

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

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
FM Table of Allotments, )  
For FM Broadcast Stations. )  
)  
(High Point and Liberty, North Carolina) )

MB Docket No. 05-115  
RM-11202

To: Office of the Secretary, to forward to Assistant Chief (Allocations), Audio Division

**REPLY COMMENTS**

Capstar TX Limited Partnership ("Capstar"), the licensee of WVBZ(FM), Channel 262C, High Point, North Carolina (Facility ID No. 74204), by its attorneys, hereby submits Reply Comments in the above-captioned proceeding.

In its Comments dated May 9, 2005, in response to the *Notice of Proposed Rule Making* in the above-captioned proceeding, DA 05-709 (released March 18, 2005) (the "*NPRM*"), Capstar affirmed its support for the proposal set forth in the *NPRM* and as proposed in Capstar's Petition for Rulemaking dated August 6, 2004 (the "Petition"), for the modification of the Commission's Table of Allotments for FM Broadcast Stations (Section 73.202 of the Commission's Rules) to: (a) delete Channel 262C from High Point, North Carolina; (b) add Channel 262CO to Liberty, North Carolina; and (c) modify the license of WVBZ(FM) to specify operations on Channel 262CO at Liberty, North Carolina, in lieu of operation on Channel 262C at High Point, North Carolina (collectively, the "Proposal").

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The Audio Division stated in the *NPRM* that, from the proposed reference coordinates, the Proposal would satisfy the Commission's technical requirements. 1/ Moreover, the Division stated in the *NPRM* that the Proposal warrants consideration because it could provide Liberty with its first local service. 2/ The *NPRM* stated that the Proposal appears to satisfy the requirements of Section 1.420(i) of the Commission's Rules because Station WVBZ(FM)'s existing and proposed channels are mutually exclusive with each other and because a first local service at Liberty under allotment Priority 3 would be preferable to retaining a sixth local service at High Point. 3/ From the reference coordinates set forth in the Petition and the *NPRM*, 2,428,562 persons would reside within the WVBZ(FM) 60 dBu contour, with a net gain in service of 807,793 persons. 4/

Capitol Broadcasting Company, Inc. ("Capitol"), the licensee of WFXQ(FM), Chase City, Virginia, submitted Comments on May 9, 2005, in the captioned proceeding (the "Capitol Counterproposal"). The Capitol Comments propose a counterproposal to the *NPRM* – a so-called "slight" modification of the reference coordinates for the Liberty allotment in order to accommodate a modification of a construction permit application filed by Capitol on May 9, 2005, File No. BMPH-20050509ACV (the "WFXQ Modification Application"). 5/

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1/ *NPRM* at ¶ 6.

2/ *Id.*

3/ *Id.*

4/ See Petition at Exhibit 17 (Technical Exhibit).

5/ Capitol already holds a construction permit to relocate the site of WFXQ(FM) to serve Creedmoor, North Carolina, File No. BPH-20040809AAJ, consistent with the change in community of license and modification of license adopted in *Chase City, Virginia, and Creedmoor, Ahoskie Gatesville, and Nashville, North Carolina*, 19 FCC Rcd 8483 (Ass't Chief,

While Capitol terms the distance between its suggested reference coordinates and the Proposal's reference coordinates as "slight," in fact, a 17 kilometer change is proposed. Capitol's Counterproposal is not comparatively preferred over the Proposal set forth in the *NPRM*. The *NPRM* Proposal will provide Liberty with its first local aural transmission service, which advances allotment Priority 3. <sup>6/</sup> On the other hand, the Capitol Counterproposal at best advances allotment Priority 4 – other public interest matters. The Capitol Counterproposal would not provide any new service to any underserved areas – as detailed in the attached Technical Statement, all of the additional service area under the WFXQ Modification Application is already extremely well served. On the other hand, the Capitol Counterproposal would decrease the population to be served by WVBZ(FM) by over 190,000 persons. <sup>7/</sup>

In *Oswego and Granby, New York*, <sup>8/</sup> the Bureau denied a requested relocation of the reference coordinates of a first local transmission service allotment that had been requested to accommodate a construction permit application. There, the Bureau found that the allotment was the comparative winner, since it advanced allotment Priority 3 – first local service – while the mutually exclusive modification application, which merely proposed an increase in service area, was considered merely a generalized public interest under Priority 4. <sup>9/</sup> Thus, the Bureau found

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Audio Division 2004). The WFXQ Modification Application requests relocation to a different site than the site specified in File No. BPH-20040809AAJ, or its licensed facility.

<sup>6/</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

<sup>7/</sup> See Technical Statement.

<sup>8/</sup> 16 FCC Rcd 16927 (Chief, Allocations Branch 2001). An affiliate of Capstar petitioned for reconsideration of the *Oswego and Granby, New York* decision; such petition for reconsideration was dismissed as moot, 18 FCC Rcd 17615 (Ass't Chief, Audio Division 2003).

<sup>9/</sup> 16 FCC Rcd at ¶ 6.

that the provision of a first local service was comparatively preferable to a simple modification application. 10/ The Bureau's holding in *Oswego and Granby, New York* is consistent with the Commission's statement that "an application is considered, in the absence of a showing to the contrary, to represent no more than the applicant's preference for a particular transmitter site. Accommodation of an applicant's preference provides minimal public interest benefits, and thus virtually any conflicting proposal involving a net public interest benefit will be preferred." 11/

Here, the net public interest benefit is clearly advanced by the Liberty Proposal, which furthers Priority 3 and will provide a net gain in service to over 800,000 persons. On the other hand, the Capitol Counterproposal only serves to increase WFXQ(FM)'s service area to an already very well served population.

For the foregoing reasons, the Commission should adopt the changes in the Table of Allotments set out in the *NPRM*, including the proposed reference coordinates for Liberty, should approve the proposed modification of WVBZ(FM)'s license pursuant to Section 1.420(i) of the Commission's Rules, and should dismiss the WFXQ Modification Application unless Capitol amends it to select a site that is not mutually exclusive with the Liberty Proposal.

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10/ *Id.*

11/ *Amendment of the Commission's Rules To Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735 at ¶17 (1993). While Capitol cites to certain cases involving reference coordinate relocations, all pre-date the 2001 *Oswego and Granby, New York* decision.

Respectfully submitted,

**CAPSTAR TX LIMITED PARTNERHIP**

By: *Marissa G. Repp / Tarah Grant*  
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Its Attorneys

May 24, 2005

Engineering Statement  
Capstar TX Limited Partnership  
WVBZ(FM) Reply Comments  
MB Docket No. 05-115  
RM-11202

This study and the attached Figures were prepared by Capstar TX Limited Partnership ("Capstar"), the licensee of WVBZ(FM), High Point, North Carolina, in support of Reply Comments in the above captioned proceeding.

Table of Figures

- Figure 1: 60 dBu Gain and Loss Study
- Figure 2: Depiction of Services to 60 dBu Gain Area
- Figure 3: Tabulation of Services to 60 dBu Gain Area

Liberty Allotment 60 dBu Study

As demonstrated in *Figure 1*, 2,428,562 persons would reside within the WVBZ(FM), Liberty, North Carolina 60 dBu contour as proposed by Capstar in Capstar's Petition for Rulemaking dated August 6, 2004 (the "Petition"). Capitol Broadcasting Company, Inc. ("Capitol"), the licensee of WFXQ(FM), Chase City, Virginia, submitted Comments on May 9, 2005, in MB Docket No. 05-115 (the "Capitol Counterproposal"), which proposes new reference coordinates for the Liberty allotment. As seen in *Figure 1*, 2,234,078 persons would reside within the WVBZ(FM) 60 dBu contour from the coordinates proposed in the Capitol Counterproposal. Thus, the Capitol Counterproposal would result in a loss of WVBZ(FM) 60 dBu service to 194,484 persons.

Services to WFXQ(FM) 60 dBu Gain Area

Capitol filed a modification of a construction permit application on May 9, 2005, File No. BMPH-20050509ACV (the "WFXQ Modification Application"), to modify its outstanding permit for WFXQ(FM), Creedmoor, North Carolina. As depicted in *Figure 2*, and enumerated in the tabulation in *Figure 3*, there are numerous existing services providing 60 dBu service to the "Gain Area" which is proposed by the

WFXQ Modification Application in contrast to the outstanding WFXQ(FM) permit. Thus no new service would be provided to any underserved areas as a result of the Capitol Counterproposal.

#### Coverage Contours

The FM predicted coverage contours were calculated in accordance with the provisions of 47 C.F.R. Section 73.313, except that, in accordance with current FCC practice, uniform terrain was assumed in all directions.

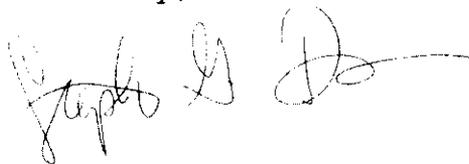
#### Population and Area

The population within the FM primary service contour (1 mV/m) was calculated using a computer program that utilizes the 2000 U.S. Census database of "population centroids". The program adds the populations of those U.S. Census designated areas whose centroid lies within each service area.

#### Certification

I hereby certify under penalty of perjury that the engineering studies presented herein were prepared by me, or under my supervision, and that the foregoing is true and correct to the best of my knowledge, understanding and belief.

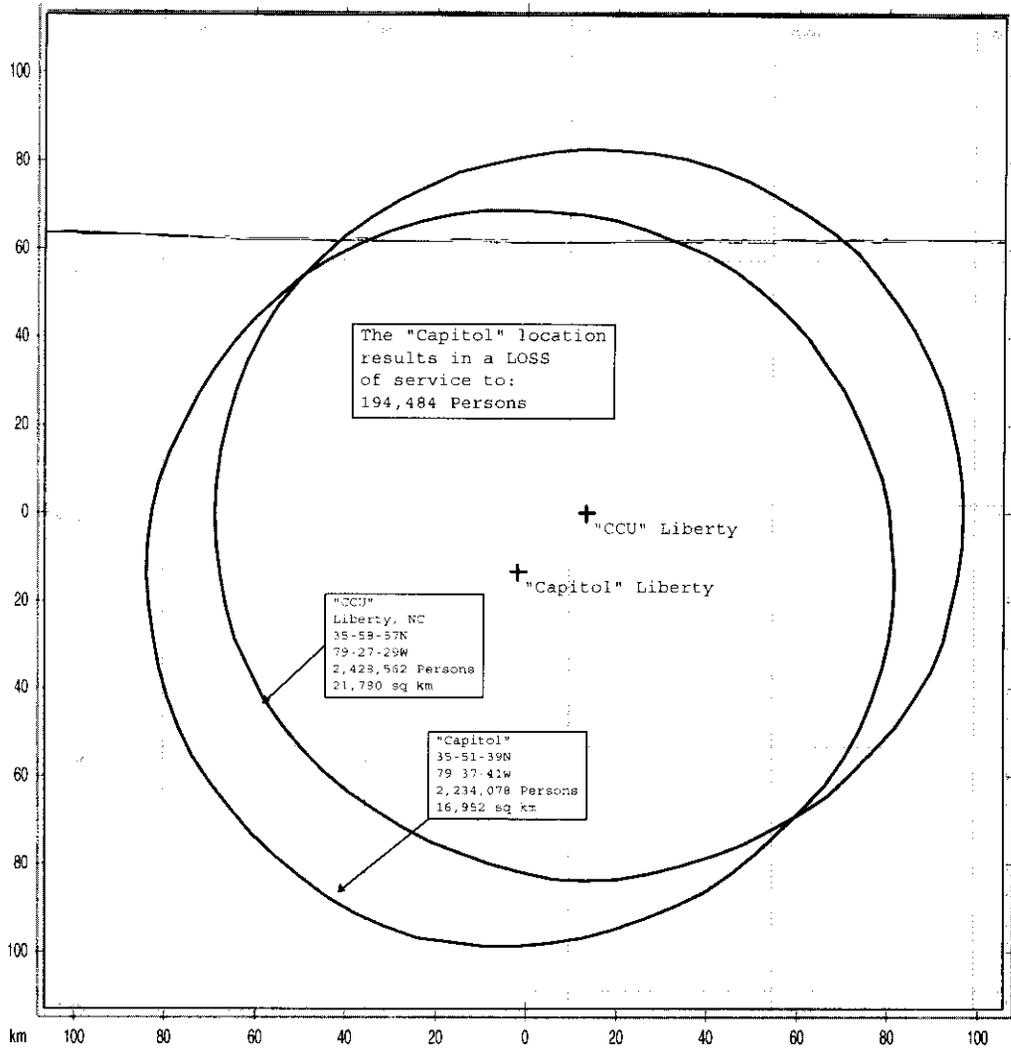
Sincerely,

A handwritten signature in black ink, appearing to read "Stephen G. Davis", with a long horizontal flourish extending to the right.

Stephen G. Davis  
Senior Vice President, Engineering  
Capstar TX Limited Partnership

24 May 2005

Figure 1: Liberty Allotment 60 dBu Study



County Borders    State Borders    Lat/Lon Grid



Figure 3: Tabulation of Aural Services to WFXQ(FM) "Gain Area".

Call Sign	City	State
WAKG	DANVILLE	VA
WAUG	NEW HOPE	NC
WBBB	RALEIGH	NC
WCHL	CHAPEL HILL	NC
WCLY	RALEIGH	NC
WCPE	RALEIGH	NC
WDCG	DURHAM	NC
WDNC	DURHAM	NC
WDNZ	RALEIGH	NC
WDUR	DURHAM	NC
WFTK	WAKE FOREST	NC
WFXC	DURHAM	NC
WFXK	TARBORO	NC
WGSB	MEBANE	NC
WJMH	REIDSVILLE	NC
WKNC-FM	RALEIGH	NC
WKRR	ASHEBORO	NC
WKRX	ROXBORO	NC
WKVE	SEMORA	NC
WLLQ	CHAPEL HILL	NC
WLUS-FM	CLARKSVILLE	VA
WMAG	HIGH POINT	NC
WNCU	DURHAM	NC
WNNL	FUQUAY-VARINA	NC
WPJL	RALEIGH	NC
WPTF	RALEIGH	NC
WQDR	RALEIGH	NC
WQMG-FM	GREENSBORO	NC
WQOK	SOUTH BOSTON	VA
WRAL	RALEIGH	NC
WRBZ	RALEIGH	NC
WRDU	WILSON	NC
WRSN	BURLINGTON	NC
WRTG	GARNER	NC
WRVA-FM	ROCKY MOUNT	NC
WRXO	ROXBORO	NC
WSHA	RALEIGH	NC
WSMW	GREENSBORO	NC
WSRC	DURHAM	NC
WTIK	DURHAM	NC
WUNC	CHAPEL HILL	NC
WVBZ	HIGH POINT	NC
WWMY	RALEIGH	NC
WXDU	DURHAM	NC
WXYC	CHAPEL HILL	NC

WYFL	HENDERSON	NC
WYMY	GOLDSBORO	NC
WZTK	BURLINGTON	NC

## CERTIFICATE OF SERVICE

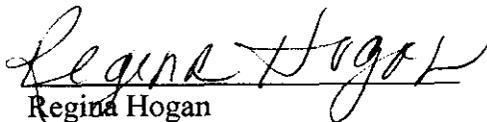
### Certificate of Service

I, Regina Hogan, hereby certify that on this 24<sup>th</sup> day of May, 2005, a copy of the foregoing **Reply Comments** were sent by first-class mail, postage prepaid, to:

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Regina Hogan

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