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SEP 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

812-0474

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September 18, 1998

BY HAND DELIVERY

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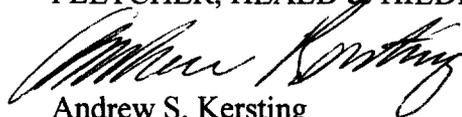
Re: Petition for Rulemaking
Princeville and Kapaa, Hawaii

Dear Ms. Salas:

Transmitted herewith on behalf of Vetter Communications Co., Inc., are an original and four copies of its Petition for Rulemaking requesting the Commission to amend the FM Table of Allotments by reallocating Channel 255C1 from Princeville, Hawaii, to Kapaa, Hawaii, which would provide the community of Kapaa with its first local broadcast service.

Should any questions arise concerning this matter, please communicate directly with this office.

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



Andrew S. Kersting
Counsel for Vetter Communications Co., Inc.

Enclosure

cc (w/ encl.): Certificate of Service (by hand)

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SEP 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations,)
(Princeville and Kapaa, Hawaii))

MM Docket No. _____
RM No. _____

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

Vetter Communications Co., Inc. ("Vetter"), permittee of Station KAWT(FM), Princeville, Hawaii, by counsel, and pursuant to Section 1.420(i) of the Commission's rules, hereby requests the Commission to institute a rulemaking proceeding for the purpose of amending the FM Table of Allotments to reallocate Channel 255C1 from Princeville to Kapaa, Hawaii, which would provide the community of Kapaa with its first local aural transmission service, and modify the construction permit for Station KAWT to specify Kapaa as its community of license pursuant to *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). In order to reallocate Channel 255C1 to Kapaa, Vetter proposes to (i) delete the allotment of Channel 255C1 at Princeville, Hawaii; and (ii) allot Channel 255C1 at Kapaa. Thus, Vetter proposes to amend Section 73.202(b) the Commission's rules as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Princeville, Hawaii	255C1, 260C1	260C1
Kapaa, Hawaii	- - -	255C1

In support of this request, the following is stated:

The city of Kapaa, Hawaii, is a census designated place located in Kauai County, on the Island of Kauai. Kapaa has a 1990 U.S. Census population of 8,149. Kapaa has its own fire department, post office, public library, and an Army National Guard facility.¹ In addition, Kapaa is served by 11 governmental service organizations, including its own waste water treatment plant. Kapaa also has its own elementary school, an intermediate and high school,² and one vocational school.

With respect to commercial establishments, the local yellow pages reflect that the community of Kapaa has five banks,³ 18 hotels/motels, resorts, and bed & breakfasts, 19 restaurants, eight grocery stores, three pharmacies, four movie theaters, and three gas stations. Kapaa also has 11 boating establishments, a department store, a sporting goods store, three bookstores, and a variety of other commercial establishments, including seven hair salons, six appliance stores, five home furniture stores, four housewares stores, 16 home and garden retail stores, and three hardware stores.

¹ Unless otherwise indicated, all of the information contained herein regarding the community of Kapaa has been obtained off the Internet by using the search engine "Yahoo - Yellow Pages."

² Internet site: AOL Netfind (www.aloha.net/hol/testimonials/kapaa_webpgs.html).

³ Internet site: AOL Netfind (netfind.switchboard.com/bin/cgidir.dll *et al.*).

With respect to medical facilities and services, Kapaa has its own hospital, an emergency ambulance service, at least three practicing physicians, three mental health facilities, four eye care clinics, three dentists, six chiropractic clinics, and two physical therapists.

The community of Kapaa also is served by 18 churches and other religious organizations, two children and youth organizations, and five child care facilities.

The city's recreational facilities include a public swimming pool and a health club.

As demonstrated in the attached Engineering Statement of John J. Mullaney, the coordinates of the proposed transmitter site satisfy the minimum distance separation requirements with respect to all known licenses, construction permits, pending applications, and pending rulemaking proceedings. Moreover, there is a wide area in which a transmitter site may be located in compliance with the required spacing provisions of Section 73.207 of the rules.

Station KAWT's present community of license, Princeville, Hawaii, has a 1990 Census population of 1,244 persons. Because the community of Princeville currently has two FM channels allotted to it, the reallocation of Channel 255C1 would leave Princeville with a first local and full-time service. Moreover, as indicated above, Kapaa has a substantially larger population than Princeville -- 8,149 persons to 1,244 persons -- which demonstrates that the proposed reallocation of Channel 255C1 would serve the public interest because it would result in providing a first local broadcast service to a larger community without removing the sole local service from Princeville.

Furthermore, as demonstrated in the attached engineering statement, if the proposed reallocation of Channel 255C1 to Kapaa is granted, Princeville will continue to receive service from a minimum of eight FM stations (including Channel 255C1 at Kapaa) and two AM stations. Therefore, the community of Princeville will continue to be well served. *See Temple and Taylor,*

Texas, 12 FCC Rcd 13755, 13756 ¶3 (Chief, Allocations Branch 1997) (proposed reallocation would not create any underserved areas where the loss area would continue to receive service from a minimum of four FM and two AM stations).

Finally, because Kapaa is neither within nor near an urbanized area, the proposed reallocation of Channel 255C1 to Kapaa raises no question concerning a *de facto* reassignment to a larger metropolitan area. *Cf. Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10354 (Mass Med. Bur. 1995) (70 dBu coverage of 50% or more of an urbanized area raises concerns regarding the validity of local service preference claims).

As demonstrated herein, the proposed reallocation of Channel 255C1 to Kapaa will provide the community with its first local broadcast service. Thus, Vetter's proposal presents a preferential reallocation plan under the third priority set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92, n.8 (1982).⁴ If this petition requesting the reallocation of Channel 255C1 to Kapaa, Hawaii, is granted, Vetter will file an application for a construction permit for the new facility, and, if its application is granted, will promptly construct the new facility.

⁴ The Commission has repeatedly noted that the provision of a first local service is the highest of the allocation priorities which remains unsatisfied to any significant degree. *See, e.g., Wallace, Idaho and Bigfork, Montana*, DA 98-1726, n. 3 (released September 4, 1998), citing *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094, 7096 (1990).

WHEREFORE, in light of the foregoing, Vetter Communications Co., Inc., respectfully requests that the Commission GRANT this petition for rulemaking, AMEND the FM Table of Allotments, and ALLOT Channel 255C1 at Kapaa, Hawaii, as that community's first local aural transmission service.

Respectfully submitted,

VETTER COMMUNICATIONS CO., INC.

By: 
Harry C. Martin
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703/812-0400)

September 18, 1998

c:\ask...martin\rm\kapaa.pet

JOHN J. MULLANEY
JOHN H. MULLANEY, P.E. (1994)

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MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

ENGINEERING EXHIBIT EE:

**VETTER COMMUNICATIONS COMPANY, INC.
RADIO STATION KAWT
RE-ALLOTMENT OF FM CHANNEL 255C1
FROM PRINCEVILLE TO KAPAA, HAWAII**

SEPTEMBER 17, 1998

**ENGINEERING STATEMENT IN SUPPORT OF A
PETITION FOR RULE MAKING
TO AMEND
THE FM TABLE OF ASSIGNMENTS**

**ORIGINAL
SIGNATURE**

MULLANEY ENGINEERING, INC.

ENGINEERING EXHIBIT EE:

**VETTER COMMUNICATIONS COMPANY, INC.
RADIO STATION KAWT
RE-ALLOTMENT OF FM CHANNEL 255C1
FROM PRINCEVILLE TO KAPAA, HAWAII**

TABLE OF CONTENTS:

1. Declaration of Engineer
2. Narrative Statement.
3. Figure 1, Channel Allocation Study for Ch. 255C1.
4. Figure 2, General Area Map.

MULLANEY ENGINEERING, INC.

DECLARATION

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an engineer in the firm of Mullaney Engineering, Inc., and that firm has been retained by Vetter Communications Company, Inc., to prepare the attached FM rule making.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.



John J. Mullaney

Executed on the 17th day of September 1998.

ENGINEERING EXHIBIT EE:

**VETTER COMMUNICATIONS COMPANY, INC.
RADIO STATION KAWT
RE-ALLOTMENT OF FM CHANNEL 255C1
FROM PRINCEVILLE TO KAPAA, HAWAII**

NARRATIVE STATEMENT:

I. GENERAL:

This engineering statement has been prepared on behalf of Vetter Communications Company, Inc., which presently holds a construction permit for FM Station KAWT on Ch. 255C1 at Princeville, Hawaii. The purpose of this statement is to support a request that the FM Table of Allotments be amended to re-allot Ch. 255C1 from Princeville to Kapaa, Hawaii and that the CP of KAWT be modified to specify operation at that community.

It should be noted Kapaa has no local service and, therefore, re-allotment of Ch. 255C1 would result in a First Local and First Full Time Service to a community with a population of 8,149 persons (1990 Census). Kapaa is located in Kauai County on the Island of Kauai. The community of Princeville has a population of 1,244 persons (1990 Census). Since Princeville currently has two FM Channels allotted to it the re-allotment of one FM channel would still leave Princeville with a First Local and First Full Time Service.

KAWT wishes to point out that the community of Kapaa is located just 18.3 km from its existing CP site. In addition, since no change in FM channel is requested the new operation would clearly be mutually exclusive with

its existing CP since the FCC rules require a separation of 245 km between two co-channel C1 facilities. Therefore, it is not necessary to demonstrate the availability of an additional equivalent channel in this type of proceeding in accordance with Section 1.420(g) of the rules.

It should be noted that the area in question is not within 290 kilometers (180 miles) of a U.S. Border and, therefore, foreign concurrence is not required.

II. ENGINEERING DISCUSSION:

A. Proposed Site:

The following geographic coordinates are for Kapaa, Hawaii:

Latitude: 22° 04' 42"
Longitude: 159° 19' 19"

B. Channel Allocation Study:

Figure 1 is a Channel Allocation Study from the Reference Point proposed herein which indicates the required separation in kilometers to all known Licenses, Construction Permits, Vacant Allocations, pending Applications, and pending Rule Makings. From this study it can be determined that the proposed special reference point exceeds all of the minimum separations (except to the KAWT CP). None of the stations to which a required separation is indicated on Figure 1 are located on the Island of Kauai.

Figure 2 is a map which illustrates the location of Kapaa. Because of the unique circumstances involved in Hawaii none of the other existing allotments are located close enough to preclude any portion of the

**Re-Allotment of Ch. 255C1
From Princeville to Kapaa, HI**

MULLANEY ENGINEERING, INC.

Island of Kauai. Given the theoretical maximum city grade radius for a C1 facility is 50 kilometers it is theoretically possible for the proposed tower site to be located anywhere on the Island of Kauai provided such a site has reasonable line of sight to Kapaa.

C. Other Existing Aural Services:

The communities of Kapaa and Princeville are 24 km (15 miles) apart. The standard prediction method indicates that an FM Class C1 (100 kW at 299m) facility will have a 60 dBu contour which extends 72 km (45 miles). Thus, the proposed Kapaa Class C1 allotment will continue to serve the community of Princeville with a 60 dBu contour.

The community of Princeville receives better than a 2 mV/m signal from both of the AM stations located on the Island of Kauai. Within 1.2 km (0.7 miles) of Princeville there is an operating non-commercial FM facility and a commercial FM translator. Both of which easily provide 60 dBu service. The standard prediction method indicates 60 dBu FM service is provided by the following seven FM facilities:

New	FM	CP	205C1
KKCR	FM	LIC	215A (less than 1.2 km away)
KQNG	FM	LIC	228C1 (partial)
K233AK	FM	LIC	233D (less than 1.2 km away)
KSRF	FM	PTA	240C1
KFMN	FM	LIC	245C1
KAWV	FM	CP	251C1
KAYI	FM	CP	260C1
KAUI	FM	PTA	277C1

**Re-Allotment of Ch. 255C1
From Princeville to Kapaa, HI**

MULLANEY ENGINEERING, INC.

In summary, the community of Princeville receives service from two AM facilities and eight FM facilities (including this proposed allotment). Thus, it is well served.

III. SUMMARY:

Vetter Communications Company, Inc., permittee of Radio Station KAWT requests that the FM Table of Allotments be amended to re-allot FM Channel 255C1 from Princeville, to Kapaa, Hawaii.

City	Present	Proposed
Princeville, Hawaii	255C1, 260C1	260C1
Kapaa, Hawaii	- - -	255C1

Vetter Communications believes that the proposed re-allotment which provides a First Local and First Full Time Service to Kapaa, Hawaii, will Serve the Public Interest. If re-allotted, Vetter will quickly apply for and will quickly construct the facility.

September 17, 1998.



John J. Mullaney

***** FM CHANNEL STUDY NO. 1 - MULLANEY ENGINEERING, INC. GAITHERSBURG, MARYLAND - 1-SEP-98 12:31:14 *****
 ***** LAST UPDATE: 980828 *****

KAWT	255 C1	FM	POLARIZATION	ERP (KW)	HAAT	RCANSL
KAPAA HI US				HOR PLN	BM TILT	(METER)
22.0442	159.1919	(D.MHSS)	HORIZONTAL	100.000	0.000	299.0
			VERTICAL	100.000	0.000	299.0

RE-ALLOTMENT FROM PRINCEVILLE TO KAPPA, HAWAII

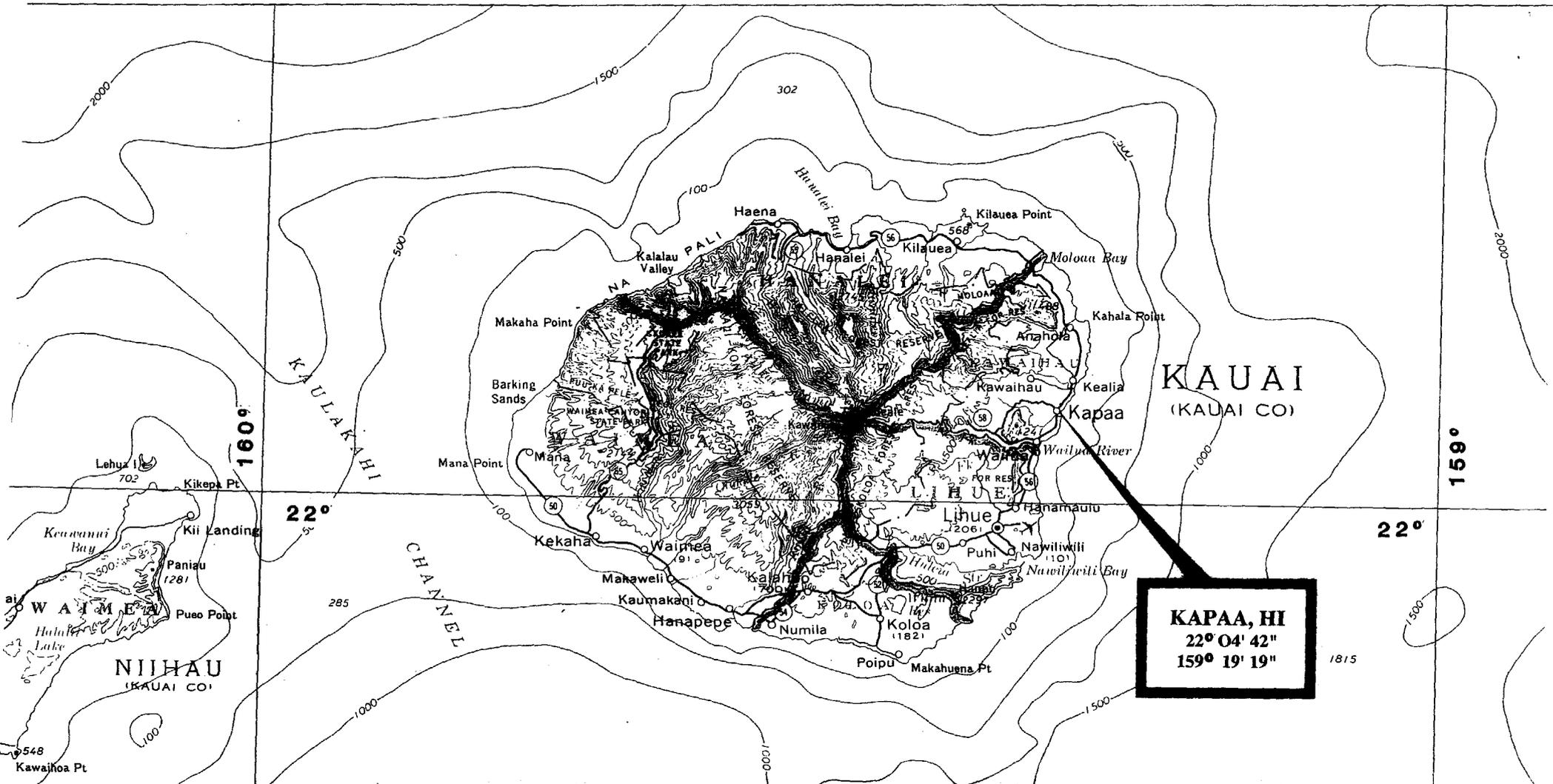
AZIMUTH		CALL	STS	FILE NUMBER	CITY	ST C	LAT (D.MHSS)	LONG	REL CHN	ERP (KW)		HAAT (M)	D I-CON (KM)	P-CON (KM)	IR (KM)	IC (KM)	REZL (KM)
FROM	TO									HORZ	VERT						
119.8	300.3		USE		Honolulu	HI A	21.1741	157.5149	2ND 253C1	H	V				174.1	82.	
332.7	152.7	KAWT	CP	BPH950119HF	Princevil	HI A	22.1330	159.2413	C0 255C1	100.H	100.V	-90			18.3	245.	S
214.8	34.7		USE		Princevil	HI A	22.0000	159.2250	C0 255C1	H	V				10.6	245.	S
120.7	301.2	KORL	LIC	BLH970418KG	Honolulu	HI A	21.2351	158.0601	3RD 258C	100.H	81.V	599D			147.2	105.	
COMMENTOne-step application																	
120.7	301.2		USE		Honolulu	HI A	21.2351	158.0601	3RD 258C	H	V	0			147.2	105.	
COMMENTReserved for KORL per one-step application BMPH-960325IC																	

THERE WERE 0 AM STATIONS WITHIN 6.43 KM (4 MI) OF THE FM REFERENCE COORDINATES

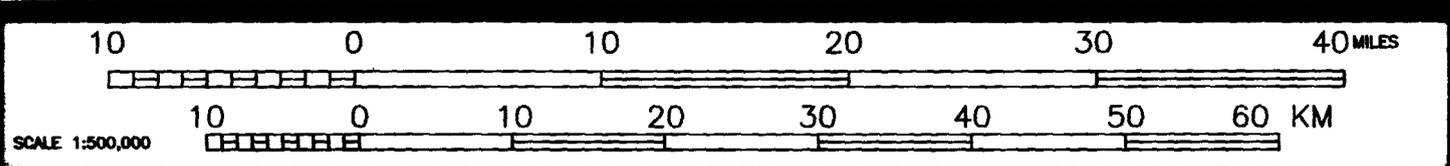
CHANNEL 255C1 ALLOCATION STUDY VETTER COMMUNICATIONS COMPANY RE-ALLOTMENT OF FM CHANNEL PRINCEVILLE TO KAPAA, HAWAII	MULLANEY ENGINEERING, INC. GAITHERSBURG, MARYLAND FIGURE 1 SEPTEMBER 1998
--	--

160°

159°



KAPAA, HI
 22° 04' 42"
 159° 19' 19"



GENERAL AREA MAP
 VETTER COMMUNICATIONS COMPANY
 RE-ALLOTMENT OF FM CHANNEL
 PRINCEVILLE TO KAPAA, HAWAII

MULLANEY ENGINEERING, INC.
 GAITHERSBURG, MARYLAND
FIGURE 2
 SEPTEMBER 1998

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 18th day of September, 1998, copies of the foregoing "Petition for Rulemaking" were hand delivered to the following:

John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, DC 20554

Ms. Kathleen Scheuerle
Allocations Branch
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Barbara Lyle