

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

OPRF
Marlene Dortch
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 02-76
Table of Allotments,) RM-10405
FM Broadcast Stations.) RM-10499*
(Crisfield, Maryland; Belle Haven, Cape)
Charles, Exmore, Nassawadox, and Poquoson,)
Virginia))

PETITION FOR RECONSIDERATION

Bay Broadcasting, Inc. ("Bay"), by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, hereby petitions for reconsideration of the *Report and Order* in MB Docket No. 02-76, DA 03-2980, released September 29, 2003.¹ In support thereof, Bay states as follows.

1. Bay is the licensee of Station WBEY(FM), Crisfield, Maryland. Crisfield is located in Somerset County on Maryland's rural Eastern Shore. According to the 2000 Census, Crisfield's population consists of 2,723 persons. WBEY is the sole broadcast transmission service in Crisfield, having served the community since 1995. The Station broadcasts on FM Channel 245A. Over the years, WBEY's broadcast signal has been impacted detrimentally from ducting

¹ The instant Petition is timely filed by virtue of it being submitted within 30 days of the October 17, 2003 publication of the *Report and Order* in the *Federal Register* (68 Fed. Reg. 59748). The *Report and Order* inadvertently specified the docket number as MM rather than MB. See *Notice of Proposed Rule Making (Crisfield, Maryland)*, 17 FCC Rcd 6671 (M. Bur. 2002).

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interference caused by co-channel Station WFPG(FM), a Class B station licensed to Atlantic City.²

2. In order to preserve its service to Crisfield and surrounding areas of the Eastern Shore, through the elimination of the ducting problems it faces, Bay filed a Petition for Rule Making with the Commission, in RM-10405, requesting the substitution of FM Channel 250A for FM Channel 245A. The original Petition was returned as unacceptable for filing owing to a question over whether the proposal would provide 70 dBu coverage of the community of license. Bay, subsequently, filed a Petition for Reconsideration of the dismissal. The dismissal was reconsidered and, based on information contained therein, the proposed change in allotments was released for comment. *Notice of Proposed Rule Making* in MB Docket No. 02-76, 17 FCC Rcd 6671 (M. Bur. 2002).

3. This proceeding, which was intended to allow WBEY to resolve interference issues, turned into a far more complex matter as two Norfolk-based radio station group owners, Sinclair Telecable, and Commonwealth Broadcasting, L.L.C. (collectively, “Sinclair”) and Tidewater Communications, Inc. (“Tidewater”), engaged in a long and tortuous battle over a Sinclair Counterproposal involving the allotment of a series of new radio stations in the vicinity of their market, located well to the south of Crisfield.

4. Contained in the Sinclair Counterproposal are arguments, couched in equivocal terms, and not supported by any evidence, that the proposal put forth by Bay fails to provide “city-grade” [sic] coverage of all of Crisfield and that it would be “doubtful” that Bay could secure

² The appended Technical Statement describes the phenomenon of ducting, which is quite common on the Eastern Shore of Maryland, and how it has a detrimental impact on broadcast station operations.

permission to construct a broadcast tower at the site proposed.³ Armed with these inconclusive claims, the Media Bureau undertook an independent investigation.⁴ Based on United States Geological Survey maps together with a “current map” of Crisfield, apparently obtained from the U.S. Census Bureau, the Media Bureau concluded that the 70 dBu signal from the proposed reference point will not “encompass all of Crisfield, Maryland,” and that the reference point “is located in marshland in the Saxis Marsh Waterfowl Management Area and Refuge” which is not “a viable...site” for the proposed facilities.⁵ Based on these conclusions, the Media Bureau denied Bay’s Petition. The facts relied on by the Media Bureau were not known to Bay and could not have been responded to until this time. These previously unknown and unsubstantiated facts not on the record, when compared to the record evidence being presented herein, fail to support the Media Bureau’s conclusions. On the contrary, the evidence now being provided show that the Media Bureau’s conclusions were clearly erroneous and should be reconsidered and reversed forthwith.

5. In the first place, Bay disagrees with the Media Bureau’s claim that a 70 dBu signal broadcast from the reference point should not be found to encompass the community of Crisfield. While Bay is uncertain, owing to the Media Bureau’s lack of specificity, as to what Census Bureau map the Media Bureau has examined, Bay has secured both a Census Bureau map and Tiger Boundary data which the Census Bureau used for the 2000 Census. The map, with the proposed 70 dBu contour and the 16.2 km arc, is reproduced as Figures 1 in the attached Technical Statement.⁶

³ Sinclair Counterproposal at p. 6 – 7.

⁴ *Report and Order* at ¶ 3.

⁵ *Id.*

⁶ In addition, Bay has secured from the City Manager of Crisfield a map evidencing the boundaries of the City. This map is attached hereto as Exhibit A.

6. As the Media Bureau considers the predicted coverage of Crisfield by WBEY, it should be aware of the uniqueness of Crisfield's topography. The 2000 Census tells us that the community consists of only 3.02 square miles. Of that area, 1.40 square miles consist of water and just a little more, 1.63 square miles, consists of land. The Technical Statement shows that nearly all of the 3.02 square miles lies within the predicted 70 dBu contour of WBEY from the proposed reference point. The Technical Statement (at p. 2) tells us that, from the Tiger Boundary Summary, just 0.4395 square kilometers, *96.8% of which is water area*, lies beyond the 16.2 km arc. Therefore, the land area excluded from the predicted 70 dBu coverage is only 0.18% of the total area of Crisfield. The excluded area is primarily located on Janes Island State Park, which is separated from the inhabited portion of Crisfield by an arm of the Chesapeake Bay. The map contained in the Technical Statement, as well as Figure 1, tell us much about that small area and why coverage of it is not relevant to the instant proceeding. The portion of that area which is land is a wetlands, with no means of access to roads or other means of ingress or egress. As such, there is no possibility that this area will be populated or used by anyone attempting to receive radio communications for the foreseeable future. Included in Exhibit A is a statement from the Crisfield City Manager, Frederick B. Gerald III, stating that the area that is not predicted to receive a 70 dBu signal is "located under water and is therefore uninhabitable. The City of Crisfield does not and has no intention of maintaining this area."

7. Considering these factors, Bay submits that it complies with Section 73.315(a). *See Cloverdale, Montgomery and Warrior, Alabama*, 15 FCC Rcd 11050, 11052 (2000). The *de minimis* difference between 100% coverage and 99.82% land area coverage is of such a small

variation that the Commission should conclude that the transmitter site complies with the rules.⁷

This is particularly so since the portion of the community involved is unpopulated, consists of wetlands, and the city has no plans to allow any inhabitants or provide any access to the area.

8. Even if a waiver of Section 73.315(a) is required in order to make the proposed allotment, the factual situation here is unique enough to meet the waiver standard. The requirement that there be 100% coverage of the community of license with a 70 dBu signal has been waived before. *Oak Beach and Bay Shore, New York*, 2 FCC Rcd 1293 (1987); *Terrell and Daingerfield, Texas*, 5 FCC Rcd 556 (1980); *Greenwood, South Carolina*, 3 FCC Rcd 4108 (1988). These cases are all predicated on unusual circumstances being present, just as here. *Oak Beach and Bay Shore* involved a 45% coverage ratio based on the availability of one particular site and that much of the coverage area consisted of water that would allow a signal to carry farther than what would otherwise be predicted by the Commission's prediction methodology. In the *Terrell* and *Greenwood* cases, the Commission was dealing with large communities that could not be covered by a Class A signal but were otherwise deserving of additional reception service.

9. Bay submits that, as in the cases where waivers have been granted, a waiver should be granted here. Unlike the reported cases, the degree of variance is minimal at best in this instance and involves wetlands that cannot be inhabited, either now or in the future. Further, WBEY has been suffering the negative effects of ducting and a change in allotments would allow the Station

⁷ Interestingly, the Commission has found the community coverage requirement, of Section 73.315(a), to be substantially complied with, at the application stage, when only 80% of the community is predicted to receive a 70 dBu signal. *Virginia Beach, Virginia*, 5 FCC Rcd 3949 (1990). Bay is aware that the Commission has elected to treat the allotment stage differently from the application stage, in applying Section 73.315(a), but submits that substantial compliance at the allotment stage can be met when the land area is at the present time, and for the foreseeable future, uninhabited and uninhabitable.

to improve its service to a rural area. The signal of WBEY suffers interference even within the community of Crisfield, as evidenced by the attached communications by WBEY listeners. *See Exhibit B. See Greater Media Radio Co., 15 FCC Rcd 7090 (1999) (inadequate coverage of community of license can serve as the basis for a spacing waiver).* As the only transmission service allotted to Crisfield, WBEY serves as the principal source of news, information and weather reporting for its area. A signal that is not impacted by ducting can better serve this area, far from urban centers with multiple sources of news and information. Finally, there has been no showing that there will be any detrimental impact on any other broadcast station or communications facility. Under the circumstances, the public interest will be served by the instant proposal to substitute Channel 250A for Channel 245A and a waiver of the complete community coverage rule is in order. Section 1.429(b)(3).

10. Lastly, Bay has located a reference point site that will provide, without question, 100% coverage of Crisfield without the need for considering whether the location meets a substantial compliance test or is entitled to a waiver. The Technical Statement contains a channel spacing study and a map (Figure 3) demonstrating that the alternative site complies with the Commission's spacing rules and that use of it will allow for coverage of all of the community of Crisfield. Thus, whether the Commission considers the reference point site contained in the Petition for Rule Making, or the alternative site described herein, the coverage of the community is met by the Petitioner.

11. Turning to the issue of the proposed reference point, this, too, should not serve to prevent a change in the Table of Allotments so that the Station can better serve the public. As presented herein, the Commission, *sua sponte*, determined, from its review of topographic maps, that the proposed reference point is not on dry land. This conclusion is not supported by the

facts. Instead, Bay is entitled to the long-standing presumption that a technically feasible site will be available. See *Mount Wilson FM Broadcasters v. FCC*, 884 F. 2d 1462 (D.C. Cir. 1989).

12. Attached hereto as Exhibit C is a Declaration of Mr. Michael Powell, the President of Bay, which is accompanied by pictures taken by him. In addition, Prometheus Methods Tower Service, Inc. has provided a statement indicating a willingness to construct a tower at the proposed site. See Exhibit D. The evidence shows that instead of wetlands, the reference point is situated on dry land. In fact, as shown by one picture, a restaurant has been constructed in the vicinity of the proposed reference point. The existence of usable dry land is the basis upon which the Media Bureau must reconsider, based on applicable precedent, an initial denial of a requested allotment change. The rationale for reconsideration was established in *Cheboygan, Rogers City, Bear Lake, et al.*, 18 FCC Rcd 8532 (M.B. 2003). In the *Cheboygan* case, the Media Bureau initially denied an allotment because it “was located in the Bar Lake Swamp and was unusable for a transmitter site.” *Id.* On reconsideration, the petitioner argued this was an erroneous conclusion and submitted evidence that the reference site was on dry land. In reconsidering its decision, the Media Bureau concluded (*id.* at 8533):

At the outset, we concur with both Northern Michigan and Fort Bend that the proposed site for a Channel 291A allotment at Bear Lake is a suitable site notwithstanding its proximity to the Bar Lake Swamp. Our review of this matter confirms that the proposed reference site is, in fact, located on dry land with electrical service. In light of this finding, we grant the Northern Michigan Petition for Reconsideration in so far as it pertains to this issue.

13. Just as in *Cheboygan*, Bay has shown herein that the proposed reference point is not in a marsh or other site covered by water, but on dry land. Having met the dry land requirement, the result in this matter, just as in *Cheboygan*, must be reconsidered and the petition granted, not denied.

14. Having denied the proposed Channel 250A allotment at Crisfield on the basis of its erroneous analysis of the community coverage and transmitter site location issues, the *Report and Order* granted Sinclair's counterproposal, which included the allotment of Channel 250B1 at Belle Haven, Virginia. That allotment is mutually exclusive with Channel 250A at Crisfield. However, an alternate channel is available to accommodate both an allotment at Belle Haven, Virginia and the Crisfield allotment. Specifically, Channel 252 is available for allotment at Belle Haven, as a Class A facility. See Technical Statement, Channel 252 Allocation Study. Bay originally proposed the use of this alternate channel in its Comments in this proceeding submitted on July 11, 2002. Subsequently, Sinclair consented to the allotment of either Channel 252A or Channel 252B1 at Belle Haven. Counterproponents' Further Response to Tidewater's Opposition to Counterproponents' Motion at 2 (filed Oct. 1, 2002). Accordingly, on reconsideration, if the Commission finds that the public interest is served by the grant of the Sinclair counterproposal, it should grant that counterproposal with the substitution of Channel 252B1 or Channel 252A in place of Channel 250B1 at Belle Haven. To the extent necessary, Bay hereby expresses an interest in either Channel 252A or Channel 252B1 at Belle Haven, and would apply for and construct the facilities if allotted. See *Bethel Springs, Martin, Tiptonville, Trenton, and South Fulton, Tennessee*, 17 FCC Rcd 14472 at ¶ 14 (2002) (where the Commission downgraded a vacant allotment from Class C3 to Class A in connection with a rule making proposal when the proponent expressed an interest in the downgraded channel).

15. In summary, the Commission's cursory examination of Bay's proposal to substitute Channel 250A for 245A at Crisfield deserves reconsideration. The proposal, designed to cure well-documented harmful interference within the station's community of license, was all but lost in the larger struggle between competitors in distant Norfolk. The proposed transmitter site is

clearly usable, as demonstrated by site visits, photographs, and tower company officials. The proposed 70 dBu contour covers all of the inhabitable area of the community of license, and the sliver of land excluded from coverage – just 0.18% of the community's total area – is composed of uninhabitable and inaccessible wetlands. More significantly, Bay has located another reference point that will allow for 100% coverage of Crisfield. To deny the proposal based on a rigid and uncomprehending reading of the community coverage rule would disserve the public interest.

WHEREFORE, Bay Broadcasting, Inc. respectfully requests that the Commission reconsider the *Report and Order* in MB Docket No. 02-76 and, in so doing, grant the requested change in the FM Table of Allotments allowing for the substitution of FM Channel 250A for FM Channel 245A at Crisfield, Maryland and the modification of the license for Station WBEY(FM), Crisfield, Maryland, to specify FM Channel 250A in place of FM Channel 245A.

Respectfully submitted,

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Dated: November 17, 2003

TECHNICAL STATEMENT

Engineering Statement
COMMUNITY OF LICENSE COVERAGE AND INTERFERENCE

prepared for
Bay Broadcasting, Inc.
WBEY(FM) Crisfield, Maryland
Facility ID 27438

The instant engineering statement has been prepared to provide additional information for a proposed rule making to change WBEY(FM) from Channel 245A to channel 250A at Crisfield, Maryland (RM-10405). As discussed in detail herein, an unpopulated, de-minimus portion of the area of Crisfield lies beyond the “requisite” arc distance from the proposed reference point which is 37-55-13 N Latitude and 75-41-59 W Longitude.

Discussion is also provided regarding interference which WBEY(FM) has been experiencing from co-channel WFPG-FM as it relates to predicted interference, potential for ducting, and the vital need to change channels.

Community of License Coverage

For purposes of a Petition for Rule Making, the FCC requires that a 16.2 km radius¹ encompass the proposed community of license. In the case of the Petition in question, the proposed transmitter location is such that the 16.2 km radius does not completely encompass the boundary of the city of Crisfield. The boundary used in this study is that indicated on the USGS map, as well as the Tiger Boundary data which the U.S. Census Bureau used for the 2000 Census.

Specifically, there are two unpopulated areas where the Crisfield city boundary is not encompassed by the 16.2 km radius from the transmitter site: the southwest portion of Crisfield, and a smaller northwestern portion of Crisfield. **Figure 1** depicts the entire Crisfield “Tiger” boundary as well as the 16.2 km radius from the proposed transmitter site. For reference, a standard FCC 70 dBu F(50,50) contour from a maximum Class A facility at this location is also depicted.

¹A 16.2 km radius is the representative predicted maximum Class A principal community coverage contour.

Engineering Statement

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It should be noted that there is some difference between the Crisfield boundary as identified by the USGS map (1968), and the Census Tiger boundary. Both boundaries extend beyond the 16.16 km radius, but the Tiger Boundary extends over a wider surface than the USGS boundary. Thus, the map in **Figure 1** depicts the worst case condition

A characterization of the “land” inside the affected areas of Crisfield was developed, based on the markings as provided on the USGS map. The total area of the Tiger Boundary which lies outside of the 16.2 km radius is 0.4395 square kilometers, or 5.62 percent of the Crisfield total area. Of that area which is outside the 16.2 km radius, 96.8 percent is over water, 1.7 percent is woodland, 0.8 percent is “large wash”, and 0.6 percent is marsh or swamp. The total land area (large wash, land, swamp, and woodland) outside the 16.2 km radius represents 0.18 percent of the total Crisfield area, which is arguably a de-minimus condition. Reductions based on the quality of the land would reduce the percentage even more.

An analysis of the USGS border calculations yields very similar results.

Discussion of Interference to Licensed WBEY(FM)

From a standard allocation viewpoint, WBEY(FM) is fully spaced to WFPG-FM (Ch. 245B, Atlantic City, New Jersey), some 196.7 km distant. The WFPG-FM 40 dBu F(50,10) contour does not overlap the WBEY 60 dBu F(50,50) protected contour. However, according to information provided by the proponent, WFPG-FM has a strong signal in the Crisfield area during times when WBEY(FM) has been off the air. Also, there have been many occasions when the signal from co-channel WFPG-FM has been stronger than the local signal (inside the protected contour) of WBEY(FM).

A Longley-Rice study was performed to determine the extent of the predicted interference from WFPG-FM to WBEY(FM), considering the very low, flat terrain and water path which exists between the two stations. Due to these conditions, the Longley-Rice study predicts signal levels from WFPG-FM well in excess of 40 dBu (F50,10) throughout the entire protected contour area of

Engineering Statement

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WBEY(FM).² Figure 2 depicts the licensed protected contour of WBEY(FM), along with a contour which represents the first occurrence of the Longley-Rice study in which the predicted WFPG-FM interfering signal drops to 40 dBu.

The phenomenon often referred to as "ducting" is also likely to play a role in the interference difficulties which have been experienced by WBEY(FM). Ducting (often called tropospheric ducting) can occur when atmospheric conditions provide, with increasing altitude, an increase in temperature and/or a rapid decrease in water vapor content. The resulting condition causes signals to be bounced, channeled, or "ducted" far beyond the normally predicted distances. In the case of the path between WFPG and WBEY, a significant portion is over water, and the rest is over low, flat terrain. In fact, the average terrain between the two stations is 11.0 meters AMSL.

Considering the above interference issues, it is desirable to identify a channel which may be allocated to the Crisfield, Maryland area which does not involve co-channel proximities which are also near the coast, as in the case with WFPG-FM. Channel 250A has been identified as a channel which may be allocated to the Crisfield community, and that channel has been monitored by the proponent on a long term basis for potential interference. The monitoring has revealed that in most cases, no signal is able to be acquired by the typical receiver, and occasionally, only a very weak signal is obtainable. This is a stark contrast to the consistency in which WFPG-FM may be received and with which WBEY receives dramatic interference. Therefore, the community of Crisfield would be better served by changing the allocation for WBEY to channel 250A.

Revised Coordinates for Channel 250A

A location has been identified which meet the FCC requirements for spacing and city coverage. The revised coordinates are 37° 54' 58" North Latitude, and 75° 42' 22" West Longitude.

²Longley-Rice ITM computer program input data includes a location variability of 50%, a time variability of 10%, a situation variability of 50%, horizontal polarization, 0.005 S/m conductivity, a climate constant of 15, an assumption of maritime temperate oversea zone, a receive antenna height of 10 meters, a terrain profile step size of 1.0 km and grid cell sizes of 1 0 km. Input data also included the pertinent portion of the U.S.G.S. 3 arc second terrain database, and pertinent data for the facility under study

Engineering Statement

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Figure 3 depicts the 16.2 km radius from the revised location which does completely encompass the land area of Crisfield, Maryland. **Table 1** is a spacing study which demonstrates that a very small short spacing exists between the proposed coordinates and WIYY(FM) (Ch. 250B, Baltimore, Maryland). The standard FCC rounding from the listed 0.33 km results in a 0 km short spacing to WIYY(FM). The 100.6 km short spacing to 250B1 in Belle Haven is dealt with in the accompanying Petition for Reconsideration, wherein Bay Broadcasting proposes an alternative allotment channel.

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Clinton is a staff engineer in the firm of Cavell, Mertz & Davis, Inc.

Robert J. Clinton
November 17, 2003

Cavell, Mertz & Davis, Inc.
7839 Ashton Avenue
Manassas, VA 20109
(703) 392-9090

List of Attachments

Figure 1	City Grade Coverage
Figure 2	Interference Study
Figure 3	City Grade Coverage from Revised Coordinates
Table I	Spacing Study Data for Revised Coordinates

FIGURE 1
CITY GRADE COVERAGE
PROPOSED WB3Y(FM) CRISFIELD, MARYLAND
CH. 250A 6 kW 100 m

prepared November 2003 for
Bay Broadcasting, Inc.

Cavell, Mertz & Cavell, Inc.
Manassas, Virginia

FCC Contour
70 dBu F(50,50)

Crisfield

16.2 km Radius

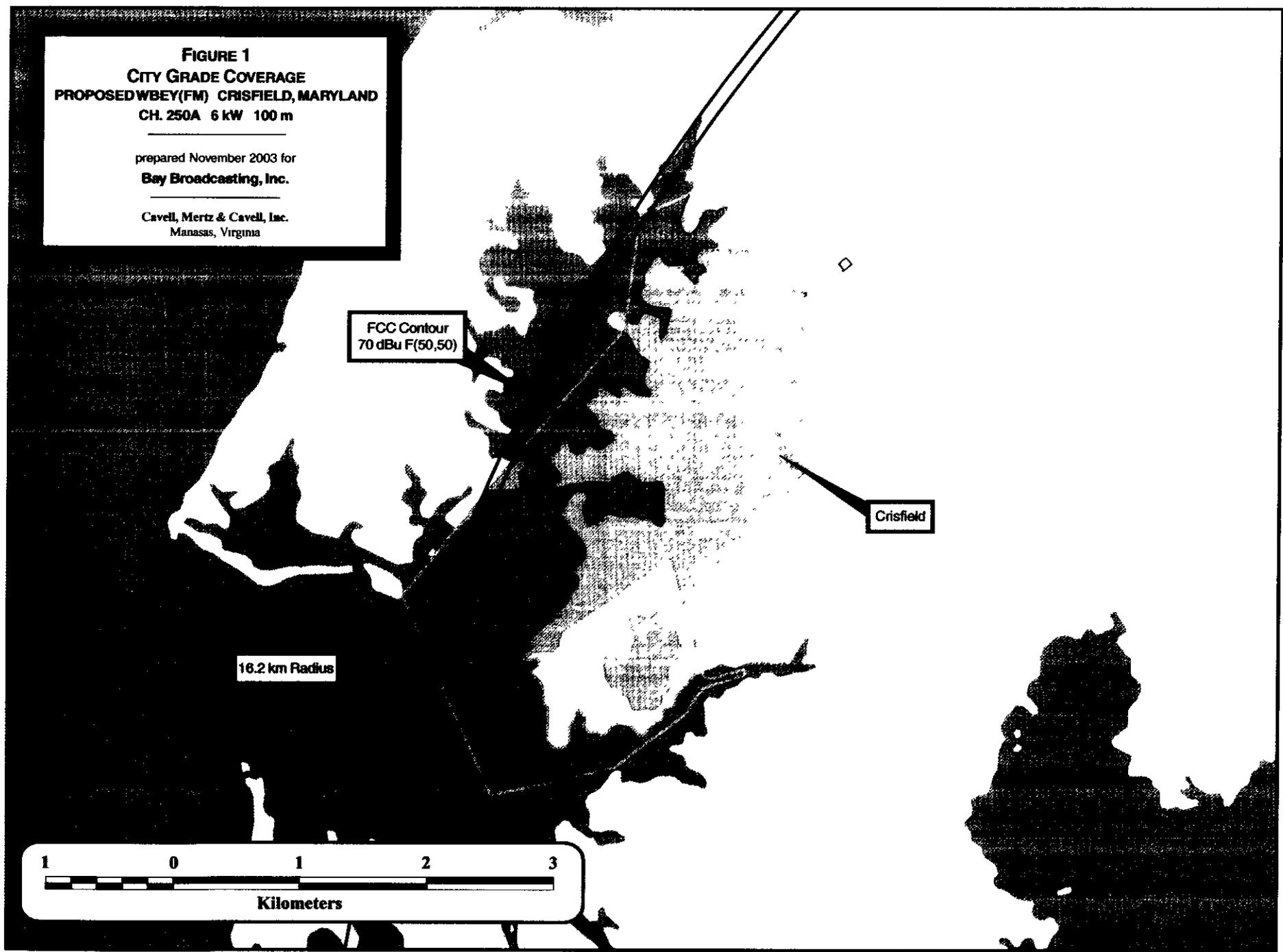
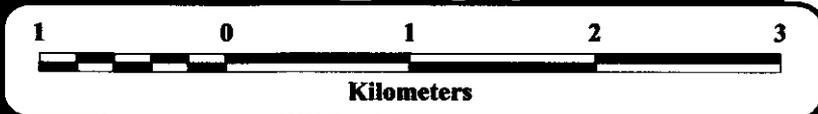


FIGURE 2

**INTERFERENCE STUDY
LICENSED WBIEY(FM) CRISFIELD, MARYLAND
Ch. 245A 2.8 KW 123 m**

prepared November 2003 for
Bay Broadcasting, Inc.

Cavell, Mertz & Cavell, Inc
Manassas, Virginia

FCC Method
60 dBu F(50,50)
Protected Contour

Longley-Rice Method
40 dBu F(50,10)
Interference Contour

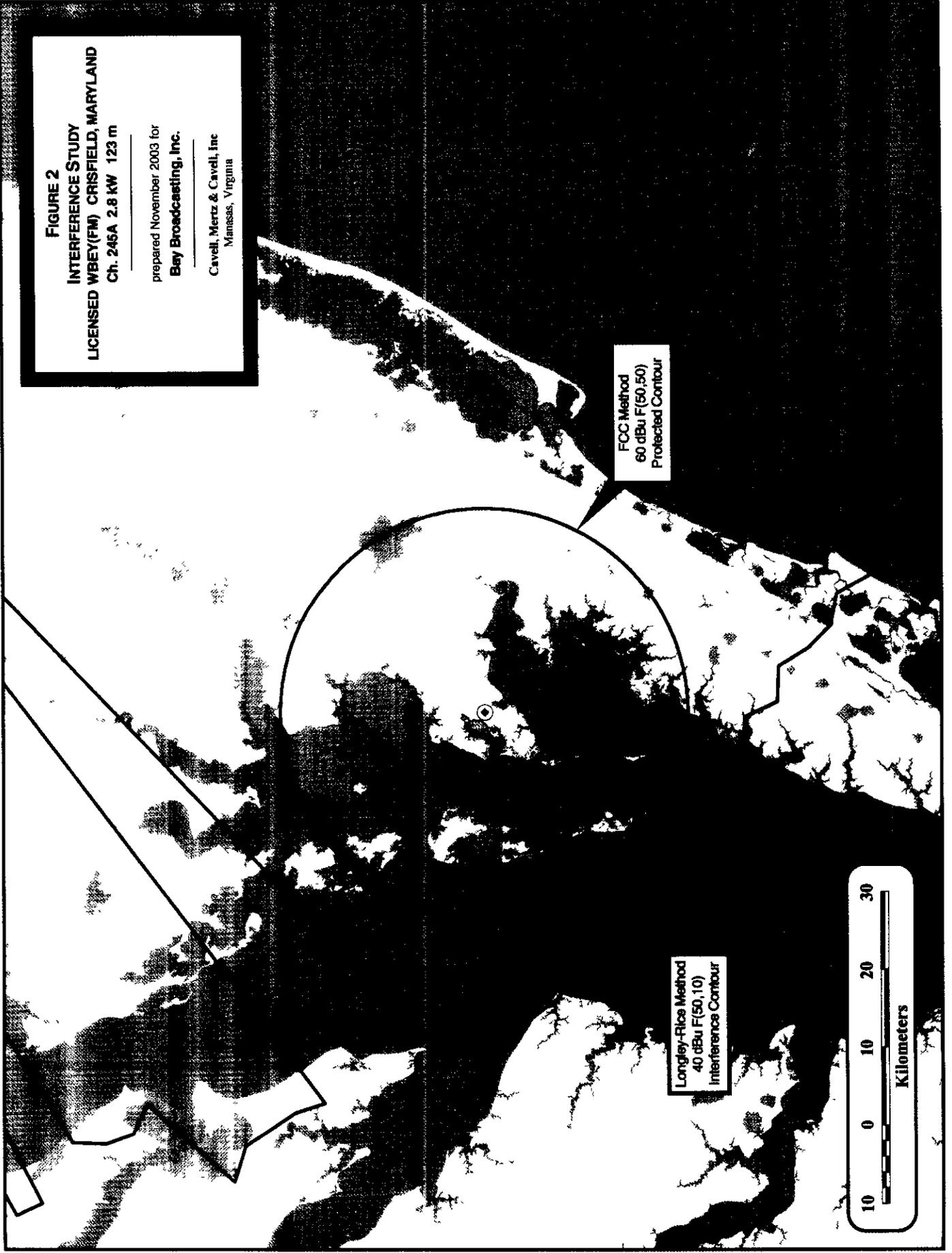


FIGURE 3
CITY GRADE COVERAGE
FROM REVISED COORDINATES
PROPOSED WBEE(FM) CRISFIELD, MARYLAND
CH. 250A 6 kW 100 m

prepared November 2003 for
Bay Broadcasting, Inc.

Cavell, Mertz & Cavell, Inc.
Manassas, Virginia

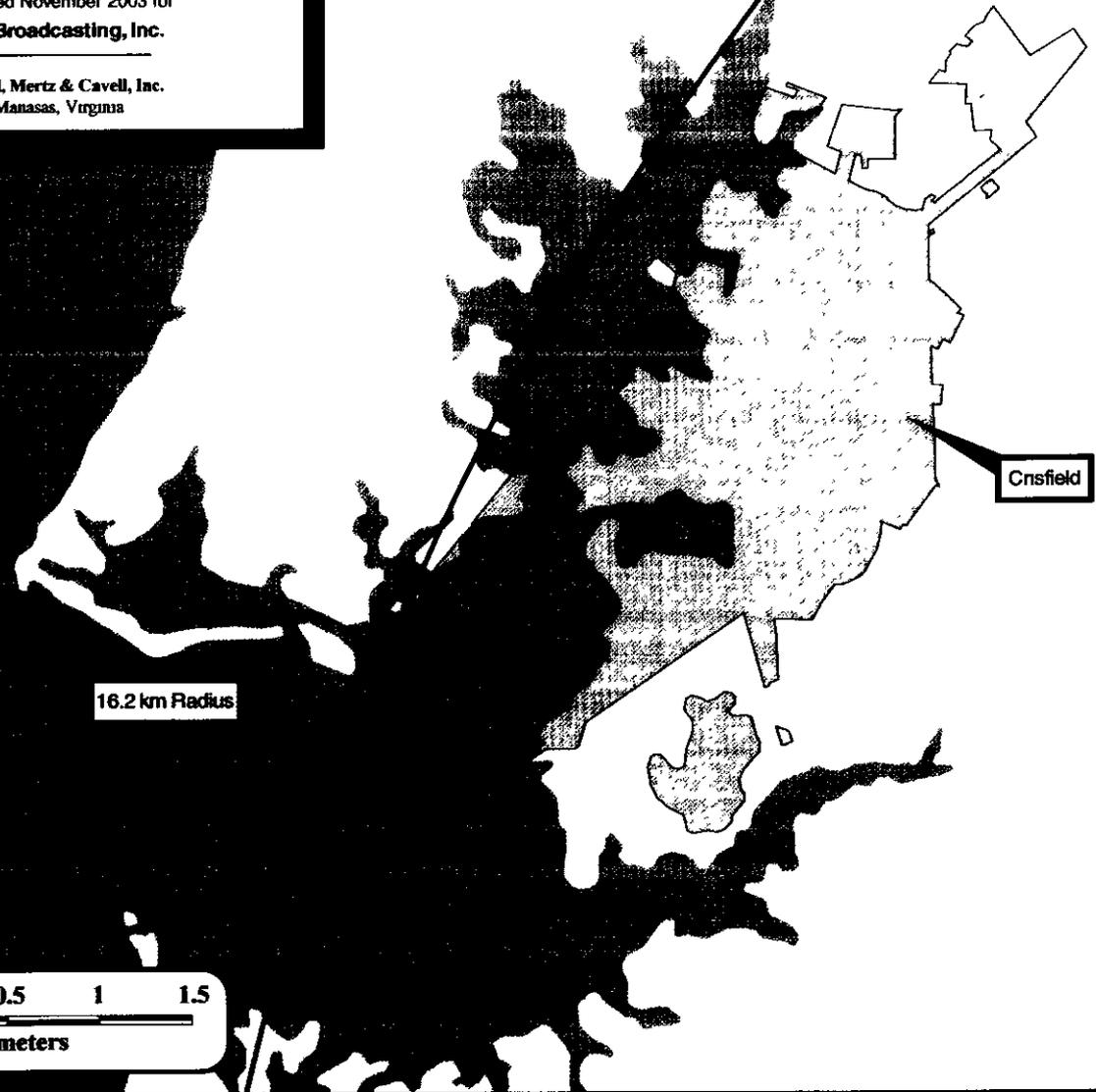


Table I
SPACING STUDY DATA FOR REVISED COORDINATES
 prepared for
Bay Broadcasting, Inc.
 WBEY(FM) Crisfield, Maryland
 Facility ID 27438

WBEY(FM) Revised Spacing						DISPLAY DATES		
REFERENCE						DATA 11-11-03		
37 54 58 N	CLASS = A							
75 42 22 W	Current Spacings					SEARCH 11-17-03		
----- Channel 250 - 97.9 MHz -----								
Call	Channel	Location	Dist	Azi	FCC	Margin		
RADD	ADD	250A	Crisfield	MD	0.73	50.4	115.0	-114.27
RADD	ADD	250A	Crisfield	MD	1.55	78.4	115.0	-113.45
RADD	ADD	250B1	Belle Haven	VA	42.40	194.9	143.0	-100.60
WIYY	LIC	250B	Baltimore	MD	177.67	332.8	178.0	-0.33
WOCM	LIC	251A	Selbyville	DE	74.96	41.2	72.0	2.96
WMDMFM	LIC	249A	Lexington Park	MD	85.21	298.9	72.0	13.21
WMDMFM	CP	249A	Lexington Park	MD	85.31	298.9	72.0	13.31
WICOFM	LIC	248A	Salisbury	MD	49.98	9.0	31.0	18.98
RDEL	DEL	252A	Nassawadox	VA	50.94	195.3	31.0	19.94
ALLO	VAC	252A	Nassawadox	VA	50.94	195.3	31.0	19.94
WAFL	LIC	249A	Milford	DE	113.86	9.5	72.0	41.86
WGBG	LIC	253A	Seaford	DE	78.06	7.6	31.0	47.06
WTVRFM	LIC	251B	Richmond	VA	160.81	256.5	113.0	47.81
WGH-FM	LIC	247B	Newport News	VA	122.83	210.7	69.0	53.83

EXHIBIT A

City of Crisfield
City Hall
319 W. Main Street
Crisfield, Maryland 21817
crisfield@ccisp.net

Mayor Richard Scott
City Council:
Catherine A. Brown,
Vice-President
Carolyn Evans
Daniel Thompson

P.O. Box 270
410-968-1333
FAX - 968-2167

November 4, 2003

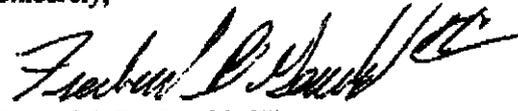
Mr. Michael Powell
Bay Broadcasting Inc.
WBEY/WDMV
1637 Dunn Swamp Road
Pocomoke, MD 21851

Dear Mr. Powell:

Please be advised that the area in question regarding the issuance of radio station WBEY's frequency change is located underwater and is therefore uninhabitable. The City of Crisfield does not and has no intention of maintaining this area.

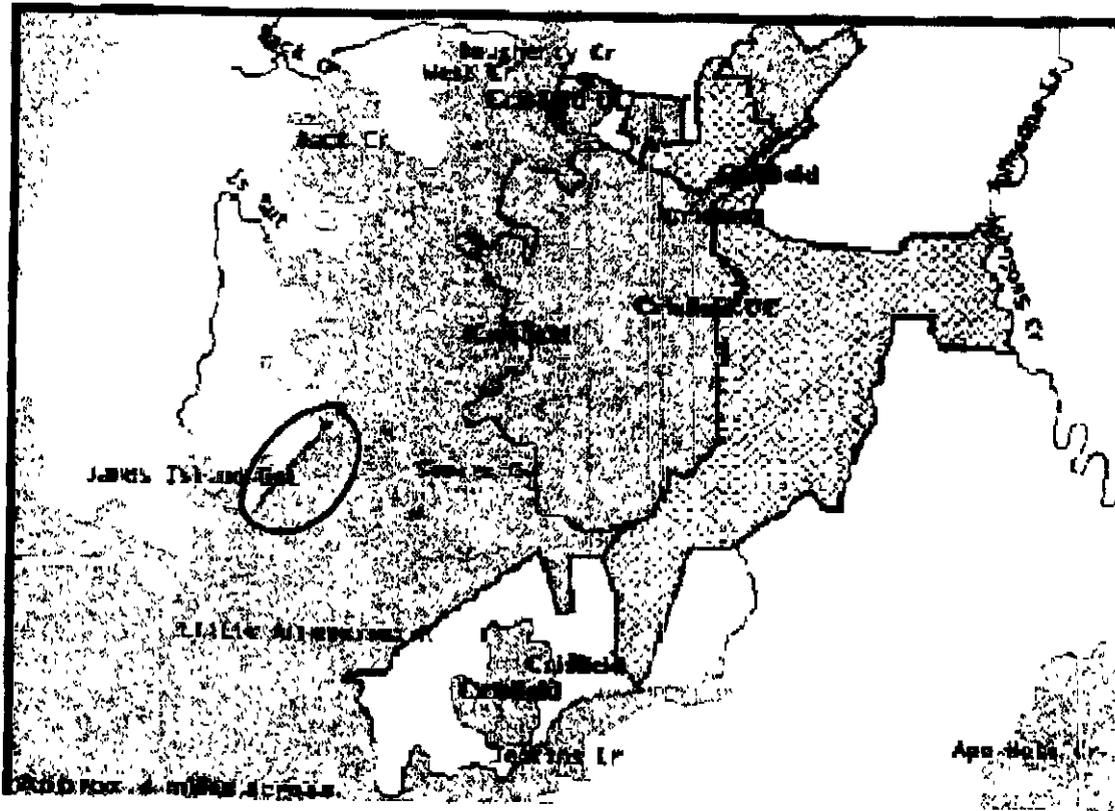
If you have any questions, please feel free to contact me at 410-968-1333.

Sincerely,



Frederick B. Gerald, III
City Manager

FBG/vs



Please be advised that the circled portion of this map is underwater and uninhabitable.

Sincerely,
Frederick B. Gerald, III
Frederick B. Gerald, III
City Manager

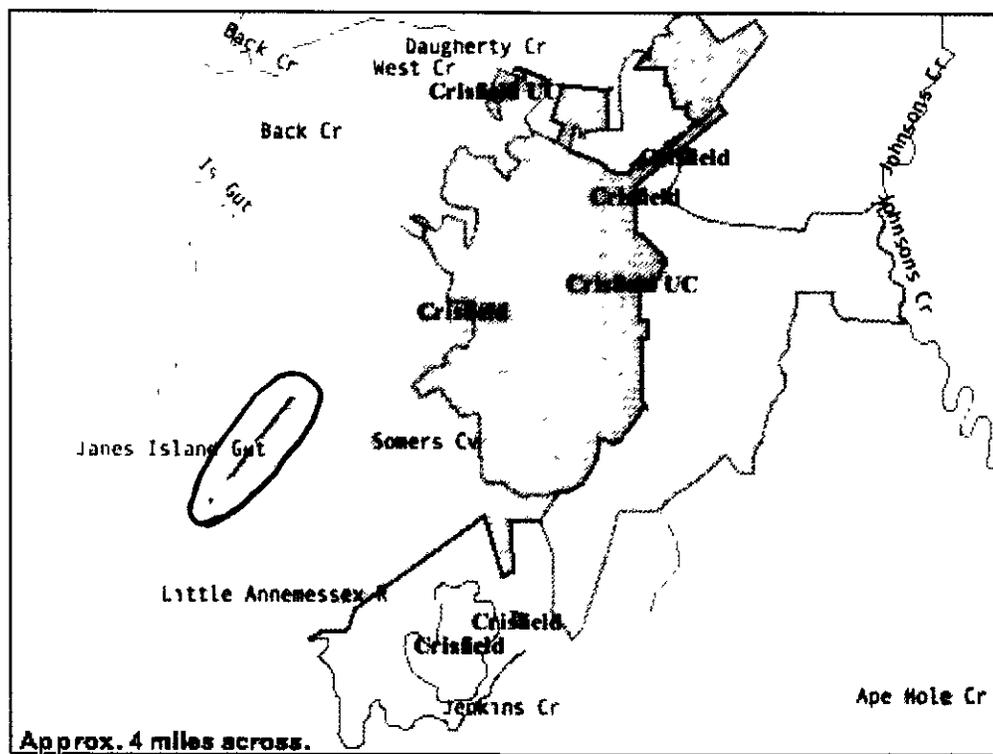


EXHIBIT B

Adam Riggin
Minden Lane
Crisfield, Md 21817

Mr. Mike Powell
96.9 WBEY

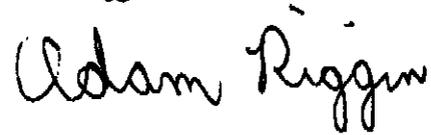
Feb 6, 2003

Dr. Mr. Powell,

I am writing today because I want to make you aware of a problem with your radio station. I like to listen to your station but it has become increasingly difficult to listen since another radio station is always overriding your broadcast. I am not sure you are aware that a radio station in Atlantic City, WFPG 96.9FM, has been coming across on the radio cutting into you programs but it is going on. It has become quite a problem. It makes listening very difficult. I find it sometimes confusing especially when I think I am listening to your station and I hear music that is definitely not WBEY Country music.

I do not understand how this is happening since you are a locally own and operated station here in Crisfield where I can see your tower just a couple miles away but it is happening. My intention is that by writing to you today you will be able to do something to alleviate this problem.

A. Riggin



Thank you,

Mike Powell
(Bay Country 96.9)

10/10/2002

Dear Mr. Powell,

It seems as though another music station, WFPG from Atlantic City, has been interrupting your daily broadcast.

I enjoy listening to the music and local news , information presented on your station however, when WFPG 96.9 cuts in it becomes quite a nuisance to me. I am sure that this has become a problem for your other listeners as well and I am sure mine is not the first letter you have received. Your station is the only station available in my area that plays the music I enjoy and comes in clear when this is not happening.

It is my hope that by writing this letter to you to voice my concerns that this will make you aware of this situation. Hopefully, now that you have knowledge of this problem there will some kind of remedy you can find to fix this problem.

Respectfully,

H Figgis.

EXHIBIT C

DECLARATION

I, Michael Powell, declare under penalty of perjury, that the following is true and correct to the best of my information, knowledge, and belief.

1. I am the President of Bay Broadcasting, Inc., the licensee of Radio Station WBEY(FM), Crisfield, Maryland.

2. In connection with the preparation of a Petition for Reconsideration by Bay Broadcasting, of the FCC's decision in *Report and Order* in MB Docket No. 02-76, I secured from my consulting engineer, precise information as to the location that Bay Broadcasting has proposed to the FCC, in MM Docket No. 02-76, as the reference point for the operation of FM Channel 250A at Crisfield, Maryland.

3. On November 12, 2003, I personally visited what has been described to me as the reference point site. In doing so, I personally photographed the same area. The photographs accompanying this Declaration are the ones I contemporaneously took of the reference point area.

4. Based on my examination of the land area constituting the reference point, I found the land area to be entirely dry. The land area consisted of earth, grasses, and trees. There was no evidence of any marshes or wetlands. Based on my experience in constructing, owning and operating broadcast radio stations, this land could be used to locate an antenna supporting structure. Further, I am familiar with other tower sites in use on the Delmarva Peninsula and I am aware that other such sites contain marshes and water that are not prevalent at the reference site proposed for WBEY.

ALBERT (1)

5. In visiting the site, I did note that a building has been built adjacent to the proposed reference point. This building, which is shown on the attached picture, is being used as a restaurant.

6. Further declarant sayeth not.

Executed at Crisfield, Maryland on the 17 day of November, 2003.

Michael J Powell







EXHIBIT D

Prometheus Methods Tower Service, Inc.

An insured tower company based in the Delaware Valley

2123
15 November 2003
Treetops
20 West Chestnut Street
West Chester, PA 19380
Re Bay Broadcasting proposed new broadcast tower

Dear Sir or Madam-

Prometheus Towers has performed both installation and service functions for Bay Broadcasting and Mr. Mike Powell since the spring of 2000. We are a full service tower company and we regularly design, procure and erect both short and tall towers for broadcast customers throughout the Mid-Atlantic states. Mr. Powell has personally spoken to me regarding construction of a new tower on the Eastern Shore of Virginia in Saxis at 37°, 55', 13" N, 75°, 41', 59" W. I assured him Prometheus Towers would be capable and willing to complete this project. In our present capacity we intend to complete any tower construction projects related to the pending change of frequency for WBEY-FM, Crisfield, MD. Furthermore, this letter is to certify our intention to bid on any tower-construction projects competitively let by Bay Broadcasting or Mr. Powell.

Sincerely,
Mr. Nick Berg, President

- Emergency service and repairs of broadcast towers and equipment
- Professional inspections of existing towers and broadcast sites
- Erection of guyed masts and self-supporting towers
- Routine maintenance and installations (painting, changing lamps, etc...)
- Development and installation of innovative, appropriate technology based, structural towers

Prometheus Methods Tower Service, Inc.
President, Nick Berg
Secretary/Treasurer, Michael Berg

climbing_hand@hotmail.com
Mobile: 484.883.4772
Office/Fax: 610.696.8873

1264 Estate Drive

West Chester, PA 19380

USA

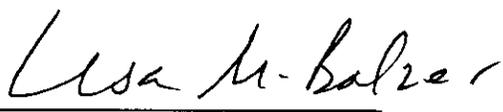
"Man is more than fire tamed..."

CERTIFICATE OF SERVICE

I, Lisa Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that on this 17th day of November, 2003, I caused copies of the foregoing "**Petition for Reconsideration**" to be mailed, first class postage prepaid, or hand delivered, addressed to the following persons:

Howard M Weiss
Fletcher, Heald & Hildreth, PLLC
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209-3801

Gary Smithwick
Smithwick & Belendiuk
5028 Wisconsin Avenue, NW
Washington, DC 20016



Lisa Balzer (Lg JJD)

* Hand-delivered