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May 24, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St. SW
Room TW-B204
Washington, D.C. 20554

RECEIVED

MAY 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Submission of two (2) separate pleadings
by Texas Grace Communications
in Allocations Proceeding on Tipton, OK
aural service matter, RM-9423,
MM Docket No. 99-23

Dear Ms. Salas,

Please find enclosed two (2) separate pleadings from Texas Grace Communications for Commission file-stamp upon receipt, and direction to the Allocations Branch proceeding, RM-9423, under MM Docket No. 99-23, on the matter of establishing aural service at Tipton, Oklahoma.

The attached (2) separate pleadings are titled:
“Essential Supplemental Comments of Texas Grace Communications”;
and, *“Motion By Texas Grace Communications For Acceptance Of Late-Filed Essential Supplemental Comments Pleading”*.

Please note that these two (2) separate pleadings are each accompanied by four copies, in addition to the signed originals, plus, “stamp-in and return copies” for our courier.

Feel free to contact the undersigned if there are any questions regarding this submission. The Secretary’s courtesy in processing this material is gratefully appreciated.

Sincerely,



Dave Garey
Proprietor, Texas Grace Communications

Enclosures (12): 2 Original Separate Pleadings, courier stamp-in and return versions, plus 4 copies of each.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED

MAY 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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|--------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MM Docket No. 99-23 |
| Table of Allotments |) | |
| FM Broadcast Stations |) | RM - 9423 |
| (Tipton, Oklahoma) |) | |

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

**ESSENTIAL SUPPLEMENTAL COMMENTS
OF TEXAS GRACE COMMUNICATIONS**

Pursuant to Section 1.415 of the Commission's Rules, Texas Grace Communications ("Texas Grace"), proprietor of station KRZB (FM) licensed to Archer City, Texas, hereby respectfully submits the following Essential Supplemental Comments of vital decisional significance to the above-captioned proceeding. In support thereof, Texas Grace states as follows:

1. SUMMARY

Texas Grace has obtained critical new information which it believes clearly evidences the petition by Good Government Radio ("GGR") for Channel 249C2 service at Tipton, Oklahoma to be marked by deception, abuse of government processes, willful effort to conceal petitioner identity, and characteristics of a "sham" filing, and therefore respectfully calls upon the Allocations Chief to appropriately deny the subject petition.

Texas Grace will also cite an amendment and effective counterproposal to the Tipton petition by the GGR petitioner seeking reservation of the Tipton channel for *not-for-profit, non-commercial service*, and award preference on such grounds. Texas Grace believes this further compels the Commission to deny the subject petition, and requests that the Commission instruct the petitioner to apply for service on the non-commercial spectrum intended for such purpose. An available C2 non-commercial channel at the proposed Tipton reference coordinates is provided the petitioner by Texas Grace.

Texas Grace has already reported that its proposed KRZB Channel 248C2 facility site was immediately obstructed by the Tipton proposal, and reiterates that its tendered 301 Application (under BMPH-990217IB), and appropriate amendment thereof, should continue to be accepted as a counterproposal within this proceeding. Amendment will be necessary in light of an unforeseen discrepancy involving apparent mis-registration of tower coordinates at this site by the structure's owner. However, Texas Grace's engineer continues to certify that KRZB's actual facilities site will provide Archer City at least the requisite city-grade coverage. (Texas Grace's submitted 301 Application was made in compliance with Commission Report and Order (under MM Docket No. 97-225, DA 98-2002), instructing KRZB to specify its new city of license and facilities site).

Texas Grace must unfortunately demonstrate that the Tipton proposal actually emanates--under pseudonym and a pattern of identity concealment--from the engineering member of the very group which has been trying to coerce Texas Grace to relinquish usage of permitted Channel 248C2, so that they can instead use the spectrum to facilitate a Dallas-Fort Worth area co-channel move-in. Since the Tipton drop-in immediately obstructs KRZB's proposed C2 facility site and service to a vital 2-county area, the subject petition, as will be demonstrated, appears clearly intended to further pressure Texas Grace to relinquish the channel.

However, Commission denial of the Tipton petition on either of the compelling grounds noted will allow Texas Grace to implement its planned KRZB Channel 248C2 service.

Through this submission, Texas Grace retracts its request for placement of Channel 275C2 at Tipton--which it initially counterproposed as a means of conflict resolution--after learning that this plan conflicts with previously counterproposed usage of Channel 276A at Vernon, Texas (the Vernon channel usage was not reflected in the FCC's database when Texas Grace made its March 15, 1999 counterproposal). This now eliminates any conflict with March 30, 1999 commenter WBAP/KSCS Operating, Ltd. and Blue Bonnet Radio, Inc. ("WBAP/Blue Bonnet"), and eliminates any connection between this proceeding and that under MM Docket 98-198.

In addition, Texas Grace renews its request to upgrade to Channel 248C1 service at Archer City, and for establishment of a first local service on Channel 282C3 in Granite, Oklahoma.

2. **BACKGROUND**

Under the *Notice of Proposed Rulemaking* (“NPRM”) captioned above (released January 22, 1999), the entity calling itself GGR proposed a first local service for Tipton, OK on Channel 249C2, with further request for channel substitutions to accommodate this drop-in (at KHIM, Mangum, OK from Channel 249A to Channel 282A, and, at the Eldorado, OK allotment from Channel 246A to Channel 245A). As a result, Texas Grace immediately found its planned facilities site for station KRZB on Channel 248C2 at Archer City, its new community of license, obstructed by the Tipton proposal. Moreover, Texas Grace’s plans to serve a vital 2-county area were now severely impeded.

Curiously, at the time the Tipton petition was submitted, a direct allocation of far superior logistical advantage for prospective Tipton service (with a less cumbersome site restriction, and no channel substitutions necessary)--and of absolutely no harm to KRZB--was readily available on Channel 275C2. Selection of the Channel 249C2 frequency for Tipton which would impede Texas Grace’s plans would, unfortunately, be later understood, in that it emanated from the personal postal box of an engineer whose group had been trying to coerce KRZB off of Channel 248 to effectuate a Dallas-Fort Worth move-in project. The whole of the Tipton proposal appears to be nothing more than a “sham” filing intended to pressure KRZB off its permitted frequency...in gross misuse of the Allocations process.

By way of tendering BMPH-990217 IB in compliance with Commission Report and Order under MM Docket 97-225, DA98-2002, Texas Grace requested that KRZB’s proposed Channel 248C2 facilities site serving Archer City be accepted as counterproposal to the Tipton NPRM, although amendment to this application is now warranted in light of a newly discovered discrepancy in FCC tower coordinates registered by the structure’s owner (to be detailed under subsequent heading, and within Engineering Statement). Texas Grace’s engineer assures the Commission that KRZB’s actual C2 facilities application site provides at least city-grade coverage to 100% of Archer City.

On March 15, 1999, the Tipton petitioner submitted a “Required Second Interest Expression”, now seeking reservation and award preference of a *not for profit, non-commercial service*--as opposed to the for-profit service previously represented on the original petition. As Texas Grace will address in subsequent section, the Tipton service now requested is more efficiently accommodated by the

non-commercial spectrum. Texas Grace believes this alteration effectively amounts to a counterproposal by the petitioner itself, which should render the initial petition as moot. (To resolve conflict and assist the petitioner, an available, non-commercial C2 channel at the Tipton petition reference coordinates has been provided by Texas Grace's engineer).

On March 30, 1999, Reply Comments were made ostensibly on behalf of WBAP/Blue Bonnet by former Commission Allocations Chief Mark Lipp, and engineering partner Paul Reynolds. In the scope of their representation of WBAP/Blue Bonnet, Lipp-Reynolds correctly pointed out that they themselves had previously counterproposed usage of Channel 276A at Vernon, TX, precluding substitution of Channel 275C2 for the Tipton service, as noted. However, Lipp-Reynolds went on to offer comments in support of the Tipton proposal, and against Texas Grace's Channel 248C2 facility application, which had nothing whatsoever to do with the interests of the named parties they purported to represent.

Texas Grace became understandably suspicious of the Lipp-Reynolds comments which were clearly prejudicial against Texas Grace's KRZB enterprise, and, with investigation by the U.S. Postal Inspector, recently learned that the Tipton drop-in actually emanates from Paul Reynolds' own post office box---despite the "Good Government Radio" pseudonym, and what appears to be extensive, deceitful effort by Reynolds to conceal his identity in the endeavor (to be treated and documented in subsequent section).

Since Reynolds and Lipp have previously tried to coerce Texas Grace/KRZB to relinquish its permitted Channel 248C2 frequency to accommodate a Dallas-Fort Worth area move-in project (on co-Channel 248), Reynolds' placement under pseudonym of a drop-in channel (249C2 at Tipton) obstructive to KRZB's service plans must raise an immediate red flag.

Texas Grace will demonstrate that, from inception, the Tipton petition has been characteristic of a "sham filing" for which the Commission must have zero tolerance. A preponderance of evidence shows the Tipton petition to be marked by a pattern of deception, blatant abuse of government processes, and willful, deliberate effort at identity concealment from the FCC, the public, and Texas Grace.

In light of such new information which clearly taints any credibility standing of the petition, coupled with subsequent petitioner request for reservation of a Tipton channel for non-commercial

service, Texas Grace respectfully believes that the Commission has the responsibility to deny the Tipton petition. Such just resolution will immediately remove construction impediment of KRZB's Channel 248C2 facility at Archer City, and also allow construction at Tipton of the requested non-commercial service.

3. TEXAS GRACE'S APPLICATION FOR ITS KRZB/ARCHER CITY, TX C2 FACILITY UNDER BMPH-990217IB SHOULD CONTINUE TO BE TREATED AS A COUNTERPROPOSAL UNDER RM - 9423, IN ACCORDANCE WITH COMMISSION RULES.

In Reply Comments from engineer Paul Reynolds ostensibly on behalf of WBAP/Blue Bonnet (submitted under Docket 99-23/RM - 9423, dated March 30, 1999), Reynolds mistakenly calls upon the FCC to "prohibit" Texas Grace's Form 301 Application for KRZB as a C2 facility licensed to Archer City (BMPH-990217IB) "from being considered as a counterproposal here".

As grounds, Reynolds cites the KRZB facility's short-spacing with the proposed Tipton drop-in on Channel 249 C2. As such, it is well within Commission Rules and Procedure to allow consideration of KRZB's facility application as a counterproposal to the Tipton NPRM, as well as to effectuate conflict resolution as part of the Allocations proceeding.

As further grounds to try and improperly squelch the referenced KRZB facility application from consideration within this proceeding, Reynolds and attorney filing partner Mark Lipp allege that the KRZB site in question fails to provide 70-dBu coverage to 100% of its new city of license, Archer City. However, the coverage discrepancy apparently results from differing methodologies in plotting/interpolating service contours within model maps employed by Texas Grace's technical advisor Lee Wheeler, and Paul Reynolds. (Wheeler, as a matter of record, certified city-grade coverage of Archer City from the KRZB site through his methodology in the submitted 301 Form).

In the interest of caution, Texas Grace nonetheless asked engineer Wheeler to review his city-grade service study, at which time a wholly new matter was discovered. As explained in Wheeler's attached Engineering Statement, it was learned that the coordinates of the tower registered with the Commission as #1052223 (as specified in the KRZB facilities application) appear to be in error...with the

actual coordinates located approximately 1.0 mile S.W. of those specified. Given this correction, the actual transmission site would be even closer to Archer City, while of greater distance from the first adjacent facility at Healdton, Oklahoma (allowing for increased ERP). Texas Grace's engineer certifies that 100% city-grade coverage of Archer City would thus be assured.

As noted on Form 301, tower #1052223 is an existing structure owned by another party, whose FCC coordinates were therefore not registered by Texas Grace. In light of the unforeseen tower coordinate discrepancy, Texas Grace believes it has good cause to make amendment to BMPH-990217IB, which shall be forthcoming. With certification of 70-dBu or greater coverage to Archer City by Texas Grace's engineer, the applied-for KRZB C2 facilities site--and amended C2 facilities application--should continue to be treated as a counterproposal under RM - 9423.

4. THE TIPTON PETITION SHOULD BE DENIED ON THE GROUNDS THE PETITIONER HAS AMENDED ITS ORIGINAL PETITION TO NOW RESERVE A CHANNEL FOR "NOT-FOR-PROFIT" NON-COMMERCIAL SERVICE, AND SOUGHT AWARD PREFERENCE, WHICH IS MORE APPROPRIATELY ACCOMMODATED BY THE NON-COMMERCIAL SPECTRUM.

In its "Request For New FM Channel Placement" dated November 16, 1998, and file-stamped as received by the FCC November 20, 1998, GGR asserted to the Commission that it is a "for profit group that will operate the new FM station at Tipton for profit", if awarded the channel. Based upon Commission acceptance of this specific assertion from GGR, the Allocations Branch issued an NPRM (RM - 9423) proposing such commercial FM band service at Tipton (on Channel 249 C2).

However, GGR affirms an entirely different scenario in its "Required Second Interest Expression" dated, and file-stamped as received by the FCC, on March 15, 1999. In this filing, GGR now states that "it won't operate for profit", and consequently seeks award preference status---via the assertion that "Good Government should get the FM radio station since it won't operate for profit".

By virtue of this March 15, 1999 filing, GGR has clearly negated the very grounds upon which it proposed---and was granted FCC consideration of---placement of a commercial FM channel at Tipton.

While initially petitioning for clearly portrayed commercial usage, the referenced GGR filing effectively counterproposes its original petition, with GGR now making specific request that the Commission reserve the Tipton channel for non-commercial service use.

Such reservation of a commercial FM band channel for a non-commercial service is contrary to Commission policy¹...except in cases where a “channel 6 television interference problem” exists, or where there is otherwise no non-commercial channel available to accommodate such a service.

However, no such preclusion of Tipton service on the channels reserved for non-commercial usage exists. In Exhibit 1 of his Engineering Statement, Texas Grace’s engineering consultant Lee Wheeler demonstrates that there is no preclusion created by the nearest “channel 6” television facility, located in Wichita Falls, Texas. Moreover, in searching the Commission’s FM database, Wheeler has determined that there are several channels reserved for non-commercial use which are readily available at GGR’s proposed allocation point, and which offer the maximum C2 facility requested.

As demonstrated, the Channel 249 allocation at Tipton initially proposed by GGR is unnecessary, since the non-commercial FM band was devised specifically to provide a voice for not-for-profit educational, religious, or other entities not operating a commercial broadcast service, who request award of such service based upon their non-commercial status.

¹In *Ashland and Eagle Point, Oregon* (MM Docket No. 91-265, RM - 7870, released November 19, 1992), reiteration is made that “Commission policy generally does not permit the reservation of a commercial channel for noncommercial educational use except where channels in the reserved portion of the FM band (Channels 201-220) are not available due to TV Channel 6 interference or foreign use of channels in the noncommercial educational band”. While the non-commercial petitioner in this cited case did succeed in receiving a requested commercial band allotment, the Commission explained that its break in policy was due solely to the fact that a commercial channel could “be allotted without prejudice to any other pending proposal” in the proceeding. Such would not be the case in the Tipton proceeding, where allotment of Channel 249C2 for non-commercial service at Tipton would needlessly prejudice KRZB from ability to construct its proposed Channel 248C2 facility licensed to Archer City, and also prejudice KRZB’s ability to upgrade to C1 service (as counterproposed).

Texas Grace therefore respectfully requests that the Commission instruct GGR to apply directly for the non-commercial service which GGR itself has stipulated, on a non-commercial channel reserved for such purpose (via Form 340), and render moot the original GGR petition. Texas Grace points out that such resolution would accomplish the most efficient processing of spectrum, and be consistent with Commission policy.

5. GGR USAGE OF THE NON-COMMERCIAL FM BAND WOULD PROVIDE AN IMMEDIATE RESOLUTION TO THE CONFLICT BETWEEN GGR AND TEXAS GRACE.

Utilization of the non-commercial channel spectrum to provide the requested non-commercial service at Tipton would provide an immediate solution to the conflict between GGR and Texas Grace. Tipton would be able to receive its C2 FM non-commercial service, as requested by GGR; and Texas Grace would be able to provide C2 service at its requested facilities site for station KRZB, licensed to Archer City, Texas, with concurrent ability to upgrade to C1 service at another site. Texas Grace believes further that such resolution would represent the most prudent and efficient management of FM spectrum allocation, preserving a very scarce commercial frequency for commercial use, while reserving for not-for-profit, non-commercial use the specific, viable spectrum channels established by the Commission for that purpose.

6. TO ASSIST WITH PROVISION OF NON-COMMERCIAL C2 FM SERVICE AT TIPTON, OK, TEXAS GRACE'S ENGINEER HAS PROVIDED A TECHNICAL STUDY IDENTIFYING AN AVAILABLE CHANNEL TO ACCOMMODATE SUCH SERVICE.

As noted, Texas Grace's engineer, Lee Wheeler, certifies that the Commission's FM database offers several channels reserved for non-commercial use at the allocation point requested by GGR, which will readily accommodate C2 FM service for Tipton. One particular channel which can immediately serve this purpose, is Channel 210 C2.

In an effort to assist GGR, or any other party who might genuinely wish to construct the Tipton service, Texas Grace has prepared a spacing study showing that Channel 210 fully meets Commission

spacing criteria for C2 service at the GGR reference coordinates (Exhibit 2). Also provided is a digitally-generated interference map (Exhibit 3), demonstrating that Channel 210 C2 would cause no prohibited interference, even as a maximum C2 facility, to co-channel station KACV-FM at Amarillo, Texas.

7. GGR'S PETITION FOR RULEMAKING HAS BEEN, FROM INCEPTION, MARKED BY WHAT TEXAS GRACE CONSIDERS TO BE A CLEAR PATTERN OF DECEPTION AND ABUSE OF GOVERNMENT PROCESS ...INCLUDING PETITIONER USAGE OF ITS U.S. POSTAL BOX SERVING AS SOLE IDENTIFYING ADDRESS UNDER FALSE PRETENSE, CONCEALING IDENTITY.

Texas Grace has recently learned that the petition for Channel 249 C2 service at Tipton has, from its origination, been characterized by what Texas Grace considers to be clearcut petitioner deception and abuse of governmental process. Specifically, Texas Grace will demonstrate that the postal box serving as sole identifying address for petitioner GGR from the date of petition submission, has been utilized under purely false pretense by the boxholder, who, as verified by the U.S. Postal Inspector, made false application regarding box usage, which served to conceal the boxholder's identity.

After justifiably becoming suspicious that the Tipton petition was characteristic of a "sham filing" (see *Background*), and, in an effort to contact petitioner directly to see if GGR might be willing to revise its petition to eliminate the conflict with KRZB---procedure generally encouraged by the Commission---Texas Grace attempted to track down the source of the petition.

Because GGR provided the FCC with nothing more than a *Gonzalez, Florida Post Office box* as sole identifying address, Texas Grace checked with telephone directory assistance, and the internet, to locate either "Good Government Radio", or the supposed entity representative "Ellinor Nelson", in the Gonzalez (Pensacola), Florida area. No listing for any such names turned up. Texas Grace next extended its directory/internet search through the entire state of Florida, with absolutely no luck.

Texas Grace therefore had good cause to contact the Gonzalez, Florida Post Office, in order to ascertain exactly *who* the boxholder responsible for the Tipton petition was, and where this person might

be found. However, the Gonzalez Postmaster explained that she was prohibited from releasing such information, due to the fact that the GGR boxholder represented on its application to the post office that it would *not* be using its postal box for business purpose. The Postmaster explained that the box was therefore considered a “personal use” box, and, as such, that the boxholder’s identity/contact information was shielded from disclosure to the public.

Since documentation showing clear business purpose usage of GGR’s “*post office box 478*” address at Gonzalez, Florida was readily available, and, in fact, on file with the FCC, Texas Grace was directed by the Postmaster and regional Florida Postal Inspector to provide this documentation to the Postal Service for investigation, and a determination on whether the boxholder’s identity would continue to be withheld.

8. THE U.S. POSTAL INSPECTOR DETERMINED THAT GGR’S “BOX 478” WAS INDEED BEING USED FOR BUSINESS PURPOSE---CONTRARY TO THE FALSE REPRESENTATION MADE TO THE POSTAL SERVICE BY THE BOXHOLDER---AND NOW IDENTIFIES THE GGR BOXHOLDER AS PAUL REYNOLDS.

Per direction of the Florida Postal Inspector, as noted, GGR’s filings to the FCC--inclusive of its original November, 1998 Petition for Rulemaking, and March, 1999 Second Interest Expression--were provided the Postal Service for investigation. In both these documents, the Tipton petitioner depicted *post office box 478/Gonzalez, FL* as its sole identifying business address, and sole address for service correspondence to and from other business entities (such as Altus Educational Foundation), law firms, members of the public, and the FCC itself. Also submitted to postal authorities was certification by the Shook, Hardy, Bacon law firm that they used the *box 478* address to serve GGR with a copy of the firm’s March 30, 1999 FCC administrative filing, and a copy of the FCC’s own NPRM under RM - 9423, accepting and transmitting to the public the referenced postal box as GGR’s sole identifying business/service address.

Formal determination that GGR was clearly using its supposed “personal use” postal box for business purpose in connection with its Tipton petition filings before the Commission....in blatant

contradiction to the false representation GGR made to the postal service in tendering application for the box....is pronounced by Tallahassee-based Postal Inspector W. G. Cunningham under Exhibit 4, in correspondence dated May 4, 1999.

Inspector Cunningham states, "The person making application identified himself as Paul Reynolds and checked no to the question "Will this box be used for soliciting or doing business with the public?"". Cunningham notes that, despite Reynolds' false representation of the postal box as a non-business box (which thereby concealed his identity under the false pretense), that Reynolds nonetheless depicted *three* business name pseudonyms for receipt of mail. Quoting from Exhibit 4, Cunningham continues, "It is interesting that Mr. Reynolds checked no to the question of soliciting or doing business with the public in view of the three business names". (The Postal Inspector identified boxholder Reynolds' business name pseudonyms as "South Communications Group", "Good Government Radio", and "Small Broadcasters").

Cunningham goes on to explain that Reynolds' concealment of his identity as GGR boxholder, was specifically accomplished by Reynolds' false assertion to the Postal Service regarding his usage of the box.

States Cunningham, "you (Texas Grace) experienced a great deal of difficulty obtaining the identity of the individual who rented the box due specifically to the fact that he checked the box indicating that he was not soliciting or doing business with the public. As you recall you were forced to present the postal service with documentation which made it obvious the box was in fact being used as a business address".

9. THE PREPONDERANCE OF EVIDENCE SHOWS THAT GGR BOXHOLDER PAUL REYNOLDS WENT TO GREAT LENGTH, AND MADE DELIBERATE EFFORT, TO CONCEAL HIS IDENTITY/INVOLVEMENT WITH THE TIPTON PETITION.

With revelation of GGR boxholder Paul Reynolds, Postal Inspector Cunningham notes in Exhibit 4 that Reynolds had to provide proof of his actual address in tendering box application, which was shown to be in *Greenville, Alabama*---where Reynolds is known to reside, and to work under the business name "Reynolds Technical Associates". Greenville, Alabama is located approximately 100 miles from

Gonzalez, Florida, where Reynolds' misused postal box has served as sole contact point for the Tipton petition.

Noteworthy here, and consistent with the apparent pattern of willful deception and identity concealment inherent to the GGR petition, is the fact that Reynolds would apply for and utilize an out-of-state post office box some 100 miles from where he ordinarily lives and works, to conduct business under the pseudonym GGR. It appears that Reynolds clearly did not want a "Greenville, Alabama" address, or, for that matter, even an Alabama address--which, in the rather small fraternity of engineers with FCC filing expertise, would likely be associated with Reynolds--on FCC filings connected to the Tipton petition. Nor did Reynolds want his name associated with the technical preparation of the Tipton petition emanating from his own postal box ...upon which it is stated that preparation was accomplished by "a person which is knowledgeable in FCC and technical matters", again concealing Reynolds' identity. (In contrast, note that Reynolds prominently lauds his "21 years" credential expertise in filing for his "legitimate" representation interests WBAP/Blue Bonnet in this proceeding).

10. THE PREPONDERANCE OF EVIDENCE SHOWS PAUL REYNOLDS TO BE SYNONYMOUS WITH THE TIPTON PETITION/PETITIONER, AND TO FUNCTION IN A SUPERVISORY CAPACITY .

Despite the substantial efforts at identification concealment, the preponderance of evidence here shows Paul Reynolds to be synonymous with the Tipton drop-in petition presently before the Commission. This petition emanates solely from the specific postal box in Reynolds' name. Any party wishing to comment on the Tipton petition has therefore been directed by the FCC to serve such comments upon the Gonzalez, FL postal box personally held by Paul Reynolds. By such circumstance, Paul Reynolds clearly supervises receipt of all comments connected to the petition, and all paper trails to petitioner GGR lead to, and must go through, Paul Reynolds. When one calls the contact telephone number given on the GGR postal box application---which, according to the Postal Inspector, is (334) 382-3239 (Exhibit 4)---the phone is answered by Paul Reynolds. The office of Paul Reynolds would therefore be reasonably considered the "headquarters" of petitioner GGR. Such authority and responsibility as exercised by Paul Reynolds in the Tipton-GGR matter is routinely and customarily

associated with the proprietor, or driving force, behind a particular enterprise. In an Allocations context, the evidence demonstrates that Reynolds is synonymous with the Tipton petition, must reasonably be considered the supervisory Tipton petitioner, and has vested interest in the proposed Tipton drop-in ...irrespective of who an ultimate Tipton licensee, if anyone, might be.

11. IN THEIR JOINTLY FILED MARCH 30, 1999 “REPLY COMMENTS”, FORMER FCC ALLOCATIONS CHIEF MARK LIPP AND ENGINEER PAUL REYNOLDS BLATANTLY CONCEALED REYNOLDS’ VESTED INTEREST IN THE TIPTON PETITION UPON WHICH THEY MADE COMMENT. AS SUCH, TEXAS GRACE BELIEVES LIPP-REYNOLDS ABUSED PROCESS, GROSSLY MISUSING THE “WBAP/BLUE BONNET” FILING TO PROMOTE THE CONCEALED INTEREST AT TIPTON ---AND TO PREJUDICE KRZB.

In their filing of March 30, 1999, former FCC Allocations Chief Mark Lipp, and engineer Paul Reynolds, made joint Reply Comments under MM Docket No. 99-23, RM - 9423, ostensibly on behalf of “WBAP/KSCS Operating, Ltd.” and “Blue Bonnet Radio, Inc.”. At least those are the two representation interests which Lipp and Reynolds certify to the Commission to be the sole scope of their interests within this Federal Administrative Proceeding.

However, such certification within this Proceeding is marred by what Texas Grace considers to be blatant fraud and omission, given Lipp-Reynolds’ failure to ever state that their Reply Comments were--as seen by a preponderance of evidence in the document itself--also apparently being made in support of/belief of the Tipton petition--which, as proven, is a vested interest of Reynolds (Exhibit 4), and which, through obstruction of KRZB service, serves to aid a joint vested interest of Lipp and Reynolds (to be treated in subsequent section).

Texas Grace notes that the specific tangent through which WBAP/Blue Bonnet relates to RM - 9423 is quite limited in scope. Solely involved was a particular conflict resolution counterproposed by Texas Grace wherein Channel 275C2 would have been substituted for the proposed Tipton service, which has been readily retracted by Texas Grace upon learning of the conflict with Channel 276A usage at

Vernon, Texas (previously counterproposed by WBAP/Blue Bonnet, as noted, so as to facilitate a Class C Dallas-area move-in).

However, further discussion presented by Lipp-Reynolds regarding other aspects of the Texas Grace counterproposal, including allegations of deficiency with KRZB's proposed Channel 248C2 facility site, and against KRZB's request to upgrade to a C1 facility, have nothing whatsoever to do with the interests of WBAP/Blue Bonnet---the interests for which Lipp and Reynolds claim to be speaking. Similarly, Reply Comment support expressed by Lipp and Reynolds for institution of the Tipton service is not at all relevant to the named interests they claim to represent here.

By example, Reynolds Reply Comment states, "Even though the proposed upgrade of KRZB to channel 248C1 at Archer City is not in direct conflict with the Blue Bonnet/WBAP counterproposal, it is in conflict with the use of channel 249C2 at Tipton". Lipp's Reply Comment states, "The Class C2 application site for KRZB, Archer City is unacceptable as a counterproposal because it does not provide a 70 dBu signal over all of Archer City" (an allegation disproven by Texas Grace's engineer). "Regardless," Lipp continues, "the Class C2 application site is also of a lower priority than a first local service at Tipton".

Such Reply Comment---while irrelevant to WBAP/Blue Bonnet interests---is, on the contrary, of clear relevance and purpose in developing the direct, vested interest of Reynolds in securing FCC allocation of the Tipton drop-in. Moreover, petition adoption, as noted, would assist Lipp and Reynolds in their documented effort to coerce Texas Grace/KRZB to relinquish permitted service on Channel 248 (by obstructing Texas Grace's ability to construct its proposed facility), to facilitate a DFW area move-in interest on co-channel 248 from Durant, Oklahoma (to be treated in the following section).

Texas Grace believes former Allocations Chief Lipp and engineering partner Reynolds grossly abused government process² within this Proceeding by so misusing a Reply Comment to facilitate a

²The Commission's own definition of "abuse of process", is "use" of "process, procedures, or rule to achieve a result which that process, or rule was not designed or intended to achieve"; or, use of a process, procedure or rule "in a manner which subverts the underlying intended purpose of that process, procedure, or rule". (See Silver Star Communications-Albany, Inc.,

wholly separate agenda on behalf of clear interests plainly hidden from the Commission, and the public. As the Allocations Branch can see, Lipp and Reynolds misused their Reply Comment filing to blatantly champion FCC adoption of the Tipton petition, and to oppose Texas Grace's facility location plans for KRZB, even though such agenda interests had nothing to do with WBAP/Blue Bonnet.

The fact that Lipp-Reynolds would not formally certify representation of the Tipton drop-in raises reasonable question as to why...and speaks to the very credibility of the Tipton petition itself. As the party whose counterproposal is being attacked by Lipp and Reynolds under this Proceeding (and whose broadcast service will be severely harmed if the proposed Tipton allocation is adopted), Texas Grace finds it especially underhanded and troubling that former Allocations Chief Lipp---of all people---would not immediately identify all interests represented and conveyed within the Lipp-Reynolds Reply Comments. Failure by Lipp-Reynolds to do so makes a mockery of the Federal Administrative and Commission Procedure at hand, and further colors the Tipton petition a "sham filing".

3 FCC Rcd 6342, 6352 (Rev Bd 1988).

By this "abuse of process" definition, GGR boxholder Reynolds clearly subverted the process (and rule) affording privacy protection for "personal use" postal box holders, under the false pretense affirmation made to the U.S. Postal Service that he would not be conducting business out of the box used as GGR's sole identifying business address....thereby accomplishing identity concealment through such process abuse. Reynolds and Lipp both appear to subvert process (and rule of disclosure) by hiding from the Commission Reynolds' vested interest in the Tipton petition, in their jointly filed March 30, 1999 Reply Comments. Here, the filing ostensibly for WBAP/Blue Bonnet was misused to actually propagate support for the concealed Tipton drop-in interest, and to subsequently try and dissuade Commission acceptance of Texas Grace's counterproposal for the KRZBC2 facilities site (which would aid Lipp-Reynolds' joint interest at Durant, Oklahoma)--interests which had absolutely nothing to do with the party they certified to represent before the Commission.

The improprieties characteristic of a "sham filing" which have marred the Tipton petition from inception seem to show profound abuse of Allocations process, inasmuch as a change in the Table of Allotments is sought under an apparent false pretense, obstructing an existing permittee and thereby incubating the concealed DFW area move-in interest of Lipp-Reynolds at KLAJ Durant, OK.

12. GGR BOXHOLDER PAUL REYNOLDS, ALONG WITH FORMER FCC ALLOCATIONS CHIEF LIPP, HAVE A HISTORY OF ATTEMPTING TO COERCE TEXAS GRACE TO ABANDON ITS PERMITTED SERVICE ON CHANNEL 248, SO THAT LIPP-REYNOLDS COULD FACILITATE A DFW AREA MOVE-IN.

The interest of Paul Reynolds in wresting Texas Grace away from Channel 248C2 was first made known to Texas Grace in September of 1996---amazingly, one month *before* the initial construction permit was even issued to Texas Grace. Reynolds, along with Lipp, and KLAQ (FM) Durant, OK proprietor Jim Stansell, had a plan to utilize Channel 248 co-channel station KLAQ to facilitate a move-in to the Dallas-Fort Worth area. To accomplish this, the consortium needed Texas Grace to relinquish usage of Channel 248C2; move to a different facilities site; and drop to a C3 power class. The Commission should note that these precise requests are enumerated by Lipp (with engineering shown by Reynolds) in a letter to Texas Grace's counsel dated September 10, 1996, included as Exhibit 5. In fact, this group was so zealous to remove Texas Grace from Channel 248, that Texas Grace was first offered \$250,000, and then one-half million dollars (Exhibit 5)--prior to issuance of the permit itself--if Texas Grace would agree to the aforementioned terms.

While Texas Grace respects the right of any party to tender offer for purchase of a station or frequency, it simply wanted no part of this deal. Texas Grace is an independent, family operator that wishes to build and operate the KRZB facility, and, understandably, has no desire to sacrifice the integrity of its service.

More recently, Stansell again attempted to pay Texas Grace to abandon Channel 248C2 service, in two conversations between January and February, 1999. Reynolds, during a phone conversation with Texas Grace proprietor Dave Garey in April, 1999, offered that his group would, quote, "build your station for you", provided Texas Grace relinquish its Channel 248 frequency. Lipp contacted Texas Grace legal counsel John Trent on at least two occasions in April, 1999, on the same issue of having Texas Grace relinquish the Channel 248C2 service.

13. LIPP-REYNOLDS, IN CONJUNCTION WITH THEIR KLAKE (FM) INTEREST, HAVE CLEAR FINANCIAL INCENTIVE TO PRESSURE KRZB/TEXAS GRACE OFF OF CHANNEL 248.

It is a matter of record before the Commission that former Allocations Chief Lipp, and engineering partner Reynolds, have recently engineered several Class C “move-ins” to the Dallas-Fort Worth metropolitan area, to communities such as Azle (MM Docket 97-225) and Flower Mound (MM Docket 96-10), Texas, with pending “move-ins” to Highland Village (MM Docket 97-04) and Allen, Texas (MM Docket 98-198). It is also a matter of record that, upon Allocations Branch granting of a community change allowing such a DFW area move-in, the financial value will be astronomical (the undeveloped Azle facility recently sold for approximately 30 million dollars). Given the incredible financial incentive in facilitating yet another DFW move-in, Reynolds, Lipp, and Stansell have clear motive in pressuring Texas Grace to relinquish its permitted frequency and service plans.

The planted Tipton “drop-in” proposal emanating directly from Reynolds’ personal postal box---despite deliberate, documented effort to conceal his identity from the Commission, from the public, and from Texas Grace in the endeavor---serves to further pressure Texas Grace to get off of Channel 248 by completely obstructing Texas Grace’s ability to utilize its intended facilities location, and by obstructing service to a vital 2-county area. Texas Grace considers such conduct to amount to in-kind extortion. That is, after other efforts failed to coax Texas Grace to “get out of the way”, a drop-in which will severely harm KRZB’s service plan suddenly appears---originating from the engineer member of the very group trying to pressure Texas Grace to get off its channel. Texas Grace characterizes such activity to be a reprehensible abuse of Allocations and government process, and again, respectfully calls upon the Commission to deny the Tipton petition.

14. TEXAS GRACE NOTES THAT IT WAS COMPLYING WITH COMMISSION ORDER IN TENDERING KRZB’S 301 APPLICATION, SPECIFYING ITS NEW CITY OF LICENSE AND FACILITIES SITE.

In tendering the Form 301 application (BMPH-990217IB) which is a facet of Texas Grace's counterproposal within this proceeding, Texas Grace was complying with Commission Report And Order under MM Docket 97-225, DA 98-2002 (released October 2, 1998, and effective November 17, 1998) to specify KRZB'S new city of license and facilities site. Texas Grace's Petition for Rulemaking to change Channel 248C2 service from Olney to Archer City, Texas, stated that the Archer City reference coordinates provided were the official U.S. census coordinates for the community, representative of the theoretical center of town. As such, KRZB needed to specify the actual facilities site in conjunction with the Report and Order's effective date, and appropriate filing window, under the granted rulemaking. It was in the process of adhering to the Order that Texas Grace's engineer discovered that the Tipton Channel 249C2 drop-in petition posed obstruction to the intended KRZB facility and service, as noted.

15. GGR/REYNOLDS' FREQUENCY SELECTION, FACILITY PLACEMENT, AND EVEN PETITION SUBMISSION DATE, APPEAR DIRECTED TOWARDS OBSTRUCTING KRZB'S SERVICE.

Coloring the Tipton petition even more suspect as a drop-in allocation intended to obstruct KRZB's service, and further coerce KRZB off Channel 248, is the particular channel sought by engineering expert Paul Reynolds (under his GGR pseudonym). At the time of the Tipton filing (preparation date is noted as November 16, 1998, with file-stamp receipt by the Commission on November 20, 1998), the petitioner could easily have selected the direct allocation available on Channel 275C2, involving absolutely no channel substitutions, and a less cumbersome site restriction.

The Commission's database verifies, in fact, that Channel 275C2 was available for the Tipton allocation at any time before December 21, 1998. For a party whose genuine motive was to ultimately be awarded and build a Tipton service, Channel 275C2 would have been the obvious, superior choice.

However, the Tipton petitioner appears to be driven by quite another motive, making it a point to select the less superior, more circuitous Channel 248C2--requiring 2 needless channel substitutions, and an increased site restriction of approximately 5 km. While providing absolutely no benefit to a future Tipton service, the Channel 248 usage at Tipton seems plainly aimed at "boxing in" KRZB so as to impede its service potential, particularly with respect to reception in Wichita County, Texas. In fact,

Reynolds' Tipton petition reserves allocation coordinates which abut the U.S. Census reference point for Archer City by a trace .05km, prohibiting KRZB's usage of any transmission site north of the theoretical center of Archer City...inclusive of KRZB's intended site. Such "boxing in" of KRZB clearly serves Reynolds' motive of coercing KRZB to abandon service on Channel 248C2.

Even the Tipton petition preparation date of November 16, 1998 is suspect in its timing---one day prior to the effective date of the Report and Order instructing Texas Grace to file a 301 form specifying KRZB's new city of license and facilities (under MM Docket No. 97-225, DA 98-2002). Again, the actions and motivation of the Tipton petitioner appear clearly directed at obstructing KRZB.

16. THE PRACTICE OF MISUSING ALLOCATIONS PROCESS TO DROP IN AN OBSTRUCTIVE, "BOX IN" CHANNEL TO HARM ANOTHER OPERATOR'S SERVICE PLAN MUST BE ACKNOWLEDGED BY THE COMMISSION.

Texas Grace respectfully reminds the Allocations Chief that the concept of misusing Allocations process to drop in an obstructive, "box in" channel at a particular location so as to deter or harm another operator's service plans, is, unfortunately, all too well-known among the fraternity of engineers with FCC filing expertise. In checking informally with even Commission engineering staff, they, too, were aware of such activity. Texas Grace believes that judicious processing of spectrum compels the Allocations Branch to acknowledge the existence of this unscrupulous practice---which clearly abuses Allocations process, and forever effectuates change of the Table of Allotments under false pretense---and have zero tolerance for it.

17. OBSTRUCTIONIST PETITIONS MARKED BY DECEPTION AND ABUSE OF PROCESS--SUCH AS THE TIPTON PETITION-- MUST NOT BE SHIELDED OR EXCUSED BY LOOPHOLES.

Since the public interest is theoretically served by institution of a new local service, all an obstructive petitioner need do is plant a drop-in petition at a community without aural service, and sadly, any misconduct tainting the credibility of the petition might theoretically be ignored on the grounds that a top Allocation priority has been triggered. Another loophole inadvertently aiding and abetting

obstructive, sham filings, is the notion that the petitioner has no claim to the ultimate construction permit which would derive from the petition. This loophole fails to account for the fact that existing permittees or operators can be irreparably harmed by the mere allocation effectuated through the obstructionist petition, irrespective of who the ultimate licensee--if anyone--might be. Beyond that, the Commission would inadvertently be *rewarding* the vested interest of such a sham petitioner by simply allowing the allocation.

In the context of the Tipton petition, GGR petitioner Paul Reynolds' vested interest appears clearly served by effectuating Commission grant of the obstructive allocation---as a means of coercing KRZB off the Channel 248C2 frequency---irrespective of who the ultimate recipient of a Tipton facility license might be. Given the overall tainted credibility inherent to the Tipton petition and petitioner conduct, as substantiated by a preponderance of evidence, Texas Grace respectfully believes that the Commission has a responsibility to deny the Tipton petition based upon its improprieties---which should void any consideration of allocation "priority triggers" normally assessed in a clean petition.

18. COMMISSION PRECEDENT MAKES "IDENTITY" OF PETITIONER RELEVANT TO PETITION CREDIBILITY WHERE CONDUCT IS NOT "ROUTINE".

Scrutiny and concern over petitioner identity by the Commission, and in how the petitioner identity issue might taint a petition's very credibility, would appear compelled by the recent *Hamilton, Meridian and Marble Falls, TX*³ decision. In this case, the Commission plainly states that petitioner

³See *Hamilton, Meridian and Marble Falls, TX* (MM Docket 97-174, released April 16, 1999). The measure of "routine" conduct by a petitioner, versus that which would reasonably be deemed "non-routine", or otherwise raising of a red flag, appears to be the standard under which the Allocations Branch would be compelled to gauge concern over petitioner identity, as well as to scrutinize or deny petitions on the basis of petitioner identity issues. The issue of a repeated, deliberate pattern of identity concealment---even going to the lengths of abusing government process to so foster identity concealment---should meet the standard of "non-routine" behavior for which the Commission must have zero tolerance.

This cited case also takes a stand on "abuse of process", depicting it relevant for scrutinization of petition credibility

identity would not “routinely” be of concern, a notion which Texas Grace readily accepts. However, such decision compels interest and scrutiny by the Commission when a petition is characterized by conduct which would reasonably be deemed “non-routine”, or otherwise unacceptable.

Since Paul Reynolds’ postal box is the sole identification, contact, and service address point for the Tipton petition, its origin and usage, and any abuse of such process, are vitally relevant to the credibility and scrutinization of the petition itself.

The deceptive pattern of conduct inherent to the Tipton petition, inclusive of misuse of postal process to conceal petitioner identity under false pretense, and the making of Reply Comments in Federal Proceeding supporting the petition--while detrimental to Texas Grace’s counterproposal--without identification or acknowledgment by the commenter that he was the same individual who submitted the petition, and with deliberate concealment from the Commission of commenter vested/representation interests to the proceeding, must immediately raise a critical red flag which meets the standard of conduct that is blatantly not “routine”.

When the petition party obscuring his identity turns out to be--through Postal Inspector investigation--the same individual whose group has been trying to coerce KRZB off its service channel, and who is now further pressuring KRZB to relinquish the channel by obstructing the KRZB facilities site through the petition filed under pseudonym, such petitioner identity is not only relevant, but should taint any credibility standing of the petition.

The Commission’s efficient, judicious management of spectrum must have zero tolerance for such clearly non-credible, “non-routine” activity connected to any petition for new service. For this reason, Texas Grace again respectfully urges the Commission to deny the Tipton petition.

19. GOOD-FAITH EFFORT TO WORK DIRECTLY WITH REPLY COMMENT PARTICIPANT DELAYED SUBMISSION OF PLEADING.

Texas Grace understands that the Commission encourages conflicting parties to try and work directly towards resolution of a conflict, if at all possible. As a matter of record, Texas Grace made such a

provided “substantiation” of such abuse is provided to the Commission---as Texas Grace clearly has done herein.

good faith effort--albeit unsuccessfully--to accommodate a request from Reply Comment participant Mark Lipp. On April 30, 1999, Texas Grace legal counsel John Trent reported that he had been contacted by Lipp, who requested that Texas Grace postpone submission of Supplemental Comments to this proceeding, in order to give Lipp a chance to first send over to Trent an engineering plan which, as Texas Grace understood it, would supposedly resolve KRZB's obstructed facility problem, and also allow Lipp's KLAK co-channel interest to facilitate their project. However, Trent reports that Lipp failed to deliver the promised engineering correspondence. After postponing submission of the filing herein in good faith (by approximately three weeks) to accommodate the conflicting party's request--to no avail--Texas Grace believes resolution of this matter must be directed to the Allocations Chief.

**20. STATEMENT OF SUPPORT FROM
U.S. CONGRESSMAN MAC THORNBERRY.**

On May 14, 1999, United States Congressman Mac Thornberry authored a letter to Commission Chairman William Kennard, objecting to and protesting in Texas Grace's behalf "drop-in petitions which are not credible"---as Texas Grace has demonstrated to be the apparent case with the subject Tipton petition for allotment of Channel 249C2.

Congressman Thornberry echoes Texas Grace's concerns in expressing hope that "the Commission will strongly oppose" such inappropriate activity, alluding further to "possible foul play and abuse of government processes connected to the drop-in" by Paul Reynolds' GGR pseudonym.

The Congressman asks for any assistance which could be provided by the Chairman in this matter, due to the fact that the KRZB facility presently obstructed by the GGR petition "will serve many of the constituents in my district".

Texas Grace prevails upon the Allocations Chief to please consider the concerns expressed by Congressman Thornberry, whose letter is enclosed as Exhibit 6.

21. CONCLUSION.

Vital Grounds Compelling Commission Denial of Channel 249C2 Allocation at Tipton

Two vital grounds compel the Commission to deny the petition for Channel 249C2 service at Tipton, Oklahoma.

Petitioner Itself Amended Petition.

Seeking Reservation of Channel for Non-Commercial Service

In the first instance, the petitioner itself amended and effectively counterproposed its original petition after issuance of the NPRM, to a request for reservation of the channel for not for profit, non-commercial service. In fact, the petitioner has even sought award preference on this basis. Commission policy is very clear on the issue of reservation of a channel for such non-commercial/educational service, stating that provision of such service must be made within the non-commercial channels set aside by the Commission for this expressed purpose. The only exception, according to Commission policy, is to be made when Channel 6 TV or foreign interference precludes availability of a non-commercial spectrum channel--which is not the case at Tipton--or, arbitrarily, if there is no prejudice to or conflict with a pending proposal (as there clearly is with the KRZB C2 facility application under BMPH-990217IB in this proceeding, as well as with KRZB's counterproposal to provide C1 service). In keeping with Commission policy, the petition for the Channel 249C2 allotment at Tipton should be therefore denied.

Critical New Information Taints Overall Credibility of Tipton "GGR" Petition

In the second instance, critical new information detailed herein---inclusive of evidentiary statement from the U.S. Postal Inspector at Tallahassee, Florida---shows the Tipton petition to be characterized at inception by apparent deceptive practice, abuse of government processes, identity concealment by petitioner via a postal box scheme whereby the box serving as sole petitioner address was obtained and used under false pretense (deceitfully concealing identity), and even failure by the real box holder, Paul Reynolds, and his legal partner, Mark Lipp, to identify before the Commission vested interest in and/or representation of the Tipton petition in Reply Comments made within this very proceeding. As also demonstrated, Reynolds and Lipp have been jointly trying to coerce Texas Grace to relinquish KRZB's Channel 248C2 service so that they can instead utilize the spectrum to facilitate a DFW area

move-in. The planting of the Tipton drop-in (under one of Reynolds' postal box pseudonyms) which immediately obstructs KRZB's facility application site and service plan reprehensibly serves to continue this coercion. Through a preponderance of evidence, the Tipton petition is shown to be of tainted credibility, and characteristic of a "sham" filing which subverts and disrespects government processes. As such, the Commission should have zero tolerance for the subject petition, and therefore deny it.

The Community of Tipton Need Not Be Deprived of Local Service

Texas Grace wishes to make clear that the vital issues compelling Commission denial of the GGR petition have nothing whatsoever to do with whether Tipton is deserving of local radio service. Tipton, like any other incorporated community, certainly qualifies to have such service. To this end, Texas Grace's engineer has located an available C2 facility channel within the non-commercial spectrum to accommodate the petitioner's own requested reservation of the channel at Tipton for non-commercial service, and respectfully requests that the Allocations Chief instruct the petitioner--if sincere in their desire to provide the service--to appropriately make application for this service through the Audio Services Division, via Form 340.

Solution Offered by Texas Grace Removes Obstruction Placed Upon KRZB Facility Site.

While Assuring The Community of Tipton the Type of Service Requested by Petitioner

This scenario accomplishes a fair, judicious solution for all parties, in that the obstruction upon KRZB's C2 facilities application site is now removed, allowing for issuance of a construction permit enabling provision of this vital service---as well as for upgrade to a C1 facility at another site. At the same time, the community of Tipton can be the beneficiary of the non-commercial service requested by the petitioner, through the most efficient, prudent usage of spectrum as stipulated by the Commission.

KRZB's C2 Facility Application Site Provides 100% City-Grade Coverage of its Community of License, Archer City, and Should Remain a Counterproposal to Proceeding

The actual KRZB C2 facility application site (under BMPH-990217IB) is certified by Texas Grace's engineer to provide at least city-grade coverage to all of Archer City, and should thus remain a bona fide counterproposal to this proceeding. However, recent investigation has uncovered an unforeseen discrepancy involving tower coordinates which were apparently mis-registered with the FCC

by the structure's owner...placing the actual structure even closer to Archer City, and, again, assuring at least 70-dBu coverage to KRZB's city of license. Although Texas Grace has received no letter of deficiency from the Commission's Engineering Staff on this matter, Texas Grace is in the process of making corrective amendment to its 301 application.

No Further Conflict Exists Between Texas Grace and WBAP/Blue Bonnet, Nor is There Any Relation Between This Proceeding and That Under MM Docket 98-198.

A previous conflict resolution facet of Texas Grace's counterproposal of March 15, 1999---before Texas Grace was aware of either the tainted credibility of the Tipton petition, or of the petitioner's subsequent amendment (filed the same date) to reserve the channel for non-commercial service---entailing substitution of Channel 275C2 at Tipton, is readily withdrawn by Texas Grace herein. This eliminates any conflict between Texas Grace's counterproposal, and a protracted separate proceeding under MM Docket 98-198. Nor is there any further conflict with the interests of Reply Comment participant, WBAP/Blue Bonnet.

Obstruction Preventing Issuance of KRZB C2 Facility CP at Archer City Will Be Eliminated; Need for Other Channel Substitutions Eliminated; and Ability Assured for Institution of New First Local Service at Granite, Oklahoma on Channel 282C3

Concurrent with appropriate Commission disallowance of a Channel 249C2 allocation at Tipton, there is no longer any need to require channel substitutions at KHIM, Mangum, Oklahoma, or upon the vacant allotment at Eldorado, Oklahoma. Nor is there any conflict whatsoever with institution of a new first local service as proposed by Texas Grace on Channel 282C3 at Granite, Oklahoma.

Of most timely concern, issuance of a construction permit for KRZB's Channel 248C2 facility at Archer City---which has been held up as a result of the conflict with the Tipton petition---can now be readily facilitated in accordance with the resolution proposed by Texas Grace.

For the premises set forth, Texas Grace respectfully believes that the public interest, as well as judicious processing of spectrum, will best be served by Commission denial of the Tipton petition described in the *NPRM*, and adoption of the proposed conflict solution herein.

Respectfully Submitted,
Texas Grace Communications

By: *Dave Garey*

Dave Garey, Proprietor

May 24, 1999

CERTIFICATION

I, Dave Garey, proprietor of Texas Grace Communications, and permittee of KRZB (FM) licensed to Archer City, Texas, do hereby verify that the statements contained in the instant document are true and correct to the best of my knowledge and belief. John Trent remains legal counsel of record for Texas Grace Communications within this proceeding, and it is therefore respectfully requested that he be simultaneously served by the Commission or other interested parties with all relevant procedural documents. However, the filing herein is made directly by Texas Grace's proprietor.

Respectfully Submitted By:
Texas Grace Communications



Dave Garey, Proprietor

May 24, 1999

Dave Garey
Texas Grace Communications
20 Samlaw Drive
Monsey, NY 10952

cc:

John Trent
Putbrese, Hunsaker & Trent
100 Carpenter Drive, Suite 100
Sterling, VA 20167

(703) 437-8400

CERTIFICATE OF SERVICE

I, Dave Garey, do hereby certify that I have, on May 24, 1999, sent by First Class U.S. Mail, postage prepaid, the forgoing "Essential Supplemental Comments" of Texas Grace Communications to the following:

WBAP/KSCS Operating, Ltd. and Blue Bonnet Radio, Inc.
c/o Attorney Mark N. Lipp
Shook, Hardy & Bacon, LLP
600 14th Street, NW, Suite 800
Washington, DC 20005

Ellinor Nelson
Good Government Radio
P.O. Box 478
Gonzalez, FL 32560

Ms. Leslie K. Shapiro
Allocations Branch
Federal Communications Commission
445 12th St., SW
Room 3-A 360
Washington, DC 20554



Dave Garey

TABLE OF AUTHORITIES

Ashland and Eagle Point, Oregon (MM Docket No. 91-265, RM - 7870, released November 19, 1992), p. 7

Silver Star Communications-Albany, Inc., 3 FCC Rcd 6342, 6352 (Rev Bd 1988), p. 14-15

Hamilton, Meridian and Marble Falls, TX (MM Docket 97-174, released April 16, 1999), p. 20-21

Appendix of Exhibits Essential Supplemental Comments of Texas Grace Communications

Engineering Statement of Lee Wheeler.

Exhibit 1 -- Channel 6 TV Interference Study for Tipton reference coordinates.

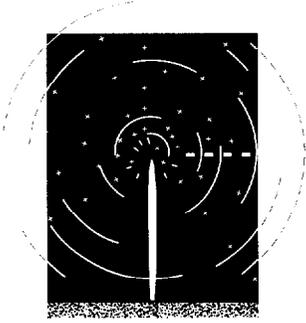
Exhibit 2 -- Channel 210C2 Non-Commercial Channel Spacing Study at Tipton reference coordinates.

Exhibit 3 -- Digitally-Generated Interference Map Study of Channel 210C2 at Tipton with respect to co-channel KACV (FM) Amarillo, Texas.

Exhibit 4 -- May 4, 1999 Statement from Tallahassee, Florida-based Postal Inspector W. G. Cunningham, upon concluding investigation of Tipton petitioner's *Box 478/Gonzalez, FL* sole address, verifying application and use of box under false pretense, improperly concealing identity of "Paul Reynolds" as boxholder.

Exhibit 5 -- September 10, 1996 Correspondence from Mark Lipp (w/ engineering portion by Paul Reynolds), on behalf of KLAK, Durant, OK interest, attempting to coerce Texas Grace to relinquish Channel 248C2 facility for cash payoff...one-month before Texas Grace was even awarded its permit.

Exhibit 6 -- May 14, 1999 Correspondence from U.S. Congressman Mac Thornberry to FCC Chairman William Kennard, protesting in Texas Grace's behalf "possible foul play and abuse of government processes" connected to obstructive GGR Tipton drop-in, and requesting that the Commission "strongly oppose drop-in petitions which are not credible".



WHEELER BROADCAST CONSULTING

Engineering Statement

Comments in RM 9423 - Tipton, OK

This consultant has been retained by Texas Grace Communications for the purpose of preparing technical support to its reply comments to the proposed Channel 249 C2 allocation sought by Good Government Radio (GGR) at Tipton, Oklahoma.

In its March 15th comments and expression of second interest, GGR effectively counterproposes its original petition for Rule Making by requesting that its proposed Channel 249C2 allocation be reserved for non commercial educational use¹. Such a restriction is unprecedented in the absence of a Television Channel 6 interference problem that precludes the use of the reserved non commercial educational channels. No such case exists with the Tipton, OK proposal.

The nearest Channel 6 television station is KAUZ-TV in Wichita Falls, TX. KAUZ-TV operates with 100 kW at 311 m HAAT. Exhibit 1 of this report is a digitally generated map that shows the 47 dBu protected contour of KAUZ-TV and the requested allocation reference coordinates as specified by GGR. As shown in Exhibit 1, the allocation reference site is located beyond the protected 47 dBu contour of KAUZ-TV.

6025 MARTWAY
SUITE 112
MISSION, KS 66202
913.362.7282
913.362.7287

A search of the Commission's April 27, 1999 FM database indicates that there are several reserved channels that would be available at the GGR allocation point. One of those channels is Channel 210. A copy of a Channel 210 spacing study is included in this report as Exhibit 2. Exhibit 3 is a digitally generated interference map that demonstrates that a Channel 210 C2 operation would not cause prohibited interference to the co-channel operation of KACV-FM in Amarillo, TX even at a maximum class C2 operation.

¹ See Good Government Comments at §1. "Therefore, Good Government should get the FM radio station since it won't operate for profit."

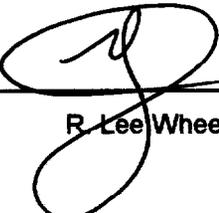
A Channel 210 FM operation would further have great latitude in selecting a transmitter site, power and HAAT combinations, and mixtures of polarization so as to comply with the Channel 6 interference criterion as set forth in 47 CFR 73.525. The Channel 249 allocation as proposed in RM 9423 is thus unnecessary and GGR could file for such a radio station directly via Form 340.

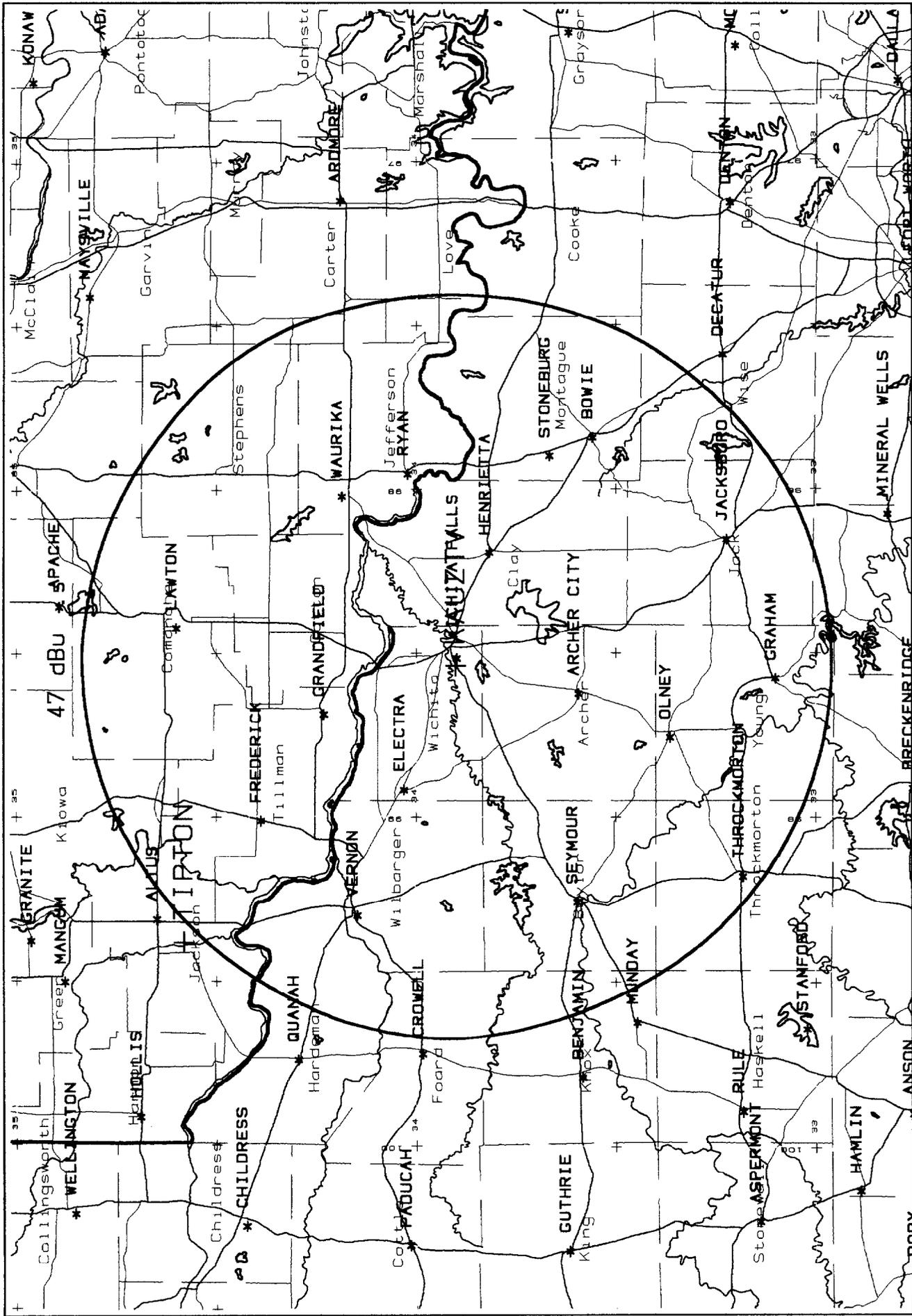
We are also in receipt of the comments of WBAP/KSCS Operating, Ltd. (WBAP) and Blue Bonnet Radio, Inc. (BBRI). WBAP and BBRI assert that the Texas Grace application of BMPH-990217 IB failed to provide 100% city grade coverage of Archer City, TX. This allegation prompted a full review of the application at which time it was discovered that the coordinates of the existing tower structure specified in the application appear to be in error. Although the structure is registered with the Commission and carries registration number 1052223, the actual coordinates appear to be approximately 1.0 mile S.W. of the coordinates specified. As such, the actual tower site is not only closer to archer city, but also of grater distance away from Channel 249 C3 at Healdton, OK. The change in the actual tower site's distance from Healdton will clearly allow KRZB to increase its ERP. This increase in ERP, coupled with the closer proximity to Archer City afforded by the actual facility site, clearly assures that KRZB will provide 100% city grade coverage of Archer City. In light of the tower coordinate discrepancy, Texas Grace has good cause to make amendment to BMPH-990217 IB, which shall be forthcoming.

Certification

All information contained in this report is true and accurate to the best of my belief. Having had numerous matters before the Commission, my qualifications are a matter of record.

5/3/99
Date


R. Lee Wheeler



Scale in km
 0 10 20 30 40 50 60 70 80 90

KAUTZVILLE 6 100KW
 N. Lat. 33 54 04 W. Lng. 98 32 21

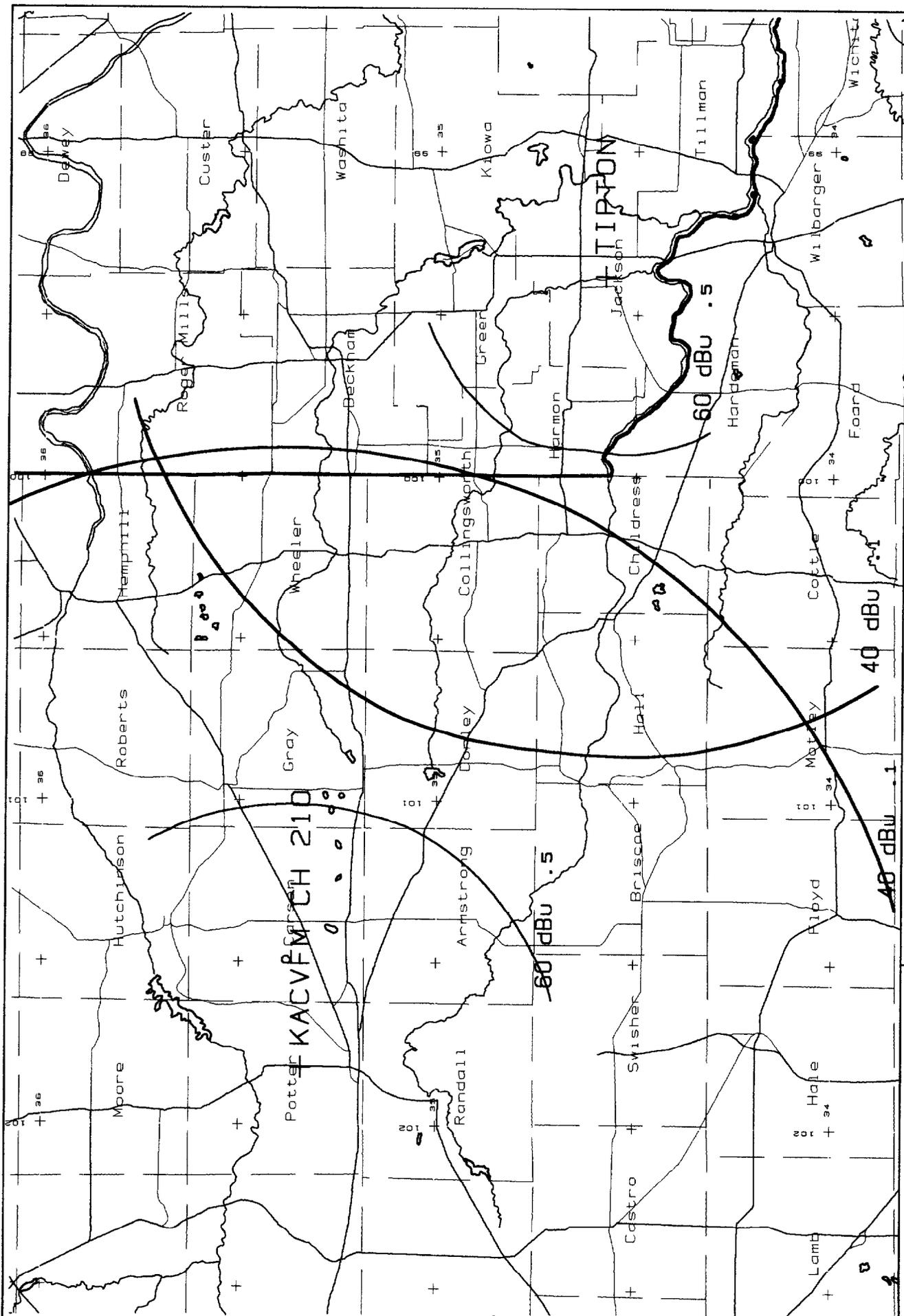
EXHIBIT 1
 L. WHEELER - 04/99

WHEELER BROADCAST CONSULTING
 6025 Martway - Suite 112 - Mission KS 66202

Non Commercial Educational Channel
 At Tipton, OK Allocation Coordinates

| | | | |
|------------|--|------------------------|-----------------|
| REFERENCE | | CLASS C2 | DISPLAY DATES |
| 34 34 53 N | | Current rules spacings | DATA 04-27-99 |
| 99 22 55 W | | CHANNEL 210 - 89.9 MHz | SEARCH 04-27-99 |

| CALL TYPE | CH# LAT | CITY LNG | STATE PWR | BEAR' HT | D-KM D-Mi | R-KM R-Mi | MARGIN (KM) |
|-----------------|-------------------|-------------------------------|------------------|---------------|-----------------|----------------|-------------|
| KACVFM LI CN | 210C 35 20 33 | Amarillo 101 49 21 | TX 100.000 kW | 291.5 352M | 238.36 148.1 | 249.0 154.8 | -10.64 * |
| | | Amarillo Junior College Distr | | | | BLED900208KD | |
| KVRS LI VN | 212A 34 37 32 | Lawton 98 31 43 | OK 1.000 kW | 86.2 46M | 78.43 48.7 | 55.0 34.2 | 23.43 |
| | | Lawton Educational Broadcasti | | | | BLED890207KB | |
| | | >VERTICAL POLARIZATION ONLY | | | | | |
| KCSC LI CN | 211C1 35 34 24 | Edmond 97 29 08 | OK 100.000 kW | 56.9 256M | 205.00 127.4 | 158.0 98.2 | 47.00 |
| | | The University of Central Okl | | | | BLED980428KC | |
| KCCU LI EN | 207A 34 37 26 | Lawton 98 16 15 | OK 2.000 kW | 87.0 141M | 102.03 63.4 | 55.0 34.2 | 47.03 |
| | | Cameron University | | | | BLED890731KB | |



| | | |
|------------------------------|--------------------------------|--------------------|
| Scale in km | TIPTON 210C2 50KW | EXHIBIT 3 |
| 0 10 20 30 40 50 60 70 80 90 | KACVFM BLED900208KD 210C 100KW | L. WHEELER - 04/99 |



TAMPA DIVISION

May 4, 1999

Dave Garey
Proprietor, Texas Grace Communications
20 Samlaw Drive
Monsey, NY 10952

Dear Mr. Garey:

Thank you for bringing your concerns regarding Post Office Box 478, Gonzalzes, FL 32560 to our attention.

This box was originally rented on August 10, 1998, in the name of the South Communications Group. The person making the application identified himself as Paul Reynolds and checked no to the question "Will this box be used for soliciting or doing business with the public?" Mr. Reynolds provided his address as 415 North College Street, Greenville, AL 36037 and gave a phone number of (334) 382-3239. He signed the application and provided an Alabama Drivers License Number 1834233 and service began on August 10, 1998. A portion of the PS Form 1093, Application for Post Office Box or Caller Service provides information for special orders. In this portion of the application form he again printed his name "Paul Reynolds" as the applicant and completed the block labeled "name of box customer" with South Communications Group. Additionally, there are two blocks labeled "Other" in which he wrote "Good Government Radio" and "Small Broadcasters", and then Mr. Reynolds signed the form in the area where it calls for the signature of the applicant. The purpose of the other blocks is to identify other names, which may receive mail through the Post Office Box.

It is interesting that Mr. Reynolds checked no to the question of soliciting or doing business with the public in view of the three business names, which he included on the application form. As information there are postal regulations that specify when information about post office box holders can and cannot be released. I am attaching a copy of a portion of the Administrative Support Manual, which deals with this topic. Please see 352.44C 1 and 2. You will note in C2 when an individual indicates a post office box is for non-business use the information on Form 1093 about the identity of the post office box holder will not be provided to the public except in certain circumstances which are described in a subsequent paragraph. When a post office box is rented for business use the information concerning the box holder can be released to anyone. I understand from our conversations that you experienced a great deal of difficulty obtaining the identity of the individual who rented this box due

EXHIBIT 4

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specifically to the fact that he checked the box indicating that he was not soliciting or doing business with the public. As you recall you were forced to present the postal service with documentation which made it obvious the box was in fact being used as a business address. As of this writing Mr. Reynolds has not been contacted by the Postal Service nor has he contacted the Postal Service to update or change his original application form. As a result of you bringing this deficiency to our attention I have directed the postmaster at Gonzalzes, Florida to indicate this box is being used for business use, as is obviously the case by the records you furnished.

Thank you again for bringing this matter to our attention.

Sincerely,



W. G. Cunningham
Postal Inspector
P. O. Box 7358
Tallahassee, FL 32314-7358

LAW OFFICES

MULLIN, RHYNE, EMMONS AND TOPEL
PROFESSIONAL CORPORATION1225 CONNECTICUT AVENUE, N.W. - SUITE 300
WASHINGTON, D. C. 20036-2804

(202) 659-4700 TELECOPIER (202) 872-0604

September 10, 1996

VIA FAX: 703-437-8483John Trent, Esq.
Putbrese & Hunsaker
100 Carpenter Drive
Suite 100
Sterling, VA 20164

Dear John:

I am writing following our telephone conversation and at Dave Garey's suggestion to provide my client's proposal as it affects Mr. Garey's pending application for Olney, Texas. As we discussed, my client, KLAJ(FM), is attempting to upgrade its facility and will need to make changes to several other stations to accomplish this goal. KLAJ's deadline for filing its proposal is rapidly approaching. KLAJ recognizes that your client is anxious to have its application granted and does not want its facility "obliterated." Our proposal is designed to maintain the coverage area proposed in the application as much as possible while offering compensation which my client considers substantial for a facility which is to cost \$85,000 to construct according to the application and which is to serve 23,713 persons. KLAJ proposes to change the channel from 248C2 to 222C3 at a new site to the southwest as indicated on the enclosed map. The coverage area has some gain areas and loss areas, but the new area will serve 20,812 persons which is close to the proposed coverage. To compensate your client for the amended site and small change in coverage area, KLAJ had offered \$250,000 but is now willing to offer \$500,000.

KLAJ did not know your client's plans for the Olney station and therefore did not intend to diminish its potential or insult your client in any way. KLAJ simply wanted to make this offer, and if there is some way to accommodate your client's plans for the station either by relocating the site in a different direction or choosing a channel which under contour protection Section 73.215 could be used at a particular location, KLAJ would attempt to do so. But, despite KLAJ's willingness to be completely open with its own plans for its station, your client was unwilling to discuss its own goals for the Olney proposal.

EXHIBIT 5

SEP.10 '96 4:29PM MULLIN,RHYNE

202 872 0604

P.3

John Trent, Esq.
September 10, 1996
Page 2

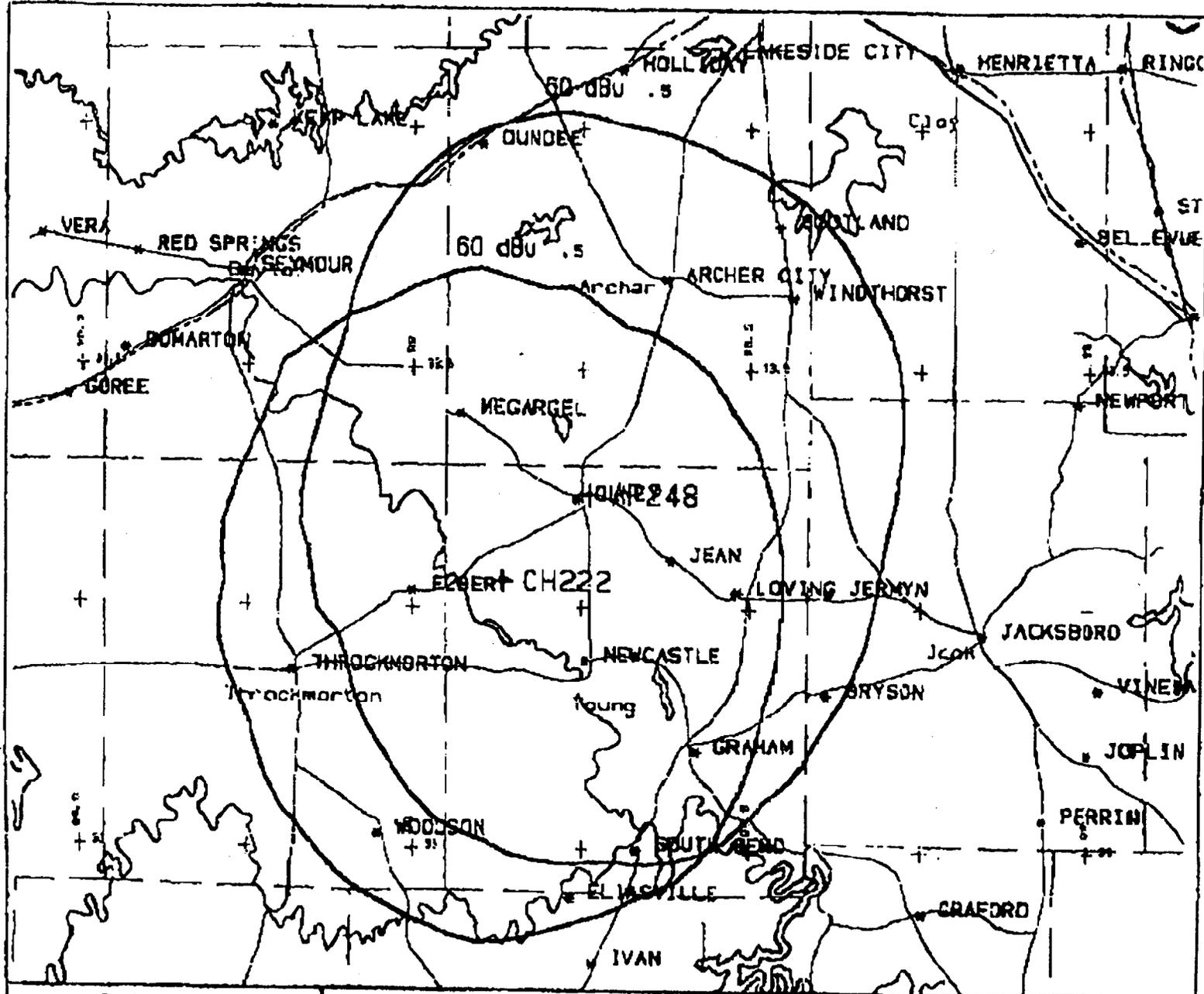
After reviewing the enclosed map, if there is any possibility of further negotiations with respect to the proposed coverage area or amount of compensation, KLAH is certainly willing to discuss it. Again, KLAH has no desire to "obliterate" your client's proposed station, but cannot work to maximize the Olney facility while still realizing its own goal without knowing what your client is trying to preserve.

I hope your client is willing to work with us to accomplish both parties goals.

Sincerely,


Mark N. Lipp

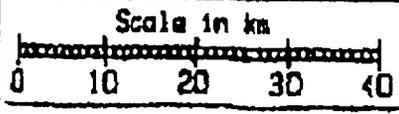
MNL:va
Enclosures



D.B.K.

554822949

P.R.C.



AP248 BPH960201MB 248C2 50KW
 N. Lat. 33 22 08 V. Lng. 98 44 :1

OLNEY 248C2/222C3 MAP
 REYNOLDS CONSULTING - 01/



MAC THORNBERRY
13TH DISTRICT
TEXAS

Congress of the United States
House of Representatives

ARMED SERVICES
COMMITTEE
RESOURCES COMMITTEE
BUDGET COMMITTEE

May 14, 1999

Federal Communications Commission
The Honorable William Kennard
1919 M. Street, N.W.
Washington, D.C. 20554

Dear Director Kennard:

I am contacting you on behalf of my constituent Dave Garey, of Texas Grace Communications, regarding a problem with a "drop-in" frequency proposal (#RM-9423). He feels this proposal will severely harm his ability to serve Archer and Wichita Counties through station KRZB (FM).

My constituent is concerned about possible foul play and abuse of government processes connected to the drop-in. Texas Grace learned from the Postal Inspector that the drop-in party may have tried to conceal their identity from the FCC by applying for and using a post office box under a false pretense. They feel this is the same individual who has been trying to force KRZB off its frequency for several years.

Mr. Garey is also concerned the proposal will make it impossible for him to provide signal coverage. He feels that a frequency channel other than the one harmful to his station could be used to resolve the problem. Texas Grace feels the FCC was charged by the Congress to allocate and manage the broadcast spectrum. He hopes the commission will strongly oppose drop-in petitions which are not credible.

The station Mr. Garey is trying to provide will serve many of the constituents in my district. Therefore, in accordance with your regulations, any assistance your office provides with this situation would be greatly appreciated. If you need more information please contact Brent Oden in my Wichita Falls office.

Sincerely,



Mac Thornberry
Member of Congress

4245 Kemp, Suite 315
Wichita Falls, Texas 76308
(940) 692-1700

131 Cannon Building
Washington, DC 20515
(202) 225-3706
www.house.gov/thornberry

724 South Polk, Suite 400
Amarillo, Texas 79101
(806) 371-8844

EXHIBIT 6