

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

Application Of)	
)	
JAMES CRYSTAL ENTERPRISES II, LLC)	FCC File No.
)	BMP-2003102____
Radio Station WFTL(AM))	
West Palm Beach FL)	
)	
For Modification of Construction Permit)	
 TO: The Chief, Audio Division Media Bureau		

**REQUEST FOR WAIVER AND GRANT WITH CONDITIONS,
AND FOR SPECIAL TEMPORARY AUTHORITY**

James Crystal Enterprises II, LLC (“JCE”), licensee of AM Station WFTL, West Palm Beach, Florida, by its attorneys, respectfully requests that the Commission waive as necessary Sections 73.37 and 73.5371 of the Commission’s rules in order to accept for filing the captioned application for minor changes in facilities (“Application”); that the Commission grant the Application with conditions; and that, pending action on the foregoing, the Commission grant special temporary authority to permit the licensee to operate WFTL as proposed in the Application. The following is shown in support of these requests.

BACKGROUND

JCE holds a construction permit, BP-19990521AI, to change the WFTL transmitter site and to increase power to 50 kW daytime, 24 kW nighttime, with different

directional antenna patterns day and night. The construction proposal represents the most significant improvements in the 50-plus year history of the facilities.

WFTL, known for many years as WEAT, was built in 1948. At that time, the four-tower array for its 5 kW-day, 1 kW-night operation was ideally sited on undeveloped land well west and south of the community of West Palm Beach. In the succeeding decades, phenomenal growth completely encompassed the transmitter site, which today is surrounded by bustling commercial activity and residential neighborhoods in Palm Beach County.

JCE acquired WFTL in 1998, and initiated its improvement plan the following year. The plan included the development of an AM facility that would cover the current boundaries of WFTL's city of license, West Palm Beach, and provide service throughout Palm Beach County as well. It is Florida's largest county (2,578 square miles), larger than the States of Rhode Island or Delaware. Palm Beach County comprises the West Palm Beach-Boca Raton Arbitron Radio Market, the 47th largest radio market in the United States.

The Commission granted the underlying WFTL construction permit in December 2001. JCE set out immediately to develop the new transmitter site for the station, and today, construction is nearly complete, with field testing ongoing, looking toward the filing of the covering license application.

PURPOSE OF THE MODIFICATION

The Application proposes changes in the WFTL facilities only with respect to second adjacent channel, daytime-only Station WACC, 830 kHz, Hialeah, Florida. The WFTL construction permit protects WACC to the protected contour of the facilities proposed in the pending FCC application File No. BP-19890109AB. There, WACC proposes an increase in daytime power to 5.0 kW.

The Application proposes to protect WACC to the protected contour of its licensed facilities of 1.0 kW.

This modification requires only an adjustment of the authorized WFTL daytime directional array. It does not require a change in power or in tower configuration. The modification proposes a modest, but from a service standpoint, a very significant, change in daytime pattern by enabling WFTL to provide additional coverage in the area represented by the difference between the WACC licensed (1.0 kW) and applied-for (5.0 kW) facilities.

JCE will accept a condition on the grant of the Application that in the event and at such time as WACC is granted, constructs, and begins testing of the facilities proposed in BP-19890109AB, JCE will revert to the facilities authorized in BP-19990521AI. As with implementation of the facilities proposed in the Application, a reversion to the facilities presently authorized to WFTL, should it become necessary, will require only a modest readjustment of the daytime directional array, not a change in power or in tower configuration.

BASIS FOR RELIEF

WACC filed its construction permit application nearly 15 years ago, in January 1989. Although it was accepted for filing and was placed on a cut-off list,¹ the proposal was rejected by the International Frequency Registration Board because it would cause prohibited interference to co-channel Cuban station CMFB, Cienfuegos.²

Both the Commission and WACC have long since admitted that the proposed WACC facilities will not be authorized. The facilities will not be built. WACC stated:³

. . . during the time that Station WACC was being “temporarily” constructed as only a 1-kilowatt facility and . . . by the time that the FCC began to process WACC’s 1989 five-kilowatt application, the FCC concluded that it could not grant that application for a “permanent” power increase.

The WACC proposal remained frozen for a decade. In an effort to dislodge it, WACC filed an “Emergency Request for Special Temporary Authority” in May 2000, to operate with the proposed 5.0 kW facilities.⁴ The request was supplemented in August 2000,⁵ and again in October 2000.⁶ Although the STA request remains pending to this

¹ *Public Notice*, “AM Broadcast Applications Accepted For Filing And Notification Of Cut Off Date,” Report No. A-146, February 27, 1989.

² Letter from Roy J. Stewart, Chief, Mass Media Bureau, to Honorable Bob Graham, May 28, 1992.

³ *Radio Peace Catholic Broadcasting, Inc., Station WACC(AM), Hialeah FL*, “Emergency Request for Special Temporary Authority” (May 5, 2000). See license file for WACC.

⁴ *Id.*

⁵ *Radio Peace Catholic Broadcasting, Inc., Station WACC(AM), Hialeah FL*, “Supplement to Request for STA” (August 17, 2000).

⁶ *Radio Peace Catholic Broadcasting, Inc., Station WACC(AM), Hialeah FL*, “Second Supplement to Request for STA” (October 2, 2000). In this supplement, WACC modified its STA request to propose operation at 4.0 kW.

day, more than three years later, it has effectively been denied by the inaction of the Commission.

No purpose is served by requiring JCE to protect the proposed WACC 5.0 kW facilities, other than to preserve WACC's aged and ostensibly infertile *Ashbacker* rights. Regardless, the relief that JCE here seeks will protect the WACC proposal, if by chance it is ever granted, constructed, and placed into operation. The Commission may impose and JCE will accept a condition on grant of the Application, that in the event and at such time as WACC is granted, constructs, and begins testing of its 5.0 kW facilities, JCE will readjust its daytime directional antenna pattern to protect such facilities.

THE PUBLIC INTEREST COMPELS GRANT OF THE REQUEST

The facilities proposed in the Application maximize WFTL's efficient operation on 850 kHz. The facilities authorized by construction permit are artificially restricted. The authorized WFTL daytime antenna pattern was designed to protect the propagation of a radio signal that has never been, nor is likely to be, authorized, constructed, and placed into operation. Without more, the public interest favors a grant of this request—but there IS more.

The area to be served by the expansion area proposed in the Application is highly densely-populated. The population served by the authorized WFTL 5.0 mV/m daytime contour, 1,664,441 persons, would be increased to 2,311,034 persons, a gain of 646,593 persons, or a 39% increase in population coverage. The population served by the authorized WFTL 2.0 mV/m daytime contour, 2,339,151 persons, would be increased to

3,830,212 persons, a gain of 1,491,061 persons, or a 64% increase in population coverage. See Figure 1, attached, which depicts the authorized and proposed 5 and 2 mV/m daytime contours for WFTL. There is no countervailing, offsetting effect from a grant of this request, no “loss” population, no “net” calculation to dilute the phenomenal impact a grant will have on AM service to the public in Palm Beach County. A grant represents 100% gain to the listening public.

The public interest would be uniquely served in another important respect. Much of the WFTL service area has grown as coastal development, within approximately 10 miles of the Atlantic Ocean. This has fostered a general north-south orientation, and as a result, driving and commuting patterns concentrate in the north-south direction. The principal traffic corridors are U.S. Interstate 95 and Florida’s Turnpike, which commuters may traverse 70 miles or more in a single direction, twice daily. JCE strategically sited the new WFTL facilities some 40 miles west of its current transmitter site, and designed a directional signal that would emphasize service throughout the north-south corridors within the service area. The proposed facilities will enable the audience to tune in the WFTL signal continuously while in transit, and to receive news and information about the entire area from a single, reliable broadcast source.

NEED FOR PROMPT ACTION

Time is of the very essence for action on the Application and this request. The authorized WFTL facilities are under construction at the time of the filing of this request,

and are in testing and proofing. Field personnel and engineering consultants are engaged in the final stages of tuning the WFTL facilities.

It would be most conducive and efficient for the personnel engaged in the final construction phase of the improved WFTL facilities, while they are in the field, to adjust, test, and proof the daytime directional antenna facilities as proposed in the Application. Prompt action on this request would save valuable time, duplication of effort, and expense, in placing the improved WFTL facilities into operation.

For these reasons, prompt consideration of this request and the Application is respectfully requested.

SPECIAL TEMPORARY AUTHORITY IS APPROPRIATE

Due to the compelling public interest and equitable factors enumerated above, grant of Special Temporary Authority is appropriate and is warranted, to enable WFTL to begin operating with the facilities specified herein. The modification alters only the authorized WFTL daytime directional antenna pattern, and then, only with respect to clearance to WACC. The pattern is adjusted only to change radiation characteristics such that WACC's licensed 1.0 kW facilities, rather than its proposed 5.0 kW facilities, are protected.

The modification may be implemented without a power increase, change in tower configuration, or other physical construction. The modification can be made by retuning the existing directional array. Field personnel and engineering consultants are available to

perform the adjustment now, as they complete the testing and proofs of the authorized facilities.

In the event the Commission may elect to await action on the Application due to resolution of any related or tangential issues, grant of Special Temporary Authority would facilitate both JCE's and the Commission's goals, and thus serve the public interest, pending any such additional determinations. The Commission may, of course, include a condition in the grant of Special Temporary Authority, that such authority is terminable in the event WACC is authorized, constructs, and commences testing of its proposed facilities.⁷

CONCLUSION

JCE proposes a modest enhancement to its daytime directional antenna pattern that will have significant beneficial effects in service. To permit WFTL conditionally to protect WACC to its licensed facilities, rather than to its 15 year-old proposed facilities which cannot and will not be authorized, will serve the public interest.

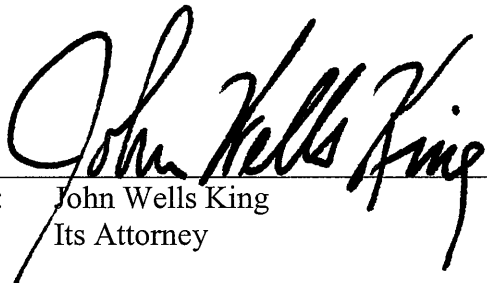
JCE respectfully requests, as the Commission may deem necessary, a waiver of Sections 73.37 and 73.5371 to effectuate this proposal, and a prompt grant of Special Temporary Authority to enable WFTL to operate with its daytime array as proposed in

⁷ The FCC has appropriately conditioned STAs in circumstances similar to WFTL's. Indeed, the Commission did so in an STA granted to WACC (then WRFM) in 1989, to operate temporarily on the frequency of 880 kHz. The Commission noted that reasons for termination "include priority of use for 880 kHz allocation by duly accepted applications presently on file at the Commission which are in direct conflict with this temporary authority." Clearly the Commission did not view grant of that STA as adversely affecting the applicants' *Ashbacker* rights. The same conclusion obtains here with respect to WACC's interest in its proposed 5 kW facilities.

the Application, inasmuch as the modification can efficiently be effectuated by field personnel presently on-site.

Respectfully submitted,

JAMES CRYSTAL ENTERPRISES II, L.L.C.


By: John Wells King
Its Attorney

October 24, 2003

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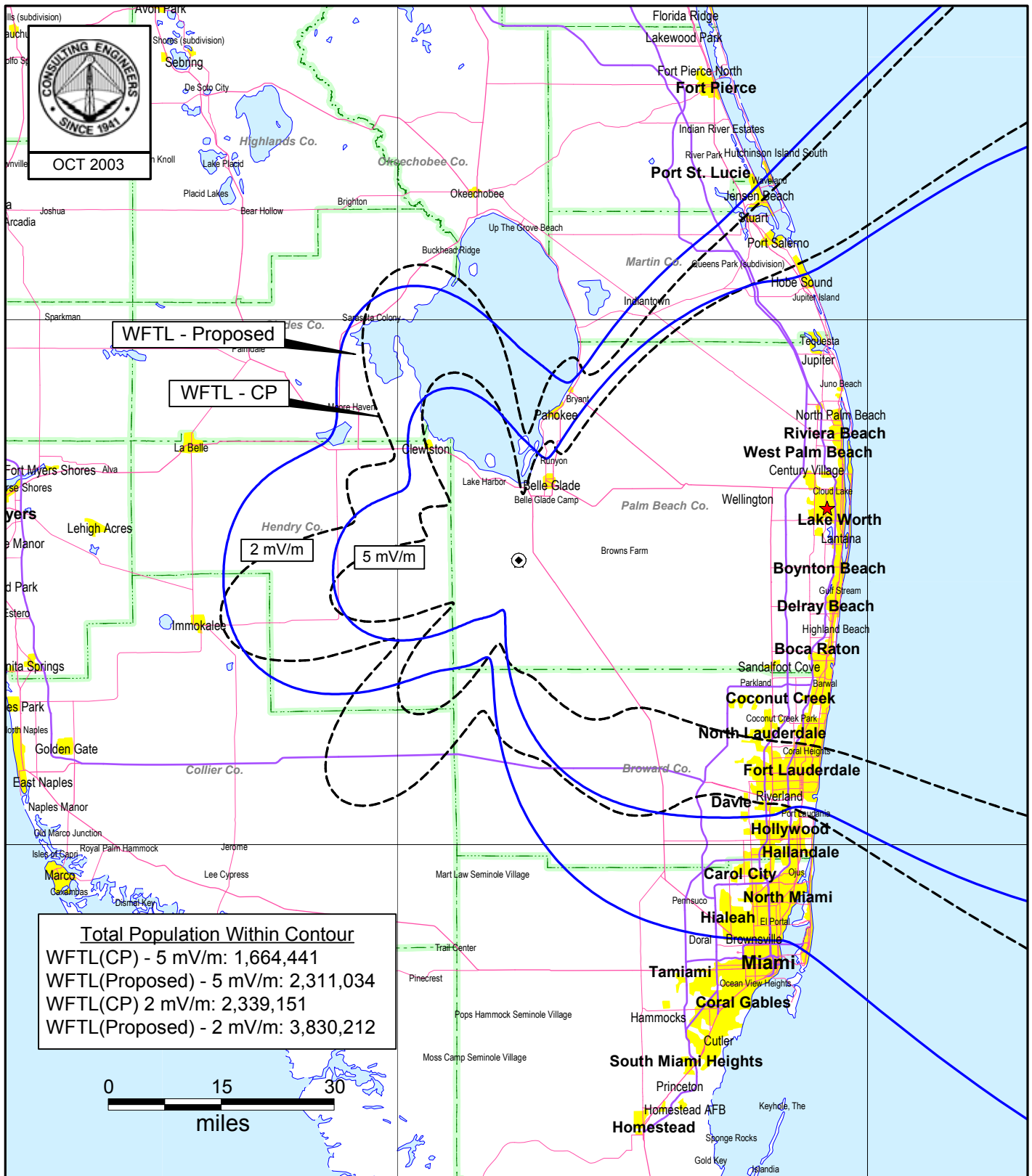
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Figure 1



PREDICTED DAYTIME GROUNDWAVE CONTOURS

RADIO STATION WFTL
WEST PALM BEACH, FLORIDA
850 KHZ 50 KW-D, 24 KW-N DA-2 U

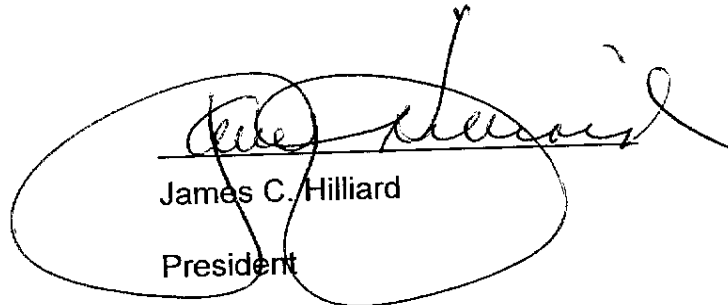
du Treil, Lundin & Rackley, Inc. Sarasota, Florida

ANTI-DRUG ABUSE ACT CERTIFICATION

The applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862a, or, in the case of a non-individual applicant (e.g., corporation, partnership, or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. § 1.2002(b).

☒ Yes☐ No

**JAMES CRYSTAL
ENTERPRISES II, L.L.C.**



James C. Hilliard
President

Date: September 23, 2003