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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 20 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 00-31
Table of Allotments,) RM-9815
FM Broadcast Stations)
(Nogales and Vail, Arizona))

To: The Chief, Allocations Branch

REPLY COMMENTS
OF
BIG BROADCAST OF ARIZONA, L.L.C.

Big Broadcast of Arizona, L.L.C. ("BBA"), by its attorney, pursuant to Section 1.415(c) of the Commission's rules and the Commission's Public Notice, Report No. 2453, released December 5, 2000, respectfully submits herewith its reply comments in the captioned matter.¹ As demonstrated herein, the belated proposal to consider allotting a new channel to Patagonia, Arizona cannot be considered but even if it were to be, then the proponent's public interest claims cannot be sustained.

This proceeding was initiated by Desert West Air Ranchers Corporation ("Desert West"), proposing a reallocation whereby the license of its station KZNO (FM) would be modified to specify operation on Channel 253A at Vail, Arizona in lieu of Channel 252A at Nogales, Arizona. The Commission's *Notice of Proposed Rule Making* herein, DA 00-369, released February 25, 2000 (the "NPRM") questioned the public interest benefits of the change of community, citing a substantial loss area (NPRM, ¶ 9), the creation of white and gray areas (*Id.*,

¹ The public notice provided a deadline of 15 days after its release for reply comments to BBA's counterproposal. BBA's own reply comments are warranted since, as demonstrated below, this pleading constitutes BBA's first opportunity to comment upon the matters addressed herein. See, e.g. Cal-Nev-Ari, Boulder City and Las Vegas, Nevada, 10 FCC Rd 7717 (1995) at n. 3.

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¶ 8) and the absence of domestic commercial stations which would continue to be licensed to serve Nogales were KZNO to be relicensed to Vail (*Id.*, ¶ 7).

BBA submitted timely comments and a counterproposal demonstrating that a relatively minor site restriction would permit KZNO to remain in Nogales and to establish a wholly new station to serve Vail, thereby preserving the public interest benefits of the Desert West proposal to provide a new service at Vail while avoiding the serious public interest detriments of removing KZNO from Nogales. In reply comments filed April 24, 2000 REC Networks (“REC”) supported BBA’s counterproposal.

In the meantime, Desert West filed its own set of comments to the NPRM. Apparently recognizing the gravity of the staff’s concerns and facing defeat, Desert West seized upon the stratagem of proposing the allotment of Channel 251A to Patagonia, Arizona, which, it claimed, become possible only through the removal of Channel 252A from Nogales. In May 2 reply comments to REC, Desert West bolstered its proposal by claiming that its new Patagonia allotment would serve both white and gray area.

Desert West’s Patagonia proposal cannot be considered as part of this proceeding, as it is not a true counterproposal. It is well established that in order to be acceptable a counterproposal must actually conflict with the initial proposal. See, e.g., Odessa and Los Ybanez, Texas, 10 FCC Rd 2767 (1995) at n. 1. Desert West’s Patagonia proposal clearly fails this standard. Desert West’s original proposal, and the NPRM, made no mention of Patagonia. The only proposal advanced involved the communities of Nogales and Vail. Desert West’s Patagonia proposal is consistent with, and in no way conflicts with, its original proposal. All it has done is to sweeten the appeal of its original proposal by suggesting that, if implemented, its original proposal would enable Patagonia to receive a station as well. This can (and, perhaps, should) be raised as a separate rule making proposal once (or, more likely, if) Desert West’s original

proposal were to be granted. Patagonia does not constitute an alternative which is mutually exclusive with the NPRM, but rather an entirely separate matter which the NPRM could facilitate at some point in the future.

In light of the foregoing, it would be improper for the Commission to give any consideration in resolving this matter to the further proposal for Patagonia which Desert West has advanced. The only question, then, is whether Desert West's original proposal to move KZNO from Nogales to Vail is to be preferred over BBA's counterproposal which would permit new service to Vail while avoiding the loss of KZNO's existing service. BBA already addressed this choice in its April 17, 2000 Comments and Counterproposal herein, demonstrating that allotment of the Vail channel with a slight site restriction while preserving the Nogales channel would best serve the public interest.²

Nonetheless, should the Commission decide (albeit improperly) to take the Patagonia proposal into account, then BBA respectfully submits that the public interest still favors its counterproposal over Desert West's enhanced proposal. BBA proposes stations at Nogales and Vail, whereas Desert West proposes stations at Patagonia and Vail. As each of the two proposes a new service to Vail, the only meaningful difference between them is a comparison of the need of Nogales to continue receiving service from KZNO versus the need of Patagonia for a new station. But, in its attempt to assess the benefits and detriments of this comparison, Desert West has placed itself in a logical bind.

On the one hand, Desert West urges that foreign stations must be taken into account, so as to provide Nogales listeners with a replacement station for the loss of KZNO (Desert West

² It should also be noted that Patagonia is a community having a 1990 Census population of only 888 persons, whereas Nogales has 20,500 and serves as the county seat of Nogales County. Accordingly, if the Commission were faced with a choice between the two communities for a single facility, it is clear that Nogales is the more important and would prevail. However, as the staff has already recognized in the NPRM, this is not a contest for a new allotment but rather a matter of removing Nogales's only domestic station, a situation that public policy strongly disfavors and thus requires that KZNO remain there.

Reply Comments at ¶(2). Of course, it is unclear how a station emanating from and licensed to a Mexican community could ever be deemed a local transmission service for an American city and Desert West does not even attempt to explain this anomaly. Nonetheless, Desert West urges that 12 Mexican stations be counted as serving the local transmission needs of Nogales, Arizona, thereby ostensibly compensating for the loss of KZNO which is the only station licensed to Nogales, Arizona.³

On the other hand, Desert West's claim that its Patagonia proposal would eliminate white and gray area is premised upon the exclusion of Mexican facilities (Desert West Reply Comments at ¶ 7 and attached "Gain/Loss Summary"). Submitted herewith is an Engineering Statement of Lawrence L. Morton Associates⁴ demonstrating that if Mexican stations are taken into account the Patagonia proposal will involve no white area and no gray area whatsoever, as the entire service area of the proposed facility will receive at least three full-time aural services.

Desert West cannot have it both ways. Either it counts the foreign stations in order to mitigate the loss of Nogales's only facility, or it does not count them in order to establish a claim of service to white and gray areas. Whichever alternative Desert West chooses, one of the legs of its public interest showing collapses. Simply put, either Nogales will have other service or Patagonia will reduce white and gray areas, but not both.

In his Engineering Statement, Mr. Morton further disputes Desert West's contention that its Vail proposal is not a Tucson move-in (Desert West Reply Comments at ¶ 4). As Mr. Morton

³ Desert West also urges that KOFH be counted as a second station serving Nogales, Arizona. Desert West Reply Comments at ¶ 2. However, the Commission's policy is to decline resolving a rule making contingent upon the eventual licensing of a station which is merely operating pursuant to a construction permit, as is KOFH. See, e.g., Cut and Shoot, Texas 11 FCC Rd 16383 (1996) at ¶ 5.

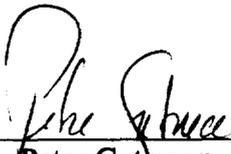
⁴ It should also be noted that there is a clear imbalance in the quality of engineering evidence which Desert West and BBA have provided to the Commission. The description and attachment to Desert West's Reply Comments is completely unidentified as to source and methodology and provides only an unsupported conclusion, whereas BBA's has been provided in detail by a highly-qualified and -respected consulting engineer. Accordingly, any irreconcilable differences between the two claims must be resolved in favor of BBA.

points out, the 60 dBu contour of an assumed maximum facility would serve 66.6% of the population and 71.7% of the area of Tucson and 54.6% of the population and 45.4% of the area of the Tucson Urban Area. While it is true that the FCC generally considers the 70 dBu contour for purposes of a suburban community showing, nonetheless it is clear that meaningful service will indeed be rendered to much of Tucson. Thus, despite Desert West's denial, its belated interest in serving the needs of the good people of Vail indeed arises from a far more commercial motive, namely to move its station to Tucson.

In view of the foregoing, Big Broadcast of Arizona, LLC respectfully urges the Commission to adopt its counterproposal herein.

Respectfully submitted,

BIG BROADCAST OF ARIZONA, LLC

By: 
Peter Gutmann
Its Attorney

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**ENGINEERING EXHIBITS
IN SUPPORT OF
REPLY COMMENTS**

December 19, 2000

**Big Broadcast of Arizona, LLC
MM Docket No. 00-31 □ RM-9815
Nogales and Vail, Arizona**



LAWRENCE L. MORTON ASSOCIATES
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(323) 467-5010 / FAX (323) 467-5848

ENGINEERING STATEMENT

The information and data contained within this Engineering Statement were prepared on behalf of Big Broadcast of Arizona, LLC, in support of *Reply Comments* to MM Docket No. 00-31, RM-9815.

I. DISCUSSION

In its Comments, Desert West Air Ranchers Corporation (“DWAR”) proposed the allotment of Channel 251A to Patagonia, which is possible only with the removal of Channel 252A from Nogales. DWAR stated that the Patagonia allotment will provide service to *white* and *gray* areas. DWAR further stated that Mexican stations operating in the border area should be counted as contributing “service” for the purposes of determining how many station serve a market. Although this is contrary to standard and well-defined Commission policy on the evaluation of gain and loss area, it nevertheless was used in this comparative study.

A site was selected for the Channel 251A potential allotment at Patagonia, which is as close to the center of that community as possible while remaining fully-spaced to all other stations and allotments. The reference site for Patagonia is:

31° 32' 58" North Latitude
110° 44' 35" West Longitude

At these coordinates Channel 251A at Patagonia would be fully-spaced to all allocation-pertinent stations and allotments in the most recent version of the Commission’s CDBS database, including the proposed allotment of Channel 253A at Vail for KZNO(FM). It assumes also that KZNO(FM) vacates Channel 251A at Nogales as it has proposed to do.

II. METHODS

To achieve a standard HAAT of 100 meters the necessary center of radiation at the Patagonia reference site was determined to be 1572.4 meters AMSL, and an ERP of 6 kW was assumed. Also, since gain and loss area studies are done under the assumption that all sub-Class C stations are operating at the maximum facilities for their respective classes of operation, the KZNO(FM) antenna center of radiation was adjusted to produce an actual HAAT of 100 meters and the ERP was increased to 6 kW.

Figure 1 shows a comparison between the 60 dB μ F(50,50) service contours of these two facilities. In yellow is the common overlap area, in pink is the area that would be lost by the removal of KZNO(FM) at Nogales, and green shows the area that would receive new service from Patagonia that does not now receive service from KZNO(FM) at Nogales. Note that a portion of the Patagonia Channel 251A service area would be served also by the KZNO(FM) facility on Channel 253A at Vail.

A detailed study was conducted to determine the number of stations, including foreign, whose service contours serve any portion of the area under study. For each FM station, terrain elevation data from three to sixteen kilometers on radials spaced at one-degree azimuthal intervals, starting with True North, were extracted from topographic data obtained from the computerized Defense Mapping Agency three arc-second point elevation database. The 30 arc-second terrain elevation database was used for foreign stations because the aforementioned three arc-second database does not extend into Mexico.

Along each radial 261 points were linearly interpolated according to the requirements of § 73.312(d). The height above average terrain along each of the 360 radials was computed by averaging the elevations between three and sixteen kilometers below the antenna radiation center in accordance with § 73.313(d)(3).

The locations of the 60 dB μ F(50,50) service contours were determined using computer methods outlined in F.C.C. publication PB-249144, *Field Strength Calculations for TV And FM Broadcasting*. These computer methods use digitized data taken from the graph of § 73.333 Figure 1. Intermediate values are obtained using bivariate interpolation techniques for surface fitting.

For non-Class C FM stations operating at less than maximum facilities, technical parameters were based on maximum facilities for the class of station under study. In the case of Class C stations, either the actual operating parameters or a minimum 300-meter height above average terrain and 100-kW effective radiated power was assumed, whichever is greater. In the case of Mexican stations where only the HAAT and ERP are notified, the antenna center of radiation was inferred from the HAAT notification in combination with the analysis of terrain radials. The ERP of foreign stations was taken to be the actual notified values and the HAAT was not adjusted to produce a maximum class facility.

Technical data for AM broadcast stations were obtained from the latest version of the CDBS Engineering Database. Soil conductivities used in the determination of distances to the nighttime interference-free contours were derived from the computerized FCC M-3 soil conductivity database for domestic stations and the Region 2 soil conductivity database for foreign stations. Conductivity data were extracted for every degree of azimuth.

For stations employing directional antenna systems, the Standard Radiation using the theoretical operating parameters contained within the CDBS Engineering Database was computed and used for inverse field strength. In the case of nondirectional stations, the effective field strengths at one kilometer were employed. In accordance with § 73.183(e), the "equivalent-distance" (Kirke) method was used to determine the distances to the nighttime interference-free contours where more than one conductivity zone exists over the path length.

Pursuant to established Commission policy, full-time AM reception service is defined by the station's nighttime interference-free contour for non-Class A stations, and by the 0.5 mV/m groundwave contour for Class A stations. Nighttime interference studies were performed for all full-time AM facilities within the vicinity of the KZNO(FM) and Patagonia 60 dB μ contours to determine those AM stations that provide nighttime interference-free service to the area.

Population figures for the areas within the contours were obtained through use of the computerized *1990 Census of Population and Housing Public Law 94-171 Data* made available by the U.S. Department of Commerce, Bureau of the Census. The census counts were taken down to the block level for maximum accuracy and resolution. There are approximately seven million block level records in the database. When the centroid coordinates of a census block fell within the contour the entire population associated with the block was assumed to reside within the contour. When the centroid fell outside the contour no portion of the population was counted.

The areas within the contours were computed using numerical integration employing the computed distances to the contours for each degree of azimuth. Distances to contours along intermediate azimuths were obtained mathematically by piecewise third-order polynomial approximations.

In cases where a station had a licensed and authorized facility, the contours were based on the authorized facility.

III. CONCLUSIONS

Analysis of the data from these studies sheds light on the true impact of the proposed move of KZNO(FM) from Nogales on Channel 252A to Vail on Channel 253A and the possible allotment of Channel 251A at Patagonia.

Contrary to the claims of DWAR, using their own asserted methodology of including foreign stations' service contours, there would be *no* first or second service provided to existing *white* and *gray* areas, respectively. In fact, all residents within the Patagonia service contour now enjoy no fewer than three fulltime aural broadcast services. Although the allotment of Channel 251A at Patagonia would provide a new

service to small underserved areas (fewer than five existing aural services), the removal of KZNO(FM) on Channel 252A at Nogales would leave behind populated underserved areas.

Furthermore, DWAR stated in its Reply Comments that “the proposed Vail station will have virtually no competitive impact on the Tucson market.” DWAR goes on to say “KZNO will be only a Class A station and will be located 46 kilometers from Tucson.”

Figure 3 shows the KZNO(FM) 60 dB μ service contour from a 100-meter HAAT/6-kW ERP Class A facility at the Vail allotment reference site for Channel 253A. Shown also on the map are the incorporated city limits of Tucson. A detailed study revealed that the KZNO(FM) service contour would encompass 66.6 percent of the population and 71.7 percent of the land area within the city limits of Tucson.

Figure 4 depicts the same contour from Vail and shows also the official 1990 U.S. Census definition for the Tucson Urban Area. KZNO(FM), operating on Channel 253A at Vail, would serve 54.6 percent of the population and 45.4 percent of the land area within the urbanized area.

**Lawrence L. Morton, P.E.
Consulting Engineer to Big Broadcasting of Arizona, LLC
December 19, 2000**



Lambert Azimuthal Equal-Area

15' 00" Graticule Spacing

CENTER OF MAP:
N LAT 31° 44' 48.00"
W LON 111° 03' 24.00"

FIGURE 1

60 dBu F(50,50) SERVICE CONTOURS
FROM KZNO(FM) ON CHANNEL 252A AT NOGALES
KZNO(FM) ON CHANNEL 253A AT VAIL AND
PROPOSED CHANNEL 251A AT PATAGONIA

Scale 1 : 674,719

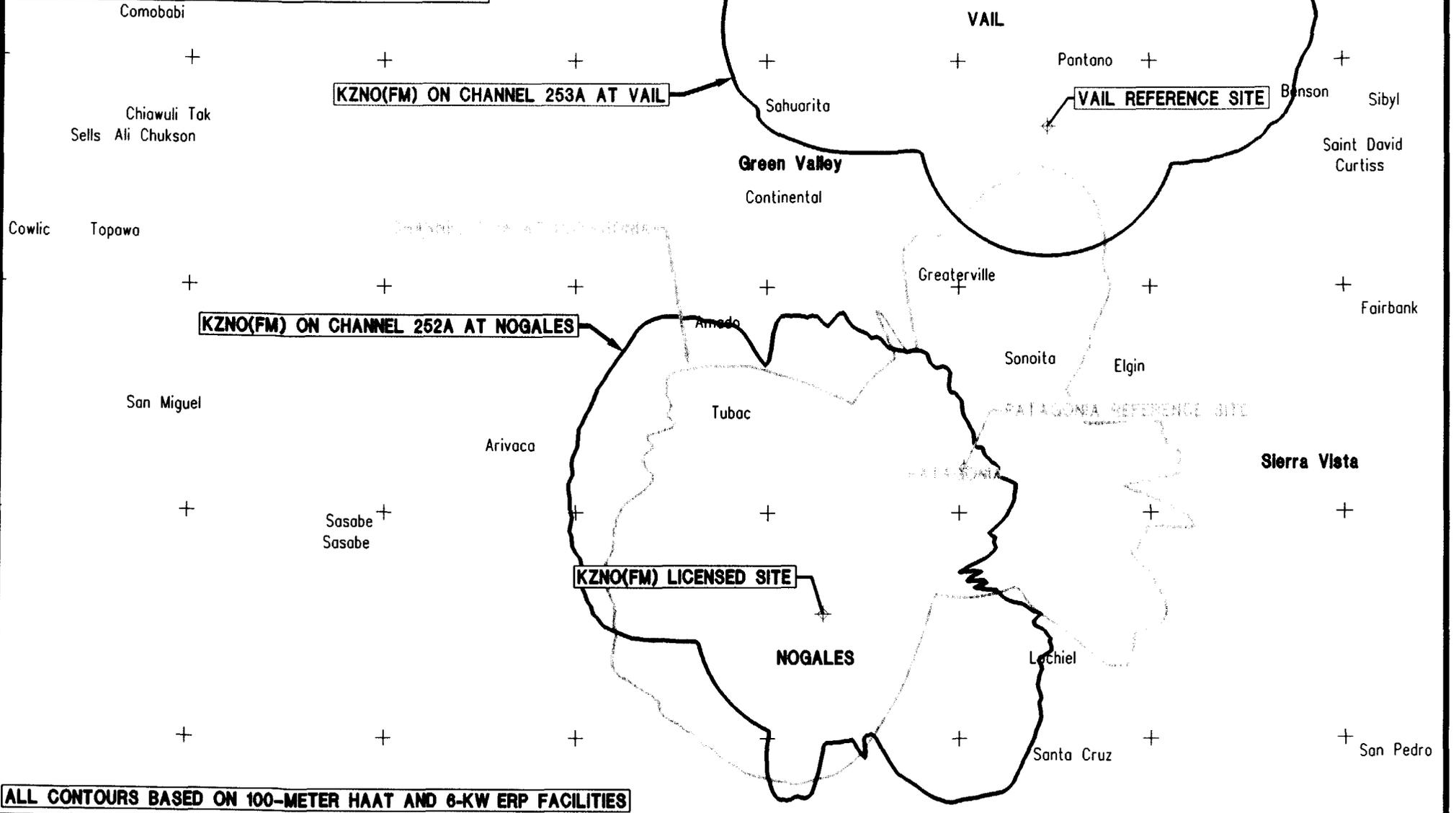
KILOMETERS



STATUTE MILES



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
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ALL CONTOURS BASED ON 100-METER HAAT AND 6-KW ERP FACILITIES

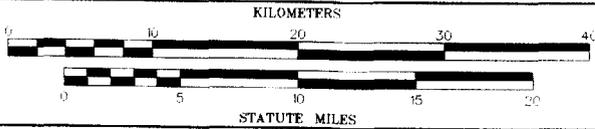
Lambert Azimuthal Equal-Area

15' 00" Graticule Spacing

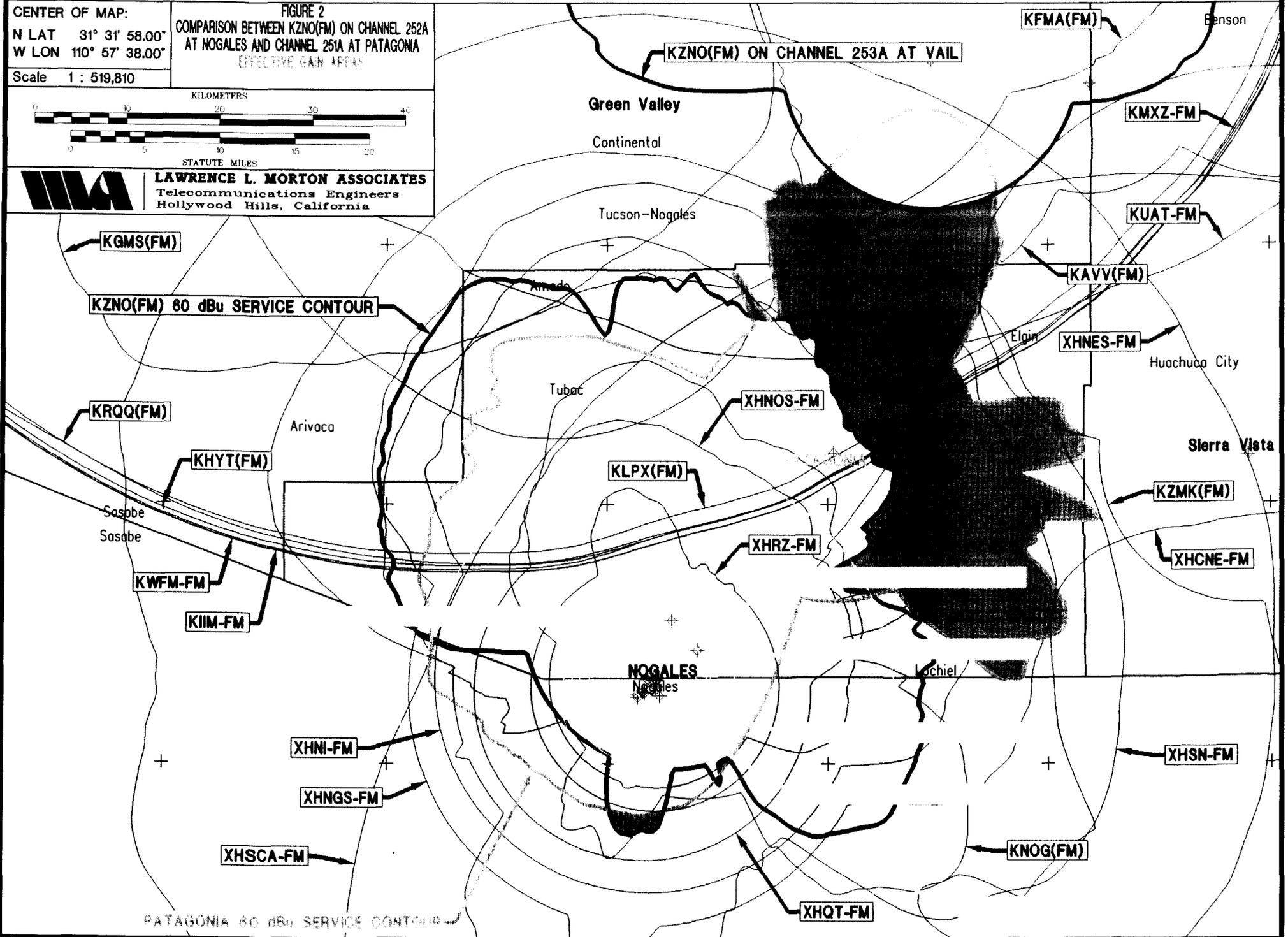
CENTER OF MAP:
N LAT 31° 31' 58.00"
W LON 110° 57' 38.00"

FIGURE 2
COMPARISON BETWEEN KZNO(FM) ON CHANNEL 252A
AT NOGALES AND CHANNEL 253A AT PATAGONIA
EFFECTIVE GAIN AREAS

Scale 1 : 519,810

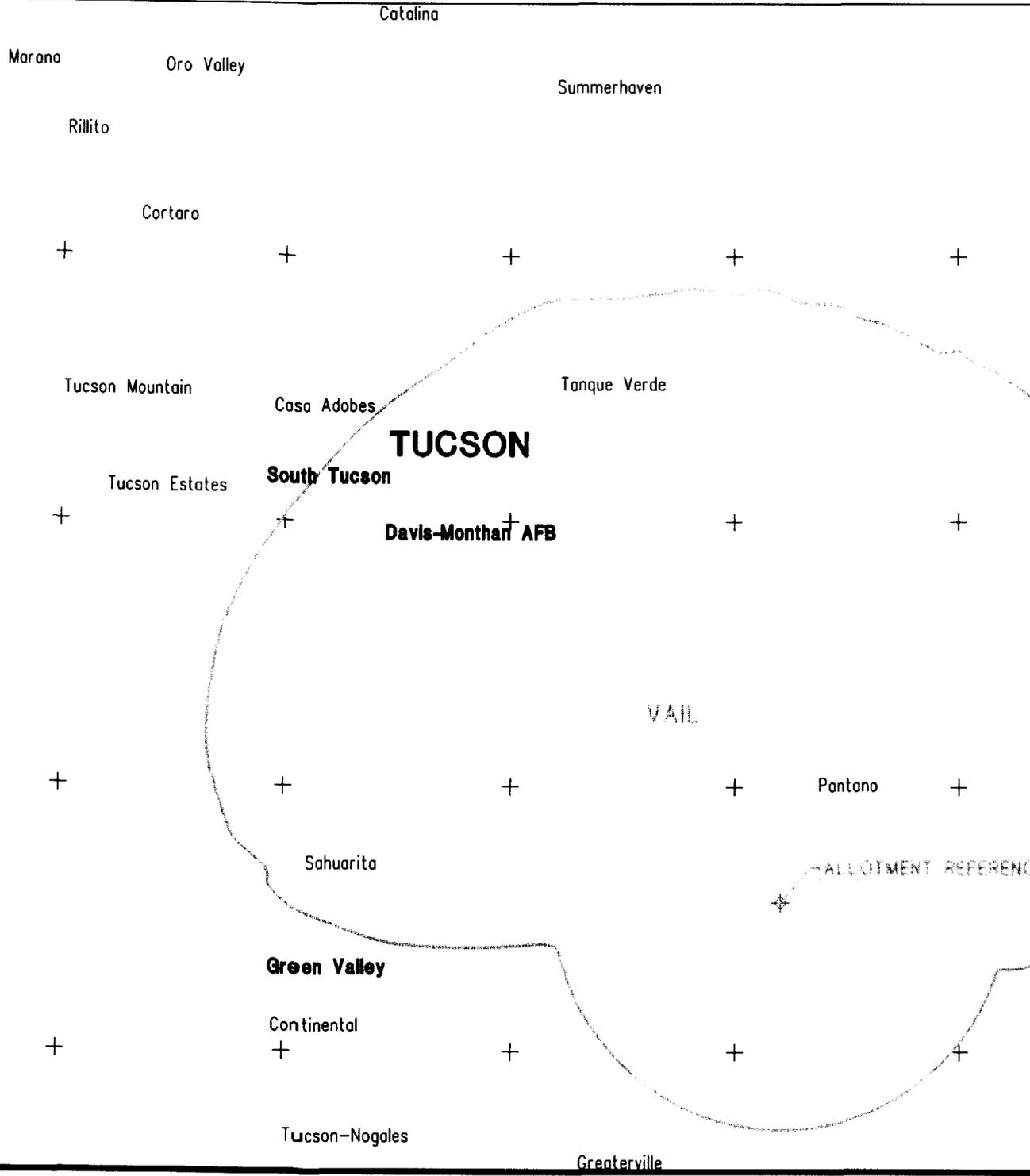


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Telecommunications Engineers
Hollywood Hills, California



Lambert Azimuthal Equal-Area

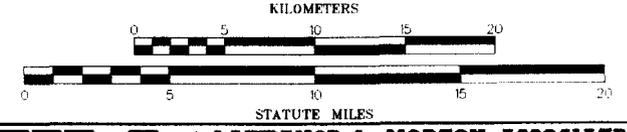
10' 00" Graticule Spacing



CENTER OF MAP:
 N LAT 32° 07' 33.00"
 W LON 110° 37' 41.00"

FIGURE 3
 KZNO(FM) 60 dBu F(50,50) SERVICE CONTOUR
 FROM CHANNEL 253A REFERENCE SITE
 AT VAIL, ARIZONA
 AND CITY LIMITS OF TUCSON

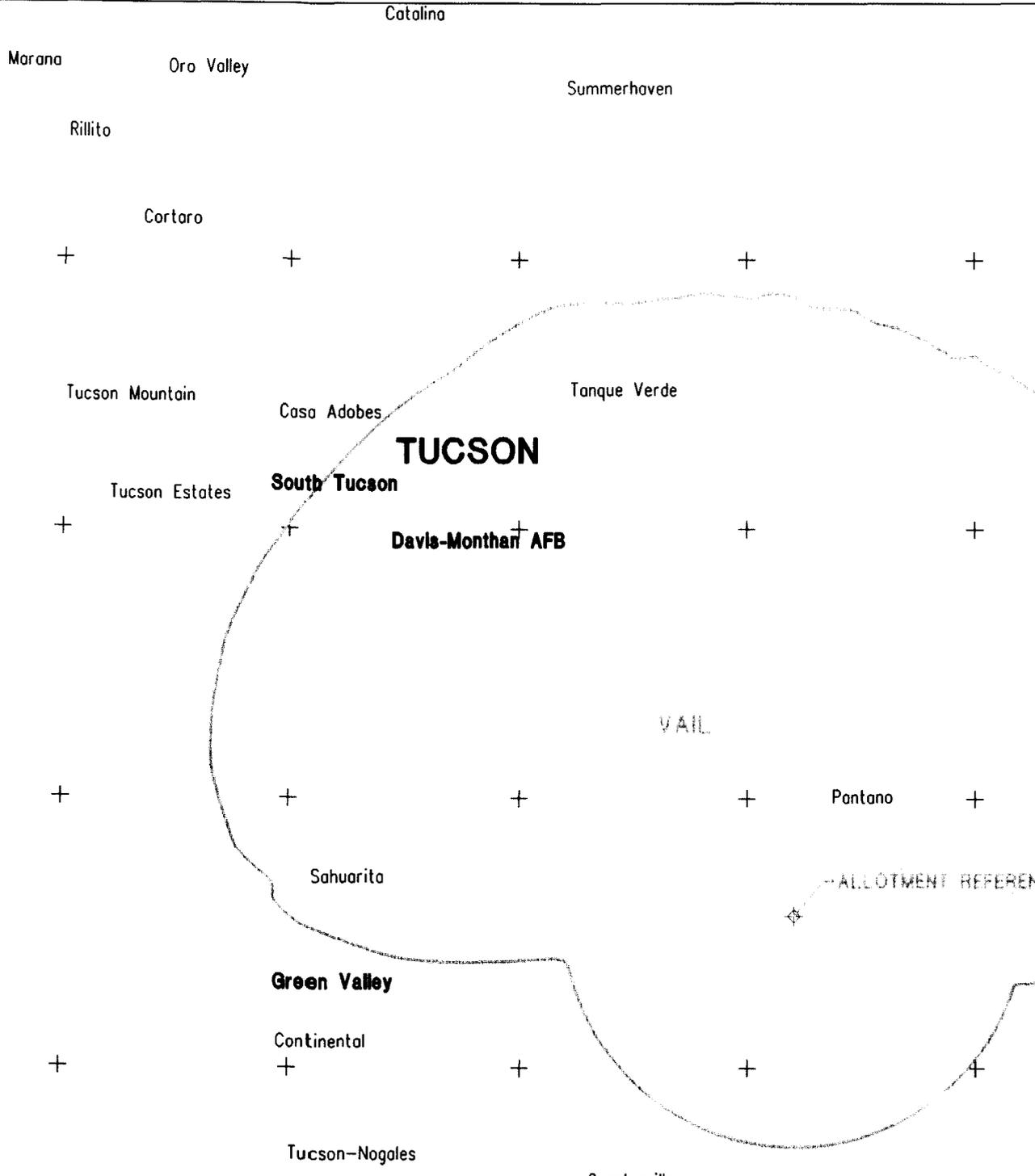
Scale 1 : 422,507



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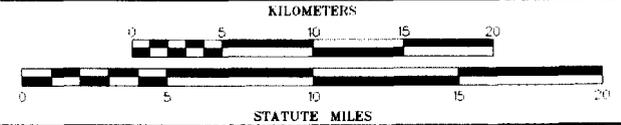
Lambert Azimuthal Equal-Area

10' 00" Graticule Spacing



CENTER OF MAP:
 N LAT 32° 07' 33.00"
 W LON 110° 37' 41.00"
 Scale 1 : 422,507

FIGURE 4
 KZNO(FM) 60 dBu F(50,50) SERVICE CONTOUR
 FROM CHANNEL 253A REFERENCE SITE
 AT VAIL, ARIZONA
 AND TUCSON URBANIZED AREA



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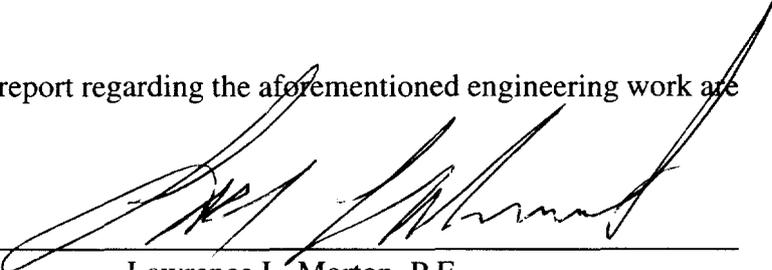
AFFIDAVIT

State of California)
) **ss:**
County of Los Angeles)

Lawrence L. Morton, being first duly sworn upon oath, deposes and says:

- That he is a qualified engineer,
- That he is a Registered Professional Engineer in the State of California,
- That he is a member of the Association of Federal Communications Consulting Engineers,
- That his qualifications are a matter of record with the Federal Communications Commission,
- That he has prepared many broadcast applications and engineering exhibits that have been filed with and granted by the Federal Communications Commission,
- That he has carried out such engineering work and that the results thereof are attached hereto and form part of this affidavit, and
- That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge.

Date: December 19, 2000



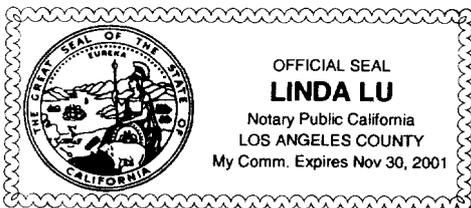
 Lawrence L. Morton, P.E.

On December 19, 2000, before me, Linda Lu, a Notary Public, in and for the State of California, personally appeared Lawrence L. Morton known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

My Commission expires 11/30/2001



 Notary Public



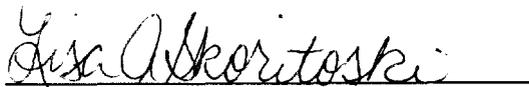
CERTIFICATE OF SERVICE

I, Lisa A. Skoritoski, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that on this 20th day of December, 2000, copies of the foregoing Comments and Counterproposal of Big Broadcast of Arizona, L.L.C. were mailed, postage prepaid, to the following:

Ms. Nancy V. Joyner*
Mass Media Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room 3-A267
Washington, D.C. 20554

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Petitioner in MM Docket No. 00-31 (RM 9815))



Lisa A. Skoritoski

***Via Hand Delivery**