

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
Hagerstown and Myersville, MD )

MB Docket No. 05-4

RECEIVED

MAR 18 2005

Federal Communications Commission  
Office of Secretary

To: The Chief, Media Bureau

REPLY COMMENTS

NASSAU BROADCASTING, III, L.L.C. ("Nassau"), pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. § 1.415(c), hereby submits its reply comments in response to the Commission's proposal to relocate Channel 295B from Hagerstown, Maryland to Myersville, Maryland, as set forth in its Notice of Proposed Rulemaking, DA 05-28, released January 10, 2005.<sup>1</sup> In particular, Nassau will herein respond to the Comments of Infinity Broadcasting Corp. of Washington, D.C. ("Infinity"), licensee of radio station WJFK-FM, Manassas, Virginia,<sup>2</sup> in response to the proposal originally submitted by Manning Broadcasting, Inc. ("Manning").<sup>3</sup> There is no need for any Tuck showing by Manning (or Nassau once there is a consummation of the assignment of the license for radio station occurs). The station operating on Channel 295B has long provided 70 dBu/3.15 mV/m contour service to more than 50% of the Frederick urbanized area, both in terms of area and population. Indeed, the Commission previously authorized dual city identification for

<sup>1</sup> The Notice of Proposed Rulemaking ("NPRM") set March 18, 2005 as the date for filing of reply comments in this proceeding, Id., at ¶ 7, so that these reply comments are timely filed.

<sup>2</sup> The Commission's CDBS Station summary states that WJFK-FM is licensed to Manassas, Virginia (see Attachment 1), although Infinity represents in its Comments that it is licensed to Washington, D.C. (Infinity Comments, p. 1), of course the center of the urbanized area that WJFK-FM actually serves.

<sup>3</sup> Counsel for Manning has authorized Nassau to state that Manning joins in and supports these Reply Comments.

No. of Copies rec'd 014  
List ABOVE

the station operating on Channel 295B, which by necessity would have required the station at the time to place a principal community contour over Frederick. The public interest will be served by the prompt adoption of the proposed relocation of Channel 295B from Hagerstown to Myersville. In support whereof, the following is respectfully set forth.

### *I. Positions of the Parties*

Manning proposed the relocation of Channel 295B from Hagerstown to Myersville as the latter community's first local transmission service.<sup>4</sup> In its Petition for Rulemaking, Manning pledged to apply for the channel and to construct its facilities if there application were granted.<sup>5</sup> Manning currently operates radio station WWEG(FM) on Channel 295B (the "Station").<sup>6</sup> On February 25, 2005, the Commission approved the assignment of the Station's license to Nassau.<sup>7</sup> The parties expect to consummate the assignment of license in the near future. On March 1, 2005, Nassau filed Comments in support of the proposal.

Although Infinity questions the public interest value of the relocation (Infinity Comments, p. 2), it concedes that Myersville is a community for allotment purposes. (Id., p. 4). Further, it concedes the importance of the provision of a first aural transmission service (Id., p. 3), which grant of the NPRM would achieve. NRPM, at ¶ 1. However, Infinity would have the Commission require a so-called "Tuck" analysis before approving the community of license change.<sup>8</sup>

---

<sup>4</sup> Id., at ¶ 1.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Public notice of the approval of the assignment of the license was given by Public Notice, Report No. 45932, released March 2, 2005. Effective March 8, 2005, the call sign for the station was changed from WARX(FM) to WWEG(FM).

<sup>8</sup> See Faye & Richard Tuck, Inc. KBEC, 3 FCC Rcd 5374, 5377-78 (1988).

Infinity argues that “where a station seeks to relocate to a community near an urbanized area, and the station’s proposed transmitter site location will allow it to place a city-grade signal over more than 50 percent of the urbanized area, the Commission would have the applicant demonstrate pursuant to its decision in Tuck that the proposed community of license is independent of the nearby urbanized area,” citing Tuck, 3 FCC Rcd at 5378 (¶ 36) (Infinity Comments, at 3-4).

## ***II. There Is No Need for Any Tuck Showing Because the Station Already Serves the Frederick Urbanized Area with 70dBu Signal***

Infinity’s contention that a Tuck analysis is a prerequisite to approving the NPRM is without merit when the facts are examined in this case. As can be discerned from the Petition for Rulemaking itself, the city of Frederick and the surrounding urbanized area is completely covered by the 0.5 mV/m contour of the Station at its present location. (Petition, Exhibit A).

In fact, the entire city of Frederick and more than 50% of the entire area and population of the Frederick urbanized area is covered by a signal strength of 70 dBu (3.15 mV/m) or better— and has been for more than 20 years. Attachment 2 hereto depicts the 70 dBu contour of the Station, as overlaid on a map of the Frederick urbanized area, which plainly demonstrates this level of coverage – from the presently authorized transmitter site for the Station.

Indeed, the Station has provided a “city grade” service to Frederick for nearly 30 years. In 1978, the Commission granted the Station authority to make a “dual city” identification for both Hagerstown and Frederick. Attachment 3 is a copy of the January 3, 1978 authority for dual city identification.<sup>9</sup> Under the provisions of Section 73.1201(b)(2), as then in effect, in order to obtain a dual city identification authority, the licensee was required to demonstrate that it covered the second

---

<sup>9</sup> See also Attachment 4, Declaration of Gene Manning, President of Manning.

city with a principal community contour. 47 C.F.R. § 73.1201(b)(2) (1978).<sup>10</sup>

Infinity's arguments about the need for a Tuck showing, in light of these facts, are grounded in pure speculation. The Petition for Rulemaking expressly stated that the community of license change could be done without a relocation of the transmitter site. (Petition, ¶ 1). Indeed, the Station has broadcast from the same location for more than 20 years. Manning has been the licensee of the Station since 1982. As recounted by Gene Manning, the President of Manning, the location of the Station has not been changed in nearly 30 years. Given the long period of time that the Station has been located at its current transmitter site, coupled with the fact that it has long covered the city of Frederick and the urbanized area of Frederick with a city grade signal, allegations that the Station's transmitter site *might* be moved to another location to improve the service to Frederick – the gravamen of the Comments – are groundless speculation. There is no motive of improving service to Frederick for moving the Station's transmitter location because it already provides a city grade service to Frederick.

The Commission distinguishes situations, such as the instant one, where a licensee already provides substantial service to the urbanized area. In the Tullahoma case, the Commission concluded no Tuck showing was necessary where the station in question already provided substantial service to the urbanized area from its existing transmitter site.<sup>11</sup> Further, the Commission has held in the Georgetown case that where a station already provides a 70 dBu signal over an entire urbanized area, no Tuck showing is necessary.<sup>12</sup>

---

<sup>10</sup> The Commission eliminated the requirement for such a showing in 1983. Report and Order (Amendment of Section 73.1201(b)(2) of the Commission's Rules), 95 FCC 2d 1253 (1983).

<sup>11</sup> Amendment of Section 73.202(b), Table of Allotments (Tullahoma, Tennessee and New Market, Alabama) (Report and Order) 19 FCC Rcd 11000, 11001 (Aud. Div. 2004).

<sup>12</sup> Amendment of Section 73.202(b), Table of Allotments (Georgetown and Garden City, South Carolina) (Report and Order), 12 FCC Rcd 13394, 13395-96 (M. Med. Bur. 1997) (no showing for station outside the market necessary where station is already effectively in the market), citing Amendment of Section 73.202(b), Table of Allotments (East Los Angeles, Long Beach and Fraser Park, California) (Report and Order), 10 FCC Rcd 3632 (M. Med. Bur. 1996).

The Chillicothe/Asheville<sup>13</sup> case cited by Infinity is readily distinguishable. There, the station covered only 2.7% of the urbanized area from its existing transmitter location. Id. at 11231 (¶ 2). By contrast, the Station already covers more than 50% of the entire Frederick urbanized area and area population and puts a city grade signal over the entire city of Frederick. For similar reasons, Infinity's reliance on the Lincoln/Sherman case is also misplaced (2.7% of the urbanized area from current transmitter transmitter location).<sup>14</sup>

As Manning has demonstrated – and as the Commission has conceded in releasing the NPRM – Myersville has the essential social, economic and cultural characteristics of a community. The town of Myersville has been a separately incorporated community for more than 100 years, with its own municipal government and own Code of Ordinances (Petition, p. 3; Exhibit B). The town provides its own sewer, water and fire department services. Id. The town also numerous businesses that serve the residents of the community. Id.

In addition, the allocation of Channel 295B to Myersville satisfies the Commission's allocation preference 3 – first local transmission service – without reducing the aural services available in Hagerstown, the current community of license. In sum, the proposal results in a preferential arrangement of allotments, consistent with the Commission's stated criteria for allotment of channels to the different communities.

### ***III. Conclusion and Reaffirmation of Interest***

Nassau hereby reaffirms that if the proposed rule change is adopted and Channel 295B is relocated to Myersville from Hagerstown, Nassau will file an application for Channel 295B, and will

---

<sup>13</sup> Amendment of Section 73.202(b), Table of Allotments (Chillicothe and Ashville, Ohio) (Request for Supplemental Information), 18 FCC Rcd 11230 (Aud. Div. 2003).

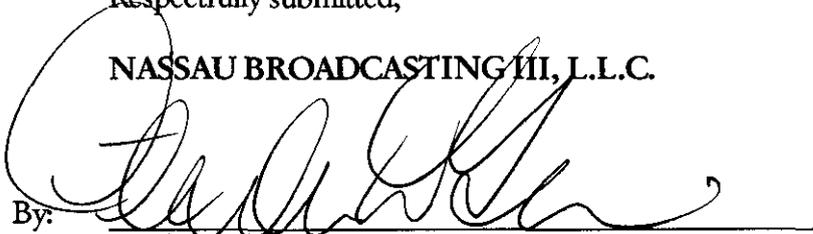
<sup>14</sup> Amendment of Section 73.202(b), Table of Allotments (Lincoln and Sherman, Illinois) (Request for Supplemental Information), 19 FCC Rcd 17446 (¶ 2) (Aud. Div. 2004).

construct the facilities if its application is granted. The public interest will be served by approval of the rule change.

Myersville is clearly a community for allocation purposes. There is no need for any additional "Tuck" showing in support of the proposed channel change. The Station already provides city grade service to the Frederick urbanized area and the city of Frederick. Nassau urges the Commission to act promptly to grant the Notice of Proposed Rulemaking and change the allotment for Channel 295B from Hagerstown to Myersville, Maryland.

Respectfully submitted,

**NASSAU BROADCASTING III, L.L.C.**

By: 

Stephen Diaz Gavin  
**PATTON BOGGS LLP**  
2550 M Street, N.W.  
Washington, D.C. 20037  
(202) 457-6000

Its Counsel

Dated: March 18, 2005

## Attachment 1



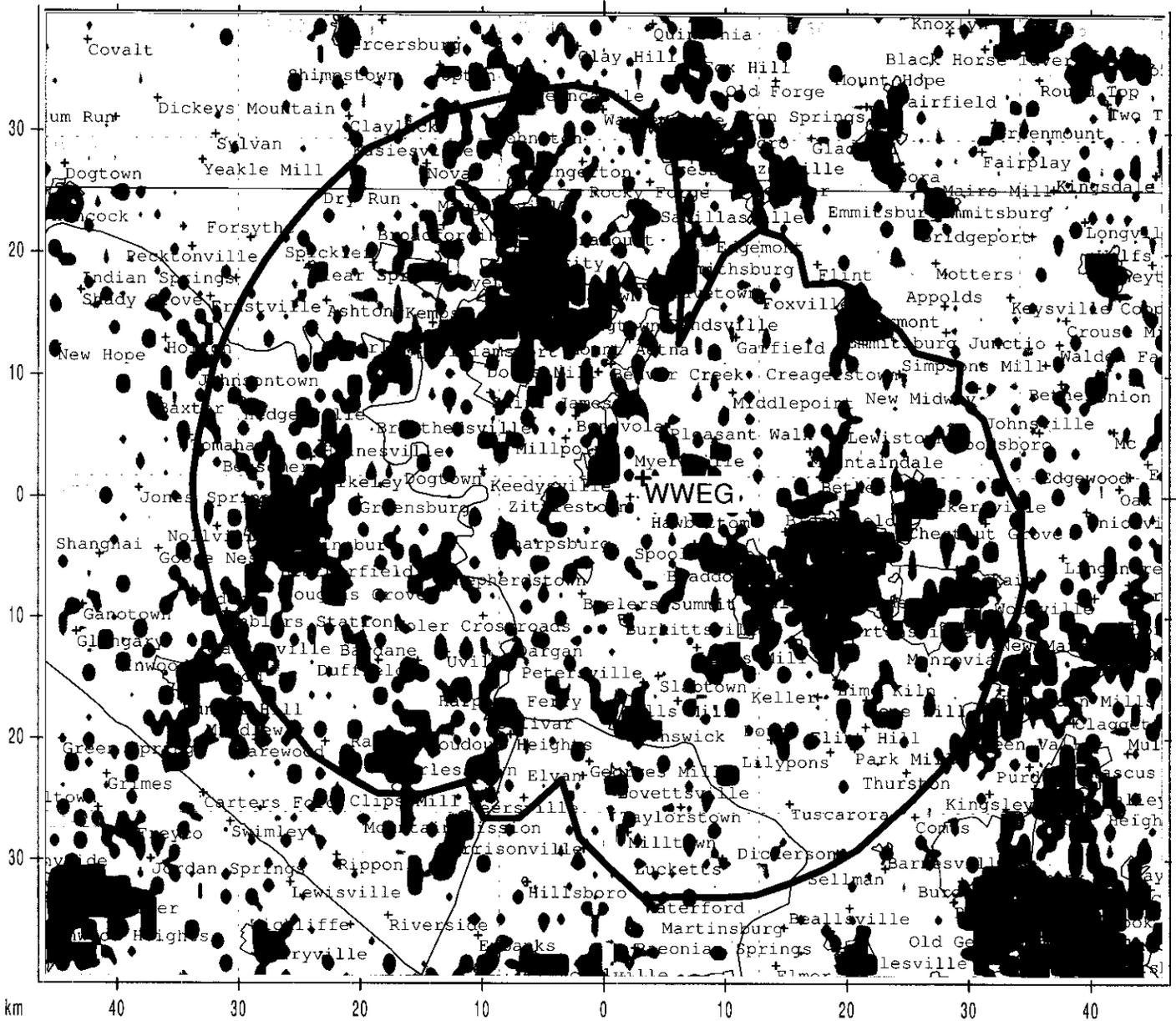
## Station Search Details

**Call Sign:** WJFK-FM  
**Facility Id:** 28625  
**Community of License:** MANASSAS, VA  
**Service:** FM  
**Fac Type:** FM STATION  
**Status:** LICENSED  
**Status Date:**  
**Frequency:** 106.7  
**Channel:** 294  
**Digital Status:**  
**Lic Expir:** 10/01/2011  
**Licensee:** INFINITY BROADCASTING CORP. OF WASHINGTON,  
DC  
**Address:** 2000 K STREET, NW, SUITE 725  
**Address 2:**  
**City:** WASHINGTON  
**State:** DC  
**Zip Code:** 20006 - 1809  
**Phone Number:** (202) 457-4518  
**Engineering Data** [View Engineering Data](#)  
**Call Sign History** [View Call Sign History](#)  
**FRN History** [View FRN History](#)

## Attachment 2

# WWEG(FM) CITY GRADE SERVICE

CONTOUR SHOWN IS 3.16 MV/M (70 DBU)



POPULATION DENSITY DEPICTED AS PER COLOR SCALE SHOWN BELOW



State Borders    City Borders    Lat/Lon Grid

Map Scale: 1:500000    1 cm = 5.00 km    V/H Size: 79.09 x 91.72 km

CHARLES A. HECHT & ASSOCIATES, INC. - MARCH 2005

## Attachment 3

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554  
JAN 3 1978

IN REPLY REFER TO  
8800-DSL

Rau Radio Stations, Inc.  
Radio Station WWC5  
880 Commonwealth Avenue  
Hagerstown, Maryland 21740

*JAN 3 1978*  
*File 217*

Gentlemen:

Reference is made to the request filed on August 26, 1977, looking toward dual-city identification of FM station WWC5, Hagerstown, Maryland as "Hagerstown-Frederick."

Examination of available engineering data indicates that station WWC5 provides the required principal city coverage to both Hagerstown and Frederick, Maryland.

Accordingly, this letter constitutes your authority for on-air identification of station WWC5 as "Hagerstown-Frederick." Such authorization is pursuant to Sections 0.201 and 73.1201(b)(2) of the Commission's rules.

This action does not modify your existing license or effect your primary obligation to the community to which WWC5 is assigned (Hagerstown).

This letter or a photocopy thereof should be posted with the station license as evidence of dual-city identification authority.

Sincerely yours,

*Wallace E. Johnson*  
Wallace E. Johnson  
Chief, Broadcast Bureau

CC: Mr. Lloyd S. Smith

*Received Jan 6, 1978*

## Attachment 4

## DECLARATION OF GENE MANNING

I, Gene Manning, do hereby declare that the following is true and correct:

1. I am the President of Manning Broadcasting, Inc. ("Manning"), licensee of FM station WWEG(FM), Hagerstown, Maryland (formerly WARX(FM)) (the "Station"). Manning has requested that the Federal Communications Commission reallocate Channel 295B, on which the Station operates, from Hagerstown to Myersville, both in Maryland. I am providing this Declaration in support of the Reply Comments being submitted by Nassau Broadcasting III, L.L.C. ("Nassau"). The Commission has approved the assignment of the Station's license from Manning to Nassau.

2. Manning has been the licensee of the Station since 1982, when the Commission approved the assignment of the Station's license from Rau Radio Stations, Inc. ("Rau") to Manning. Rau and then Manning have operated the Station from its current transmitter site for nearly 30 years. In 1995, Manning filed an application to correct the transmitter site coordinates for the Station. However, the location of the transmitter was not changed.

3. Prior to the assignment of the Station's license to Manning, the Station received dual city identification authority from the Commission to identify the Station as a "Hagerstown-Frederick" station. That permission was dated January 3, 1978. Under the Commission's rules as then in effect, in order to have a dual city identification, a licensee must demonstrate that the Station placed a "city grade" signal over the second community, in this case, Frederick.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gene Manning

**CERTIFICATE OF SERVICE**

I, Eugenia Delgado, a secretary with the law firm Patton Boggs LLP, do hereby certify that the foregoing "Reply Comments" was served on the parties listed below by First Class U.S. Mail this 18<sup>th</sup> day of March, 2005.

Veronica D. McLaughlin Tippet  
Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
Counsel for Manning Broadcasting, Inc.

Robert-Paul Sagner  
Leventhal Senter & Lerman PLLC  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006-1809  
Counsel for Infinity Broadcasting Corp.



---

Eugenia Delgado