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Before the  
Federal Communications Commission  
Washington, DC

NOV 9 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
*Amendment of Section 73.202(b),* )  
*Table of Allotments,* )  
*FM Broadcast Stations* )  
*(Dos Palos and Chualar, California)* )  
)  
)  
)  
To: Chief, Allocations Branch )

MM Docket No. 01-248 /  
RM-10241

**COMMENTS OF KNT0, INC.**

KNT0, Inc., licensee of Station KNT0(FM), Livingston, California, by its attorney, hereby submits comments in support of the proposed reallocation of Channel 240A from Dos Palos, California to Chualar, California. *Notice of Proposed Rule Making*, DA 01-2206 (Chief, Allocations Branch, rel. Sept. 21, 2001) ("NPRM"). In support thereof, the following is stated:

KNT0, Inc. supports the proposed reallocation of Channel 240A to Chualar. In the event this Petition is granted and the allotment is made to Chualar, KNT0, Inc. reaffirms its commitment to expeditiously file an application for a construction permit for service to the new community.

As stated previously, the predecessor of KNT0, Inc. was granted authority to change the community of license of KNT0(FM) from Livingston, California to Dos Palos, California, in MM Docket No. 00-92. *Report and Order*. 15 FCC Rcd 20226 (2000). Although a construction permit currently is outstanding to relocate Station KNT0 and change the community of license of KNT0 to Dos Palos, California (File No. BPH-20010214ACG), that facility has not yet been constructed.

In the NPRM released in this proceeding, the Commission requested that KNT0, Inc.

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BY: SCDE

submit a gain and loss study showing the number of reception services served by both the Chualar and Dos Palos allotments. That study is attached hereto as Attachment 1.

As seen in the attached Technical Statement, although there are certain areas that will lose fourth and fifth full-time service, the areas are small and virtually unpopulated. The area comprising the fourth service loss encompasses 55.2 square kilometers which contains no persons, and the area comprising the fifth service encompasses 651.3 square kilometers in which only 211 persons reside. Attachment 1 at 2. Under Commission precedent, these levels of areas and population are *de minimis*. See *Seabrook, Huntsville, Bryan, Victoria, Kenedy, and George West, TX*, 10 FCC Rcd 9360 (1995) (455 persons *de minimis*). Further, while analytically there is loss of fourth and fifth service to certain areas and populations, it must be remembered that those areas do not presently receive service from Channel 240/KNTO, insofar as no Dos Palos facility has yet been constructed. Therefore, unlike the typical rulemaking situation involving “gain” or “loss” areas, no actual “loss” of existing service of *any* sort will occur. Moreover, even *if* service already was being provided to Dos Palos, as seen in the attached Technical Statement, approving this rulemaking will permit an increase in service to **56,316 persons** over the present KNTO licensed facilities in Chualar, as well as improved 60 dBu service to **164,648 more persons** than would have been provided by the continued allotment and construction of Channel 240A at Dos Palos, California. In *Seabrook*, the Commission ruled that a proposal to provide service within a gain area to 144,628 persons would be favored over a competing proposal to provide a third aural service to 18,629 persons, a fourth aural service to 11,307 persons, and a fifth aural service to 8,243 persons. *Id.* at ¶ 10. The Commission stated:

We are aware of the public interest benefits of third, fourth and fifth aural services, and the need to provide service to areas that are relatively underserved. In order to

take such factors into consideration, we adopted Greenup which allowed [a petitioner] to make a showing...that would discount the raw population advantage. We emphasize that in the absence of such a showing, we will continue to first consider the raw population differential. See 6 FCC Rcd at 1495, para. 15.

*Id.* at ¶ 10. Under this rationale, when comparing the present Dos Palos allotment to the proposed Chualar allotment, in light of the larger overall gain in population to be served, the “fourth” and “fifth” service population loss within the loss area is not relevant, and the proposed Dos Palos allotment is favored.

*In Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094 (1990), the Commission addressed the removal of a sole local service from a community as presumptively disserving the public interest. As the Commission has stated, “in general,” it does not believe that the public interest would be served by removing a community's sole local transmission service merely to provide a first local transmission service to another community. *See Ardmore, Oklahoma, and Sherman, TX*, 6 FCC Rcd 7006, ¶ 7 (1991). The underpinning for this policy is that the public has a legitimate expectation that existing local service will continue. That policy consideration, however, does not come into play in this proceeding. Although the reallocation of Channel 240A from Dos Palos to Chualar will deprive Dos Palos of its sole allotment, it must again be emphasized that the Channel 240A allotment has not yet been constructed. Therefore, as the Commission often has recognized, the Commission does not consider the removal of a channel under such circumstances “to present parallel concerns with loss of service, as it does not constitute a service upon which the public has become reliant.” *Orabi and Leupp, AZ*, 14 FCC Rcd 13547, ¶ 6 (Chief, Allocations Branch 1999). Although the NPRM suggests that such reallocation is only appropriate in instances where a showing is made demonstrating that no viable

transmitter site is available that would serve the prior allotment community<sup>1</sup> (NPRM ¶ 4), as seen in *Oraibi*, no such showing has been required in the past. In *Oraibi*, as here, the rulemaking proponent sought to remove the sole local aural service allotment from a community. As here, the allotment had not yet commenced operation. The proponent proposed no site change. Nevertheless, reallocation of the channel at issue was approved. Similarly, in *Hague, NY and Addison, VT*, 13 FCC Rcd 20997 (Chief, Allocations Branch 1998), the Commission permitted a reallocation of the sole local aural service allotment to a new community to occur where service under the previous allotment had not yet commenced without requiring a showing that the previous allotment was defective or that a viable transmitter site was not available.

The Commission will allow an allotment to be reassigned to a new community of license where the new allotment is mutually exclusive with the current allotment, and the reallocation will result in a preferential arrangement of allotments. *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Chualar currently is the community of license only of non-commercial educational station KHDC(AM). Therefore, in this case, the proposed reallocation will allow Chualar to be allotted its first commercial local service. In light of the overall greater service that KNTD will be able to provide by virtue of the reallocation, the reallocation will result in a more efficient use of the allotment, and the public interest will be served by approving this proposed reallocation.

The Commission tentatively has concluded that “a waiver of our restriction on removal of

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<sup>1</sup> The Commission cited *Glencoe and LeSueur, MN*, 7 FCC Rcd 7651 (1992) and *Sanibel and San Carlos Park, FL*, 10 FCC Rcd 7215 ¶ 9 (1995).

sole local transmission service is warranted” in this case. NPRM at ¶ 5. No new facts warrant deviation from that tentative conclusion. Accordingly, KNT0, Inc. respectfully requests that the proposed reallocation being considered in the *Notice of Proposed Rule Making* issued in this proceeding be granted, and that Channel 240A be reallocated from Dos Palos, California to Chualar, California, as proposed in this proceeding.

Respectfully submitted,

**KNT0, INC.**

By: \_\_\_\_\_  
Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert*  
2120 N. 21<sup>st</sup> Rd.  
Arlington, VA 22201  
(703) 243-8690

November 9, 2001

ATTACHMENT 1

# GRAHAM BROCK, INC.

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BROADCAST TECHNICAL CONSULTANTS

**TECHNICAL COMMENTS**

**MM DOCKET #01-248**

**KNTO, INC.**

**ALLOT CHANNEL 240A**

**CHUALAR, CALIFORNIA**

**November 2001**

**TECHNICAL EXHIBIT**

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**TECHNICAL COMMENTS**  
**MM DOCKET #01-248**  
**KNTO, INC.**  
**ALLOT CHANNEL 240A**  
**CHUALAR, CALIFORNIA**  
**November 2001**

**TECHNICAL STATEMENT**

1. This technical statement and attached exhibits were prepared on behalf of KNTO, Inc. ("KI"), licensee of KNTO, Channel 240A, Livingston, California. KI also is the petitioner in MM Docket #01-248, seeking to change the community of license of KNTO to Chualar, California.<sup>1</sup>

2. In the Notice of Proposed Rule Making ("Notice") in MM Docket #01-248, the Commission requested that KI submit a gain and loss area study showing the number of reception services in both Chualar<sup>2</sup> and Dos Palos. However, since KNTO's service to Dos Palos has not commenced, the available services in Livingston, California, should also be considered.<sup>3</sup>

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- 1) In MM Docket #00-92, the community of license for KNTO was changed from Livingston, California, to Dos Palos, California. While there is an outstanding construction permit for KNTO at Dos Palos, California (BPH-20010214ACG), the licensed facility of KNTO remains operational.
  - 2) The number of reception services in Chualar was originally submitted in the KI Petition for Rule Making, and showed the entire gain area had five existing full time services. The data is re-incorporated herein for comparison purposes.
  - 3) In the Report and Order in MM Docket #00-92, the Commission noted that there was no under served area by either the KNTO licensed facility or from the proposed allocation site at Dos Palos. However, since a permit has now been issued at Dos Palos, the gain and loss area study has been updated to reflect the actual permit location, which is different than the allocation site.

## DISCUSSION

3. A study of the available services in the gain and loss areas (Chualar, Dos Palos and Livingston) has been undertaken.<sup>4</sup> Exhibit #1 is a map depicting the licensed contour of KNTO and a maximum Class A facility operating at Dos Palos and those AM and FM stations which provide service to that area.<sup>5</sup> Exhibit #2 is a more detailed map depicting the areas that would receive fourth and fifth service. A tabulation of those stations shown is attached as Exhibit #3. There are five or more existing full time services within the entire area that presently receives service from KNTO. Within the area predicted to receive service from a theoretical Class A facility at Dos Palos, based on the KNTO construction permit site, there are a few under served areas in which KNTO would theoretically provide some fourth and fifth full time service. The areas (as denoted on Exhibit #2) of fourth service encompass 55.2 square kilometers, but do not contain any persons. The area of fifth service contains 651.3 square kilometers in which 211 persons reside.<sup>6</sup> It is noted that KNTO has not yet commenced service in Dos Palos, as such, these persons have not come to rely on the service from this station.

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- 4) The service areas of the Dos Palos and Chualar Class A facilities are based on 60 dBu contour radii of 28.2 kilometers. For reference, there are 41,323 persons in 2,498.3 square kilometers within the theoretical Dos Palos 60 dBu contour (from the construction permit site).
  - 5) For all commercial FM stations, with the exception of Class C, maximum class contours were used. For Class C facilities, the contours were based on their respective authorizations or, in the case of vacant allotments, minimum values for the Class. For non-commercial FM stations the facilities' actual licensed values were used to determine the reference distance to the 60 dBu contour. The nighttime interference free contours of AM Class B and C facilities were used where applicable. In the case of Class D stations, due to the high level of interference, the 25.0 mV/m contours were used. All Class A AM stations 0.5 mV/m contours were used.
  - 6) The area and population calculations were made using the computer program "Probe 2". The population is in a block census form, with a 1.5 kilometer resolution, extracted from the 2000 Census.

4. Exhibit #4 depicts the number of services within the predicted theoretical gain area at Chualar, based on the re-allotment of Channel 240A from Dos Palos/Livingston. The other AM and FM facilities providing service to the gain area are tabulated on Exhibit #5. As noted, the entire gain area is served by more than five existing full-time services and, as such, is considered well served.

5. A re-allotted Channel 240A at Chualar, California, will provide 60 dBu service to 205,971 persons in 2,498.3 square kilometers.<sup>7</sup> This represents an increase of 56,316 persons over the present KNTD licensed facility in Livingston.<sup>8</sup> Further, a Chualar facility would provide 60 dBu service to 164,648 persons more than the allotment to Dos Palos, California.<sup>9</sup>

6. Therefore, the proposed re-allotment will not deprive Livingston of its only local service<sup>10</sup> and will provide Chualar with its first local commercial transmission service. Further, while there is an area of theoretical fourth and fifth service to 211 persons in the Dos Palos contour, this area does not presently receive service from KNTD and, as such, no actual loss of service will result. As such, the re-allotment to Chualar, while creating a new reception service, is in an area which is already served by five or more existing services. Therefore, based on the foregoing, KI respectfully requests that Channel 240A be re-allotted to Chualar, California

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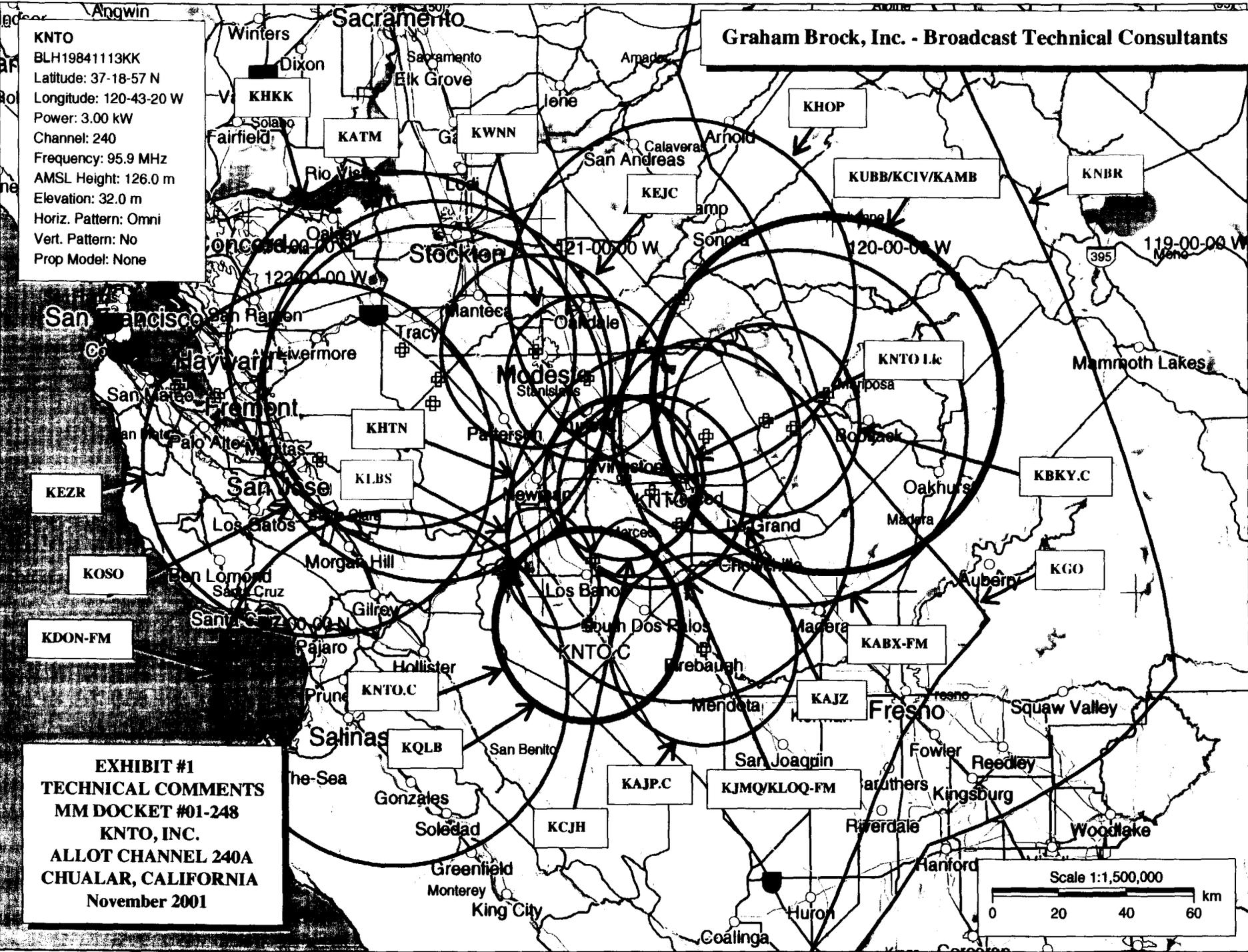
7) The population reported in the original Chualar petition was 204,817 persons. The difference is due to a change in the computer model that did not originally convert the contour data from NAD 83 to NAD 27 before calculating the population.

8) The present KNTD licensed site provides 60 dBu service to 149,655 persons in 1,721.9 square kilometers.

9) See Footnote 4 supra.

10) Full-time FM non-commercial stations KLVN and KYCC will remain licensed to Livingston.

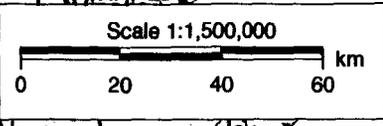
7. The foregoing was prepared on behalf of KNTO, Inc., by Graham Brock, Inc., its Technical Consultants. All information regarding AM and FM facilities was extracted from the CDBS database. All population data was extracted from the PL 94-171 (2000 census) data files. We assume no liability for errors or omissions in those databases that may be adverse to the requests contained herein.



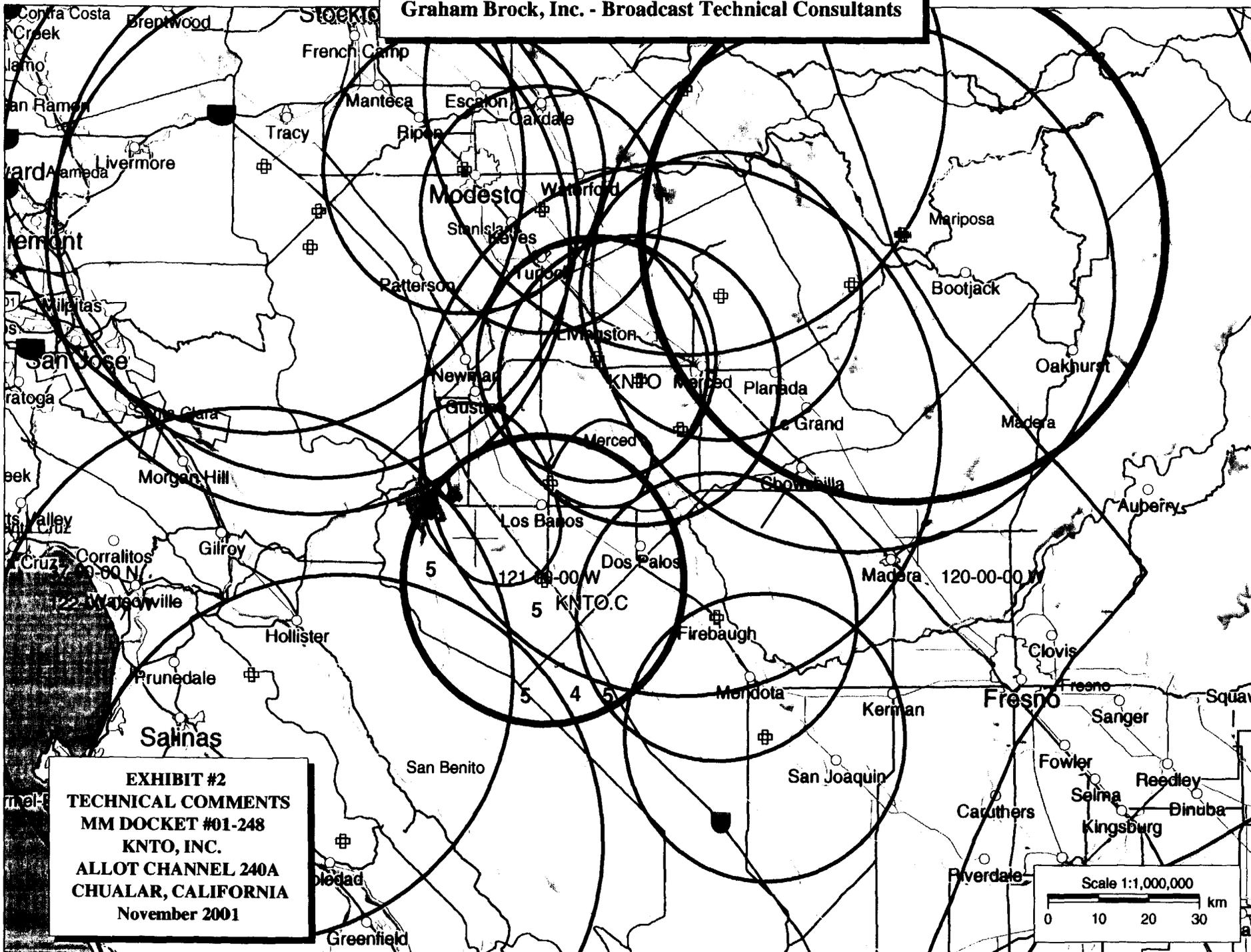
**Graham Brock, Inc. - Broadcast Technical Consultants**

**KNTO**  
 BLH19841113KK  
 Latitude: 37-18-57 N  
 Longitude: 120-43-20 W  
 Power: 3.00 kW  
 Channel: 240  
 Frequency: 95.9 MHz  
 AMSL Height: 126.0 m  
 Elevation: 32.0 m  
 Horiz. Pattern: Omni  
 Vert. Pattern: No  
 Prop Model: None

**EXHIBIT #1**  
**TECHNICAL COMMENTS**  
**MM DOCKET #01-248**  
**KNTO, INC.**  
**ALLOT CHANNEL 240A**  
**CHUALAR, CALIFORNIA**  
**November 2001**



Graham Brock, Inc. - Broadcast Technical Consultants



**EXHIBIT #2**  
**TECHNICAL COMMENTS**  
**MM DOCKET #01-248**  
**KNTV, INC.**  
**ALLOT CHANNEL 240A**  
**CHUALAR, CALIFORNIA**  
**November 2001**

**TECHNICAL COMMENTS**  
**MM DOCKET #01-248**  
**KNTO, INC.**  
**ALLOT CHANNEL 240A**  
**CHUALAR, CALIFORNIA**  
**November 2001**

**EXHIBIT #3**

**Tabulation of Stations Considered in Gain/Loss Area of Channel 240A**

**AM Stations**

| <b>Call Sign</b> | <b>Frequency</b> | <b>Power</b> | <b>Contour Depicted</b> | <b>City/State</b> |
|------------------|------------------|--------------|-------------------------|-------------------|
| KNBR             | 680 kHz          | 50.0 kW ND   | 0.5 mV/m                | San Francisco, CA |
| KGO              | 810 kHz          | 50.0 kW DA   | 0.5 mV/m                | San Francisco, CA |
| KLBS             | 1330 kHz         | 5.0 kW DA    | 17.252 mV/m             | Los Banos, CA     |

**FM Stations**

| <b>Call Sign</b> | <b>Channel</b> | <b>Power</b> | <b>Service Radius</b> | <b>City/State</b> |
|------------------|----------------|--------------|-----------------------|-------------------|
| KCJH             | 206A           | 5.80 kW      | 24.0 km               | Livingston, CA    |
| KJMQ             | 223A           | 6.00 kW      | 28.3 km               | Atwater, CA       |
| KOSO             | 226B           | 2.95 kW      | 52.2 km               | Patterson, CA     |
| KEJC             | 230A           | 4.00 kW      | 28.2 km               | Modesto, CA       |
| KBKY.C           | 231A           | 6.00 kW      | 28.2 km               | Merced, CA        |
| KAJP.C           | 234A           | 0.90 kW      | 28.2 km               | Firebaugh, CA     |
| KHOP             | 236B           | 29.5 kW      | 52.2 km               | Oakdale, CA       |
| KUBB.C           | 242B           | 1.90 kW      | 52.2 km               | Mariposa, CA      |
| KABX-FM          | 248B           | 8.80 kW      | 52.2 km               | Merced, CA        |
| KWNN             | 252A           | 2.00 kW      | 24.2 km               | Turlock, CA       |
| KLOQ-FM          | 254A           | 6.00 kW      | 28.2 km               | Winton, CA        |
| KCIV             | 260B           | 1.90 kW      | 52.2 km               | Mt. Bullion, CA   |
| KAMB             | 268B           | 1.85 kW      | 52.2 km               | Merced, CA        |
| KDON-FM          | 273B           | 18.5 kW      | 52.2 km               | Salinas, CA       |
| KATM             | 277B           | 50.0 kW      | 52.2 km               | Modesto, CA       |
| KHKK             | 281B           | 50.0 kW      | 52.2 km               | Modesto, CA       |
| KHTN             | 284B           | 50.0 kW      | 52.2 km               | Los Banos, CA     |
| KEZR             | 293B           | 50.0 kW      | 52.2 km               | San Jose, CA      |
| KQLB             | 295A           | 6.00 kW      | 28.2 km               | Los Banos, CA     |
| KAJZ             | 299A           | 4.00 kW      | 28.2 km               | Merced, CA        |

Graham Brock, Inc. - Broadcast Technical Consultants

38-00-00 N  
124-00-00 W

36-00-00 N

KNBR 0.5 mV/m

KGO 0.5 mV/m

CHULAR REFERENCE

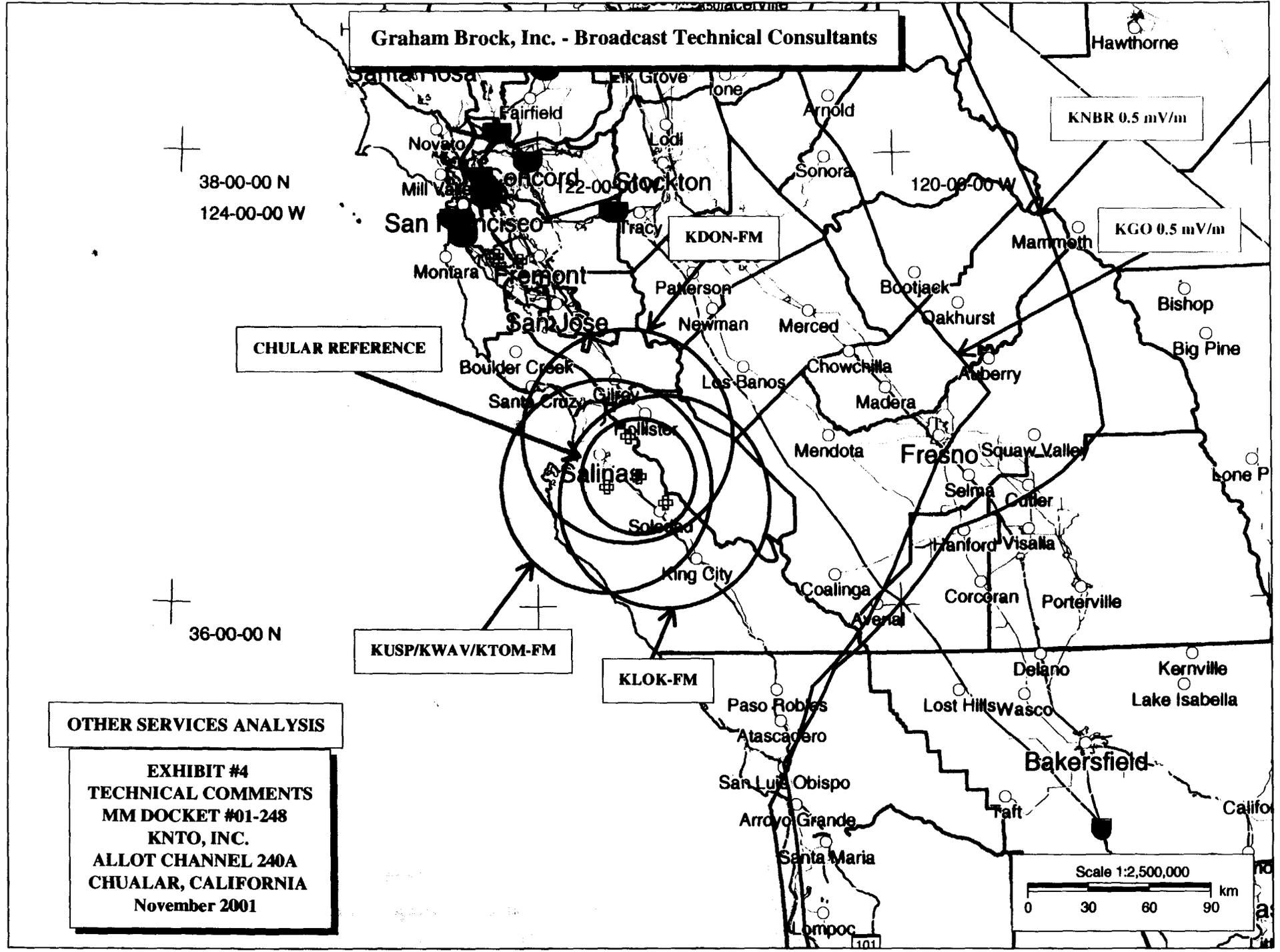
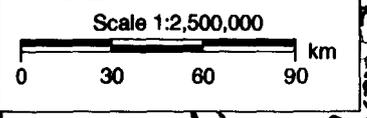
KUSP/KWAV/KTOM-FM

KLOK-FM

KDON-FM

OTHER SERVICES ANALYSIS

EXHIBIT #4  
TECHNICAL COMMENTS  
MM DOCKET #01-248  
KNTD, INC.  
ALLOT CHANNEL 240A  
CHUALAR, CALIFORNIA  
November 2001



**TECHNICAL COMMENTS**  
**MM DOCKET #01-248**  
**KNTO, INC.**  
**ALLOT CHANNEL 240A**  
**CHUALAR, CALIFORNIA**  
**November 2001**

**EXHIBIT #5**

**Partial List of Stations Providing Service to Chular**

| <b><u>Call</u></b> | <b><u>Frequency/Channel</u></b> | <b><u>Power</u></b> | <b><u>City</u></b> | <b><u>State</u></b> |
|--------------------|---------------------------------|---------------------|--------------------|---------------------|
| KNBR               | 680 kHz                         | 50.0 kW             | San Francisco      | CA                  |
| KGO                | 810 kHz                         | 50.0 kW             | San Francisco      | CA                  |
| KUSP               | 205B                            | 1.25 kW             | Santa Cruz         | CA                  |
| KWAV               | 245B                            | 18.0 kW             | Monterey           | CA                  |
| KLOK-FM            | 258B                            | 30.0 kW             | Greenfield         | CA                  |
| KTOM-FM            | 264B                            | 1.40 kW             | Salinas            | CA                  |
| KDON-FM            | 273B                            | 18.5 kW             | Salinas            | CA                  |

**AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT**

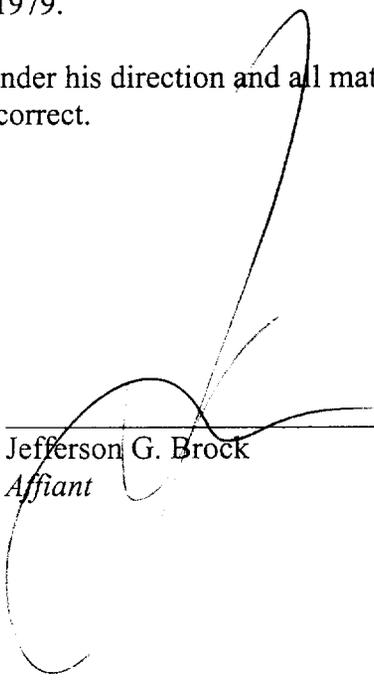
*State of Georgia )*  
*St. Simons Island ) ss:*  
*County of Glynn )*

**JEFFERSON G. BROCK**, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by KNTD, Inc., licensee of Radio Station KNTD, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

*This the 5th day of November, 2001.*

  
\_\_\_\_\_  
Jefferson G. Brock  
Affiant

*Sworn to and subscribed before me  
this the 5th day of November, 2001.*

  
\_\_\_\_\_  
Notary Public, State of Georgia  
My Commission Expires: April 20, 2002