

In support hereof, Fant states as follows:

I. Background

On July 22, 1996, Fant filed an application for a construction permit for a new television station to operate on the existing allocation for analog Channel 45 at Richland Center, Wisconsin (File No. BPCT-19960722KN). Following the filing of Fant's application, the Commission allotted DTV Channel 44 to Fond du Lac, Wisconsin.¹ Fant's proposed operation on Channel 45 at Richland Center would have caused impermissible interference to the Channel 44 DTV facility at Fond du Lac.

Accordingly, on July 11, 2000, pursuant to *Public Notice*, 14 FCC Rcd 19559 (1999) ("Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations"),² Fant filed a Petition for Rule Making proposing to substitute analog Channel 59 for the existing Channel 45 allotment at Richland Center. Subsequent to the filing of Fant's Petition, however, the Commission issued the *Channel 52-59 NPRM* in which announced that it was suspending the processing of all pending NTSC proposals for Channel 59. The Commission stated, however, that it would provide all applicants and rulemaking petitioners with an opportunity to amend their pending NTSC proposals to specify an alternative channel below Channel 59. 16 FCC Rcd at 7292 ¶24.

Following the issuance of the *Channel 52-59 NPRM*, Fant began searching for an alternative channel to substitute for its pending analog Channel 59 proposal. In the process of doing so, Fant discovered for the first time that, on July 11, 2000, when Fant filed its Petition, the FCC's database did not reflect the filing of a minor modification application on April 28,

¹ See 47 C.F.R. §73.622(b).

² The amendment filing period opened on November 22, 1999 and closed on July 17, 2000. See *Public Notice*, 15 FCC Rcd 4974 (2000) ("Window Filing Period for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000").

2000, by Station WOI-DT, Channel 59, Ames, Iowa (File No. BMPCDT-20000428ABD). Fant also discovered that its pending proposal for Channel 59 at Richland Center was predicted to cause 2.6% interference to Station WOI-DT. Accordingly, on May 8, 2001, Fant filed a "Petition for Leave to Amend Petition for Rule Making" in which it modified its pending allotment proposal in order to protect the facilities specified in Station WOI-DT's modification application.

Nevertheless, on October 23, 2001, the Chief of the Television Branch sent a letter to Fant dismissing its Petition for Rule Making because a staff engineering analysis found that Fant's allotment proposal would cause 2.6% interference to the DTV allotment for Station WOI-DT, apparently without considering Fant's supplemental filing of May 8, 2001, which demonstrated that in fact Fant's proposed analog Channel 59 proposal, as modified, would only cause less than .5% interference to WOI-DT's modified facility.

As a result, on November 20, 2001, Fant filed a Petition for Reconsideration of the dismissal of its Petition for Rule Making. In Fant's Petition for Reconsideration, Fant showed that in fact Fant's proposal for analog Channel 59 would cause less than .5% interference to WOI-DT's modified facility, and thus, Fant's Petition for Rule Making should not have been dismissed. In Fant's Petition for Reconsideration, Fant also asked, pursuant to the Channel 52-59 NPRM, that Fant's Petition for Rule Making be amended to propose the substitution of analog Channel 53 for the existing analog Channel 45 allotment at Richland Center, WI rather than analog Channel 59 as proposed in Fant's Petition for Rule Making. This proposal was fully consistent with the Channel 52-59 NPRM, in which the Commission ruled that it would provide petitioners with pending NTSC proposals on Channel 59 the opportunity to specify an alternate channel.

Now, however, Channels 52-59 have been reallocated,³ but the Filing Window Public Notice provides that Fant and others seeking to modify an existing NTSC allotment by proposing the substitution of a channel within Channels 52-59 have the opportunity through March 8, 2002, the date of this filing, to specify an alternate channel. Consequently, Fant has searched for an alternate channel, and Fant has determined that DTV Channel 45 at Richland Center would meet the Commission's technical parameters and would enable the provision of the first local commercial television service to the residents of Richland Center. See Engineering Statement of Pete Myrl Warren, III attached hereto. As a result, Fant is submitting the instant pleading to supplement its Petition for Reconsideration and to amend its Petition for Rule Making, which is the subject of the Petition for Reconsideration, to propose that DTV Channel 45 at Richland Center be substituted for the existing analog Channel 45 allotment, rather than analog Channel 53 as proposed in Fant's Petition for Reconsideration and analog Channel 59 as proposed in Fant's Petition for Rule Making.

II. The FCC Should Substitute DTV Channel 45 for the Existing Analog Channel 45 Allotment at Richland Center, Rather Than Analog Channels 53 or 59 as Fant Previously Proposed

As stated above, the Commission expressly provided in the Window Filing Public Notice that a party with a proposal to modify an existing NTSC allotment by substituting a NTSC channel within Channels 52-59 is to have the opportunity to specify an alternate channel. As a result, the proposal made herein by Fant is timely and proper. Fant had a timely and viable Petition for Rule Making on file to substitute analog Channel 59 for the existing allotment of analog Channel 45 at Richland Center, and Fant showed in its Petition for Reconsideration that Fant's Petition for Rule Making was erroneously dismissed. Fant also made in its Petition for

³Reallocation and Service Rules for the 698-746 MHz Spectrum Band, GN Docket No. 01-74, Report and Order, FC 01-364, released January 18, 2002.

Reconsideration a timely request to modify its proposal to substitute analog Channel 53 rather than Channel 59 for the existing allotment of analog Channel 45. Now, Fant's latest proposal to substitute DTV Channel 45 for the analog Channel 45 allotment is fully consistent with the Window Filing Public Notice and the Channel 52-59 Reallotment Order. Moreover, the attached Engineering Statement of Pete Myrl Warren shows that this proposal fully meets the Commission's technical parameters for DTV allotments.

As demonstrated in Fant's Petition, the proposed allotment of DTV Channel 45 to Richland Center would provide substantial public interest benefits. First, a grant of Fant's allotment proposal would provide the community of Richland Center with its first local television service which would 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.⁴ In addition, the proposed allotment will promote the second television allotment priority established 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, 167 (1952), of providing each community with at least one television broadcast station.

Furthermore, the proposed allotment of Channel 53 to Richland Center would:

(1) help foster the development of emerging new television networks by providing an additional competitive broadcast outlet in a top 100 television market⁵ with which to establish a primary affiliation;⁶ (2) promote ownership diversity in the Madison television market; and, (3) increase

⁴ 47 U.S.C. §307(b). See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing a 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 a goal of Section 307(b) to "secure local means of expression").

⁵ The Madison market currently is ranked as the 84th television market. See *Broadcasting & Cable*, p. B-204 (2001).

⁶ The WB Television Network and the United Paramount Network have explained to the Commission in a variety of proceedings that one of their primary challenges in establishing (footnote continued on next page)

competition in the local advertising market. Indeed, in light of the Commission's relaxation of the local television ownership rules and the increasing consolidation in the broadcast industry, the public interest benefits that would result from Fant's allotment proposal have particular significance in today's broadcast environment.

III. Conclusion

WHEREFORE, in light of the foregoing, Fant Broadcast Development, L.L.C. requests that this Petition for Reconsideration, as supplemented herein, be granted; that Fant's Petition for Rule Making seeking the allotment of Channel 59 at Richland Center, Wisconsin be returned to pending status *nunc pro tunc*; that Fant's Petition for Rule Making be deemed amended, as set forth herein, to propose the substitution of DTV Channel 45 for the existing allotment of analog Channel 45 at Richland Center, WI, and that the Commission substitute DTV Channel 45 at Richland Center, WI for the existing allotment of analog Channel 45 at Richland Center to provide Richland Center, WI with its first local commercial television service.

themselves as a nationwide network has been finding a sufficient number of stations with which to affiliate. *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); Comments of the UPN, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates*, MM Docket No. 95-92 at 21-22 (filed Oct. 30, 1995).

Respectfully submitted,

By: _____

Dean R. Brenner
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Attorney for Fant Broadcast Development, L.L.C.

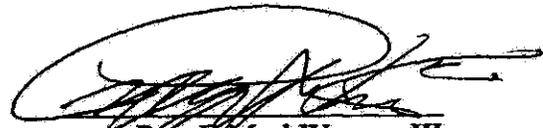
Dated: March 8, 2002

WES Broadcast Consultants.

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 Broadcast Consultants and that the firm has been retained to prepare an engineering statement on behalf of Fant Broadcast Development LLC.

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 6th day of March 2002

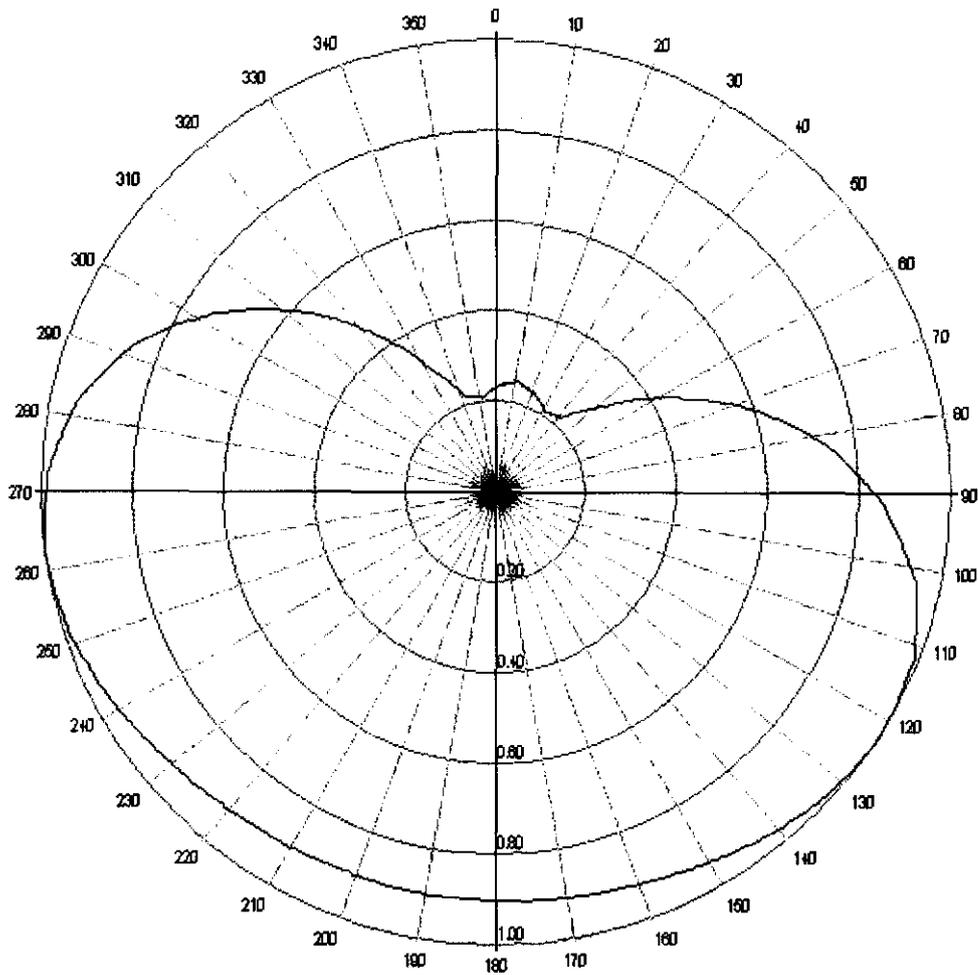
Engineering Statement
Richland Center, WI
Channel 45 DTV
Amendment to Proposed Rulemaking
By WES Broadcast Consultants

Richland Center, WI Channel 53 seeks to Amend its current proposal on Channel 53 to DTV Channel 45. To do this, it is necessary to revert to the broad cardioid antenna pattern that was proposed on Channel 45 NTSC originally and its orientation is shown in Exhibit ANT-1. Ch 45 DTV Richland Center will not change location or RCAMSL. Richland Center Channel 45 meets and maintains the proper City of License Coverage required.

Richland Center Channel 45 DTV is Short spaced to one DTV facility and one NTSC facility. Exhibit FLR-1 demonstrates protection to WMMF-DT Channel 44's maximized facility showing .31 percent interference which is below the de minimus . Exhibit FLR-2 demonstrates protection to WMMF-TV Channel 44, the Digital Allotment for WMMF-DT Channel 44 with an interference percentage of .34, which is again below the de minimus standard.

Exhibit FLR-3 is run against WMSN-TV Channel 47 NTSC and shows .0 percent interference to that facility.

**Exhibit ANT-1 Richland Center, WI Channel 45 Proposed Rulemaking
prepared by WES Broadcast Consultants**



Azim	RelFS ERP [kW]		dBk
0.0	0.227	51.529	17.121
5.0	0.235	55.225	17.421
10.0	0.242	58.564	17.676
15.0	0.241	58.081	17.640
20.0	0.234	54.756	17.364
25.0	0.224	50.176	17.005
30.0	0.212	44.944	16.527
35.0	0.210	44.100	16.444
40.0	0.215	46.225	16.649
45.0	0.243	59.049	17.712
50.0	0.285	81.225	19.097
55.0	0.342	116.964	20.681
60.0	0.410	168.100	22.256
65.0	0.482	232.324	23.661
70.0	0.557	310.249	24.917
75.0	0.631	398.161	26.001
80.0	0.704	495.616	26.951
85.0	0.769	591.361	27.719

Azim	RelFS ERP [kW]		dBk
90.0	0.829	687.241	28.371
95.0	0.879	772.641	28.880
100.0	0.922	850.084	29.295
105.0	0.954	910.116	29.591
110.0	0.977	954.529	29.798
115.0	0.990	980.100	29.913
120.0	0.997	994.009	29.974
125.0	0.996	992.016	29.965
130.0	0.990	980.100	29.913
135.0	0.980	960.400	29.825
140.0	0.968	937.024	29.718
145.0	0.954	910.116	29.591
150.0	0.941	885.481	29.472
155.0	0.930	864.900	29.370
160.0	0.920	846.400	29.276
165.0	0.913	833.569	29.209
170.0	0.907	822.649	29.152
175.0	0.903	815.409	29.114

Azim	RelFS ERP [kW]		dBk
180.0	0.901	811.801	29.094
185.0	0.899	808.201	29.075
190.0	0.899	808.201	29.075
195.0	0.899	808.201	29.075
200.0	0.899	808.201	29.075
205.0	0.901	811.801	29.094
210.0	0.904	817.216	29.123
215.0	0.908	824.464	29.162
220.0	0.914	835.396	29.219
225.0	0.922	850.084	29.295
230.0	0.932	868.624	29.388
235.0	0.944	891.136	29.499
240.0	0.957	915.849	29.618
245.0	0.970	940.900	29.735
250.0	0.983	966.289	29.851
255.0	0.991	982.081	29.921
260.0	0.997	994.009	29.974
265.0	0.996	992.016	29.965

Azim	RelFS ERP [kW]		dBk
270.0	0.989	978.121	29.904
275.0	0.972	944.784	29.753
280.0	0.949	900.601	29.545
285.0	0.914	835.396	29.219
290.0	0.871	758.641	28.800
295.0	0.817	667.489	28.244
300.0	0.757	573.049	27.582
305.0	0.689	474.721	26.764
310.0	0.617	380.689	25.806
315.0	0.542	293.764	24.680
320.0	0.467	218.089	23.386
325.0	0.396	156.816	21.954
330.0	0.329	108.241	20.344
335.0	0.276	76.176	18.818
340.0	0.234	54.756	17.384
345.0	0.214	45.796	16.608
350.0	0.209	43.681	16.403
355.0	0.214	45.796	16.608

Exhibit FLR-2
 Richland Center, WI Ch 45
 Amendment to Proposed Rulemaking
 prepared by WES Broadcast Consultants

Ch 45 DTV N LAT 43-23-40 W LON 89-52-20 ERP: 1000 kW AGL:170m GAMSL:444m RCAMSL:614m

Callsign	City	Class	Status	ERP	Sep	Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WMMF-TV*	FOND DU LAC	DTV	LIC	123	D/M	Clean	79	110	-31	-28	10	14	1	UHF	44	A-1	LR	F(50,90)	41	-

Population before the addition of Ch 45 to the database not affected by terrain losses: 2,497,330 persons
 Population lost to NTSC before the addition of Ch 45: 55,166 persons
 Population after the loss to NTSC: 2,442,164 persons
 Population after the addition of Ch 45 to the database: 2,433,794 persons
 Population lost to NTSC with Ch 45: 8,370 persons
 Percentage of population lost with Ch 45: .34 %

Exhibit FLR-1
 Richland Center, WI Ch 45
 Amendment to Proposed Rulemaking
 prepared by WES Broadcast Consultants

Ch 45 DTV N LAT 43-23-40 W LON 89-52-20 ERP: 1000 kW AGL:170m GMSL:444m RCMSL:614m

Callsign	City	Class	Status	ERP	Sep	Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WMMF-DT	FOND DU LAC	DTV	CP MO	122	D/M	Clean	79	110	-31	-28	10	14	1	UHF	44	A-1	LR	F(50,90)	41	-

Population before the addition of Ch 45 to the database not affected by terrain losses: 2,499,151 persons
 Population lost to NTSC before the addition of Ch 45: 55,394 persons
 Population after the loss to NTSC: 2,443,757 persons
 Population after the addition of Ch 45 to the database: 2,435,837 persons
 Population lost to NTSC with Ch 45: 7,920 persons
 Percentage of population lost with Ch 45: .31 %

Exhibit FLR-3
 Richland Center, WI Ch 45
 Amendment to Proposed Rulemaking
 prepared by WES Broadcast Consultants

Ch 45 DTV N LAT 43-23-40 W LON 89-52-20 ERP: 1000 kW AGL:170m GAMSL:444m RCAMSL:614m

Callsign	City	Class	Status	ERP	Sep	Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc	Contour	Svc Strength
WMSN-TV	MADISON	NTSC	LIC	1150	D/M	Clean	47	81	-34.5	-24	0	6	1	UHF	47	+	T+2	LR	F(50,50)	64	-

Population before the addition of Ch 45 to the database not affected by terrain losses: 761,130 persons

Population lost to NTSC before the addition of Ch 45: 20,358 persons

Population after the loss to NTSC: 740,772 persons

Population after the addition of Ch 45 to the database: 740,772 persons

Population lost to NTSC with Ch 45: 0 persons

Percentage of population lost with Ch 45: .0 %

CERTIFICATE OF SERVICE

I, Dean R. Brenner, do hereby certify that a true and correct copy of the foregoing
“Petition for Reconsideration” was served by U.S. mail this 8th day of March 2002 to:

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Mass Media Bureau
Federal Communications Commission
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