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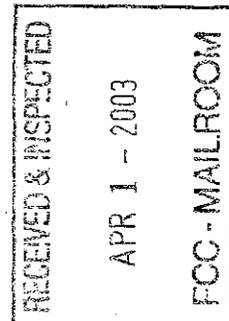
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March 31, 2003

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In re: WPXC, Hyannis, MA  
Radio Hyannis, Inc.  
Facility ID No. 54620  
Application File No: BPH-20010413AAI

Dear Counsel:

This letter is in reference to: (i) the above-captioned one-step upgrade application, filed by Radio Hyannis, Inc. ("Radio Hyannis") to upgrade FM station WPXC from Class A to Class B1;<sup>1</sup> (ii) the Informal Objection filed by AAA Entertainment Licensing LLC ("AAA") on June 25, 2001;<sup>2</sup> (iii) the staff's letter dated July 30, 2001; (iv) Radio Hyannis' August 30, 2001 technical amendment; and (v) all other related pleadings filed by the parties.

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<sup>1</sup> A "one-step" application to upgrade consists of two parts. The applicant must first show that there exists a suitable fully spaced allotment site meeting the minimum separation requirements of 47 CFR Section 73.207 with respect to all other stations, prior filed applications, and allotments. The allotment site must also provide 70 dBu coverage over the entire community of license. Second, the applicant must specify the transmitter site from it proposes for operation, which can employ the lesser spacings provided contour protection is afforded by 47 CFR Section 73.215.

<sup>2</sup> AAA Entertainment Licensing, LLC is the licensee of station WAKX (FM), Narragansett Pier, RI.

## **Radio Hyannis' Allotment Reference site**

Radio Hyannis' original application specified coordinates on Hallets Rock, which lies offshore south of Hyannis, MA. The proposal was silent to the suitability of the site. AAA's Informal Objection contends that Hallets Rock is unusable and unsuitable as an allotment reference site, having no inhabitants, electrical, or other services. On July 30, 2001, the staff sent a letter directing Radio Hyannis to file an amendment to show that the proposed allotment site is suitable for construction.

On August 30, 2001, Radio Hyannis amended its application specifying a new allotment reference site on another small offshore island. The amendment describes the new location as:

The proposed allocation site is an island that is the location of a former 65-foot high lighthouse named Bishop and Clerks Light, which stood on the island from 1858 until 1953. The island was once 5 acres in size, and sheep were pastured there. Due to natural processes, the island is smaller today and there is a skeleton day beacon installed to mark the surrounding rocks to ships

Pictures of the site were included, showing the present beacon on an island not much larger than the light that sits on it. Radio Hyannis includes a statement from a tower construction company stating that it is "very feasible to install a [382 foot self-supporting] tower at this location." Coast Guard radio equipment is said to be operational at this site. Radio Hyannis indicated that a member of the Coast Guard (which maintains the site) knew of no environmental regulations that would block the proposal.

AAA takes issue with Radio Hyannis' conclusions. AAA contends that the site is almost inaccessible, unprotected from severe weather, on an island that is shrinking in size. No indication is given as to whether any employee of the tower company that provided the certification letter ever visited the site. There is no source of available electric power, and that any suggested use of wind or solar power or alternate sources is no more than speculation. AAA states that the site is under Coast Guard jurisdiction, and Radio Hyannis has not made any application to the Coast Guard for its use. AAA states that Coast Guard is not accepting any applications for use of its offshore installations at this time. Finally, AAA hints that the cost of constructing such an operation would be prohibitive. Therefore, AAA recommends denial of the application.

### **Analysis – Use of offshore island allotment reference coordinates.**

The Commission has authorized allotment reference coordinates on offshore islands, but only upon a showing that the site is available and suitable for broadcasting. In *Table of Allotments, Atlantic City, NJ*, 57 RR 2d 1436 (1985), an offshore allotment was deleted when the proponent for the allotment failed to file a construction permit application and no other party filed an application for a fully spaced transmitter site. That allotment had been adopted only after the staff requested data concerning the federal, state, and local requirements applicable to such a location; the petitioner provided "extensive information" to show that there were no unusual problems involved. In *Table of Allotments, Oak Beach and Bay Shore, NY*, 57 RR 2d 1275 (1985) an allotment on Fire Island was accepted where the petitioner was able to secure a lease agreement to use the only available non-short-spaced transmitter site (a lighthouse). In *Table of Allotments, Clewiston, Fort Myers Villas, Indiantown, Jupiter, Key Colony Beach, Key Largo, Marathon and Naples, Florida*, 10 FCC Rcd 6548 (1995) the staff rejected an allotment reference site on Sanibel Island due to its "environmentally sensitive" nature which made the location unusable.

## Analysis – Suitability of Allotment Reference Sites.

We conclude that Radio Hyannis has not established that the proposed allotment sites are suitable for broadcast operation. Radio Hyannis has not provided sufficient information to support the feasibility of broadcast use of either Bishop and Clerks Light or Halletts Rock. Radio Hyannis' conclusions are based on little more than its assumptions concerning the sites' suitability and availability.<sup>3</sup> As stated in *Crestview and Westbay, Florida*, 7 FCC Rcd 3059 (1992):

The underlying requirement for an allotment is the reasonable expectation that a useable site is available in compliance with the minimum spacing requirements. We will not allot a channel where a properly spaced site is technically infeasible. Although the Commission generally presumes in rule making proceedings that a technically feasible site is available, that presumption is rebuttable. See *San Clemente, California*, 3 FCC Rcd 6728 (1988), *appeal denied sub nom. Mount Wilson FM Broadcasters, Inc. v. FCC*, 884 F.2d 1462 (D.C. Cir. 1989).[4]

## Conclusion.

We agree with AAA that Radio Hyannis has failed to establish that an allotment reference site on either Bishop and Clerks Island or Halletts Rock is suitable. Accordingly, AAA's Informal Objection IS GRANTED. Because an acceptable allotment reference site has not been specified, Radio Hyannis' application is unacceptable for filing.<sup>5</sup>

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<sup>3</sup> *Table of Allotments, Atlantic City, NJ, supra*. In a rulemaking proceeding, 100% of the community of license must be covered by the 70 dBu contour (*see, e.g., Vacaville and Middletown*, 4 FCC Rcd 8315, 8316 (1989), *recon. denied*, 6 FCC Rcd 143 (1991)). The tower company letter submitted by Radio Hyannis provides little assistance to demonstrate that proper coverage can be achieved since it is completely devoid of details pertinent to construction at this site. *Randolph and Brandon, VT*, 6 FCC Rcd 1760, 1764 (1989) at note 4, states:

In rulemaking proceedings to allot FM channels "the question as to the availability and suitability of an antenna site in a marginal situation is important only to the extent of whether, if a channel were to be assigned, there is a reasonable assurance that a station would be able to provide adequate service to the community...."

Here, there is an inextricable link between the feasibility of the proposed allotment site for broadcast operation and the ability to provide adequate service to the community of license. Radio Hyannis has not established whether the 70 dBu contour from a feasible operation could completely cover the community of Hyannis.

<sup>4</sup> *See also West Palm Beach, Florida*, MM Docket 87-438, DA-91-1421, 6 FCC Rcd 6975, 6976 ("[w]e will ... take into account a showing by a party that, in reality, no theoretical sites exist because of environmental, air hazard, or other similar considerations").

<sup>5</sup> Absent an acceptable allotment site, we need not consider the acceptability of the proposed transmitter site.

The staff's July 30, 2001 letter stated that "applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment." See Appendix B in the *Report and Order* in MM Docket No. 91-347, 7 FCC Rcd 5074, 57 Fed. Reg. 34872, released July 27, 1992. The July 30, 2001 letter constituted Radio Hyannis' one opportunity for corrective amendment pursuant to § 73.3522(a)(6). Therefore, application BPH-20010413AAI IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Edward P. De La Hunt  
Associate Chief, Audio Division  
Office of Broadcast License Policy  
Media Bureau

cc: Radio Hyannis