

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 04-219
Table of Allotments) RM-10986
FM Broadcast Stations)
(Evergreen, Alabama and Shalimar, Florida))

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Federal Communications Commission
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**REPLY OF QANTUM OF FT. WALTON
BEACH LICENSE COMPANY, LLC**

Qantum of Ft. Walton Beach License Company, LLC (“Qantum”), by its attorneys, hereby submits these reply comments in response to the Comments filed July 16, 2004 (“Comments”) and supplemented on July 23, 2004, by Gulf Coast Broadcasting Company, Inc. (“Gulf”). As is set forth in detail below, the proposal supported in the *Comments* is contrary to the public interest and does not represent a preferential arrangement of allotments. As a result, the proposal set forth in the Notice of Proposed Rule Making, 19 FCC Rcd. 10208 (2004), should not be adopted.

In its *Comments*, Gulf supports the petition for rule making (“Petition”) it filed on August 20, 2003. Gulf, licensee of station WPGG(FM), Channel 227C1, Evergreen, Alabama, seeks the downgrading of Channel 227C1 to Channel 227C2 and the realloing of Channel 227C2 from Evergreen, Alabama, to Shalimar, Florida. Gulf then proposes to make Shalimar the WPGG community of license. Gulf proposes this realloiment pursuant to Section 1.420(i) of the Commission’s Rules, which permits the modification of a station’s license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Amendment of the Commission’s Rules Regarding Modification of FM & TV Authorizations to Specify a New Community of License*, 4 FCC Rcd. 4870 (1989)

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("Change of Community R&O"), *recon. granted in part*, 5 FCC Rcd. 7094 (1990) ("Change of Community MO&O").

II. The Reallocation of Channel 227C2 Will Cause the Withdrawal of Reception Service in Evergreen and Create New Underserved Areas.

In order to meet the Commission's spacing requirements while also providing the requisite city-grade service over Shalimar, Gulf proposes reference coordinates that are some 76 miles from WPGG's licensed coordinates. Gulf also must downgrade WPGG from Class C1 to Class C2. The relocation of the facilities coupled with their downgrading results in a situation where there is no overlap between the 60 dBu contour that would be achieved from the proposed reference coordinates and WPGG's present 60 dBu contour.

The extreme change to the WPGG facilities will cause a withdrawal of service from 97,195 people. Evergreen will lose one of only two stations for which it serves as community of license. Moreover, of the 97,195 people who would lose service, 9,062 people (i.e., nearly 10 percent) would receive fewer than five full-time services if the proposal is adopted. Specifically, more than 722 persons would lose their fourth service, while 8,340 people would lose their fifth service.¹ The Commission has consistently held that such losses in service are *prima facie* inconsistent with the public interest and require a strong showing of countervailing factors. *See West Michigan Telecasters, Inc.*, 22 FCC.2d 943 (1970), *recon. denied*, 26 FCC.2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc.*, 460 F.2d 883 (D.C. Cir. 1972); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964). Gulf has not met this burden.

Although Gulf states in its *Petition* that WPGG's licensed 60 dBu contour serves a population of 95,599, whereas WPGG would serve a population of 222,040 within its 60 dBu contour under its proposal, most of the population resides in the well-served Ft. Walton Beach

¹ Gulf states in its *Petition* that there will be no loss area. *Petition*, Engineering Statement, p. 2. This is clearly incorrect.

Urbanized Area. Specifically, WPGG would be serving all of the 152,741 residents of the Ft. Walton Beach Urbanized Area within its 60 dBu contour from the proposed Shalimar facilities. Thus, the increase in population served outside the urbanized area totals less than 70,000 people whereas the population that will lose service approaches 100,000 people. Moreover, as was explained by Qantum in its Comments, the entire area served by the proposed facilities is already well served by more than five full-time stations. As a result, the Gulf proposal would lead to the creation of underserved areas with no countervailing provision of new service to underserved areas. For this reason alone, the proposal must be rejected.

III. The Proposal would not Achieve a Preferential Arrangement of Allotments.

Moreover, the proposal would not achieve a preferential arrangement of allotments. As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCC 2d 88, 91 (1982). Gulf seeks approval of its reallocation proposal on the ground that the proposal would provide the first local aural transmission service to Shalimar and thus is theoretically preferable to continued treatment of WPGG as a second station serving Evergreen.

A preferred distribution of allotments takes into consideration “the facilities available in the existing and proposed communities and the relative population of the communities.” *Change of Community R&O*, 4 FCC Rcd. at 4873. The real effect of Gulf’s proposal is to permit the relocation of a station from a rural area to a well-served larger metropolitan area – and to deprive listeners of service in the rural area as a result. In adopting Section 1.420(i), the Commission acknowledged the potential for this type of abuse, but assured the public, and in so doing provided a warning to broadcasters, that it would not sanction reallocations that would not be

fair, equitable and efficient pursuant to Section 307(b) of the Communications Act. *Change of Community MO&O*, paras. 13, 14. The Commission has consistently stated that it “will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area.” *Anniston & Ashland, Alabama; College Park, Covington, Milledgeville, & Social Circle, Georgia*, 15 FCC Rcd. 9971 (2000).

The Gulf proposal is exactly the type of reallocation that led the Commission to issue its warning concerning abusive reallocations. In *RKO General, Inc. (KFRC)*, 5 FCC Rcd. 3222 (1990), the Commission did not afford Richmond, California a preference for first local service over competing applications for facilities in San Francisco, California because the facilities proposed for Richmond would provide the same coverage and power as those proposals with San Francisco as their community of license. Here, the relocation of Channel 227C2 to Shalimar is a sham because the available open area and its immediate environs is the same area where other stations allocated to communities in the Ft. Walton Beach Urbanized Area are located and WPGG would provide 70 dBu contour coverage to the bulk of the Ft. Walton Beach Urbanized Area. *See Petition*, Engineering Statement, Exhibit 2. This further supports the argument that Gulf is trying to enter the already well served Ft. Walton Beach Urbanized Area and should not be credited with providing the first local aural service to Shalimar.

Shalimar is a small town with a population of 718 and is separated from Ft. Walton Beach, Florida (population 19,973), the principal city of the Ft. Walton Beach Urbanized Area (population 152,741), by only three miles. Shalimar’s population is 0.47% of the total population of the Ft. Walton Beach Urbanized Area. Evergreen, WPGG’s current community of license, is the county seat of Conecuh County, Alabama (population 14,089). According to the 2000 U.S. Census, it has a population of 3,630. Unlike Evergreen, Shalimar is not the county seat of its

county. Nevertheless, Gulf would have the Commission relegate Evergreen to second class status by leaving it with only a single AM station, while providing Shalimar, a community one-fifth its size, with a C2 FM station even though Shalimar receives service from numerous full-service stations.

Although the provision of a community's first local transmission service can provide a public interest benefit outweighing the loss of transmission service at the station's former community of license, that is not the case when the new community of license is intertwined with the urbanized area in such a way that it would confound logic to treat a proposal as legitimately providing first transmission service to the new community of license. Indeed, the Commission has recognized that a proponent is not to be given credit for providing first local transmission service if the new community of license is within an urbanized area unless the proponent can demonstrate that the proposed new community of license is sufficiently independent of the urbanized area under the factors set forth in *Faye and Richard Tuck*, 3 FCC Rcd. 5374 (1988) ("Tuck"). Applying those factors in the present case, it is clear that Gulf cannot be credited with providing first local transmission service to Shalimar and that, as a result, Channel 227C1 must continue to be allocated to Evergreen.

The first area of inquiry under Tuck is the extent to which the proposed facility would provide service to the entire Urbanized Area. In this case, the open area is actually located within the Urbanized Area. Moreover, in order to meet spacing requirements, it is tucked up against the Gulf of Mexico. It is physically impossible for a station to encroach any more into the Urbanized Area. From that open area, the proposed facility would have facilities equivalent to those of stations allocated to other communities in the Urbanized Area, including WKSM(FM), a C2 station allocated to Ft. Walton Beach, that has a transmitter site that is only 8 miles from the proposed Shalimar reference coordinates. From the proposed reference coordinates, the proposed

facility would cover 82% of the Ft. Walton Beach Urbanized Area within its 70 dBu contour and would cover all of the urbanized area within its 60 dBu contour.

The second area of inquiry under Tuck is the relative populations of the communities. As has been explained above, Shalimar's population is only a scant 0.47% of the total population of the Ft. Walton Beach Urbanized Area. Moreover, its population is only 3.6% that of Ft. Walton Beach.

Applying the third area of inquiry under Tuck, namely, the independence of the proposed community, it is clear, as was explained in Qantum's Comments, that Shalimar is interdependent with Ft. Walton Beach and the Ft. Walton Beach Urbanized Area:

1. The Perceptions of Shalimar Residents are Not Represented by a Non-Resident.

Gulf provides a statement from the Town Manager in its *Comments* in alleged support of its claim that Shalimar is independent of Ft. Walton Beach. The Town Manager, a full-time employee of the Town of Shalimar, admits, however, to living outside the incorporated boundary of Shalimar. The Town Manager's declaration is the sole evidence provided by Gulf attesting to the perceptions of town leaders and residents that Shalimar is not part of the Ft. Walton Beach Urbanized Area. Not only is this statement insufficient evidence that Shalimar is independent of the Ft. Walton Beach Urbanized Area, but the very fact that the Town Manager himself lives outside the Shalimar city limits in and of itself provides evidence of the interdependence between Shalimar and the rest of the Ft. Walton Beach Urbanized Area.

2. The Residents of Shalimar May Not Work in Shalimar.

Gulf states in its *Comments* that Shalimar is a net importer of workers, which should be expected given the fact that, according to the 2000 U.S. Census, only 363 people of the 718 residents in Shalimar work for a living. The large majority of Shalimar residents are retired. The

town web site notes that the population of Shalimar is likely to remain at the current level because of the limited available housing. See www.shalimarflorida.org.

Interestingly, Gulf fails to state the number of Shalimar residents that work in Shalimar. This is not surprising considering that jobs for each city or town in the Ft. Walton Beach Urbanized Area are advertised in the Ft. Walton Beach daily newspaper known as the *Northwest Florida News*. This indicates the regional nature of the Ft. Walton Beach Urbanized Area because residents may choose to seek jobs in other neighboring cities and towns.

3. Shalimar depends on the Ft. Walton Beach Urbanized Area for media that covers Shalimar's local needs, interests and advertising.

There are no dedicated media outlets in Shalimar. The Town of Shalimar has a web site at www.shalimarflorida.org which primarily consists of government notices and Shalimar's history. Shalimar's web site does not contain advertising or an area for residents to discuss current events or to post classified ads.

Since Shalimar has no dedicated media outlets, Shalimar businesses advertise their services using media outlets from the Ft. Walton Beach Urbanized Area. There are dozens of AM and FM radio stations in the Ft. Walton Beach Urbanized Area that provide a service to Shalimar. A number of these stations are located less than five miles away from Shalimar in Ft. Walton Beach.

Shalimar businesses also advertise using television stations licensed to other markets in the Ft. Walton Beach Urbanized Area. Cable television service is provided to Shalimar by Cox Cable of Ft. Walton Beach. DirecTV provides satellite service to Shalimar which includes the local television signals of the stations located in the Mobile, AL - Pensacola, FL geographical area.

There are no daily or weekly newspapers operating in Shalimar. Shalimar is served by newspapers from the Ft. Walton Beach Urbanized Area. Such newspapers include the *Northwest*

Florida News in Ft. Walton Beach, *The Destin Log* and *The Crestview News Bulletin*. The *Northwest Florida News* contains advertising, classified ads, legal notices and local news for Shalimar and the entire Ft. Walton Beach Urbanized Area.

4. Shalimar has only a part time elected government. Shalimar relies on the Ft. Walton Beach Urbanized Area for numerous municipal services.

Shalimar operates under a Mayor/Commission form of government with five unpaid members. The Mayor and the Commissioners are elected but these are only part time positions. If the Mayor or the Commissioners are needed to assist a resident, they must be located by their staffs.

Although Shalimar Elementary School and Megis Middle School are both located in the town of Shalimar, Choctawhatchee High School, which is the high school used by Shalimar's residents, is located in Ft. Walton Beach.

According to web site for the town of Shalimar, the Official Emergency Alert Stations in "our area" broadcast flood and hurricane information on the following frequencies: 1260AM, 99.5 FM, 96.5 FM and 105.5 FM. All are stations located in the Ft. Walton Beach Urbanized Area that provide coverage to Shalimar. Emergency shelters are provided by Okaloosa County, not Shalimar, in Crestview, FL and Baker, FL. *See* www.shalimarflorida.org.

There is no Town of Shalimar library. An independent library is available just outside of the city limits of Shalimar. Although the Town of Shalimar has a police department and a fire house, the Shalimar Police force encourages residents to leave a voicemail message when no one is available at the police station or to call the Okaloosa County Sheriff's Dispatcher. If the dispatcher is called, an Okaloosa County Sheriff, not a Shalimar police officer, will respond to the call. Shalimar relies on Okaloosa County to support its police department. The fire house located in Shalimar is Station No. 2 of the Ocean City-Wright Fire Department and not operated by the Town of Shalimar.

Shalimar does not contain a location to register an automobile or to obtain a driver's license. Residents must travel to Ft. Walton Beach, Crestview or Niceville to obtain these services. Voter registration is limited to state and county government facilities and there is no voter registration office in Shalimar. Voter registration offices are located in Ft. Walton Beach and Crestview.

Natural gas services are provided by the Okaloosa County Gas District to the residents of Shalimar. Water service is also provided by Okaloosa County to the residents of Shalimar. Once again, the residents of Shalimar must rely on the county to provide basic services.

5. Shalimar does not have its own telephone book provided by the local telephone company.

Shalimar does not have its own telephone book provided by the telephone company. Listings for Shalimar are placed in the Ft. Walton Beach telephone book.

6. Shalimar has relatively few commercial establishments and very limited health facilities and transportation systems.

Shalimar has a limited number of commercial establishments compared to the number of establishments available in the Ft. Walton Beach Urbanized Area. Shalimar has no hotels or motels and tourism is limited to people stopping at the local gas station. *See* www.shalimarflorida.org. Hotel and motel services are available throughout other towns and cities in the Ft. Walton Beach Urbanized Area. There is a small medical clinic in Shalimar but residents must travel to Ft. Walton Beach or Niceville, FL to reach a hospital or large treatment center. Shalimar is provided limited transportation service by a commercial bus service called The Wave but Shalimar operates no public transportation system beyond school buses. The 2000 U.S. Census indicates that only one person uses public transportation (including taxicabs) to travel to work.

In short, the conclusion is inescapable that Shalimar is inextricably intertwined with the Ft. Walton Beach Urbanized Area. Under such circumstances, it blinks reality to credit Gulf's claim that it would be providing first local transmission service to Shalimar, a community that receives service from numerous stations in the Ft. Walton Beach Urbanized Area.

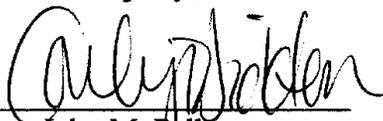
Conclusion

Grant of the proposal would cause more than 9,000 persons, constituting nearly 10% of the population within WPGG's coverage area, to be deprived of service including 722 persons who would lose their fourth service and 8,340 people who would lose their fifth service. Such a withdrawal of service is prima facie contrary to the public interest. At the same time, there would be no countervailing benefits as a result of the grant of the proposal. The area that would receive service for the first time is already well-served by more than five full-time services. Moreover, all the evidence suggests that Shalimar is not independent from the larger Ft. Walton Beach Urbanized Area -- with the result that Gulf should not receive credit for providing first local transmission service to Shalimar.

Accordingly, for the aforementioned reasons, the proposed rule making should be denied.

Respectfully submitted,

**Qantum of Ft. Walton Beach
License Company, LLC**

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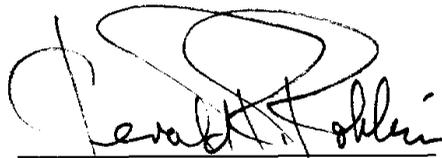
Dated: August 17, 2004

CERTIFICATE OF SERVICE

I, Gerald Robbins, hereby certify that copies of the foregoing "Reply of Qantum of Ft. Walton Beach License Company, LLC" was sent this 17th day of August, 2004, by first class U.S. Mail, postage prepaid, to the following:

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