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June 13, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20054

Re: MM Docket No. 96-54
RM-8769
Responsive Pleading of Kellie K. Brown
FM Table of Allotments, Section 73.202(b)
Add Channel 268A, Ruidoso, NM

Dear Mr. Caton:

Transmitted herewith, on behalf of our client, Kellie K. Brown, are an original and four copies of her **Responsive Pleading to the Revised Counterproposal of MTD, Inc.** concerning the proposed rulemaking to modify the FM Table of allotments and add FM Channel 268A to the community of Ruidoso, New Mexico.

As a courtesy, a separate copy of this filing has been sent directly to Mr. John A. Karousos, Chief, Allocations Branch, Mass Media Bureau.

Comments or correspondence concerning these comments should be directed to Ms. Brown at the following address:

Kellie K. Brown
P.O. Box 4396
Ruidoso, NM 88345

Sincerely yours,

Timothy Z. Sawyer
Engineering Consultant to the petitioner

No. of Copies rec'd 0+4
List ABCDE

cc: Mr. John A. Karousos (courtesy copy)

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	MM Docket No. 96-54
	)	
Amendment of Section 73.202(b),	)	RM-8769
Table of Allotments,	)	
FM Broadcast Stations	)	
(Ruidoso, New Mexico)	)	

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To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

RESPONSIVE PLEADING of KELLIE K. BROWN
to the Revised Counterproposal of MTD, Inc.

Kellie K. Brown (hereafter "Petitioner"), states that she has been served by U.S. Mail on June 5, 1996 with a revised counterproposal in this proceeding by legal counsel for MTD, Inc. (hereafter "MTD"). Petitioner believes that these comments are timely filed. However, if the Commission determines that these comments are not timely filed, Petitioner specifically requests that she be allowed to respond to the revised counterproposal of MTD (motion to accept) to complete the record in this proceeding.

1. MTD in its revised counterproposal states that the proposed alternate Channel 240C at Cloudcroft is not acceptable to MTD based upon a desired transmitter site at the Buck

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Mountain electronics site. That argument is fatally flawed. The Commission has not previously allowed or considered a desired transmitter site at the allocation stage as the basis for the allocation of a specific channel unless a suitable showing has been made that there are no other sites (or channels) available. Clearly, based upon MTD's original comments, a site known as the "Wofford Electronic Site" exists as a possible application site for the Cloudcroft allocation (and indeed there may be other suitable sites as well) [1] [2]. The Wofford site has been demonstrated by the Petitioner as an acceptable site (for the purposes of station separation requirements only) in her reply comments filed on May 28, 1996 [3]. She acknowledges MTD's statement that the Wofford site was used as only a hypothetical site in its comments. However, the record must be clear that all sites are hypothetical (including MTD's desired site of Buck Mountain) until an application for a construction permit has been filed.

2. Petitioner has demonstrated that Channel 240C is an equivalent channel to Channel 268C at Cloudcroft and Channel 240C should be assigned to Cloudcroft in accordance with the Commission's current practice and polices in resolving conflicts between competing

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[1] A demonstration as to the lack of available sites at Cloudcroft has not been made by MTD, but rather a demonstration that a site does exist.

[2] The Buck Mountain Electronic site, like the Wofford Electronic site, is located on U.S. Forest Service controlled property. There have been no assurances offered by MTD that this site would ultimately be approved for use by MTD or other applicants for the Cloudcroft facility.

[3] MTD has acknowledged that Channel 240C is available at the Cloudcroft city reference point and the Wofford Electronic site., See Technical Comments of Graham Brock, Inc. at ¶ 2, Revised Counterproposal of MTD, Inc.

allocation proposals when an alternate channel exists.

3. Petitioner and Norbert Fritz have filed comments affirming their interest in the assignment of Channel 268A at Ruidoso, New Mexico. Channel 268A was selected from a number of possible channels at Ruidoso based upon the flexibility it offers to applicants in the selection of transmitter sites. It also was selected for its ability to be improved upon (station Class) should a licensee/permittee desire to do so at a later date. While we acknowledge that the ability to improve a facility at a later date is dependent on other stations, allocations and the Commission's Rules, it also offered (as a Class A allotment) the least impact on other co-channel and adjacent stations or allocations.

4. MTD has proposed as option #2 in its revised counterproposal the allotment of Channel 244C to Cloudcroft. However, this too must be rejected by the Commission. Channel 244C at Cloudcroft would require the imposition of a site restriction of 18 kilometers north of the community [4]. The Commission has repeatedly stated that it endeavors to impose the least restrictive theoretical site from the intended city of license. Clearly, the least restrictive theoretical site is that of the city reference point which is available without restriction on Channel 240C.

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[4] See Technical Comments of Graham Brock, Inc. footnote 4., Revised Counterproposal of MTD, Inc.

5. Therefore, the petitioner again proposes the following changes to the Commission's Table of FM Allotments:

	Present	Proposed
Ruidoso, New Mexico	228C3	228C3, 268A
Cloudcroft, New Mexico	---	240C

WHEREFORE, Petitioner requests that her response to the Revised Counterproposal of MTD be accepted, and urges the Commission to resolve this matter by granting of the allotment of Channel 268A to Ruidoso, New Mexico and resolving the mutual exclusivity issue between the two communities by allotting Channel 240C at Cloudcroft, New Mexico.

Respectfully submitted,

Kellie K. Brown

June 12, 1996

Kellie K. Brown

Correspondence, Comments or other matters to be directed to:

Kellie K. Brown
P.O. Box 4396
Ruidoso, New Mexico 88345

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Certification

I, Kellie K. Brown, certify that I am the petitioner in this proceeding and that I have read these comments prepared on my behalf. I believe the statements contained herein to be true and accurate to the best of my knowledge and belief.

June 12, 1996

Kellie K. Brown

Kellie K. Brown
P.O. Box 4396
Ruidoso, New Mexico 88345

I, Timothy Z. Sawyer, certify that I am the technical consultant for the petitioner in this proceeding and that I have prepared on Kellie K. Brown's behalf these comments and that I believe the facts and statements contained herein to be true and accurate.

I further certify that I have delivered a true and accurate copy(s) on Ms. Brown's behalf to :

BY HAND (or as indicated) ON June 13, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C.
(Original & 4 copies)

Vincent J. Curtis, Jr., Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Rosslyn, VA 22209
(Legal Counsel for FRITZ)
(U.S. Mail-1st Class postage prepaid)

John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
Policy and Rules Division, Mass Media Bureau
Washington, D.C.
(Courtesy Copy)

Cary S. Tepper, Esq.
Booth, Freret & Imlay, P.C.
1233 20th Street, N.W. Suite 204
Washington, D.C. 20554
(Legal Counsel for MTD)
(U.S. Mail-1st Class postage prepaid)

June 13, 1996

Timothy Z. Sawyer

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