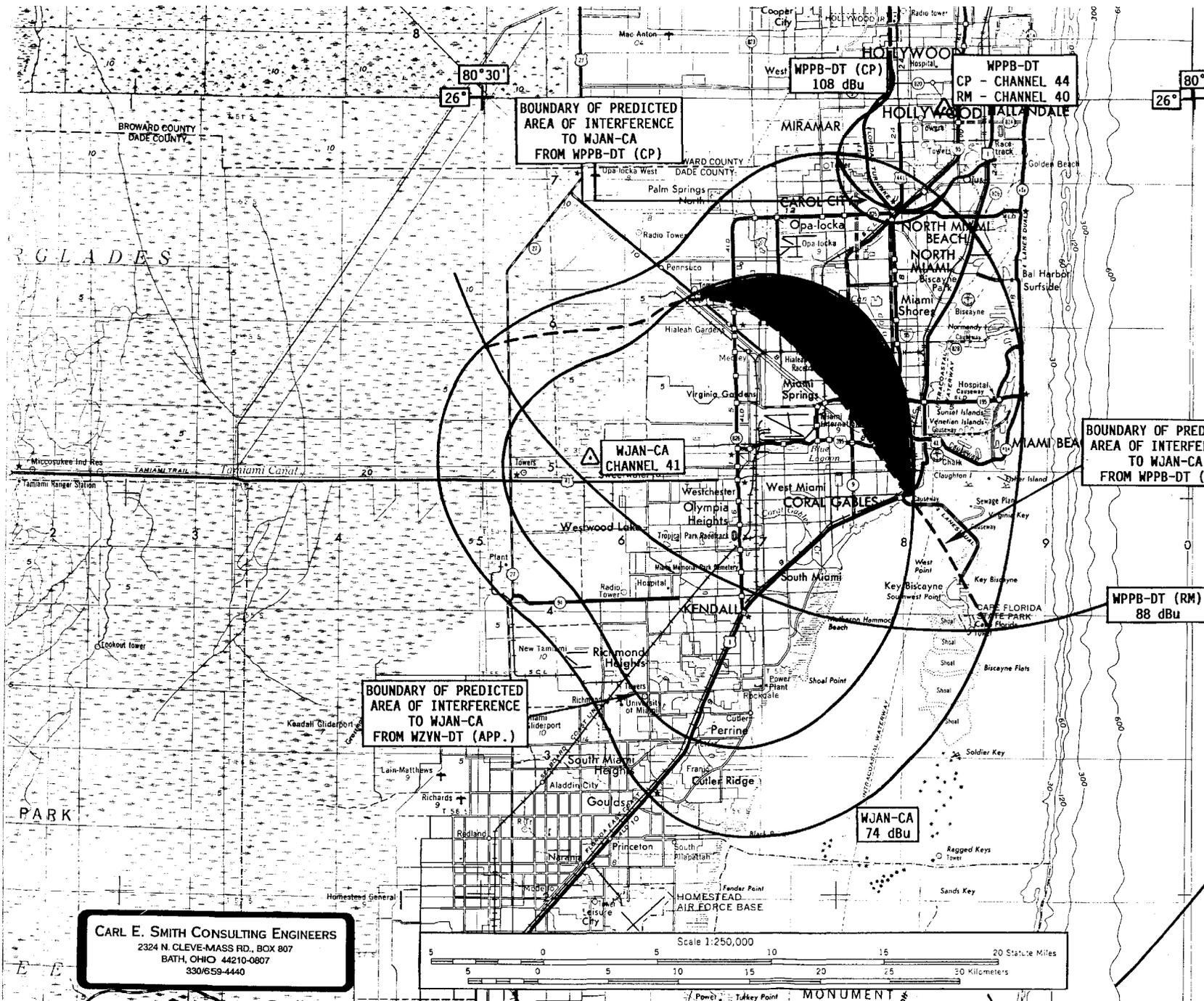
Based on the above information, it is obvious that the Channel 40 DTV facilities proposed in the WJAN-CA rulemaking petition will result in interference to WJAN-CA in areas within its 74 dBu contour to which interference free service is presently provided. Thus, the proposed Channel 40 DTV facilities fail to provide the protection to WJAN-CA which it is entitled to by virtue of its status as a Class A TV station.

The joint engineering statement also attempts to claim that the prohibited overlap caused to WJAN-CA by the proposed Channel 40 DTV facilities is permitted by Section 73.623(c)(5)(iii) of the FCC Rules if a more detailed analysis shows that interference is not likely and submits the results of an interference study conducted utilizing the procedures outlined in OET Bulletin 69 to attempt to document that the predicted interference to WJAN-CA will amount to less than the 0.5% rounding tolerance permitted by this rule section. This is a gross misinterpretation of this rule section, however, which actually states that showings of this sort may be submitted to demonstrate that interference is not likely to occur in support of a request for a waiver of the applicable contour protection requirements. No such waiver request has been made by WPPB-DT, however, at any time during the course of this proceeding. Nor have they made a showing of any sort that the DTV facilities proposed in this rulemaking petition cannot be achieved on their present channel or another channel which would not require such a waiver. Furthermore, no showing has been submitted to document the public interest benefits which would result from the grant of such a waiver, which has historically been required to justify any waiver of the FCC Rules.

There are also questions regarding the suitability of the FCC's "FLR" computer program, which was utilized to conduct the OET 69 studies submitted in this joint engi-

neering statement, for use in calculating predicted interference to LPTV and Class A TV facilities. This computer program was designed for use on TV broadcast facilities, which have much lower signal levels at their protected contours, and includes a correction factor for the directional receive antennas which are normally utilized at these lower signal levels. LPTV and Class A facilities are only protected to a higher signal level, approximating the Grade A contour for TV broadcast facilities, where the use of such highly directional receive antennas is less common. As a result, it is likely that the use of the "FLR" program to evaluate the potential for interference to an LPTV or Class A TV facility will significantly underestimate the extent of any such interference which will actually occur. It was partially for this reason that the FCC declined to adopt this analysis technique for evaluating protection to Class A TV stations and instead established a contour protection methodology for providing the required protection to Class A TV stations.

Based on the above information, the Channel 40 DTV facilities proposed in the WPPB-DT rulemaking petition fail to provide the required protection, as outlined in Section 73.623(c)(5) of the FCC Rules, to WJAN-CA. Furthermore, the joint engineering statement submitted by the licensee of WPPB-TV and Gunter Marksteiner in their reply comments in this proceeding fail to overcome this deficiency and come nowhere near providing the necessary support for a waiver of this rule section, which has not even been requested. Accordingly, this rulemaking proposal to substitute DTV Channel 40 for DTV Channel 44 in Boca Raton, Florida for use by WPPB-DT must be denied.



LEGEND:

	- AREA WITHIN WJAN-CA 74 dBu CONTOUR PRESENTLY PREDICTED TO RECEIVE INTERFERENCE FROM OTHER STATIONS.
	AREA: 553.4 km ²
	POPULATION: 598,585
	- AREA WITHIN WJAN-CA 74 dBu CONTOUR PREDICTED TO RECEIVE NEW INTERFERENCE FROM WPPB-DT CHANNEL 40 RULEMAKING FACILITIES.
	AREA: 74.6 km ²
	POPULATION: 254,964
	TOTAL IN WJAN-CA 74 dBu CONTOUR:
	AREA: 1,080.6 km ²
	POPULATION: 1,674,951

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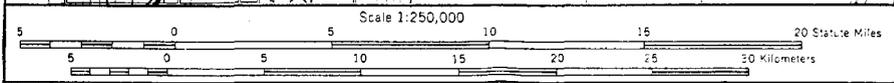


FIG. 1.0
 DETAILED INTERFERENCE STUDY
 WJAN-CA - MIAMI, FL
 Sherjan Broadcasting Co., Inc.
 Miami, FL

CERTIFICATE OF SERVICE

I, Tracy L. Trynock, do hereby certify that I have, this 23rd day of November, 2000, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Supplemental Reply Comments" to the following:

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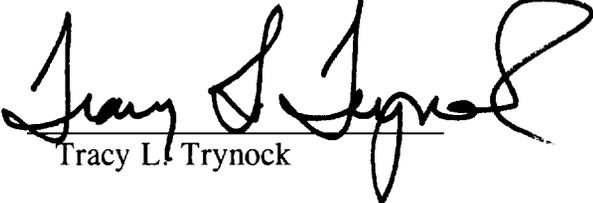
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