

Before the
Federal Communications Commission
Washington, DC

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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

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OPPOSITION TO REQUEST FOR LEAVE TO FILE RESPONSE

KNTO, Inc., licensee of Station KNTO(FM), Livingston, California, by its attorney, hereby submits its Opposition to the "Request for Leave to File Response and Response of Coyote Communications, Inc. to Reply" ("Response") filed by Coyote Communications, Inc. ("Coyote") on December 12, 2001. As a threshold matter, it is well established that the Commission's Rules do not provide for the filing of a response to reply comments.¹ Therefore, Coyote's Response should not be considered. To the limited extent that Coyote's Response may ultimately be considered by the Commission, KNTO submits this response. As seen below, Coyote's interpretation of Commission policy is inaccurate, and must be disregarded.

First of all, contrary to Coyote's arguments, Coyote's "counterproposal" for "Big Sur" is defective. As noted previously, The Commission's long-standing policy is to require allotments be made to communities composed of "geographically identifiable population groupings." This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census. *Moncks Corner, Kiawah Island and Sampit, SC*, 11 FCC Rcd 8630, ¶ 15 (MMB

¹ See, e.g., *Rosendale, NY*, 10 FCC Rcd 11471, n.4 (Chief, Allocations Branch 1995).

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1996). In this case, the “Big Sur” locale is neither incorporated nor listed in the U.S. Census. It is the Commission's policy that, if a community is not incorporated or listed in the census reports, the proponent of the allotment must make a showing, demonstrating that the place is a "geographically identifiable population grouping." *Benavides, Bruno and Rio Grande, TX*, 13 FCC Rcd 2096, ¶ 8 Chief. Allocations Branch 1998). This Coyote did not do, despite the fact that counterproposals are required to be "technically correct and substantially complete" at the time they are filed. See *Broken Arrow, OK, et al.*, 3 FCC Rcd 6507, 6511 n.2 (Policy and Rules Division 1989). The reason for this requirement was clearly stated in that proceeding:

Counterproposals must be technically correct at the time of their filing so that all parties are afforded an opportunity to respond in reply comments.

Id.

Once again, Coyote’s predicament is essentially identical to that found in *Pike Road and Ramer, AL*, 10 FCC Rcd 10347 (MMB 1995). In that case, a counterproposal was submitted for an alleged community that *also* was neither incorporated or listed in the U.S. Census. The Commission ultimately rejected the counterproposal, stating:

it was incumbent upon Miller to initially present the Commission with sufficient evidence to demonstrate that Ramer is a community for allotment purposes. See *Garden City, Indiana*, 6 FCC Rcd 3747 (1991). We conclude that Miller failed to provide substantially complete information with his counterproposal, in contravention of Commission policy, to demonstrate that Ramer has political, social, economic or cultural indicia, or to provide the testimony of local residents attesting to Ramer's community status.

Id. at ¶ 13 (emphasis added). Thus, as noted, Coyote was not entitled to withhold the information for filing at some later date. Rather, Coyote was required to file the information “with [its] counterproposal.”

For the same reasons as found in *Pike*, Coyote's Counterproposal must also be rejected and given no further consideration. In this circumstance, the burden was on Coyote to attempt to establish that "Big Sur" is an acceptable community in the course of the body of its counterproposal, thereby allowing KNT0 to rebut that showing in Reply Comments. Coyote's suggestion, that it simply provide that information as a response to a notice of counterproposal (Response at 2) not only would be contrary to past Commission practice, but also, since there are no permitted pleadings beyond the counterproposal reply date, Coyote's preferred procedure would leave opposing parties such as KNT0 no procedural opportunity within which to respond. Cf. *Broken Arrow, Ok, et al.*, supra.²

Moreover, KNT0's submission of an alternative channel for "Big Sur," to be used in the event the counterproposal nevertheless is accepted, is not an impermissible "counter-counterproposal" (Response at 3), and is fully acceptable and in accord with past Commission practice. See, e.g., *Ely, Hermantown, and Pine City, MN and Siren, WI*, 12 FCC Rcd 587, ¶¶ 4, 7 (Chief, Allocations Branch 1997) (counterproposal filed for Channel 265A at Siren, Wisconsin; in reply comments, original proponent proposes alternative allotment of Channel 289A to Siren; Channel 289 allotted); *Arnold and Columbia, CA*, 13 FCC Rcd 18894 (Chief, Policy and Rules

² Coyote notes that the Commission has at times requested community-status information at the Notice of Proposed Rule Making stage of a proceeding. Response at n.3. There is a major difference, however, that exists. Under the procedure, the information is filed with the petitioner's initial comments, and responses to that showing would be filed at the reply stage. In this instance, again, if the Coyote's information were to be first filed in response to a notice of acceptance of its counterproposal, as Coyote suggests, there would be no opportunity for opposing parties such as KNT0 to comment on that information. *Accord, Lockport and Amherst, NY*, 13 FCC Rcd 12304, n.4 (Chief, Allocations Branch 1997) ("[b]ecause there are no pleadings which are authorized by the Commission's Rules beyond responses to counterproposals, counterproponents are expected to include in their counterproposals all relevant information").

1998). As the Commission stated in that case:

The NPRM placed all parties on notice that the filing of a counterproposal may lead the Commission to allot a channel different from that requested for any of the communities involved. [The substitute channel] was selected for just that purpose -- to resolve the conflict between [the] original rulemaking proposal and [the] counterproposal by enabling the contending communities of Arnold and Columbia to be awarded new local aural services.

It is...well established that an alternate channel may be allotted, provided it is equivalent, i.e. it is of the same class, meets the minimum distance separation requirements, and provides a 70 dBu signal over the entirety of the community.

Id. at ¶¶ 13-14. KNTO's alternate channel for "Big Sur" meets all those requisites. See also, *Columbia and Dothan*, AL, 8 FCC Rcd 4496 (Chief, Allocations Branch 1993 ("[i]n response to...counterproposal [petitioner] performed a channel search to find an alternate channel for allotment to Columbia.... Channel 221A can be allotted to Columbia instead of Channel 271A"; substitution adopted). In so doing, an argument similar to Coyote's was made, and rejected. As the Commission stated in that case:

CBG characterizes BAI's suggestion as an untimely counterproposal. We disagree. BAI has merely proposed the use of an alternate channel for allotment to Columbia.

Id. at n.3.

As to the *Tuck* matter, as Coyote concedes (Response at 3), the FCC's Allocations Branch generally uses standard prediction methodology in its studies. Nevertheless, Coyote complains that KNTO "cites no case...in which the Commission has limited an evaluation of a need for a *Tuck* showing to the standard prediction methodology." Response at 3.

A *Tuck* analysis examines an allotment's predicted 70 dBu contour. It is well-established that at the allocation stage, the Commission depicts the location of an allotment's 70 dBu contour

using uniform terrain. *Meeker and Craig*, DA 00-2714 (Chief, Allocations Branch, Dec. 1, 2000). This yields a coverage area that is perfectly circular. The analysis is done in that manner because at the allocations stage the ultimate location of the transmitter site is generally unknown, and therefore the Commission can not examine the specific terrain along any given signal path. *Id.* at ¶ 7. Coyote’s analysis continues to inappropriately assume that KNTO will use the existing KBOQ transmitter site, even though KNTO has stated that “it has not yet been settled whether that is the site that will be used when the allotment is granted.” KNTO Reply at 6. The *Meeker* case, as the case here, also involved a proposed change of community of license. Based upon Commission precedent, under a proper analysis, only 2.2 % of the Salinas Urbanized Area will be covered by the proposed allotment’s 70 dBu contour. Accordingly, under Commission policy, no *Tuck* analysis is needed.³

With respect to the significance of the allotment of Station KHDC to Chualar (Response at 4), Coyote misses the point. Stations, including non-commercial stations, only are allotted or assigned to “communities.” Station KHDC is allotted to Chualar. In order for that licensing decision to have been made, Chualar was afforded community status. That fact, coupled with the fact that Chualar is a census designated place *and* contains all the community indicia already summarized by Coyote itself that “establish the modest, rural character of the town” (Coyote Counterproposal at 4), all require the rejection of Coyote’s argument.

Finally, the debate about current status of “Station KQLB” (Response at 5) is taken out of context. It has been argued that an allotment of KNTO to Dos Palos is needed to enable

³ Accord, *Willows and Dunnigan, CA*, DA 00-2713 (Chief, Allocations Branch, 2000), where the Commission rejected an opponent’s request that the Commission evaluate specific terrain data in determining whether to require a *Tuck* showing.

KNTO(FM) to serve the “unique needs” of Dos Palos. J&M Comments at 3-4. What those “unique needs” are, or how KNTO(FM), as a Spanish-language station, will satisfy those “unique needs,” was not identified previously, and is still not identified by Coyote in its Response.

KNTO still strongly contends that in light of (a) the fact that it never commenced service to Dos Palos, (2) the level of service that will remain in Dos Palos, and (3) the substantially larger number of persons that will be served as a result of the proposed community change, the FM Table of Allotments and the public will be best served by a grant of the proposal filed by KNTO, Inc.

Accordingly, KNTO, 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,

KNTO, INC.

By: _____

Dan J. Alpert

Its Attorney

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

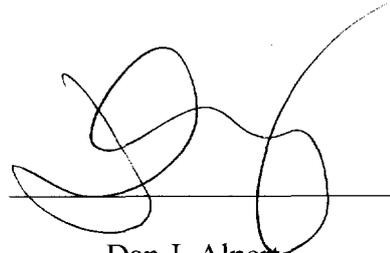
December 20, 2001

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that on December 20, 2001, the foregoing document has been served upon the following by First Class Mail:

John Wells King, Esq.
Garvey, Schubert & Barer
Fifth Floor
1000 Potomac St., N.W.
Washington, DC 20007-3501

Jerrold Miller, Esq.
Miller & Miller
P.O. Box 33003
Washington, DC 20033



Dan J. Alpert