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June 7, 2001

By Federal Express

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RECEIVED

JUN 8 2001

FCC MAIL ROOM

Re: Nogales, Vail and Patagonia, AZ
MM Docket No. 00-31
RM-9815
RM-10014
RM-10095

Dear Ms. Salas:

I enclose for filing the original and four (4) copies of the Petition of Arizona Lotus Corp. ("Lotus") and McMurray Communications, Inc. ("McMurray") for Leave to File Comments in Response to Desert West Air Ranchers' Suggestion to Add Channel 272A or 283A to Vail, Arizona. A copy of the Comments of Arizona Lotus Corp. and McMurray communications, Inc. in Response to Desert West Air Ranchers' Suggestion to Add Channel 272A or 283A to Vail, Arizona is attached to the Petition. All notices and communications to Lotus should be directed to the undersigned. Notices and communications to McMurray should be directed to:

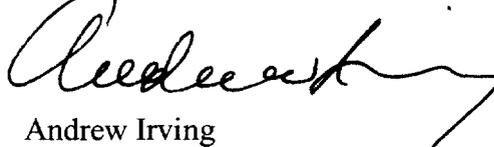
Lee J. Peltzman, Esq.
Shainis & Peltzman, Chartered
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Ms. Magalie Roman Salas, Secretary
June 7, 2001
Page 2

Kindly return the enclosed copy of this letter in the enclosed envelope with proof of receipt.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew Irving", written in a cursive style.

Andrew Irving

Enclosures

cc: Lee J. Peltzman, Esq.
All Parties on Certificate of Service

ORIGINAL

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

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Nogales, Vail and Patagonia, Arizona))

MM Docket No. 00-31
RM-9815
RM-10014
RM-10095

RECEIVED
JUN 8 2001
FCC MAIL ROOM

To: The Chief, Allocations Branch

PETITION OF ARIZONA LOTUS CORP. AND MCMURRAY COMMUNICATIONS, INC. FOR LEAVE TO FILE COMMENTS IN RESPONSE TO DESERT WEST AIR RANCHERS' SUGGESTION TO ADD CHANNEL 272A OR 283A TO VAIL, ARIZONA

Arizona Lotus Corp. ("Lotus"), permittee of Station KCMT (FM), Oro Valley, Arizona, and McMurray Communications, Inc. ("McMurray"), licensee of Station KWRQ (FM), Clifton, Arizona, by their undersigned attorneys, respectfully petition for leave pursuant to Section 1.415(d) of the Commission's Rules to submit comments in this proceeding. Lotus and McMurray desire to comment for the sole purpose of demonstrating that if the FM Table of Allotments is to be amended by adding a second channel to Vail, Arizona in addition to channel 253A as proposed by both Desert West Air Ranchers ("DWAR") and Big Broadcast of Arizona LLC ("BBA") (albeit with different coordinates), the second channel should be Channel 267A rather than Channel 272A. A copy of the proposed Comments of Arizona Lotus Corp. and McMurray Communications, Inc. in Response to Desert West Air Ranchers' Suggestion to Add Channel 272A or 283A to Vail, Arizona (the "Proposed Comments") is attached hereto.

1. Lotus, the successful bidder in FM Auction 25 for the construction permit

for Channel 270A, Oro Valley, Arizona, is permittee of Station KCMT (FM), which is operating on Channel 270A, Oro Valley pursuant to Limited Program Test Authority. Lotus has made a one-step application to the Commission (File No. BPMH-20010110AAN) (the “Lotus Application”) for authorization to upgrade KCMT’s facilities to Channel 271C1, Oro Valley.

2. McMurray is the licensee of Station KWRQ, Clifton, Arizona. McMurray has made a one-step application to the Commission (File No. BPMH-20010110AAM) (the “McMurray Application”) for authorization to change KWRQ’s facilities to Channel 272C1, Clifton. The McMurray and Lotus Applications are contingent upon each other.¹

3. Neither McMurray nor Lotus had any knowledge when the McMurray and Lotus Applications were filed that a party to this proceeding had proposed or that the Allocations Branch was considering amending the Table of Allotments to add an allotment of Channel 272A to Vail, Arizona. DWAR’s suggestion to add Channel 272A to Vail appeared in two sentences of its Reply Comments to Big Broadcast of Arizona, LLC filed December 20, 2000. There has been no public notice of a proposal to make such an addition.

4. As set forth in the Proposed Comments, adding Channel 272A to Vail will conflict with (i) Lotus’ proposed upgrade of KCMT from Channel 270A to Channel 271C1, and (ii) McMurray’s proposed change in the facilities for KWRQ from Channel 271C1 to Channel 272C1. Adding the second Vail channel on Channel 267A avoids conflicts with both proposed changes and will require a less severe power limitation to accommodate short-spaced Mexican

¹ Lotus and McMurray have filed a Petition for Reconsideration of the April 30 ruling by the Audio Services Division determining to return the Lotus and McMurray Applications upon the ground that the Lotus Application erroneously responded “Not Applicable” to an Item in the Tech Box on Form 301. The Petition for Reconsideration demonstrates that the “Not Applicable” response was accurate in view of the specifics of the Lotus Application.

allotments. Accommodating the Lotus and McMurray Applications by assigning Channel 267A to Vail, Arizona rather than Channel 272A would be consistent with the Commission's practice of eliminating conflicts between a rulemaking petition and later-filed applications by allotting a different channel from that proposed in the petition. See, Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 8 FCC Rcd 4743, 4745 n. 12 (1993). Lotus and McMurray desire to submit the Proposed Comments for the sole purpose of invoking that policy.

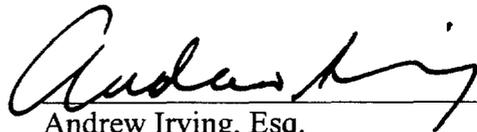
5. The Commission should accept the Proposed Comments since the analysis of the advantages of Channel 267A as compared to Channel 272A set forth therein will permit the Commission to resolve this proceeding on the basis of a full record demonstrating the public interest benefits of adding Channel 267A rather than Channel 272A to Vail. Wallace, Idaho and Lolo, Montana, 14 FCC Rcd. 21110 (1999)². The suggestion of Channel 267A in lieu of 272A will not prejudice any party to this proceeding. Colfer and Fairbury, Illinois, 8 FCC Rcd 4092 (1993).

² Were the Commission to decline to consider the Proposed Comments and allot Channel 272A to Vail notwithstanding the conflicts with the Lotus and McMurray Applications, such a result would raise concerns of due process and compliance with the Administrative Procedure Act in view of the lack of specific public notice of a proposal to add Channel 272A to Vail, notwithstanding Pinewood, SC, 5 FCC Rcd 7609 (1990).

WHEREFORE, Lotus and McMurray respectfully request that the Commission accept and consider the attached Comments of Arizona Lotus Corp. and McMurray Communications, Inc. in Response to Desert West Air Ranchers' Suggestion to Add Channel 272A or 283A to Vail, Arizona.

Dated: June 7, 2001

Respectfully submitted,



Andrew Irving, Esq.
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& Berman LLP
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(212) 541-2277
Attorneys for Arizona Lotus Corp.



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Attorneys for McMurray
Communications, Inc.

CERTIFICATE OF SERVICE

I, RASHIDA SCHEFER, a secretary in the law offices of Robinson Silverman Pearce Aronsohn & Berman LLP, do hereby certify that on this 7th day of June, 2001, I have caused to be mailed, via federal express, return receipt requested, a copy of the foregoing Petition of Arizona Lotus Corp. and McMurray Communications, Inc. for Leave to File Comments in Response to Desert West Air Ranchers' Suggestion to Add Channel 272A or 283A to Vail, Arizona 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

Richard-Michelle Eyer
REC Networks
Arizona Microradio Associates
P.O. Box 2408
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Mark Lipp, Esquire
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600 14th Street, NW
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(Counsel for desert West Air Ranchers
Corporation
Petitioner in MM Docket No. 00-31 (RM
9815))

Peter Gutmann
Pepper & Corazzini, L.L.P.
1776 K Street, NW
Suite 200
Washington, DC 20006
(Counsel for Big Broadcast of Arizona, LLC
in MM Docket No. 00-31 (RM 9815))


RASHIDA SCHEFER

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-31
Table of Allotments,)	RM-9815
FM Broadcast Stations)	RM-10014
(Nogales, Vail and Patagonia, Arizona))	RM-10095

To: The Chief, Allocations Branch

**COMMENTS OF ARIZONA LOTUS CORP. AND MCMURRAY COMMUNICATIONS,
INC. IN RESPONSE TO DESERT WEST AIR RANCHERS' SUGGESTION TO ADD
CHANNEL 272A OR 283A TO VAIL, ARIZONA**

Arizona Lotus Corp. ("Lotus"), permittee of Station KCMT (FM), Oro Valley, Arizona, and McMurray Communications, Inc. ("McMurray"), licensee of Station KWRQ (FM), Clifton, Arizona, by their undersigned attorneys, respectfully submit their comments in this proceeding for the sole purpose of demonstrating that if the FM Table of Allotments is to be amended by adding a second channel for Vail, Arizona in addition to channel 253A as proposed by both Desert West Air Ranchers ("DWAR") and Big Broadcast of Arizona LLC ("BBA") (albeit with different coordinates), the second channel should be Channel 267A rather than Channel 272A. Adding Channel 272A to Vail will conflict with (i) Lotus' proposed upgrade of KCMT from Channel 270A to Channel 271C1, and (ii) McMurray's proposed change in the facilities for KWRQ from Channel 271C1 to Channel 272C1. Adding the second Vail channel on Channel 267A avoids conflicts with both proposed changes and will require a less severe power limitation to accommodate short-spaced Mexican allotments.

1. Lotus, the successful bidder in FM Auction 25 for the construction permit for Channel 270A, Oro Valley, Arizona, is permittee of Station KCMT (FM), which is operating on Channel 270A, Oro Valley pursuant to Program Test Authority. Lotus has made a one-step application to the Commission (File No. BPMH-20010110AAN) (the "Lotus Application") for authorization to upgrade KCMT's facilities to Channel 271C1, Oro Valley.

2. McMurray is the licensee of Station KWRQ, Clifton, Arizona. McMurray has made a one-step application to the Commission (File No. BPMH-20010110AAM) (the "McMurray Application") for authorization to change KWRQ's facilities to Channel 272C1, Clifton.

3. The McMurray and Lotus Applications are contingent upon each other.¹ At the time they were filed neither McMurray nor Lotus had any knowledge that a party to this proceeding had proposed or that the Allocations Branch was considering amending the Table of Allotments to add an allotment of Channel 272A to Vail, Arizona, and there has been no public notice of a proposal to make such an addition.

4. DWAR proposes substituting Channel 253A at Vail, Arizona for Channel 252A at Nogales, Arizona so that DWAR can relocate Station KZNO (FM) from Nogales to Vail. The Notice of Proposed Rule Making, DA 00-369, released February 25, 2000, made no mention of Channel 272A. The possibility of an allotment of Channel 272A to Vail did not arise until December 20, 2000, when DWAR responded to BBA's April 17, 2000 counter-proposal

¹ Lotus and McMurray have filed a Petition for Reconsideration of the April 30 ruling by the Audio Services Division determining to return the Lotus and McMurray Applications upon the ground that the Lotus Application erroneously responded "Not Applicable" to an Item in the Tech Box on Form 301. The Petition for Reconsideration demonstrates that the "Not Applicable" response was accurate in view of the specifics of the Lotus Application.

seeking different coordinates for a new Channel 253A to be allotted to Vail that would avoid conflict with KZNO's existing facility on Channel 252A at Nogales. DWAR's December 20, 2000 Reply Comments to Big Broadcasting of Arizona, LLC responded to BBA's counter-proposal by identifying two channels, 272A and 283A, which could be allotted to Vail to accommodate BBA's interest in a Vail channel other than Channel 253A as proposed by DWAR. Significantly, DWAR articulated no basis for preferring Channel 272A for that purpose. Moreover, as indicated above, there has been no Public Notice released of the proposal to add either Channel 272A or Channel 283A at Vail, to the Commission's Table of Allotments, even though Public Notices were released announcing BBA's counter-proposal for different coordinates for Channel 253A at Vail² and DWAR's proposal (made in its April 17, 2000 Comments to respond to concerns expressed by the Commission in the Notice of Proposed Rule Making in this proceeding) to add Channel 251A at Patagonia, Arizona.³

5. Lotus and McMurray express no opinion as to the merits of the proposal to substitute Channel 253A at Vail, Arizona, for Channel 252A at Nogales, or the relative merits of DWAR's proposed coordinates for Channel 253A at Vail as against BBA's counter-proposal for a new Channel 253A at Vail at different coordinates. Rather, Lotus and McMurray simply urge that, if a second allotment to Vail is to be made, the Commission choose Channel 267A rather than Channel 272A.⁴ The attached Engineering Exhibit demonstrates that Channel 267A can be

² See Public Notice 2453, December 5, 2000.

³ See Public Notice 2476, April 4, 2001.

⁴ Since Channel 283A, also suggested by DWAR, does not conflict with the Lotus and McMurray Applications, Lotus and McMurray would not object to adding Channel 283A to Vail instead of Channel 272A.

allocated to Vail without conflicting with any other authorization or pending application. It would be short spaced to only two vacant Mexican allotments, a conflict amenable to resolution through a specially negotiated allotment arranged with the Mexican authorities consistent with precedent. By contrast, adding Channel 272A to Vail would cause spacing deficiencies to the Lotus Application and the McMurray Application as well as a short-spacing to a vacant Mexican allotment more severe than the short-spacing to vacant Mexican allotments that will result from the addition of Channel 267A to Vail.

6. Accommodating the Lotus and McMurray Applications by assigning Channel 267A to Vail, Arizona rather than Channel 272A would be consistent with the Commission's practice of eliminating conflicts between a rulemaking petition and later-filed applications by allotting a different channel from that proposed in the petition. See, Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 8 FCC Rcd 4743, 4745 n. 12 (1993). The Commission made such accommodations in Durango and Dolores, Colorado, 12 FCC Rcd 9740 (1997); Weaverville, California, 12 FCC Rcd 2965 (1997); and Kerman, California, 11 FCC Rcd 2887 (1996). In the present case, Lotus and McMurray are suggesting a channel (267A) as an alternative to a channel (272A) that is not even the subject of a formal proposal or counterproposal, but was merely suggested by one party (DWAR) in response to a counterproposal by another (BBA). The accommodation suggested by Lotus and McMurray would serve the public interest by permitting Lotus to upgrade KCMT's facilities so as to expand its population and coverage area within its 60dBu contour by 174,805 people and 3,590 square kilometers.

WHEREFORE, Lotus and McMurray respectfully request if the Commission allots a Channel to Vail, Arizona in addition to Channel 253A, it shall allot Channel 267A rather than Channel 272A.

Dated: June 7, 2001

Respectfully submitted,



Andrew Irving, Esq.
Robinson Silverman Pearce Aronsohn
& Berman LLP
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New York, NY 10104
(212) 541-2277
Attorneys for Arizona Lotus Corp.



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Attorneys for McMurray
Communications, Inc.

**EXHIBIT E
ENGINEERING STATEMENT
IN SUPPORT OF
SUPPLEMENTAL COMMENTS
IN DOCKET NO. 00-31/RM-9815**

This statement was prepared on behalf of Arizona Lotus Corp., permittee of FM broadcast station KCMT, Oro Valley, Arizona, and McMurray Communications, Inc., licensee of FM broadcast station KWRQ, Clifton, Arizona. KCMT is operating with program test authority as a Class A station on Channel 270A and has an application pending that proposes a one-step upgrade to a Class C1 station on Channel 271C1. KWRQ has an application pending that proposes a one-step change from a Class C1 station on Channel 271C1 to a Class C1 station on Channel 272C1. The KCMT and KWRQ applications are contingent on each other. A grant of the contingent applications is in question due to a proposed addition of Channel 272A to Vail, Arizona. The proposed addition of Channel 272A was apparently initiated by the Allocations Branch of the Commission in order to provide a second channel to Vail, Arizona in response to comments and counter proposals in Docket No. 00-31/RM-9815. The proposed addition was not published through a Notice of Proposed Rule Making or other Public Notice.

As previously stated the proposed addition of Channel 272A to Vail conflicts with the proposed upgrade of KCMT from Channel 270A to Channel 271C1 at Oro Valley, which upgrade will result in a gain in population and area within the 60dBu contour of 174,805 people and 3,590 square kilometers. It is also in conflict with the concurrently filed contingent application of KWRQ at Clifton, AZ to change channel from 271C1 to 272C1. Since the proposed addition of Channel 272A to Vail would preclude a grant of the application to upgrade the facilities of KCMT and to change the facilities of KWRQ,

allocation studies were conducted by the office of the undersigned to determine the availability of an alternate channel that can be added to Vail, AZ and avoid the conflicts with the pending applications.

It has been determined through an all channel allocation study, using the reference coordinates of Vail, that Channel 267A can be added to Vail as a better overall alternative than the addition of 272A to Vail. Attached to this statement as Figure 1 is the result of an analysis of the proposed addition of Channel 267A to Vail, AZ. For purposes of comparison, an analysis of the proposed addition of Channel 272A to Vail is attached as Figure 2.

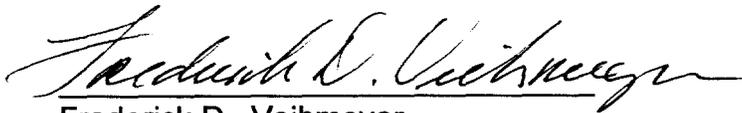
As shown on Figure 1 the addition of 267A to Vail in lieu of 272A would resolve the conflict with the pending applications of KCMT Oro Valley, AZ and KWRQ Clifton, AZ. The addition of 267A at the reference coordinates site in Vail is short-spaced with the antenna site coordinates of the proposed upgrade of KKYZ at Sierra Vista, AZ, however it is not short-spaced with the allotment site coordinates of KKYZ. That spacing requirement with KKYZ and interference ratio relationship is the same as for the proposed addition of Channel 272A to Vail, AZ. Channel 267A at Vail is also short-spaced with two vacant Mexican allotments but in both cases the power limitation toward the vacant Mexican allotments will be less severe than the power limitation that would be placed on the proposed addition of Channel 272A in view of 272A's more severe short-spacing with a different Mexican allotment.

Figure 2 shows the spacing deficiencies that the addition of Channel 272A imposes on the pending applications of KCMT Oro Valley and KWRQ Clifton. As shown Channel

272A is also short-spaced with a vacant Mexican allotment that will require a significant reduction in the ERP in the direction of that allotment.

The addition of Channel 267A to Vail is obviously a better alternative as compared to Channel 272A since it will provide an additional channel for Vail, if needed, will remove the preclusion to a grant of the contingent applications of KCMT and KWRQ as described above and will require a less severe power limitation with respect to short-spaced vacant Mexican allotments.

Respectfully submitted,
LOHNES AND CULVER


Frederick D. Veihmeyer

June, 2001

**FIGURE 1
FM ALLOCATION STUDY
RE: PROPOSED ADDITION OF
CHANNEL 267A TO VAIL, ARIZONA**

<u>CHANNEL</u>	<u>STATION CALL</u>	<u>CLASS</u>	<u>CITY, STATE</u>	<u>DISTANCE SEPARATION IN KM</u>	
				<u>ACTUAL⁽¹⁾</u>	<u>REQUIRED⁽²⁾</u>
213	KUAT-FM	C	Tucson, AZ.	40.9	29
214	No stations within required separation plus 50 kilometers				
264	No stations within required separation plus 50 kilometers				
265	KZMK	A	Sierra Vista, AZ.	69.2	31
266	ALLOC ⁽³⁾	B	Sasabe, SO.	102 ⁽⁴⁾	113
267	ALLOC ⁽³⁾	B	Agua Prieta, SO.	136.5 ⁽⁴⁾	178
268	KZON	C	Phoenix, AZ.	190.6	165
269	KKYZ(APP) ⁽⁶⁾	C2	Sierra Vista, AZ.	50.3 ⁽⁴⁾	55
269	KKYZ(APP) ⁽⁶⁾	C2	Sierra Vista, AZ.	69.9	55
270	KCMT	A	Oro Valley, AZ.	39.5	31

- Notes:**
- (1) Calculated distance separation between stations in accordance with Section 73.208 of the FCC Rules.
 - (2) Required minimum distance separation between stations per Section 73.207 of the FCC Rules.
 - (3) Vacant Mexican Allotment.
 - (4) Mileage separation deficiencies.
 - (5) KKYZ antenna site.
 - (6) KKYZ allotment site.

Prepared by
Lohnes and Culver Washington, D.C.
June, 2001

**FIGURE 2
FM ALLOCATION STUDY
RE: PROPOSED ADDITION OF
CHANNEL 272A TO VAIL, ARIZONA**

<u>CHANNEL</u>	<u>STATION</u>		<u>CITY, STATE</u>	<u>DISTANCE SEPARATION IN KM</u>	
	<u>CALL</u>	<u>CLASS</u>		<u>ACTUAL⁽¹⁾</u>	<u>REQUIRED⁽²⁾</u>
218	No stations within required separation plus 50 kilometers				
219	No stations within required separation plus 50 kilometers				
269	KKYZ(APP) ⁽⁵⁾	C2	Sierra Vista, AZ.	50.3 ⁽⁴⁾	55
269	KKYZ(APP) ⁽⁶⁾	C2	Sierra Vista, AZ.	69.9	55
270	KCMT(CP)	A	Oro Valley, AZ.	39.5	31
271	KCMT(APP)	C1	Oro Valley, AZ.	39.5 ⁽⁴⁾	133
272	KWRQ(APP)	C1	Clifton, AZ.	160.5 ⁽⁴⁾	200
272	ALLOC ⁽³⁾	B	Cananea, SO.	124.3 ⁽⁴⁾	178
273	KNIX-FM	C	Phoenix, AZ.	190.9	165
274	XHQT-FM	B	Nogales, SO.	84.0	69

- Notes:
- (1) Calculated distance separation between stations in accordance with Section 73.208 of the FCC Rules.
 - (2) Required minimum distance separation between stations per Section 73.207 of the FCC Rules.
 - (3) Vacant Mexican Allotment.
 - (4) Mileage separation deficiencies.
 - (5) KKYZ antenna site.
 - (6) KKYZ allotment site.

Prepared by
Lohnes and Culver Washington, D.C.
June, 2001

CERTIFICATE OF SERVICE

I, RASHIDA SCHEFER, a secretary in the law offices of Robinson Silverman Pearce Aronsohn & Berman LLP, do hereby certify that on this 7th day of June, 2001, I have caused to be mailed, via federal express, return receipt requested, a copy of the foregoing Comments of Arizona Lotus Corp. and McMurray Communications, Inc. in Response to Desert West Air Ranchers' Suggestion to Add Channel 272A or 283A to Vail, Arizona to the following:

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


RASHIDA SCHEFER