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

JUL 17 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202	)	RM-9953
of the Commission's Rules	)	
Table of Allotments	)	MM Docket No. 00-169
For FM Broadcast Stations	)	
(Oswego and Granby, NY)	)	

To: Chief, Allocations Branch

**REPLY COMMENTS IN SUPPORT OF CRAM PROPOSAL**

Clear Channel Broadcasting Licenses, Inc. ("CCBL"), the licensee of WXBB(FM) (formerly WVOA(FM)), Facility ID No. 22134, DeRuyter, New York, hereby files reply comments in support of the proposal of Cram Communications, Inc. in this proceeding, as that proposal is the only approach that will enable WTKV(FM), Oswego, New York, to bring a first local transmission service to Granby, New York, without blocking WXBB(FM)'s carefully planned efforts to improve its ability to serve the public. 1/

**I. BACKGROUND**

In April 2000, CCBL and Cram Communications, Inc. ("Cram") filed an application requesting Commission consent for CCBL to acquire WXBB(FM) from Cram (the "Assignment Application"). See FCC File No. BALH-20000414ABM. In August 2000, Galaxy Communications, L.P. ("Galaxy"), the licensee of WTKV(FM), Channel 288A, Oswego, New

1/ At the time this proceeding began, the call sign of the DeRuyter station was WVOA(FM). Recently, the call sign of WVOA(FM) was changed to WXBB(FM). For the sake of clarity, these reply comments will refer to the station by its current call sign -- WXBB(FM) -- throughout. In addition, since this proceeding began, and pursuant to prior Commission approval, CCBL has consummated its acquisition of WXBB(FM). See FCC File No. BALH-20000414ABM. CCBL supports Cram's proposal and intends to continue to prosecute the construction permit proposed in WXBB(FM)'s pending application in order to improve that station's ability to serve its listeners. See FCC File No. BPH-20001106ABG.

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York, filed a petition for rule making (the "Petition") to modify the FM Table of Allotments to assign Channel 288A from Oswego to Granby, New York, and to modify the license of its station WTKV(FM) accordingly (the "Initial Galaxy Proposal"). The Petition also proposed a theoretical set of reference coordinates on which to base the projections for the proposed allocations. Six weeks later, the Commission issued a Notice of Proposed Rule Making requesting comment on the Initial Galaxy Proposal (the "Notice").

On November 6, 2000, pursuant to the Notice, both Cram and Galaxy timely filed comments (respectively, the "Cram Comments" and the "Galaxy Comments"). Also on November 6, 2000, Cram timely filed a construction permit application to modify the facilities of WXBB(FM) (the "Permit Application"). *See* FCC File No. BPH-20001106ABG. Cram, in its comments, explained that the public interest would be best served by the Commission approving both the Permit Application and a slightly modified version of the Initial Galaxy Proposal (specifically, adopting the Galaxy Proposal with a very slight change to the theoretical reference coordinates proposed in the Petition or, alternatively, a very minor – four kilometer – site restriction) (collectively with the Permit Application, the "Cram Proposal"). 2/

On November 21, 2001, both Cram and Galaxy filed reply comments (respectively, the "Cram Reply" and the "Galaxy Reply"). The Cram Reply summarized the benefits of the Cram Proposal as follows:

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2/ In its initial comments, Cram referred to its proposal as the "Counterproposal." *See* Cram Comments at 1. As explained in the Cram Reply, this terminology was meant only to put Galaxy on notice that Cram had proposed a material modification to their initial proposal. In fact, despite Galaxy's suggestion to the contrary, Galaxy Reply at 2, the Cram Proposal is not a formal counterproposal, but merely a proposal for a site restriction or a set of alternate reference coordinates. *See* Cram Reply at n.3; *Kerman, California*, Report and Order, 11 FCC Rcd 2887 (1996). The one case cited by Galaxy in support of its argument to the contrary is inapposite, as it involves two competing allotment proposals for a single channel, not an allotment proposal and a construction permit. *See* Galaxy Reply at 2 (citing *Roxton, Texas and Soper, Oklahoma*, Report & Order, 13 FCC Rcd 20992 (1998)).

1. WTKV(FM) would be able to change its community of license to become Granby's first aural local transmission service;
2. WTKV(FM) would be able to increase its net service population by more than 70,000 persons;
3. WTKV(FM) would be able to reduce a short spacing to a Canadian allotment on Channel 289B, Kingston, Ontario;
4. WXBB(FM) would be able to increase its net service population by more than 190,000 persons;
5. WXBB(FM) would be able to eliminate existing short-spacings to four other New York stations: WNGZ(FM), Montour Falls; WGKR(FM), Grand Gorge; WKPQ(FM), Hornell; and WMRV-FM, Endicott;
6. WXBB(FM) would be able to reduce mutual interference with WILQ(FM), Williamsport, Pennsylvania, and significantly reduce any short-spacing with that station; and
7. WXBB(FM) and WTKV(FM) would be able to implement changes that, collectively, would increase service to roughly 265,000 persons, or more than twice as many persons as would receive additional service under the Initial Proposal.

In its Reply, Galaxy refused to accept the Cram Proposal. Even though both proposals enable an initial local aural transmission service to be brought to Granby, Galaxy nonetheless contended that the public interest benefits of its Initial Proposal outweighed those of the Cram Proposal. Galaxy also manufactured a series of vague alternatives (collectively, the "New Galaxy Proposal") that shared a single key attribute: each requires WXBB(FM) to modify its pending Permit Application to specify a totally different transmitter site. <sup>3/</sup> But none of Galaxy's arguments or alternatives justify denial or modification of the Cram Proposal, which will enable WXBB(FM) to substantially improve its service through use of its intended transmitter site, and WTKV(FM) to bring first local transmission service to Granby, New York.

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<sup>3/</sup> Galaxy Reply at 6-7.

Following this exchange of comments, the Commission approved the Assignment Application and the sale of WXBB(FM) to CCBL in March 2001. CCBL and Cram have since consummated the transaction pursuant to such approval.

**II. THE CRAM PROPOSAL SERVES THE PUBLIC INTEREST FAR BETTER THAN THE INITIAL OR NEW GALAXY PROPOSAL.**

The Cram Proposal is entirely consistent with Commission policy and precedent and demonstrably better serves the public. Galaxy's attempts to suggest otherwise, including the unprecedented assertion that a rulemaking proponent should be allowed to amend a pending construction permit application to specify a new (and apparently hypothetical) site of the proponent's choosing, only underscores the frailty of Galaxy's own claims.

**A. The Cram Proposal Incorporates the Key Aspects of the Initial Galaxy Proposal While Offering Substantial Additional Benefits in a Manner Consistent with Established Precedent.**

Galaxy's comparison of the Cram Proposal to its own Initial Proposal <sup>4/</sup> misconstrues the plain facts of this case and Commission precedent. Contrary to Galaxy's assertions, the relevant factual comparison to be made is not between the Permit Application and the Initial Galaxy Proposal. Rather, the key comparison is between the *entire* Cram Proposal – which retains the key elements of the Initial Galaxy Proposal, including the delivery of first local transmission service to Granby, New York, *as well as* grant of the Permit Application – and the Initial Galaxy Proposal. Under the Commission's established allotment priorities, such a comparison compels adoption of the Cram Proposal.

Simply stated, both proposals would enable Granby to receive its first local transmission service, both would reduce an international short-spacing, and both would increase the total number of persons served. However, only the Cram Proposal would eliminate four

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<sup>4/</sup> See Galaxy Reply at 3-6.

existing short-spacings between WXBB(FM) and other New York radio stations. Only the Cram Proposal would enable WXBB(FM) to reduce mutual interference and short-spacing with WILQ(FM), Williamsport, Pennsylvania. And – most significantly – only the Cram Proposal would enable WXBB(FM) and WTKV(FM) to implement changes that, collectively, *would increase service to roughly 265,000 persons*, or more than twice as many persons as would receive additional service under the Initial Galaxy Proposal.

The Commission's case law in favor of the Cram Proposal is likewise compelling. Although the Allocations Branch prefers that "channels be allotted with the least site restrictions possible," 5/ it is not, as Galaxy asserts, "inconsistent with well-established Commission policy" for the Allocations Branch to issue a site restriction or modify a set of reference coordinates proposed in an allotment rulemaking petition in order to facilitate grant of a timely filed construction permit application. 6/ To the contrary, clear Commission precedent has established that a site restriction (or alternate set of reference coordinates) *should* be utilized to enable a timely filed pending permit application to be adopted. 7/

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5/ See Galaxy Reply at 4.

6/ The one case that Galaxy cites in support of its claim that an application-driven site restriction violates Commission policy did not even involve a construction permit application. See *Vacaville and Middleton, California*, 4 FCC Rcd 8315 (1989), *recon. denied*, 6 FCC Rcd 143 (1991). That case involved competing *allotment* proposals – one for a class upgrade (which required a petition for rulemaking) and one for a new allotment. Moreover, the thrust of the decision was to underscore that an allotment proposal's theoretical reference coordinates should not be allowed to block a proposed service upgrade. *Id.* at 8316. Indeed, one of the other cases cited approvingly by Galaxy in its Reply – *Roxton, Texas, and Soper, Oklahoma* – itself concluded that a site restriction should be applied to a proposed allotment in order to enable a pending modification application. See 13 FCC Rcd 20992.

7/ See, e.g., *Kerman, California*, Report and Order, 11 FCC Rcd 2887 (Allocations, 1996); *Huntingdon, Tennessee*, Report and Order, 8 FCC Rcd 3918 (Allocations 1993); *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 8 FCC Rcd 4743, 4745 n.12 (1993) ("The staff will also attempt to resolve conflicts between a rulemaking petition and a later-filed FM application by imposing a site restriction on the proposal in the petition . . . whenever it is possible to do so. . . .")

For example, in *Kerman, California*, the Allocations Branch faced a set of relevant facts nearly identical to those of the instant case. <sup>8/</sup> There, the petitioner had proposed a new FM allotment for Kerman, California. On the date that initial comments were due in that allotment proceeding, a second party – EBE Communications Limited Partnership – filed an application for a construction permit to modify its station's existing facilities. EBE also timely filed comments in the allotment proceeding that requested that the Commission adopt a site restriction of 11 kilometers (and a different channel) for the proposed Kerman allotment in order to enable grant of its permit application. <sup>9/</sup> EBE explained that this approach was consistent with Commission policy. The Allocations Branch agreed, and adopted EBE's proposal.

The parallels to the instant case are apparent. Like EBE, the application to improve WXBB(FM)'s service was filed as of the comment date in this proceeding. Like EBE, the Cram Proposal requests a site restriction (or alternate set of reference coordinates) so that its Permit Application may be granted at the site proposed. In fact, the Cram Proposal should be even less of an issue than the EBE's proposal in the *Kerman* proceeding, as the site restriction proposed here is much less restrictive. Accordingly, under *Kerman*, the Allocations Branch should adopt the Cram Proposal without further delay.

**B. Each of the New, "Compromise" Galaxy Proposals Likewise Contradicts Commission Policy and Common Sense.**

Implicitly recognizing the superiority of the Cram Proposal to its own Initial Proposal, Galaxy closed its Reply by offering a series of vague "compromise" alternatives. The one constant in each of these proposals, however, is what makes each unacceptable under Commission precedent: each proposal would compel the licensee of a station to revise its

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<sup>8/</sup> *Kerman, California*, 11 FCC Rcd at 2887-88.

properly filed construction permit application to specify a random transmitter site *simply to preserve a set of theoretical reference coordinates chosen by a rule making proponent.*

Even the proposal of such a "compromise" is absurdly unreasonable. A set of reference coordinates is nothing more than a temporary placeholder, a theoretical point that may be easily modified. <sup>10/</sup> In contrast, a transmitter site proposed in a construction permit is the actual location at which the applicant intends to construct its facility. In this case, it is a site where a tower already is located, where the applicant has reasonable site assurance, and where FAA clearance is ensured. Any forced change in that site will delay the permit process for many months, until the applicant can obtain a right to build on the different site and the necessary FAA clearance. To risk significant or permanent delay to a public beneficial construction permit, such as the Permit Application, simply to protect a temporary and theoretical set of reference coordinates is contrary to the public interest.

Such a forced re-location of the site specified in Permit Application would be even more damaging in this case. Galaxy has not just selected a different site for WXBB(FM)'s proposed re-location, but it apparently has selected that site without consideration of the fact that no broadcast tower appears to exist, or even if tower construction is possible, at this new location. <sup>11/</sup> In fact, Galaxy presents no reason to think that it did anything other than to pick a

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<sup>9/</sup> Notably, the Allocations Branch did not treat this "alternate" proposal as a counterproposal, even though EBE called its own request a counterproposal. *See id.* at n.2.

<sup>10/</sup> For example, the Allocations Branch has instituted site restrictions (or a different set of reference coordinates) in literally dozens, if not hundreds, of allocations proceedings in order to facilitate several potentially exclusive proposals. *See, e.g., McCook, Alliance, Imperial, Nebraska, and Limon, Parker, Aspen, Avon, and Westcliffe, Colorado, Report and Order, MM Docket No. 00-6 (Allocations, rel. April 27, 2001) (instituting site restriction to enable grant of pending application); Roxton, Texas and Soper, Oklahoma, Report & Order, 13 FCC Rcd 20992 (1998).*

<sup>11/</sup> *See attached Engineering Statement at 3.*

set of coordinates out of thin air to assign to WXBB(FM)'s Permit Application. And even if construction were theoretically possible at the new site dictated by Galaxy, there is no guarantee that all necessary local or federal approvals may be obtained for the new site, which could delay or block any effort to improve WXBB(FM)'s service. Accordingly, the Commission should reject any proposal by Galaxy that would require the Permit Application to specify a new site.

The New Galaxy Proposal should be rejected for one final reason: there is no guarantee that this proposal offers any significant benefit beyond that set forth in the Cram Proposal. The New Galaxy Proposal suggests that the collective service population gain of its approach on the site specified may exceed by a few thousand that which would result from implementation of the Cram Proposal. Such a margin is within the vagaries of the methodologies used to project populations for allotment purposes. <sup>12/</sup> And the New Galaxy Proposal's other "new" benefits -- a further slight reduction in WTKV(FM)'s international short spacing, and a *de minimis* effect on certain of WXBB(FM)'s short spacings -- cannot justify putting all the many public benefits of the Permit Application at risk by requiring CCBL to locate and obtain a new actual transmitter site consistent with Galaxy's requirements (if one even exists).

**C. The Cram Proposal Best Serves the Public Interest and Should Be Adopted.**

Galaxy's other attacks also fail to justify the delay or rewriting of the Cram Proposal. Galaxy's complaint that an alternate set of reference coordinates (or a site restriction) might limit WTKV(FM)'s *theoretical* service gain should not preclude adoption of the Cram Proposal. First, a future applicant for the Granby allotment is not obligated to locate its

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<sup>12/</sup> *See id.* As noted in the Engineering Statement, it is not clear whether Galaxy used the traditional "circle" methodology for determining its gain and loss numbers. CCBL has attempted to replicate their methodology, without success. In any event, the art of such technical analysis is subject to minor variations, which should not be the sole basis of a Commission decision.

transmitter at the allotment's reference coordinates – such coordinates merely serve as a placeholder until a formal permit application can be filed. Accordingly, a future applicant may well be able to locate a site that might achieve greater coverage than can be now projected under the Allocations Branch's established "circle" methodology. Second, and more important, the net service population gain under the Cram Proposal *doubles* the net gain that would result from the Initial Proposal alone. 13/ Such a clear public benefit more than outweighs any minor burden placed on the proponent of a new allotment by means of a change in reference coordinates of roughly two miles.

Such a huge net service gain also answers Galaxy's contention that the creation of any area receiving four aural services is sufficient to justify the denial of the Permit Application. In this instance, the Cram Proposal is predicted to cause only 1,600 or so persons – *or less than one percent of the total net service gain resulting from the proposed modification* – to receive four aural services. Accordingly, such a minor change in existing levels of service should not preclude the clear gains of the Cram Proposal. 14/

Finally, Galaxy's complaint that the Cram Proposal would "neutralize" its attempt to mitigate an existing international short spacing is, at best, a ridiculous overstatement. None of

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13/ See Cram Reply at 4.

14/ See, e.g., *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville, and Social Circle, Georgia*, Report and Order, 15 FCC Rcd 9971 (2000) (approving proposal that would bring first local transmission service to new community, eliminate short spacings, and increase net service even though it would cause more than 17,000 persons to receive four aural services and roughly 10,000 persons to receive three or fewer); *Healdton and Krum, Texas*, Report and Order, 14 FCC Rcd 3932 (Allocations, 1999) (finding loss of fourth service to 22 persons and loss of fifth service to 3,762 persons outweighed by benefit of additional service to 39,256 persons). Moreover, through Cram's Proposal, more than 96.3 percent of WVOA(FM)'s "loss" population (and all of WTKV(FM)'s loss population) would remain well-served, and the remainder would have access to four aural services. See *Johnstown and Altamont, New York*, Report and Order, 13 FCC Rcd 12463 (Allocations, 1998) (approving allotment change in which 96 percent of loss population would remain well-served).

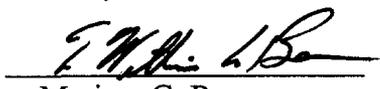
Galaxy's various proposals appear able to eliminate this international short-spacing. 15/ Neither will the Cram Proposal. Both sets of proposals, however, will enable WTKV(FM) to reduce this international short-spacing, which, in any event, does not create any contour overlap over Canadian land. Accordingly, the reduction of this single short-spacing cannot outweigh the elimination of the several short-spacings and other public interest benefits possible through adoption of the Cram Proposal.

### CONCLUSION

Accordingly, and in light of the substantial public interest benefits of the Cram Proposal and the weight of relevant Commission precedent, CCBL hereby urges the Commission to adopt the proposed allotment reference coordinates of 43° 18' 26" N.L. and 76° 27' 23" W.L. (or, alternatively a site restriction on the allotment that accomplishes the same result), so as to enable provision of a first aural transmission service to Granby *and* grant of the Application.

Respectfully submitted,

**CLEAR CHANNEL BROADCASTING  
LICENSES, INC.**

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July 17, 2001

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15/ See, e.g., Notice at 3.

# **ENGINEERING STATEMENT**

TECHNICAL EXHIBIT  
IN SUPPORT OF REPLY COMMENTS  
IN MM DOCKET NO. 00-169  
GRANBY AND DERUYTER, NEW YORK

Technical Narrative

This technical exhibit has been prepared on behalf of Clear Channel Broadcasting Licenses, Inc., licensee of FM station WXBB, Deruyter, New York (herein "CCBL") in support of reply comments in the Federal Communications Commission (FCC) Notice of Proposed Rule Making in MM Docket No. 00-169 (Notice). The Notice was issued in response to a Petition for Rule Making filed by Galaxy Communications, L.P. (herein "Galaxy"), licensee of FM Station WTKV, Oswego, New York, requesting the amendment of Section 73.202(b) by the reallocation of channel 288A from Oswego to Granby, New York and the modification of Station WTKV's license to specify Granby as its community of license. Cram Communications, LLC (herein "Cram") filed comments which specified an alternate allotment reference point for channel 288A at Granby in order to permit the relocation of WXXB.<sup>1</sup> Cram and Galaxy submitted reply comments. Since then CCBL has completed its acquisition of the station. These reply comments concern the method used by Galaxy to calculate the population figures for the service areas as well as gain and loss areas in its reply comments. In addition, information is provided concerning the transmitter site proposed by Galaxy for WXBB's proposed transmitter site.

The method used by the FCC in FM allotment proceedings for determining population within service areas, as well as gain and loss areas, is based on the presumption of uniform terrain and maximum facilities (i.e. circles) for all commercial FM stations (with the exception of Class C stations).<sup>2</sup> This method was used by Cram in its comments for the determination of population within the service areas, as

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<sup>1</sup> The WXBB application for construction permit was filed on November 6, 2000, FCC File No. BPH-200001106ABG (herein "application").

<sup>2</sup> See footnote 1 of the Notice of Proposed Rule Making in MM Docket No. 96-219 (DA 96-1774; adopted October 25, 1996; released November 1, 1996). See also footnote 5 of the Notice of Proposed Rule Making in MM Docket No. 94-61 (DA 94-611; adopted June 9, 1994; released July 5, 1994).

well as the gain and loss areas.<sup>3</sup> However, based on a review of Galaxy's reply comments, Cram was unable to replicate Galaxy's population figures for the service areas and gain and loss areas.

For example, the 1990 Census population within the 1 mV/m (60 dBu) service contours was determined for Galaxy's licensed channel 288A facility at Oswego, the "modified" Granby channel 288A reference point set forth by Galaxy in its reply comments and the proposed WXBB operation set forth in the Application. The population was determined based on uniform terrain and maximum facilities (circle method) as well as the FCC's standard prediction method using 360 evenly spaced radials and actual facilities. The following tabulates the 1990 Census population within each contour. For comparative purposes, the population within each contour as determined by Galaxy is also tabulated.

Facility	1990 Census Population		
	Uniform Terrain (Cram Comments)	FCC Standard Prediction Method	Galaxy Reply Comments
WKTU License (Ch. 288A)	101,978	95,487	96,718
Modified Granby Site (Ch. 288A)	200,547	207,262	215,684
WXBB Application (Channel 286B)	831,355	848,174	844,902

As indicated, the difference between the population figures specified by Cram and Galaxy for WKTU's licensed operation is 5,260 persons (5.2% difference), the difference for the modified Granby site is 15,137 persons (7.5% difference) and the difference for the WXBB Application is 13,547 persons (1.6% difference). Furthermore, these differences appear significant as Galaxy indicated in its reply comments that its modified proposal would result in a population gain of 267,909 persons as compared to the Cram proposal of 261,963 persons, or a gain of 5,946 persons (2.2 percent gain). Finally, it is noted that the population

<sup>3</sup>It is noted that WXBB utilized the FCC's standard prediction method for calculations concerning the predicted interference reductions resulting from its proposal.

differences are much smaller when the Galaxy figures are compared to the figures based on the FCC's standard prediction method, namely 1,231 persons (1.3% difference) for the WKTU licensed operation, 8,422 persons (4.1% difference) for the modified Granby site and 3,272 persons (0.4%) for the WXBB Application.

Finally, in its reply comments, Galaxy proposes a new site location for WXBB to relocate its operation on channel 286B (N42°56'03", W75°45'18"). Based on a review of the FCC and FAA tower databases, including the registered tower database, there do not appear to be any existing towers at this location.



W. Jeffrey Reynolds

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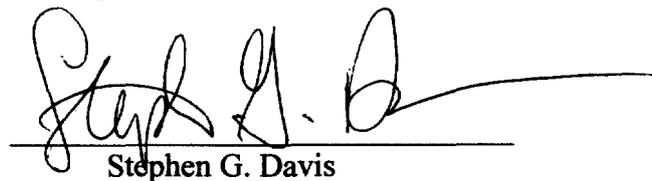
July 13, 2001

## DECLARATION

I, Stephen G. Davis, declare as follows:

1. I am Vice President, Engineering, of Clear Channel Broadcasting Licenses, Inc., the licensee of WXBB(FM), DeRuyter, New York (the "Station").
2. CCBL intends to continue to prosecute the pending construction permit application for the Station, as filed in November 2000. *See* FCC File No. BPH-20001106ABG.
3. If awarded the proposed construction permit for WXBB(FM), CCBL promptly will construct and operate such facilities.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate to the best of my knowledge, information and belief.



Stephen G. Davis

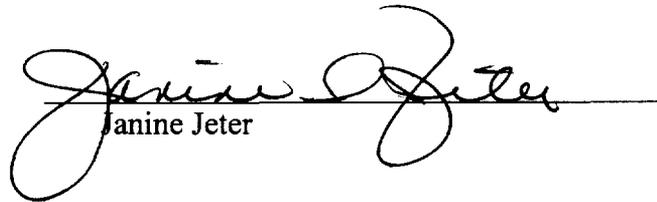
July 16, 2001

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 17th day of July, I have caused a copy of the foregoing Reply Comments to be delivered, by first-class mail, to the following:

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