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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
)  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
)  
Thayne, Wyoming )  
\_\_\_\_\_ )

MM Docket No. 99-55  
RM - 9458

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

REPLY COMMENTS OF KISN-AM LICENSE L.P.

KISN-AM License L.P. ("KISN-AM") hereby submits its Reply Comments in response to the Comments filed by Mountain West Broadcasting ("Mountain West"), and the Comments and Counterproposal filed by Mount Rushmore Broadcasting, Inc. ("Mount Rushmore") in the above-captioned proceeding.

At the request of Mountain West, the Commission, in a Notice of Proposed Rule Making, released February 12, 1999 (DA99-319), proposed the allotment of Channel 294C1 to Thayne, Wyoming, as that community's first local aural transmission service. However, in view of the effect that the proposed allotment of Channel 294C1 would have on other local facility upgrades, on April 5, 1999, Mountain West proposed in its Comments to substitute the alternative allotment of Channel 290C1 to Thayne:

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List A B C D E

Mountain West Broadcasting has been made aware that ~~there may be some affected~~ parties by the allotment of channel 294C1 to Thayne, Wyoming as they are in the

process of planning an upgrade of facilities. With this consideration, Mountain West Broadcasting would prefer the substitution of an alternate class C1 channel to Thayne, Wyoming. If the Commission were to substitute a different channel to Thayne, Wyoming, *Mountain West would prefer channel 290C1.*

Mountain West Comments on Proposed Rule Making, filed April 5, 1999, at 1 (emphasis added).<sup>1/</sup>

In addition, on April 5, 1999, Mount Rushmore submitted its Comments and Counterproposal to allot Channel 294A at Thayne and Channel 295A at Marbleton, Wyoming,<sup>2/</sup> which would provide a first local service to these two communities instead of only one service to Thayne. For the reasons set forth more fully below, KISN-AM supports Mountain West's proposed substitution of Channel 290C1 at Thayne and, in an effort to accommodate Mount Rushmore's desire to provide an additional first local service, KISN-AM urges the substitution of an alternate Class A allotment at Marbleton.<sup>3/</sup>

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<sup>1/</sup>Mountain West noted that Channel 299C1 or Channel 231C1 also could be substituted for its initial proposal to allot Channel 294C1 at Thayne, but expressed its preference for Channel 290C1. *Id.*

<sup>2/</sup>In addition to its proposal for the allocation of a Class A channel at Marbleton, Mount Rushmore urged the Commission to reexamine its current FM allocation policy and institute a notice of inquiry to determine (i) whether its FM allocation policy satisfies the Commission's obligations under Section 307(b) of the Communications Act of 1934, as amended (the "Act"), and (ii) whether the policy has had a detrimental effect on the enhancement of minority ownership of FM broadcast stations. Mount Rushmore Comments and Counterproposal, filed April 5, 1999, at 1-5. These Reply Comments do not address Mount Rushmore's concerns regarding the Commission's allocation policies; they address only Mount Rushmore's counterproposal to allot a Class A channel at Marbleton.

<sup>3/</sup>Mount Rushmore's counterproposal to allot two first local transmission services, rather than only one, would promote the objectives of Section 307(b) of the Act of providing a fair, efficient and equitable distribution of broadcast stations among the various states and communities. 47 U.S.C. §307(b). See National Broadcasting Co. v. U.S., 319 U.S. 190, 217 (1943) (describing a goal of the Communications Act to "secure the maximum benefits of radio to all the people of the United States"); FCC v. Allentown Broadcasting Co., 349 U.S. 358, 359-62 (1955) (describing a goal of Section 307(b) to "secure local means of expression"). At the same time, Mount Rushmore's proposal also would promote the third allotment priority established in Revision of  
(continued...)

KISN-AM is the licensee of Station KOSY(FM), which operates on Channel 293C at Spanish Fork, Utah. KISN-AM is in the process of modifying KOSY to maximize the station's coverage.<sup>4/</sup> However, as set forth in the Engineering Statement prepared by W. Jeffrey Reynolds of the firm of du Treil, Lundin & Rackley Inc. (attached hereto as Exhibit A), KOSY's consulting engineer, the allotment of Channel 294C1 at Thayne would adversely affect KOSY's planned modification. Exhibit A, p. 1. Therefore, KISN-AM supports Mountain West's alternative proposal to substitute Channel 290C1 for Channel 294C1 at Thayne which, according to the attached Statement, would permit the maximization of KOSY's facilities. *Id.* at 1-2.

In addition, according to Mr. Reynolds, Mount Rushmore's proposal to allot Channel 295A at Marbleton would also adversely affect the planned modification of KOSY's facilities. Exhibit A, p. 1. However, as demonstrated in the attached Statement, there are at least 18 other channels available to allocate to Marbleton which would not conflict with the alternate channels available to Thayne, and which also would not adversely affect KOSY's planned modification.<sup>5/</sup> Mr. Reynolds suggests that, of the 18 alternative Class A channels available at Marbleton, Channel 239A would be preferable to Channel 295A because Channel 239A could be upgraded to a Class C1 facility at Mount Rushmore's reference coordinates. *Id.* at 3. Therefore, KISN-AM also supports the substitution of any of the 18 specified alternate channels at Marbleton, but specifically requests that

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<sup>3/</sup>(...continued)

FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).

<sup>4/</sup>KISN-AM is in the process of preparing an application to upgrade KOSY's facilities. As soon as KOSY's application is filed, these Reply Comments will be supplemented accordingly to reflect that filing.

<sup>5/</sup>Specifically, Mr. Reynolds had demonstrated the availability of alternate Channels 223, 224, 234, 239, 240, 241, 250, 253, 255, 263, 268, 270, 271, 274, 276, 278, 279 and 281 to provide a Class A service to Marbleton. Exhibit A, p. 2.

the Commission substitute Channel 239A in lieu of Channel 295A to accommodate Mount Rushmore's proposal for a Class A operation at Marbleton.

KISN-AM submits that the public interest would be served by these substitute allocations. The allocation of Channel 290C1 at Thayne and the allocation of Channel 239A (or one of Mr. Reynolds' other specified Class A channels) at Marbleton would enable the residents of both communities to receive their first local aural transmission service, while enabling KISN-AM to pursue its planned modification of Station KOSY. Moreover, the substitution of Channel 290C1 at Thayne would result in an increase of 1 mV/m service to over 1,100 more people than Mountain West's initial proposal to allot Channel 294C1 at Thayne. Exhibit A, p. 2. Similarly, the substitution of Channel 239A at Marbleton would, potentially, with an upgrade of the channel to Class C1 status, result in an increase of 1 mV/m service to over 6,600 more people than a Class A facility operating on either Channel 295A or Channel 239A at Marbleton. *Id.* at 3-4. Furthermore, it is the Commission's policy to eliminate conflicts between rule making petitions and station modifications and, where possible, to do so without prejudicing the affected parties. See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 8 FCC Rcd 4743, 4745 n.12 (1993). Accord Kerman, California, 11 FCC Rcd 2887 (1996). In this case, Mountain West, Mount Rushmore and KISN-AM would all be accommodated by the specified channel substitutions proposed herein.<sup>6/</sup>

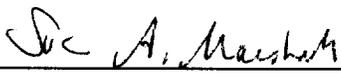
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<sup>6/</sup>As stated above, Mountain West has expressed its preference for the substitution of Channel 290C1 at Thayne. In support of the Channel 290C1 allotment, Mountain West has provided an engineering analysis demonstrating that the allotment would be in compliance with the Commission's minimum distance separation requirements.

WHEREFORE, for the reasons set forth hereinabove, KISN-AM License L.P. (1) supports the alternate proposal of Mountain West Broadcasting to allot Channel 290C1 at Thayne, Wyoming, and (2) requests the allotment of Channel 239A or any of the other Class A channels specified in the attached Engineering Statement as a Class A allocation at Marbleton, Wyoming.

Respectfully submitted,

KISN-AM LICENSE L.P.

By:   
Susan A. Marshall

Its Attorney

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April 20, 1999

**EXHIBIT A**

TECHNICAL STATEMENT  
PREPARED IN SUPPORT OF THE  
REPLY COMMENTS OF KISN-AM LICENSE L.P.  
IN THE NOTICE OF PROPOSED RULE MAKING IN  
DOCKET NO. 99-55  
THAYNE, WYOMING

This technical narrative and associated exhibits were prepared in support of the Reply Comments of KISN-AM License L.P. ("KISN-AM") in the Notice of Proposed Rule Making in MM Docket No. 99-55 ("NPRM").

At the request Mountain West, the Commission issued the NPRM which proposed the allotment of channel 294C1 at Thayne, Wyoming as that community's first local aural transmission service. However, in its Comments in the NPRM, Mountain West proposed to substitute 290C1 for channel 294C1 due to the potential for the initial channel 294C1 proposal to effect other local facility upgrades. Mountain West also indicated that channels 299C1 and 231C1 were also available as substitutes for channel 294C1. In addition, Mount Rushmore filed Comments and Counterproposal to allot 294A at Thayne and channel 295A to Marbleton, Wyoming as a first local aural transmission service.

KISN-AM is the licensee of Station KOSY(FM) on channel 293C at Spanish Fork, Utah. KISN-AM has been planning a modification of KOSY's facilities to maximize the station's coverage. However, the proposed allotment of channel 294C1 at Thayne and the proposed allotment of channel 295A at Marbleton would adversely effect the planned modification of KOSY's facilities. Therefore, KISN-AM supports (1) the substitution of channel 290C1

for 294C1 at Thayne and (2) the allotment of channel 239A at Marbleton. The proposed changes are as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Thayne, Wyoming	--	290C1
Marbleton, Wyoming	--	239A

Channel 290C1, Thayne, Wyoming

As noted above, the substitution of channel 290C1 for the proposed channel 294C1 allotment at Thayne will eliminate the adverse effect to the planned modification of KOSY's facilities. Furthermore, the channel 294C1 allotment would provide 1 mV/m (60 dBu) service to 23,672 persons, whereas the channel 290C1 allotment would provide 1 mV/m service to 24,809 persons. Therefore, substitution of channel 290C1 for channel 294C1 at Thayne would result in an increase in 1 mV/m service to 1,137 persons (4.8 percent increase).

Channel 239A, Marbleton, Wyoming

As noted above, the proposed allotment of channel 295A at Marbleton will adversely effect the planned modification of KOSY's facilities. However, it has been determined that there are at least 18 other channels available for allotment to Marbleton, namely, channels 223, 224, 234, 239, 240, 241, 250, 253, 255, 263, 268, 270, 271, 274, 276, 278, 279 and 281. Of these, channel 239A is preferred as a substitute for channel 295A as there would be no adverse effect on the planned KOSY facility modification. Furthermore, channel

239A is preferable to channel 295A as it is also upgradeable to Class C1 status at the allotment reference coordinates whereas channel 295 is not.

The attached Figure 1 is a tabulation of required separations pertinent to use of channel 239A at Marbleton. The allotment reference coordinates contained in Mount Rushmore's Comments and Counterproposal (Latitude 42°33'27" North, Longitude 110°05'58" West) have been utilized for distance calculations. As shown, the allotment reference coordinates comply with the Commission's minimum distance separation requirements contained in Section 73.207 with respect to all existing, authorized and proposed stations and allotments.

The attached Figure 2 is a tabulation of required separations pertinent to use of channel 239C1 at Marbleton. As shown, the allotment reference coordinates comply with the Commission's minimum distance separation requirements contained in Section 73.207 with respect to all existing, authorized and proposed stations and allotments.

The attached Figure 3 is a tabulation of required separations pertinent to use of channel 295C1 at Marbleton. As shown, the allotment reference coordinates do not comply with the Commission's minimum distance separation requirements contained in Section 73.207.

The upgrade of channel 239 from Class A to Class C1 status will result in 1 mV/m service to 8,578 persons, whereas the channel 239A/295A allotment would

provide 1 mV/m service to 1,879 persons. Therefore, substitution of channel 239A for channel 295A at Marbleton has the potential to increase 1 mV/m service to 6,699 persons (356 percent increase).

#### Coverage Contours

The FM predicted coverage contours were calculated from the allotment reference coordinates in accordance with the provisions of Section 73.313, except that uniform terrain was presumed in all directions.

#### Population Within 1 mV/m Contours

The population within each 1 mV/m contour was calculated using a computer program that utilizes the 1990 U.S. Census database of "population centroids". The program adds the populations of those U.S. Census designated areas whose centroid was within each service area.

#### Conclusion

The proposed allotment of channel 294C1 at Thayne and the proposed allotment of channel 295A at Marbleton would adversely effect the planned modification of KOSY's facilities. In order to eliminate the adverse effect, KISN-AM proposed (1) the substitution of channel

290C1 for 294C1 at Thayne and (2) the allotment of  
channel 239A at Marbleton.

  
W. Jeffrey Reynolds

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April 16, 1999



TECHNICAL STATEMENT  
 PREPARED IN SUPPORT OF THE  
 REPLY COMMENTS OF KISN-AM LICENSE L.P.  
 IN THE NOTICE OF PROPOSED RULE MAKING IN  
 DOCKET NO. 99-55  
 THAYNE, WYOMING

FM SEPARATION STUDY

Job Title :Proposed Ch. 239C1 Marbleton Separation Buffer 32 km  
FCC DB Date : 04/09/99  
 Channel 239C1 ( 95.7 MHz) Coordinates : 42-33-27 110-05-58

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
KYCS LIC	Rock Springs WY	BLH861015KA	236C 95.1	100. 355.0	41-29-50 109-20-36	151.8	133.39	105 CLEAR
KZJH LIC	Jackson WY	BLH890714KA	237C 95.3	100. 322.0	43-27-40 110-45-09	332.4	113.64	105 CLOSE
NEW APP	Weston ID	BPH970904ME	240A 95.9	1.7 177.0	42-07-12 111-47-13	251.2	147.33	133 CLOSE
K240CP LIC	Evanston WY	BLFT961025TB	240D 95.9	.011 DA 546.0	41-21-04 110-54-20	206.7	149.75	0 TRANS
Translator for KCSPFM, Casper, WY- Vertical Polarization Only								
NEW APP	Weston ID	BPH970904ML	240A 95.9	6.0 100.0	42-01-27 111-49-31	247.9	154.18	133 CLEAR

\*\* End of separation study for channel 239C1 \*\*

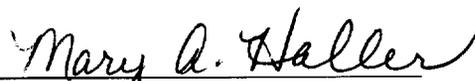


**CERTIFICATE OF SERVICE**

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Reply Comments of KISN-AM License L.P." were sent this 20<sup>th</sup> day of April, 1999, by United States mail, postage prepaid, to the following:

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President, Mountain West Broadcasting  
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Mary A. Haller