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December 12, 2002 File No. 20764-101-60

SUBMITTED VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: MM Docket 99-325
Digital Audio Broadcasting Systems and Their Impact on Terrestrial Broadcasting

Subject: PETITION FOR RECONSIDERATION

Dear Ms. Dortch:

On December 10, 2002, there was transmitted on behalf of Glen Clark & Associates, its Petition for Reconsideration of the First Report and Order adopted by the Commission in the above-referenced proceeding.

For the convenience of the Commission and interested parties, and in conformity with the specifications of Section 1.49, I submit herewith for association with the docket the Petition for Reconsideration with Table of Contents and Executive Summary appended as pages i through iii.

Kindly communicate any questions directly to this office.

Respectfully submitted,

John Wells King

JWK:gr
Enclosure

Before The

FEDERAL COMMUNICATIONS COMMISSION

Washington D.C. 20554

In the matter of:	)	
	)	
Digital Audio Broadcasting Systems and	)	MM Docket 99-325
Their Impact on Terrestrial Broadcasting	)	

TO: The Commission

PETITION FOR RECONSIDERATION

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EXECUTIVE SUMMARY

Glen Clark & Associates ("GCA") requests the Commission to remove the prohibition on digital operations in the AM band during nighttime hours. The concerns which led to the nighttime prohibition can be addressed fully in other ways which will allow the immediate adoption of the digital system at night by a large majority of existing, full-time AM stations.

Although a minority of AM stations operating with IBOC at night would cause significant interference to distant stations on first-adjacent channels, the number of stations which would cause interference is small. It is unnecessary to preclude all nighttime use of AM IBOC because of a minority of cases. Those stations which would not cause nighttime interference can be given nighttime IBOC authority immediately. There is readily at hand a simple test to identify quickly and positively, the stations which would cause interference at night. That test is already within the Commission's inventory of proven software tools. No development of new tools or procedures is required.

Using existing tools and specifications, it is clear that all expanded AM band stations should be given immediate authorization for nighttime IBOC operation. New facilities proposed in the Commission's AM Major Change Filing Window also meet criteria for nighttime IBOC operations.

There are many more AM stations which satisfy the Commission's present technical criteria at night. The software tools to identify them already exist. GCA incorporated these tools into a five-rule test and applied it to more than 90 night studies it

has performed in the past decade. The results of that review project that 80% of all full-time AM stations could operate with IBOC at “normal power” during nighttime hours. An additional 10% of full-time stations can operate with nighttime IBOC with reduced power in one or both of the “primary” sidebands.

Precluding the use of IBOC by all AM stations at night because of the unique circumstances of a few, easily-identifiable stations is unnecessary. It is also contrary to the Commission’s stated goal to compress the timeframe for finalizing the rules and policies that will affect the ultimate success of AM digital service. CGA proposes a procedure that is uncomplicated and is economical to administer. It places the burden of proof on the broadcaster, conserving the Commission’s resources.

The Commission should reconsider the *IBOC Order* insofar as it prohibits AM stations from transmitting IBOC signals during nighttime hours, and should authorize such operation on an interim basis, prescribing the tests and specifications outlined below.

Before The

FEDERAL COMMUNICATIONS COMMISSION

Washington D.C. 20554

In the matter of:	)	
	)	
Digital Audio Broadcasting Systems and	)	MM Docket 99-325
Their Impact on Terrestrial Broadcasting	)	

TO: The Commission

PETITION FOR RECONSIDERATION

Glen Clark & Associates ("GCA"), by its counsel and pursuant to Section 1.106 of the Commission's rules, hereby petitions the Commission to reconsider, in part, its *First Report and Order* ("*IBOC Order*") in the above-captioned proceeding, in which the Commission authorized the use of digital transmission within the AM and FM broadcast bands.

GCA is a consulting engineering firm based in suburban Pittsburgh, Pennsylvania. Its president, Glen Clark, is a communications consulting engineer whose qualifications are well established and well known to the Commission. He has been directly involved in the study and development of digital transmission in the AM broadcast band. GCA participated in the proceeding leading to the adoption of the *IBOC Order*, and accordingly, is a party in interest.

GCA requests the FCC to reconsider its prohibition on digital operations in the AM band during nighttime hours.[1] The concerns which led to the nighttime prohibition can be addressed fully in other ways which will allow the immediate adoption of the digital system at night by a large majority of existing, full-time AM stations.

INTRODUCTION

After years of research, development and field testing, iBiquity Digital Corporation presented to the Commission a specific protocol and format for the transmission of digital signals in the AM and FM broadcast bands. The National Radio Systems Committee ("NRSC"), a non-profit industry group of technical experts, determined that the proposed AM system is superior to the present analog standard in many ways. After extensive tests, the NRSC determined that the digital system was more robust[2] in the presence of several types of interference and that it delivered superior audio fidelity.[3]

Echoing the comments of several group owners, the Commission concluded that "AM IBOC . . . has the potential to revitalize AM broadcasting and substantially enhance service for the listening public."[4] The Commission also acknowledged that time is of the

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[1] *IBOC Order* at ¶ 24.

[2] National Radio Systems Committee, Digital Subcommittee Report, *"Evaluation of the iBiquity Digital Corporation IBOC System: Part 2 – AM IBOC"*, submitted April 16, 2002 comments of the NRSC ("NRSC AM Report") at 31.

[3] See *IBOC Order* at ¶ 32.

[4] *Id.*, at ¶ 26.

essence with regard to adopting and implementing a digital transmission system, commenting:[5]

> [W]e believe the adoption of a standard will facilitate an efficient and orderly transition to digital radio. This approach is particularly warranted at a time when broadcasters face competitive challenges from various digital media and when many station owners link their continued viability to the prompt introduction of a digital transmission technology. The Commission's support of a standard-setting process is designed to provide regulatory clarity and to compress the timeframe for finalizing the rules and policies that will affect the ultimate success of this service.

However, as digital receivers will be few in number during the first several years after the adoption of a digital standard, and as AM stations must continue to generate revenue to survive during those early years, any digital system must function without disrupting the continued operation of the legacy analog system and the installed fleet of analog receivers. Regrettably, both computer models and field tests have shown that nighttime use of the AM IBOC system can, in certain instances, lead to intolerable levels of interference to the ongoing operation of legacy analog broadcasting for first-adjacent channel stations. Such digital-into-analog interference is an obstacle to blanket adoption of the AM IBOC system.

Based on the results of field tests, the NRSC recommended that the AM IBOC system be authorized for daytime use only.[6] Several other parties also filed comments and

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[5] *Id.*, at ¶ 44.

[6] *Id.*, at ¶ 21.

reply comments which expressed concern about nighttime operation of the AM IBOC system. The Commission concurred:[7]

> [W]e agree with the NRSC that significant uncertainty exists with regard to the potential for first adjacent channel nighttime interference under nighttime skywave propagation conditions. We will therefore defer authorizing nighttime use of AM IBOC until further testing has been completed.

It is true that a minority of AM stations, if they operate with IBOC at night, would cause significant interference to distant stations on first-adjacent channels. GCA prepared reply comments for submission in this proceeding which provide examples demonstrating this fact.[8]

However, the number of stations which would cause interference is small. Further, a simple test already exists to identify quickly and positively, the stations which would cause interference at night. Moreover, that test is already within the Commission's inventory of proven software tools. No development of new tools or procedures is required.

It is unnecessary to preclude all nighttime use of AM IBOC because of a minority of cases. Those stations which would not cause nighttime interference can be given nighttime IBOC authority immediately.

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[7] *Id.*, at ¶ 24.

[8] See *Reply Comments* of The Walt Disney Company and ABC, Inc., and *Reply Comments* of James Crystal Enterprises, L.L.C.

A CLOSER LOOK AT THE NIGHTTIME PROBLEM

Most commenters in the IBOC proceeding agree that the presently-proposed IBOC system for AM performs adequately during daytime hours in terms of protection of the installed fleet of analog receivers. Field tests and computer models both support that conclusion. This begs the obvious question "What is different about the nighttime situation that makes IBOC cause interference at night?"

It is common knowledge that daytime signals travel by groundwave propagation, while nighttime signals travel by both groundwave and skywave propagation. While that observation is a true statement, it is a diversion from the cause of the problem. Once the radio signal has been intercepted by the receiving antenna and is inside the receiver, the circuitry has no way of discerning whether the signal originally arrived by groundwave, skywave or other means. The receiver responds only to the "protection ratio" of the signals which it encounters. It is oblivious to the method by which the signals arrive at its location.

The true problem is that, prior to 1991, the AM allocation standards for nighttime operation on first-adjacent channels were drastically different from the daytime standards. In 1991, the Commission released its *Report and Order* in MM Docket 87-267, which made nighttime standards more demanding and eliminated the disparity.[9]

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[9] *Review of the Technical Assignment Criteria for the AM Broadcast Service* (MM Docket 87-267), 6 FCC Rcd 6273 (1991) ("*Review Order*") at ¶ 57.

THE "DESIRED-TO-UNDESIRED RATIO"[10]

The primary tool for any spectrum allocation methodology is the Desired-To-Undesired Ratio ("the D/U ratio"). Sections 73.37 and 73.182 require co-channel stations to have a D/U ratio of 20-to-1 or more. That means simply that any undesired (interfering) signal can be no stronger that $1/20^{th}$ of the strength of the desired signal. First adjacent channel stations are required to have a D/U ratio of 2-to-1 or more at the periphery of the *primary service area.*[11] That means that the interfering signal can be no more than one-half as strong as the desired signal. This requirement does not change from day to night in the present rules.

THE EVOLUTION OF AM ALLOCATION STANDARDS AND WHY IT IS CENTRAL TO THE IBOC MATTER

Over the years, there have been three standards for daytime allocations and two standards for nighttime allocations.

Prior to 1964, daytime AM facilities were allocated using a complex matrix of technical and need criteria. Due to the complicated contour maps which resulted from the process, Commission and private consulting engineers informally referred to this as "the spaghetti map method." In 1964, the Commission adopted the present "contour

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[10] The terms of art *protection ratio* and *desired-to-undesired ratio* can be used interchangeably. The only difference is that protection ratios are usually expressed in decibels (dB) and desired-to-undesired ratios are usually expressed as a simple fraction.

[11] "Primary service area" is defined in Section 73.14.

protection" methodology[12] with a 1-to-1 D/U ratio specified for first adjacent channel stations. In 1991, the Commission modified the contour protection method to specify a 2-to-1 D/U ratio for first-adjacent channel stations.[13] [14]

The "spaghetti map method" did not produce a specific D/U ratio because unserved markets were permitted greater latitude in their technical criteria. However, the process produced D/U performance which was close to 1-to-1 for first-adjacent channel stations in most locations. Excepting waivers of Part 73.37 or modification of grandfathered facilities, all daytime AM Form 301 applications filed after 1964 complied with the 1-to-1 D/U standard and all applications filed after 1991 complied with the 2-to-1 D/U standard.

Three things are known about the daytime, first-adjacent channel situations of the 4,825 presently-licensed AM facilities:

1) regardless of when they went on the air, the allocation process provided for a nominal D/U of 1-to-1 or better.

2) large deviations from the 1-to-1 D/U value are rare and, if present, are very localized.

3) as additional stations file Form 301 applications to move or upgrade under the newer 2-to-1 D/U standard, the national average of protection afforded to first–adjacent channel stations will improve.

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[12] See *AM Station Assignment Standards* (Docket 15084), 45 FCC 1515 (1964).

[13] See *Review Order* at ¶¶ 56 and 98.

[14] D/U ratios in which the first number is larger than the second number, i.e. 2:1, express less interference than ratios in which the second number is larger than the first number, i.e. 1:2.

In contrast to the daytime situation, there have been only two major allocation regimes for nighttime authorizations. Before 1991, Part 73 included no restriction whatever on the nighttime radiation toward first-adjacent channel stations. After 1991, applications for new nighttime stations were required to provide a 2-to-1 D/U protection to first-adjacent channel stations. Today, the D/U standards in Part 73.182(q) for nighttime operation on first-adjacent channels are identical to the standards in Part 73.37(a) for daytime operation.

In making this change, the Commission commented:[15]

> . . . recognizing that scientific studies show that adjacent channel interference should be reduced in order to improve the AM service, we are adopting a more moderate value of 6 dB. This value is consistent with the daytime protection ratio and strikes an appropriate balance between the needs of flexibility for existing station facilities modifications and our overall desire in this proceeding to reduce AM interference in the AM band . . . .

Regrettably, the turnover rate for new facilities is slow. Many AM stations operate the same transmission facility for decades. Since only 11 years have elapsed since the adoption of MM Docket 87-267, it is likely that the *majority* of AM stations are operating with facilities which were authorized before 1991. The Commission acknowledged that the changes adopted in MM Docket 87-267 would not immediately eliminate the effects of earlier, more lenient standards, saying "As a group, these rules should lead to a significant, although gradual, improvement in AM signal quality."[16]

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[15] *Review Order* at ¶ 57.

[16] *Review Order* at ¶ 98.

In addition, AM broadcasters which file Form 301 proposals to modify the nighttime facility of a station having significant grandfathered radiation rights are not required to comply fully with the new nighttime standard. Rather they are required only to make an incremental move toward compliance under what is commonly known as "the ratchet clause."[17]

THE REAL REASON WHY DAYTIME AND NIGHTTIME ARE DIFFERENT

It is true that AM signals travel by groundwave propagation during the day and by both groundwave and skywave propagation at night. But that fact is not at the root of the AM IBOC matter. The root of the matter is that one can make some well-founded generalizations about the allocation situations encountered in the daytime. One can make almost no generalizations about the allocation situations encountered in the nighttime.

Despite three standards over the years for daytime allocations, all daytime allocations were established under standards which nominally provided for a D/U ratio of 1-to-1 or better for first-adjacent channel stations. Some excursions from the 1-to-1 value can be found over small areas. However, the characteristics of the daytime population are bounded.

By contrast the situations encountered in the population of nighttime authorizations are completely UN-bounded. For example, KDWN(AM) [Facility ID No.

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[17] Part 73.182(q), Footnote 1 requires a 10% reduction in radiated field toward some affected stations. The ratchet clause was introduced in the *Review Order* at ¶ 70.

("FID") 54686] provides a D/U to KDIS(AM) [FID 33255] of 1-to-2.24.[18] There is very wide variation among the nighttime situations encountered.

In the absence of any global generalizations which one can make about existing nighttime facilities, it is impossible to judge the suitability of the IBOC waveform for nighttime use on an all-or-nothing basis. The Commission had no choice but to defer an all-inclusive decision on the nighttime use of IBOC pending further study. However, certain subpopulations can be identified which are compatible with IBOC use at night.

ALL "EXPANDED BAND" STATIONS SHOULD BE GIVEN IMMEDIATE AUTHORIZATION FOR NIGHTTIME IBOC OPERATION

Expanded band stations were first authorized in MM Docket 87-267, the same docket which established the more stringent nighttime allocation standards. By definition, all Expanded Band stations conform to the new nighttime standard of a 2-to-1 D/U ratio for first-adjacent channels.

As the Commission has, by authorizing IBOC for daytime use, already determined that a 2-to-1 D/U ratio is adequate for present receivers, it follows that no Expanded Band station would cause interference while using IBOC at night.

There are additional classes of stations which could implement nighttime IBOC immediately without harmful effects. One is the group of drop-in AMs which were proposed during the Commission's *Major Change Filing Window*. As the window did not open until after the more stringent night standards were in place, those new facilities

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[18] See note 14, *supra*.

could, like the Expanded Band stations, immediately implement nighttime IBOC with few ill effects.[19]

Statistics reflect that, in addition to the identifiable blocks of Expanded Band and "new" stations, many more stations exist which satisfy the Commission's present D/U criteria at night. These stations are not part of an identifiable block which, by inspection, can be shown to satisfy the present standards. They are co-mingled with other stations in their class which may not satisfy the present night criteria. Nevertheless, if the stations which satisfy the new D/U standards could be easily identified, they would not cause undue interference if given immediate nighttime authority to operate with IBOC.

A SIMPLE LITMUS TEST IS AVAILABLE

It could take more than a year to develop the specification for a software program to identify suitable nighttime IBOC stations, to write the program and to validate the program. Fortunately, that delay is unnecessary, as the software tools to identify suitable nighttime stations already exist.

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[19] It should be noted that not all AM proposals filed during the recent window were for "new" stations. Some proposed a change in the city of license for an existing station. As the existing station may have had grandfathered nighttime radiation rights, applications for change in city of license may or may not deserve immediate authorization for nighttime IBOC operation.

One can identify stations which could transmit IBOC during nighttime hours with no significant additional first-adjacent channel interference[20] by asking the following question:

> *What stations could satisfy the same standards at night as are implied to be adequate by the Commission's approval of IBOC use during daytime hours?*

This question is identical to asking:

> *What stations could satisfy the current standards in Part 73.182 with reference to first-adjacent channel stations without drawing upon grandfathered radiation rights?*

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[20] Co-channel stations are not considered since the D/U ratio for co-channel stations is and always has been 20-to-1 for both day and night. The night co-channel criteria are identical to the daytime criteria, which the Commission has already found to be adequate for IBOC implementation.

Second-adjacent channel stations are not considered, as second-adjacent channel IBOC transmission will not affect receivers with a bandwidth of less than 5 kHz and "virtually all of the broadcast industry commenters agree that . . . most AM receivers in use today are designed to capture only that portion of the AM signal that is within 5 kHz of the station's licensed frequency[.]" *IBOC Order* at ¶ 25.

Skywave-to-skywave interference is not considered since Part 73.182(a)(1) entitles Class A facilities to protection of the "secondary service area" from co-channel stations only. While the Commission has reaffirmed its commitment to protecting the "secondary service area" of Class A facilities from co-channel interference, see *The Audio House, Inc.*, 2 FCC Rcd 3171 (1987) at ¶ 8, the Commission has also reaffirmed that protecting the secondary service area of Class A stations from first-adjacent channel interference is "unrealistic and counterproductive."*Review Order* at ¶ 58.

Stations which satisfy this question in the affirmative do not enter the 25% exclusion RSS calculation[21] of any first-adjacent channel station. While the computations to determine membership in the 25% exclusion are lengthy, proven programs to perform the calculations are standard tools used by the Commission and private consulting engineers on a daily basis.

To permit as many stations as possible to implement IBOC at an early time, it is helpful to know that the amplitudes of the AM IBOC system digital sidebands can be adjusted. It is also helpful to know that the upper and lower sidebands can be adjusted independently of one another. When the specific allocation situation on the upper first-adjacent channel is more permissive than the allocation situation on the lower first-adjacent channel (or vice versa), the amplitudes of the digital sidebands can be adjusted to take maximum advantage of the specific situation. Additionally, for those stations which contribute to the 25% RSS calculation, but do not enter the 50% RSS calculation, a second tier is possible, which will increase the number of stations that can adopt early.

PROPOSED GREEN LIGHT CRITERIA

Despite the complexity of nighttime allocations in general and the complexity of the IBOC issues in particular, the following five rules provide a more than adequate framework for granting nighttime IBOC authority:

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[21] The 25% RSS calculation was introduced at paragraph 70 of the *Review Order* and is now codified in Section 73.182(k)(2).

1) Any station which provides an engineering showing to the Commission demonstrating that: a) it does not enter into the 25% RSS calculation for any first-adjacent channel Class B station which is lower in frequency than the proposing station, and b) its 10% skywave, 0.25 mV/m skywave does not cross the 0.5 mV/m groundwave service contour of any first-adjacent channel Class A station which is lower in frequency than the proposing station, may transmit the IBOC "lower primary" sidebands at "normal power."[22]

2) Any station which provides an engineering showing to the Commission demonstrating that: a) it does not enter into the 50% RSS calculation for any first-adjacent channel Class B station which is lower in frequency than the proposing station, and b) its 10% skywave, 0.5 mV/m skywave does not cross the 0.5 mV/m groundwave service contour of any first-adjacent channel Class A station which is lower in frequency than the proposing station, may transmit the IBOC "lower primary" sidebands at 6 dB below "normal power."

3) Any station which provides an engineering showing to the Commission demonstrating that: a) it does not enter into the 25% RSS calculation for any first-adjacent channel Class B station which is higher in frequency than the proposing station, and b) its 10% skywave, 0.25 mV/m skywave does

[22] "Normal Power" is that injection level proposed by iBiquity Digital Corp.

not cross the 0.5 mV/m groundwave service contour of any first-adjacent channel Class A station which is higher in frequency than the proposing station, may transmit the IBOC "upper primary" sidebands at "normal power."

4) Any station which provides an engineering showing to the Commission demonstrating that: a) it does not enter into the 50% RSS calculation for any first-adjacent channel Class B station which is higher in frequency than the proposing station, and b) its 10% skywave, 0.5 mV/m skywave does not cross the 0.5 mV/m groundwave service contour of any first-adjacent channel Class A station which is higher in frequency than the proposing station, may transmit the IBOC "upper primary" sidebands at 6 dB below "normal power."

5) Stations which cannot transmit either primary sideband according to the above criteria, even at reduced power, cannot implement nighttime IBOC operation at this time. The primary sidebands contain essential information which is not duplicated elsewhere. It is impossible to decode the IBOC signal without at least one primary sideband.

APPLICATION OF THE FIVE PROPOSED CRITERIA TO THREE EXAMPLE NIGHT STUDIES

GCA reviewed more than 90 archived night allocation studies which it has performed since the 1991 adoption of the new allocation standards. GCA has evaluated how the above five-rule test would affect each of the studied stations.

Because the individual studies, by virtue of their un-redactable dates and frequencies, clearly infer confidential technical and business strategies of GCA clients, they are not included in the public record.[23] However, three of the night studies which do not contain confidential information are included below for illustration purposes.

There are four parts to each of the examples shown below:

1) consideration of Class B stations on the upper adjacent channel

2) consideration of Class A stations on the upper adjacent channel

3) consideration of Class B stations on the lower adjacent channel

4) consideration of Class A stations on the lower adjacent channel

Where a particular set of sidebands has already been precluded by Class B considerations, there is no need to study the Class A considerations, as they will not change the outcome.

The first example night study was performed on WFNZ(AM) [FID 53974]. WFNZ is a Class B station operating on 610 kHz and is licensed to Charlotte, North Carolina. The attached TABLE 1 shows the protection which WFNZ provides to other Class B stations. The 11th column shows the maximum radiation allowed toward each station. (When counting columns, the hyphenated data in the 5th and 6th positions count as two columns.) If the letter "H" appears to the right of the number in the 11th column, the

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[23] A summary of the studies is filed separately with this petition, accompanied by a request for confidentiality due to the sensitive, proprietary nature of the information contained therein.

studied station enters the 25% RSS calculation for the station on that line. If the letter "R" appears to the right of the number in the 11th column, the studied station enters the 50% RSS calculation for the station on that line.

There are no "H" notations in the WFNZ report, so WFNZ does not enter the 25% RSS calculation for any station. There is one "R" notation in the WFNZ report, for Roanoke, Virginia. Roanoke is on the same channel as WFNZ so, using the five rules proposed above, there are no Class B obstacles to WFNZ implementing nighttime IBOC at full power.

Both first-adjacent channels (600 kHz and 620 kHz) are "regional" class channels. 600 kHz and 620 kHz have no Class A stations so there are no Class A considerations. There are no Class A or Class B obstacles. Applying the five-rule test, WNFZ would be able to operate with IBOC at night using "normal power" in both primary sidebands.

The second example night study was performed on WJAS(AM) [FID 55705]. WJAS is a Class B station operating on 1320 kHz and is licensed to Pittsburgh, Pennsylvania. The attached TABLE 2 shows the protection which WJAS provides to other Class B stations. There are multiple "R"s and "H"s in the 11th column of the WJAS report. However, all but two of them relate to co-channel stations. There are no "R"s pertaining to adjacent channel stations. Therefore, WJAS does not enter the 50% exclusion calculation for any adjacent channel station. Only the "H"s for Erie, Pennsylvania, and Fairfax, Virginia, relate to adjacent channel stations. WJAS enters the 25% exclusion calculation for Fairfax, which operates on 1310 kHz (one channel below WJAS) and the 25% exclusion calculation for Erie, which operates on 1330 kHz (one channel above WJAS). With reference to other Class B stations, WJAS could operate

with both the upper and lower primary sidebands reduced to 6 dB below normal level. There are no domestic Class A stations on 1310 or 1330 kHz so the Class B conditions are final. WJAS could implement nighttime IBOC with both sidebands at reduced power.

The third example night study was performed on WMC(AM) [FID 19185]. WMC is a Class B station operating on 790 kHz and is licensed to Memphis, Tennessee. The attached TABLE 3 shows the protection which WMC provides to other Class B stations. There are multiple "R"s and "H"s in the 11th column of the WMC report. However, all but two relate to co-channel stations. There is an "R" for New Orleans, Louisiana, and an "H" for Oklahoma City, Oklahoma. New Orleans and Oklahoma City both operate on 800 kHz, one channel above WMC. The more restrictive condition controls. Under the five-rule test, WMC would not be able to transmit the upper primary sidebands due to New Orleans. However, with reference to Class B stations, WMC would be able to transmit the lower primary sideband at "normal power".

The attached Figure 1 shows that the WMC 10%, 0.25 mV/m skywave contour does not cross the 0.5 mV/m groundwave contour of adjacent channel, Class A station WBBM(AM), which operates on 780 kHz. There are also no Class A stations on 800 kHz within the WMC skywave contour. WMC's situation is unchanged by considering Class A stations. Under the five-rule test, WMC would be permitted to transmit the upper primary sideband at full power but would not be able to transmit the lower primary sideband.

THE RESULTS OF A CONSOLIDATED NIGHT STUDY

GCA applied the above five-rule test to the remainder of the 90-plus night studies. The results of that review project that 80% of all full-time AM stations could operate

with IBOC at "normal power" during nighttime hours while providing a 2-to-1 D/U ratio protection to all first adjacent channel stations.[24] An additional 10% of full-time stations can operate with nighttime IBOC with reduced power in one or both of the "primary" sidebands.

The 90-plus night studies have a reasonable statistical distribution in terms of frequency, market size and geographic location.

It should be noted that the examples above are not representative of the population of the 90-plus studies. More than half of the studies were similar to the WFNZ example and showed that the considered station could operate with IBOC at night with "normal power" in both sidebands. The atypical examples selected were chosen based on their value for illustrating the proposed process.

STATIONS WHICH DO NOT PASS THE TEST ARE NOT AT AN IMPASSE

It should be noted that stations which do not pass the five-rule test or which do not pass it in a way that allows "normal power" in both primary sidebands are not without recourse. Ample Commission precedent exists to allow stations to enter into mutual-interference agreements. It is to be anticipated that in some instances both the studied station and the station which blocks it may be owned by the same licensee, facilitating the likelihood of agreement.

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[24] For purposes herein, "full-time" means Class A, B or C, as defined in Section 73.21.

It is also clear that some stations which did not pass the five-rule test could pass the test if modifications were made to the station's nighttime radiation pattern.

SUMMARY AND CONCLUSIONS

Many AM stations presently operate with facilities which would not cause significant interference to distant stations if permitted to operate with IBOC facilities during nighttime hours. Those are the stations which comply fully with the post-1991 version of Section 73.182. All Expanded Band stations fall into that group. New stations filed during the Major Change Filing Window also fall into that group. Additional stations can be identified using proven software tools which are already in the Commission's toolbox.

The procedure proposed herein is uncomplicated and is economical to administer. It places the burden of proof on the broadcaster, conserving the Commission's precious resources.

Precluding the use of IBOC by all AM stations at night because of the unique circumstances of a few, easily-identifiable stations is unnecessary. It is also contrary to the Commission's stated goal "… *to compress the timeframe for finalizing the rules and policies that will affect the ultimate success of this service."*[25]

The Commission should reconsider the *IBOC Order* insofar as it prohibits AM stations from transmitting IBOC signals during nighttime hours. The Commission should

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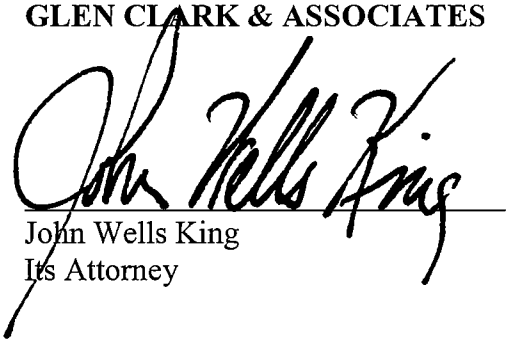
[25] *IBOC Order* at ¶ 44.

permit interim operation of digital transmission systems during nighttime hours, upon appropriate notification that demonstrates compliance with the D/U ratios and related technical specifications of Section 73.182.

Respectfully submitted,

GLEN CLARK & ASSOCIATES

By: 
John Wells King
Its Attorney

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December 10, 2002

CERTIFICATE OF SERVICE

The undersigned, Gerald Robbins, an employee of Garvey Schubert Barer, hereby certifies that this Petition for Reconsideration was served this date upon the parties to the proceeding listed in the attached service list, by U.S. Postal Service, First Class postage prepaid, or by hand-delivery*, or by email# where no mail address appears in the docket.

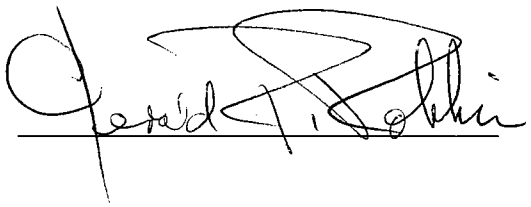


TABLE 1

WFNZ 610 kHz RADIATION LIMITS

STATION ID	FREQ (kHz)	STATUS	BEARING (Degrees)	CRITICAL VERTICAL WINDOW (Degrees)	SKYWAVE FIELD (mV/m)	RSS LIMIT (mV/m) (50%)	RSS LIMIT (mV/m) (25%)	EXCLUSION LIMIT (mV/m)	RADIATION LIMIT (mV/m @ 1 km)	LOCATION
WIP	610	LIC	43.4	9.7-16.8	0.068910	3.839	5.314	1.328	96.4	PHILADELPHIA, PA
WSLC	610	LIC	18.7	30.9-44.9	0.263876	10.845	12.625	5.703	108.1R	ROANOKE, VA
WEZN	610	LIC	251.6	12.5-20.9	0.098033	9.205	10.230	2.558	130.4	BIRMINGHAM, AL
WTVN	610	CP	340.3	14.7-24.1	0.114130	9.775	11.969	2.992	131.1	COLUMBUS, OH
WTVN	610	LIC	340.8	13.7-22.6	0.104426	10.270	12.335	3.084	147.7	COLUMBUS, OH
WSJS	600	LIC	27.9	54.1-66.4	0.406154	4.862	5.924	1.481	182.3	WINSTON-SALEM, NC
WDAF	610	LIC	292.7	3.5- 7.7	0.027167	3.451	4.310	1.046	192.5	KANSAS CITY, MO
WDAF	610	CP	292.7	3.5- 7.7	0.027165	3.451	4.310	1.046	192.5	KANSAS CITY, MO
WIOD	610	LIC	176.0	5.4-10.4	0.042938	6.615	7.117	1.754	204.2	MIAMI, FL
WNTW	610	LIC	27.8	15.1-24.7	0.118328	21.529	21.529	5.382	227.4	WINCHESTER, VA
WGIR	610	LIC	40.5	4.3- 8.8	0.028683	7.523	8.243	2.061	359.2	MANCHESTER, NH
WRJZ	620	LIC	287.0	26.8-40.2	0.230166	4.842	6.633	1.658	360.2	KNOXVILLE, TN
KILT	610	LIC	250.3	2.2- 5.8	0.023802	8.262	9.880	2.470	518.9	HOUSTON, TX
CHNC	610	OPER	37.6	1.4- 1.4	0.012008	2.624		1.312	546.3	NEW CARLISLE, QU
CHNC	610	PROP	37.6	1.4- 1.4	0.012008	2.624		1.312	546.3	NEW CARLISLE, QU
WDNC	620	LIC	64.2	36.4-50.7	0.306485	11.767	13.858	3.465	565.2	DURHAM, NC
WSNG	610	LIC	41.1	6.0-11.3	0.040054	18.361	18.361	4.590	573.0	TORRINGTON, CT
KDAL	610	LIC	326.9	1.6- 5.0	0.015267	6.636	7.387	1.847	604.8	DULUTH, MN
KARV	610	LIC	273.6	4.9- 9.6	0.036589	18.396	19.134	4.783	653.7	RUSSELLVILLE, AR
WCAO	600	LIC	37.2	12.5-20.8	0.093345	4.284	5.666	1.416	758.7	BALTIMORE, MD
WTMT	620	LIC	309.5	13.6-22.5	0.104993	7.372	7.372	1.843	877.7	LOUISVILLE, KY
WREC	600	LIC	271.9	8.0-14.2	0.058652	3.489	4.380	1.095	933.4	MEMPHIS, TN
KSVA	610	LIC	276.8	0.0- 0.6	0.009454	6.370	7.350	1.837	971.8	ALBUQUERQUE, NM
WTMJ	620	LIC	325.3	5.6-10.7	0.037262	2.086	2.974	0.736	987.2	MILWAUKEE, WI
CKTB	610	OPER	9.3	10.4-10.4	0.077755	35.698		17.742	1140.9	ST. CATHARINES,
KFRC	610	LIC	286.9	0.0- 0.0	0.003203	2.465	3.292	0.821	1282.1	SAN FRANCISCO, CA
WBWL	600	LIC	188.5	13.1-21.8	0.104465	8.812	10.932	2.733	1308.1	JACKSONVILLE, FL
WBWL	600	APP	188.5	13.1-21.8	0.104465	8.812	10.932	2.733	1308.1	JACKSONVILLE, FL
WWNR	620	LIC	353.8	26.7-40.0	0.227867	24.000	24.000	6.000	1316.6	BECKLEY, WV
WICC	600	LIC	43.7	6.6-12.2	0.044304	4.049	5.448	1.362	1537.1	BRIDGEPORT, CT
WMT	600	LIC	312.4	4.2- 8.7	0.029331	3.214	3.806	0.951	1621.9	CEDAR RAPIDS, IA
WKPZ	620	LIC	11.2	12.9-21.5	0.097039	12.211	13.098	3.275	1687.2	GREENSBURG, PA
WSUN	620	LIC	191.5	7.8-14.0	0.059890	7.213	8.288	2.072	1729.9	ST. PETERSBURG,
CFLO	610	OPER	18.3	5.2- 5.2	0.036414	25.656		12.828	1761.4	MONT-LAURIER, QU
CFLO	610	PROP	18.3	5.2- 5.2	0.036414	25.656		12.828	1761.4	MONT-LAURIER, QU
WKPZ	620	CP	10.3	13.0-21.7	0.097874	13.010	13.823	3.456	1765.4	IRWIN, PA
KVNU	610	LIC	294.2	0.0- 0.0	0.005415	6.498	8.415	2.104	1942.5	LOGAN, UT
CMJA	610	PROP	160.9	2.4- 2.4	0.006512	5.060		2.530	1942.6	MAYARI ARRIB, CU
CMGA	610	PROP	176.4	3.9- 3.9	0.010400	8.150		4.075	1959.2	TRINIDAD 1, CU
XEBX	610	OPER	252.3	0.6- 0.6	0.009256	7.413		3.706	2002.2	SABINAS, CI
CKXJ	610	OPER	50.1	0.0- 0.0	0.005868	4.890		2.445	2083.1	GRAND BANK, NF
WSNL	600	LIC	345.3	7.3-13.2	0.048119	6.797	8.811	2.203	2288.8	FLINT, MI

WJAS 1320 N40-28-46 W79-54-13 kHz RADIATION LIMITS

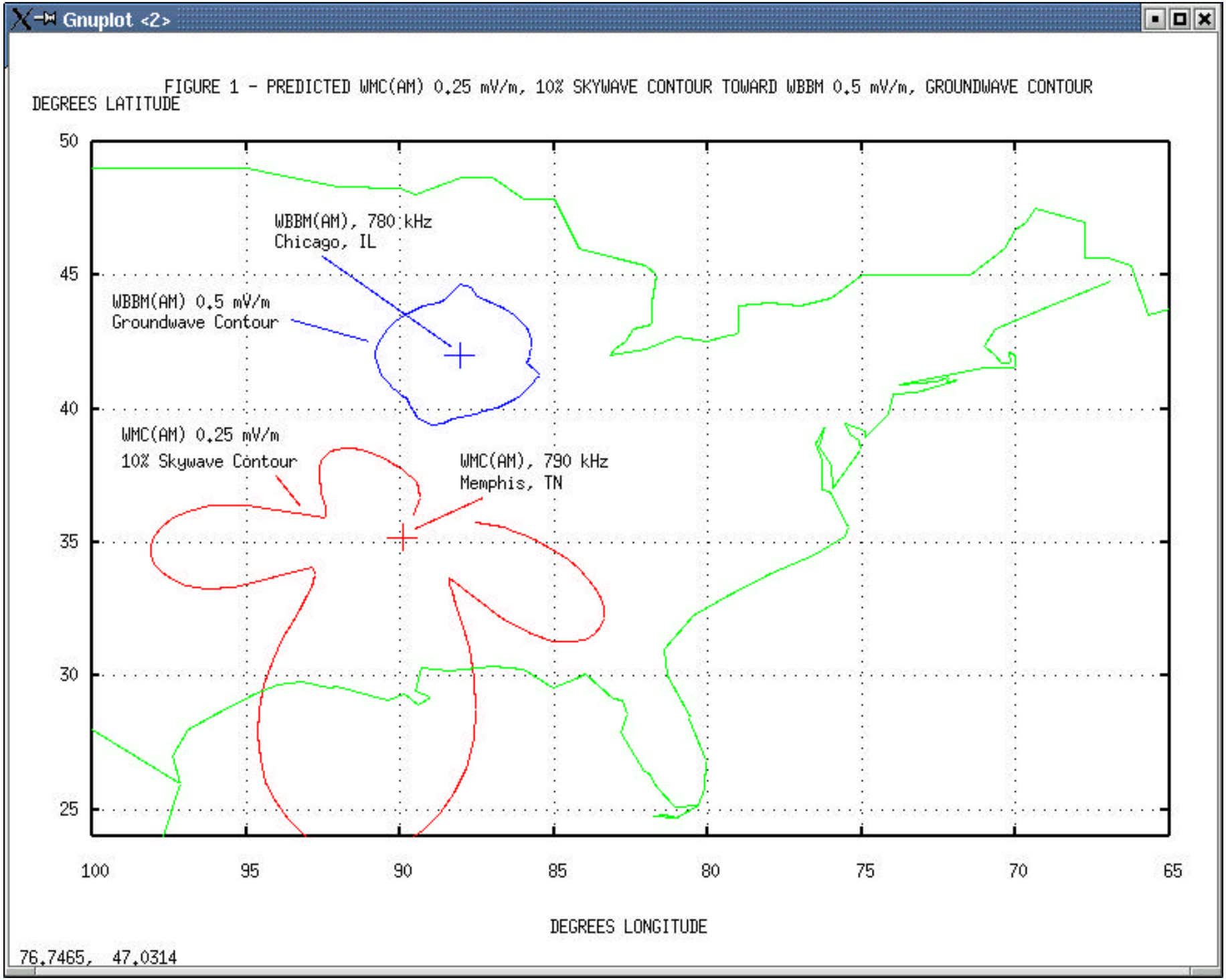
TABLE 2

STATION ID	FREQ (kHz)	STATUS	BEARING (Degrees)	CRITICAL VERTICAL WINDOW (Degrees)	SKYWAVE FIELD (mV/m)	RSS LIMIT (mV/m) (50%)	RSS LIMIT (mV/m) (25%)	EXCLUSION LIMIT (mV/m)	RADIATION LIMIT (mV/m @ 1 km)	LOCATION
WOBL	1320	LIC	295.1	33.6-47.8	0.275527	11.622	11.622	8.686	157.6R	OBERLIN, OH
WILS	1320	LIC	304.0	16.4-26.5	0.119781	7.554	9.034	5.305	221.4R	LANSING, MI
WATR	1320	LIC	76.2	12.4-20.8	0.084828	6.504	8.060	3.784	223.0R	WATERBURY, CT
WTKZ	1320	LIC	86.6	20.2-31.7	0.158368	9.954	11.202	7.092	223.9R	ALLENTOWN, PA
WISW	1320	LIC	188.5	9.6-16.5	0.068446	6.399	9.005	3.165	231.2R	COLUMBIA, SC
WISW	1320	APP	188.5	9.6-16.5	0.068442	6.399	9.005	3.165	231.2R	COLUMBIA, SC
WAML	1320	LIC	74.3	9.4-16.3	0.059324	6.119	7.130	2.797	235.7R	ATTLEBORO, MA
WJGR	1320	LIC	188.9	4.6- 9.2	0.034601	4.223	6.461	1.841	266.0H	JACKSONVILLE, FL
WJGK	1320	CP	188.9	4.6- 9.2	0.034590	4.222	6.458	1.840	266.0H	JACKSONVILLE, FL
WDER	1320	LIC	66.8	9.0-15.7	0.054866	12.882	12.882	3.220	293.5	DERRY, NH
CJSO	1320	OPER	39.4	11.3-11.3	0.084257	11.688		5.436	322.6H	SOREL, QU
WOGY	1320	LIC	197.5	12.2-20.5	0.090638	9.991	11.616	5.883	324.5R	FOREST CITY, NC
WCOG	1320	LIC	180.1	15.6-25.3	0.120433	9.014	11.628	8.112	336.8R	GREENSBORO, NC
WGET	1320	LIC	106.4	30.6-44.5	0.253244	19.839	19.839	17.855	352.5R	GETTYSBURG, PA
WFHR	1320	LIC	301.5	6.8-12.4	0.038812	10.662	12.284	3.071	395.6	WISCONSIN RAPIDS,
WASN	1330	LIC	313.9	60.8-71.4	0.424801	12.158	14.233	3.558	418.8	CAMPBELL, OH
WDMJ	1320	LIC	320.5	7.0-12.7	0.037799	4.807	6.988	3.278	433.6R	MARQUETTE, MI
WDPN	1310	LIC	296.1	51.2-64.1	0.386566	11.874	14.237	3.559	460.4	ALLIANCE, OH
WKIN	1320	LIC	208.0	15.2-24.9	0.117089	15.414	18.293	11.257	480.7R	KINGSPORT, TN
WFNN	1330	LIC	356.5	40.1-54.4	0.321346	8.424	11.040	3.233	503.0H	ERIE, PA
WAGF	1320	LIC	207.4	4.6- 9.3	0.034540	9.498	11.783	3.836	555.3R	DOTHAN, AL
WWRV	1330	LIC	82.6	15.0-24.5	0.109057	3.640	5.034	1.224	561.0	NEW YORK, NY
WWRV	1330	CP	82.6	15.0-24.5	0.109057	3.640	5.034	1.224	561.0	NEW YORK, NY
KDZY	1320	LIC	309.0	3.3- 7.3	0.018249	8.510	9.095	2.257	618.3	GRAND RAPIDS, MN
KELO	1320	LIC	289.1	2.6- 6.3	0.017779	6.649	8.392	2.225	625.8H	SIOUX FALLS, SD
WDCT	1310	LIC	128.4	26.1-39.2	0.215692	9.391	12.078	2.959	686.0H	FAIRFAX, VA
CJMR	1320	OPER	2.1	29.3-29.3	0.162208	22.374		22.374	689.7H	MISSISSAUGA, ON
WSPQ	1330	LIC	23.9	29.7-43.6	0.241535	10.947	13.339	3.335	690.3	SPRINGVILLE, NY
WJSS	1330	LIC	106.3	22.3-34.5	0.179927	8.614	10.287	2.572	714.6	HAVRE DE GRACE, MD
WCVG	1320	LIC	249.4	17.8-28.4	0.138202	27.237	29.923	19.754	714.7R	COVINGTON, KY
WTRX	1330	LIC	313.0	18.1-28.9	0.135438	5.761	8.026	1.974	728.8	FLINT, MI
WKAN	1320	LIC	278.8	10.6-18.1	0.070812	20.935	26.702	10.365	731.9H	KANKAKEE, IL
WRSB	1310	LIC	37.8	22.0-34.1	0.171142	7.861	10.157	2.539	741.9	CANANDAIGUA, NY
WYRD	1330	LIC	200.3	10.7-18.3	0.077885	3.122	4.975	1.207	774.9	GREENVILLE, SC
CKEC	1320	OPER	62.0	3.9- 3.9	0.026091	8.443		4.076	781.2	NEW GLASGOW, NS
WEMG	1310	LIC	96.6	18.4-29.3	0.142196	6.549	9.057	2.264	796.2	CAMDEN, NJ
KSIV	1320	LIC	260.3	6.8-12.5	0.044355	15.145	20.496	7.390	833.0R	CLAYTON, MO
KXYZ	1320	LIC	233.9	0.4- 3.3	0.015228	3.922	5.994	2.590	850.3R	HOUSTON, TX
KOLT	1320	LIC	282.3	0.0- 2.3	0.009315	4.847	6.708	1.677	900.2	SCOTTSBLUFF, NE
WXDX	1310	LIC	306.5	22.0-34.1	0.173100	11.884	12.526	3.132	904.6	DEARBORN, MI
KLWN	1320	LIC	267.5	3.2- 7.2	0.023061	12.779	17.380	4.345	942.0	LAWRENCE, KS
WILC	1310	LIC	263.0	13.7-22.6	0.099442	5.562	7.606	1.901	956.1	INDIANAPOLIS, IN

TABLE 3

WMC 790 kHz RADIATION LIMITS

STATION ID	FREQ (kHz)	STATUS	BEARING (Degrees)	CRITICAL VERTICAL WINDOW (Degrees)	SKYWAVE FIELD (mV/m)	RSS LIMIT (mV/m) (50%)	(25%)	EXCLUSION LIMIT (mV/m)	RADIATION LIMIT (mV/m @ 1 km)	LOCATION
WWKY	790	LIC	47.9	14.5-23.8	0.113779	8.578	10.050	3.474	152.7H	LOUISVILLE, KY
WNIS	790	LIC	76.2	3.8- 8.1	0.029587	3.936	5.803	1.428	241.3	NORFOLK, VA
WAYY	790	LIC	353.4	5.1-10.0	0.033590	7.076	8.249	2.033	302.6	EAU CLAIRE, WI
KKYR	790	LIC	243.4	17.6-28.2	0.145999	11.876	13.857	10.688	366.0R	TEXARKANA, AR
WTNY	790	LIC	46.5	1.9- 5.4	0.017243	4.035	5.490	1.373	398.0	WATERTOWN, NY
WSKO	790	LIC	59.7	0.7- 3.7	0.013646	3.327	4.397	1.099	402.8	PROVIDENCE, RI
KGHL	790	LIC	312.4	0.0- 2.5	0.010740	2.543	3.549	0.886	412.4	BILLINGS, MT
KBME	790	LIC	223.3	8.6-15.2	0.066290	7.121	9.893	5.479	413.3R	HOUSTON, TX
KURM	790	LIC	289.5	18.8-29.8	0.156451	17.986	18.967	13.231	422.8R	ROGERS, AR
CIAO	790	OPER	39.5	5.7- 5.7	0.040744	7.081		3.541	434.5	BRAMPTON, ON
WALB	790	LIC	59.9	2.7- 6.5	0.022302	7.760	8.603	2.151	482.2	ALLENTOWN, PA
XEFE	790	PROP	229.4	5.9- 5.9	0.041920	9.170		4.213	502.5	NUEVO LAREDO, TA
WQXI	790	LIC	105.0	14.0-23.1	0.111971	14.935	15.466	11.537	515.2R	ATLANTA, GA
KFGO	790	LIC	337.9	2.7- 6.5	0.020001	7.959	8.257	2.064	516.0	FARGO, ND
WSGW	790	LIC	27.7	5.4-10.3	0.035378	12.786	15.298	3.824	540.5	SAGINAW, MI
WAXY	790	LIC	137.3	2.9- 6.8	0.028244	13.778	14.975	3.667	649.1	SOUTH MIAMI, FL
WLBE	790	LIC	130.5	5.5-10.6	0.043268	13.273	15.661	6.145	710.1H	LEESBURG-EUSTIS, F
KFYO	790	LIC	263.7	4.8- 9.5	0.037438	9.692	12.019	6.120	817.3R	LUBBOCK, TX
KQCV	800	LIC	274.4	9.9-17.1	0.074862	4.278	5.053	1.264	844.1H	OKLAHOMA CITY, OK
KABC	790	LIC	275.5	0.0- 0.0	0.008130	4.290	5.191	1.482	911.6H	LOS ANGELES, CA
XELN	790	PROP	221.6	4.1- 4.1	0.027619	11.767		5.884	1065.1	LINARES, NL
KNST	790	LIC	266.6	0.0- 2.4	0.014214	14.496	14.496	3.624	1274.8	TUCSON, AZ
WSHO	800	LIC	182.1	12.3-20.6	0.097767	5.430	7.345	2.681	1371.2R	NEW ORLEANS, LA
WKZI	800	LIC	19.7	15.3-24.9	0.120351	12.733	14.051	3.513	1456.9	CASEY, IL
WDEH	800	LIC	82.7	15.1-24.7	0.121322	12.311	15.066	3.766	1552.3	SWEETWATER, TN
XEGZ	790	OPER	234.3	2.7- 2.7	0.018144	11.732		5.633	1552.4	GOMEZ PALACIO, DU
KJRB	790	LIC	309.5	0.0- 0.0	0.005239	6.535	7.549	1.887	1801.2	SPOKANE, WA
XERPC	790	PROP	248.9	2.7- 2.7	0.017889	13.834		6.751	1886.8	CHIHUAHUA, CH
KKON	790	LIC	273.5	0.0- 0.0	0.001483	1.547	1.917	0.570	1922.5	KEALAKEKUA, HI
XEUP2	790	PROP	173.2	3.4- 3.4	0.022932	17.727		8.863	1932.5	TIZIMIN, YC
KGMI	790	LIC	309.6	0.0- 0.0	0.003549	4.547	5.642	1.411	1987.1	BELLINGHAM, WA
XECOV	790	PROP	206.5	2.1- 2.1	0.014832	14.175		6.710	2262.2	COATZINTLA, VC
XEDT	790	OPER	222.6	1.4- 1.4	0.012038	10.921		5.460	2267.9	AGUASCALIENTES, AG
XENVA2	790	PROP	259.6	2.2- 2.2	0.015390	14.696		7.348	2387.3	JANOS, CH
BNP2000002010	790	APP	280.3	0.0- 0.8	0.010119	18.032	19.446	4.862	2402.3	WINCHESTER, NV
WJAT	800	LIC	110.3	9.1-15.9	0.069155	11.810	14.412	3.603	2605.0	SWAINSBORO, GA
WPLK	800	LIC	125.9	6.0-11.3	0.046353	8.187	10.387	2.597	2801.1	PALATKA, FL
WPJM	800	LIC	89.8	10.1-17.4	0.076229	16.042	17.438	4.359	2859.4	GREER, SC
XERC	790	OPER	209.7	1.1- 1.1	0.010816	12.995		6.497	3003.7	GRANJAS MEXICO, DF
XEVA	790	OPER	189.7	1.3- 1.3	0.011596	15.627		7.814	3369.1	VILLAHERMOSA, TB
XENT	790	PROP	243.6	0.0- 0.0	0.006849	9.568		4.784	3492.1	LA PAZ, BS
WDUX	800	LIC	3.7	5.7-10.8	0.037226	9.495	10.732	2.610	3505.5	WAUPACA, WI


Gnuplot <2>
FIGURE 1 - PREDICTED WMC(AM) 0.25 mV/m, 10% SKYWAVE CONTOUR TOWARD WBBM 0.5 mV/m, GROUNDWAVE CONTOUR
DEGREES LATITUDE
50
45
40
35
30
25
WBBM(AM), 780 kHz
Chicago, IL
WBBM(AM) 0.5 mV/m
Groundwave Contour
WMC(AM) 0.25 mV/m
10% Skywave Contour
WMC(AM), 790 kHz
Memphis, TN
100
95
90
85
80
75
70
65
DEGREES LONGITUDE
76.7465, 47.0314

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SUPPLEMENTAL CERTIFICATE OF SERVICE

The undersigned, Gerald Robbins, an employee of Garvey Schubert Barer, hereby certifies that this Petition for Reconsideration was served this 10th day of December 2002, upon the following, by hand-delivery.

The Honorable Michael K. Powell, Chairman
Federal Communications Commission
Washington DC 20554

The Honorable Kathleen Q. Abernathy, Commissioner
Federal Communications Commission
Washington DC 20554

The Honorable Michael J. Copps, Commissioner
Federal Communications Commission
Washington DC 20554

The Honorable Kevin J. Martin, Commissioner
Federal Communications Commission
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The Honorable Jonathan S. Adelstein, Commissioner
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