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November 21, 2003

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NOV 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery
Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

RE: Petition For Rulemaking
Otter Creek, Florida - Channel 240A
Living Proof, Inc., Petitioner – FRN: 0006-2429-11

Dear Ms. Dortch:

Living Proof, Inc., by and through its attorneys, hereby submits this Petition for Rulemaking to reserve the above-reference vacant commercial FM allotment for noncommercial use. This Petition is being submitted in accordance with the Public Notice, dated September 30, 2003, requiring that such Petitions be submitted by November 21, 2003 (DA 03-2990).

Should there be any questions regarding this Petition, please contact undersigned counsel.

Sincerely,

Harry C. Martin
Lee G. Petro

Counsel for Living Proof, Inc.

Enclosures

cc: Ms. Rolanda F. Smith, Audio Division
Media Bureau – Room 2-B450

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:	}	
	}	
Amendment of Section 73.202(b),	}	**MB Docket No.:**
Table of Allotments,	}	**RM-_____**
FM Broadcast Stations	}	
	}	
(Otter Creek, Florida)	}	

TO: CHIEF, MEDIA BUREAU

PETITION FOR RULEMAKING

Living Proof, Inc. ("Living Proof"), by and through its attorneys, hereby submits this Petition for Rulemaking to reserve Channel 240A, Otter Creek, Florida, for noncommercial use. This Petition is being submitted in response to the *Public Notice*[11] establishing a filing window for reserving existing, vacant commercial FM allotments in accordance with the procedures set forth in the recently-adopted noncommercial FM reservation rules.[12]

As discussed in more detail below, Channel 240A at Otter Creek, Florida, can be reserved for noncommercial use under the procedures and standards set forth in the *Public Notice* and the *NCE Second Report and Order*. In particular, supporting this Petition is an engineering statement, attached hereto as Exhibit One, demonstrating that no reserved channel can be allotted to serve Otter Creek, and that the proposed reservation would provide significant first and second NCE service to the proposed primary service contour of the facility in excess of the 10%

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11 *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, DA 03-2990 (rel. Sept. 30, 2003) (the "*Public Notice*").

12 *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*").

threshold established in the *NCE Second Report and Order*. Therefore, Living Proof respectfully submits that the reservation of Channel 240A at Otter Creek, Florida, will be in the public interest.

I. BACKGROUND

In 1997, Congress granted authority to the Commission to hold auctions to resolve conflicts among mutually-exclusive new and major change applications.[13] In response, the Commission determined that NCE entities seeking nonreserved, commercial FM and Television channels would be required to participate in auctions.[14] However, before this rule came into effect, the U.S. Court of Appeals for the D.C. Circuit vacated the requirement for NCE entities to participate in auctions for nonreserved spectrum.[15]

In response to the *NPR* decision, and based on the subsequent comments submitted in response to a *Second Further Notice of Proposed Rulemaking*[16], the Commission modified the process by which qualifying NCE entities could reserve noncommercial FM and TV spectrum for noncommercial educational use. Noting that a large number of FM allotments had been made prior to the modification of the noncommercial reservation rules, the Commission indicated that it would establish a window by which those allotments made prior to August 7, 2000, could be reserved, under certain circumstances.[17]

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13 *Balanced Budget Act of 1997*, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

14 *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7429 (2000).

15 *NPR v. FCC*, 254 F.3d 226, 229 (D.C.Cir. 2001).

16 *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 3833 (2002).

17 *NCE Second Report and Order*, ¶ 39.

The Commission established a three-part test to reserve a commercial FM allotment. Specifically, the reservation proponent must demonstrate that:

> (1) maximum class facilities at the proposed allotment site would provide first or second NCE service to at least ten percent of the population within the proposed station's service area and that such population is at least 2000 persons;
>
> (2) no rule-compliant facility can be authorized at maximum antenna height above average terrain and with maximum effective radiated power on any reserved band channel at four equally-spaced locations with the predicted 60 dBu signal of the maximum same class facility centered on the proposed community of license; and
>
> (3) no same class rule-compliant facility can be authorized at minimum antenna HAAT and with minimum ERP on any reserved band channel at the city center coordinates for the community of license.[18]

A "rule-compliant" facility would be one that would otherwise complies with the technical and spacing requirements for FM facilities, and that would not cause prohibited interference to existing television stations operating on Channel 6.[19] By satisfying these requirements, the proponent will have established that the vacant nonreserved FM allotment is qualified to be reserved solely for noncommercial, educational purposes. *Id.*

II. DISCUSSION

As shown in Exhibit One, Channel 240A qualifies for reservation under the Commission's rules. First, 19.12% (2,092 persons) of the population within the proposed service area will be receiving a first NCE service, and 10.95% (1,198 persons) of the population within the proposed service area will be receiving a second NCE service. Both of these figures are substantially higher than the 10% population threshold established by the Commission.

---

18 *Id.* at ¶ 35.

19 47 C.F.R. 73.202(1)(a)(i)

In addition, the Engineering Statement also demonstrates that there are no available reserved FM channels that can be utilized to provide NCE service to Otter Creek, Florida. First, the Engineering Statement shows that a minimum Class A facility (0.1 kW at 30 meters height above average terrain ("HAAT")) can not be allotted on any reserved FM channel. Moreover, the Engineering Statement also shows that, among 4 equally-spaced points within the proposed 60 dBu contour, a maximum Class A facility (6.0 kW at 100 meters HAAT) could not be allotted on any reserved FM channel.

Therefore, it is clear from the Engineering Statement both that a rule-complaint reserved channel FM allotment can not be made at Otter Creek, and "that NCE service is in fact needed" at Otter Creek,[20] In light of this showing, Living Proof respectfully requests that the Commission amend the FM Table of Allotments for Channel 240A at Otter Creek as follows:

Community, State	Current Channel No.	Proposed Channel No.
Otter Creek, Florida	240A	240A*

Living Proof, Inc., certifies that it will apply for the requested channel if allotted, and, if successful in obtaining the construction permit for the facility, will construct the station.

---

20 *Id.* ¶ 33.

III. CONCLUSION

WHEREFORE, in light of the foregoing, Living Proof, Inc. respectfully requests that the Commission grant the petition for rulemaking and reserve Channel 240A at Otter Creek, Florida for noncommercial use.

The reservation of the allotment would deliver 2,092 persons their first NCE service, 1,198 persons their second NCE service, and would best serve the public interest.

Respectfully submitted,

LIVING PROOF, INC.

By: _____

Harry C. Martin
Lee G. Petro

Fletcher, Heald & Hildreth PLC
1300 North 17th Street, 11th Floor
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Telecopier - 760-812-0486

Its Counsel

November 21, 2003

Engineering Statement
In response to MMB Window Closing November 21, 2003
Providing for Conversion of
Commercial Allotments to Noncommercial Allotments

Otter Creek, FL 240A

Robert Moore
November 19, 2003

Public Notice DA 03-2990[1] and Report and Order 18 FCC Rcd 6691[2] state that three distinct engineering criteria must be satisfied to qualify an allotment. These must demonstrate 1) need for an additional NCE service, 2) unsuitability of any NCE channel at the site at the proposed city of license and 3) unsuitability of any NCE channel at four points near the edge of the protected contour surrounding the city of license. These will be demonstrated in order.

1) Need for Additional NCE Service – NCE Second Report and Order ¶34

The graphic below illustrates the 60 dBu coverage of existing NCE authorizations (shown in black) that intersect the 60 dBu contour of the proposed allotment when it is evaluated at it's allotment site (shown in red). The graphic demonstrates that 30.07 % (3,290 out of 10,941 people) of the population covered by the allotment would be newly served with first or second NCE service NCE programming by conversion of the channel to NCE status. Of these 19.12 % would receive their first NCE service (shown in red) and 10.95 % would receive their second NCE service (shown in green). The remaining population (shown in black) is already served by two NCE stations. This coverage significantly exceeds the 10% and 2,000 people specified in the R&O.

2) City of License Site – NCE Second Report and Order ¶35b

The city coordinates are given at http://www.fcc.gov/mb/audio/bickel/atlas2.html as OTTER CREEK , FL Latitude: N 29 19 29 Longitude: W 82 46 18 . A **minimum class** A facility (0.1 kW at 30 m HAAT) was evaluated at each NCE channel. The entries *IN* and *OUT* represent the incoming and outgoing contour overlap with each specified station, or spacing, as in FMCONT output, is given in km. Only negative results, indicating prohibited contour overlap or spacing violation, are displayed. The existence of even one negative value for a channel shows that that channel is not available at the specified site with the specified facilities. Note that all stations in the CDBS are included here, whether authorized or not, since most, if not all, are included in closed Mx groups, so there is no longer an opportunity for new entrants to file. This table shows that all the NCE channels are unavailable at this site for the specified facility.

3) Cardinal Sites – NCE Second Report and Order ¶35a

Availability was also evaluated at 27 km (28km class A class contour distance - 1 km) of from the city of license site at azimuths of 0, 90, 180 and 270 degrees. In these evaluations, a **class maximum facility** was utilized. The entries are interpreted as in 2). These tables show that no NCE channels are available at these sites for the specified facility.

Conclusion:

The criterion specified by the Commission is satisfied by this allocation and it can be considered for conversion to an NCE allocation.

---

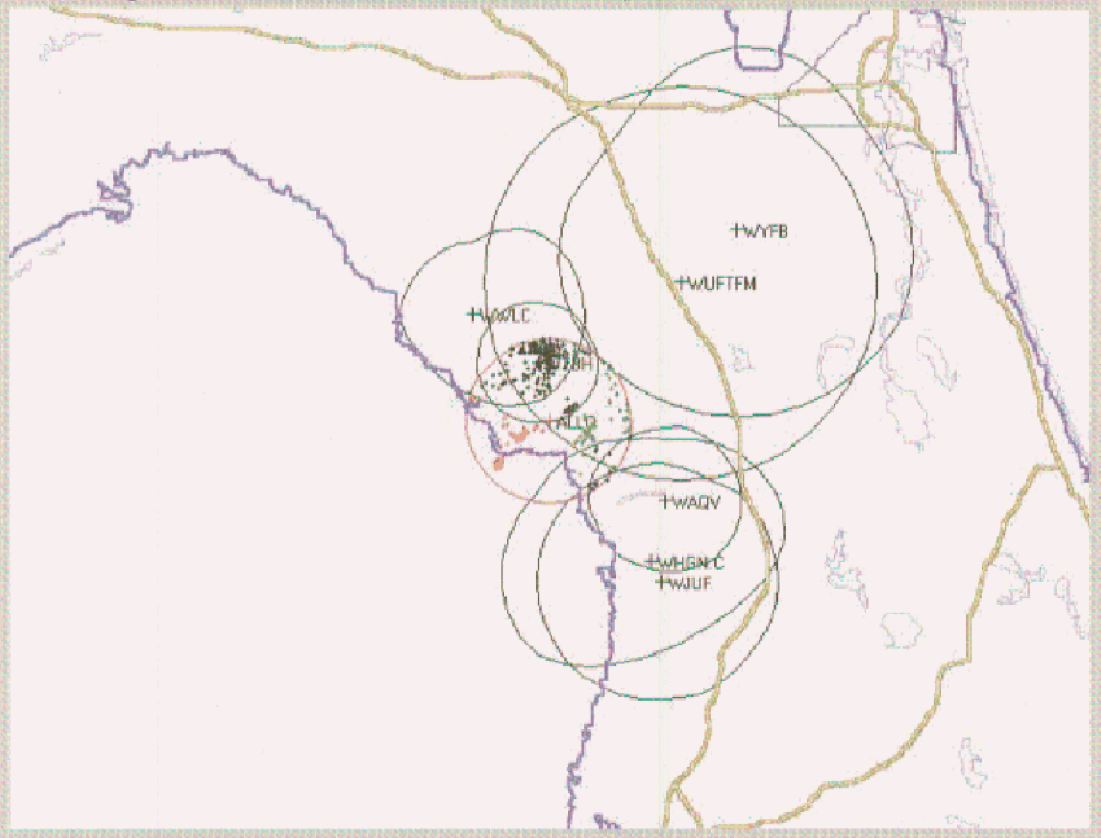
[1] *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, DA 03-2990 (rel. Sept. 30, 2003) (the "*Public Notice*").

[2] *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*").

1) Need for Additional NCE Service

Threshold Form

White Space Calculation for Otter Creek, FL



Chan/Cl	Status	Call	City	St	Owner	FacID	Dist	Az	Pop
203C1	CP	WWLC	Cross City	FL	Spirit Radio Of North Florida	121772	45.01	324	0
206C1	LIC	WUFTFM	Gainesville	FL	Board Of Trustees, Univers...	66604	65.63	44	0
211C2	LIC	WJUF	Inverness	FL	Board Of Trustees, Univers...	965	67.72	146	0
213C1	LIC	WYFB	Gainesville	FL	Bible Broadcasting Networ...	5083	91.33	44	0
215A	LIC	WAQV	Crystal River	FL	Radio Training Network, Inc.	40159	48.49	125	0
218A	LIC	WTBH	Chiefland	FL	Long Pond Baptist Church	38349	20.11	350	0
220C2	CP	WHGN.C	Crystal River	FL	The Moody Bible Institute Of	11026	58.80	145	0

Distance (km) 200

Find Stations | Delete Station | Mark Pops | ☑ Hide Unused Sta ☑ Hide Zeros | Load List Box | Form Print

Plot Scale 2.00

Plot Stations | Plot Pops | Graphics

Receiving First NCE Service: 2092 / 10941 (19.12%)

Receiving 2nd NCE Service: 1198 / 10941 (10.95%)

Total New Service: 3290 / 10941 (30.07%)

lat = 280608 lon = 830230

2) City of License Site

Showing of available NCE channels at Otter Creek, FL

Latitude 291929 Longitude 824618 ERP(Kw) 0.100 HAAT(m) 30 COR AMSL(m) 35

Chan	Call	*IN*	*OUT*	Margin
201	WHIJ	-8.7		
202	WTLG	-1.3		
	WLMS	-28.4		
	WWLC	-23.4		
203	WWLC	-88.6	-9.9	
	WUFTFM		-12.2	
204	WWLC	-23.4		
	WUFTFM		-12.2	
205	WYFE	-33.5		
	WUFTFM	-48.9	-19.5	
206	WUFTFM	-116.1	-30.1	
207	WUFTFM	-48.9	-19.5	
208	WUFTFM		-12.2	
	WKSG	-37.7		
	WGSG	-23.2		
209	WUFTFM		-12.2	
210	WJCTFM	-16.0		
	WJCTFM	-15.6		
	WJUF	-1.0		
211	WJUF	-52.6		
212	WJUF	-1.0		
	WYFB	-18.5		
213	WYFB	-85.3	-0.7	
214	WYFB	-18.5		
	WAQV	-0.1		
215	WAQV	-40.5	-0.3	
	WTBH		-2.1	
216	WAQV	-0.1		
	WKES	-3.5		
	WTBH		-2.1	
217	WOLR	-15.8		
	WTBH	-16.9	-9.4	
218	WTBH	-56.6	-20.0	
219	WTBH	-16.9	-9.4	
	WJLF	-25.3		
	WHGN	-13.1		
	WHGN.C	-13.1		
220	WTBH		-2.1	
	WHGN	-64.4	-5.1	
	WHGN.C	-64.4	-5.1	

3) Cardinal Sites:

0 degrees:

Showing of available NCE channels at Otter Creek, FL

Latitude 293406 Longitude 824618 ERP(Kw) 6.000 HAAT(m) 100 COR AMSL(m) 116

Chan	Call	*IN*	*OUT*	Margin
201	WAYT.C	-21.7		
	WHIJ	-20.7	-34.6	
	WWLC		-5.8	
202	WTLG	-39.8	-38.4	
	WLMS	-24.8	-30.2	
	WWLC	-58.5	-47.8	
203	WWLC	-123.9	-90.6	
	WUFTFM		-30.7	
204	WWLC	-58.5	-47.8	
	WUFTFM		-30.7	
205	WWLC		-5.8	
	WYFE	-28.4	-3.8	
	WFSUFM	-42.9		
	WUFTFM	-87.1	-70.2	
206	WWLC		-5.8	
	WUFTFM	-154.3	-113.4	
207	WUFTFM	-87.1	-70.2	
	WGSG	-18.1	-14.1	
208	WUFTFM		-30.7	
	WKSG	-52.1	-32.7	
	WKSG	-2.0	-12.6	
	WGSG	-70.0	-57.0	
209	WUFTFM		-30.7	
	WGSG	-18.1	-14.1	
210	WJCTFM	-54.6	-13.7	
	WJCTFM	-54.2	-13.5	
	WYFB		-1.9	
211	WJUF	-49.6	-35.4	
	WYFB		-1.9	
212	WYJC	-27.8	-1.2	
	WYFB	-57.2	-41.6	
213	WYFB	-123.1	-84.8	
214	WYFB	-57.2	-41.6	
	WAQV	-0.2	-2.5	
215	WYFB		-1.9	
	WKTZFM	-24.0		
	WAQV	-40.6	-45.3	
	WTBH	-13.6	-5.5	
216	WYFB		-1.9	
	WAQV	-0.2	-2.5	
	WKES	-1.6		
	WUJC	-0.0		
	WOLR	-21.3	-19.8	
	WTBH	-13.6	-5.5	
217	WOLR	-65.7	-62.8	
	WWKO		-21.6	
	WTBH	-40.8	-47.3	
218	WOLR	-21.3	-19.8	
	WTBH	-80.4	-90.1	
	AP218		-19.3	
	WJLF	-23.0	-27.8	
219	WTBH	-40.8	-47.3	
	WJLF	-57.1	-71.1	
	WHGN	-9.2	-3.1	
	WHGN.C	-9.2	-3.1	
220	WTBH	-13.6	-5.5	
	WJLF	-23.0	-27.8	
	WHGN	-60.5	-46.0	
	WHGN.C	-60.5	-46.0	

90 degrees:

Showing of available NCE channels at Otter Creek, FL

Latitude 291929 Longitude 822937 ERP(Kw) 6.000 HAAT(m) 100 COR AMSL(m) 121

Chan	Call	*IN*	*OUT*	Margin
201	WHIJ	-57.9	-71.2	
	AP201		-11.0	
	WLMS	-7.8	-13.6	
202	WHIJ	-23.0	-28.4	
	WTLG	-40.5	-39.4	
	WLMS	-49.4	-56.7	
	WWLC	-23.2	-11.8	
203	WLMS	-7.8	-13.6	
	WWLC	-88.6	-54.9	
	WMNF	-6.3		
	WUFTFM		-27.4	
204	WWLC	-23.2	-11.8	
	WWKQ		-1.5	
	WUFTFM		-27.4	
205	WKTO.A	-5.4		
	WYFE	-50.2	-27.6	
	WFSUFM	-4.1		
	WUFTFM	-85.2	-68.9	
206	WUFTFM	-152.4	-111.8	
207	WUFTFM	-85.2	-68.9	
	WKFA.C		-8.6	
	WKSG	-31.7	-25.0	
	WKSG	-0.1	-5.0	
208	WUFTFM		-27.4	
	WKSG	-87.2	-67.9	
	WKSG	-37.1	-47.8	
	WGSG	-31.7	-18.5	
209	WUFTFM		-27.4	
	WKSG	-31.7	-25.0	
	WKSG	-0.1	-5.0	
	WUSF	-25.6		
210	WJCTFM	-57.7	-17.1	
	WJCTFM	-57.3	-17.0	
	WJUF	-29.3	-23.7	
211	WJUF	-80.9	-66.7	
212	WJUF	-29.3	-23.7	
	AP212		-12.7	
	WYFB	-56.5	-41.4	
213	WYFB	-123.4	-84.2	
214	WYFB	-56.5	-41.4	
	WMFEFM	-34.8		
	WAQV	-32.7	-35.3	
215	WKTZFM	-27.2	-0.2	
	WAQV	-73.3	-78.3	
216	WAQV	-32.7	-35.3	
	WKES	-36.3		
	WWKO	-4.8	-16.6	
217	WOLR	-42.6	-34.6	
	WWKO	-23.8	-59.4	
	WHIF		-12.1	
	WTBH	-16.0	-21.6	
218	WWKO	-4.8	-16.6	
	WLPJ.C	-10.2	-2.2	
	WTBH	-55.8	-64.7	
	990415		-20.8	
	990916		-24.5	
	AP218		-19.6	
	990917		-8.8	
	WLPJ	-15.5	-0.8	
	990917		-20.7	
	WJLF	-30.1	-33.1	
219	WTBH	-16.0	-21.6	
	WJLF	-67.8	-76.0	
	990526		-8.1	
	WHGN	-37.8	-31.8	
	WHGN.C	-37.8	-31.8	
220	WJLF	-30.1	-33.1	
	WHGN	-88.9	-74.9	
	WHGN.C	-88.9	-74.9	

180 degrees:

Showing of available NCE channels at Otter Creek, FL

Latitude 290452 Longitude 824618 ERP(Kw) 6.000 HAAT(m) 100 COR AMSL(m) 101

Chan	Call	*IN*	*OUT*	Margin
201	WHIJ	-29.5	-42.5	
	AP201	-3.4	-31.7	
	WLMS	-33.5	-36.1	
202	WTLG	-3.2	-2.1	
	WLMS	-74.2	-79.0	
	WWLC	-20.1	-11.9	
203	WLMS	-33.5	-36.1	
	WWLC	-82.3	-54.8	
	WMNF	-26.9		
204	WWLC	-20.1	-11.9	
	WYFE	-24.8	-15.3	
205	WYFE	-83.4	-58.2	
	WUFTFM	-49.7	-33.3	
206	WYFE	-24.8	-15.3	
	WUFTFM	-116.8	-76.2	
207	WUFTFM	-49.7	-33.3	
	WKFA.C		-13.5	
	WKSG	-4.4		
208	WKSG	-60.0	-40.6	
	WKSG	-9.9	-20.6	
	WGSG	-20.7	-7.6	
	WJUF		-0.2	
209	WKSG	-4.4		
	WUSF	-46.3	-10.2	
	WJUF		-0.2	
210	WJCTFM	-19.3		
	WJCTFM	-18.9		
	WJUF	-47.2	-41.4	
211	WJUF	-98.9	-84.3	
212	WJUF	-47.2	-41.4	
	WYFB	-19.5	-4.3	
213	WJUF		-0.2	
	WYFB	-86.4	-47.2	
	WBVM	-30.6	-1.6	
214	WJUF		-0.2	
	WYFB	-19.5	-4.3	
	WMFEFM	-20.2		
	WAQV	-36.9	-38.2	
215	WAQV	-77.2	-81.2	
216	WAQV	-36.9	-38.2	
	WKES	-49.5	-11.8	
217	WOLR	-11.6	-9.4	
	WWKO	-12.8	-38.0	
	WTBH	-15.3	-21.0	
	WHGN		-11.2	
	WHGN.C		-11.2	
218	WLPJ.C	-38.5	-31.3	
	WTBH	-55.1	-63.9	
	990415		-2.7	
	990916		-5.9	
	WLPJ	-45.0	-30.4	
	990917		-2.6	
	WHGN		-11.2	
	WHGN.C		-11.2	
219	WTBH	-15.3	-21.0	
	WJLF	-30.8	-40.0	
	WHGN	-58.8	-52.4	
	WHGN.C	-58.8	-52.4	
220	WHGN	-110.1	-95.3	
	WHGN.C	-110.1	-95.3	

270 degrees:

Showing of available NCE channels at Otter Creek, FL

Latitude 291929 Longitude 830259 ERP(Kw) 6.000 HAAT(m) 100 COR AMSL(m) 101

Chan	Call	*IN*	*OUT*	Margin
201	WAYT.C	-16.1		
	WHIJ	-4.2	-17.2	
	WWLC		-2.2	
202	WTLG	-3.1	-1.8	
	WLMS	-36.0	-40.8	
	WWLC	-48.3	-43.4	
203	WWLC	-105.1	-86.3	
204	WWLC	-48.3	-43.4	
205	WWLC		-2.2	
	WYFE	-55.3	-27.4	
	WFSUFM	-36.5		
	WUFTFM	-51.2	-34.6	
206	WWLC		-2.2	
	WUFTFM	-118.4	-77.7	
207	WUFTFM	-51.2	-34.6	
	AP207	-5.3		
	WGSG	-0.5		
208	WKSG	-33.4	-14.0	
	WGSG	-52.6	-39.4	
209	WGSG	-0.5		
	WUSF	-11.1		
210	WJCTFM	-17.5		
	WJCTFM	-17.1		
	WJUF	-9.1	-3.3	
211	WJUF	-60.8	-46.2	
212	WJUF	-9.1	-3.3	
	WYJC	-24.4		
	WYFB	-20.5	-5.1	
213	WYFB	-86.8	-48.2	
	WBVM	-0.8		
214	WYFB	-20.5	-5.1	
	WAQV	-1.7	-3.4	
215	WAQV	-42.1	-46.3	
	WTBH	-9.1	-2.9	
216	WAQV	-1.7	-3.4	
	WKES	-11.9		
	WUJC	-3.0		
	WTBH	-9.1	-2.9	
217	WOLR	-35.2	-33.1	
	WWKO		-8.1	
	WTBH	-38.3	-43.6	
218	WLPJ.C	-5.9		
	WTBH	-78.0	-86.5	
	WFSQ	-1.2		
	WLPJ	-13.7		
219	WTBH	-38.3	-43.6	
	WJLF	-21.1	-36.2	
	WHGN	-20.6	-14.2	
	WHGN.C	-20.6	-14.2	
220	WTBH	-9.1	-2.9	
	WHGN	-71.9	-57.1	
	WHGN.C	-71.9	-57.1	