

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) RM-
FM Broadcast Stations)
(Elberton and Eatonton, Georgia;)
Seneca, South Carolina))

To: **Assistant Division Chief, Audio Division**
Mass Media Bureau

PETITION FOR RULEMAKING AND FOR ISSUANCE OF
ORDER TO SHOW CAUSE

Georgia-Carolina Radiocasting Company, LLC ("GCR"), by its attorney, hereby requests that the Commission amend the FM Table of Allotments as follows:

<u>Community</u>	<u>Current</u>	<u>Proposed</u>
Elberton, GA	286A	249C2
Eatonton, GA	249C3	286C3
Seneca, SC	251C	251C0

In support thereof, the following is stated:

GCR is licensee of Station WEHR(FM), Elberton, Georgia. GCR desires to upgrade its station to a Class C2 facility to enable it to improve and increase its area-wide coverage. As seen in the attached Technical Comments, this objective can be accomplished by allowing GCR to swap channels with Station WMGZ(FM), Channel 249C3, Eatonton, Georgia, namely by deleting Channel 286A at Elberton and instead allotting Channel 286C3 to Eatonton; and deleting Channel 249C3 at Eatonton and

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instead allotting Channel 249C2 to Elberton. Channel 249C2 is not available for use at Eatonton. In order to accommodate the proposed allotment of Channel 249C2 to Elberton, GCR further proposes to downgrade the channel of operation of Station WHZT(FM), Seneca, South Carolina, from Channel 251C to Channel 251C0.

Although this swap involves non-adjacent channels, it is not appropriate under the Commission's rules for the Commission to subject proposed Channel 249C2 at Elberton to "competing expressions of interest" or for the proposed channel to be opened up to the public for competing applications. Under Section 1.420(g)(3) of the Commission's rules, licensees may request the substitution of a higher class of channel and a modification of their existing licenses in the course of a rulemaking proceeding if they are upgrading on their existing channels or on channels that are adjacent to their current channels of operation. 47 C.F.R. § 1.420(g)(3). Admittedly, this case does not involve that situation. In adopting this rule, however, the Commission *also* stated:

we are asked to consider variations of the rule which involve the need to make substitutions at other communities in order to create a mutually exclusive relationship. The scenario is as follows: a Class A licensee operating on Channel 240A files a request to upgrade on Channel 271C2 and proposed to exchange channels with a licensee in another community currently operating on Channel 270A. It is argued that although Channels 240A and 271C2 are not adjacent, nevertheless Channel 271C2 is not available in the Ashbacker sense for application by other interested parties, because Channel 270A must be replaced with Channel 240A in order for the upgrade to be possible. Only the licensee on Channel 240A could utilize Channel 271C2 in this scenario. We recognize that this sequence of events is not strictly an adjacent channel relationship. However, the mutually exclusive relationship of the channels involved is similar to the subject proposal. We believe that rather than foreclose this type of proposal, we shall analyze such requests on a case-by case basis to ascertain the exact factual situation and determine whether the rationale used here for the new rule...applies. The concern in all such cases would be mutually exclusive relationship which is created.

Amendment of the Commission's Rules Regarding Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels, 60 R.R.2d 114, 120 ¶ 24 (1986). Since the adoption of that *Report and Order*, the Commission has accepted and adopted proposals for "incompatible channel swaps" that include the required "mutual exclusivity" between the proposed swapping channels detailed above. See, e.g., *Jackson and Salyersville, KY*, 17 FCC Rcd 4462 (Chief, Allocations Branch 2002); *Pikeville, KY, Clinchco, VA and Matewan, WV*, 6 FCC Rcd 3732 (Chief, Allocations Branch 1991); *Angola, Berne, Decatur, Lagrange, and Roanoke, IN; Brooklyn and Hudson, MI*, 6 FCC Rcd 1230 (Acting Chief, Allocations Branch 1991); *Beverly Hills, Chiefland, Holiday, Micanopy and Saratoga, FL*, 8 FCC Rcd 2197 (Chief, Allocations Branch 1993). See also, *Cordova, Holly Pond, and Warrior, AL*, 5 FCC Rcd 6301 (Deputy Chief, Policy and Rules Div. 1990).

As seen in the attached Technical Comments, in the present case, the required "mutual exclusivity" between the two channels and communities clearly exists; and further, as required, Channel 249C2 is the only Class C2 channel available for use at Elberton, and Channel 286C3 is the only other Class C3 channel available for use at Eatonton. See *Dyersburg, TN; De Witt, Heber Springs, Hoxie, Jonesboro, and Newport, AR*, 4 FCC Rcd 4814, 4816 ¶ 16 (Chief, Allocations Branch 1989).

Thus, it is requested that it be determined that the parties have proposed a valid "incompatible channel swap" within the meaning of the Commission's *Report and Order*, that the proposal be accepted and placed on public notice in a *Notice of Proposed Rulemaking* for comment, and that the Commission specifically state that no

competing expressions of interest for the upgraded channel may be filed by the public.

With respect to the proposed downgrade of Station WHZT(FM), Seneca, South Carolina, the current Station WHZT(FM) license specifies an operation of 100 kW at 304 meters HAAT, which is below the minimum Class C antenna height requirements of 451 meters HAAT. 47 C.F.R. § 73.211(a)(2). Section 316(a) of the Communications Act, as amended, permits the Commission to modify an authorization if such action is in the public interest. Because Station WHZT(FM) is operating below minimum Class C standards, it properly is subject to reclassification as a "Class C0" facility. *See 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21,649 (2000) ("Second Report and Order"), and Section 1.420(g), n.2, and Section 73.3573, n.4 (47 C.F.R. §§ 1.420(g), n.2 and 73.3573 n.2), of the Commission's Rules. Pursuant to the Commission's rules, the reclassification of a Class C FM station to a Class C0 station may be initiated through the filing of a petition for rule making to amend the FM Table of Allotments. In instances where an initiating petition proposes both to amend the FM Table of Allotments and to reclassify a Class C FM station, the Commission will issue an order to show cause, as set forth in Section 73.3573, note 4, of the Commission's rules. A petitioner proposing both amendment of the FM Table of Allotments and reclassification of a Class C FM station must certify that no alternative channel is available for the proposed service.

Reclassification of License of Station KMMZ-FM, Enid, OK, DA 03-1121 (Ass't Chief, Audio Div., May 9, 2003). As seen in the attached Technical Comments, that certification can accurately be made in this case – no Class C2 channel other than

Channel 249C2 is available for service at Elberton. Therefore, issuance of an "Order to Show Cause" requiring the licensee of WHZT to show cause why its authorization should not be modified to specify operation on Channel 251C0 in lieu of Channel 251C is appropriate.

Adoption of this proposal will be in the public interest. Approval of this proposal will allow GCR to improve the service that it provides to the public by greatly increasing its service area and overall population served. GCR pledges expeditiously to apply for and to construct this proposed facility when this counterproposal is granted by the Commission. Moreover, this increased service can occur without any antecedent reduction of service to the public. The proposed change of channel of operation for Station WMGZ from Channel 249C3 to Channel 286C3 will occur at the licensee's current transmitter site, and thus, will not result in any reduction of service to the public. As required, GCR pledges to reimburse the licensee of WMGZ for all reasonable expenses incurred in connection with the change of frequency of operation. With respect to Station WHZT, there also will be no actual reduction of service to the public. Although under GCR's proposal WHZT's allotment will be downgraded from Class C to Class C0, WHZT's licensed parameters will not change, and WHZT will continue to be permitted to provide the same level of service it currently is providing to the public.

Accordingly, Georgia-Carolina Radiocasting, LLC respectfully requests that this Petition be adopted; that the Commission issue an "Order to Show Cause" with respect to the licensee of Station WHZT with respect to the proposed downgrade of Station WHZT; and subsequently, that the Commission issue a Notice of Proposed Rulemaking to amend the FM Table of Allotments as specified above, and accept comments thereon.

Respectfully submitted,

**GEORGIA-CAROLINA
RADIOCASTING COMPANY, LLC**

By: _____
Dan J. Alpert

Its Attorney

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July 16, 2003

**Technical Comments
Petition for Rule Making
Georgia-Carolina Radiocasting Company, LLC
Elberton, Georgia
July 2003**

These Technical Comments are filed on behalf of Georgia-Carolina Radiocasting Company, LLC ("GCR"), licensee of Station WEHR, 286A, Elberton, Georgia. GCRC wishes to increase WEHR from the present Class A allotment to a Class C2 allotment. In order to accomplish this, a channel swap is proposed with respect to Station WMGZ(FM), 249C3, Eatonton, Georgia. This rule making will also act as a trigger to downgrade Station WHZT(FM), Seneca, South Carolina from Class C (Channel 251C) to Class C0 (Channel 251C0).

The proposed allotment site for the WEHR upgrade to Channel 249C2 is North Latitude 33° 54' 32" and West Longitude 82° 45' 07". As seen in Exhibit 1A, from that proposed allotment site, all Section 73.207 spacing regulations are fulfilled. Exhibit 1B establishes that the 32.6 KM uniform terrain city grade contour will cover all of Elberton, Georgia, the station's community a license, from the allotment reference coordinates. There will be a dramatic increase in the area and population served at Elberton when the rule making is approved as follows:

	<u>Area (Sq Km)</u>	<u>Population</u>
WEHR Licensed Class A	2,428.18	26,638
WEHR Proposed Class C2	8,591.81	142,482

In order to accommodate this channel change and upgrade, GCR proposes to swap channels of operation with Station WMGZ(FM), Eatonton, Georgia pursuant to a non-adjacent incompatible channel swap. Exhibit 2 is the Section 73.207 spacing study for the channel change for Station WMGZ(FM), Eatonton, Georgia, to Channel 286C3. This rule making proposes a lateral change of channel of WMGZ at Eatonton at the current licensed site of North Latitude 33° 20' 41" and West Longitude 83° 13' 41". Station WMGZ will experience no loss or gain of coverage as a result following this swap, and Station WMGZ will continue to provide a full 70 dBu service to its community of license. GCR commits to reimburse the licensee of Station WMGZ (currently Middle Georgia Communications, Inc.) for its reasonable out of pocket expenses incurred in connection with the channel swap.

Finally, in order to accommodate the upgrade of Station WEHR on Channel 249C1, GCR proposes that the Commission downgrade Station WHZT(FM), Seneca, South Carolina, from Channel 251C to Channel 251C0. The current WHZT(FM) license specifies an operation of 100 kW at 304 meters HAAT, which is below the current minimum for full Class C facilities. Therefore, downgrade of that station is appropriate under the Commission's rules. GCR hereby certifies that no alternative channel is available for the proposed service.

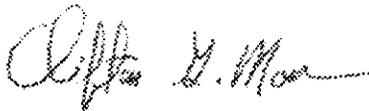
All other requirements for non-adjacent incompatible channel swaps are satisfied. There is no other Class C2 channel available that can serve as an alternative C2

allotment for Station WEHR, Elberton, Georgia. Additionally, other than its current channel of operation (which no longer will be available after the swap) there is no other available Class C3 channel alternative for WMGZ, Eatonton, Georgia.

Therefore, in order to expand service to the public, the following changes in the Commission's FM Table of Allotments are requested:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Elberton, GA	286A	249C2
Eatonton, GA	249C3	286C3
Seneca, SC	251C	251C0

All information contained herein is believed to be true and correct to the best knowledge of the undersigned.



Clifton G. Moor
Technical Consultant
Bromo Communications, Inc.

July 15, 2003

EXHIBIT 1A

WEHR - Elberton, GA
Channel Swap and Upgrade

REFERENCE
33 54 32 N
82 45 07 W

CLASS = C2
Current Spacings
Channel 249 - 97.7 MHz

DISPLAY DATES
DATA 07-12-03
SEARCH 07-15-03

Call	Channel	Location	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Ant	Power	HAAT		
WMGZ	LIC 249C3	Eatonton	GA	76.61	215.2	177.0 -100.39*
33 20 41	83 13 41	C	8.500 kW	169 M		
	Middle Georgia Communicati		BLH19991018ABS			
WHZT	LIC 251C0	Seneca	SC	89.03	346.1	89.0 0.03+
34 41 15	82 59 13	CN	100.000 kW	304 M		
	Cxr Holdings, Inc.		BLH19980629KB			
WFOX	LIC 246C	Gainesville	GA	105.04	283.6	105.0 0.04
34 07 32	83 51 32	CY	100.000 kW	483 M		
	Cox Radio, Inc.		BLH19980825KB			
WCOSFM	LIC 248C1	Columbia	SC	158.70	80.2	158.0 0.70
34 08 23	81 03 22	CN	100.000 kW	299 M		
	Capstar Tx Limited Partner		BLH19900927KC			
WTCQ	LIC 249A	Vidalia	GA	189.63	171.0	166.0 23.63
32 13 12	82 26 07	CX	4.300 kW	118 M		
	Vidalia Communications Cor		BMLH20020919AAP			
WIIZ	LIC 250C2	Blackville	SC	154.43	124.5	130.0 24.43
33 06 52	81 23 13	CN	50.000 kW	132 M		
	Nicwild Communications, In		BLH19960502KB			
WPEG	LIC-D 250C	Concord	NC	217.76	41.7	188.0 29.76
35 21 44	81 09 19	DCY	95.000 kW	491 M		
	Infinity Radio Subsidiary		BLH19901207KC			
WSLT	LIC 252A	Clearwater	SC	94.93	120.8	55.0 39.93
33 28 07	81 52 26	CN	2.800 kW	148 M		
	Wgac License, Llc		BMLH19891212KM			

*Channel Swap Proposed. WMGZ is proposed to be relocated to 286C3.

+A downgrade from Class C to Class C0 is proposed for WHZT, Seneca, SC.

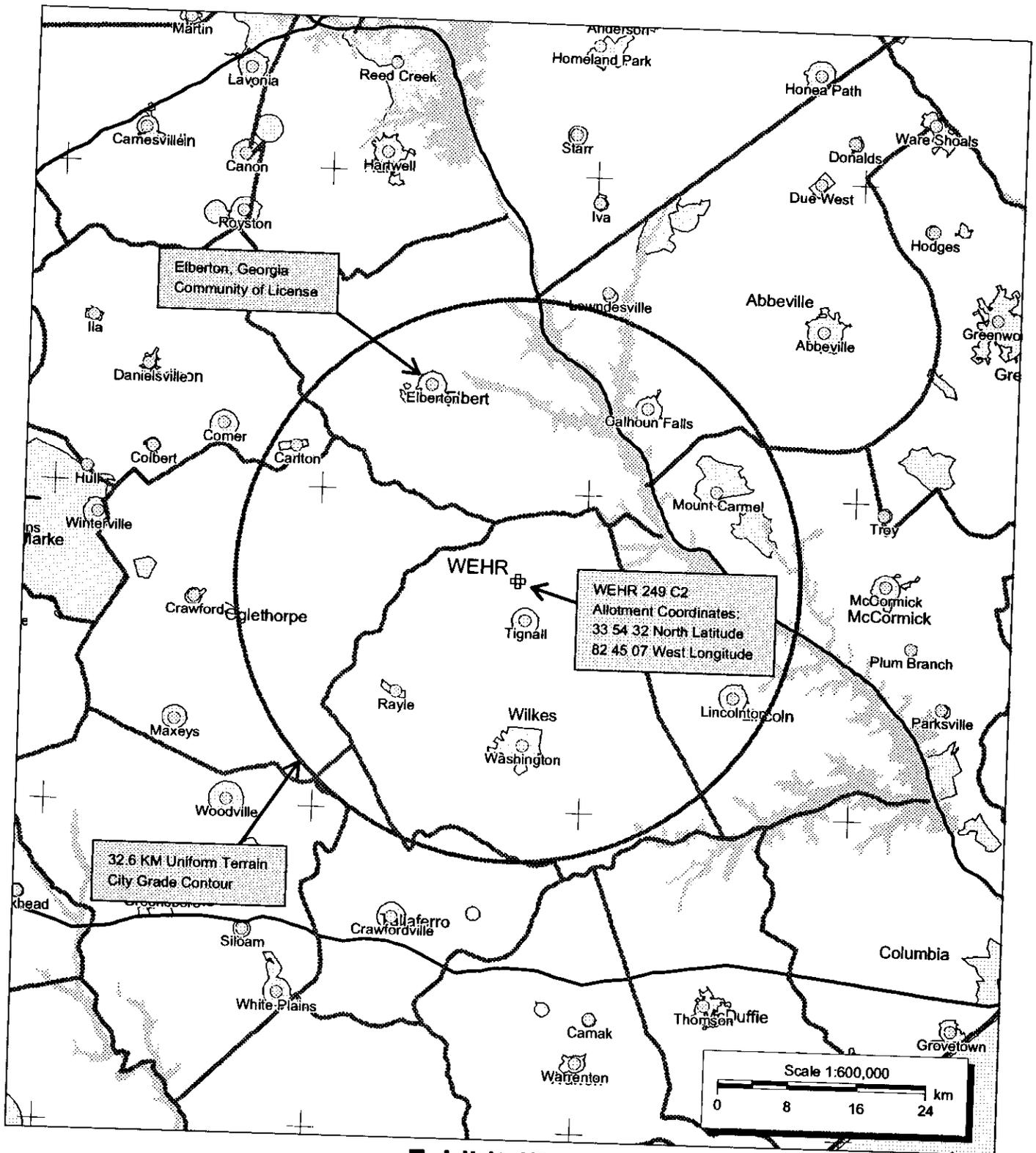


Exhibit 1B
City Grade Coverage Demonstration
Georgia-Carolina Radiocasting Company, LLC
Elberton, Georgia

Bromo Communications, Inc.

Atlanta, Georgia
 July 2003

EXHIBIT 2

Eatonton, GA
Searching at WMGZ Site

REFERENCE
33 20 41 N
83 13 41 W

CLASS = C3
Current Spacings
Channel 286 - 105.1 MHz

DISPLAY DATES
DATA 07-12-03
SEARCH 07-15-03

Call	Channel	Location	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Ant	Power	HAAT		
WEHR	LIC 286A	Elberton	GA 83.03	30.3	142.0	-58.97*
33 59 22	82 46 23	CN	6.000 kW	100 M		
	Georgia-carolina Radiocast		BLH19980521KC			
WEHR.A	APP-Z 286A	Elberton	GA 97.25	27.7	142.0	-44.75*
34 07 10	82 44 12	ZCX	5.200 kW	100 M		
	Georgia-carolina Radiocast		BPH20021206AAT			
WEHR.A	APP-Z 286A	Elberton	GA 97.25	27.7	142.0	-44.75*
34 07 10	82 44 12	ZCX	5.200 kW	100 M		
	Georgia-carolina Radiocast		BPH20021206AAT			
WMCG.A	APP 285C2	Milan	GA 107.14	174.5	117.0	-9.86+
32 22 59	83 07 08	CX	31.000 kW	190 M		
	Tel-dodge Broadcasting Co.		BPH20010522AAD			
WFSHF	LIC 284C1	Athens	GA 80.11	316.4	76.0	4.11
33 51 56	83 49 34	CN	100.000 kW	299 M		
	South Texas Broadcasting,		BLH19890707KA			
WFSHF	APP 284C1	Athens	GA 80.42	316.4	76.0	4.42
33 52 02	83 49 44	CX	24.000 kW	505 M		
	South Texas Broadcasting,		BPH20021106AAR			
WMAXFM	LIC-N 287C1	Bowdon	GA 149.25	273.3	144.0	5.25
33 24 41	84 49 48	NCX	61.000 kW	367 M		
	Clear Channel Broadcasting		BLH20020220AAB			
WAYS	LIC-Z 288C3	Macon	GA 57.34	209.9	43.0	14.34
32 53 48	83 32 05	ZC	6.100 kW	201 M		
	Cumulus Licensing Corp.		BLH20010208AAB			
WMCG	LIC 285C2	Milan	GA 135.75	181.6	117.0	18.75
32 07 16	83 16 05	C	36.000 kW	172 M		
	Tel-dodge Broadcasting Co.		BLH19940310KB			
WHEL.A	APP 286A	Helen	GA 162.43	343.7	142.0	20.43
34 44 55	83 43 43	CX	1.700 kW	187 M		
	Citicasters Licenses, L.p.		BPH20030609ADM			
WHEL	LIC-Z 286A	Helen	GA 162.43	343.7	142.0	20.43
34 44 55	83 43 43	ZCN	1.700 kW	187 M		
	Citicasters Licenses, L.p.		BLH19931210KB			
RADD	ADD 287C3	Alamo	GA 122.60	157.3	99.0	23.60
32 19 29	82 43 23		25.000 kW	100 M		

*Proposed to be swapped to Channel 249C2.

+Application dismissed.