

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

FILED/ACCEPTED

MAR - 7 2008

Federal Communications Commission
Office of the Secretary

In re Application of)
)
SSR Communications, Inc.)
For a Minor Change in Licensed Facility) BPH-20070222ABD
Station WYAB(FM), Flora, Mississippi) Fac. ID No.77646
)

To: Office of the Secretary
Attn: Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

Central Mississippi Development Group (“Petitioner”),¹ by its counsel, and pursuant to Section 1.106 of the Commission’s Rules, hereby submits this Petition for Reconsideration of the grant of the above captioned application.² The Commission’s grant was in error because the allotment coordinates specified in the application are not mutually exclusive with the station’s present assignment. Thus, the application violates Section 1.420(i) of the Commission’s Rules. The Commission must rescind its grant of the above captioned application. In support hereof, Petitioner states as follows:

1. The above captioned application proposed to change the community of license of Station WYAB from Benton to Flora, Mississippi. It was filed pursuant to the Commission’s new allotment procedures, which streamlined the process to change a station’s community of

¹ Petitioner is a newly formed entity not yet registered with the state but which is assisting in the presentation of a proposal to the Commission which is now precluded by grant of the instant application. Petitioner did not participate earlier in the proceeding because it only recently became involved in this project and did not know until recently that the above captioned application would adversely affect its proposal. Regardless of whether Petitioner failed to file at an earlier stage, the Commission staff should not have permitted this application to be granted. As will be demonstrated, the application has a fundamental defect. The Commission should not need to rely on a third party to bring the defect to the attention of the Commission staff. If the grant is not rescinded regardless of whether it was timely raised, the Commission would create a precedent that would eviscerate the allotment stage of the new procedures and obliterate the intergity of the FM allocation process.

² Public Notice of grant of the above captioned application was released on February 6, 2008. See Report No. 46667. Thus, this Petition for Reconsideration is timely. See 47 C.F.R. §1.106(f).

license from two-steps to one-step.³ Prior to the implementation of the *Streamlining Order*, a station that wanted to change its community of license would file a rule making petition to request such a change. If the Commission granted the rule making, the licensee would then file an implementing application. The *Streamlining Order* combined the rule making step and the application step into one step. Licensees are now permitted to change a station's community of license through a one-step application. In adopting these changes, however, the Commission did not eliminate the allotment rules and policies inherent in the rule making step. Rather it combined them at the application stage. Nevertheless, applicants are still required to specify allotment reference coordinates that are fully-spaced consistent with Section 73.207 of the Commission's Rules and demonstrate that a station's coverage from the allotment reference site covers 100 percent of the proposed community of license.⁴

2. One of the fundamental tenets of the Commission's allotment rules and policies is that a station can change community of license without subjecting the license to competing expressions of interest only "where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."⁵ (emphasis added). The above captioned application violates this basic tenet because the proposed WYAB allotment is not mutually

³ See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) ("*Streamlining Order*").

⁴ See 47 C.F.R. §73.3573(g)(4).

⁵ See 47 C.F.R. §1.420(i). This rule was promulgated in 1989 when the Commission permitted stations to change community of license without subjecting the license to competing expressions of interest. See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) ("*Community of License Change Order*"). In this *Order*, the Commission stated that "the procedure is limited to situations in which the new allotment would be mutually exclusive with the existing allotment." (emphasis added) *Id.* at ¶22. Because community of license change applications filed pursuant to the *Streamlining Order* include an allotment component, Section 1.420(i) and the policies underlying this rule are applicable to community of license change applications. SSR expressly recognizes in Exhibit 22A where it states that "SSR Communications, Inc. ("SSR") is filing this application pursuant to Section 1.420(i) of the Commission's rules ...".

exclusive with the station's present assignment.⁶ In fact, as demonstrated in Table 1 to Exhibit 22B to the application, the proposed WYAB allotment coordinates are properly spaced to WYAB's licensed facilities by 13.02 kilometers⁷ and thus grant of the application violates Section 1.420(i). If the WYAB proposal were filed prior to implementation of the *Streamlining Order*, it would have been denied at the rule making stage. For this reason, the Commission must rescind grant of the above captioned application.

3. The basis for Section 1.420(i)'s requirement that the allotment be mutually exclusive with the station's present assignment is that "it does not deprive potential applicants of opportunities for comparative consideration."⁸ When the Commission adopted the *Community of License Change Order* it was aware of the fact that a non-mutually exclusive community of license change proposal would deprive potential applicants of the opportunity to file competing applications for the spectrum.⁹ Thus, "the procedure is limited to situations in which the new allotment would be mutually exclusive with the existing allotment."¹⁰ Otherwise "such potential applicants are precluded from requesting such a new allotment because of the mutual exclusivity with existing one."¹¹ Here, by granting WYAB's application, the Commission approved a non-mutually exclusive community of license change. Therefore, it is necessary for the Commission to reconsider this grant in order to preserve such an integral component of the Commission's allocations process.

⁶ See, e.g., *Rosendale, New York*, 10 FCC Rcd 11471, at note 1 (1995) (denied rule making proposal because proposed allotment was not mutually exclusive with station's present assignment).

⁷ For convenience, Table 1 to Exhibit 22B is attached hereto as Attachment 1. See also, Attachment 2 attached hereto.

⁸ *Streamlining Order*, 21 FCC Rcd at ¶9 (citing *Community of License Change Order*, 4 FCC Rcd at ¶24).

⁹ *Community of License Change Order*, 4 FCC Rcd at ¶24.

¹⁰ *Id.* at ¶22 (emphasis added). This concern was also addressed in the *Streamlining Order* when the Commission cited to the *Community of License Change Order*. *Streamlining Order*, 21 FCC Rcd at ¶9.

¹¹ *Community of License Change Order*, 4 FCC Rcd at ¶24.

4. The streamlining of the Commission's community of license change procedures is analogous to the Commission's decision to combine its procedures to permit FM station channel and class changes by application.¹² Prior to that proceeding, stations wishing to upgrade or downgrade to a co-channel or adjacent channel had to comply with the same two-step rule making and application process as community of license change applicants. In the *One-Step Order*, the Commission combined the rule making step and the application step into one step. In doing so, however, the Commission was cognizant of its allotment rules and policies when it stated,

we wish to make our intentions abundantly clear. Where a station seeks a modification using the one-step process, and is unable to demonstrate that a suitable site exists that would meet allotment standards for the station's channel and class, that application would be dismissed even if the facilities which the applicant intends to build would otherwise comply fully with the Commission's standards.¹³

This rationale is applicable to the changes implemented in the *Streamlining Order*. Applicants must demonstrate an allotment site that complies with the Commission's allotment standards. If the Commission did not intend to maintain its allotment policies and standards when it implemented the *Streamlining Order*, it would not still require an applicant to specify an allotment reference site when changing community of license.¹⁴ Moreover, there would have

¹² See *Amendment to the Commission's Rules to Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735 (1993) ("*One-Step Order*").

¹³ *Id.* at ¶14.

¹⁴ It appears that the Commission staff may have granted this application due to the fact that the proposed transmitter site and the existing transmitter site are short spaced. However, that short spacing is irrelevant and in fact would not have been known under the rule making procedures previously in effect because the transmitter site coordinates were not considered at the rule making stage. The fact that the procedure is now one-step should not have changed the analysis. To the extent that the Commission staff is inadvertently evaluating the mutually exclusive relationship between the proposed site and the existing site, that practice should be analyzed as if it were a two step process. In doing so, the only mutually exclusive relationship that is relevant involves the allotment coordinates in Section III, Question 4 (Proposed Allotment or Assignment Coordinates) and the existing authorization coordinates.

been some discussion or explanation in the *Streamlining Order* of such a fundamental change in the process.

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that the Commission rescind grant of the above captioned application.

Respectfully submitted,

CENTRAL MISSISSIPPI
DEVELOPMENT GROUP

By:



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Its Counsel

March 7, 2008

ATTACHMENT 1

Table 1: Flora, Mississippi allotment section 73.207 separation study

Proposed Allotment: Flora, Mississippi
 Channel: 280A
 Coordinates: 32-28-54 N (NAD27)
 90-18-24 W

CDBS Application Number	Callsign	Record Type	Channel / Class	Community	State	Distance (km)	Minimum Distance per 73.207b1 (km)	Margin (km)
604027		PROP AL	280 A	FLORA	MS	3.80	115.00	-111.20
1129991		PROP AL	280 A	HERMANVILLE	MS	71.45	115.00	-43.55
295181		USED AL	279 C0	HATTIESBURG	MS	153.16	152.00	1.16
1148440	WUSW	LIC	279 C0	HATTIESBURG	MS	153.16	152.00	1.16
299263		USED AL	280 C3	CLEVELAND	MS	143.41	142.00	1.41
223450	WCID-FM	LIC	280 C3	CLEVELAND	MS	143.95	142.00	1.95
295355		USED AL	281 C	MONROE	LA	168.39	165.00	3.39
1156280	KJLO-FM	APP	281 C	MONROE	LA	168.39	165.00	3.39
289112		USED AL	281 C2	UNION	MS	109.73	106.00	3.73
1160107		VAC AL	281 C	MONROE	LA	177.62	165.00	12.62
* 1104826	WYAB	LIC	226 A	BENTON	MS	23.02	10.00	13.02
116996	KJLO-FM	LIC	281 C0	MONROE	LA	168.39	165.00	16.39
400650	WZKS	LIC	281 C2	UNION	MS	133.27	106.00	27.27
289534		USED AL	283 C3	TALLULAH	LA	72.00	42.00	30.00
978948		USED AL	226 A	BENTON	MS	40.01	10.00	30.01
Proposed		PROP AL	226 A	BENTON	MS	40.01	10.00	30.01
1156553		VAC AL	283 C3	TALLULAH	LA	78.19	42.00	36.19
1156146	KLSM	APP	283 C3	TALLULAH	LA	84.85	42.00	42.85
556957		VAC AL	278 C2	LAKE VILLAGE	AR	100.90	55.00	45.90
532133		VAC AL	280 C2	OKOLONA	MS	226.72	166.00	60.72
261626	WGNL	LIC	282 C2	GREENWOOD	MS	116.47	55.00	61.47
292872		USED AL	282 C2	GREENWOOD	MS	116.47	55.00	61.47
417205	WMJU	LIC	282 C3	RUDE	MS	108.01	42.00	66.01
299339		USED AL	280 C2	COLUMBUS	MS	233.04	166.00	67.04
293185		USED AL	282 C3	RUDE	MS	112.60	42.00	70.60
299261		USED AL	277 C3	DECATUR	MS	114.35	42.00	72.35
1073073	WACR-FM	LIC	280 C2	OKOLONA	MS	242.87	166.00	76.87

Note 1 The petitions to add these allotments were dismissed in docket 06-52.

Note 2 This allotment is proposed in this application. Please see Exhibit 22A.

ATTACHMENT 2



March 6, 2008

**Informal Objection to Construction Permit Grant for
WYAB(FM) in File Number BPH-20070222ABD**

The attached allocation study and map show that the proposed allocation coordinates proposed by WYAB on channel 280A at Flora, Mississippi constitutes a non-mutually exclusive change of its community of license. This is prohibited by FCC rules. Thus the construction permit that was issued to WYAB in file number BPH-20070222ABD was erroneously issued and should be rescinded.

The attached allocation study shows that while the proposed channel 280A allotment coordinates are fully spaced; they are not mutually exclusive with the WYAB licensed facility on channel 226A¹. The minimum spacing requirement for two class A intermediate frequency (I.F.) facilities is 10 km (9.5 kilometers when allowing for rounding). The proposed channel 280A allotment coordinates are 23.02 kilometers from WYAB's licensed site, which is well beyond the 9.5-kilometer MX circle required, since WYAB also proposes to change the community of license from Benton, MS to Flora, MS.

An attached map (Exhibit 2) shows not only that the allotment coordinates specified in BPH20070222ABD are defective, but it also shows that no fully spaced site (shown in gray on the map) exists that is MX with WYAB on channel 226A. Since WYAB cannot remain MX with itself on channel 280A, this channel change is not permissible.

The channel change from 226A to 280A would not be permissible even if the license was not seeking a change in community of license from Benton. If the WYAB licensee chose to leave the station licensed to Benton on channel 280A, Exhibit 3 shows that the distance from the nearest point in the allocation window to Benton is 35.2 kilometers. This distance is much greater than the 16.2-kilometer distance used for the city-grade signal of a class A station.

In summary, the FCC granted a construction permit for BPH-20070222ABD in error. The proposed allotment coordinates are not MX with the licensed WYAB facility. The construction permit should be rescinded.

Respectfully Submitted

A handwritten signature in black ink that reads 'Bert Goldman'.

Bert Goldman
Goldman Engineering Management, LLC.

¹ It is acknowledged that channel 226A and channel 280A are MX channels. However, the proposed allotment coordinates for channel 280A are too far from WYAB's licensed site to maintain that MX relationship.

Proposed Allocation Study
Channel 280A (WYAB) Flora, MS

REFERENCE		DISPLAY DATES
32 28 54 N	CLASS = A	DATA 01-23-08
90 18 24 W	Current Spacings	SEARCH 03-05-08
----- Channel 280 - 103.9 MHz -----		

Call	Channel	Location	Dist	Azi	FCC	Margin
WYAB	RSV 280A	Flora	MS 0.00	0.0	115.0	-115.00
WYAB	RSV 280A	Flora	MS 0.00	0.0	115.0	-115.00
WYAB.A	APP-Z 280A	Flora	MS 14.89	13.4	115.0	-100.11
WYAB.A	APP-Z 280A	Flora	MS 14.89	13.4	115.0	-100.11
WUSW	LIC 279C0	Hattiesburg	MS 153.16	133.6	152.0	1.16
WCLD-F	LIC-N 280C3	Cleveland	MS 143.95	344.9	142.0	1.95
From Channel 280A Per D93-100						
KJLO-F	APP-N 281C	Monroe	LA 168.40	277.3	165.0	3.39
KJLO-F	RSV 281C	Monroe	LA 177.62	278.5	165.0	12.62
WYAB	LIC-Z 226A	Benton	MS 23.02	12.6	10.0	13.02

This is the licensed site of WYAB:

North Latitude: 32-41-03

West Longitude: 90-15-10

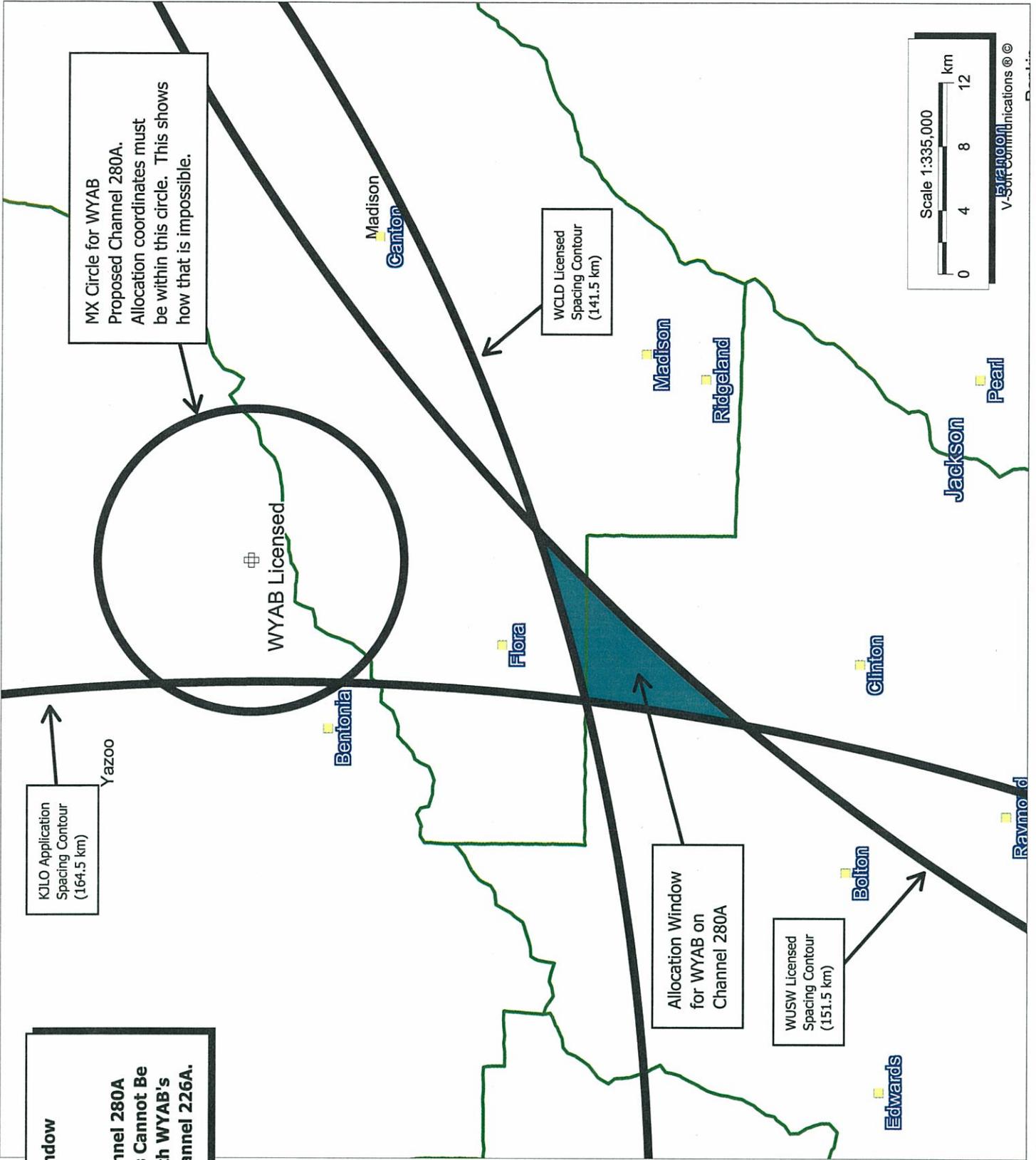
The proposed allocation coordinates for WYAB on channel 280A must be MX with WYAB's licensed coordinates on channel 226A.

Otherwise, WYAB is proposing to make a non-MX change as well as changing its community of license.

KJLO-F	LIC 281C0	Monroe	LA 168.40	277.3	152.0	16.39
WZKS	LIC-Z 281C2	Union	MS 133.27	88.8	106.0	27.27
WZKS.C	CP -N 281C2	Union	MS 133.42	88.9	106.0	27.42
KLSM.C	CP -N 283C3	Tallulah	LA 84.85	267.7	42.0	42.85
KZYQ	RSV 278C2	Lake Village	AR 100.90	313.5	55.0	45.90

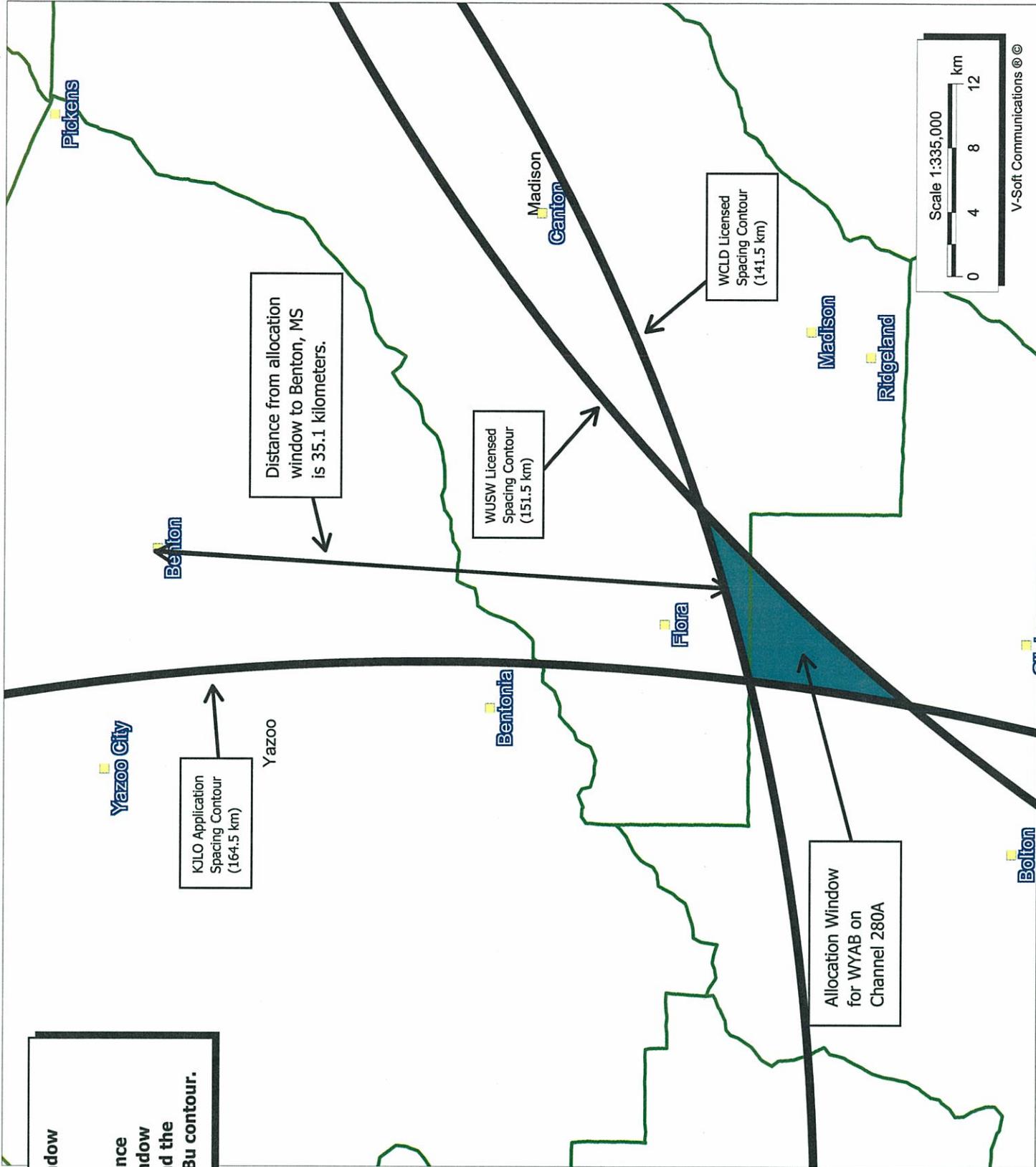
**WYAB Allocation Window
on Channel 280A**

**Showing how the Channel 280A
Allotment Coordinates Cannot Be
Mutually Exclusive with WYAB's
Current Facility on Channel 226A.**



**WYAB Allocation Window
on Channel 280A**

Showing that the distance
from the allocation window
to Benton, MS is beyond the
reach of a class A 70 dBu contour.



CERTIFICATE OF SERVICE

I, Elbert Ortiz, in the law firm of Wiley Rein LLP, do hereby certify that I have on this 7th day of March, 2008, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Petition for Reconsideration**" to the following:

Matthew Wesolowski
740 Highway 49
Suite R
Flora, MS 39071

SSR Communications
5270 West Jones Bridge Road
Norcross, GA 30092



Elbert Ortiz