

'ORIGINAL'

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

MAR - 4 2010
FCC Mail Room

To:
Secretary Attn: WTB/ASAD
445 12th Street S.W.
Room # TW-A325
Washington, DC 20554

REPLY COMMENTS AND SUPPLEMENTAL
INFORMATION RELATIVE TO AUCTION #88
AU-DOCKET NO. 10-31

Metro North Communications, Incorporated, (hereinafter 'Metro North') by its director and minority stockholder Mark Heller, (hereinafter 'Heller') submits reply comments and wishes to support the initial comments made by Donald G. Burcham, President of Metro North, relative to four remaining and original applicants for new FM service to New Holstein, WI at 92.9 MHz. (BPH-19960507MW)

As Heller was contracted to provide the initial filing for this applicant, fourteen years ago, it is appropriate that he now provide technical testimony and provide relevant exhibits to the issues involved in this allocation. Heller again, has personally revisited the area in February 2010.

BRIEF NARRATIVE

Fourteen years ago, wind energy as a utility in the United States was in its infancy. Other than Palm Springs, CA and Na'alehu, HI there were few wind farms generating electricity to be sold to utilities in the U.S. Today, the area known as the Niagara Escarpment, including Calumet County, Wisconsin is a 'hotbed' of activity. A moratorium on the permitting and construction of wind farms expired on December 31st, 2009 in the County. The floodgates have officially opened, and the Town of Chilton, WI is a major target for the placement of 33 wind turbines generating over 100 megawatts of power, to be sold to utilities. The Town of Chilton is entirely situated on this very escarpment overlooking Lake Winnebago, Wisconsin's largest inland

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lake. A study of the Township has already occurred, and a map is attached, as Exhibit 'A'.

**SHOULD THE 'CITY OF LICENSE' BE CHANGED,
PRIOR TO AUCTION?**

Fourteen years ago, Calumet County had only one public airport, owned by the City of New Holstein, WI. A popular, small airport which, annually helps to provide support to the annual EAA AirVenture at Oshkosh, WI. In June 2009, a new public airport, although privately owned, has been established. It is called the 'Flying Feathers Airport' and located in the Town of Chilton, between one and two miles northwest of the City of Chilton, WI. The runway is in a north-south configuration, and the FAA is now obligated to protect the airspace around it. Heller visited both airports and is providing photos, as Exhibit 'B'.

In May 2007, Metro North made an application with the FAA to seek an alternative tower site, due to their original directional antenna concerns, which deeply nulls WAUN-FM, Kewaunee, WI. The FAA responded with a 'Notice of Presumed Hazard' and limited the overall height to 204 feet above ground level. (See Exhibit 'C', enclosed) Unable to provide 'city grade' signal over New Holstein, WI, at such a low height, Metro North, retained its original 'directional' site.

During the time of waiting for FCC action, and after the death of Lyle R. Evans, (a competing applicant who died on March 6, 2006), there was an effort to seek either a settlement or a merger agreement with the remaining applicants. At that time, KM Communications sought the advice of the Consulting firm of 'DuTreil, Lundin & Rackley' to look for existing towers in the vicinity. A copy of the e-mail from Atty. Jeff Timmons, counsel for KM Communications is attached. (See Exhibit 'D')

Atty. Timmons' commentary in the second paragraph is worth repeating, at this time:

"One odd thing we discussed is it doesn't appear there is any fully-spaced site that would allow city grade coverage over New Holstein, at least not without using an alternative propagation

showing; that's odd since the FCC normally wouldn't make an FM allotment unless there are viable allotment reference coordinates that are fully-spaced with line of sight to, and city grade coverage over, the community of license (in other words, the FCC wouldn't make this allotment today); not sure yet how that came about, but its some thing we'll probably want to check into at some point".

(Source: Atty. Jeff Timmons e-mail of August 28, 2007 933am)

This allocation, from its conception, was a marginally engineered allotment. Today, with the advent of a new airport at the Town of Chilton, WI coupled with the prospect of wind turbines makes the task even more difficult, by a factor of 33. (note: 33 wind turbines are apparently proposed for this township)

Heller supports the original comments of Metro North, that the City of Chilton, WI be should be substituted over New Holstein, WI due to the complexity of finding a suitable tower location. Chilton is currently served with a daytime radio station at 1530 KHz during daylight hours only. This station, WMBE-AM suffers through significant skywave in the early morning hours and again in the late afternoon, as a powerful 1530 KHz station is located at WCKY-AM in Cincinnati, OH with a non-directional 50,000 watts during the daylight hours, and its nighttime pattern does not go into use until 'after Sunset at KFBK-AM in Sacramento, CA' according to the license data, publicly available. WMBE-AM operates at a power level of 250 watts, among the lowest class of AM daytime power levels currently granted by the FCC. In the winter months, this station leaves the air around 4:30pm.

Skywave interference around Chilton, WI is already heard as early as 315pm during the winter months. It should be noted that WCKY-AM is approximately 390 miles away.

Chilton, WI is the County Seat of Calumet County, WI and has a larger population than New Holstein, WI. While a winning bidder could be selected to build this facility, current allocation rules may make it impossible to meet, without significant waivers, or at the very least, by using alternative propagation showings.

SHOULD THE FILING FEE BE REDUCED TO A REASONABLE AMOUNT, SUCH AS \$7,500 PER APPLICANT, OR LESS, AS PROPOSED BY METRO NORTH?

The combination of no prospect of collocation on any existing tower, and still serving New Holstein, WI, coupled with a new airport airspace restriction, (which was unforeseen fourteen years ago!) and the additional land lease options being acquired by the Wind Turbine industry in the Town of Chilton, WI; makes reasonable sense that each applicant that pursues this project is making a significant 'gamble' unlike any other FCC allocation in recent history. Thus, the Commission should not utilize its standard rates as proposed. A reasonable entry fee for bidding on this project should be reduced considerably, to \$7,500 or even lower, upon further review.

Heller personally visited a nearby tower, which does not provide sufficient height, nor does it provide sufficient open space, for the placement of an FM antenna at the present time. Shown as Exhibit 'E'. This tower is located adjacent to the Calumet County Courthouse and Public Safety facility. (FCC Registration Number 1060993) At an overall height of 270 feet (82.3 meters), it simply does not provide the 'city grade coverage' needed over New Holstein. It should be noted that this site is also short-spaced to WBWI-FM at West Bend, WI and that a waiver of the short-spacing under Section 73.215 is simply not likely.

CONCLUSION

Whereas, Mark Heller, at the time of the preparation of the original engineering documents, was unable to foresee the future of New Holstein, WI and the surrounding area. Heller was also unaware that it would take fourteen years to see a grant of a Construction Permit.

That, while each applicant made a 'good faith effort' to apply to serve the New Holstein city of license, it now makes considerable common sense to realize the new airport in the Town of Chilton, WI and the added pressure of large scale wind farms, have made site restrictions multiply, almost to unreasonable levels.

That, moving the city of license to the community of Chilton, WI; which is the county seat of government in Calumet County, WI, makes sense, as the only current aural service in that community is from a low-power, daytime AM station, which battles skywave interference from a co-channel 50,000 watt major station on a daily basis. The allocation of Chilton, WI receiving its first FM service, would provide a first, 24-hour voice based in that community, which it does not enjoy today.

Heller also supports the concept of reducing the initial bidding fee to an amount of \$7,500 or less, for the remaining original applicants. Three of the four have already invested in their engineering studies, application preparation and paid a fee of \$2,355 to the FCC as part of the original procedure in 1996. This is clearly a 'gamble' for the remaining original applicants, and the Commission should recognize that risk as well.

Sincerely,

METRO NORTH COMMUNICATIONS, INCORPORATED



by: Mark Heller, Director and Minority Stockholder

2/26/10 Date

Subscribed and Sworn before me, this 26th day of February, 2010

Judd J. Bingham Notary Public.
State of Wisconsin, Manitowoc County.
My Commission expires 5/20/2012.

(seal)

Map 13. Niagara Escarpment Study Area Calumet County

Exhibit 'A'

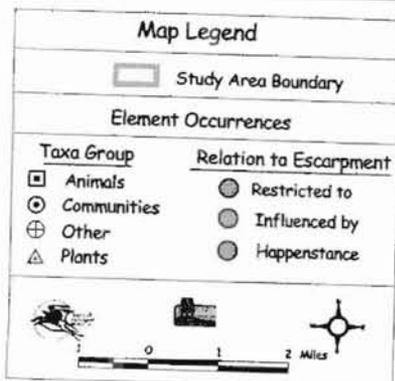




Photo of New Holstein, WI Municipal Airport



Photo of 'Flying Feathers Airport' Chilton Township, WI



EXHIBIT 'C'

Issued Date: 05/23/2007

Mark Heller
Metro North Communications, Inc.
1414 16th Street
Two Rivers, WI 54241-3031

**** NOTICE OF PRESUMED HAZARD ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Antenna Tower FM tower Metro North
Location:	Chilton, WI
Latitude:	44-2-44.00 N NAD 83
Longitude:	88-12-8.00 W
Heights:	328 feet above ground level (AGL) 1272 feet above mean sea level (AMSL)

Initial findings of this study indicate that the structure as described exceeds obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities. Pending resolution of the issues described below, the structure is presumed to be a hazard to air navigation.

Any height exceeding 204 feet above ground level (1148 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

See Attachment for Additional information.

Signature Control No: 504480-100531679
Cesar Perez
Specialist

(NPH)

Attachment(s)
Additional Information

Additional information for ASN 2007-AGL-1279-OE

The proposed structure would be located approximately 0.99 nautical miles south of the proposed public-use Flying Feathers Airport (00YZ) airport reference point. Based on this initial study the proposal was found to have a substantial adverse effect on the aeronautical operations in the vicinity of this proposal.

The proposed structure exceeds by 124 feet the vertical confines of the VFR traffic pattern and also of the Conical Surface of the 00YZ Airport. Therefore, it is determined that the proposal would have a significant adverse effect for aircraft operating in the VFR traffic pattern.

E-mail from Attorney Jeffrey L. Timmons, dated 8/28/2007.

Mark Heller

From: "Jeff Timmons" <jeff@timmonspc.com>
To: "Kevin Bae" <kevinbae@kmcommunications.com>; "Mark Heller" <wgbw@isol.net>; <mwalton@greenbaysun.com>
Sent: Tuesday, August 28, 2007 9:33 AM
Subject: Potential Sites for New FM, New Holstein WI

KM had one of its consulting engineers (Jon Edwards at du Treil, Lundin & Rackley) look at the potential sites we identified, and they advise that the existing 364-ft AGL American Tower/Spectrasite tower (ASR No. 1223463) is not a viable option, since it is within the 54 dBu contour for WBWI-FM and not eligible for a short-spaced Section 73.215 contour protection showing. The other two sites would work, either proposing the new tower on the land that Mark has identified for purchase or the existing 270-ft AGL Calumet County Sheriff's tower (ASR No. 1060993); either site would be short-spaced to WAUN(FM) Kewaunee WI and require a Section 73.215 showing, as well as use of an alternate propagation method to show city grade contour coverage over the community of license of New Holstein. Of the two, and assuming the FAA won't allow the originally proposed 328-foot tower at the Metro North site but rather only the lower 204-foot height, the Metro North site is a bit better (77,500 population within the protected contour, based on 6 kw and 79 meters HAAT, versus 43,200 for the Calumet Sheriff tower, based on 6 kw and 81 meters HAAT), but might involve commitments for the site assurance and other additional work; KM would prefer to just go with the existing Sheriff's tower (if assurance can be obtained), at least initially to get a grant of a permit, and then who ever ends up with the permit and building it can modify it if another site might be desired. I'll try contacting the contact for that tower today to see if it is a viable option, and we still have the 204 foot (or possibly higher) new tower as another option.

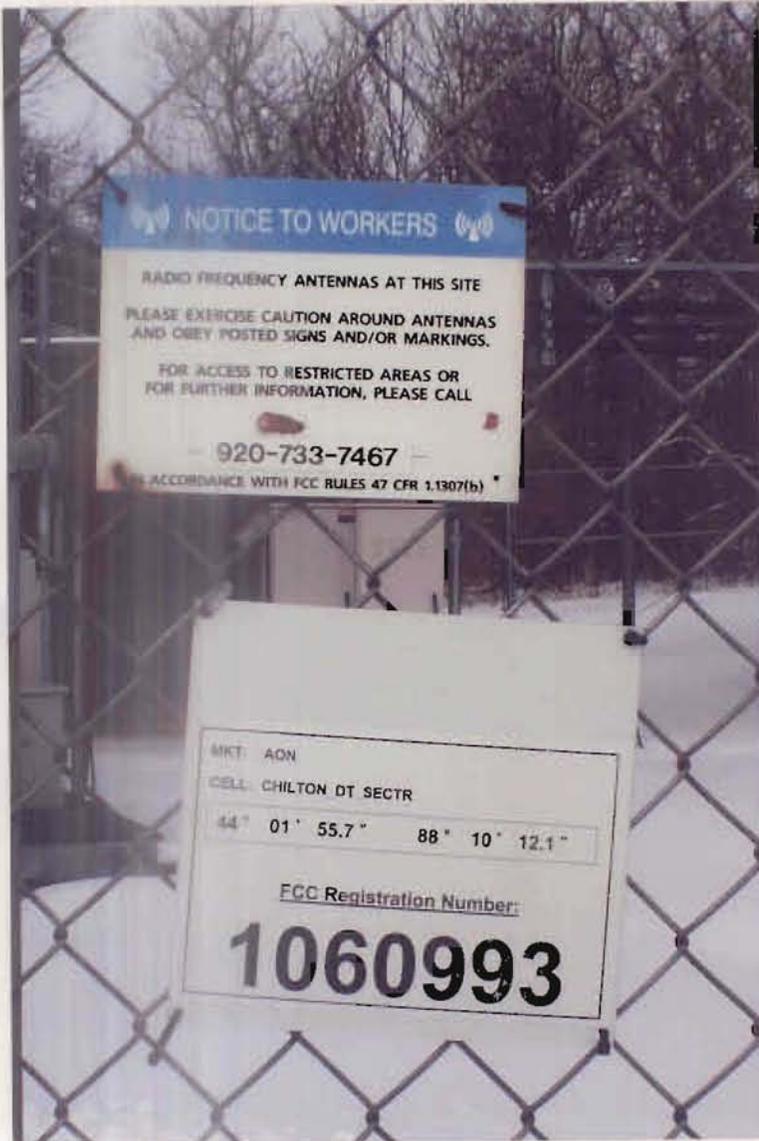
One odd thing we discovered is it doesn't appear that there is any fully-spaced site that would allow city grade coverage over New Holstein, at least not without using an alternate propagation showing; that's odd since the FCC normally wouldn't make an FM allotment unless there are viable allotment reference coordinates that are fully-spaced with line of sight to, and city grade coverage over, the community of license (in other words, the FCC wouldn't make this allotment today); not sure yet how that came about, but its some thing we'll probably want to check into at some point.

Cc (by fax): 847-674-9188

Jeff Timmons

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EXHIBIT 'E'



Photos of Calumet County-owned Tower (FRN #1060933)
270' AGL (address: 206 Court Street, Chilton, WI)