DowLohnes

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January 16, 2013

VIA ECFS

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notification of *Ex Parte* Communication
MB Docket Nos. 09-182 and 06-121

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on January 14, 2013, James G. Babb, Chief Operating Officer of Bahakel Communications, Ltd. ("Bahakel"), and I met with Commissioner Mignon Clyburn, Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Clyburn, and Alexandra Jiga, Law Clerk to Commissioner Clyburn, to discuss the Commission's proposal to modify the attribution status of television joint sales agreements ("JSAs").

Mr. Babb explained that, in the summer of 2011, Bahakel, the licensee of WAKA(TV), the CBS affiliate in Selma, Alabama, entered into an "Agreement for the Sale of Commercial Time and Services" ("Agreement") with Channel 31 Montgomery, LLC, the licensee of WNCF(DT), the ABC affiliate, in Montgomery, Alabama. Under the Agreement, Bahakel agreed to provide up to 15 percent of the weekly programming on WNCF(DT). As part of the overall transaction, Bahakel also purchased the non-license assets of WNCF(DT), and the two parties entered into an agreement pursuant to which Bahakel leases many of those assets to the licensee. Since the Agreement was executed, Bahakel's staff has sold the advertising inventory on the WNCF(DT), although this is done through a sales unit dedicated to selling inventory on that station.

In the year and a half since entering into the transaction, Bahakel has spent approximately $6 million to improve the former facilities of WNCF(DT), which were in serious disrepair. (*See* attached "Before" and "After" photos provided in the meeting.) The licensee of WNCF(DT) has also applied for and obtained a license to modify its facilities to increase its power fourteen-fold. Those facilities have been constructed, and as a result, WNCF(DT)'s over-the-air broadcasts reach significantly more homes in the DMA with a signal that is much more robust. (*See* "Before" and "After" Longley-Rice coverage maps provided at the meeting.)

The extensive man-hours, hard work, and significant monetary sums that Bahakel has devoted to improvements at WNCF(DT) will culminate next month with the launch of 17 hours a week of new local news programming on WNCF(DT). Prior to entering into the Agreement,

WNCF(TV) was offering news provided by the Independent News Network located in the Midwest.

The Montgomery-Selma DMA is ranked #118, and this infusion of capital and significant improvement in facilities, service, and news programming would not have been possible in such a small market absent the commitment of a broadcaster, like Bahakel, with existing properties that could be leveraged to obtain the necessary funding. Census and demographic figures for the DMA show that, in all but two of the 15 counties in the DMA, the number of residents below the federally defined poverty level exceeds the national average; seven of the 15 counties are also "majority minority," that is, more than 50 percent of their residents are from minority groups. The percentage of over-the-air-only homes in four of the counties exceeds the national average. (*See* attached charts distributed at the meeting.) The demographics of the DMA mean that it is exactly the type of market that will benefit greatly from the increased delivery of over-the-air local news.

In the meeting, Mr. Babb also noted that television stations must confront competition in advertising sales from cable and satellite systems which face no FCC restrictions in jointly selling time, and he added that, in most markets, advertising on all multi-channel video programming distribution systems is sold in combination. In addition, Mr. Babb pointed out that the Media Bureau had routinely approved JSAs for almost a decade, and millions of dollars of investment in new and improved facilities have been undertaken in reliance on such approvals. Mr. Babb said that the FCC should hesitate before taking action that would discourage future investment in broadcasting.

At the conclusion of the meeting, Mr. Babb asserted that the Commission should not make JSAs attributable. If, however, the Commission does not want to abandon its attribution proposal, Bahakel urged that the FCC should first open another proceeding to ensure a complete record on the issue prior to adopting any changes. Such a proceeding is necessary to document the public interest rationales behind any change. If after such review, the FCC eventually decides to make JSAs attributable, Bahakel said that it should not do so without, at the same time, modifying its local television duopoly rule which, in small and medium television markets, has not effectively changed for decades.

If the Commission decides not to open a separate proceeding and proceeds to make JSAs attributable without loosening the duopoly restrictions in small and medium-sized markets, Bahakel urged the FCC to adopt an exemption from attribution for JSA brokers that follow certain practices. First, Bahakel suggested that such an exemption be available to brokers that provide significant local news and locally originated programming on brokered stations. Bahakel suggested the required level of local news and locally originated programming necessary for such an exemption should be set at the current amount of programming brokers are allowed to provide without triggering attribution -- up to fifteen percent of the brokered station's programming on a weekly basis. Such an exemption would encourage programming improvements, such as local news, that otherwise would very likely be absent because of the frequently poor pre-JSA financial condition of brokered stations. Second, Bahakel suggested an exemption should be available for brokers that sell time on any brokered stations with sales staff

or sales teams dedicated exclusively to selling time on the brokered station. Bahakel said such an approach would address a concern raised in the meeting about the possibility that the broker might acquire allegedly excess leverage over programming on the brokered station.

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for the above-referenced docket.

Very truly yours,

M. Anne Swanson

Attachments
cc (w/attach.) (via email):
The Honorable Mignon Clyburn
Dave Grimaldi, Esquire
Ms. Alexandra Jiga

MONTGOMERY-SELMA, ALABAMA DMA DEMOGRAPHICS

Counties	Economic Data	Ethnicity (% of Population)				
	% Below Poverty Level Over Last 12 Months	White	Black	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islanders
Autauga Co.	10.9	78.6	18.5	0.5	0.9	0.1
Bullock Co.	26.0	27.5	69.5	0.9	0.2	0.8
Butler Co.	25.7	54.4	43.5	0.4	0.9	0.1
Covington Co.	21.6	84.7	12.9	0.6	0.5	<0.1
Crenshaw Co.	16.9	72.1	24.1	0.4	1.8	0.1
Dallas Co.	34.7	29.4	69.4	0.2	0.4	<0.1
Elmore Co.	12.4	76.3	21.1	0.4	0.7	0.1
Lowndes Co.	27.3	25.9	72.8	0.2	0.3	0.0
Macon Co.	26.7	16.7	81.5	0.2	0.4	<0.1
Marengo Co.	20.8	46.9	51.7	0.2	0.3	0.2
Montgomery Co.	19.7	41.1	55.0	0.4	2.1	0.1
Perry Co.	25.4	30.9	68.0	0.2	0.3	<0.1
Pike Co.	27.1	59.1	36.9	0.6	1.8	0.1
Tallapoosa Co.	17.1	71.2	26.9	0.4	0.5	<0.1
Wilcox Co.	36.7	27.0	72.2	0.1	0.1	<0.1

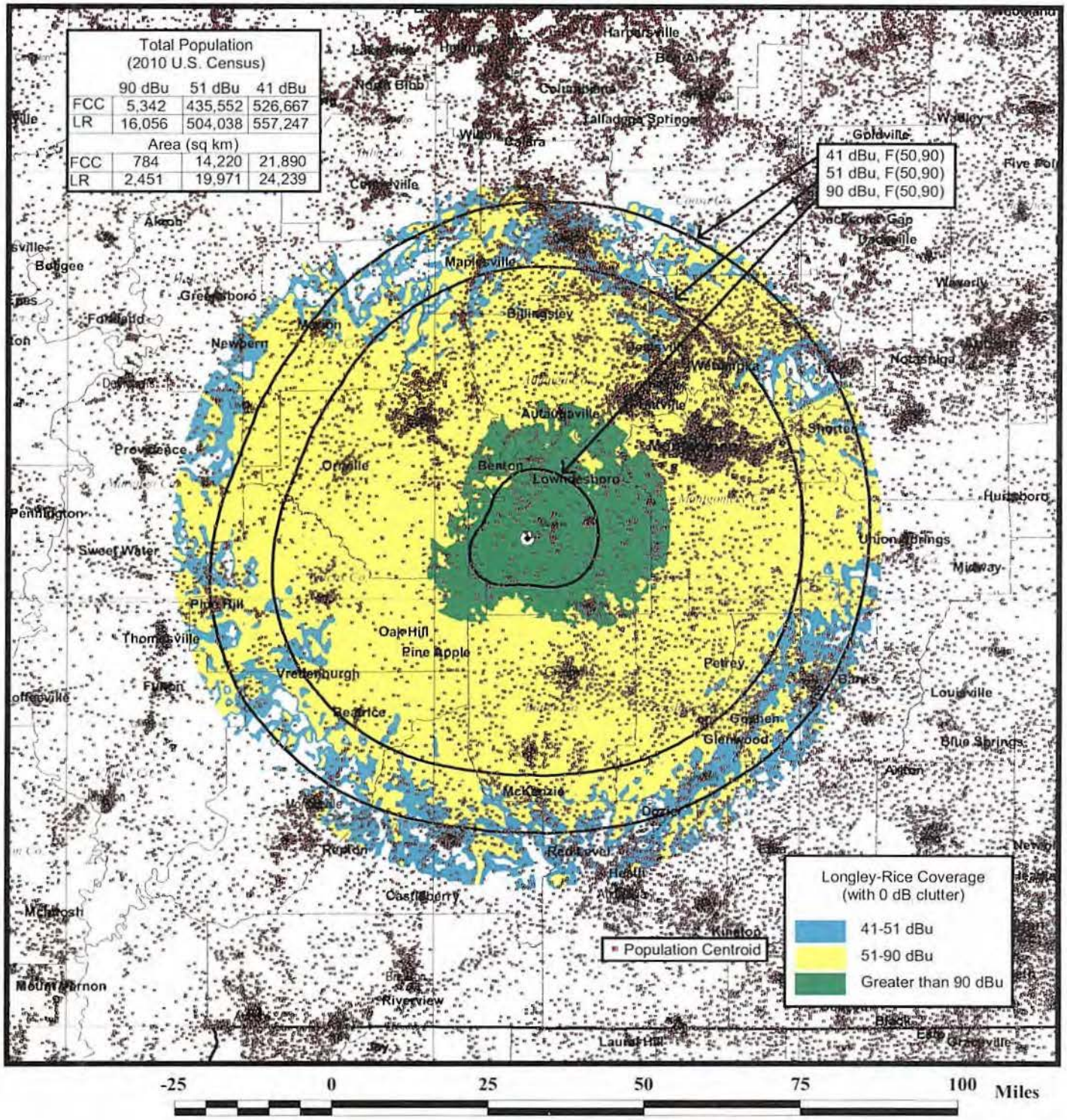
	Economic Data	Ethnicity (% of Population)				
	% Below Poverty Level[1]	White	Black	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islanders
United States	14.3%	78.1	13.1	1.2	5.0	0.2

MONTGOMERY-SELMA DMA DEMOGRAPHIC HIGHLIGHTS

Counties with High Broadcast-Only %'s	Broadcast Only Homes (%)	% Below Poverty Level Over Last 12 Months	Ethnicity (% of Population)				
			White	Black	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islanders
Bullock Co.	10.8	26.0	27.5	69.5	0.9	0.2	0.8
Butler Co.	11.4	25.7	54.4	43.5	0.4	0.9	0.1
Crenshaw Co.	15.0	16.9	72.1	24.1	0.4	1.8	0.1
Lowndes Co.	10.5	27.3	25.9	72.8	0.2	0.3	0.0
Macon Co.	9.5	26.7	16.7	81.5	0.2	0.4	<0.1

	Broadcast Only Homes (%)	% Below Poverty Level Over Last 12 Months	Ethnicity (% of Population)				
			White	Black	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islanders
United States	9.9	14.3%	78.1	13.1	1.2	5.0	0.2

Figure 1A
BEFORE

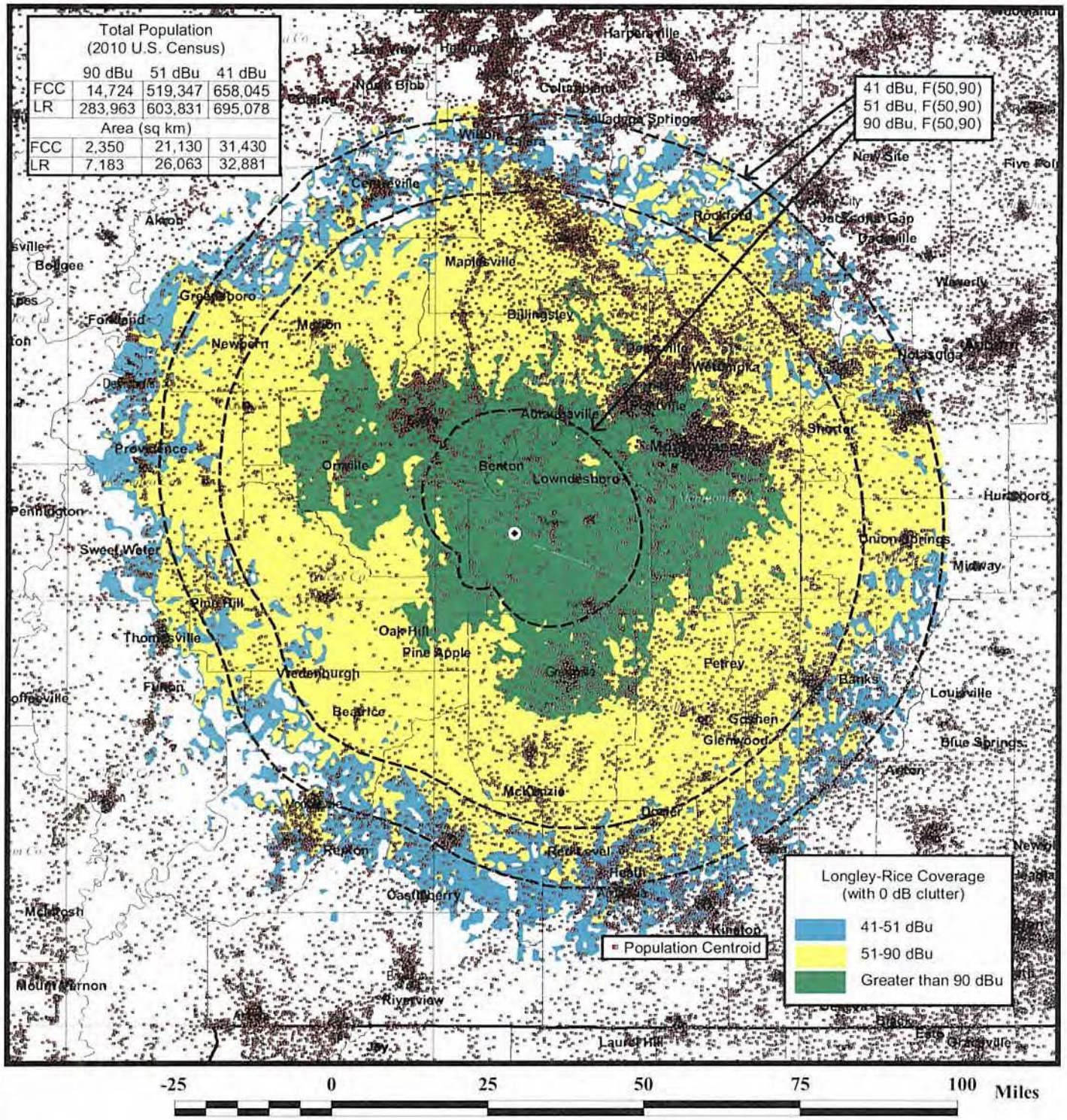


FCC AND LONGLEY-RICE COVERAGE

STATION WNCF- LICENSE
MONTGOMERY, ALABAMA
CH 32 35 KW (DA) 545 M

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2A
AFTER



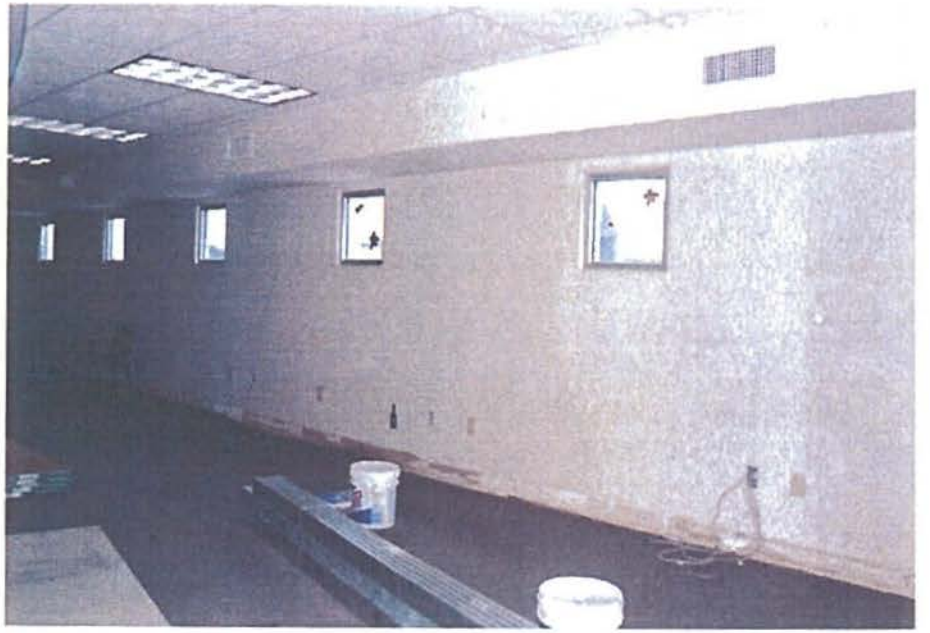
FCC AND LONGLEY-RICE COVERAGE

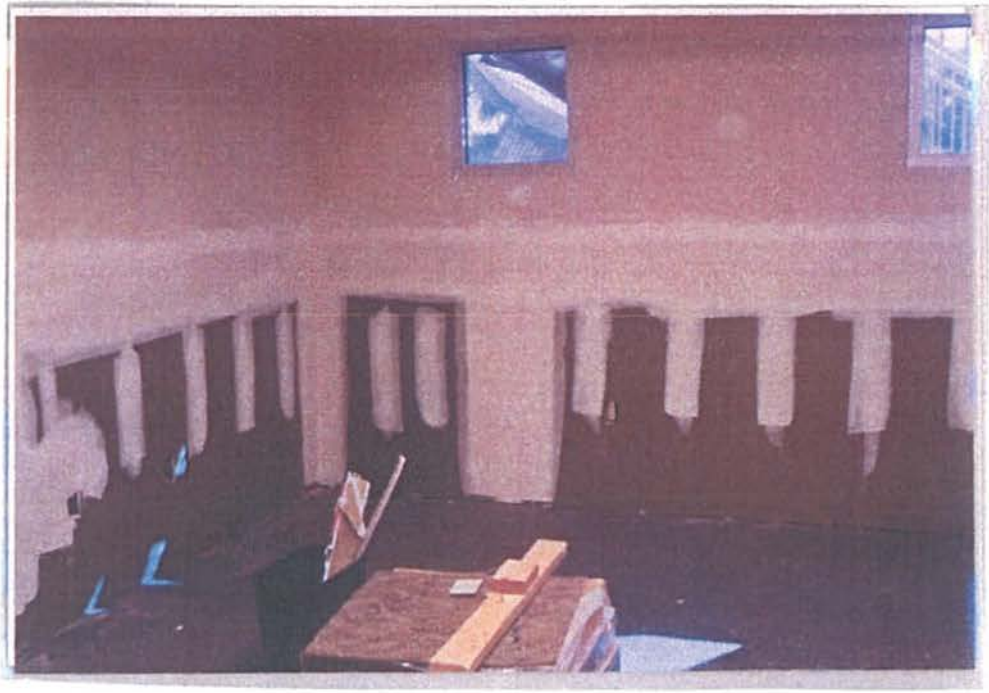
STATION WNCF - CONSTRUCTION PERMIT
MONTGOMERY, ALABAMA
CH 31 720 KW (DA) 473 M

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

WNCF

BEFORE





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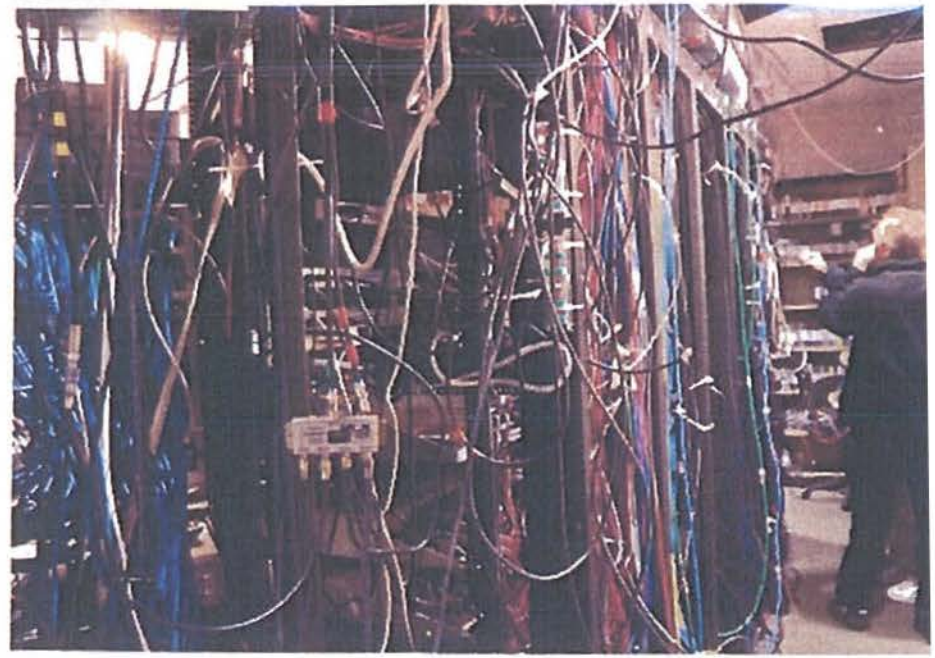

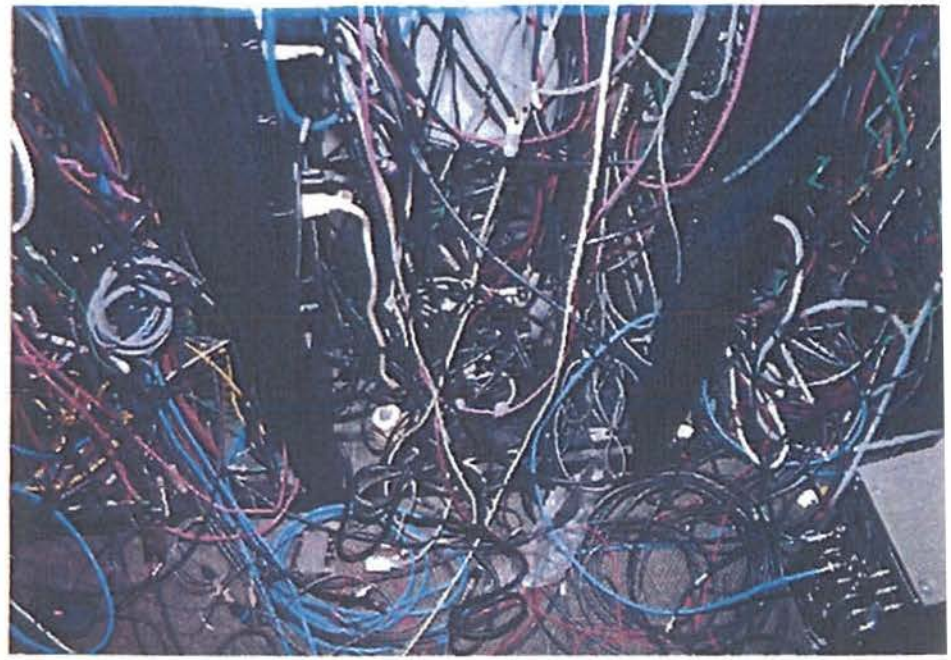

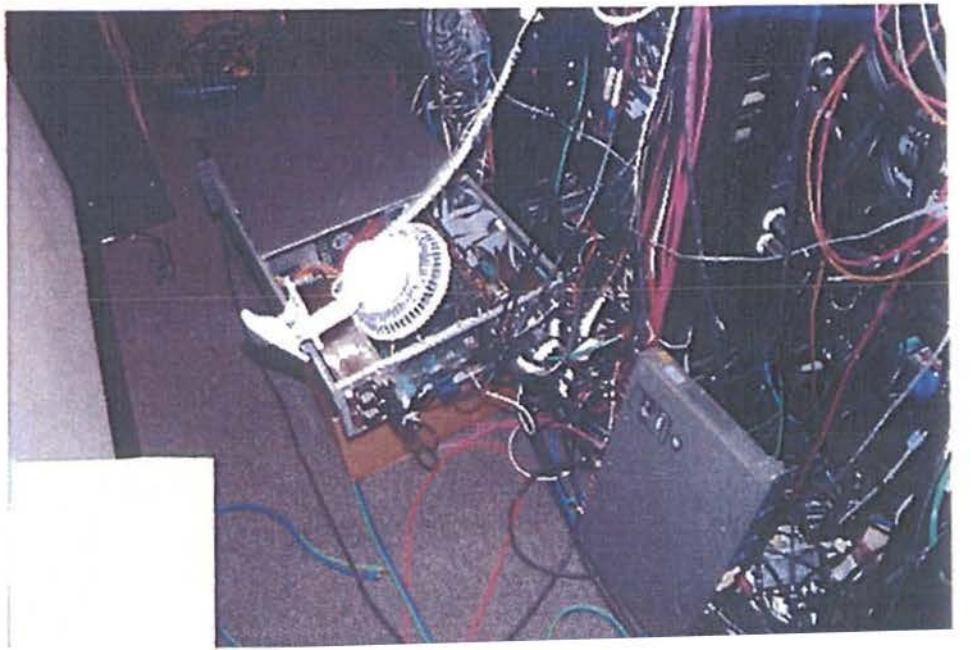

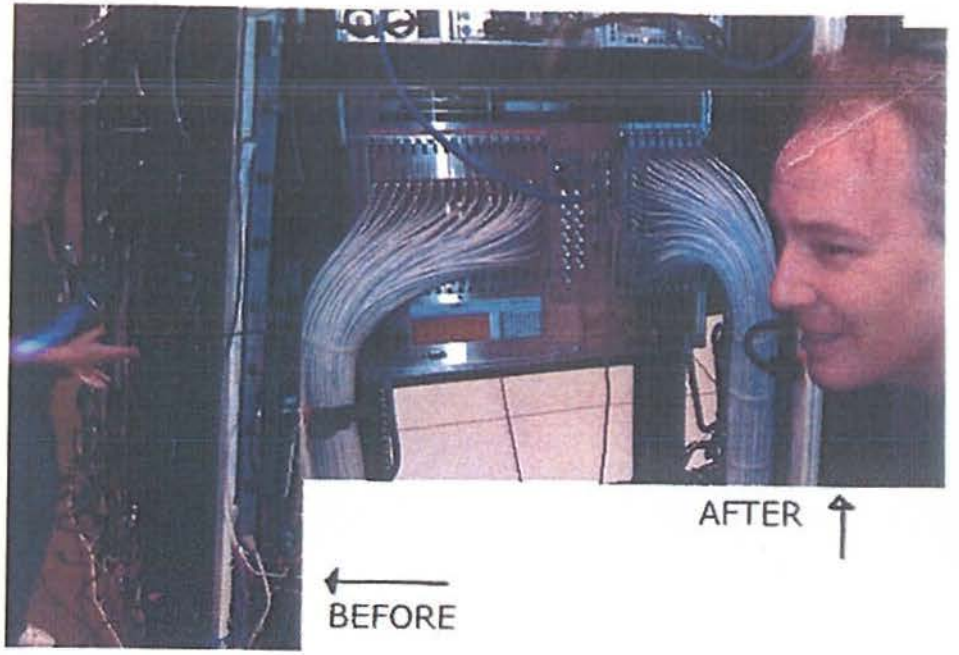

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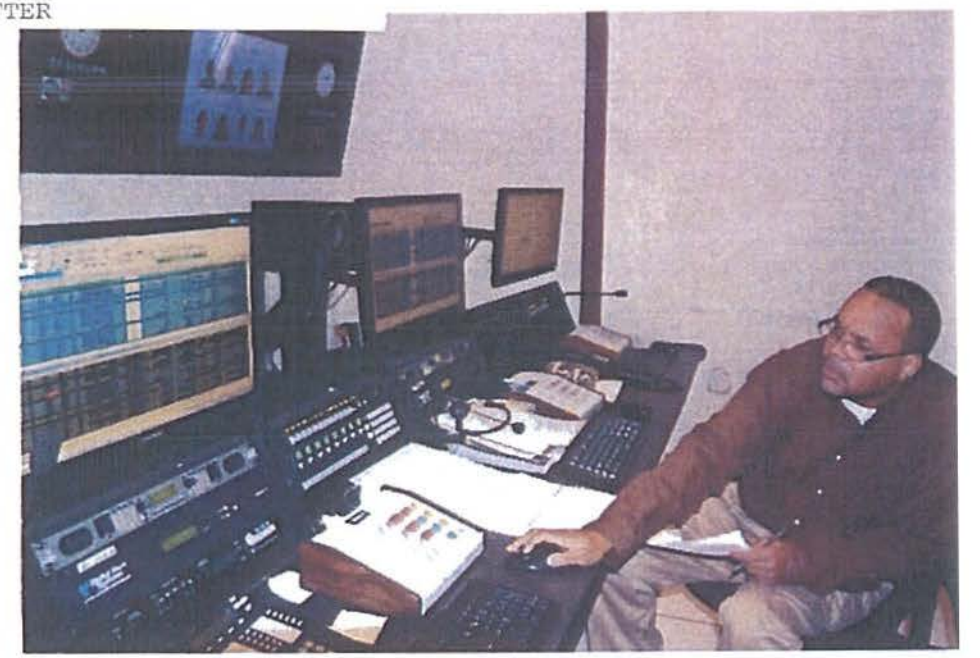

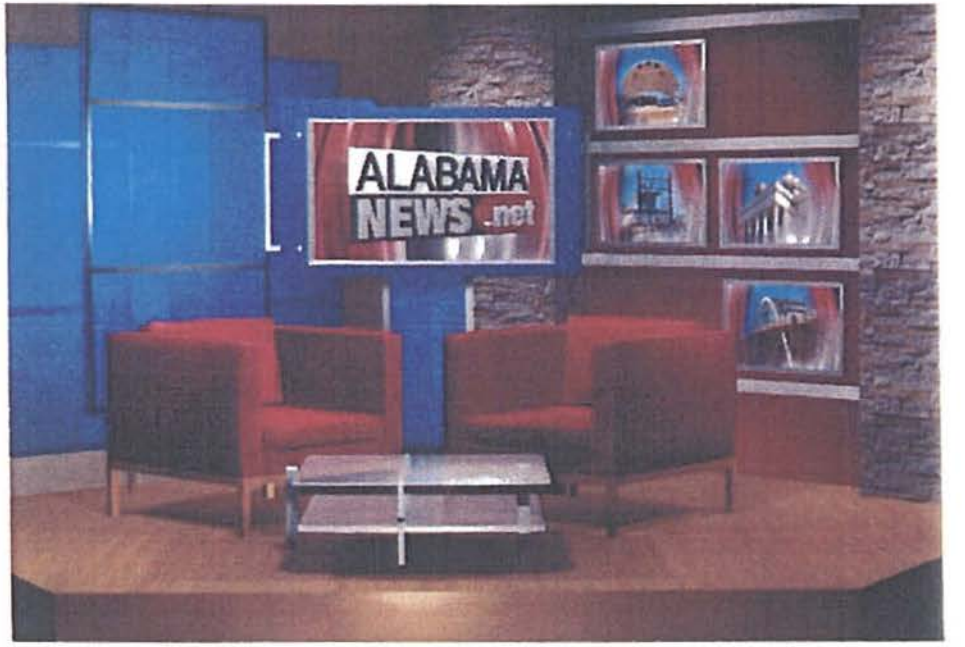

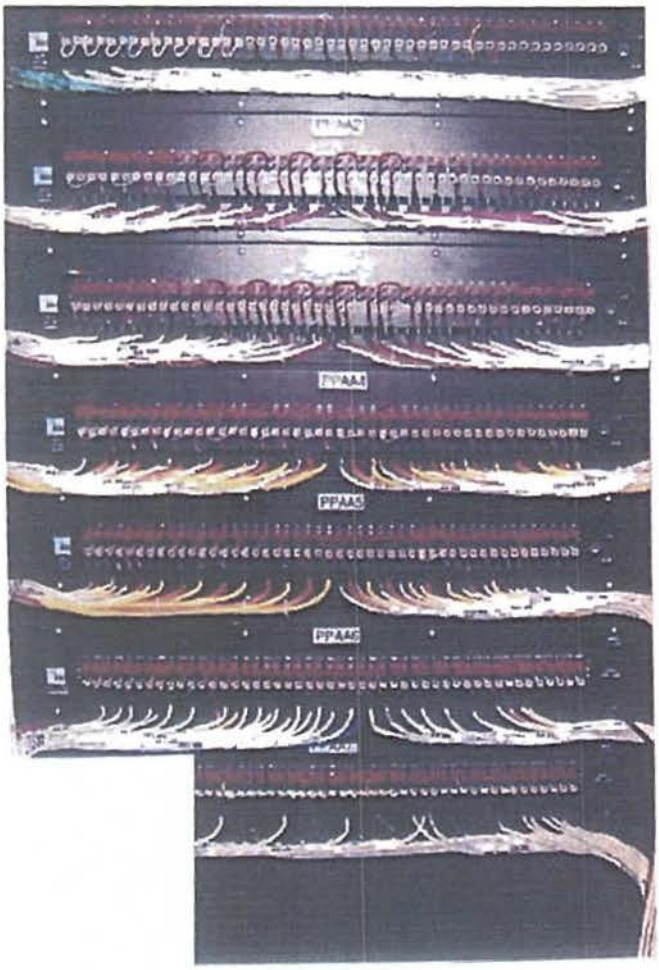
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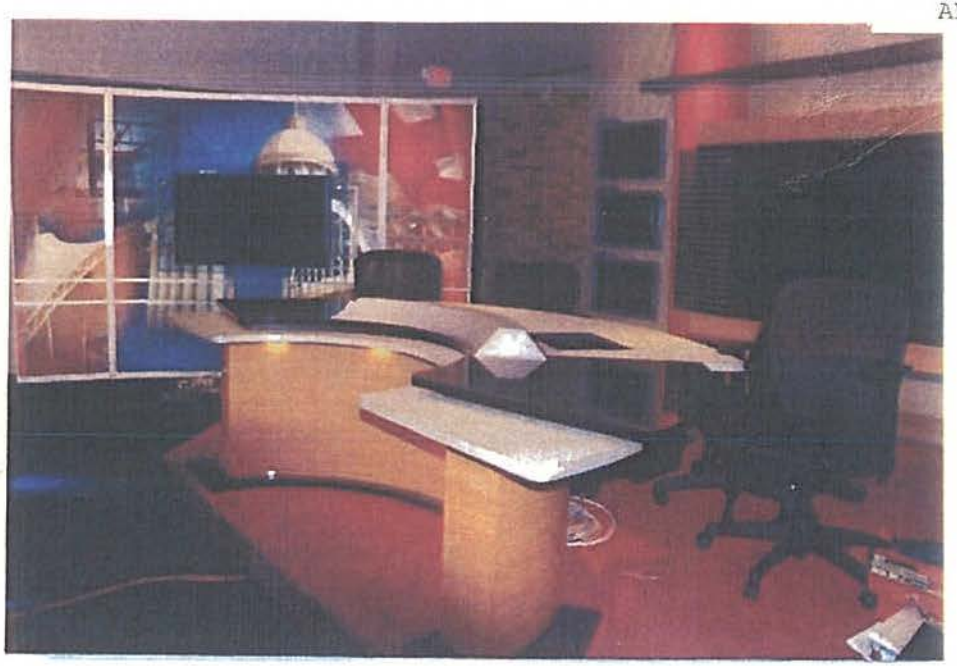
PPAA6

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