

ORIGINAL

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	DOCKET FILE COPY ORIGINAL
)	
Amendment of Section 73.202(b))	MM Docket No. 00-148
Table of Allotments)	RM-9939
FM Broadcast Stations)	RM-10198
(Quannah, Archer City, Converse, Flatonia,)	
Georgetown, Ingram, Keller, Knox City,)	
Lakeway, Lago Vista, Llano, McQueeney,)	
Nolanville, San Antonio, Seymour, Waco)	
and Wellington, Texas, and Ardmore,)	
Durant, Elk City, Healdton, Lawton and)	
Purcell, Oklahoma))	

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

REPLY TO PARTIAL OPPOSITION TO MOTION TO STRIKE

1. Next Media Licensing, Inc. ("NMLP"), First Broadcasting Company, L.P. ("FBC"), Capstar TX Limited Partnership ("Capstar"), Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), and Rawhide Radio, L.L.C. ("Rawhide") ("Joint Parties"), by their respective counsel, hereby reply to the Partial Opposition to Motion to Accept Supplement ("Partial Opposition") filed in the above-captioned docket on December 11, 2001 by Elgin FM Limited Partnership and Charles Crawford ("Elgin/Crawford").¹ Putting aside the irrelevant side issues (which will be addressed below), Elgin/Crawford's opposition comes down to two points, one factual and one legal, and both wrong.

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1. This reply is timely filed pursuant to Section 1.45(c) based on the date that the opposition was due to be filed pursuant to Section 1.45(b) which is December 13, 2001.

2. First, Elgin/Crawford assert that the Motion to Accept Supplement can and should be read as an admission of a defect in the Joint Parties' Counterproposal. (Partial Opposition at 3-5). The alleged defect is the offer by the Joint Parties that an alternate channel (255C3) be allotted to Quanah, instead of the proposed Channel 233C3. However, there is no rule, policy or requirement of any kind to propose an alternate channel to resolve a mutually exclusive situation. Therefore it cannot be considered a defect to fail to provide an alternate channel. Elgin/Crawford has cited no case to establish this assertion and there are no such cases. Furthermore, it is absurd to describe the withdrawal of Channel 255C3 as an error on the part of the Joint Parties. The Joint Parties had called to the Commission's attention an error in the Commission's own records regarding the license of Station KTIJ(FM), Elk City, Oklahoma.² The Commission issued a license for KTIJ at the wrong coordinates. The Commission recently corrected its error and reissued the license. This had many ramifications, one of which was the subject of the Supplement. The channel the Joint Parties originally offered as a substitute channel to satisfy the petitioner's interest in a new station at Quanah, Texas became unavailable as a result of the Elk City license reissuance. Somehow, Elgin/Crawford twist the facts and calls what is clearly the Commission's error to be the Joint Parties error. Thus, not only was the Counterproposal free of defects when originally filed, it remains free of defects today, since there is no requirement that a counterproponent offer an alternate channel to satisfy the petitioner's expression of interest.

3. Second, Elgin/Crawford assert that the Supplement cannot be accepted because of the failure of a condition precedent to its acceptance. Specifically, while Elgin/Crawford agree the Commission can accept supplementary material, they point out that the Commission can only do so

2. The Joint Parties also called this matter to the attention of the licensee of Station KTIJ.

if acceptance would not prejudice other mutually exclusive proposals. (Partial Opposition at 7). But Elgin/Crawford have no mutually exclusive proposal on file. They have not stated how they are adversely affected or indicated what interest they have in this proceeding. Elgin/Crawford go on to say, however, that acceptance of the Joint Parties' supplement would prejudice proposals filed in *other* dockets many months after the comment date – *Shiner, Texas* (Docket 01-105); *Benjamin, Texas* (Docket 01-131); *Junction, Texas* (Docket 01-132); *Mason, Texas* (Docket 01-133). That statement is wrong as a matter of law. Rule making proceedings are independent of one another. A proposal that is in conflict with a rule making proceeding and timely to that proceeding is incorporated into the proceeding. A proposal that is in conflict and *not* timely must be dismissed. Accordingly, as a matter of law, a filing in one rule making proceeding *cannot* prejudice a later separately filed rule making proposal that is not mutually exclusive. The Commission can accept a Supplement to a counterproposal as long as acceptance would not prejudice other proposals *in the same proceeding*.

4. The cases cited by Elgin/Crawford actually support this statement of the law. *See Frederiksted and Charlotte Amalie, Virgin Islands*, 12 FCC Rcd 2406, 2407 (1997) (curative amendment rejected because it would prejudice another timely filed counterproposal *in the same proceeding*); *Amor Family Broadcasting Group v. FCC*, 918 F.2d 960, 962 (D.C. Cir. 1990) (it is the policy of the FCC to routinely accept late-filed expressions of interest *in uncontested cases*).³

3. *Springdale, Arkansas et al.*, 4 FCC Rcd 674 (1989) and *Franklin and White Castle, Louisiana*, 12 FCC Rcd 20168 (1997), also cited by Elgin/Crawford, are inapplicable here. The counterproposal rejected in *Springdale* was defective both before and after the attempted curative amendment and would have affected other proposals in the same proceeding. The counterproposal rejected in *Franklin* clearly violated Section 1.420(d) and (e) of the Rules and also adversely affected another proposal in the same proceeding. Neither case describes the situation here.

Not only are Elgin/Crawford unaffected by any submissions by the Joint Parties, the Joint Parties also note that on Dec.21, 2001, NationWide, the original petitioner for Ch. 233C3, withdrew its expression of interest citing the availability of other channels in the area primarily as a result of filings made by Crawford. Therefore, the Commission may accept the Joint Parties' Supplement. No party in this proceeding would be prejudiced thereby.

5. Elgin/Crawford repeat their previous assertion that the reference coordinates for the Lakeway proposal constitute a defect. But the Joint Parties more than adequately demonstrated that there was no defect in view of the fact that: (1) rounding off is permitted; (2) corrected coordinates of less than 3 seconds latitude and longitude do not require prior Commission approval and therefore do not constitute a defect; and (3) there is a large site area available including an existing tower for which the licensee has a lease. Rather than comment on the substance of the Joint Parties showings, Elgin/Crawford simply repeat their position that the Lakeway site is a defect. However not only is there no defect but the only other party in this proceeding with a conflicting proposal, NationWide, has now withdrawn its proposal.

6. Crawford, who has expressed an interest in more new stations in Texas than any individual is capable of constructing, keeps trying to elbow his way into this proceeding, but it cannot work. Any rule making proposal that was filed after the counterproposal deadline in this proceeding is late to this proceeding. If it conflicts with this proceeding, it must be dismissed. That is true *no matter what the outcome of this proceeding is*. Thus, if counterproposal *A* is filed on the deadline for counterproposals in a given proceeding, and mutually exclusive proposal *B* is filed one day later, *B* must be dismissed, even if *A* turns out to be defective. *A* has protection until it is acted upon. Once *A* is dismissed, *B* may be refiled. See *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990); *Mason, Menard, and Fredericksburg, Texas*, 15 FCC Rcd 12618, 12619-20 (2000).

7. Elgin/Crawford also take this occasion to make gratuitous assertions such as describing the Joint Parties proposal as “behemoth” and “gargantuan” because 23 communities are involved.⁴ But it is incredible that Crawford of all people should make this assertion. It is Crawford who has overburdened the Commission’s Allocations Branch with at least 218 petitions for rule making in the past year. See Exhibit 1.⁵

8. Elgin/Crawford also make reference to the two month period between the release of the NPRM in the proceeding and the filing of the Counterproposal. The Joint Parties are not sure what point Elgin/Crawford is making but assuming that they are somehow questioning when the preparatory work began, the following explanation may respond to their concerns. Parts of this project began in 1998 and continued off and on for more than 2 years. This proposal was to be filed as a petition when it was ready. But there were many negotiations involved and when negotiations stalled, changes to the scenario were needed which caused delays. But when the Joint Parties noticed that a NPRM was issued to allot Channel 233C3 to Quanah, the Joint Parties had to greatly speed up their preparatory work and be ready to file by the comment date or else they could not propose the substitution of Channel 233C3 to Channel 232C3 for Station KXOO, Elk City, Oklahoma (not to be confused with Station KTIJ, Elk City, Oklahoma mentioned earlier) which had already been negotiated. The Counterproposal could not have been put together in two months. It took several years not only to prepare a thorough and complete proposal but also to make sure that the proposal could be implemented smoothly and quickly once granted.

4. Approximately one half of the stations involved are licensed to one of the Joint Parties.

5. The Joint Parties note that while 40 of these petitions were actually signed by Crawford but all have the same format and all seem to have some relationship to Crawford.

9. Finally, in a footnote, Elgin/Crawford attempt to distinguish the instant Counterproposal from other proceedings to change community of license on the ground that four of the communities in the Counterproposal are located near major urbanized areas. (Partial Opposition at p. 6). This is a red herring. The issue is whether these communities are independent of their respective urban centers, not whether they are located in metropolitan areas. The Joint Parties have gone to great lengths to demonstrate, through clear and convincing factual evidence, that each of these communities is independent. Once this independence is established, these four communities are entitled to a first local preference just like any other community, and indeed, are indistinguishable from any other community in that regard.

CONCLUSION

10. As stated, there was no defect that caused the Joint Parties to file the November 30, 2001 Supplement. The Joint Parties called the Commission's attention to an error that the Commission had made and also called this error to the attention to the licensee of Station KTIJ, Elk City, Oklahoma. As a result of the Joint Parties' efforts, the Commission corrected its data base and reissued a corrected license, in effect admitting its mistake. Also as a result, the Joint Parties voluntarily withdrew an alternate channel proposed for Quanah. The proposal for an alternate channel at Quanah to eliminate a mutually exclusive situation was not essential to the grant of the Joint Parties proposal which remains intact. Furthermore, Elgin/Crawford's reference to a previous alleged defect in the proposed reference coordinates for an allotment to Lakeway, Texas were thoroughly discussed and satisfactorily explained in a previous filing and has not been rebutted. In brief there is no defect. Finally, the Quanah petitioner has decided, on its own, that in view of the lack of an alternate channel at Quanah and the likely availability of several other channels in the Quanah area, it no longer wants to prosecute its proposal for Channel 233C3 at Quanah.

Wherefore, for the foregoing reasons, the Commission should accept the Joint Parties' Supplement as previously requested in the Motion to Accept Supplement.

Respectfully submitted,

NEXT MEDIA LICENSING, INC.

FIRST BROADCASTING COMPANY, L.P.
RAWHIDE RADIO, L.L.C.

By: Joseph A. Belisle (by HNL)
Matthew L. Leibowitz
Joseph A. Belisle
Leibowitz & Associates, P.A.
One Southeast Third Avenue
Suite 1450
Miami, FL 33131-1715
(305) 530-1322

By: Mark N. Lipp
Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon, LLP
600 14th Street, NW
Suite 800
Washington, DC 20005
(202) 783-8400

Its Counsel

Their Counsel

CAPSTAR TX LIMITED PARTNERSHIP
CLEAR CHANNEL BROADCASTING
LICENSES, INC.

By: Gregory L. Masters (by HNL)
Gregory L. Masters
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20036
(202) 719-7000

Their Counsel

December 26, 2001

EXHIBIT 1

<u>LOCATION</u>	<u>PETITIONER</u>	<u>FILED</u>
Chillicothe, TX	Robert Fabian	12/6/01
Mangum, OK	Robert Fabian	12/3/01
Estelline, TX	Robert Fabian	12/3/01
Leedey, OK	Robert Fabian	11/29/01
Thomas, OK	Robert Fabian	11/29/01
Vici, OK	Robert Fabian	11/29/01
Taloga, OK	Robert Fabian	11/29/01
Childress, TX	Linda Crawford	11/16/01
Wheeler, TX	Maurice Salsa	11/16/01
Dickens, TX	Maurice Salsa	11/16/01
Westbrook, TX	Maurice Salsa	11/16/01
Hedley, TX	Maurice Salsa	11/16/01
Shamrock, TX	Maurice Salsa	11/16/01
Quitaque, TX	Maurice Salsa	11/16/01
Sayre, TX	Maurice Salsa	11/16/01
Happy, TX	Maurice Salsa	11/16/01
Childress, TX	Maurice Salsa	11/16/01
Groom, TX	Maurice Salsa	11/16/01
Matador, TX	Maurice Salsa	11/16/01

Colorado City, TX	Linda Crawford	11/16/01
Turkey, TX	Linda Crawford	11/16/01
Memphis, TX	Katherine Pyeatt	11/16/01
McLean, TX	Robert Fabian	11/16/01
Pittsburg, TX	Maurice Salsa	11/13/01
Hugo, OK	Maurice Salsa	11/13/01
Cadillac, MI	Robert Fabian	11/13/01
Clarendon, TX	Maurice Salsa	11/13/01
Silverton, TX	Maurice Salsa	11/13/01
Memphis, TX	Maurice Salsa	11/13/01
Millerton, OK	Jeraldine Anderson	11/9/01
Red Oak, OK	Maurice Salsa	11/1/01
Amity, AR	Maurice Salsa	11/1/01
Spur, TX	Maurice Salsa	11/1/01
Wellington, TX	Maurice Salsa	11/1/01
Carter, OK	Maurice Salsa	11/1/01
Erick, OK	Maurice Salsa	11/1/01
Wickes, AR	Maurice Salsa	11/1/01
Grannis, AR	Maurice Salsa	11/1/01
Leedey, OK	Maurice Salsa	11/1/01
Hooks, TX	Katherine Pyeatt	11/1/01
Clayton, OK	Jeraldine Anderson	11/1/01
Red Oak, OK	Maurice Salsa	10/27/01

Broken Bow, OK	Jeraldine Anderson	10/17/01
Minden City, MI	Maurice Salsa	10/17/01
Estelline, TX	Katherine Pyeatt	10/17/01
Clayton, OK	Linda Crawford	10/17/01
Pigeon, MI	Katherine Pyeatt	10/17/01
Millersburg, MI	Maurice Salsa	10/17/01
Alpena, MI	Maurice Salsa	10/17/01
Ft. Supply, OK	Maurice Salsa	10/15/01
Ossineke, MI	Maurice Salsa	10/15/01
Attica, KS	Maurice Salsa	10/15/01
Rock Springs, TX	Charles Crawford	10/12/01
Helper, UT	Linda Crawford	10/5/01
Albion, OK	Maurice Salsa	10/4/01
Mackay, ID	Linda Crawford	10/4/01
Smiley, TX	Linda Crawford	10/4/01
Marsing, ID	Linda Crawford	10/2/01
Dickens, TX	Jeraldine Anderson	10/1/01
Escobares, TX	Charles Crawford	10/1/01
San Isidro, TX	Linda Crawford	10/1/01
Channing, TX	Linda Crawford	10/1/01
Floydada, TX	Linda Crawford	10/1/01
Dalhart, TX	Linda Crawford	10/1/01
Encino, TX	Charles Crawford	10/1/01

Balморhea, TX	Linda Crawford	10/1/01
Encinal, UT	Jeraldine Anderson	9/27/01
Zapata, TX	Jeraldine Anderson	9/27/01
Eldorado, TX	Katherine Pyeatt	9/27/01
Encinal, TX	Katherine Pyeatt	9/27/01
San Isidro, TX	Katherine Pyeatt	9/27/01
Lewiston, MI	Charles Crawford	9/27/01
Lockney, TX	Linda Crawford	9/27/01
Freer, TX	Linda Crawford	9/27/01
San Isidro, TX	Linda Crawford	9/27/01
McGregor, TX	Linda Crawford	9/27/01
Sonora, TX	Katherine Pyeatt	9/27/01
Roaring Springs, TX	Linda Crawford	9/27/01
Crane, TX	Linda Crawford	9/27/01
Encinal, TX	Linda Crawford	9/27/01
Encino, TX	Charles Crawford	9/27/01
San Diego, TX	Charles Crawford	9/26/01
Richland, TX	Jeraldine Anderson	9/25/01
Big Lake, TX	Linda Crawford	9/25/01
Guthrie, TX	Katherine Pyeatt	9/21/01
Rotan, TX	Linda Crawford	9/21/01
Ozona, TX	Linda Crawford	9/21/01
Rocksprings, TX	Jeraldine Anderson	9/21/01

Sheffield, TX	Jeraldine Anderson	9/21/01
California City, CA	Charles Crawford	9/20/01
Sanderson, TX	Katherine Pyeatt	9/19/01
Sheffield, TX	Katherine Pyeatt	9/13/01
Weinert, TX	Jeraldine Anderson	9/12/01
Sonora, TX	Linda Crawford	9/12/01
Panhandle, TX	Linda Crawford	9/12/01
Crosbyton, TX	Jeraldine Anderson	9/11/01
Guthrie, TX	Linda Crawford	9/11/01
Premont, TX	Linda Crawford	9/11/01
Eden, TX	Linda Crawford	9/10/01
Hebbronville, TX	Linda Crawford	9/6/01
Ft. Stockton, TX	Linda Crawford	9/5/01
Crosbyton, TX	Linda Crawford	9/4/01
Merizon, TX	Linda Crawford	9/4/01
Sanderson, TX	Linda Crawford	9/4/01
Alpine, TX	Linda Crawford	9/4/01
Memphis, TX	Katherine Pyeatt	8/24/01
Bellmead, TX	Jeraldine Anderson	8/22/01
Taos, NM	Jeraldine Anderson	8/20/01
Williams, AZ	Charles Crawford	8/20/01
Macon, MO	Charles Crawford	8/20/01
Cross City, FL	Charles Crawford	8/17/01

Lewiston, MI	Charles Crawford	8/17/01
Woodward, OK	Katherine Pyeatt	8/13/01
Leakey, TX	Katherine Pyeatt	8/13/01
Stamford, TX	Katherine Pyeatt	7/26/01
O'Brien, TX	Katherine Pyeatt	7/26/01
Munday, TX	Jeraldine Anderson	7/26/01
Benjamin, TX	Jeraldine Anderson	7/26/01
Gustine, TX	Jeraldine Anderson	7/26/01
Rochester, TX	Katherine Pyeatt	7/26/01
Barksdale, TX	Jeraldine Anderson	7/26/01
Chillicothe, TX	Charles Crawford	7/23/01
Antlers, OK	Maurice Salsa	7/10/01
Hartshorne, OK	Maurice Salsa	6/29/01
Snyder, TX	Charles Crawford	5/29/01
Goldthwaite, TX	Charles Crawford	5/29/01
Encinal, TX	Charles Crawford	5/25/01
Graham, TX	Maurice Salsa	5/21/01
Batesville, TX	Charles Crawford	5/21/01
Harper, TX	Charles Crawford	5/07/01

EXHIBIT 1

<u>LOCATION</u>	<u>PETITIONER</u>	<u>DOCKET #</u>
Wickett, TX	Pyeatt	01-308
Camp Wood, TX	L. Crawford	01-307
San Isidro, TX	Jeraldine Anderson	01-305
Menard, TX	Jeraldine Anderson	01-304
Jayton, TX	L. Crawford	01-295
Eldorado, TX	Jeraldine Anderson	01-294
Crowell, TX	Jeraldine Anderson	01-293
Balinger, TX	Jeraldine Anderson	01-292
Hamlin, TX	L. Crawford	01-285
Dickens, TX	L. Crawford	01-284
Macamey, TX	L. Crawford	01-283
Benjamin, TX	Pyeatt	01280
Rocksprings, TX	L. Crawford	01-279
Richland Springs, TX	L. Crawford	01-274
Eldorado, TX	L. Crawford	01-273
Turkey, TX	Pyeatt	01-272
Post, TX	Pyeatt	01-271
Matador, TX	Pyeatt	01-270
Antlers, OK	C. Crawford	01-269
Cotulla, TX	Jeraldine Anderson	01-267

Aspermint, TX	Jeraldine Anderson	01-266
Junction, TX	Salsa	01-263
La Pryor, TX	Pyeatt	01-262
Early, TX	Jeraldine Anderson	01-261
Pawhuska, OK	Salsa	01-260
Benavides, TX	Jeraldine Anderson	01-256
Wright City, OK	Salsa	01-255
Atoka, OK	Salsa	01-254
Big Wells, TX	Pyeatt	01-247
Asherton, TX	Jeraldine Anderson	01-246
Freer, TX	Jeraldine Anderson	01-243
Bruni, TX	Jeraldine Anderson	01-239
Hebronville, TX	Jeraldine Anderson	01-238
Sayre, OK	Jeraldine Anderson	01-237
Arnett, OK	Pyeatt	01-236
Junction, TX	Jeraldine Anderson	01-228
Reydon, OK	Pyeatt	01-227
Mooreland, OK	Pyeatt	01-226
Hartshorne, OK	Salsa	01-225
Buffalo Gap, TX	Pyeatt	01-221
Santa Anna, TX	Jeraldine Anderson	01-220
Rule, TX	Jeraldine Anderson	01-219
Mangum, OK	Jeraldine Anderson	01-218

Hollis, OK	Jeraldine Anderson	01-217
Valiant, OK	Salsa	01-216
Menard, TX	Pyeatt	01-214
Kiowa, OK	Salsa	01-212
Crowell, TX	Pyeatt	01-210
Broken Bow, TX	Salsa	01-209
Weinert, TX	Jeraldine Anderson	01-205
Sweetwater, TX	Jeraldine Anderson	01-204
Leakey, TX	Jeraldine Anderson	01-203
Goree, TX	Jeraldine Anderson	01-202
Dilley, TX	Jeraldine Anderson	01-200
Knox City, TX	Jeraldine Anderson	01-199
Junction, TX	Pyeatt	01-198
Baird, TX	Pyeatt	01-197
Childress, TX	Jeraldine Anderson	01-196
Clayton, OK	Salsa	01-191
Comanche, TX	Jeraldine Anderson	01-190
Winnsboro, TX	Pyeatt	01-189
Evant, TX	C. Crawford	01-188
Sabinal, TX	Pyeatt	01-187
Rule, TX	C. Crawford	01-183
Clarksville, TX	Pyeatt	01-182
Wapanucka, OK	Pyeatt	01-181

Holdenville, OK	Pyeatt	01-180
Comanche, TX	C. Crawford	01-159
Woodson, TX	C. Crawford	01-157
Paducah, TX	C. Crawford	01-156
Goliad, TX	C. Crawford	01-155
George West, TX	Pyeatt	01-147
Snyder, TX	C. Crawford	01-144
Comfort, TX	C. Crawford	01-142
Altus, OK	Pyeatt	01-137
Mason, TX	C. Crawford	01-133
Junction, TX	C. Crawford	01-132
Benjamin, TX	C. Crawford	01-131
Batesville, TX	C. Crawford	01-130
Pearsall, TX	C. Crawford	01-124
Eagle Lake, TX	C. Crawford	01-80

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 26th day of December, 2001 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply to Partial Opposition to Motion to Strike" to the following:

NationWide Radio Stations
Marie Drischel, General Partner
496 Country Road
Suite 308
Big Creek, MS 38914
(Petitioner)

Station KXOO
Paragon Communications, Inc.
P.O. Box 945
Elk City, OK 73648

Stations KGOK(FM) and KICM
AM & PM Broadcasting LLC
5946 Club Oaks Drive
Dallas, TX 75248

Station KRZB
Texas Grace Communications
P.O. Box 398
Wichita Falls, TX 76307

Robert L. Thompson, Esq.
Thiemann Aitken & Vohra, L. L.C.
908 King Street
Suite 300
Alexandria, VA 22314
(Counsel to AM & PM Broadcasting,
LLC)

Station KKAJ
Chuckie Broadcasting, Co.
Box 429
1205 Northglen
Ardmore, OK 73402

Station KSEY
Mark V. Aulabaugh
Box 471
Seymour, TX 76380

Timothy Brady, Esq.
P.O. Box 71309
Newnan, GA 30271-1309
(Counsel to Chuckie Broadcasting Co)

Station KLRK
KRZI, Inc.
1018 N. Valley Mill Drive
Waco, TX 76710

Lee Peltzman, Esq.
Shainis & Peltzman, Chartered
1850 M Street, NW
Suite 240
Washington, DC 20036
(Counsel to KRZI, Inc.)

Sheldon Broadcasting, Ltd.
P.O. Box 1996
Temple, TX 76502
(Licensee of KLFX)


Lisa M. Balzer