

APR 23 2001

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

01-62

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments)
FM Broadcast Stations)
(Ardmore, Brilliant, Gadsden, Moundville,)
Pleasant Grove, Scottsboro, Trussville,)
Tuscaloosa and Winfield, AL; Columbus)
And Okolona, Mississippi; Pulaski and)
Walden, Tennessee)

MM Docket No. 01-52
RM-10053

To: Chief, Allocations Branch
Mass Media Bureau

COMMENTS AND COUNTERPROPOSAL
OF
BUFFALO RIVER BROADCASTERS

Buffalo River Broadcasters ("BRB"), by its attorneys, and pursuant to Section 1.420(d) of the Commission's Rules, hereby respectfully files comments and a counterproposal in the above-captioned proceeding. This submission is made in response to the Commission's *Notice of Proposed Rule Making* ("NPRM"), DA 01-563, released March 2, 2001¹. BRB herein proposes the allotment of Channel 253A to Linden, TN, as its first local service, in lieu of the proposal set forth in the *NPRM* to substitute Channel 252C1 for Channel 252A at Pulaski, TN, reallocate Channel 252C1 to Ardmore, AL, and modify the license of WKSJ-FM to specify operation on Channel 252C1 at Ardmore, AL.²

In support hereof, the following is respectfully shown:

¹ The *NPRM* established April 24, 2001 as the deadline for counterproposal. Accordingly, the instant counterproposal is timely filed.

² BRB respectfully requests addition of Linden, TN, to the caption.

No. of Copies rec'd 014
List A B C D E

The *NPRM* invited comments and counterproposals in connection with eight interrelated changes to the FM Table of Allotments (“*FM Table*”) jointly proposed by Capstar TX Limited Partnership (“Capstar”), licensee of WQEN, Channel 279C2, Gadsden, AL, WENN, Channel 290A, Trussville, AL, and WRTR, Channel 288A, Tuscaloosa, AL, and Jacor Licensee of Louisville II, Inc. (“Jacor”), licensee of WTRZ-FM, Channel 280A, McMinnville, TN. Capstar and Jacor are hereinafter jointly referred as “the Petitioners”. Seven of the Petitioners’ proposed changes request changes to the license communities of existing stations, pursuant to Rule Section 1.420(i).

In pertinent part, the Petitioners propose the substitution of Channel 252C1 for Channel 252A at Pulaski, TN, reallocate Channel 252C1 to Ardmore, AL, and modification of the license of WКСR-FM. WКСR-FM is licensed to Pulaski Broadcasting, Inc.³

BRB proposes the allotment of Channel 253A at Linden, TN, as the first local service at Linden. Section 73.207 of the Rules, at Table A, would require a minimum spacing of 133 km. between the proposed Channel 253A facility at Linden and the proposed Channel 252C1 facility at Ardmore. The actual distance between the Linden and Ardmore facilities is only 120 km.⁴ The proposals are therefore mutually exclusive and must be compared to determine which allotment should be preferred. It is respectfully submitted that, for the reasons set forth below, addition of an allotment on Channel 253A at Linden would be the more preferential arrangement of allotments.

³ In order to accommodate the Channel 252C1 allotment at Ardmore, the Petitioners also propose substitution of Channel 278A for Channel 252A at Scottsboro, AL, and modification of the license of WKEA, Channel 252A, Scottsboro, AL, to specify operation on Channel 252A at Scottsboro. WKEA is licensed to KEA Radio Inc.

⁴ See Technical Exhibit attached hereto at Figure 2.

Linden is an incorporated community in Perry County, TN, and is the county seat of Perry County. The 1990 U.S. Census shows Linden as having a population of 1099 persons. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to demonstrate that it is a “community” for allotment purposes.⁵ As Linden is incorporated and listed in the U.S. Census, it is qualified for allotment of a local radio service on these bases alone. Linden has additional characteristics of a “community,” including:

- A local government, consisting of the Mayor and an Alderman.
- Its own municipal services, including its own City Water, Sewer and Gas Department, its own Sanitation Department, a volunteer fire department, Linden Elementary School, Linden Middle School and Linden High School.
- Its own zip code: 37096. The Linden Post Office is located in the center of Linden.
- Churches to serve the population of Linden, including the First Methodist Parsonage and the First Baptist Church.
- Local health facilities include Perry Memorial Hospital, which is located in Linden, and local doctors’ offices.
- Community organizations, including a chapter of the Lion’s Club.
- Linden has its own branch of the Perry County Public Library.
- A local newspaper, the Buffalo River Review.
- Numerous commercial establishments.

⁵ *Strattanville and Farmington Township, PA*, MM Docket No. 99-58, DA 00-2711 (Chief, Alloc. Br., released December 1, 2000).

The Technical Exhibit attached hereto shows that an allotment can be made to Linden that will cover the entire town of Linden, without a site restriction, from the following reference coordinates:

N. Lat.	35	37'	02"	NAD-27
W. Long.	87	50'	22"	

Although Figure 2 shows a current short spacing to WRJB(FM), Channel 252A, Camden, AL, WRJB was ordered to specify operation on Channel 240A in lieu of Channel 252A in *Metropolis, IL, Clinton and Wickliffe, KY, and Camden, Dyer and Henderson, TN*, 7 FCC Rcd 2518 (Chief, Alloc. Br., 1992). WRJB has a pending application to modify its operation to Channel 240A under FCC File No. BPH-20000228AAO.

Figure 1 to the Technical Statement attached hereto is an allowable area map which illustrates the area in which an antenna tower can be located. The antenna could be located in downtown Linden downtown Linden.

The Commission evaluates conflicting allotment proposals pursuant to the "allotment priorities" set forth in Revision of FM Assignment and Policies and Procedures, 90 FCC 2d 88 (1982). The allotment priorities are:

- (1) First full-time aural service;
- (2) Second full-time aural service;
- (3) First local service; and
- (4) Other public interest matters.

Priorities (2) and (3) are given co-equal weight.

In the instant comparison, there is no issue involving Priorities (1) and (2). Accordingly, this matter must be resolved based upon Priorities (3) and (4).

Allotment of Channel 253A will provide Linden with its first local service. Accordingly, Linden qualifies under Priority (3).

The proposal for Channel 252C1 at Ardmore also proposes a first local service qualifying under Priority (3). However, the new allotment at Linden should be preferred over the Ardmore proposal pursuant to Priority (4), in view of other public interest considerations.

The proposal to substitute Channel 252C1 for Channel 252A at Pulaski and reallocate Channel 252C1 to Ardmore would require removal from Pulaski of the existing service of WКСR-FM, which is presently operating at Pulaski. On the other hand, adoption of the proposal to allot Channel 253A to Linden will add a new primary service to the *FM Table*, and will not disrupt existing service at any other community. It is Commission policy to prefer an allotment that would add a new primary service to the *FM Table* over a conflicting proposal to modify an existing service, even where the existing service is proposed to be upgraded to a higher class channel.⁶ The addition of a new primary service to the *FM Table* would better serve the public interest and further the mandate under Section 307(b) of the Communications Act to make a “fair, efficient and equitable” distribution of radio services among communities.⁷ Accordingly, new primary service

⁶*Sibley, IA and Brandon, SD*, 15 FCC Rcd 19180 (Chief, Alloc. Br., released September 29, 2000); *Cheyenne, WY and Gering, NE*, 15 FCC Rcd 7528 (Chief, Alloc. Br., 2000); *Corinth, Hadley and Queensbury, NY*; 5 FCC Rcd 3243 at para. 8 (1990); *Benton, Clarksville, Dardanelle, El Dorado, Hampton, Harrison, Huttsville, Mena, Ozark and Sherwood, AR; Homer, LA; Sallisaw and Vinita, OK; Hooks and Kilgore, TX*, 7 FCC Rcd 2555 at para. 9 (Policy and Rules Div., 1992).

⁷ *Id.*

should be added on Channel 253A at Linden, in lieu of the proposed modification and reallocation of the existing Channel 252 facility from Pulaski to Ardmore.

The public has a “legitimate expectation that existing service will continue.”⁸ The weight to be accorded the public’s expectation is substantial.⁹ The Petitioners’ Ardmore proposal would uproot the long-standing service WКСR-FM has provided to Pulaski and modify the WКСR-FM license to instead serve Ardmore. WКСR-FM has served Pulaski for more than 30 years. This is exactly the sort of situation in which the public’s legitimate expectation of continued service, so strongly weighted by the Commission, would be defeated.

As a final matter, it should be noted that Petitioners’ proposal would remove a service from the larger community of Pulaski, which had a 1990 U.S. Census population of 7,895 persons, to the much smaller town of Ardmore (1990 U.S. Census population: 1,090). Generally, Commission policy would favor the retention of the channel in the community with the larger population.¹⁰ Under the circumstances, the public interest would be better served by retaining Channel 252A at Pulaski.

Consistent with the foregoing, it is respectfully submitted that adoption of the proposed allotment at Linden would be the more preferential arrangement of allotments.

If the subject proposal is adopted, BRB intends to apply for a construction permit to establish the Linden station.

⁸*Modification of Authorizations to Specify a New Community of License*, “Memorandum Opinion and Order,” 5 FCC Rcd 7094, 7097 (1990). *See also Eatonton and Sandy Springs, GA*, 6 FCC Rcd 6580, 70 RR 2d 182, 190 (1991).

⁹*Eatonton and Sandy Springs, GA*, *supra* 70 RR 2d at 190.

¹⁰*Van Wert, OH and Monroeville, IN*, 7 FCC Rcd 6519 (Chief, Alloc. Br., 1992).

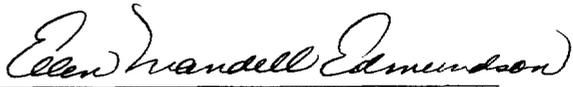
The proposed allotment at Linden would not be within the Canadian or Mexican border areas. Accordingly, no international coordination will be required.

WHEREFORE, BRB respectfully requests the Commission to propose to amend Section 73.202(b) of the Commission's Rules to adopt the proposed allotments set forth herein, as follows:

<u>Community</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
Linden, TN	-----	253A

Respectfully submitted,

BUFFALO RIVER BROADCASTERS

By 
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April 23, 2001

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ENGINEERING EXHIBIT EE-RM:

COUNTERPROPOSAL - MM DOC 01-62

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

ALLOT CH. 253A TO LINDEN, TENNESSEE

APRIL 16, 2001

**ENGINEERING STATEMENT PREPARED ON BEHALF OF
BUFFALO RIVER BROADCASTERS**

ENGINEERING EXHIBIT EE-RM:

COUNTERPROPOSAL - MM DOC 01-62

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

ALLOT CH. 253A TO LINDEN, TENNESSEE

TABLE OF CONTENTS:

1. Declaration of Engineer
2. Narrative Statement
3. Figure 1, Allowable Area Map - Ch. 253A - Linden, TN.
4. Figure 2, Channel Allocation Study for Ch. 253A.
From City Ref. Point for Linden, TN.

Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by Buffalo River Broadcasters to prepare the instant engineering exhibit in support of a counterproposal rule making petition to amend the FM Table of Allotments.

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


John J. Mullaney, Consulting Engineer

Executed on the 17th day of April 2001

ENGINEERING EXHIBIT EE-RM:

COUNTERPROPOSAL - MM DOC 01-62

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

ALLOT CH. 253A TO LINDEN, TENNESSEE

NARRATIVE STATEMENT:

This engineering statement has been prepared on behalf of Buffalo River Broadcasters ("Buffalo River"). The purpose of this statement is to provide engineering in support of a rule making petition to amend the FM Table of Allotments to Allot Ch. 253A to Linden, Tennessee. The proposal to allot channel 253A as a first aural service to Linden is in direct conflict with a proposal contained in MM Docket 01-62 to re-allot and upgrade Ch. 252A at Pulaski, Tennessee, to Ch. 252C1 at Ardmore, Alabama.

The proposed reference point is not within 290 kilometers (180 miles) of a United States Border and, therefore, foreign concurrence is not required.

Proposed Reference Site - Ch. 253A

For the purposes of this rule making the applicant proposes to use the following city reference coordinates for Ch. 253A at Linden, Tennessee.

N. Latitude: 35° 37' 02" NAD-27
W. Longitude: 87° 50' 22"

The proposed reference site (located within the city of Linden) will provide an unobstructed view of the city of license, Linden, TN and is located close enough to serve the entire community with the required 3.16 mV/M or 70 dBu contour. Figure 1 is an allowable area map showing Linden along with a 16 km circle used for city grade allotment purposes.

Channel Allocation Study - Ch. 253A

Figure 2 is a Channel Allocation Study from the proposed reference point for Ch. 253A at Linden, TN. The study indicates the actual & required separation in kilometers to all licenses, construction permits, applications, vacant allocations and pending rule makings. From this study it can be determined that proposed reference point exceeds all of these minimum separations with the exception of two items.

The first short spacing is to the proposal to ADD Ch. 252C1 to Ardmore, AL which is short spaced by 12.6 km. The

required 133 km separation specified by the rules is shown in red on the allowable area map. Consequently, both proposals are mutually exclusive.

The second short spacing is to WRJB's license on Ch. 252A at Camden, AL. However, WRJB is under a final order in MM Doc 89-416 to change channels to 240A and holds a CP authorizing such a change. Thus, this short spacing can be ignored.

Public Interest Showing

As proposed herein, the allotment of Ch. 253A to Linden, TN, will provide a new first service without depriving any other community of its existing radio service. Assuming maximum facilities from the proposed reference point will result in 17,400 persons being encompassed within the 60 dBu contour. The town of Linden, TN, has a 1990 population of 1,099 persons and is located in Perry County Tennessee.

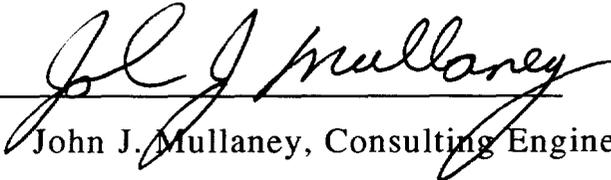
Based upon the above information, Buffalo River] believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest.

SUMMARY

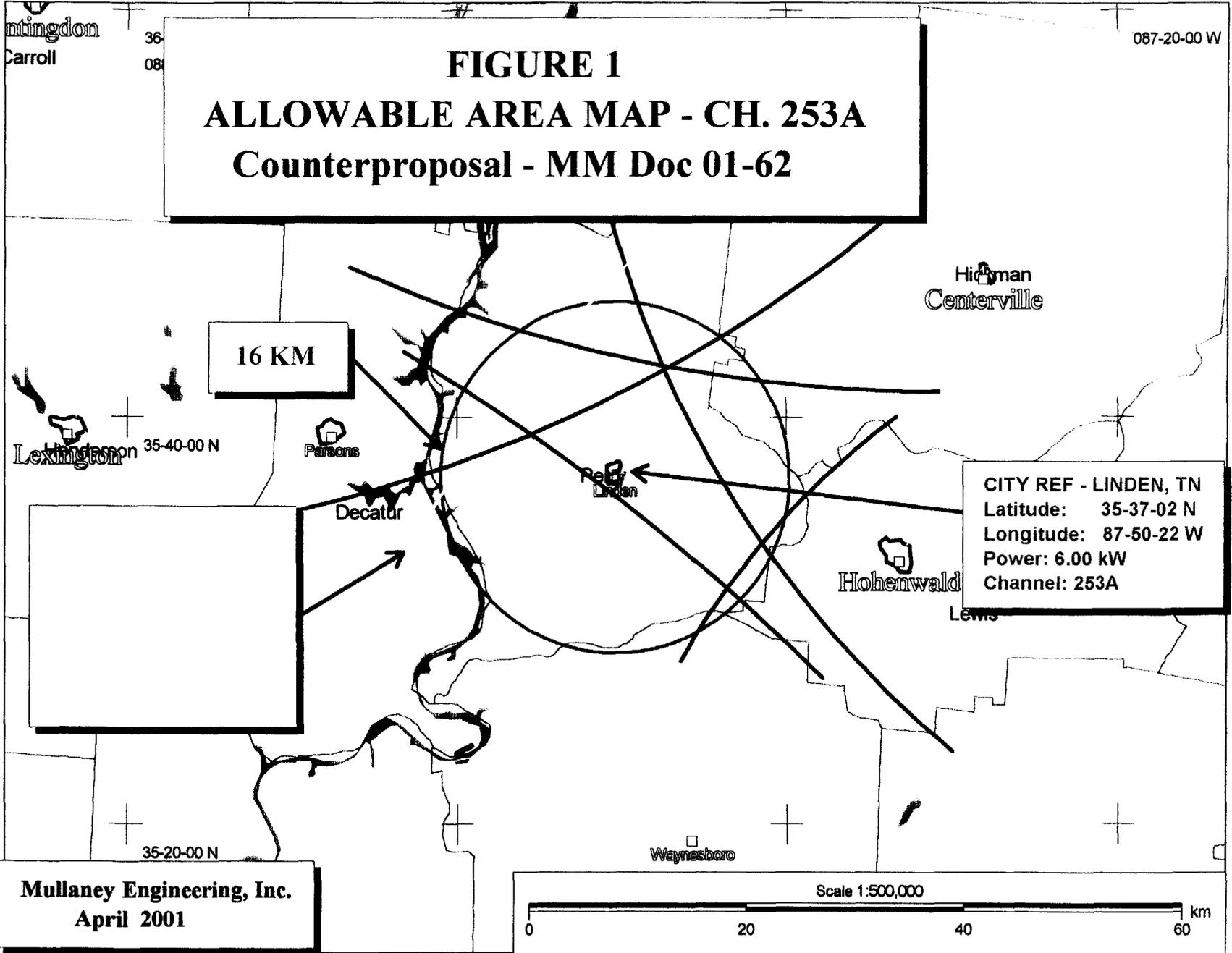
Buffalo River Broadcasters requests that the FM Table of Allotments be amended to Allot Ch. 253A to Linden, Tennessee. This request is submitted as a counterproposal in MM Docket 01-62.

	Present	Proposed
Linden, Tennessee	---	253A

Buffalo River believes that the proposed allotment of a new FM service will result in a preferential arrangement of allotments and therefore, serves the public interest. If granted, Buffalo River will quickly file an application for construction permit.


John J. Mullaney, Consulting Engineer

April 17, 2001.



NEW 253 A FM POLARIZATION ERP (KW) HAAT RCAMSL
 LINDEN TN US HOR PLN BM TILT (METER) (METER)
 35.3702 87.5022 (D.MMSS) 98.5 MHz HORIZONTAL 6.000 0.000 100.0
 VERTICAL 6.000 0.000 100.0

THE FOLLOWING CONTOURS ARE CALCULATED USING: CALCULATED HAAT FROM TOPO DATA BASE
 ERP= 6.000 (KW) 7.8 (DBK) HAAT= 100.0 (METERS)

INTERFERING	DOMESTIC	AZIMUTH	HAAT	HAAT	CONTOURS (KM)	
	DBU KM	DEGREES	(METERS)	(FEET)	70 DBU	60 DBU
CO CHANNEL (40.0)	86.7	0.0	72.3	237.1	13.6	24.3
1ST ADJACENT (54.0)	43.7	45.0	99.7	327.0	16.1	28.3
2ND ADJACENT (80.0)	9.1	90.0	73.6	241.5	13.7	24.5
3RD ADJACENT (100.0)	2.8	135.0	66.3	217.5	13.1	23.4
		180.0	113.6	372.7	17.4	30.0
		225.0	115.4	378.7	17.5	30.2
PROTECTED (60.0)	28.3	270.0	145.4	477.1	19.7	33.6
		315.0	113.7	373.1	17.4	30.0
CITY GRADE (70.0)	16.2	AVERAGE	100.0	328.1	16.2	28.3

EST SITE ELEVATION : 160.6 m.; 526.9 ft.
 EST RAD CENTER AGL : 128.6 m.; 421.9 ft.
 RAD CENTER A.M.S.L.: 289.2 m.; 948.8 ft.

 NO CHANNEL 6 TV STATIONS WITHIN 41. KM

AZIMUTH	LAT	LONG	ERP (KW)	HAAT	D	I-CON	P-CON	IR	IC	REZLT		
FROM TO CALL STS	FILE NUMBER	CITY	ST C	(D.MMSS)	REL CHN	HORZ VERT	(M)	A F5010	F5050	DIST RSEP	RSEP IR IC	
								(KM)	(KM)	(KM)	(KM)	
62.0 242.6 WSIX-F LIC	BMLH831110AH	NASHVILLE TN A	36.0249	86.4949	3RD 250C	100H 100V	349			102.9	95.	C
128.4 309.0 ADD	RMRAH10	ARDMORE AL A	34.5627	86.4815	1ST 252C1	H V		MX		120.4	133.	S
127.4 307.9 WKSR-F LIC	BLH941220KC	PULASKI TN A	35.0847	87.0528	1ST 252A	6H 6V	97			85.7	72.	
127.4 307.9 DEL	RMRAH10	PULASKI TN A	35.0847	87.0528	1ST 252A	H V				85.7	72.	
334.2 154.0 WRJB LIC	BLH7102	CAMDEN TN A	36.0325	88.0610	1ST 252A	3H 3V	91	Moving		54.3	72.	S
Comment: Ordered to Ch. 240A per MM Docket 89-416, WRJB holds CP on 240A												
335.1 154.7 WRIC-F CP	BMPH941019IB	METROPOLI IL A	36.4509	88.2958	1ST 252C1	100H 100V	213			139.3	133.	C
335.1 154.7 DEL	RM9754	METROPOLI IL A	36.4509	88.2958	1ST 252C1	H V				139.3	133.	C
335.1 154.7 ADD	RM9754	PADUCAH KY A	36.4509	88.2958	1ST 252C1	H V				139.3	133.	C
217.1 36.3 WZLQ LIC	BLH960308KC	TUPELO MS A	34.1005	89.0923	CO 253C1	100H 100V	299			200.8	200.	C
74.0 255.4 WGIC LIC	BLH910206KA	COOKEVILL TN A	36.0834	85.2802	CO 253C2	50H 50V	1500			222.0	166.	
175.3 355.3 ADD	RM8472	CLOVERDAL AL A	34.5619	87.4617	1ST 254A	H V				75.5	72.	C
11.7 191.9 WHOP-F LIC	BLH790727AG	HOPKINSVI KY A	36.5254	87.3044	1ST 254C1	100H 100V	90			143.4	133.	
129.5 310.2 LIC	BLH891219KC	HUNTSVILL AL A	34.4753	86.3824	3RD 256C	100H 100V	300			142.1	95.	

 THERE WERE 0 AM STATIONS WITHIN 6.43 KM (4 MI) OF THE FM REFERENCE COORDINATES

**CHANNEL ALLOCATION STUDY FOR CH. 253A
 FROM REFERENCE POINT FOR LINDEN, TN**

COUNTERPROPOSAL - MM DOC. 01-62

**MULLANEY ENGINEERING, INC.
 GAITHERSBURG, MARYLAND**

**FIGURE 2
 APRIL 2001**

Certificate of Service

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Comments and Counterproposal of Buffalo River Broadcasters" as sent by by hand delivery or first class U.S. Mail, postage prepaid, this 23rd day of April, 2001 to the following

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Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
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James L. Winston, Esquire
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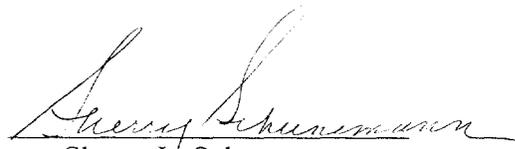
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