

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

In the Matter of)	
)	MB Docket No. _____
Amendment of Section 73.622,)	RM- _____
Digital Television Table of Allotments,)	
(Valdosta, Georgia and Moultrie, Georgia))	
)	

To: Office of the Secretary, Federal Communications Commission
Attn: Chief, Media Bureau

PETITION FOR RULEMAKING

Marquee Broadcasting Georgia, Inc (“Marquee”), licensee of television station WSWG(TV) Valdosta, Georgia (Facility ID Number 28155, Channel 31) (“WSWG” or the “Station”), hereby submits this Petition for Rulemaking to modify the DTV Table of Allotments (the “DTV Table”)¹ contained in Section 73.622(i) of the Commission’s rules.² Specifically, Marquee requests that the Commission: amend the DTV Table to delete Channel 43 at Valdosta, Georgia, and add Channel 31 at Moultrie, Georgia; and (3) modify WSWG’s license to specify Moultrie as its community of license.³

¹ It should be noted that Gray Television Licensee, LLC (“Gray”), the former licensee of WSWG(TV), submitted a similar Petition in 2012, as amended in 2013, but no action was taken on that filing. To the extent necessary, Marquee requests dismissal of that earlier Petition.

² See 47 C.F.R. §§ 1.401, 73.622(i).

³ WSWG(TV)’s license was modified as part of the post-auction repack to specify operation on Channel 31 (LMS File No. 0000063722), although the DTV Table has not yet been updated to reflect this change. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6789 (2014), *aff’d Nat’l Assn. of B’Casters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (postponing adoption of a revised DTV Table reflecting post-auction channel changes until after the end of the post-auction repack).

I. INTRODUCTION AND BACKGROUND

Marquee purchased WSWG from Gray in January 2019. Gray was required to divest the license for WSWG when it re-acquired Raycom station WALB, the heritage television station in the Albany, Georgia Designated Market Area (“DMA”). WSWG has been the Albany, Georgia affiliate for the CBS television network for many years. The instant proposal is intended to reconcile the DTV Table with marketplace realities, help clarify any confusion as to the market served by WSWG, and bolster the Station’s service to its local audience. The proposed city of license change is a straightforward solution to the longstanding problem described below. Marquee proposes no technical alterations to WSWG’s operations with this petition. The Station’s facilities and over-the-air coverage will remain precisely the same. Thus, adoption of the proposal will have no impact on the current use of spectrum in these markets.

Marquee’s request is born of a unique and correctable situation. While WSWG’s current city of license, Valdosta, is located in the Tallahassee, FL-Thomasville, GA Designated Market Area (“DMA”) (#108), Nielsen Media Research (“Nielsen”) has assigned the Station to the smaller, underserved, Albany, GA DMA (#154), where it serves as the CBS affiliate. The Commission has long recognized that television is a regional service defined more by coverage area than by the political boundaries of the community of license.⁴ Because WSWG’s transmitter site and the majority of its coverage area are within the Albany DMA, the Station cannot compete effectively in the Tallahassee DMA. Valdosta viewers generally look to another station, WCTV(TV), Thomasville, GA, as their local CBS affiliate.⁵ Moreover, WSWG is not

⁴ See *Bessemer & Tuscaloosa, Alabama*, Memorandum Opinion and Order, 11 FCC Rcd 2967, 2967 (¶ 9) (1996).

⁵ Indeed, prior to the sale of the station to Marquee, WSWG operated as a semi-satellite of WCTV, and simulcast many of its newscasts.

carried by multichannel video programming distributors (“MVPDs”) in Valdosta or anywhere else in the Tallahassee DMA.

Because of its licensed coverage area (depicted in Figure 1) and Nielsen assignment, the bulk of WSWG’s viewers and advertisers are located within the Albany DMA. In addition, in contrast to its situation in Valdosta and the Tallahassee DMA, the Station is distributed by cable, satellite, and other MVPDs in the Albany DMA. Yet, its association with out-of-market Valdosta has hampered WSWG’s ability to compete in the Albany DMA and thus to serve the majority of viewers that actually receive the Station’s signal.

Simply put, given its coverage area, Nielsen assignment, and the concomitant economic realities, it makes no sense for the Station to be licensed to a community located in the Tallahassee DMA. As demonstrated herein, grant of the instant request, which involves no changes to the Station’s channel assignment, transmitter site, or digital service area, but solely the specification of a new community of license for the Station located within the Albany DMA, would significantly improve WSWG’s ability to serve its audience, satisfy Section 307(b) of the Communications Act, and otherwise serve the public interest.

II. DISCUSSION

Under the Commission’s community of license change policies and Section 1.420(i) of the rules, *see* 47 C.F.R. § 1.420(i), the Commission may modify a station’s license to specify a new community of license without affording interested parties an opportunity to file competing expressions of interest if: (a) the proposed community of license is an identifiable community; (b) the new allotment would be mutually exclusive with the old allotment; and (c) looking at the totality of factors, the new allotment would result in a preferential arrangement of allotments.⁶

⁶ *See Modification of FM and TV Authorizations to Specify a New Community of License, Report and Order, 4 FCC Rcd 4870 (1989) (“Allotment Report and Order”), recon. granted in*

As demonstrated below, Marquee’s proposal clearly satisfies the first two prongs of this analysis. With respect to the third, while Marquee recognizes that the proposed community of license change from Valdosta to Moultrie will remove Valdosta’s sole local television transmission service, the unique circumstances surrounding this re-allotment request eliminate any concern about continued service to Valdosta television viewers. Moreover, the proposed change would result in considerable benefit to underserved Moultrie (and, indeed, to viewers throughout the Albany DMA). Therefore, this community of license change, which is designed simply to overcome geographic and service anomalies, is entirely consistent with the Commission’s television allotment objectives and with applicable precedent.

A. Moultrie Is a Community Deserving of a DTV Channel Allotment.

Moultrie, Georgia, which currently has no local television allotment, is the largest city within, and the county seat of, Colquitt County. Located approximately 39 miles from Albany⁷ and 41 miles from Valdosta, Moultrie has a population of approximately 14,000,⁸ making it the third largest city in southwest Georgia. Allotment of channel 31 to Moultrie and a corresponding change in WSWG’s community of license to Moultrie would bring a first local television transmission service to this vibrant community in rural Georgia.

part, 5 FCC Rcd 7094 (1990) (“Allotment Reconsideration Order”); see also LaGrange and Rollingwood, Texas, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

⁷ Moultrie is not located within the Albany Urbanized Area (*see* <https://censusreporter.org/profiles/40000US00901-albany-ga-urbanized-area>). Accordingly, no Tuck showing is required. *See Faye & Richard Tuck, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).*

⁸ *See* <https://data.census.gov/cedsci/profile?g=1600000US1353060> (last visited June 3, 2021).

Moultrie is known as the “City of Southern Living.”⁹ It has its own city government, including a Mayor, City Manager and a City Council,¹⁰ and Moultrie boasts agricultural, manufacturing, service, and distribution businesses.¹¹ The city is home to two local colleges, Southern Regional Technical College and a satellite campus of Abraham Baldwin Agricultural College.¹² Numerous public schools, including Colquitt County High School, one middle school, one junior high school, 10 elementary schools, three private schools, and a number of preschools are located in Moultrie. Moultrie is served by two hospitals, Colquitt Regional Medical Center and Turning Point Hospital, as well as the Moultrie Municipal Airport.¹³

With a revitalized downtown area and an award-winning Main Street program, Moultrie is a magnet for visitors to its many festivals, farm shows, swap meets and holiday festivities.¹⁴ Visitors to Moultrie are also drawn to its Arts Center, Museum of Colquitt County History, and the Moultrie Genealogy Odom Library.¹⁵ Moultrie is home to the Moose Moss diving facility and Memorial Pool, an eight lane heated competition pool that draws Olympic-caliber divers, as well as hunting preserves, two golf courses, and a YMCA.¹⁶

⁹ See City of Moultrie Georgia, <http://www.moultrie-georgia.com> (last visited May 26, 2021).

¹⁰ *Id.*

¹¹ See Better Business Bureau, <http://www.bbb.org/us/ga/moultrie> (last visited May 26, 2021).

¹² See . <https://www.aacc.nche.edu/college/abraham-baldwin-agricultural-college-moultrie/> (last visited May 26, 2021); <https://www.privateschoolreview.com/georgia/colquitt-county> (last visited May 26, 2021); <https://www.colquitt.k12.ga.us/> (last visited May 26, 2021).

¹³ See Moultrie Municipal Airport, <http://www.airnav.com/airport/KMGR> (last visited May 26, 2021).

¹⁴ See Tourism, <http://www.exploregeorgia.org/city/moultrie/> (last visited May 26, 2021).

¹⁵ *Id.*

¹⁶ See Recreation Facilities, <https://www.moultriega.com/departments/park-recreation/parks-facilities/> (last visited May 26, 2021).

The requested change will align WSWG with its Nielsen designated market which, compared to the Tallahassee-Thomasville DMA in which Valdosta is located, is underserved. Currently, only three commercial television stations are licensed to communities within the Albany DMA, and only two of those stations provide local news. The nature of the market is such that Gray's WALB(TV) in Albany, GA carries both NBC and ABC network programming on its primary and multicast channels, respectively. Sinclair's WFXL(TV) is the Fox affiliate, and Marquee's WSST(TV) is an independent station that is closely connected to WSWG, including sharing many operational functions at the WSST studio in Cordele, Georgia. Grant of the instant proposal will better enable the Station truly to become an additional voice in the Albany DMA and serve those viewers concentrated within its signal contour, thus improving diversity and competition in the market. Conversely, as also demonstrated in Section II.C.1, *infra*, the change would have no adverse impact on viewers in WSWG's current community of license, Valdosta, Georgia.

As depicted in Figure 1, WSWG already provides city grade coverage of Moultrie, and the Station is distributed to residents in the area through Comcast, DirecTV, and Dish. As a practical matter, given that Marquee proposes no changes to WSWG's service area, this request is more appropriately evaluated by considering the public interest benefits, discussed in Section II.C, *infra*, to Moultrie and the Albany DMA that will result from the Station's community of license change.

B. The New Allotment Is Mutually Exclusive With the Existing Allotment.

As stated above, the instant proposal involves no technical changes whatsoever. Marquee is not proposing to relocate WSWG's transmitter site, operate on a different channel, change its predicted community contours, or otherwise modify the area or population served by the Station's over-the-air signal. Operations will continue exactly as they have since the Station

completed its post-auction transition to operation on Channel 31. WSWG's signal contour will continue to cover Valdosta, its old community of license, as well as Moultrie, its new community of license, closer to where the Station's main studios are already located in Albany.

By definition, Marquee's proposal satisfies the requirement that a licensee may petition for a new community of license only where "the amended allotment would be mutually exclusive with the licensee's" present allotment.¹⁷ The proposal also satisfies the requirement that it provide city grade coverage to its new community a license.¹⁸

C. The Proposed Change Would Serve the Public Interest.

Generally, the Commission will grant a new allotment upon a demonstration that it would serve the Commission's allotment priorities better than the existing allotment.¹⁹ As stated above, Marquee recognizes that the proposed change would remove a transmission service from Valdosta. In evaluating the proposal, however, the Commission must weigh: (1) the realities of the public's expectation of continued service in the existing community of license versus (2) the public benefits of re-allotment.²⁰ Here, compelling public interest benefits will result from the community of license change to Moultrie. At the same time, the abundance of local television viewing options available to Valdosta residents will remain undisturbed.

Although the Commission generally applies a presumption against removing a community's only local transmission service, it must be reemphasized that the instant proposal amounts to no more than a change in the name of the Station's community of license. The

¹⁷ 47 C.F.R. § 1.420(i); *see also Farmington and Gallup New Mexico*, Notice of Proposed Rulemaking 7 FCC Rcd 2382 (1992).

¹⁸ *See* 47 C.F.R. § 73.622.

¹⁹ *See generally Allotment Report and Order; Allotment Reconsideration Order.*

²⁰ *See Allotment Reconsideration Order at 7094 (¶ 19).*

Station's signal contour will be unchanged by this application, providing service to the same viewers, including viewers in Valdosta. Therefore, the instant proposal is not akin to television re-allotment proposals that involve a shift in service area or some form of tangible abandonment of the existing community of license. Moreover, as shown below, strict adherence to the Commission's stated allotment priorities²¹ in this case actually would serve to undermine the Commission's objectives.

1. Valdosta Will Not Experience Any Change in Local Television Service

As stated above, the proposed community of license change would not disturb the *status quo* for television viewers in Valdosta. Therefore, it is consistent with precedent where, despite removal of the sole local television transmission service, the Commission approved reallocation and license modification proposals because viewers located within the city of license would not experience disruption to their current level of service.²² WSWG's signal will cover Valdosta in precisely the same manner it currently does. The change will have no impact on WSWG's non-existent MVPD carriage in Valdosta and the Tallahassee DMA. Valdosta residents will be served by exactly the same television stations that they choose among today, including over-the-air WSWG.

In fact, Valdosta is well-served by seven commercial stations, including a full complement of major network affiliates. Numerous local news bureaus afford residents coverage

²¹ The television allotment priorities are (1) to provide at least one television service to all parts of the United States; (2) to provide each community with at least one television broadcast station; (3) to provide a choice of at least two television services to all parts of the United States; (4) to provide each community with at least two television broadcast stations; and (5) to assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Id.* at 7094 & n.4.

²² See *Ardmore, Oklahoma and Sherman, Texas*, Report and Order, 7 FCC Rcd 4846, 4847 (¶¶ 9, 10) (1992).

of matters of specific interest to the community. Because of Valdosta’s geographic location and inclusion in the Tallahassee-Thomasville DMA (and attendant MVPD carriage of stations designated within this DMA — WSWG notably not among them), the reality is that Valdosta viewers consider Gray’s WCTV, *not* WSWG, to be their local CBS affiliate. Indeed, WCTV, which is licensed to Thomasville, GA, has operated a news bureau in Valdosta since the 1970s. At the same time, a community of license change that would associate WSWG more clearly with the Albany DMA is necessary if the Station is to improve its financial position sufficient to support the new local news programming of particular interest to the majority of viewers that reside within its service contour. WSWG no longer carries local news from Gray’s WCTV. Rather, it carries local news more pertinent to the viewers served by WSWG, the majority of whom are located in the Albany DMA. Regardless, the change proposed herein will be indiscernible to viewers in Valdosta and will not cause any public interest harm.

2. Changing WSWG’s Community of License Will Help to Ensure the Station’s Continued Economic Wellbeing

The Commission has approved re-allotment proposals that remove a community’s sole local transmission service where doing so recognizes marketplace realities and will serve to improve the petitioning station’s long-term economic viability.²³ Station KXII(TV), for example, proposed a move from Ardmore, Oklahoma to Sherman, Texas, in part to provide its advertisers with a more accurate audience measurement and thereby obtain increased advertising revenue.²⁴ In granting the station’s request, the Commission reasoned that there would be “benefits in recognizing . . . Station KXII(TV)’s bonds with the city of Sherman,” and approved the formal relationship. Similarly, the Commission determined that removing Nogales, Arizona’s sole

²³ See *id* at 4847 (¶ 7).

²⁴ See *id*.

transmission service to create a hyphenated Nogales-Tucson allotment would serve the public interest.²⁵ There, Station KZAZ argued that, from “a *de facto* view,” it competed with television stations affiliated with Tucson, but that it operated at a severe disadvantage with respect to regional and national advertisers because of its “*de jure* designation as a Nogales station.”²⁶ The Commission authorized the re-allotment, recognizing that Nogales could not support the station financially and that by re-licensing KZAZ to Tucson, the station would gain economic strength while continuing to serve Nogales.²⁷

Marquee’s re-allotment proposal is important to WSWG’s economic viability. Because of the misalignment of the station’s community of license and assigned Nielsen DMA, it is believed that WSWG has experienced lower ratings and greater financial challenges. Its *de jure* location in the Tallahassee-Thomasville DMA (despite its *de facto* physical location and viewing audience in the Albany DMA), places WSWG at a disadvantage with respect to regional and national advertisers. Network non-duplication and syndicated exclusivity protection rules further inhibit WSWG’s ability to compete effectively in the Tallahassee-Thomasville DMA, as that market boasts a full contingent of stations broadcasting all the major (NBC, CBS, ABC, and Fox) and minor networks (CW, MyNet, Bounce, and MeTV). As the CBS affiliate for the

²⁵ *Nogales and Tucson, Arizona*, Report and Order, 32 FCC 2d 885 (1972); *see also Columbia and Edenton, North Carolina*, Report and Order, 20 FCC Rcd 12457, 12461 (¶ 12) (2005) (approving a non-commercial television station’s petition to remove Columbia, South Carolina’s only local broadcast station in order to alleviate “geographic and service anomalies” created by Nielsen DMAs).

²⁶ *Nogales*, 32 FCC 2d at 886 (¶ 4).

²⁷ *Id.* at 888 (¶ 10). The Commission’s approval was conditioned on KZAZ agreeing to maintain an auxiliary station in Nogales, continue to provide a city grade signal to Nogales, and continue to provide programming to Nogales viewers. The Commission determined that these conditions were necessary because KZAZ also sought to relocate its main studio to Tucson. *Id.* WSWG’s proposal, by contrast, does not involve any physical relocation and therefore raises no such coverage or programming concerns.

Albany DMA and with no MVPD carriage in Valdosta, WSWG simply cannot realistically compete on an equal footing in the Tallahassee-Thomasville DMA. WSWG's association with out-of-market Valdosta has hampered its competitive position in the Albany DMA, where virtually all of the station's viewers and advertisers are located. WSWG historically has been in third place to WALB(TV) and WFXL(TV) although Marquee has invested significant amounts of capital in WSWG and its new local news program to increase viewership.

3. Granting the Petition Would Correct the Disparity between WSWG's Community of License and its Nielsen DMA Assignment

The Commission has waived its policy against removing a community's sole local television transmission service in order to eliminate inconsistencies between a station's community of license and its Nielsen-assigned DMA that unnecessarily limit the station's ability to serve the public. In one such instance, a North Carolina broadcaster licensed to Columbia, located within the Greenville-Washington-New Bern, North Carolina DMA, petitioned for a change in its community of license because it was unable to gain DBS carriage in the Norfolk DMA, which includes nine North Carolina counties served by that station's over-the-air signal.²⁸ The Commission granted the request, noting that the proposal involved "no change to the station's transmitter site, operating parameters or service area." Rather, the Commission highlighted that its grant was simply "an administrative re-designation," which would allow the station to "overcome geographic and service anomalies" created by a private entity's market designations.

²⁸ See *Columbia and Edenton, North Carolina*, 20 FCC Rcd 12457 (2005). Although the station in *Columbia* was a non-commercial educational station, the Commission's concerns regarding Nielsen-created anomalies apply equally in the commercial context.

Marquee's proposal is a similar attempt to rectify a mismatch between WSWG's Nielsen assignment and its allotment in the DTV Table. As explained above, WSWG's community of license/DMA misalignment has created very real financial challenges for the station and compromised its ability to serve its audience effectively.

III. CONCLUSION

For the foregoing reasons, Marquee respectfully requests that the Commission grant this petition and immediately commence a rulemaking proceeding to modify the allotment for Channel 31 from Valdosta, Georgia to Moultrie, Georgia and to modify the license for WSWG as proposed herein.

Respectfully submitted

MARQUEE BROADCASTING
GEORGIA, INC.

By: 

Daniel Kirkpatrick
Baker & Hostetler LLP
1050 Connecticut Avenue NW
Suite 1100
Washington, DC 20036
(202) 861-1758

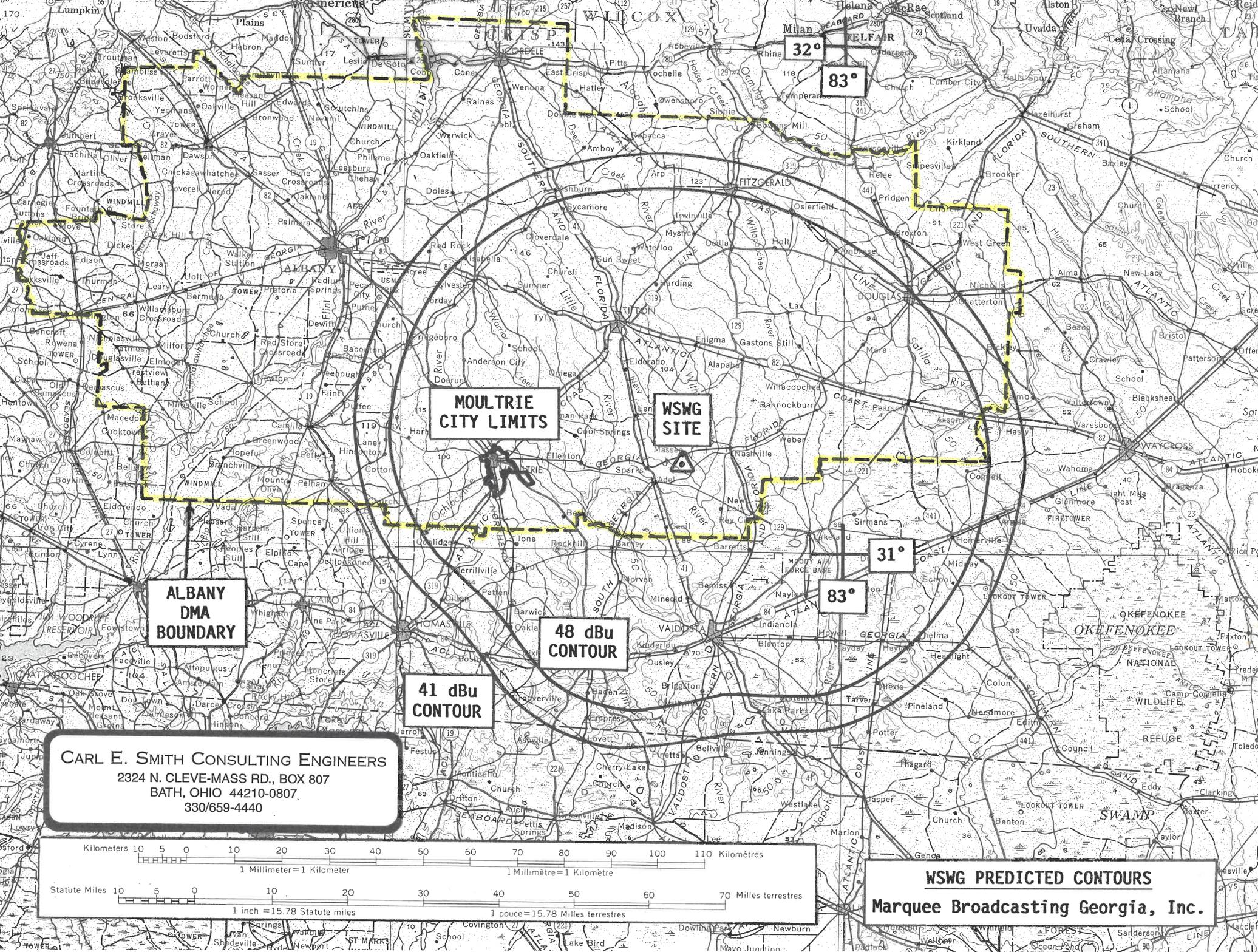
Its Attorney

Patricia R. Lane
Chief Executive Officer
Marquee Broadcasting Georgia, Inc.
2421 North Slappey Boulevard
Albany, GA 31701

Date: June 7, 2021

Figure 1

Over-the-Air Service Contours of WSWG(TV)



MOULTRIE CITY LIMITS

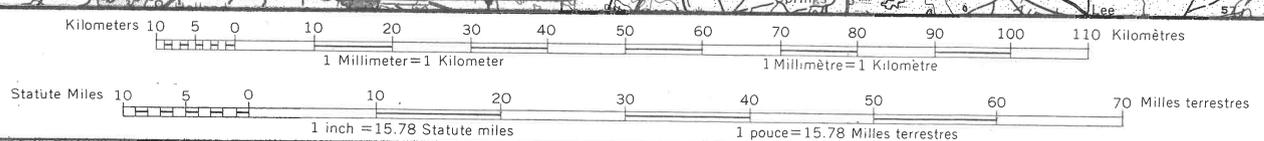
WSWG SITE

ALBANY DMA BOUNDARY

48 dBu CONTOUR

41 dBu CONTOUR

CARL E. SMITH CONSULTING ENGINEERS
 2324 N. CLEVE-MASS RD., BOX 807
 BATH, OHIO 44210-0807
 330/659-4440



WSWG PREDICTED CONTOURS
Marquee Broadcasting Georgia, Inc.