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Before the

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Federal Communications Commission
Washington, DC

DEC 31 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

MOTION TO STRIKE

KNTO, Inc., licensee of Station KNTO(FM), Livingston, California, by its attorney, hereby moves to strike the "Reply Comments of Coyote Communications, Inc." filed by Coyote Communications, Inc. on December 26, 2001. With respect thereto, the following is stated:

Reply comments in this proceeding were due on November 28, 2001. Moreover, 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 pleading is an unauthorized pleading and warrants no consideration. The FCC did not request or provide leave to file "reply" comments. Moreover, Coyote did not request leave to file a Reply. This pleading is a blatant attempt on the part of Coyote to supplement it deficient Counterproposal. As previously has been pointed out, 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

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

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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).

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.

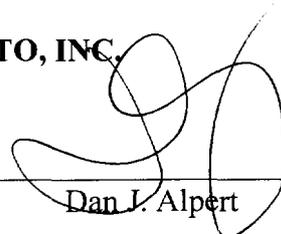
Id. at ¶ 13 (emphasis added). Thus, as noted, Coyote was not entitled to withhold the information for filing at some later date. Rather, Coyote was required to file the information "with [its] counterproposal."

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. No precedent exists for allowing Coyote to submit new, unauthorized pleadings on its own schedule, thereby lengthening the pleading cycle of this proceeding, and thereby disrupting the processing of this rulemaking proceeding.

WHEREFORE, it respectfully is requested that this Motion be granted, and that the “Reply Comments of Coyote Communications, Inc.,” filed by Coyote Communications, Inc., be stricken.²

Respectfully submitted,

KNTO, INC.

By: 

Dan J. Alpert

Its Attorney

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December 31, 2001

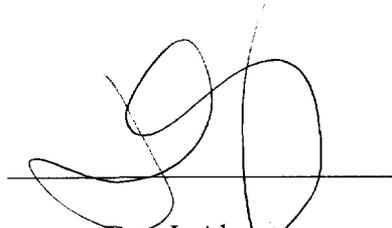
² It also is noted that Coyote Communications, Inc. evidently failed to serve copies of its pleading on all parties to this proceeding. This represents an further reason why the pleading must be stricken.

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that on December 31, 2001, the foregoing document has been served upon the following by First Class Mail:

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