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September 15, 2000

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***by hand***

Magalie Roman Salas, Esq.  
Secretary (TW-A325)  
Federal Communications Commission  
The Portals, 445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

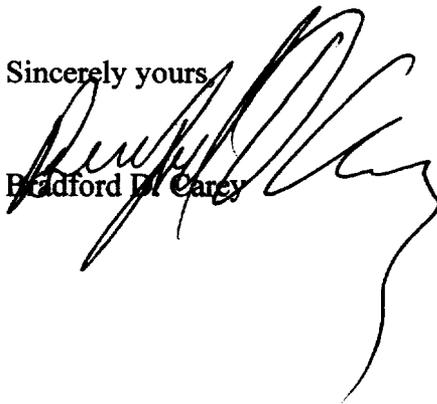
Re: MM Docket 99-239  
Amendment of §73.202  
Edwards & Johannesburg, California  
Petition for Reconsideration

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SEP 18 2000  
FEDERAL COMMUNICATIONS COMMISSION  
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Dear Ms Salas:

I forward herewith an original and six copies of a Petition for Reconsideration of the Report and Order issued in the above referenced proceeding, which is being filed on behalf of Amaturro Group of L.A., Ltd.

Sincerely yours,

  
Bradford D. Carey

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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SEP 18 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 73.202(b) )  
of the Commission's Rules )  
FM Broadcast Station )  
)  
Edwards, California )  
Johannesburg, California )  
)  
Avalon, California )  
Fountain Valley, California )  
Adelanto, California )  
Ridgecrest, California )  
Riverside, California )

MM Docket No. 99-239

To: Chief, Mass Media Bureau

**Petition for Reconsideration**  
**filed by**  
**AMATURO GROUP OF L.A., LTD.**

September 15, 2000

Amaturo Group of LA., LTD.

By its Attorneys,

Bradford D. Carey

Ashton R. Hardy

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**PETITION FOR RECONSIDERATION**  
**Filed by AMATURO GROUP OF L.A., LTD.**

Amaturo Group of L.A., Ltd (“Amaturo”), through counsel, hereby files its **Petition for Reconsideration** of the **Report and Order** in MM Docket 99-239, DA 00-1902 (Released August 18, 2000) (the “Order”), in this proceeding.

**I. AMATURO PARTICIPATED IN THE PROCEEDING.**

The Notice of Proposed Rule Making (“NPRM”) in this proceeding sought comments on, and counterproposals to, the proposal of Adelman Communications, Inc. (“Adelman”) that the Commission substitute channel 280 A at Edwards, California for channel 281 B1 at Johannesburg, California and modify Adelman’s licensee for station KEDD accordingly. Amaturo filed Comments in response to the NPRM, asserting standing as a competitor and because grant of Adelman’s proposal could impact Commission consideration of Amaturo’s pending proposal to amend the table of Allotments to specify new communities of license<sup>1</sup> for two of its stations and to down-grade KZIQ.<sup>2</sup> As Amaturo has stated in previous filings, it does not object to the changes to the table of allotments sought in this proceeding provided that such changes do not adversely impact Amaturo’s own proposed changes to the table of allotments. Thus, if Amaturo’s proposal is granted, upon finality of an order adopting Amaturo’s proposals, this petition may be moot.

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<sup>1</sup>Specification of new reference coordinates for certain stations is also sought.

<sup>2</sup>Amaturo herein seeks conditional reversal of the determination of the Order that its proposal is not mutually exclusive with that of Adelman.

## **II. BACKGROUND.**

On July 15, 1999, Amaturio filed a Petition for Rule Making (“Amaturio’s Petition”) seeking amendment of section 73.202(b), the Table of Allotments of FM Broadcast Stations, by

(1) re-allotment of channel 224A from Avalon, California to Fountain Valley, California and modification of Amaturio’s license for station KLIT, channel 224A, Avalon, to specify operation on the channel at Fountain Valley; and,

(2) re-allotment of channel 224A from Riverside, California to Adelanto, California and modification of Amaturio’s license for station KELT, channel 224A, Riverside, to specify operation on the channel at Adelanto;

To accommodate these changes, Amaturio’s Petition seeks modification of section 73.202(b) of the Commission’s Rules and Regulations by

(3) substitution of channel 224A for channel 224B1 at Ridgecrest, California and modification of the license of station KZIQ-FM accordingly; and,

(4) specification of revised reference coordinates for station KMLT, Thousand Oaks, California.

In their separately filed proposals, Amaturio and Adelman each proposed amendments to the table of allotments for FM broadcast stations affecting the same service area. As set forth above, Amaturio’s proposal included substitution of Channel 224A for Channel 224B1 at Ridgecrest, California. Adelman proposed the substitution of Channel 280A for Channel 280 B1 at Johannesburg, California and reallocation of the Channel to Edwards, California.

The incumbent stations on these allotments, KEDD, Channel 280 B1, Johannesburg and KIZQ, 224 B1, Ridgecrest, California, have transmitters located in close proximity to one another. Thus alteration of either Class B1 station's technical facilities necessarily alters the number of services received in their present, common, service area.

Adelman counted KZIQ (the station operating on the allotment which Amaturio seeks to change) as being a reception service that would remain after it down-graded and moved its station on Channel 280B1, although Amaturio had proposed that the allotment on which KZIQ operates, Channel 224B1, be downgraded to Channel 224A. Conversely, Amaturio counts station KEDD as a remaining service for the stations' mutual service area as a Class B1 station in support of its proposal.

In Comments filed in this proceeding, Regent Communications, Inc. and High Desert Broadcasting Company ("Regent" and "High Desert" respectively and "Objectors" collectively) suggested that Adelman's proposal should be denied because it would, by their analysis, result in some areas receiving fewer than five services. Amaturio believes that the position of the objectors underscores the need for the Commission to have acted on both the Amaturio and the Adelman petitions simultaneously.

In the Order, the Chief, Allocations Branch, Policy and Rules Division of the Mass Media Bureau (the "Chief")<sup>3</sup> denied "Amaturo's request that its proposal be considered as a counterproposal. The Chief stated that "Although it was timely filed, Amaturo's petition is not mutually exclusive with petitioner's and will not be considered. It will be considered in MM Docket No 99-329." Amaturo respectfully submits that to the extent that the Commission might consider the number of remaining reception services after the KEDD allotment has been downgraded and moved, (rather than before), the proposals are potentially mutually exclusive and Amaturo had a right to have its proposal considered at the same time as was the instant proposal.<sup>4</sup>

**III. THE PUBLIC INTEREST BENEFITS OF AMATURO'S PROPOSED CHANGES ARE COMPELLING.**

In its Petition and in its Comments and Reply Comments in this proceeding, Amaturo demonstrated that the public interest will be well served by adoption of the changes to the table of allotments proposed in Amaturo's Petition.

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<sup>3</sup>The Order cites to *McFarland and Coalinga, California*, 13 FCC Rcd 1315, n2 (1998) ("McFarland") and *Potts Camp and Saltillo, Mississippi* 13 FCC Rcd 11909, n1 (1998) ("Saltillo"). Those cases are inapposite to the situations presented herein, as discussed below.

<sup>4</sup>The Commission could have released orders in both dockets at the same time. However, because that did not happen, Amaturo is obliged to protect its rights by filing this Petition.

**IV. AMATURO'S COUNTER-PROPOSAL WAS IMPROPERLY DENIED.**

Amaturo's Counterproposal was wrongly denied in the Order, based on *McFarland* and *Saltillo*, both of which are inapposite.<sup>5</sup> In *McFarland*,<sup>6</sup> the Chief of the Allocations Branch ruled that two proposals to use channel 247A were not mutually exclusive because the allotment proponents agreed to a site restriction that would cause the two allotments on the same channel to be fully spaced. Hence, there was no need for a choice to be made.

In *Saltillo*, the licensee of a station on Channel 240C3 sought to move the station to Saltillo from Potts Camp. A counterproposal was filed, which sought the addition of Channel 275C3 at Saltillo. There being no impediment to the grant of both, the counterproposal to add Channel 275C3 at Saltillo was dismissed as not being mutually exclusive.

Neither of those cases applies to the facts present in this case. While there is no mutual electrical exclusivity between the proposals of Adelman and Amaturo, Adelman's proposal seeks removal of an existing reception service from the same

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<sup>5</sup>That other allotment changes since the Comments and Reply Comments were filed in this proceeding may have lessened (but apparently not eliminated) the possibility that the combined removal of the two stations from Johannesburg would leave some area with fewer than five reception services does *per se* not negate the mutually exclusive situation.

<sup>6</sup>The Order cites to *Ccoalinga* as being found at 13 FCC Rcd 1315. It appears, however, that the citation is incorrect. The page cited to is one of many pages listing PCS applications for the D, E, and F channels associated with DA 97-883. We note that the cited page is found in Volume 13, No 2, which is dated January 12 - January 23, 1998. The Report and Order in MM Docket No. 97-204 (*McFarland*) was released on May 1, 1998.

area in which Amaturio seeks to down-grade KIZQ. If the down-grade of KEDD and removal of it to Edwards adversely affects the Commission's consideration of Amaturio's proposal, the two proposals are mutually (legally) exclusive and Amaturio is entitled to have its proposal considered in conjunction with, and in comparison to, that of Adelman.

Amaturio respectfully submits that until its proposal is acted on by the Commission and the Commission's decision with respect to it has become final, there is the possibility that the proposals might need to be compared. Thus, since an Order has been issued in this proceeding denying treatment of Amaturio's proposal as a counterproposal, but no Report and Order has been issued in MM Docket No. 99-329, Amaturio is compelled to file this Petition.

**V. AMATURO'S PROPOSAL IS TO BE PREFERRED OVER ADELMAN'S.**

Amaturio respectfully submits that the public interest would be served by the Commission granting the changes to the FM Table of Allotments sought by both Amaturio and Adelman. However, were the Commission to determine that the public interest would not be served by *both* substitution of channel 280A at Edwards for channel 280B1 at Johannesburg (as sought by Adelman) *and* downgrade of channel 224 at Ridgecrest from class B1 to class A (and the other changes sought by Amaturio), the Order in this proceeding must be reconsidered and the Commission must select the proposal that is to be preferred under its established criteria; that of Amaturio.

Amaturo's proposal would result in two communities receiving their first local transmission service, whereas Adelman's proposal would result in only one community receiving its first local transmission service. Creation of new service in two communities rather than just one is generally preferred by the Commission.

Moreover, the population (53,691) of *one* of the communities to which Amaturo proposes to provide first local transmission service, Fountain Valley, is more than twice that claimed for Edwards under Adelman's theory of population counting. And, as set forth by the Objectors, under other methodology, the Edwards population is substantially lower.

Amaturo's proposal would result in a net of 1.4 million people gaining a reception service. On the other hand, Adelman's proposal would result in 37,445 persons losing a reception service while only 29,885 persons would gain a reception service, for a net loss of a reception service by over 7,500 people.

Amaturo's proposals would result in elimination of grand fathered short-spacing interference to 1.5 million people, whereas Adelman does not even claim that any interference would be eliminated under its proposal.

Under all of these relevant criteria, Amaturo's proposal is to be preferred over that of Adelman.

**VI. BOTH PROPOSALS CAN BE GRANTED.**

While it is clear that the allotment scheme contained in Amaturo's proposal is to be preferred over the current scheme and that of Adelman's proposal, Amaturo submits that the public interest would also be served by grant of both

proposals. If both proposals were adopted:

- 1) A net of more than 1.4 million persons would gain an additional reception service, of which a net of approximately 6,000 persons would gain their fifth service and approximately 2,500 persons would gain their fourth service.
- 2) Three communities would gain their first local transmission service.
- 3) No community will lose its only local transmission service; all three communities from which it is proposed to remove service will continue to have local transmission services.
- 4) No white or grey areas will be created.
- 5) Grand-fathered short-spacing interference to 1.5 million persons will be eliminated.

**VI. CONCLUSION: THE ORDER MUST BE RECONSIDERED AND AMATURO'S PETITION GRANTED.**

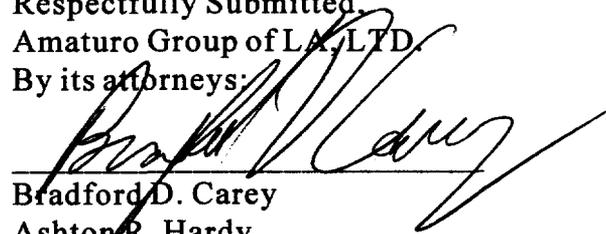
The Order in this proceeding must be reconsidered and Amaturó's proposal granted. Failure to consider Amaturó's counterproposal in this proceeding deprived Amaturó of its fundamental rights under the Administrative Procedures Act, the Communications Act and the Commission's own rules for its proposed allotment changes to be considered in conjunction with other proposed allotment changes that might prejudice Amaturó's proposal. If a comparison between the proposals is necessary, when compared to Amaturó's strong proposal, Adelman's is relatively less preferred under the Commission's criteria and must yield to Amaturó's proposal.

Wherefore, premises considered, it is respectfully urged that the Commission grant this Petition for Reconsideration and the counterproposal of Amaturo and Group of LA, Ltd., and amend 47 C.F.R. §730202(b), the Table of Allotments of FM Broadcast Stations, as follows:

<u>City (all California)</u>	<u>Present</u>	<u>Proposed</u>
Avalon	204A, 224A	204A
Fountain Valley	--	224A
Riverside	202A, 209A, 224A, 248B, 256B	202A, 209A, 248B, 256B
Adelanto	--	224A
Ridgecrest	224B1, 285 B1	285B1

at the reference coordinates specified and change the allotment reference coordinates for station KMLT, Thousand Oaks as specified in the Technical Exhibit attached to the Petition for Rule Making which was filed on July 15, 1999 and in this proceeding.

Respectfully Submitted  
Amaturo Group of LA, LTD.  
By its attorneys:



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Dated as of  
September 15, 2000

**CERTIFICATE OF SERVICE**

The undersigned, an employee of the law firm of Hardy, Carey & Chautin, L.L.P., hereby certifies that on this date a copy of the foregoing document has been mailed by First Class United States Mail, postage prepaid, to:

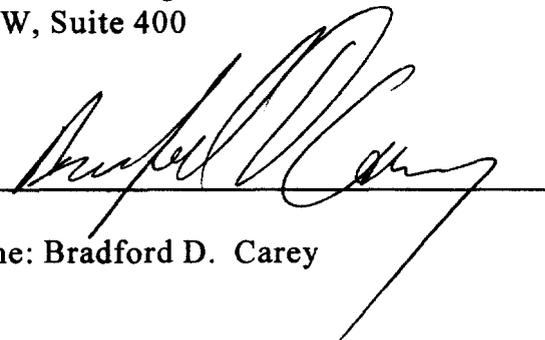
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Dated: Sept 15, 2000

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