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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 96-7
RM-8732
Banks and Redmond, Oregon

Dear Mr. Caton:

Transmitted herewith, on behalf of Common Ground Broadcasting, Inc. and Combined Communications, Inc., are an original and four copies of their Joint Reply Comments in the above-referenced proceeding.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for Common Ground Broadcasting, Inc.

Enclosures

cc: J. Dominic Monahan, Esquire (with enclosure)

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BEFORE THE

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WASHINGTON, D.C. 20554

APR 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM DOCKET NO.96-7
Table of FM Allotments)	RM-8732
(Banks and Redmond, Oregon))	

Directed to: Chief, Allocations Branch

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JOINT REPLY COMMENTS

Common Ground Broadcasting, Inc., ("Common Ground"), licensee of Station KDBX, Banks, Oregon, and Combined Communications, Inc. ("CCI"), licensee of Station KLRR, Redmond, Oregon, by their respective attorneys, hereby respectfully submit their Reply Comments with regard to the above-captioned proceeding. With respect thereto, the following is stated:

In response to a Petition for Rule Making filed by Common Ground on November 29, 1995, the Commission issued a *Notice of Proposed Rule Making and Order to Show Cause*, DA 96-14, released February 6, 1996 (*NPRM*). The *NPRM* proposed that the Table of FM Allotments, Section 73.202(b) of the Commission's Rules, be amended to substitute Channel 298C1 for Channel 298C2 at Banks, Oregon, and that the license of KDBX be modified to specify operation on the higher class channel. In order to accommodate this upgrade, the *NPRM* further proposed that Channel 269C2 be substituted for Channel 298C2 at Redmond, Oregon, and that the license of Station KLRR be modified to specify

operation on the new channel. On March 28, 1996, Common Ground and CCI submitted Joint Comments supporting the changes proposed in the *NPRM*.

On March 28, 1996, Hurricane Broadcasting, Inc. ("Hurricane") submitted Comments containing a counterproposal in the proceeding. In lieu of the upgrade for Station KDBX and the substitution of Channel 269C2 for Channel 298C2 at Redmond, Hurricane proposed the allotment of Channel 269C2 to Sunriver, Oregon, as its first local service. Hurricane argued that this allotment would better reflect the Commission's allotment priorities.

The Commission need not make a choice between these proposals, however. As reflected in the attached Engineering Statement, it is possible both to allot a channel to Sunriver as its first local service and to make the upgrade and substitution proposed in the *NPRM*. If the Commission were to allot Channel 224C2 to Sunriver in lieu of Channel 269C2, then there would be no conflict with the upgrade of Station KDBX on Channel 298C1 or the substitution of Channel 269C2 for Channel 298C2 at Redmond.

As set forth in the Engineering Statement, the allotment of Channel 224C2 to Sunriver would be in accordance with the Commission's Rules. Hurricane specifies use of an existing transmitter site in its Comments. While use of Channel 224C2 from that location would be slightly short-spaced to the reference co-ordinates for the Channel 224C3 allotment at The Dalles, Oregon, Hurricane's suggested tower site is fully spaced to both of the pending applications for that channel. Section 73.208(a)(1) of the Commission's Rules specifies that the

reference points to be used to determine distance separation requirements when considering petitions to amend the Table of Allotments are: “First, transmitter sites if authorized, or if proposed in applications with cut-off protection....” Both of the applications for The Dalles have such cut-off protection. Therefore, the relevant co-ordinates to be used to determine proper spacing from the Sunriver transmitter site proposed by Hurricane are the co-ordinates specified in the two pending applications. A station operating on Channel 224C2 from Hurricane’s suggested transmitter site would be fully spaced to both transmitter sites specified in The Dalles applications.

Moreover, even if an allotment of Channel 224C2 at Sunriver were required to protect the reference co-ordinates for The Dalles, the reference co-ordinates for Sunriver are fully spaced from that site. Thus, the Commission could use the Sunriver reference co-ordinates and allot Channel 224C2 to Sunriver without a site restriction. While Hurricane might prefer to use an existing transmitter site, a mere site preference does not outweigh the public interest benefits to be realized from increased service as proposed by Common Ground. *Topsail Beach and Wilmington, North Carolina*, 3 FCC Rcd. 159 (M. Med. Bur. 1988). *See also, Homerville, Lakeland, and Statenville, Georgia*, 6 FCC Rcd. 5802 (M. Med. Bur. 1991). Hurricane has not shown that the site it proposed is unique or that it would have any difficulty in finding another suitable site. Indeed, the Engineering Statement shows that there is a large area within which Hurricane and other potential applicants could find an acceptable site, which would protect not only

both The Dalles applications but also its reference point, for use of Channel 224C2 at Sunriver. Therefore, it is clear that the allotment of Channel 224C2 would be properly spaced and in full compliance with the Commission's Rules.

This proceeding involves an appropriate situation for the Commission to substitute an alternate channel at Sunriver for that requested by Hurricane. The Commission has in the past substituted alternate channels after the time has passed for comments and counterproposals when to do so would expeditiously resolve the proceeding. *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990). The Commission stated that "[a]fter the counterproposal deadline, we believe it is appropriate for a party in a proceeding to suggest alternate channels which may lead to a resolution with regard to the communities already at issue in the proceeding." *Id.* at 7610. The Commission has made clear that "[t]he purpose of the reply comment period is to allow all interested parties to respond to pleadings filed during the initial comment period and to call to the Commission's attention possible solutions to or defects in mutually exclusive requests." *Corinth, Hadley and Queensbury, New York*, 2 FCC Rcd. 3316, 3317 n. 3 (M. Med. Bur. 1987), *recon. denied*, 4 FCC Rcd 5709 (M. Med. Bur. 1989), *review denied*, 5 FCC Rcd 3243 (1990).

Where possible, the Commission's policy is to resolve apparent or superficial conflicts between FM proposals on the basis of solutions suggested in reply comments. In MM Docket No. 89-70, a petition was filed for allotment of Channel 291A to Streator, Illinois, and a counterproposal was filed for allotment

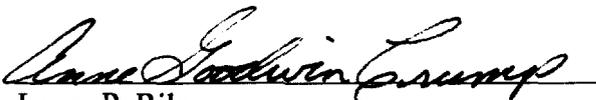
of Channel 291A to Seneca, Illinois. *Seneca and Streator, Illinois*, 5 FCC Rcd 1155 (M. Med. Bur. 1990). The petitioner, in reply comments, suggested an alternate channel for use at Seneca to avoid conflict. The Commission found that a comparative analysis of the proposal and counterproposal would be unnecessary if Channel 239A were allotted to Seneca with a site restriction of 7.6 kilometers south, and the Commission allotted Channel 239A to Seneca and Channel 291A to Streator. *See also, Endwell and Southport, New York*, 5 FCC Rcd. 1121 (M. Med. Bur. 1990); *Arcadia, Goulds, et al., Florida*, 5 FCC Rcd. 4540 (M. Med. Bur. 1990).

Indeed, not only will the Commission consider alternate channels suggested in reply comments, but the Commission's staff on its own initiative routinely investigates and implements channel substitutions to resolve allotment conflicts. *Pinewood, South Carolina*, 5 FCC Rcd. at 7611, n. 5. Accordingly, it would be entirely appropriate for the Commission to substitute Channel 224C2 for Hurricane's requested Channel 269C2 at Sunriver. This action would allow for an expeditious resolution of this proceeding. The public interest would be served by conserving the resources of the parties and the Commission and by expediting potential new service to Sunriver and improved service to Banks.

WHEREFORE, the premises considered, Common Ground and CCI respectfully request that the FM Table of Allotments be amended as set forth in the *NPRM* and support the allotment of Channel 224C2 to Sunriver.

Respectfully submitted,

COMMON GROUND BROADCASTING, INC.

By: 
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Its Attorneys

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April 12, 1996

agc/#77/repcmnt.sal

CARL T. JONES
CORPORATION

STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF JOINT REPLY COMMENTS
IN MM DOCKET NO. 96-7

I am a Graduate Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by Common Ground Broadcasting, Inc. ("Common Ground"), licensee of KDBX(FM), Banks, Oregon, and Combined Communications, Inc., licensee of KLRN(FM), Redmond, Oregon, to prepare this statement and the attached Figures in support of Joint Reply Comments in MM Docket No. 96-7.

On February 6, 1996, the Commission issued a *Notice of Proposed Rulemaking and Order to Show Cause* in response to a Petition to Amend the FM Table of Allotments filed by Common Ground. The Common Ground Petition requested that Section 73.202(b) of the FCC Rules be modified in the following manner:

	<u>Present</u>	<u>Proposed</u>
Banks, Oregon	298C2	298C1
Redmond, Oregon	275C1,298C2	275C1,269C2

On March 28, 1996, Hurricane Broadcasting, Inc., filed a conflicting counterproposal ("Hurricane Counterproposal") in the instant proceeding requesting that Channel 269C2 be allotted to Sunriver, Oregon, in lieu of Common Ground's proposed

STATEMENT OF WILLIAM J. GETZ
PAGE 2

upgrade for KDBX(FM) and channel substitution for KLRR(FM). The Hurricane Counterproposal proposes the first local service for Sunriver, Oregon.

An engineering study of all pertinent allotments and assignments and applications revealed that Channel 224C2 can be allotted to Sunriver, Oregon, with no site restriction (See the attached Figure 1).¹ Figure 2, also attached, is a map depicting the 1,388 square kilometer permissible site area in which a fully-spaced transmitter site for operation on FM Channel 224C2 could potentially be located to serve Sunriver.²

This statement and the supporting Figures were prepared by me or under my direct supervision and are believed to be true and correct.

DATED: April 12, 1996


William J. Getz

¹ The allotment reference coordinates for center-city Sunriver, Oregon, are 43° 52' 35" N.L. and 121° 27' 10" W.L.

² The Hurricane counterproposal specifies the existing KXIX(FM), Bend, OR, tower site as its reference site for Channel 269C2 at Sunriver. Considering operation on Channel 224C2, the existing KXIX(FM) tower site would be 2.6 km short-spaced to the allocation reference coordinates for Channel 224C3 at The Dalles, OR. However, from the KXIX(FM) tower site, the Sunriver facility (on Channel 224C2) would be fully-spaced to both applicants for The Dalles, OR allotment.

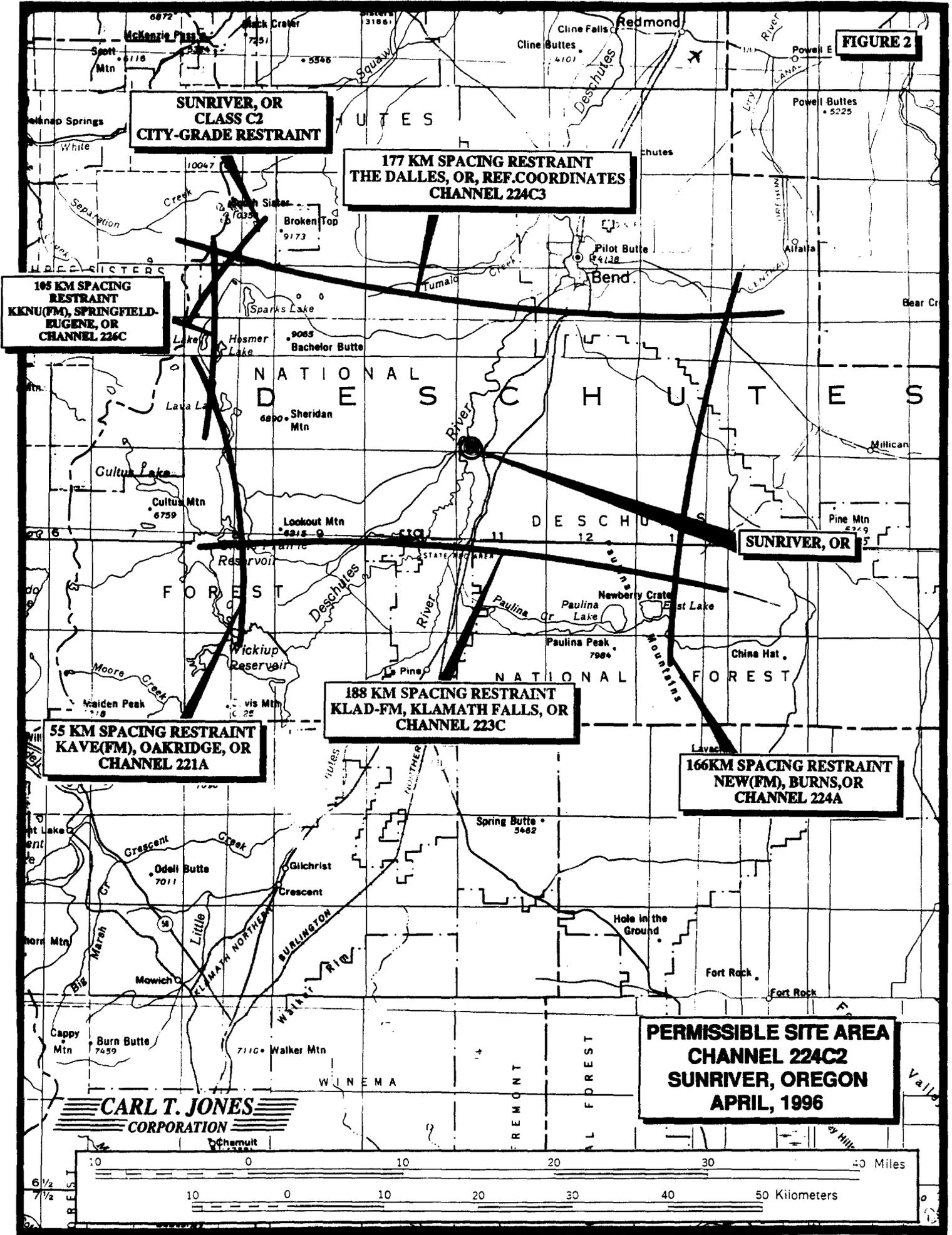
Figure 1

Study Name: new Date: 4/11/1996 Time: 15:41 Page: 1
 sun river , or Date of Data Base: 4/ 1/96
 ZONE 2
 Channel: 224C2 Section 73.207 Spacings
 Latitude: 43 52 35
 Longitude: 121 27 10
 Translators Not Included
 Nearest FOB Station or Quiet Zone: Ferndale, WA 570.93 Km 351.9 Deg.

SER	CHAN	CALL	CITY AND STATE	LATITUDE	LONGITUDE	FILE NO	STATUS	ERP	HAAT	BEAR	DIST	REQD	CLEAR
FA 221A			Oakridge	OR 43 44 18	122 26 22	-	USED	.000	0	259.4	80.86	55.0	25.86
	R	# 3 - SITE RESTRICTED											
FM 221A	KAVE		Oakridge	OR 43 44 34	122 26 3	BMLED-920207KA	LIC *	.580	-253	259.7	80.35	55.0	25.35
FA 222C			Portland	OR 45 29 23	122 41 47	-	USED	.000	0	331.7	204.60	105.0	99.60
	G	Coordinates updated from LIC record			BLH4959								
FM 222C	KGON		Portland	OR 45 29 20	122 41 40	BLH-900820KF	LIC	100.000	386	331.7	204.45	105.0	99.45
FA 223C			Klamath Falls	OR 42 5 51	121 37 58	-	USED	.000	0	184.3	198.16	188.0	10.16 CLOSE
	G	Coordinates updated from LIC record			BLH850916KO								
FM 223C	KLADFM		Klamath Falls	OR 42 5 50	121 37 59	BLH-891205KA	LIC	63.000	653	184.3	198.20	188.0	10.20 CLOSE
FA 224C3			Newport	OR 44 45 22	124 2 54	-	VACANT	.000	0	296.2	228.99	177.0	51.99
	R	Site Restricted-Effective Date 931213-Reserved for KCLM per D93-113-											
FA 224A			Burns	OR 43 34 22	119 7 50	-	USED	.000	0	99.5	190.14	166.0	24.14
FM 224A	NEW		Burns	OR 43 34 22	119 7 50	BPH-941122MP	CP	.750	276	99.5	190.14	166.0	24.14
FM 224A	KGBR		Gold Beach	OR 42 23 50	124 21 50	BLH-860716KF	LIC	.265	314	236.2	288.28	166.0	122.28
	G	*To Channel 224C1 per D89-346											
FM 224C3	NEW		The Dalles	OR 45 37 23	121 5 33	BPH-941213MB	APP D*	25.000	-14	8.2	196.19	177.0	19.19 CLOSE
FM 224C3	NEW		The Dalles	OR 45 38 53	121 16 43	BPH-941215MB	APP	3.700	259	3.9	197.36	177.0	20.36
FA 224C3			The Dalles	OR 45 35 42	121 10 24	-	VACANT	.000	0	6.5	192.26	177.0	15.26 CLOSE
	R	Effective 11-14-94											
FA 224C1			Gold Beach	OR 42 23 50	124 21 50	-	USED	.000	0	236.2	288.28	224.0	64.28
	R	Effective 9-24-90-Rsvd for KGBR per D89-346											
FM 226C	KKNU		Springfield-Eug	OR 44 0 5	123 6 48	BLH-900406KB	LIC	100.000	300	276.5	134.05	105.0	29.05
FA 226C			Springfield-Eug	OR 44 0 4	123 6 15	-	USED	.000	0	276.6	133.31	105.0	28.31
	G	Coordinates updated from LIC record			BLH810310AE								

END OF STUDY

FIGURE 2



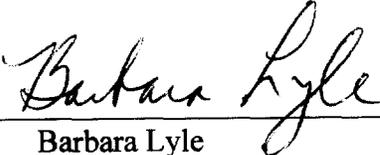
CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing Joint Reply Comments was sent this 12th day of April, 1996, by first-class United States mail, postage prepaid, to:

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