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

APR 23 2001

01-62
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM Docket No. 01-52
)	RM-10053
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)	

To: Chief, Allocations Branch
Mass Media Bureau

COMMENTS AND COUNTERPROPOSAL
OF
YALOBUSHA BROADCASTERS

Yalobusha Broadcasters ("Yalobusha"), 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. Yalobusha herein seeks allotment of Channel 279A to Vardaman, MS, in lieu of the proposal set forth in the *NPRM* to reallocate Channel 280C2 from Columbus, MS, to Okolona, MS.²

In support hereof, the following is respectfully shown:

The *NPRM* invited comments and counterproposals in connection with eight interrelated changes to the FM Table of Allotments ("*FM Table*") jointly proposed by

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

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List A B C D E

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 reallocation of Channel 280C2 from Columbus, MS, to Okolona, MS, and modification of the license of WACR, Channel 280C2, Columbus, MS, to specify operation on Channel 280C2 at Okolona, MS. WACR is licensed to T&W Communications.

Yalobusha herein proposes the allotment of Channel 279A to Vardaman, MS, as the first local service at Vardaman. Section 73.207 of the Rules, at Table A, would require a minimum spacing of 106 km. between the proposed Channel 279A facility at Vardaman and the proposed Channel 280C2 facility at Okolona. The actual distance between the facilities proposed at Vardaman and Okolona facilities is only 62 km.³ 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 279A at Vardaman would be the more preferential arrangement of allotments.

Vardaman is an incorporated town in Calhoun County, MS, in the Sand-Clay Hills soil area of northeast Mississippi. The 2000 U.S. Census shows that that Vardaman has a population of 1,065 persons, which is an increase from the population of 920

² Yalobusha respectfully requests addition of Vardaman, MS, to the caption.

persons shown in the 1990 U.S. Census. 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.⁴ As Vardaman is incorporated and listed in the U.S. Census, it is qualified for allotment of a local radio service on these bases alone. Vardaman has additional characteristics of a “community,” including:

- A local government, consisting of the Mayor and 5 Alderman.
- Its own municipal services, including Vardaman City Hall, the Vardaman Police Department, a volunteer fire department, its own sanitation service handled by Waste Management, Vardaman Elementary School, Vardaman Middle School and Vardaman High School.
- Its own zip code: 38878. The Vardaman Post Office is located on Burkett Avenue in Vardaman.
- Churches which identify with Vardaman, including Vardaman First Baptist Church and Vardaman Methodist Church.
- Local health facilities to serve Vardaman, including the Vardaman Family Medical Clinic, the Vardaman Senior Citizen Nutrition Site, and local doctors’ offices.
- Community organizations, including Mary Hart’s and the Senior Citizen Club.
- Vardaman Public Library.
- The Vardaman branch of Bank of Mississippi.
- Numerous commercial establishments.

³ See Technical Exhibit attached hereto at Figure 1.

The Technical Exhibit attached hereto shows that an allotment can be made to Vardaman on Channel 279A in compliance with the Commission's coverage and spacing requirements if a site restriction is imposed 7 km. south of Vardaman. The Technical Exhibit proposes the following reference coordinates for the Channel 279A allotment at Vardaman:

N. Lat.	33	48'	40"	NAD-27
W. Long.	89	10'	50"	

According to the Technical Exhibit, the reference coordinates will provide line-of-sight to the entire community of Vardaman.

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 279A will provide Vardaman with its first local service.

Accordingly, Vardaman qualifies under Priority (3).

⁴ *Strattanville and Farmington Township, PA*, MM Docket No. 99-58, DA 00-2711 (Chief, Alloc. Br., released December 1, 2000).

The proposal for Channel 280C2 at Okolona also proposes a first local service qualifying under Priority (3). However, the new allotment at Vardaman should be preferred over the Okolona proposal under Priority (4), in view of other public interest considerations.

The proposal to reallocate Channel 280C2 from Columbus to Okolona would require the removal from Columbus of the existing service of WACR, which presently operates on Channel 280C2 at Columbus. On the other hand, the allotment of Channel 279A to Vardaman 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.⁵ The addition of a new primary service to the *FM Table* better serves the public interest and furthers the mandate under Section 307(b) of the Communications Act to make a “fair, efficient and equitable” distribution of radio services among communities.⁶ Accordingly, new primary service should be added on Channel 279A at Vardaman, in lieu of reallocation of the existing Channel 280C2 service from Columbus to Okolona.

⁵*Sibley, IA and Brandon, SD*, 15 FCC Rcd 19130 (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, Dardanella, El Dorado, Hampton, Harrison, Hutsville, 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).

⁶ *Id.*

The public has a “legitimate expectation that existing service will continue.”⁷ The weight to be accorded the public’s expectation is substantial.⁸ The Petitioners’ Okolona proposal would uproot the long-standing service WACR has provided to Columbus and modify the WACR license to instead serve Okolona. WACR has served Columbus for more than two decades. 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.

Furthermore, removal of Channel 280C2 from Columbus to Okolona would create a loss of reception service over a 5,982 sq. km. area encompassing 64,879 persons.⁹ Although the Okolona proposal also shows a gain area, any loss of existing service is a matter of serious concern to the Commission.¹⁰ In the instant case, if the Okolona proposal were adopted, nearly 65,000 members of the public would lose “the signal of an operating station that can be accessed today simply by turning on a . . . radio set,”¹¹ contrary to the strong public interest in continued service.

The Petitioners have shown no countervailing service benefit to be achieved by reallocating Channel 280C2 from Columbus to Okolona. The geographic area contained within the gain area would not exceed that of the loss area.¹² Although Petitioners claim

⁷ *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).

⁸ *Eatonton and Sandy Springs, GA*, *supra*, 70 RR 2d at 190.

⁹ *Petition*, Exhibit E-20.

¹⁰ *Modification of Authorizations to Specify a New Community of License*, *supra* at 7097. *See also Bay City, Brenham, Cameron, Centerville, Edna, Ganado, Giddings, Harker Heights, Hearne, La Grange, Matagorda, New Ulm, Point Comfort, Rollingwood, Rosenberg and Seadrift, TX*, 10 FCC Rcd 3337, 78 RR 2d 1128, 1129-1130 (1995).

¹¹ *Modification of Authorizations to Specify a New Community of License*, *supra* at 7097.

¹² *Petition*, Exhibit E-20.

an overall population increase in the gain area, Petitioners' proposal would remove a service from the larger community of Columbus, which had a 1990 U.S. Census population of 23,799 persons, to the much smaller town of Okalona (1990 U.S. Census population: 3,267). Generally, Commission policy would favor retention of the channel in the community with the larger population.¹³ Under the circumstances, the public interest would be better served by retaining Channel 280C2 at Columbus.

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

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

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

WHEREFORE, Yalobusha 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>
Vardaman, MS	-----	279A

¹³*Van Wert, OH and Monroeville, IN*, 7 FCC Rcd 6519 (Chief, Alloc. Br., 1992).

Respectfully submitted,

YALOBUSHA BROADCASTERS

By 

Ellen Mandell Edmundson
Its Attorney

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April 23, 2001

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

ENGINEERING EXHIBIT EE-RM:

COUNTERPROPOSAL - MM DOC 01-62

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

ALLOT CH. 279A TO VARDAMAN, MISSISSIPPI

APRIL 16, 2001

**ENGINEERING STATEMENT PREPARED ON BEHALF OF
YALOBUSHA BROADCASTERS**

ENGINEERING EXHIBIT EE-RM:

COUNTERPROPOSAL - MM DOC 01-62

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

ALLOT CH. 279A TO VARDAMAN, MISSISSIPPI

TABLE OF CONTENTS:

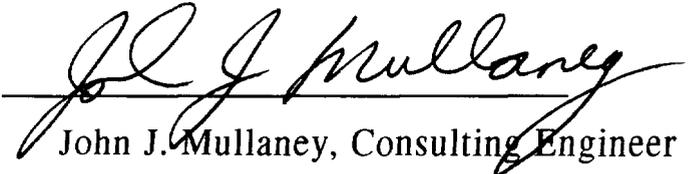
1. Declaration of Engineer
2. Narrative Statement
3. Figure 1, Allowable Area Map - Ch. 279A - Vardaman, AL.
4. Figure 2, Channel Allocation Study for Ch. 279A.
From Special Ref. Point for Vardaman, AL.

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 Yalobusha 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 16th day of April 2001

ENGINEERING EXHIBIT EE-RM:

COUNTERPROPOSAL - MM DOC 01-62

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

ALLOT CH. 279A TO VARDAMAN, MISSISSIPPI

NARRATIVE STATEMENT:

This engineering statement has been prepared on behalf of Yalobusha Broadcasters. 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. 279A to Vardaman, Mississippi. The proposal to allot channel 279A as a first aural service to Vardaman is in direct conflict with a proposal contained in MM Docket 01-62 to re-allot Ch. 280C2 at Columbus, Mississippi, to Ch. 280C2 at Okolona, Mississippi.

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. 279A

For the purposes of this rule making the applicant proposes to use the following special reference coordinates (7 km south of Vardaman) for Ch. 279A at Vardaman, Tennessee.

N. Latitude: 33° 48' 40" NAD-27

W. Longitude: 89° 10' 50"

The proposed reference site will provide an unobstructed view of the city of license, Vardaman, MS and is located close enough to serve the entire community with the required 3.16 mV/M or 70 dBu contour. Figure 3 is an allowable area map showing Vardaman along with a 16 km circle used for city grade allotment purposes.

Channel Allocation Study - Ch. 279A

Figure 4 is a Channel Allocation Study from the proposed special reference point for Ch. 279A at Vardaman, MS. 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 one item.

The short spacing is to the proposal to ADD Ch. 280C2 to Okolona, MS which is short spaced by 43.9 km. The required 106 km separation specified by the rules is shown in red on the allowable area map. Consequently, both proposals are mutually exclusive.

Public Interest Showing

As proposed herein, the allotment of Ch. 279A to Vardaman, MS, 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 28,420 persons being encompassed within the 60 dBu contour. The town of Vardaman, MS, has a 1990 population of 920 persons and is located in Calhoun Mississippi.

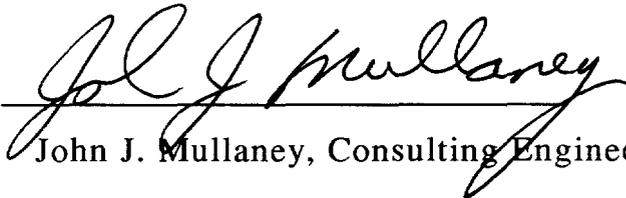
Based upon the above information, Yalobusha believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest.

SUMMARY

Yalobusha Broadcasters requests that the FM Table of Allotments be amended to Allot Ch. 279A to Vardaman, Mississippi. This request is submitted as a counterproposal in MM Docket 01-62.

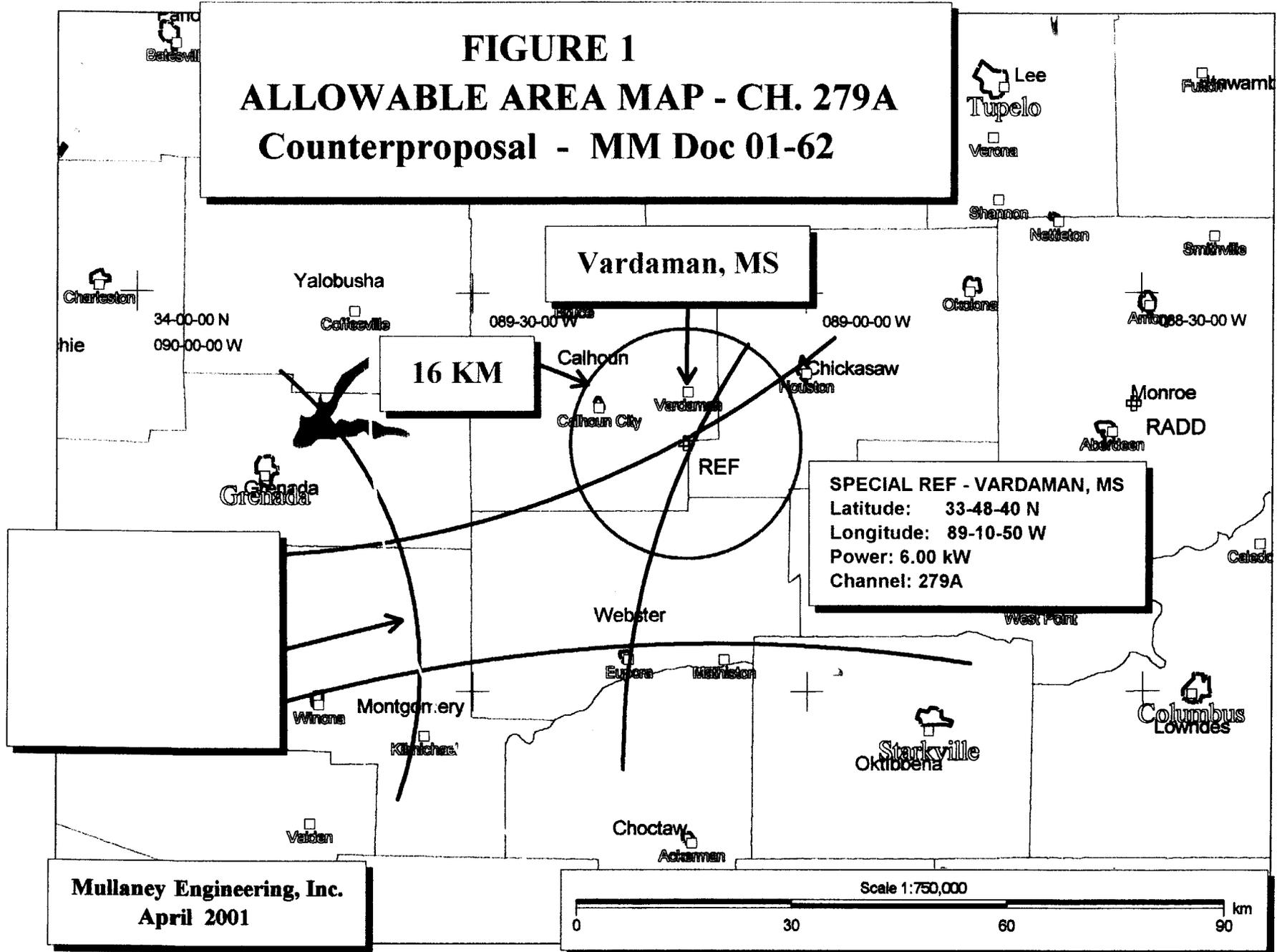
	Present	Proposed
Vardaman, Mississippi	---	279A

Yalobusha 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, Yalobusha will quickly file an application for construction permit.


John J. Mullaney, Consulting Engineer

April 16, 2001.

FIGURE 1
ALLOWABLE AREA MAP - CH. 279A
Counterproposal - MM Doc 01-62



Mullaney Engineering, Inc.
April 2001

Scale 1:750,000

0 30 60 90 km

NEW 279 A FM POLARIZATION ERP (KW) HAAT RCAMSL
 VARDAMAN MS US HOR PLN BM TILT (METER) (METER)
 33.4840 89.1050 (D.MMSS) 103.7 MHZ HORIZONTAL 6.000 0.000 100.0
 VERTICAL 6.000 0.000 100.0

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

CALCULATED HAAT FROM TOPO DATA BASE

INTERFERING	DOMESTIC	AZIMUTH	HAAT	HAAT	CONTOURS (KM)
DBU	KM	DEGREES	(METERS)	(FEET)	70 DBU 60 DBU
		0.0	106.4	349.0	16.8 29.1
CO CHANNEL (40.0)	86.7	45.0	112.6	369.5	17.3 29.9
1ST ADJACENT (54.0)	43.7	90.0	93.8	307.7	15.6 27.5
2ND ADJACENT (80.0)	9.1	135.0	85.8	281.4	14.8 26.3
3RD ADJACENT (100.0)	2.8	180.0	87.0	285.3	14.9 26.5
		225.0	90.9	298.3	15.3 27.1
PROTECTED (60.0)	28.3	270.0	115.3	378.3	17.5 30.2
		315.0	108.2	355.1	16.9 29.4
CITY GRADE (70.0)	16.2	AVERAGE	100.0	328.1	16.2 28.3

EST SITE ELEVATION : 117.9 m.; 386.7 ft.
 EST RAD CENTER AGL : 84.7 m.; 277.8 ft.
 RAD CENTER A.M.S.L.: 202.5 m.; 664.5 ft.

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)	(KM)		
131.3	311.6	WMBC	LIC	BLH900507KA	COLUMBUS	MS A	33.2040	88.3247	3RD	276C2	22H	22V	230			78.4	55.			
331.5	151.1	WRBO	LIC	BLH980617KC	COMO	MS A	34.5144	89.5242	1ST	278C1	100H	100V	179			133.1	133.			C
331.5	151.1	WRBO	CP	BPH991021AA	COMO	MS A	34.5144	89.5242	1ST	278C1	100B	100B	207D			133.1	133.			C
179.0	359.1	WUSW	LIC	BLH860609KD	HATTIESBU	MS A	31.3137	89.0807	CO	279C	100H	100V	322			253.3	226.			
88.9	270.4	WQEN	LIC	BLH980710KF	GADSDEN	AL A	33.4933	86.2646	CO	279C1	77H	77V	337			253.2	200.			
85.9	267.5	WQEN	APP	BPH980713IA	GADSDEN	AL A	33.5711	86.1304	CO	279C	100H	100V	326			274.6	226.			
85.5	267.2		DEL	RMRAH10	GADSDEN	AL A	33.5804	86.1235	CO	279C1	H	V				275.4	200.			
100.2	281.5		ADD	RMRAH10	TRUSSVILL	AL A	33.2638	86.5247	CO	279C1	H	V				217.3	200.			
57.8	237.9	NEW	APP	BNPL000830AA	HOUSTON	MS A	33.5416	89.0007	CO	279L1	H	V	29.97			19.5	67.			-
114.7	295.3	WACR-F	LIC	BLH961212KA	COLUMBUS	MS A	33.2427	88.0827	1ST	280C2	50H	50V	150			106.4	106.			C
103.2	283.8		DEL	RMRAH10	COLUMBUS	MS A	33.3700	88.1225	1ST	280C2	H	V				92.8	106.			-
84.7	265.1		ADD	RMRAH10	OKOLONA	MS A	33.5138	88.3044	1ST	280C2	H	V			MX	62.1	106.			S
266.9	86.1	WCLD-F	LIC	BLH960411KD	CLEVELAND	MS A	33.4401	90.4250	1ST	280C3	24.5H	24.5V	960			142.3	89.			
251.0	70.5	WGNL	LIC	BLH980202KE	GREENWOOD	MS A	33.3130	90.0952	3RD	282C2	50H	50V	84			96.6	55.			

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

CHANNEL ALLOCATION STUDY FOR CH. 279A
 FROM SPECIAL REF. POINT FOR VARDAMAN, MS

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 Yalobusha 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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Policy and Rules Division
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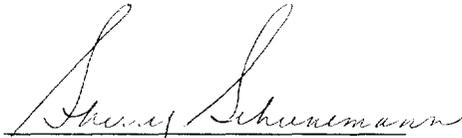
Station WKXM
Ad-Media Corporation
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Sherry L. Schunemann