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

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FEB 22 2008

FCC Mail Room

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Culebra, Puerto Rico and Charlotte Amalie,)
Virgin Islands))

MB Docket No. _____

RM No. _____

To: Office of the Secretary, FCC

PETITION FOR RULE MAKING

Western New Life, Inc., ("Petitioner), permittee and operator by Special Temporary Authority ("STA") of Station WJZG-FM, fac id. 3250, (the "Station"), by its counsel, hereby requests an amendment to the FM Table of Allotments by substituting Channel 271A for Channel 254A at Culebra, Puerto Rico, so that the Station can finally obtain a license to provide the community of Culebra with its first licensed local service. To accommodate the addition of Channel 271A at Culebra, the vacant allotment at Channel 271B in Charlotte Amalie, Virgin Islands, must be deleted. Petitioner has on file an application to operate the Station on Channel 271A at Culebra.¹ Petitioner will promptly construct the facility if this Petition and the pending application are granted. In support hereof, Petitioner states as follows:

1. Channel 271A can be allotted to Culebra using coordinates 18-19-19 NL and 65-17-54 WL as the reference point. As demonstrated in the attached Engineering Statement, a 70 dBu signal can be placed over the community of Culebra from the

¹ See FCC File No. BMPH-20071211AAQ.

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proposed reference point. The proposed allotment will provide a first local service to the community of Culebra after a decade of secondary service from the Station by way of its STA.

2. To accommodate the allotment of Channel 271A at Culebra, the vacant allotment on Channel 271B at Charlotte Amalie, VI must be deleted. As shown in the attached Engineering Statement, the community of Charlotte Amalie has a population of 15,697 and is already served by six full-power FM facilities, including one Class B1 station, three Class B stations and two Class A stations. In addition, there are currently three vacant FM allotments assigned to the community of Charlotte Amalie. The deletion of the Channel 271B allotment at Charlotte Amalie will still leave two allotments for parties interested in applying for and constructing new facilities to provide additional service to that community. The deletion of the Channel 271B allotment at Charlotte Amalie does not run afoul of FCC rules or policies concerning FM allotment priorities. At the same time, the deletion of Channel 271B at Charlotte Amalie will allow the allocation of Channel 271A at Culebra, enabling that community to have a permanent first local service by allowing Petitioner to obtain a license for the Station. The Station can then continue to provide local service that the community has come to rely on over the past ten years.²

THE HISTORY OF THE CULEBRA ALLOTMENT

3. When applications for the subject Culebra allotment were first filed in 1991, Channel 293A was the channel allotted for the community's first local service. However, this allotment was part of the infamous MM Docket No. 91-259 rule making

² Petitioner has a minor modification of permit application pending to specify operation of the Station on Channel 271A instead of Channel 254A (see BMPH-20071211AAQ).

proceeding. The FCC's 1995 *Report and Order in MM Docket No. 91-259* resulted in the substitution of Channel 254A for Channel 293A at Culebra.³ However the Culebra allotment was at the end of the "daisy chain" of allotment moves promulgated in the *R&O*. The Station could not be licensed on Channel 293A because that allotment had been deleted from the Table of Allotments once the *R&O* issued and it could not be licensed on Channel 254A until a string of other facilities completed the modifications the FCC ordered them to complete in the *R&O*. Thirteen years later, in 2008, Petitioner still has no channel upon which it can apply for a license for the Station.

4. In preparation for constructing the Station, Petitioner located a site that would work whether the Station operated on Channel 293A or Channel 254A. Three years after the *R&O* was issued in 1998, Petitioner approached the FCC for STA to operate the Station on Channel 293A while it waited for the other stations in MM Docket No. 91-259 to implement the allotment changes mandated in the *R&O*. In the request for STA, Petitioner explained that it wanted to commence first local service to the residents of Culebra, but it could not obtain permanent authorization on its post-*R&O* channel or on its pre-*R&O* channel. The STA was granted and Petitioner has, at its expense, renewed the STA regularly for the past ten years so that the Station could continue to provide first local service on a secondary basis to the residents of Culebra.

5. Operation under an STA instead of a license is perilous and uncertain at best. Petitioner's operation of the Station is not protected from the filings of other primary stations. Not only is the Station's operation considered a secondary service, but unlike a regular FCC broadcast station license which is issued for an eight year term, the

³ *Report and Order in MM Docket No. 91-259*, 10 FCC Rcd 6673 (1995), *recon denied*, 11 FCC Rcd 16392 (1996); *app. for review denied*, 12 FCC Rcd 10055 (1997); *further recon. denied*, 15 FCC Rcd 10449 (1999) (the "*R&O*").

STA must be renewed every six months at the Petitioner's expense. With no end to the uncertainty of the Station's status in sight, hiring and keeping personnel and advertisers has proved to be a challenge. Grant of the instant Petition would resolve these problems by allowing Petitioner to file for a license for the Station.

6. This is not Petitioner's first attempt to obtain a permanent authorization for the Station. Petitioner was the proponent in MB Docket 04-318 which was rejected by the Commission.⁴ In August, 2007, Petitioner also filed a Request for Urgent Action in MM Docket No. 91-259 (the "*Request*"), asking the Commission to enforce the changes in channels and communities it promulgated in the R&O. Many responsive pleadings were filed by the parties to the MM Docket No. 91-259 proceeding, but no concrete action has resulted from Petitioner's *Request*. On November 9, 2007, Petitioner filed a request with the FCC asking that the restrictive condition in its construction permit for the Station requiring it to wait for other stations to implement changes before the Station could operate on Channel 254A be removed. Eliminating that condition from the Station's current construction permit would enable the Station to commence operation on Channel 254A and obtain a license thereon immediately. That request, which was modeled after relief granted by the FCC in other similar situations, remains pending. Most recently, it has filed an application to operate on Channel 271A, which in turn, requires the filing and ultimate grant of the instant Petition. While providing a much needed first local service to Culebra, Petitioner has at the same time been extremely diligent in its pursuit of a permanent authorization for its Station.

⁴ *Report and Order in MB Docket 04-318*, 21 FCC Red 6884 (2006).

WJZG NEEDS A PERMANENT AUTHORIZATION NOW MORE THAN EVER

7. Petitioner commenced operation of the Station by STA in 1988. A decade later, its listeners have come to rely upon the Station as a main source for local news and information. Yet it still cannot apply for a license to protect the future of the Station. The substitution of Channel 254A for Channel 293A at Culebra took place in 1995 and became final in 1999. Petitioner has waited for the stations ahead of it in the daisy chain to move, but they have not and the FCC has not been able to compel the stations to make the changes to their facilities required by the R&O. So Petitioner still has no channel upon which it can file for a license.

8. The situation is even more compelling after the FCC's recent decision involving Station WVIS-FM.⁵ The Commission reinstated the license for this station and awarded the licensee a new three year construction permit in which to build its station on Channel 291B in Vieques, PR. Petitioner has reason to believe that the licensee of WVIS is very close to completing construction on Channel 291B at Vieques. The operation of WVIS on Channel 291B at Vieques was authorized in the *R&O* in MM Docket No. 91-259, but the move resulting in that allotment was not part of any daisy change. When the FCC granted the WVIS licensee the construction permit to implement the change, the permit contained no restrictive conditions (e.g., a requirement for other stations to complete their MM Docket 91-259 changes before WVIS commences operations on Channel 291B at Vieques). WVIS is, therefore, free to commence operation on Channel 291B at Vieques as soon as it completes construction.

9. The operation of WVIS on Channel 291B at Vieques is mutually exclusive with the operation of the Station on Channel 293A at Culebra. WVIS is a licensed FM

⁵ *In the Matter of V.I. Stereo Communications Corp.*, FCC 06-169, released December 4, 2006.

facility, and therefore considered a primary service. WJZG has no license, only the STA, and is therefore considered a secondary service. When WVIS completes construction and commences operation on Channel 291B at Vieques, it will notify the FCC and then notify WJZG that it must terminate operations on Channel 291A. Under present Commission rules and policies, and based on the restrictive conditions set forth in its STA, WJZG will be required to cease operations to accommodate WVIS. WJZG's decade of first local service that its community has come to depend upon will suddenly end, because it has no other authorized channel allotted to Culebra upon which to operate.

10. This is the latest of Petitioner's diligent attempts to obtain a permanent authorization for its Station. The clock for WJZG's continued operation is ticking. A grant of this Petition is in the public interest. Adopting the changes to the Table of Allotments proposed herein will allow five licensed, local FM services to remain in Charlotte Amalie along with three vacant allotments to allow room for further expansion of local service to that community. At the same time, the proposed changes will allow Culebra to have its first licensed local service and will enable WJZG to continue to provide service to the community it has served for ten years.

WHEREFORE, Petitioner respectfully requests that Channel 271B be deleted from Charlotte Amalie, Virgin Islands, and that Channel 271A be substituted for Channel 254A at Culebra, Puerto Rico to provide that community with its first licensed local service.

Respectfully submitted,

WESTERN NEW LIFE, INC.

 **Scott C.
Cinnamon**

Digitally signed by Scott C.
Cinnamon
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Its Counsel

February 14, 2008

EXHIBIT A
ENGINEERING STATEMENT

**Petition For Rule Making
WJZG (FM) Radio Station
Culebra, PR
January 2008**

This Petition For Rule Making is being filed on behalf of Western New Life, Inc., permittee of WJZG (CP), Channel 254A. and currently operating under a Special Temporary Authority on Channel 293A. This Rule Making seeks to permanently authorize Channel 271A to Culebra and requests WJZG be ordered to that channel. Channel 271B is a vacant channel currently allocated at Charlotte Amalie, USVI and this rule making requests that the current 271B allocation be deleted as well as the Channel 254A allocation at Culebra.

Culebra Allocation

At the geographic coordinates of :

**18 19 19 North Latitude
65 17 54 West Longitude**

there are no allocation constraints other than the current vacant 271B allocation at Charlotte Amalie, USVI. See attached Exhibit 1 for allocation details. From this location, the uniform terrain 70 dBu contour covers 100% of Culebra. See Exhibit 2.

WJZG on Channel 254A is the only FM allotment at Culebra. The issue is that WJZG, currently operates on Channel 293 and is in jeopardy of being forced off the air when Channel 291B allocated at Vieques begins broadcasting. WJZG is attempting to locate an alternate channel because the 291B at Vieques is under construction and soon will displace WJZG on 293A. Channel 271A is only an alternate channel for the present allocation on 254A. Through the allocation process the Commission has already determined that Culebra is a city deserving broadcast service; hence the allocation on 254A. Because other stations have not implemented channel changes ordered in MM Docket No. 91-259, WJZG may not utilize 254A, the intended channel for WJZG. Channel 271 can operate independent of the changes ordered in Docket 91-259. If authorized, WJZG will immediately begin construction to change frequencies and file for a permanent license on Channel 271A. The 2000 Census indicates that 1,868 persons reside in the Culebra Municipality (county) and 1,418 reside in the Culebra zona urbana (city).

Charlotte Amalie, USVI

Charlotte Amalie has a population on 15,697 and has the following FM allocations:

WGOD	250B
WIUJ	257A
WIVI	241B1
WVGN	297A
WVJZ	287B
WZIN	282B
Vacant	226A
Vacant	257A
Vacant	271B (Subject of this rule making)

Charlotte Amalie is served by the six FM facilities listed above as well as having three additional allocations. Western New Life is proposing for Charlotte Amalie to keep all six existing stations and two of the three vacant allotments. The only vacant allotment that is workable on Culebra is the Channel 271 allotment used as a Class A. Allocation constraints preclude the other two Charlotte Amalie vacant allotments from being usable at Culebra.

Attached is Exhibit 3 showing the primary contours of the six Charlotte Amalie stations. 100% of Charlotte Amalie is served by these six FM stations; therefore we come to the conclusion that having greater than five FM services, Charlotte Amalie is "over served".

Concurrent Filing

Concurrent to this Rule Making Request, Application BMPH-20071211AAQ is being amended to reflect the filing of this instant petition. Application BMPH-20071211AAQ was originally filed due to a Commission database error that eliminated the 271B allotment to Charlotte Amalie.

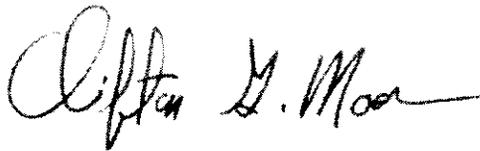
Summary

Western New Life and its predecessors have been working for years to obtain a channel on Culebra that can accommodate the station specified in Construction Permit BMPH-20030116AAF. The present WJZG service on Culebra is operating under a STA which will soon be displaced when the service authorized on Channel 291B at Vieques begins broadcasting.

Proper implementation of MM Docket No. 91-259 has not occurred. Had it been fully implemented, WJZG could be operating of Channel 254A. Therefore it is requested to delete the Channel 271B vacant allotment at Charlotte Amalie, USVI and allocate Channel 271A at Culebra, PR. Charlotte Amalie has six FM services covering 100% of the city. WJZG is the only commercial allocation for Culebra. Through CP BMPH-20030116AAF the Commission has authorized Culebra's first commercial FM service, but because MM Docket No. 91-259 was never fully implemented, Western New Life's Channel 254 has never become

available. A grant of this Rule Making Request will remove Western New Life from the clutches of Docket No. 91-259 and finally it will be able to construct an FM facility on Channel 271A and become licensed.

All information contained herein is thought accurate to the knowledge of the undersigned:

A handwritten signature in black ink, appearing to read "Clifton G. Moor". The signature is written in a cursive, flowing style.

February 8, 2008

Clifton G. Moor, Bromo Communications, Inc.
Technical Consultant to Western New Life, Inc.

Demonstration of City Grade Coverage
From Allocation Reference

24.9 KM Uniform Terrain
City Grade Signal

Culebra, PR

Reference

Culebra

Esperanza

Allocation Reference:
18 19 19 North Latitude
65 17 54 West Longitude



Exhibit 2
WJZG (FM) Petition For Rule Making
271 A - 102.1 mHz
Culebra, PR

Bromo Communications, Inc.
Atlanta, Georgia
February 2008

Primary Services to Charlotte Amalie, USVI

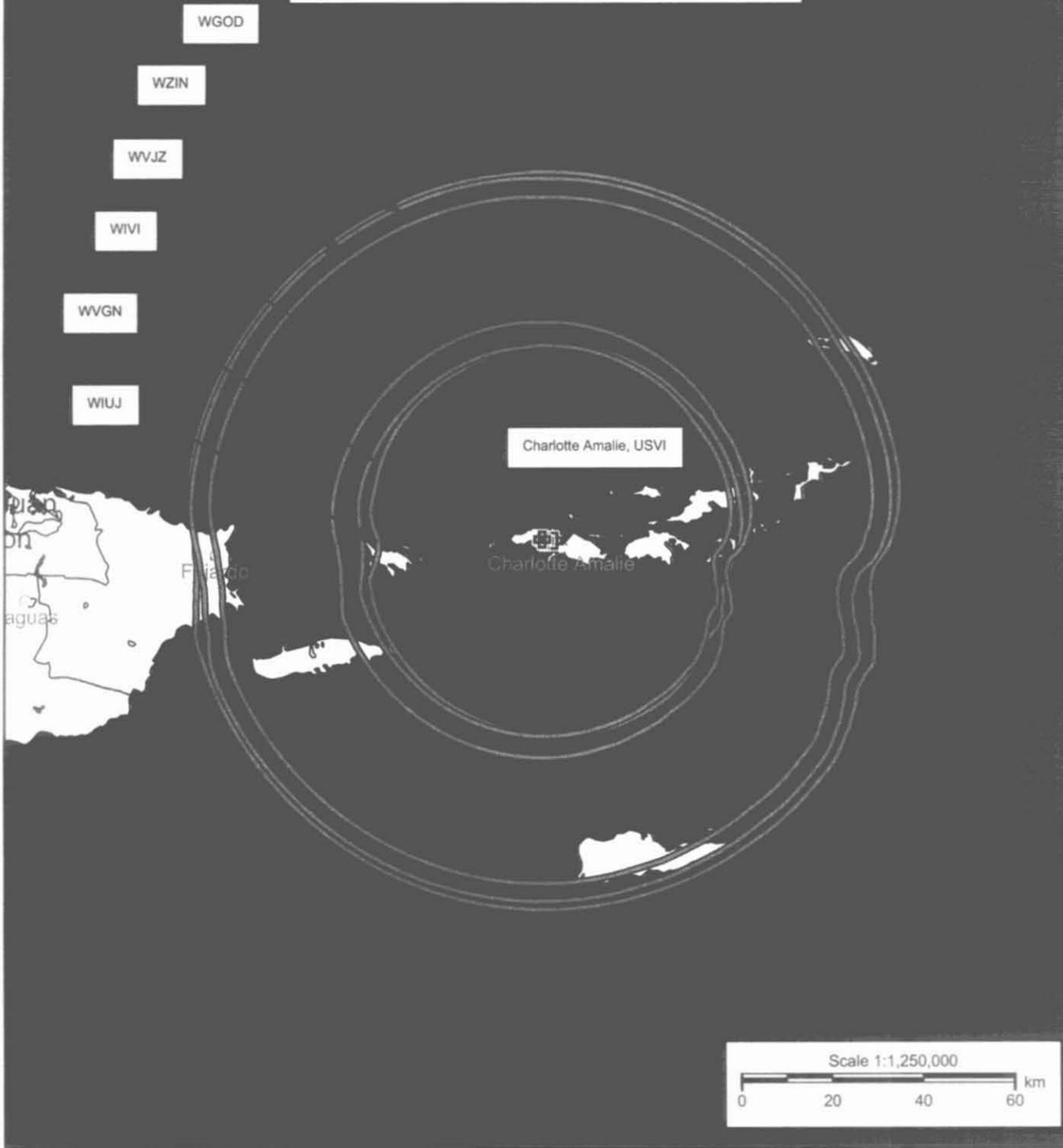


Exhibit 3
WJZG (FM) Petition for Rule Making
271 A - 102.1 mHz
Culebra, PR

Bromo Communications, Inc.

Atlanta, Georgia
February 2008