

Sea-Comm, Inc.
Commercial FM Broadcast Station WBNE
Facility I.D. No. 73954
Topsail Beach, North Carolina

FCC Form 301, Section II, Item 4(b)
Application for Minor Modification of
Outstanding Construction Permit
to Make Minor Changes in Licensed Facilities
(File No. BPH-20060228AOO)

EXHIBIT 5

This application requests a modified construction permit for Sea-Comm, Inc.'s ("Sea-Comm's") commercial FM broadcast station WBNE. WBNE is currently licensed to operate on Channel 229A and to serve the community of Wrightsville Beach, North Carolina. Sea-Comm holds a construction permit (the "Permit") in File No. BPH-20060228AOO, granted on July 6, 2006, which, among other things, authorizes Sea-Comm to upgrade WBNE's channel classification to Channel 229C3 and to change WBNE's community of license to Topsail Beach, North Carolina.

This application requests a modified construction permit for a so-called "one-step downgrade" in WBNE's channel classification, from Channel 229C3 to Channel 229A, and authorization to operate the station with its currently-licensed transmitting facilities (*i.e.*, to revert back to the licensed facilities from those authorized in the Permit), while maintaining the station's community of license as Topsail Beach, as authorized in the Permit.

Wrightsville Beach, WBNE's current community of license, is located within the Wilmington, North Carolina market, as defined by Arbitron. Topsail Beach, WBNE's community of license as authorized in the Permit, is not in the Wilmington market; in fact, Topsail Beach is not located in any Arbitron-defined market.

In addition to WBNE, Sea-Comm holds licenses from the Commission to operate the following other commercial FM broadcast stations:

1. WLTT (Facility I.D. No. 60882), which is licensed to the community of Shallotte, North Carolina. Shallotte is in the Wilmington market.
2. WBNU (Facility I.D. No. 52023), which is licensed to the community of Shallotte, but which holds an outstanding construction permit (File No. BPH-20060228AOP, granted on July 6, 2006) that, among other things, authorizes a change in WBNU's community of license to Wrightsville Beach. As noted earlier, Wrightsville Beach is in the Wilmington market.
3. WWTB (Facility I.D. No. 67339), which is licensed to the community of Topsail Beach but which holds an outstanding construction permit (File No. BPH-20060224AAF,

granted on June 20, 2006) that, among other things, authorizes a change in WWTB's community of license to Swansboro, North Carolina. Swansboro is not in the Wilmington market.

In addition, as noted in Exhibit 4 to this application, Sea-Comm is a party to a time brokerage agreement (the "LMA"), as amended, involving commercial FM broadcast station WUIN in Carolina Beach, North Carolina (Facility I.D. No. 34006). Carolina Beach is in the Wilmington market.

Attached is a Radio Market Analysis (the "Analysis") performed by Jefferson G. Brock of Graham Brock, Inc. in St. Simon's Island, Georgia, Sea-Comm's broadcast engineering consultant, dated August 25, 2006. The Analysis concludes that the instant application is consistent with the Commission's multiple ownership rules, based upon the fact that in a market, as defined by Arbitron, having the number of radio stations that the Wilmington market has, a single entity may hold attributable interests in up to six commercial AM and FM broadcast stations, no more than four of which may be in the same service. The Analysis attributes WLTT, WBNU, WUIN, and WBNE to Sea-Comm in the Wilmington market (acknowledging that while the Permit authorizes WBNE to serve a community outside of the Wilmington market, the station may be considered "home" to that market). The Analysis does not attribute WWTB to Sea-Comm in the Wilmington market, based upon the fact that WWTB's outstanding construction permit in File No. BPH-20060224AAF authorizes WWTB to serve a community (Swansboro) that is in the Arbitron-defined Greenville-New Bern-Jacksonville, North Carolina market.

The Analysis' determination is consistent with advice that Sea-Comm's counsel earlier received in informal discussions with the Commission's staff, to the effect that the issuance of a construction permit authorizing a change in a station's community of license in order to conform to an amendment to the Table of Allotments for FM Broadcast Stations, Section 73.202(b) of the Commission's Rules, is considered effective for purposes of determining compliance with Section 73.3555(a) of the Commission's Rules.¹ *See also* FCC Form 301, Worksheet # 2, Heading A ("Multiple Ownership and Cross Ownership"), Subheading I ("Local Radio Station Ownership"), Paragraph 3 (Page 3): "Applicants also may not rely on the removal, after September 3, 2004, of their own stations from BIA's list of 'home' stations in a Metro unless (i) such exclusion has been in effect for at least two years or (ii) *the exclusion results from an FCC-approved change in the community of license of a station from within the Metro to outside the Metro*" (emphasis supplied).

For the foregoing reasons, Sea-Comm believes that the present application is consistent with the Commission's multiple ownership rules, and hence an affirmative response to the question at FCC Form 301, Section II, Item 4(b), may have been appropriate. Out of an

¹ By a *Report and Order in MB Docket No. 05-16*, 21 FCC Rcd. 91 (Assistant Chief, Audio Division, Media Bureau, 2006), the Commission amended Section 73.202(b), among other things, to change WBNU's community of license from Shallotte to Wrightsville Beach, to change WBNE's community of license from Wrightsville Beach to Topsail Beach, and to change WWTB's community of license from Topsail Beach to Swansboro. A copy of the *Report and Order* is attached to this Exhibit 5.

abundance of caution, however, Sea-Comm has elected to respond in the negative to the question at FCC Form 301, Section II, Item 4(b), and to submit this Exhibit 5. In the event that the Commission should conclude that this application is not consistent with the multiple ownership rules, Sea-Comm hereby respectfully requests a temporary waiver of those rules for the following reasons:

1. Sea-Comm is in the process of divesting itself of its interests in WWTB. Sea-Comm is currently in the advanced stages of negotiating with an identified purchaser for the sale to such purchaser of most of Sea-Comm's assets associated with WWTB, including the license and outstanding construction permit from the Commission for WWTB. Sea-Comm expects to file an application requesting the Commission's consent to the voluntary assignment of the license and the outstanding construction permit for WWTB to such purchaser in the near future. Therefore, irrespective of the fact that WWTB has effectively "exited" the Wilmington market by virtue of the outstanding construction permit in File No. BPH-20060224AAF changing the station's community of license to Swansboro in the Greenville-New Bern-Jacksonville Market, WWTB will also soon "exit" Sea-Comm's portfolio of attributable commercial FM broadcast stations.

2. As indicated in Exhibit 4 to this application, Sea-Comm's counsel, out of an abundance of caution, submitted a letter to the Commission on September 1, 2006 that requests a temporary extension of the "grace" period, in order to permit Sea-Comm's LMA involving WUIN to continue past the September 3, 2006 deadline for non-compliant radio broadcast station time brokerage agreements to terminate. As recited in that letter, in the event that the Commission were to find that Sea-Comm's continued enjoyment of its rights and performance of its obligations pursuant to the WUIN LMA is no longer permissible, WUIN would likely be compelled to suspend its broadcast service for some period of time, due to the fact that the current licensee of the station is not in a position immediately to resume broadcast operations, since the current licensee lacks the staff, facilities, and resources to do so. Forcing WUIN to suspend operations and withdraw its service to the public would clearly disserve the public interest.

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

RADIO MARKET ANALYSIS
SEA-COMM, INC.
WBNE RADIO STATION
TOPSAIL BEACH, NORTH CAROLINA
August 2006

TECHNICAL EXHIBIT

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RADIO MARKET ANALYSIS
SEA-COMM, INC.
WBNE RADIO STATION
TOPSAIL BEACH, NORTH CAROLINA
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TECHNICAL STATEMENT

1. This technical statement and attached exhibits were prepared on behalf of Sea-Comm, Inc. ("Sea-Comm"), licensee of station WBNE, Channel 229A, Wrightsville Beach, North Carolina. WBNE also holds a construction permit to change its community of license to Topsail Beach, North Carolina. Sea-Comm is submitting an application for WBNE to relocate the transmitter site at its authorized community of license of Topsail Beach. As such, a radio market analysis is necessary. WBNE's community of license, Topsail Beach, North Carolina is not located in any metro county within an Arbitron/BIA rated market, however, it is considered "home" in the Wilmington, North Carolina Arbitron Market (Market #170). As such, a hybrid ownership analysis will be conducted, for both rated and non-rated markets.

2. Sea-Comm also has interests in stations WLTT, Channel 292A, Shallotte, North Carolina; WBNU, Channel 279C3, Shallotte, North Carolina; and WWTB, Channel 280C3, Topsail Beach, North Carolina.¹ Sea-Comm also has an agreement in place with the licensee of WUIN, Channel 294A, Carolina Beach, North Carolina, under a Local Marketing Agreement. WLTT, WBNU and WUIN are all licensed to communities located in metro counties within the Wilmington, North Carolina market. Although, the licensed WWTB is considered "home" to the market, WWTB, by virtue of its new community of license, will be included in the Greenville-

1) WWTB also holds a construction permit to downgrade to Channel 281A at Swansboro, North Carolina.

New Bern-Jacksonville, North Carolina Market.² Additionally, in the same docket, WBNU was ordered to change to Wrightsville Beach, North Carolina and, as such, remains a station located in the Wilmington Market.³ Therefore, both WWTB and WBNU will be considered located in their respective new communities of license for this instant review.

ARBITRON/BIA MARKET REVIEW

3. As shown on Exhibit #1, there are twenty-five AM and FM (commercial and non-commercial) stations listed in the Wilmington, North Carolina Arbitron Market.⁴ Sea-Comm would be in control of four FM stations in the market, assuming the removal of WWTB to the Jacksonville, North Carolina Arbitron market. The number of stations indicated falls in the fifteen to twenty-nine stations tier of §73.3555(a)(1)(iii) of the Commission's rules. At this level, common ownership or control of up to six stations, with no more than four in the same service, is permissible. Therefore, control of WBNE in the Wilmington, North Carolina market is believed to be in compliance with the Commission's radio ownership rules for rated markets.

REVISED CONTOUR OVERLAP REVIEW

4. A study has, therefore, been conducted to verify that the ownership of WBNE, licensed to a non-metro county, yet being considered "home" to a rated market, is in compliance with the Commission's multiple ownership rules. A map showing the Sea-Comm stations is attached as Exhibit #2. As noted on the map, only the contours of the proposed WBNE and the

2) This is the only station in which Sea-Comm has interests in the Greenville-New Bern-Jacksonville, North Carolina market.

3) WBNU currently holds a construction permit on Channel 279C2, Wrightsville, North Carolina.

4) With the deletion of WWTB, there will be twenty-four stations.

authorized WBNU have an overlap of contours. As a result of the overlap, a single distinct radio market is created. The city grade contours of WBNE and WBNU will be used to determine the number of other contributing stations in the market, the Radio Market Boundary. No stations with transmitters located more than 92.0 kilometers from the boundary of the common overlap of subject stations will be considered. Nor will any Sea-comm stations be considered as a contributing station, unless it is a subject station in the market under review.

4. Exhibit #3 is a depiction of the AM and FM stations (commercial and non-commercial) providing service to the WBNE/WBNU Radio Market. Exhibit #4 is a tabulation of the stations in the Radio Market, which including the two subject stations, brings the total of stations in the Radio Market to ten. The number of stations depicted falls in the fourteen or fewer stations tier of §73.3555(a)(1)(iv) of the Commission's rules.⁵ At this level, common ownership or control of up to five stations, with no more than three in the same service, is permissible provided the number of stations to be commonly held does not exceed 50% of the stations in the market. Based on this number of facilities, it has been herein demonstrated that the Radio Market is in compliance.

5. As a result of the compliance shown above, in both rated and non-rated markets, the relocation for WBNE is in compliance with the Commission's rules.

6. The foregoing technical statement was prepared on behalf of Sea-Comm, Inc., by Graham Brock, Inc., its Technical Consultants. All information contained herein is true and

5) There are other stations providing service to the market, however, the ones indicated were sufficient to demonstrate compliance based on the number of stations to be commonly held.

accurate to the best of our belief and knowledge. All data relating to AM and FM facilities in the relevant BIA/Arbitron market was determined using the BIA Financial Network, Inc. Media Access Pro, Version 4.0. BIA database. All other data was extracted from the CDBS database. We assume no liability for errors or omissions in either database which may be adverse to the information contained herein.



FCC Geographic Market Definition for Wilmington, NC

Call Letters	AM/FM	Freq	Type	Station	Format	Home Market	Market Designm Date	Home Mkt Rank	Owner	City & State of License	County of License
WAAV	AM	980	C	Nws/Tlk/Spt	Wilmington, NC	Wilmington, NC	07/02/2003	170	Cumulus Broadcasting Inc	Leland, NC	Brunswick
WAZO	FM	107.5	C	CHR	Wilmington, NC	Wilmington, NC	07/02/2003	170	NextMedia Group Inc	Southport, NC	Brunswick
WBNE	FM	93.7	C	Cisc Rock	Wilmington, NC	Wilmington, NC	07/02/2003	170	Sea-Comm Inc	Topsail Beach, NC	Pender
WBNU	FM	103.7	C	Cisc Rock	Wilmington, NC	Wilmington, NC	07/02/2003	170	Sea-Comm Inc	Wrightsville Beach, NC	New Hanover
WDVV	FM	89.7	NC	Christian	Wilmington, NC	Wilmington, NC	07/02/2003	170	Family Radio Network	Wilmington, NC	New Hanover
WGHW	FM	88.1	NC	CP - NOA	Wilmington, NC	Wilmington, NC	03/31/2005	170	Church Planters of America	Lockwoods Folly Town, NC	Brunswick
WGNI	FM	102.7	C	AC	Wilmington, NC	Wilmington, NC	07/02/2003	170	Cumulus Broadcasting Inc	Wilmington, NC	New Hanover
WHQR	FM	91.3	NC	Nws/Cis/NP	Wilmington, NC	Wilmington, NC	07/02/2003	170	Friends of Public Radio Inc	Wilmington, NC	New Hanover
WILT	FM	98.7	C	Lite AC	Wilmington, NC	Wilmington, NC	08/05/2005	170	NextMedia Group Inc	Jacksonville, NC	Onslow
WKXB	FM	99.9	C	Rhythmic	Wilmington, NC	Wilmington, NC	07/02/2003	170	NextMedia Group Inc	Burgaw, NC	Pender
WKXS	FM	94.5	C	Rhythm/Blu	Wilmington, NC	Wilmington, NC	07/02/2003	170	Cumulus Broadcasting Inc	Leland, NC	Brunswick
WLQB	FM	93.5	C	Mexican	Wilmington, NC	Wilmington, NC	07/02/2003	170	Cumulus Broadcasting Inc	Ocean Isle Beach, NC	Brunswick
WLSG	AM	1340	C	Sothn Gspel	Wilmington, NC	Wilmington, NC	07/02/2003	170	Quantum Communications Corp	Wilmington, NC	New Hanover
WLTT	FM	106.3	C	Nws/Tlk/Inf	Wilmington, NC	Wilmington, NC	07/02/2003	170	Family Radio Network	Wilmington, NC	Brunswick
WMFD	AM	630	C	Sprts/Talk	Wilmington, NC	Wilmington, NC	07/02/2003	170	Sea-Comm Inc	Shallotte, NC	Brunswick
WMNX	FM	97.3	C	Urban	Wilmington, NC	Wilmington, NC	07/02/2003	170	NextMedia Group Inc	Wilmington, NC	New Hanover
WMYT	AM	1180	C	Span/Cctm	Wilmington, NC	Wilmington, NC	07/02/2003	170	Cumulus Broadcasting Inc	Wilmington, NC	New Hanover
WRQR	FM	104.5	C	AOR	Wilmington, NC	Wilmington, NC	07/02/2003	170	Family Radio Network	Carolina Beach, NC	New Hanover
WSFM	FM	98.3	C	Modern	Wilmington, NC	Wilmington, NC	07/02/2003	170	NextMedia Group Inc	Wilmington, NC	New Hanover
WUIN	FM	106.7	C	Alternative	Wilmington, NC	Wilmington, NC	07/02/2003	170	NextMedia Group Inc	Oak Island, NC	Brunswick
WVCB	AM	1410	C	Religion	Wilmington, NC	Wilmington, NC	07/02/2003	170	Sea-Comm Inc	Carolina Beach, NC	New Hanover
WWIL	AM	1490	C	Gospel	Wilmington, NC	Wilmington, NC	07/02/2003	170	Worrell, John G	Shallotte, NC	Brunswick
WWIL	FM	90.5	NC	Christian	Wilmington, NC	Wilmington, NC	07/02/2003	170	Family Radio Network	Wilmington, NC	New Hanover
WWQQ	FM	101.3	C	Country	Wilmington, NC	Wilmington, NC	07/02/2003	170	Family Radio Network	Wilmington, NC	New Hanover
WWTB	FM	104.1	C	Nws/Tlk/Inf	Wilmington, NC	Wilmington, NC	07/02/2003	170	Cumulus Broadcasting Inc	Wilmington, NC	New Hanover
WWTB	FM	104.1	C	Nws/Tlk/Inf	Wilmington, NC	Wilmington, NC	07/02/2003	170	Sea-Comm Inc	Swansboro, NC	Onslow

Number of Stations in Geographic Market 25

"C" - Commercial Station; "NC" - Non Commercial Station "p" indicates pending sale to owner listed

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(c) BIA Financial Network, Inc.



Graham Brock, Inc. - Broadcast Technical Consultants

WBNE Proposed
 Latitude: 34-25-04 N
 Longitude: 077-43-21 W
 ERP: 11.00 kW
 Channel: 229C3
 Frequency: 93.7 MHz

WBNU CP
 Latitude: 34-03-02 N
 Longitude: 077-57-20 W
 ERP: 35.00 kW
 Channel: 279C2
 Frequency: 103.7 MHz

WLTT
 BLH-19930628KA
 Latitude: 34-02-50 N
 Longitude: 078-16-12 W
 ERP: 6.00 kW
 Channel: 292A
 Frequency: 106.3 MHz

WWTB CP
 Latitude: 34-43-03 N
 Longitude: 077-16-57 W
 ERP: 3.90 kW
 Channel: 281A
 Frequency: 104.1 MHz

WUIN
 BLH-19951109KC
 Latitude: 34-03-02 N
 Longitude: 077-57-20 W
 ERP: 5.60 kW
 Channel: 294A
 Frequency: 106.7 MHz

WBNE 3.16 mV/m

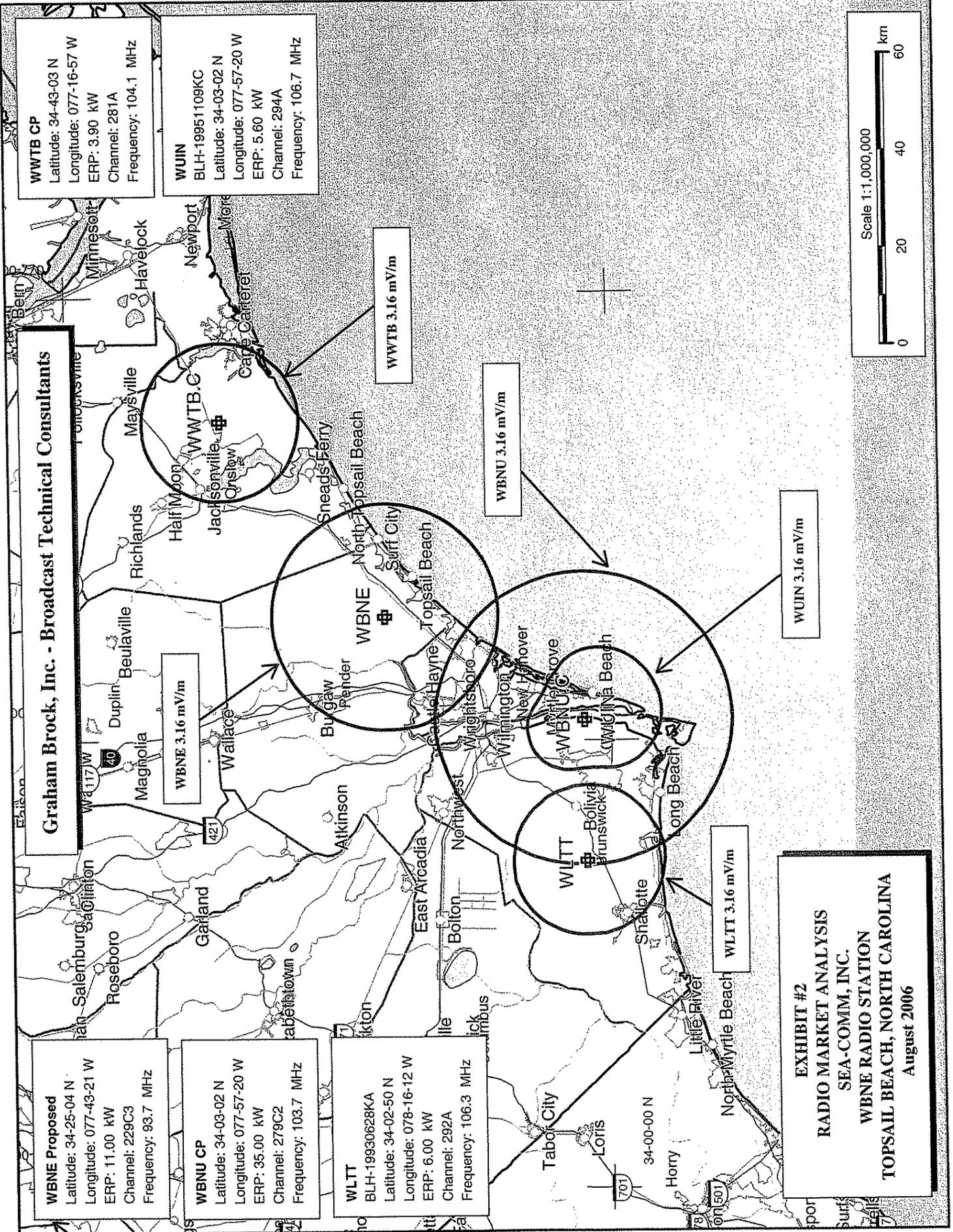
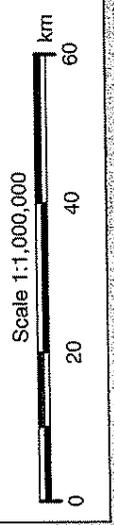
WWTB 3.16 mV/m

WBNU 3.16 mV/m

WUIN 3.16 mV/m

WLTT 3.16 mV/m

EXHIBIT #2
RADIO MARKET ANALYSIS
SEA-COMM, INC.
WBNE RADIO STATION
TOPSAIL BEACH, NORTH CAROLINA
 August 2006



RADIO MARKET ANALYSIS
SEA-COMM, INC.
WBNE RADIO STATION
TOPSAIL BEACH, NORTH CAROLINA
August 2006

EXHIBIT #4

Tabulation of Stations in Radio Market

AM Stations

WAAV	980 kHz	Leland, North Carolina
WMYT	1180 kHz	Carolina Beach, North Carolina
WLSG	1340 kHz	Wilmington, North Carolina
WWIL	1490 kHz	Wilmington, North Carolina

Total AM Stations - 4

FM Stations

WDVV	Ch 209A	Wilmington, North Carolina
* WBNE	Ch 229C3	Topsail Beach, North Carolina
WMNX	Ch 247C1	Wilmington, North Carolina
WGNI	Ch 274C1	Wilmington, North Carolina
WRQR	Ch 283A	Wilmington, North Carolina
* WBNU	Ch 279C2	Wrightsville Beach, North Carolina

Total FM Stations - 6

GRAND TOTAL OF STATIONS CONSIDERED IN STUDY - 10

- * Subject station.
- + Station provides city grade coverage to market.

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

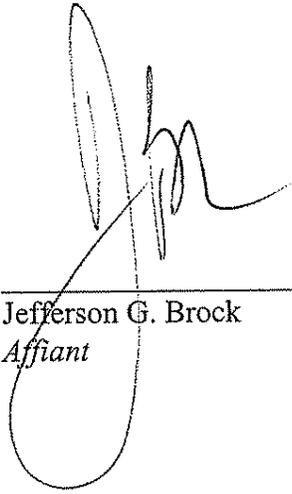
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Sea-Comm, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 25th day of August 2006.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 25th day of August 2006.*



Notary Public, State of Georgia
My Commission Expires: September 3, 2007

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-16
Table of Allotments,)	RM-11143
FM Broadcast Stations.)	RM-11295
(La Grange, Richlands, Shallotte, Swansboro,)	
Topsail Beach, and Wrightsville Beach,)	
North Carolina ¹))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: January 4, 2006

Released: January 6, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* (“*Notice*”)² issued in response to a Petition for Rule Making filed on behalf of Sea-Comm, Inc. (“*Petitioner*”) licensee of Stations WBNU, Shallotte, North Carolina; WWTB, Topsail Beach, North Carolina; and WBNE, Wrightsville Beach, North Carolina. *Petitioner* filed comments and reply comments. Conner Media Corporation (“*Conner*”) filed “*Comments and Counterproposal*” (“*Counterproposal*”) and reply comments. Several other responsive pleadings were filed. Subsequently, both *Petitioner* and *Conner* (“*Joint Parties*”) submitted a settlement agreement entitled “*Resolution of Rulemaking Proceeding*” (“*Joint Resolution*”) which proposed granting *Conner*’s *Counterproposal*.³ For the reasons stated below, we grant *Conner*’s *Counterproposal* and dismiss *Petitioner*’s *Petition for Rule Making*.

2. In its *Petition for Rule Making*, *Petitioner* proposed to upgrade Channel 279C3, Station WBNU, to Channel 279C2, reallocate Channel 279C2 from Shallotte to Wrightsville Beach, North Carolina, and modify the Station WBNU license accordingly. To accommodate the Station WBNU changes, *Petitioner* proposed to downgrade Station WWTB from Channel 280C3 to Channel 281A, reallocate Channel 281A from Topsail Beach to Richlands, North Carolina, and modify the license of Station WWTB accordingly. In order to assure that Topsail Beach retains a local aural transmission service, *Petitioner* proposed to upgrade Station WBNE from Channel 229A to Channel 229C3, reallocate Channel 229C3 from Wrightsville Beach to Topsail Beach and to modify Station WBNE’s license accordingly. *Petitioner*’s proposal would provide a first local aural transmission service to Richlands,

¹ La Grange and Swansboro have been added to the caption.

² *Richlands, Shallotte, Topsail Beach and Wrightsville Beach, North Carolina*, 20 FCC Rcd 1282 (MB 2005).

³ The *Joint Parties* agree that upon the grant of *Conner*’s *Counterproposal*, all pending pleadings except the *Joint Resolution*, may be dismissed without further consideration. Therefore, the reply comments of *Conner* and *Petitioner* and all pleadings filed subsequent to those reply comments but prior to the *Resolution of Rulemaking Proceeding* are dismissed, upon the grant of *Conner*’s *Counterproposal*. The pleadings filed after the reply comments include *Conner*’s motion to file a procedural response to *Petitioner*’s reply comments and the procedural response itself; *Petitioner*’s opposition to *Conner*’s foregoing motion and response; *Petitioner*’s motion to strike *Conner*’s reply comments; *Conner*’s opposition to the foregoing motion to strike; and *Petitioner*’s reply to that opposition.

North Carolina. Conner filed a counterproposal (RM-11295) which proposed the same three steps of Petitioner's initial Petition for Rule Making, except Conner recommended that Station WWTB move to Swansboro, North Carolina (2000 U.S. Census population of 1,426 persons), rather than Richlands (2000 U.S. Census population of 928 persons), thus providing the larger community of Swansboro with its first local aural transmission service. In addition, the counterproposal requested the upgrade of Conner's Station WZUP, La Grange, North Carolina, from Channel 284C3 to Channel 284C2. After the record was closed, Petitioner and Conner filed their Joint Resolution that proposed granting Conner's counterproposal.

3. The Joint Resolution asks that Petitioner's Petition for Rule Making be dismissed and that Conner's Counterproposal be granted. The Joint Parties explain that Petitioner's decision to support Conner's Counterproposal was unilateral and did not result from any negotiations or discussions between the parties or their representatives. Each of the Joint Parties has submitted a declaration under penalty of perjury explaining that no consideration has been paid or promised to Petitioner to induce its concurrence with Conner's Counterproposal.⁴ The downgrade of Channel 280C3, Station WWTB to Channel 281A and the reallocation of Channel 281A to Swansboro, North Carolina, would provide Swansboro with its first local aural transmission service. In their Joint Resolution, Petitioner and Conner made the three foregoing reallocation requests for Stations WBNU, WWTB, and WBNE pursuant to Section 1.420(i) of the Commission's rules,⁵ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁶ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.⁷

4. We find that reallocation Channel 281A, Station WWTB, from Topsail Beach to Swansboro, North Carolina, would result in a preferential arrangement of allotments under the FM allotment priorities because it would provide the first local aural transmission service to Swansboro (priority (3) of the FM allotment priorities).⁸ This would not deprive Topsail Beach of its only local aural transmission service, because Station WBNE will move to Topsail Beach to replace Station WWTB. Further, a total net gain in radio service to 145,190 persons would result from the three changes in community of license we grant in this proceeding. Swansboro, North Carolina is an incorporated town to which an FM allotment may be made. Since the proposed Channel 281A facility at Swansboro would provide a 70 dBu contour over 64.6 percent of the Jacksonville, North Carolina

⁴ These declarations comply with 47 C.F.R. § 1.420(j).

⁵ 47 C.F.R. § 1.420(i).

⁶ See *Modification of FM and TV Authorizations to Specify a New Community of License*, ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁷ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁸ *Community of License* does not provide for a party to seek a change in community of license of a station licensed to another party. In this situation, the Petitioner has agreed to the modification of its Station WWTB as recommended by Conner in its Counterproposal.

Urbanized Area, the Joint Parties were required to provide a *Tuck* showing that Swansboro is sufficiently independent of the Jacksonville, North Carolina Urbanized Area, that the proposal to relocate Station WWTB to Swansboro deserves credit for providing the first local service to Swansboro.⁹ Conner submitted a *Tuck* analysis in its Counterproposal that demonstrates that Swansboro is independent of the Jacksonville Urbanized Area. This analysis meets a clear majority of the eight *Tuck* factors, as required by Commission precedents.¹⁰ Conner states that Swansboro is self-governed and also has its own town manager, levies its own property tax, provides its own police and fire departments, rescue squad and sewer and water services. In addition, Swansboro has a weekly newspaper published in Swansboro, its own zip code, numerous commercial establishments, and several health facilities. Therefore, in accordance with the provisions of Section 1.420 (i) of the Commission's rules,¹¹ we modify the licenses of Stations WBNU, WWTB, WBNE as requested and grant the Joint Parties' Joint Resolution. Pursuant to Section 1.420(g)(3) of the Commission's rules,¹² we also grant the Joint Parties' request to upgrade Channel 284C3, Station WZUP, to Channel 284C2 at La Grange, North Carolina. In addition, we shall condition the commencement of service on Channel 281A by Station WWTB at Swansboro, on the commencement of service on Channel 229C3 by Station WBNE at Topsail Beach, to avoid any disruption of service of local service to Topsail Beach.

5. Consistent with the technical requirements of the Commission's rules, Channel 279C2 can be allotted to Wrightsville Beach, North Carolina, utilizing coordinates of 33-59-56 NL and 77-54-35 WL, with a site restriction of 25.4 kilometers (15.8 miles) southwest of Wrightsville Beach; Channel 229C3 can be allotted to Topsail Beach, North Carolina, utilizing coordinates of 34-25-37 NL and 77-38-33 WL, with a site restriction of 7.0 kilometers (4.3 miles) north of Topsail Beach; and Channel 281A can be allotted to Swansboro, North Carolina, utilizing coordinates of 34-42-41 NL and 77-16-07 WL, with a site restriction of 13.9 kilometers (8.7 miles) west of Swansboro. Lastly, Channel 284C3 can be upgraded to Channel 284C2 at La Grange, North Carolina, utilizing coordinates of 35-07-39 NL and 77-42-59 WL, with a site restriction of 20.9 kilometers (13.0 miles) south of La Grange.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

7. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective February 21, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the

⁹ *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *see also Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (a reallocation proposal that seeks a preference for providing a first local aural transmission service to a community must submit a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area.)

¹⁰ *See, e.g., Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095, 1096 (MMB 1996).

¹¹ 47 C.F.R. § 1.420(i).

¹² 47 C.F.R. § 1.420(g)(3).

communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
La Grange, North Carolina	284C2
Shallotte, North Carolina	292A
Swansboro, North Carolina	281A
Topsail Beach, North Carolina	229C3
Wrightsville Beach, North Carolina	279C2

8. IT IS FURTHER ORDERED that the foregoing Resolution of Rulemaking Proceeding IS GRANTED.

9. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Sea-Comm, Inc. IS DISMISSED as requested.

10. IT IS FURTHER ORDERED, That the Counterproposal submitted by Conner Media Corporation IS GRANTED.

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Sea-Comm, Inc. for Station WBNU(FM), Shallotte, North Carolina, IS MODIFIED to specify operation on Channel 279C2 at Wrightsville Beach, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

12. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Sea-Comm, Inc. for Station WWTB(FM), Topsail Beach, North Carolina, IS MODIFIED to specify operation on Channel 281A at Swansboro, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may not be conducted in accordance with 47 C.F.R. Section 73.1620 until Station WBNE(FM) is operating on Channel 229C3 at Topsail Beach; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

13. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Sea-Comm, Inc. for Station WBNE(FM), Wrightsville Beach, North Carolina, IS MODIFIED to specify operation on Channel 229C3 at Topsail Beach, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

14. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Conner Media Corporation for Station WZUP(FM), La Grange, North Carolina, IS MODIFIED to specify operation on Channel 284C2 at La Grange, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

15. Pursuant to 47 C.F.R. Section 1.1104(3)(1), Sea-Comm, Inc., licensee of FM Stations WBNU, WWTB, and WBNE, and Conner Media Corporation, licensee of FM Station WZUP, are required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes in community of license for FM Stations WBNU, WWTB and WBNE and the upgrade in channel for Station WZUP, respectively, at the time their Form 301 applications are submitted.

16. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

17. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau