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FCC MAIL BRANCH

KVEN Broadcasting Corp.  
P.O. Box 699, Ventura, CA 93002  
April 9, 1992

Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Washington, D.C. 20554

Re: RM-7932  
RM-7933

In these comments it is our desire to support the National Association of Broadcasters' Petition, RM-7932, "To Suspend Temporarily New Commercial FM Station Allotment and Application Processing," and RM-7933, "The Petition for Comprehensive Rule Making." The Commission should also be informed that I, Robert L. Fox, have been a broadcaster for over 36 years. Further, for 26 years I have been an owner and operator of KVEN Broadcasting Corp, the licensee of KVEN and KHAY, Ventura, Ca. I serve as Chairman/CEO of the corporation. Additionally, I have served twice as Chairman of the Southern California Broadcasters Association, Secretary/Treasurer and Director of the California Broadcasters Association, and Officer and Director of the National Association of Broadcasters and Finance Chairman of the Radio Music License Committee.

With respect to RM-7932 (Temporary Suspension) I believe the present allocation system is visiting technical degradation to the FM band and economic hardship to the radio industry. It is incumbent that the Commission revisit the allocation process in order to correct the above stated facts. The facts are obvious in that there exists increased interference on the FM band. Further, the marketplace cannot support the existing stations and absolutely cannot support an increase in the number of stations. The Commission should suspend all allocations and authorizations while reviewing and reassessing the rules.

With respect to RM-7933 (New Station/Allotment Processing) we believe it is vital that the Commission begin a comprehensive review of its rules and policies governing the commercial FM radio service.

There is submitted as Exhibit A, MM Docket No. 90-174. This allocation provides Channel 279A at El Rio, CA. The allocation refers to the provisions of Section 73.213(C). What this rule permits is interference to Class B FM Station KOST in Los Angeles. KOST will suffer interference and the new allocation will cause

the interference. Further Channel 279A will suffer diminished signal coverage because of KOST.

Each time an allocation is made using Sec. 73.213(C), interference will be caused. I do not believe this is the Commission's charge or intent. I believe the rule should be abolished. Further, all rules that allow directional FM antennas, short spacing and interference with existing stations should be rescinded or abolished.

Also, included as Exhibits B and C are letters from broadcasters that outline economic hardships caused by additional allocations to markets. Exhibit D is a covering letter and a letter from an attorney in which applicants are solicited for new allocations. The allocation to Cottage Grove, Oregon is in fact an opportunity to serve Eugene, Oregon. Eugene, Oregon is a negative cash flow radio market. Exhibit E is a copy of a letter from a media broker in which a Class A station is offered for sale for about 50% less than it sold some 2 years ago.

What the above points out is the fact that Docket 80-90 and other allocations are always made in small and medium markets. These are the markets that cannot

economically support additional stations. In many cases the existing stations are too many for specific markets.

The market where my stations are located (Oxnard/Ventura, CA) serves as an excellent example of an "over-radioed" market. In the last 6 months a Class A station (KXBS) sold out of bankruptcy for about one third of its purchase price about 3 years ago. This station has never been profitable. Recently, Class A station KKUR has been offered for sale for one half of its purchase price some two years ago. The station has not been profitable and this will be its third sale. By the way KXBS has been sold at least 4 times in the last few years. A class A FM, KZTR and its co-owned Class IV AM, KZTR, were time brokered to another local owner/operator about 6 months ago. The brokered stations were not profitable - it is questionable that this LMA is economically viable. Class A station KAGR, which was put on the air about a year ago, suffered financially from the day it began operating. It was sold recently to Douglas Broadcasting who is using the frequency to carry its foreign language and brokered programming heard on Douglas's Los Angeles Class A station. The frequency allocated

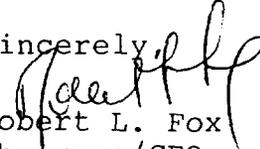
to KAGR no longer provides local programming.

The above is a scenario that is being repeated throughout the United States. We are witnessing a slow destruction of small and medium market radio. There is increased competition for listeners and advertising due to increased competition from cable operators and digital cable radio services, etc. The allocation policy of the Commission is helping to exacerbate the problems of radio broadcasters.

The establishment of economic viability studies and guidelines with respect to future allocations will bring some order to the industry.

All of the above does not preclude entry into radio ownership. There are always stations for sale. Further, once proper guidelines both technical and economic are put in place, the temporary suspension will be lifted.

We respectfully request that the Commission temporarily suspend FM allocations while reviewing the entire process. There exists precedence for such an action.

Sincerely,  
  
Robert L. Fox  
Chairman/CEO



KVEN Broadcasting Corp.  
P.O. Box 699, Ventura, CA 93002

EXHIBIT A

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

MM Docket No. 90-174

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(El Rio and Ojai, California)

RM-7055  
RM-7115

**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: September 17, 1991 Released: September 30, 1991

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* ("NPRM") in this proceeding, 5 FCC Rcd 1996 (1990), in which two mutually exclusive allotments were proposed. Susan M. Ciborosky ("Ciborosky") seeks the allotment of Channel 279A to El Rio, California, as that community's first local broadcast service. Eric R. Hilding ("Hilding") requests that Channel 279A be allotted to Ojai, California, as that community's second local FM service. Ciborosky, Miklos Benedek, Magic Broadcasting Company, and Hilding filed comments. Hilding was the only party to file reply comments.

2. Ciborosky states that her proposal to allot Channel 279A to El Rio should be given preference under priority (3) of *Revision of FM Policies and Procedures*<sup>1</sup> because the allotment of that channel to El Rio would provide that community its first local broadcast facility. She indicates that although the populations of the two communities are comparable,<sup>2</sup> El Rio has no local service but Ojai has a first local service in operation, Station KMXV(FM). Ciborosky concludes that the allotment of Channel 279A to Ojai cannot satisfy any of the Commission's allotment priorities. Ciborosky also reaffirms her interest in applying for and constructing a station if Channel 279A is allotted at El Rio.

3. In his comments, Hilding questions whether El Rio is a community for allotment purposes. In support of this position, Hilding alleges that El Rio is an unincorporated area within Ventura County, which is primarily a residential suburb of Oxnard, California. Hilding also contends that since the 1980 Census, the area known as El Rio has decreased by 30 per cent due to an alleged "annexation" by the City of Oxnard. Hilding asserts that on January 1, 1989, the Ventura County Monitoring System estimated the unincorporated area of El Rio's population to be 4,346. Hilding contends that continued annexation is like-

ly, which in turn raises a question as to the future existence of El Rio even as an unincorporated area within Ventura County. Under these circumstances, Hilding believes that the allotment of Channel 279A to El Rio would result in nothing more than a sixth FM service for Oxnard and a ninth FM service for the Oxnard/Ventura metropolitan area, and that Ciborosky is not therefore entitled to a first local service preference under priority (3). On the contrary, Hilding submits that the case should be resolved under priority (4), other public interest considerations.

4. With respect to priority (4), Hilding argues that it would further the public interest to allot Channel 279A to Ojai rather than El Rio because of Ojai's geographic isolation and its need for a second broadcast facility. Hilding alleges that El Rio's broadcast reception services are all licensed in or near the Oxnard/Ventura area which contains El Rio. Hilding contends that despite the proximity of Ojai to El Rio, Ojai is shielded from the broadcast services available to El Rio by an intervening mountain range which has elevations up to 2,000 feet, and that therefore Ojai receives service only from its own local station. Hilding submits that, to compensate for these geographical conditions, a second service in Ojai is needed to provide an alternative station during public emergencies such as fires and earthquakes. Hilding adds that since Ojai and the surrounding area are noted for tourism, an additional broadcast facility would further serve the public interest by providing public service announcements to direct tourists to points of interest.

5. Miklos Benedek filed comments expressing an interest in applying for a construction permit for Channel 279A if it is allotted to El Rio. He therefore encourages the Commission to rule in favor of the El Rio allotment.

6. Magic Broadcasting Corporation, Inc. ("Magic"), licensee of Station KMGQ-FM, Goleta, California, supports the allotment of Channel 279A to El Rio for two reasons. First, it believes El Rio should be preferred because it alone satisfies allotment priority (3). Second, it rejects Hilding's argument that El Rio does not qualify as a community. Magic contends that Hilding has presented no evidence to suggest that El Rio lacks the characteristics of a community.

7. In reply comments, Hilding again questions El Rio's status as a community in light of its eventual annexation by the city of Oxnard. He states that the annexation process is already underway and that "the City of Oxnard General Plan calls for the area known as El Rio to become part of Oxnard through annexation."

8. After carefully reviewing the record in this proceeding, we believe that the public interest would best be served by allotting Channel 279A to El Rio. First, we find that El Rio is a community for allotment purposes. Generally, we presume community status if a community is incorporated or listed in the U.S. Census. In this instance, Ciborosky's original petition for rule making stated that El Rio was incorporated and listed in the U.S. Census with a population of 6,173 persons. Although we determined that El Rio is not incorporated, we confirmed that it is listed in the U.S. Census and, therefore, did not raise

<sup>1</sup> 90 FCC 2d 88, 91 (1982). The criteria for determining the comparative preferability of a proposed FM allotment are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters.

Co-equal weight is given to priorities (2) and (3).

<sup>2</sup> El Rio has a population of 6,173; Ojai, a population of 6,816. The data are taken from the 1980 U.S. Census.

a community issue in the *Notice* in this proceeding.<sup>3</sup> El Rio is still entitled to this presumption of community status unless the presumption has been rebutted. While Hilding alleges that 30% of El Rio's area has been annexed by the city of Oxnard and the remainder of El Rio will be annexed, no documentation has been submitted to support these allegations or to indicate when future annexation would occur.<sup>4</sup> Moreover, no allegations have been made that El Rio lacks other indicia of community status. Under these circumstances, we believe that El Rio is a community for allotment purposes.

9. Second, since the parties were requested by the *Notice* to determine if alternate channels may be available for allotment to Ojai or El Rio and since no such showings were made, we must use the criteria established in *Revision of FM Assignment Policies and Procedures*<sup>5</sup> to decide whether Channel 279A should be allotted to El Rio or Ojai. Using this criteria, we note that El Rio is entitled to a first local service preference under priority (3) because it has no local radio station whereas Ojai already has one local FM station. Therefore, Channel 279A will be allotted to El Rio.<sup>6</sup>

10. A staff engineering analysis confirms that Channel 279A can be allotted to El Rio in compliance with the Commission's minimum distance separation requirements.<sup>7</sup> Since El Rio is located within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government has been obtained.

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, that effective November 14, 1991, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include the community listed below, as follows:

City	Channel No.
El Rio, California	279A

12. The window period for filing applications for Channel 279A at El Rio will open on November 15, 1991, and close on December 16, 1991.

13. IT IS FURTHER ORDERED, That the petition for rule making of Eric R. Hilding to allot Channel 279A to Ojai, California (RM7115) IS DENIED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Belford V. Lawson, III, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>3</sup> See 1988 Rand McNally Commercial Atlas at 268.

<sup>4</sup> Although Hilding claims that his allegations regarding the annexation of El Rio can be verified by contacting the city of Oxnard, the burden is on the party rebutting the presumption of community status to present such information to the Commission.

<sup>5</sup> See *supra* note 1.

<sup>6</sup> Hilding also seeks to raise what appears to be a quiet village issue by claiming that Ojai has a greater need for a second local FM service than El Rio has for a first local service. We do not agree. While Hilding has shown that a need may exist for a second local FM service at Ojai due to its isolated location, he has not shown that El Rio does not need a first local aural service. Although he claims that the residents of El Rio already

receive nine radio signals, this does not undercut their need for a first local service because it is well established that a reception service is not a substitute for a local transmission service. See, e.g., *Bartow, Georgia*, 4 FCC Rcd 6876, 6879 (1989), *recon. dismissed*, 5 FCC Rcd 442 (1990). Furthermore, quiet village issues have only been applicable to communities with populations under 1,000. Since the population of El Rio is over 6,000 persons, a quiet village issue is not appropriate.

<sup>7</sup> The coordinates for Channel 279A at El Rio are 34-14-33 and 119-12-17. Since the petition resulting in this allotment was filed prior to October 2, 1989, applicants for Channel 279A at El Rio may avail themselves of the provisions of Section 73.213(c) with respect to Station KOST(FM), Channel 278B, Los Angeles, California.



KVEN Broadcasting Corp.  
P.O. Box 699, Ventura, CA 93002

EXHIBIT B



**YUCCA VALLEY**  
**106.9 mhz**

February 4, 1992

Mr. Robert L. Fox  
NAB Director, District 24  
c/o KVEN Broadcasting Corporation  
P.O. Box 699  
Ventura, California 93002

Dear Bob:

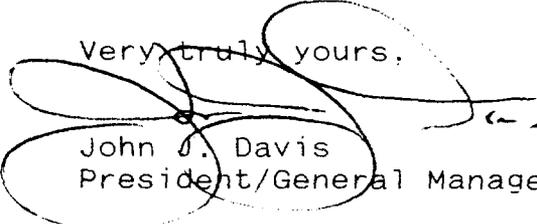
I totally support your effort to get the FCC to place a freeze on new FM allotments. Docket 80-90 has been a true disaster for our business. Charles Ferris will go down in history for doing his best to ruin FM broadcasting!

I have been involved in broadcasting all my life and it has been a dream to one day own my own station. I filed for 106.9 MHz in Yucca Valley in 1980 (this was not an 80-90 drop in) and it would have been the high desert's second FM station (Yucca Valley is just north of Palm Springs). Many delays and several years later in August, 1988 KROR went on the air and has lost money ever since. It doesn't help that there are another five stations, as a result of Docket 80-90, that have come into our market since that time. Not many of these stations in our area (Palm Springs) are making money these days.

We have enough problems from legitimate competition, such as cable, radio, TV, that, even though I'm basically a free-market kind of person, I long for the good old days when the FCC would consider the financial health of the existing stations before allotting any more stations to an area.

Anything that the NAB can do to bring sanity back to the FCC would be most welcome.

Very truly yours,

  
John J. Davis  
President/General Manager



KVEN Broadcasting Corp.  
P.O. Box 699, Ventura, CA 93002

EXHIBIT C



**CBS NETWORK**



2/12/92

Mr. Robert L. Fox  
Chairman/CEO  
KVEN Broadcasting Corp.  
P.O. Box 699  
Ventura, CA 93002

Dear Bob,

Enclosed is a draft that you can use in any way that you feel is most **beneficial** to our cause.

If there is anything else you need, or have any questions of me before you go to Washington, just let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Seehafer".

Don Seehafer

President

Seehafer Broadcasting Corp.

DS/kas  
ENC.

**SEEHAFER BROADCASTING CORP.**

Phone 414-682-0351

Box 1385 MANITOWOC, WISCONSIN 54221-1385

Case by case examples of how the 8090 docket has/or will effect current long standing community oriented radio stations.

Wausau Wisconsin:

Population of approximately 35,000

3 FM and 3 AM stations

An 8090 was allocated to Mosinee, population about 3,000; 10 miles south of Wausau. This station then went on the air in November 1991 with 25,000 watts. Not only is this station not programming a single program specifically for Mosinee, but their studios and offices are not even in Mosinee, they are in downtown Wausau.

At this time, the economic impact on me as owner of one of the FM/AM combos in Wausau has been about \$15,000 in lost revenue per month. Word is, this effect has been felt by the other two combos about as greatly.

What will this mean, of course a cutback in personnel and local originated and or full service programming cutbacks.

Just 20 miles south of Mosinee is Stevens Point, population about 20,000 with 2 FM and 1 AM liscensed to it, but new FM's went on the air recently in small communities adjacent to Stevens Point, again offering no local service to the small communities, but programming via satellite mostly with the idea they are Stevens Point stations. Now within the past month the one stand alone FM liscensed to Stevens Point went off the air, revenues dropped to a point where they could not exist, and no one wanted to buy the station.

Rochester Minnesota:

Population of approximately 50,000

4 FM and 3 AM stations

An 8090 was allocated to Stewartville, population about 5,000; seven miles south of Rochester.

A station will be going on the air there soon, and already I understand that they will be able to go 25,000 watts. Word is, no program origination will take place in Stewartville, and that studios and offices will be located in Rochester.

As owner of one of the combos in Rochester, I know the pie will be split even greater, and current operators will have to cutback in someway.

LeSueur Minnesota:

Population of approximately 3,000

This community has been served by an AM/FM station in St. Peter, population of about 8,000. For over 30 years the station has been under the same ownership, infact this owner lives in LeSueur. A live local news program originates several times daily from studios in LeSueur, and office is staffed in LeSueur.

LeSueur high school sports events have been broadcast live on this station for over 30 years, as well as many other community related events. People in this community consider the station their radio station. The business community feels exactly that way too.

An 8090 has been allocated to LeSueur, and chances are the station will go on the air, how can it survive, and what will this do to the owner of the FM/AM station that has been serving LeSueur all these years. The economic impact will be devastating.

We do not need any new radio stations in this country, we have too many already. The FCC must put a freeze on any and all new FM stations immediately.



KVEN Broadcasting Corp.  
P.O. Box 699, Ventura, CA 93002

EXHIBIT D



David J. Benjamin  
President/CEO

Community

Pacific

Broadcasting  
CORPORATION

P.O. Box 80011

Salinas, California

93912

(408) 424-1428

Telefax (408) 757-8610

KEED AM

Eugene, Oregon

KSND FM

Eugene, Oregon

KASH AM

Modesto, California

KJSN FM

Modesto, California

KKSD AM

Anchorage, Alaska

KASH FM

Anchorage, Alaska

March 25, 1992

Robert L. Fox  
CEO  
KVEN Broadcasting  
P.O. Box 699  
Ventura, CA 93001

Dear Bob:

Since you took the lead on the FM freeze board resolution, I thought you might be interested in the enclosed. I received two copies - one for our AM in Eugene and one for our FM. Mr. Hayes is obviously taking the bird shot as opposed to rifle shot approach. Since half of the stations in the Eugene-Springfield market are already not viable, it is doubtful an additional would be. Of course, there is clearly no intent here to serve the city of license, Cottage Grove. Once again, the medium and small markets will bear the brunt of the 80-90 debacle.

I believe the attached letter is illustrative of a process which serves to weaken further an already weak industry, all the while deteriorating service to the public. Vigorous and intense competition among broadcasters is one thing. An FM licensing process that hatches new stations like helpless chicks without sufficient nourishment to keep them breathing is another. I am optimistic enough to believe that at some point common sense will prevail.

Best personal regards.

Sincerely,

David J. Benjamin

DJB/ddh

Enclosure

cc: Edward O. Fritts  
Richard Novik

**RICHARD J. HAYES, JR.**

ATTORNEY AT LAW

13809 BLACK MEADOW ROAD  
GREENWOOD PLANTATION  
SPOTSYLVANIA, VIRGINIA 22553

PRACTICE LIMITED TO MATTERS BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

ADMITTED IN GEORGIA

TELEPHONE (703) 972-7941

March 20, 1992  
Advertisement

Mr. David J. Benjamin  
KEED  
Community Pacific Broadcasting  
1330 Day Island Road  
Eugene, OR 97401

Dear Dave:

The Federal Communications Commission recently released a Report and Order allocating new FM Broadcast Stations to Cottage Grove, Oregon and to Ilwaco, Washington. Since you already own a station in the Pacific Northwest, I thought you might be interested in receiving information regarding these new allotments.

The new station allotted in Cottage Grove, Oregon, channel 263A, is particularly interesting. It will be a 6,000 watt facility which will place a 1.0 mV/m signal into both Springfield and Eugene. Channel 280C3, allotted to Ilwaco, Washington will blanket the coastal area with 25,000 watts at 328 feet.

Representative "coverage maps" are enclosed to show the projected 1.0 mV/m (stereo, interference-free) contour for each of the new FM stations. The map assumes that a tower of maximum height will be located at the reference coordinates provided in the Report and Order and that each station will operate with full power. As you know, actual coverage will vary, depending upon the exact location chosen for the tower.

The FCC will accept applications for the new facility in Cottage Grove between March 31 and April 30. Applications for the Ilwaco station will be accepted between April 21 and May 21. If you would like to discuss these opportunities further, please feel free to contact me at (703) 972-2690. There is never any charge for "exploratory" discussions.

In today's economy, and in an effort to combat increased competition and eroding market share, many broadcasters are taking advantage of the FCC's relaxation of "program origination" rules. I would be happy to explain how one or all of these new FM stations may be used as a simulcast "superstation" in a manner which may help you to increase dominance in your regional market at a fraction of what you might expect it to cost. Radio, as we know it, is a whole new ballgame with different rules and opportunities. The latest of which to evolve pertains to the number of FM stations an individual can own.

For the past 10 years, I have operated my own FCC law practice and I have been involved in the broadcast industry for 27 years. I have built and managed a number of stations as well as constructed and operated an FM station of my own. Therefore, I am quite familiar with the day-to-day operations of running a successful radio facility, including selling spots. This knowledge, combined with my 10 years of FCC legal experience, enables me to assist you in ways few attorneys can. Since my offices are located 50 miles south of Washington, D.C., I am not bound by the high costs associated with the big city. This permits a substantial savings which I am able to pass along to my clients; a fact which is readily appreciated by those whom I represent.

I am routinely called upon to assist station owners and clients in all areas of broadcast law. I also provide assistance and guidance in matters such as financing, marketing, management, programming, sales, construction, operation, and budget analysis.

If you believe that this decade demands more of a generalized approach to FCC legal representation and station management ... if you believe you should get more for your money, perhaps we should talk. I look forward to hearing from you.

Sincerely,



Richard J. Hayes, Jr.

(Enclosure)

P.S. If you are interested in coastal North Carolina, there is a construction permit available for a Class C1 (100,000 watts) FM station which would serve all of the growing beach communities on the Outer Banks. This permit is available for "costs." There is also an option on real estate for the transmitter site. Feel free to call me about this opportunity.



KVEN Broadcasting Corp.  
P.O. Box 699, Ventura, CA 93002

EXHIBIT E



## MEDIA VENTURE PARTNERS

WASHINGTON, D.C. • ORLANDO • SAN FRANCISCO

February 25, 1992

Mr. Howard Anderson  
KRXY(FM)  
12381 Wilshire Blvd  
Suite 105  
Los Angeles, CA 90025

MAR - 2 - 92 MON 11:17 KRXY-LOS ANGELES

## MEDIA VENTURE PARTNERS

KKUR(FM), Oxnard-Ventura, CA  
February 25, 1992  
Page 2

KKUR is licensed to Ojai, a smaller city high in the hills above the coastal plain on which Oxnard and Ventura sit. Its dominant site (1358 feet HAAT, and 2,115 feet above sea level) allows KKUR to cover a wide area with its 3 kw equivalent ERP. A six kilowatt upgrade should be granted in a few weeks, improving coverage significantly.

The station is currently an SMN "Star Station" (Adult Contemporary) affiliate, having recently switched from an all-live presentation. KKUR is currently ranked sixth 25-54 in the metro, nearly double the station's Spring, 1991 share. Despite this very strong upward trend, the owners of KKUR wish to divest themselves of the property in order to concentrate on their other business. In 1989 they paid \$1.8 million cash for the station, and it had far less market presence, revenue, and potential than today. Nonetheless, they are realistic: today's asking price for the KKUR assets, excluding cash on hand and accounts receivable, is \$1 million. This is consistent with the recent sale of a Class A in the market for \$910,000 cash, and the owners are willing to consider some terms from a well-qualified buyer.

Your call will bring a detailed brochure.

Cordially,