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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

IN THE MATTER OF:

*Amendment of 47 C.F.R. §73.202(b)
Table of Allotments
FM Broadcast Stations
(Johannesburg and Edwards, CA)*

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

) MM DOCKET No. 99-239

) RM-9658

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**OPPOSITION TO AMATURO
PETITION FOR RECONSIDERATION**

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List A B C D E

Law Offices
PUTBRESE HUNSAKER & TRENT
100 Carpenter Drive, Suite 100
P.O. Box 217
Sterling VA 20167-0217
(703) 437-8400

Respectfully submitted,

David M. Hunsaker
Its Attorney

September 19, 2000

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IN THE MATTER OF:)	MM DOCKET NO. 99-239
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**OPPOSITION TO AMATURO
PETITION FOR RECONSIDERATION**

Comes now **Adelman Communications, Inc.** (“Adelman”), by Counsel, and pursuant to Section 1.429(f) of the Commission's Rules, hereby respectfully submits the following Opposition in response to the Petition for Reconsideration filed by Amaturro Group of L.A., Ltd. (“Amaturro”) dated September 15, 2000. In connection therewith, Adelman states as follows:

1. On August 18, 2000, the Commission through delegated authority, issued a *Report and Order*¹ in this proceeding amending Section 73.202(b) of the Rules, FM Table of Allotments, by Deleting Channel 280B1 from Johannesburg and Adding Channel 280A to the community of Edwards, California. The *Report & Order* was issued pursuant to a *Notice of Proposed Rule Making* released July 6, 1999 (DA-99-239) requested by Adelman in a petition for rule making.

2. On or about September 18, 2000, Amaturro, a “party” in the rule-making proceeding, filed a Petition for Reconsideration, arguing that the Staff erred in approving the reallocation of Channel 280B1 from Johannesburg to 280A in Edwards,

¹ DA 00-1902, released August 18, 2000 (“*Report & Order*”).

California prior to considering Amaturio's own proposal in MM Docket 99-329. While conceding that Amaturio's proposals were *not* mutually exclusive with the Edwards, California proposal, Amaturio had argued that its proposal might be precluded if Adelman's was approved first.²

3. Amaturio's petition should be dismissed as procedurally defective and entirely devoid of merit. The petition is inconsistent with the provisions of Section 1.429 of the Rules. Section 1.429 requires petitioners to state with particularity the basis for their reconsideration request and the specific provisions of the Order which should be changed.³ Amaturio's "petition" does neither.⁴

4. Amaturio says it does not *really* oppose the allotment of Channel 280A to Edwards. Amaturio is not sure what it wants, except that it wants its own proposal granted immediately, and is not content to wait for action in its own proceeding. That proposal, which Amaturio admits, is not mutually exclusive with the Edwards allotment, is properly being considered in MM Docket 99-329. Amaturio's repeated attempts to force the Commission to consider its proposal in this proceeding should be rejected out-of-hand. Its bogus "counterproposal" was properly rejected in the *Report & Order* as procedurally defective, and this new attempt to have it reconsidered should also be rejected—*promptly*.

² Amaturio offered no support for this paranoid delusion. In fact, Amaturio argued in the Docket 99-239 Rule Making proceeding that it believed that Adelman's proposal would not impact at all on the proposal of Amaturio. That being the case, one wonders at the motivation of Amaturio for filing its "Counterproposal" in MM Docket 99-239 and now this Petition for Reconsideration of the *Report & Order*.

³ See 1.429(c) of the Rules (47 CFR §1.429(c)).

⁴ Nor is Amaturio relying on any new facts not previously presented to the Commission. See §1.429(b).

5. Amaturio offers no new facts or facts not already before the Commission the first time around.⁵ Instead, Amaturio merely repeats the arguments it previously made. The Commission need not pause to consider such irrelevant inanities. As noted by the Commission's Review Board,

[I]t is a long held and universally applied tenet of administrative law procedure that reconsideration will not be granted "merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken..."

Tri-state Broadcasting Co., Inc., 5 FCC Rcd 3727, 67 RR 2d 1576, 1990 (Rev. Bd. 1990) [citing, *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff d sub nom. Lorain Journal Co. v. FCC*, 351 F. 2d 824 (1965), *cert denied*, 383 U.S. 967 (1966)]

6. If Amaturio's proposals are not truly a counterproposal to an allotment for Edwards, California, then Amaturio has no real standing to seek reconsideration and thus delay the bringing of new and needed service to the residents of Edwards, California. Apparently, Amaturio did not understand the difference as explained by the Commission:

The distinction between a counterproposal to an allotment proceeding and a petition for rule making may determine the procedural posture of a given proposal and, therefore, the nature of the remedial action necessary. *A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made.*

Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments, 5 FCC Rcd 931, 67 RR 2d 603 (1990) (*emphasis supplied*). See also, *DeRidder, Louisiana*, DA 99-1426, 1999 FCC Lexis 3467 (MMB 1999) ("Counterproposal" not mutually exclusive with proposal set forth in subject NPRM is entitled to no

⁵ Most of Amaturio's petition is used as a sounding board to parade out, once again, all the reasons why Amaturio thinks its proposed channel allotments are in the public interest. They may be quite worth while, but they have nothing whatever to do with the Commission's decision to allot Channel 280A to Edwards, California, a community of over 7,000 people, presently without any first local service. Amaturio is nothing more than a *spoiler*, who is abusing the Commission's processes.

consideration in that proceeding); *McFarland and Coalingua, California*, 13 FCC Rcd 13135, n.2 (MMB 1998); *Potts Camp and Saltillo, Mississippi*, 13 FCC Rcd 11909, n.1 (MMB 1998).⁶

7. Amaturio attempts to distinguish the *McFarland* and *Saltillo* cases, cited by both Adelman and the *Report & Order*. Amaturio's way of *distinguishing*, however, is to assert that the facts on those cases do not involve a "legal" mutual exclusivity – apparently a doctrine of Amaturio's own creation that is conveniently trotted out to deal with precedent that does not fit with Amaturio's goals. Amaturio's weak efforts to distinguish notwithstanding, the *McFarland* and *Saltillo* cases, as well as the more recent *DeRidder, LA* case, cited by Adelman, remain the law.⁷

8. Here is a new fact: between the time Comments were filed in MM Docket 99-239 and the issuance of the *Report & Order*, the Commission granted the One-Step Application of KRAJ (FM), Johannesburg, California to upgrade from operation on Channel 265A to 265B1.⁸ Since the transmitter site specified in that Application is co-located with that of KEDD, there will be no loss of service *whatsoever* to those presently being served by KEDD. Amaturio was fully aware of this Application and this upgrade, since Adelman took pains to point it out in Amaturio's rule making proceeding. The only notation Amaturio makes of this is in its footnote 5 that other allotment changes have taken place that "may have lessened (but apparently not eliminated) the possibility that the combined removal of the two stations from Johannesburg would

⁶ If Amaturio wants the Commission to develop a new theory of mutual exclusivity that does not depend upon the laws of physics, but rather on the laws of whim, its proper course of action would be to – you guessed it – petition the Commission to initiate a rule making where that can be considered – not attempt to ride the coat tails of a completely unrelated allotment proceeding.

⁷ It is far too late, however, to seek reconsideration of those cases.

⁸ See BPH-19990917AAM, granted January 14, 2000.

leave some area with fewer with five receptions...”). To suggest that Amaturio is being disingenuous here is being more than kind. Adelman is not aware of any proposal to move *two* stations from Johannesburg – only KEDD. Station KRAJ remains allotted to Johannesburg, but will now be a Class B-1 station.⁹ Accordingly, any basis for arguing that the downgrading of both KZIQ in Ridgecrest *and* KEDD in Johannesburg creates a “legal” mutual exclusivity is moot: The upgrade of KRAJ in Johannesburg to a Class B1, means that the only loss of service that will occur in this area will be due to Amaturio’s proposed downgrade of KZIQ. That issue is properly considered in MM Docket 99-329, and *nowhere else*.

9. Given the above analysis, it is plain that Amaturio’s petition for reconsideration is nothing more than a *strike petition*, which has no purpose other than to frustrate Adelman and to delay service to Edwards, California. There is no public interest basis whatsoever for reconsidering the *Report & Order* in this proceeding. And there can be no public interest reason not to dismiss Amaturio’s improper petition *forthwith*.

⁹ For Amaturio to insinuate otherwise is nothing less than fraud.

WHEREFORE, the above premises considered, Adelman respectfully urges that the Petition for Reconsideration filed by Amaturio Group of L.A., Ltd. be DISMISSED, as procedurally infirm, and/or DENIED as utterly without merit.

Respectfully submitted,

ADELMAN COMMUNICATIONS, INC.

By: 
David M. Hunsaker

Law Offices
PUTBRESE, HUNSAKER & TRENT, P.C.
100 Carpenter Drive, Suite 100
P.O. Box 217
Sterling VA 20167-0217
(703) 437-8400

Its Attorney

September 19, 2000

CERTIFICATE OF SERVICE

I, Sharon L. Hinderer, Secretary in the Law Firm of **Putbrese Hunsaker & Trent, P.C.**, hereby certify that I have on this 19th day of September, 2000, sent, by United States Mail, postage prepaid, a true copy of the foregoing "**Opposition to Amaturio Petition for Reconsideration**" upon the following:*

*John A. Karousos, Chief
Allocations Branch, Policy & Rules Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington DC 20554

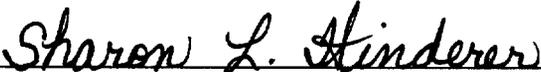
*Robert Hayne, Esquire
Allocations Branch, Policy & Rules Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington DC 20554

Kevin C. Boyle, Esq.
Latham & Watkins
1001 Pennsylvania Ave., NW, Ste. 1300
Washington DC 20004-2505
(Counsel for Regent Communications, Inc.)

David D. Oxenford, Esq.
Fisher Wayland Cooper Leader
& Zaragoza, L.L.P.
2001 Pennsylvania Avenue, NW
Suite 400
Washington DC 20006-1851
(Counsel for High Desert Broadcasting Company)

Bradford D. Carey, Esq.
Hardy & Carey
110 Veterans Boulevard
Suite 300
Metairie LA 70005
(Counsel for Amaturio Group of LA, Ltd)

*Via Hand Delivery



Sharon L. Hinderer