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

JUN 25 2002

In the Matter of)
)
Amendment of Section 73.202)
Table of Allotments)
For FM Broadcast Stations.)
(Shafter, California))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 02-58
RM-10415

To: Assistant Chief, Audio Division, Media Bureau

**REPLY COMMENTS OF
CLEAR CHANNEL BROADCASTING LICENSES, INC.**

Clear Channel Broadcasting Licenses, Inc. ("CCBL"), by its attorneys,
submits these Reply Comments in the above-captioned proceeding to emphasize
that:

- CCBL's Counterproposal and Comments (the "Counterproposal") requesting the allotment of Channel 224A to Buttonwillow, California better serves the public interest than the proposal of American General Media of Texas, Inc. ("AGMT") to substitute a different channel – 226A – for an existing Class A allotment – 282A – at Shafter, California (the "Initial Proposal"); and
- even assuming *arguendo* that the Counterproposal was not adopted, the Initial Proposal does not advance the public interest under the Commission's allotment priorities and should be rejected.

Background

On December 28, 2001, American General Media of Texas, Inc. ("AGMT") filed a petition for rule making (the "Petition") to change the channel, but

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not the class or community of license, of KCOO(FM), Shafter, California, 1/ from Channel 282A to Channel 226A. On February 12, 2002, AGMT filed a supplement to the Petition (the "Supplement"), which requested immediate action on the proposed channel change because AGMT alleged that KCOO(FM) was going to lose its existing site, but that AGMT had located a site "now available to KCOO" that would be fully spaced if the station was operating on Channel 226A. 2/ Otherwise, AGMT warned that it faced "difficulties . . . in finding a new site, particularly with the short time frame that exists" from which KCOO could continue operations. 3/ An engineering statement attached to the Supplement also asserted that there are "no suitable existing tower structures on which to locate the main transmission facility of KCOO(FM)" and that "it would be very difficult, if not impossible to locate vacant land on which to build a new tower." 4/

On April 19, 2002, the Audio Division issued a Notice of Proposed Rule Making, DA 02-908 (the "Notice") that requested comments on the Initial Proposal. In response to the Notice, CCBL filed the Counterproposal (as part of its comments) which, if adopted, would authorize a first local transmission service to the census-designated community of Buttonwillow, California. The Counterproposal demonstrated that Buttonwillow is a bona fide community without its own aural

1/ The call sign of KCOO(FM) has since been changed to KRFR(FM). For convenience, the station will be referred to by the former call sign, KCOO.

2/ See Supplement at 2.

3/ See *id.*

4/ See Supplement at Exhibit 2, 1.

transmission service, and that the allotment of Channel 224A to Buttonwillow would satisfy all Commission technical requirements. CCBL also included a statement of intention to apply for the Buttonwillow allotment, if adopted. 5/ In contrast, AGMT filed cursory comments reiterating its intention, if the Initial Proposal is adopted, to apply for the revised allotment and modify KCOO(FM)'s facilities accordingly. AGMT neither updated the record as to the current state of affairs that allegedly threaten its current tower nor provided any evidence that there were no other technically-suitable tower sites available to KCOO. 6/

The Commission's Allotment Priorities and Precedent Compel Adoption of the Counterproposal

As detailed in the CCBL Comments, the Commission's well-established allotment priorities compel adoption of the Counterproposal. The Counterproposal would advance the Commission's third allotment priority by providing a first local aural transmission service to Buttonwillow, California, which, pursuant to overwhelming Commission precedent, is a community that merits its own local transmission service. Buttonwillow is a census designated place, with its own school, fire department, and library, each of which bear its name, as well as its own zip code and post office, many businesses – including Buttonwillow Physicians --

5/ CCBL, by reference, hereby reiterates this statement of intention and incorporates it and the Counterproposal in their entirety.

6/ AGMT has filed a Motion to Dismiss against CCBL's Counterproposal on the grounds that it was untimely filed. Concurrently, CCBL is submitting a separate Opposition to Motion to Dismiss that demonstrates that the Counterproposal should be considered on the merits in this proceeding.

and religious organizations. 7/ Such objective indicia of a community, especially when coupled with the census designation, compel the conclusion that Buttonwillow deserves its own local transmission service. 8/

As the Counterproposal serves the Commission's third allotment priority, it is to be preferred to the Initial Proposal. AGMT does not suggest – never mind demonstrate – that the Initial Proposal advances the Commission's first, second or third allotment priorities. Accordingly, the Counterproposal must be adopted over the Initial Proposal.

Even Assuming, *Arguendo*, That the Counterproposal Were Not Adopted, the Commission Still Should Not Grant the Initial Proposal

As CCBL noted in its Counterproposal, the Initial Proposal does not just fail to advance any of the first three allotment priorities; AGMT also has never established how it furthers the fourth (and last) allotment priority – other public interest benefits. 9/ AGMT merely intends to replace KCOO(FM)'s current class A allotment – Channel 282A – for another Class A allotment. From an allocations perspective, there is no public interest benefit from such a same channel

7/ See Counterproposal at 2 and Exhibit 1.

8 See, e.g., Shell Knob, Missouri, Report & Order, 11 FCC Rcd 11622 (Allocations 1996).

9/ See Counterproposal at 5-6.

substitution, as “it is well established that the Commission generally considers channels of the same class to be equivalent for allotment purposes” 10/

Furthermore, AGMT’s claim that it must be awarded a different channel to permit KCOO(FM) to continue to operate does not withstand the slightest scrutiny. As noted by CCBL in its Counterproposal, AGMT specified in its Petition allotment reference coordinates for Channel 226A that would satisfy the Commission’s technical requirements *using KCOO’s existing allotment on Channel 282A.* 11/ Thus, by definition, there is an available location by which Shafter can be served on Channel 282A. AGMT cannot have it just one way – once it has stated that the allotment coordinates are available to support the allocation of Channel 226A to Shafter, it cannot claim such coordinates are unavailable for use by a Shafter station operating on Channel 282A.

Not only has AGMT been hooked on its own allotment coordinates snare, it has not in fact documented that there are no available tower sites – or land on which to construct a tower – from which KCOO(FM) can operate on its existing allotment. To the contrary, the fully spaced area in which AGMT could locate a site for KCOO(FM) and still provide 70 dBu coverage to Shafter, the station’s community of license, includes more than 617 square kilometers. 12/ Yet, AGMT

10/ *Chester, Shasta Lake City, Alturas, McCloud, Weaverville, and Shingletown California, Memorandum Opinion & Order, 13 FCC Rcd. 8549 at ¶13 (Policy and Rules, 1998) (“Chester”).*

11/ *See Counterproposal at 6 n.13.*

12/ *See Technical Exhibit to Reply Comments at 1 at Exhibit A hereto.*

has not justified its assertion that “it would be very difficult, if not impossible to locate vacant land on which to build a new tower” in this huge (and largely rural) area. 13/ Likewise, AGMT has provided no concrete support for its claim that there are “no suitable existing tower structures on which to locate the main transmission facility of KCOO(FM).” To the contrary, CCBL has been able to locate a fully spaced, available site on an existing tower that would enable KCOO(FM) to provide the requisite 70 dBu coverage to Shafter on its existing allotment. 14/

Furthermore, the Commission’s rules provide any number of solutions to KCOO’s alleged predicament short of an allotment change. A request for special temporary authority (“STA”), permission to use an emergency antenna 15/ and/or an application for a construction permit for a new site would ensure that KCOO(FM) remained on-the-air under its current allotment. 16/ Each of these

13/ See Supplement at Exhibit 2 at 1; compare *Chester*, 13 FCC Rcd. 8549 at ¶13 (presumption of equivalency for channels of the same class applies unless “showings are made that a station operating on that channel cannot be constructed for reasons such as aeronautical hazards or environmental effects”) (citing *Vero Beach, Florida*, 3 FCC Rcd 1049 (1998)).

14/ See Exhibit B hereto (reasonable site assurance letter for tower space lease on existing tower currently housing KPSL-FM); *Technical Exhibit* at 2 at Exhibit A hereto (KCOO(FM) operation on Channel 282A from KPSL-FM tower would meet spacing requirements and provide 70 dBu coverage to 100% of Shafter). In any event, from an allocations perspective, whether there are existing towers are irrelevant – the issue is whether an operating facility can be constructed within the technically suitable area.

15/ See 47 C.F.R. §§ 73.1635 & 73.1680.

16/ Of course, to the extent AGMT protests that such solutions would not facilitate an expansion of KCOO(FM)’s service to the potentially more lucrative Bakersfield market, such speculation has no bearing on KCOO(FM)’s ability to serve its designated community of license, Shafter.

options could be implemented far more quickly than an allotment change, the proceeding for which already has taken four months since AGMT filed its Supplement. These STA/application solutions – none of which AGMT has demonstrated are unavailable – also would not foreclose the possibility of bringing a first local transmission service to the community of Buttonwillow. To prevent the allocations process from being turned into a time-consuming substitute for an STA or a construction permit, and to preserve the integrity of the Commission's precedent that, unless *proven* unavailable for construction, channels of the same class are equivalent for allotment purposes, the Audio Division must ensure that each proposed change to the Table of Allotments serves a demonstrated and cognizable public interest. AGMT's Initial Proposal does not.

Conclusion

For the reasons set forth in the Counterproposal and these Reply Comments, the Division should adopt CCBL's Counterproposal, which would provide a first local transmission service on Channel 224A to Buttonwillow, California, in preference to the Initial Proposal, which in any event should not be adopted because it would not provide a cognizable public interest benefit.

Respectfully submitted,

**CLEAR CHANNEL
BROADCASTING LICENSES, INC.**

By: 

Marissa G. Repp
F. William LeBeau

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109
(202) 637-5600

June 25, 2002

Its Attorneys

EXHIBIT A

TECHNICAL EXHIBIT TO REPLY COMMENTS
PROPOSAL TO AMEND THE FM TABLE OF ALLOTMENTS
SHAFTER, CALIFORNIA

Technical Narrative

Clear Channel Broadcasting Licenses, Inc. ("CCBL"), has prepared this technical exhibit in support of CCBL's Reply Comments regarding the proposal by American General Media of Texas, Inc. ("AGMT") to change the FM Table of Allotments to substitute Channel 226A for 282A at Shafter, California, and to modify the license of station KRFR(FM) (formerly KCOO(FM)), Shafter, California (the "Station") for operation on Channel 226A in lieu of Channel 282A (the "Initial Proposal"). AGMT has stated that it seeks to change the Station's channel because it cannot locate an available, existing tower site from which it can continue to operate on Channel 282A. This technical exhibit examines the area and tower sites available to the Station should it continue to operate on Channel 282A. This exhibit demonstrates that:

- The area available to locate a fully spaced transmitter site for a station operating on Channel 282A while providing predicted (uniform terrain) 70 dBu coverage to 100% of Shafter, California, consists of approximately 617 square kilometers.
- The area to locate encompasses the Initial Proposal's reference coordinates and at least one existing tower (where KPSL-FM is located) that has space currently available for another station. Both the reference coordinates chosen by AMGT and the KPSL-FM tower site would enable the Station to encompass Shafter with city-grade coverage (as calculated by either uniform terrain or actual terrain methods) while operating on Channel 282A.

Area to Locate

The area in which the Station, operating on Channel 282A (its current channel), may locate a fully-spaced transmitter site while providing predicted (uniform terrain) 70 dBu coverage to the entire community of Shafter consists of approximately 617 square kilometers. The attached Figure 1 is a map illustrating the available area for a Channel 282A operation serving Shafter.¹ Also shown on Figure 1 hereto as being within the area to locate are two sites: 1) the Initial Proposal's specified reference coordinates of 35° 30' 06" North and 119° 16' 18" West, and 2) an existing tower (on which KPSL-FM is located and which currently has space available for another station, *see reasonable site assurance letter* filed with CCBL's Reply Comments) with the coordinates of 35° 31' 29" North and 119° 18' 46" West.

¹ Figure 1 hereto shows the area to locate assuming operations pursuant to Section 73.207 of the Commission's Rules. If operations on Channel 282A were proposed pursuant to the contour protection provisions of Section 73.215, an even a greater area in which to locate would be available.

Potential Tower Sites for Continued Channel 282A Operation

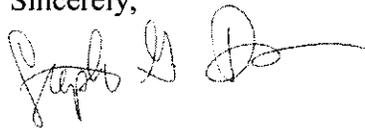
Specified Reference Coordinates. If the Station were to operate on Channel 282A from the reference coordinates proposed by AGMT, it is projected to provide the requisite city-grade (70 dBu) signal to 100 percent of Shafter, based on Class A maximum facilities and either uniform or actual terrain. *See* Figure 2 hereto (showing projected 70 dBu contour by both the uniform and actual terrain methods from AGMT's reference coordinates of 35° 30' 06" North and 119° 16' 18" West). As demonstrated at Figure 4 to the Technical Exhibit submitted with CCBL's Counterproposal and Comments in this proceeding, operation of the Station on Channel 282A from the reference coordinates proposed by AGMT would comply with the Commission's spacing requirements.

KPSL-FM Tower. If the Station were to operate on Channel 282A from the KPSL-FM Tower, it is projected to provide the requisite city-grade (70 dBu) signal to Shafter at a height of 100 meters above average terrain and ERP of 6 kilowatts, which comply with the Commission's requirements for a Class A station. *See* Figure 3 hereto (showing projected 70 dBu contour by both the uniform and actual terrain methods from the KPSL-FM site). As demonstrated at Figure 4 hereto, operation of the Station on Channel 282A from the KPSL-FM tower complies with the Commission's spacing requirements.

Conclusion

AGMT has a large area in which to locate a transmitter site for the operation of the Station on Channel 282A, the Station's current allotment. That area includes at least two currently available sites – the site proposed by AGMT as the reference coordinates for operation of the Station on Channel 226A (which therefore is, by definition, a site available to AGMT) as well as the existing KPSL-FM Tower, which is available for use by an additional station.

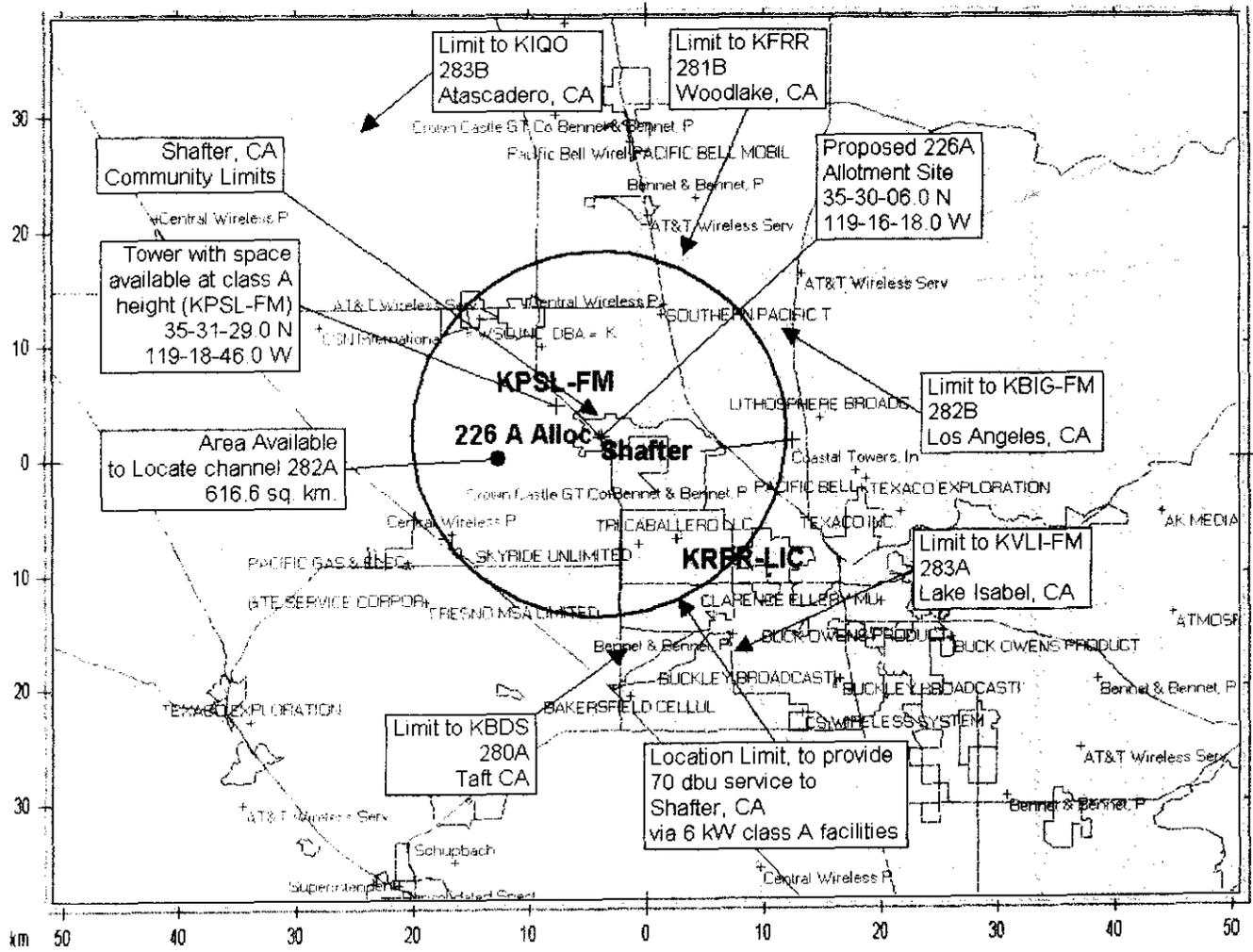
Sincerely,



Stephen G. Davis
Senior Vice President, Engineering
Clear Channel Broadcasting Licenses, Inc.

2 At the application stage, adequate city-grade coverage is provided when, as here, pursuant to the actual terrain method, 80% or more of the community of license is predicted to receive 70 dBu coverage. *See, e.g., Barry Skidelsky, 7 FCC Rcd 5577 (1992) (Section 73.315(a) is deemed complied with when at least 80 percent of the community of license is covered) (citing John R. Hughes, 50 Fed. Reg. 5679 (February 11, 1985)).*

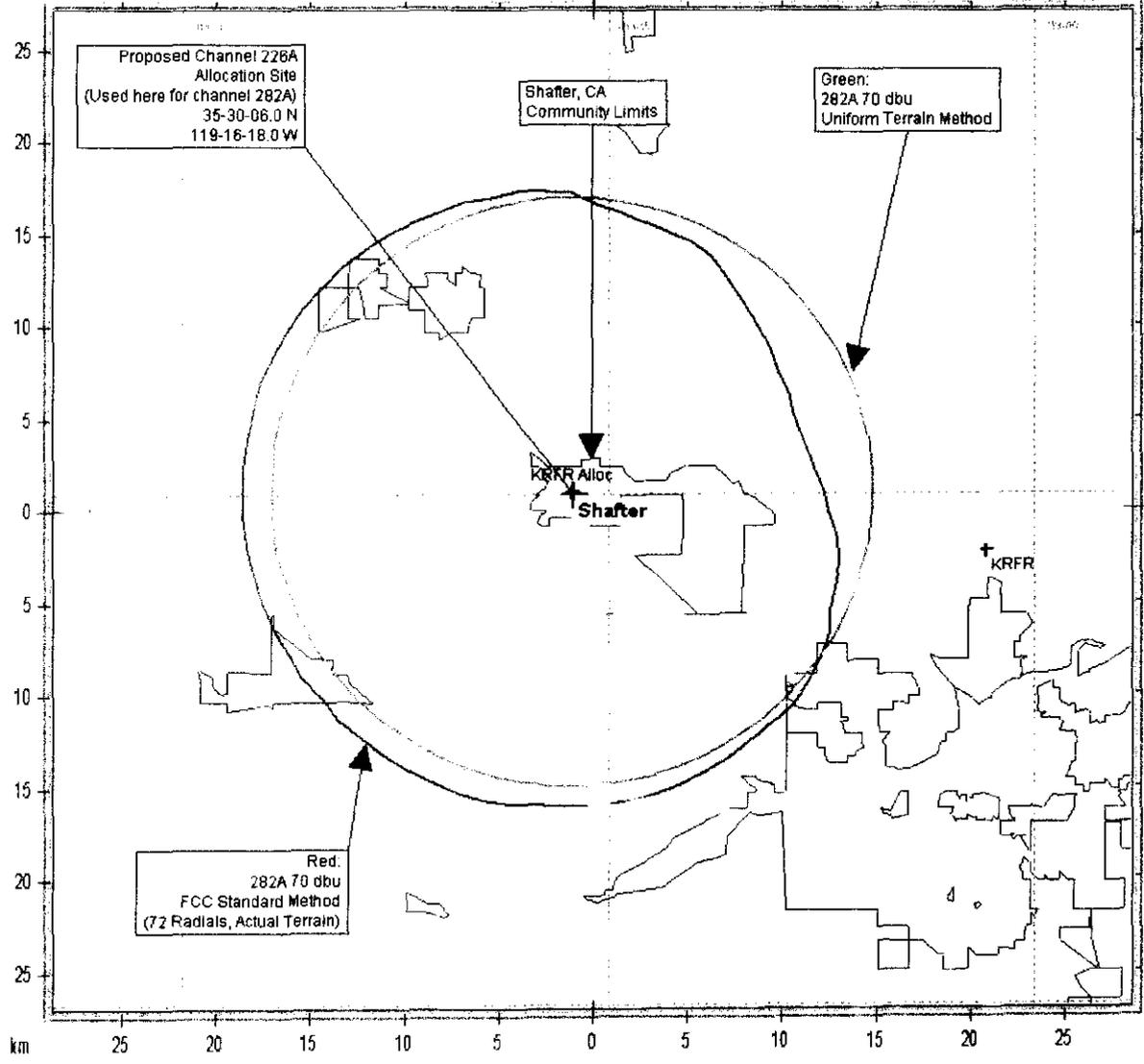
Fully Spaced Allocations Site for 282A Shafter, CA



Red: Towers

State Borders
 City Borders
 Highways

70 dbu Service to Shafter, CA



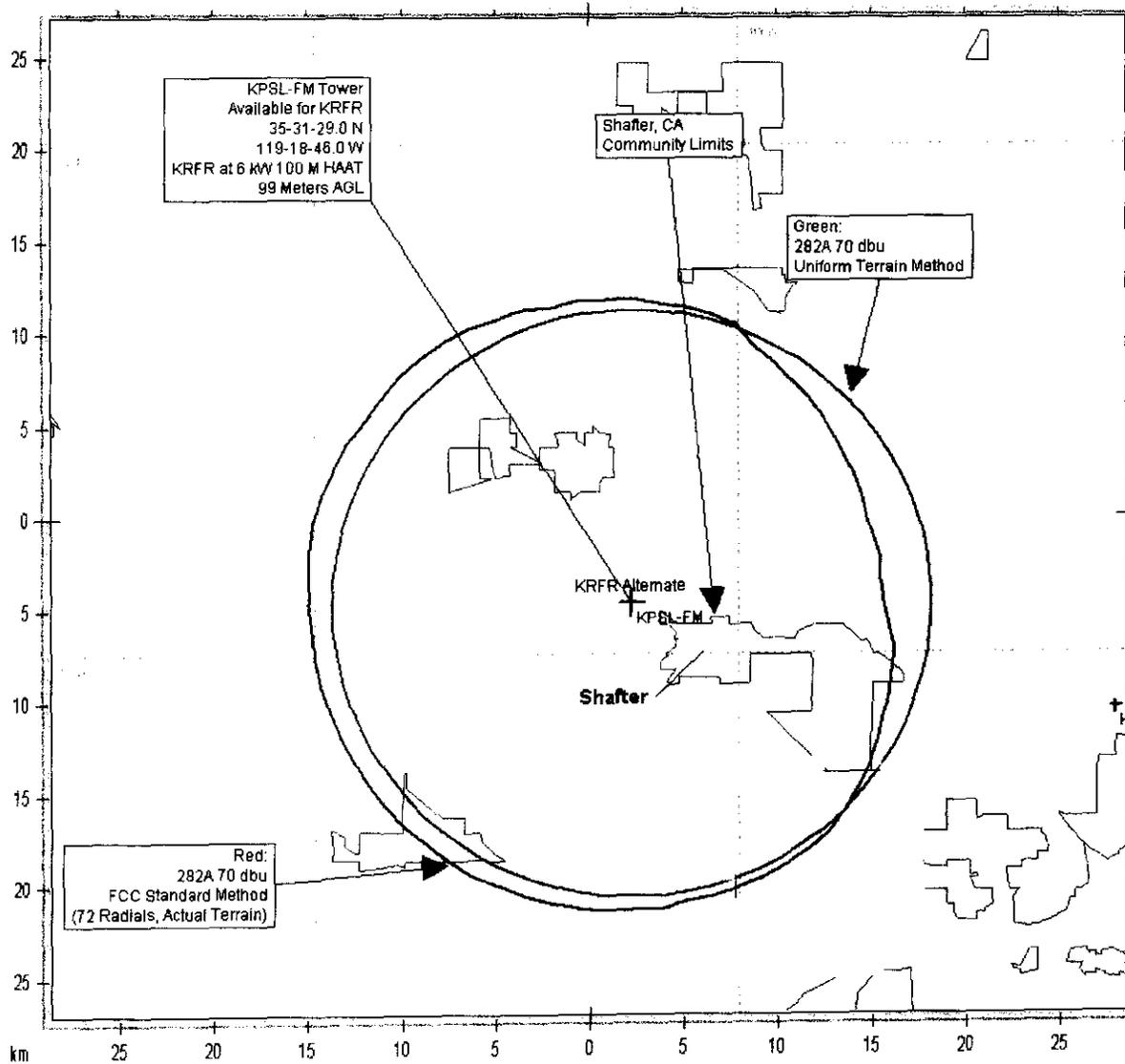
From Initially Proposed 226A Allotment Site (Fully Spaced for 282A)

State Borders
 City Borders
 Lat/Lon Grid

Map Scale: 1:348326 1 cm = 3.48 km V/H Size: 54.14 x 57.19 km

FCC Standard and Uniform Terrain Methods

70 dbu Service to Shafter, CA



From Available Space at KPSL License Site

State Borders
 City Borders
 Lat/Lon Grid

Map Scale: 1:348326 1 cm = 3.48 km V/H Size: 54.14 x 57.19 km

FCC Standard and Uniform Terrain Methods

Figure 4
 ComStudy 2.2 search of channel 282
 104.3 MHz Class A
 At 35-31-29.0 N, 119-18-46.0 W.
 (KPSL-FM Tower)

| CALL | CITY | ST | CHN | CL | DIST | S | BRNG | CLEARANCE |
|---------|---------------|----|-----|-------|--------|-----|----------|-----------|
| KRFR | SHAFTER | CA | 282 | A | 15.63 | 115 | 138.4 | -99.37 |
| KRFR | SHAFTER | CA | 282 | A | 26.50 | 115 | 102.6 | -88.50 |
| KBIG-FM | LOS ANGELES | CA | 282 | B | 183.63 | 178 | 141.4 | 5.63 |
| KBIG-FM | LOS ANGELES | CA | 282 | B | 183.63 | 178 | 141.4 | 5.63 |
| KBIG-FM | LOS ANGELES | CA | 282 | B | 183.63 | 178 | 141.4 | 5.63 |
| KVLI-FM | LAKE ISABELLA | CA | 283 | A | 80.06 | 72 | 81.9 | 8.06 |
| KVLI-FM | LAKE ISABELLA | CA | 283 | A | 80.06 | 72 | 81.9 | 8.06 |
| KIQO | ATASCADERO | CA | 283 | B | 123.30 | 113 | 261.9 | 10.30 |
| KIQO | ATASCADERO | CA | 283 | B | 123.30 | 1 | 13 261.9 | 10.30 |
| KIQO | ATASCADERO | CA | 283 | B | 123.29 | 113 | 261.9 | 10.29 |
| KBDS | TAFT | CA | 280 | A | 44.39 | 31 | 199.1 | 13.39 |
| KFRR | WOODLAKE | CA | 281 | B | 127.80 | 113 | 14.9 | 14.80 |
| KBDS | TAFT | CA | 280 | A | 47.07 | 31 | 196.4 | 16.07 |
| NEW | BAKERSFIELD | CA | 228 | LP100 | 36.00 | 7 | 114.2 | 29.00 |
| KCRZ | TIPTON | CA | 285 | A | 60.28 | 31 | 345.1 | 29.28 |
| KNAC | EARLIMART | CA | 228 | A | 40.06 | 10 | 5.3 | 30.06 |
| KNAC | EARLIMART | CA | 228 | A | 48.44 | 10 | 6.7 | 38.44 |
| KBOX | LOMPOC | CA | 281 | B1 | 134.91 | 96 | 229.4 | 38.91 |
| KBOX | LOMPOC | CA | 281 | B1 | 134.91 | 96 | 229.4 | 38.91 |
| KBOX | LOMPOC | CA | 281 | B1 | 135.07 | 96 | 230.0 | 39.07 |

EXHIBIT B

May 8, 2002

VIA FAX
(661) 323-0893

Mr. Sandy Gamblin
Market Manager
Clear Channel Radio of Bakersfield
1100 Mohawk, #280
Bakersfield, CA 93309

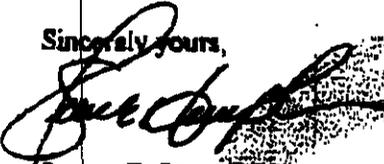
RE: Tower Lease LOI

Dear Sandy,

This letter shall serve to confirm our intent to lease Clear Channel space on our McFarland tower site (KPSL). Our monthly rate will be \$1,500 per month, plus utilities and common area expenses.

The initial term would be for five years, plus a five year renewal option/with rate increase, but no term longer than provided in our master lease agreement with Kern County. This LOI will expire on July 1, 2002, or upon the execution of a Site Lease, whichever occurs first.

Sincerely yours,



Steven E. Humphreys
Chief Operating Officer

Accepted by: _____

Date: _____

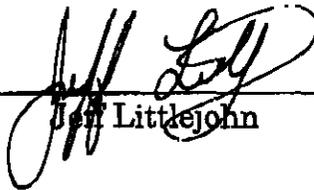
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DECLARATION

I, Jeff Littlejohn, Senior Vice President, Engineering, of Clear Channel Broadcasting Licenses, Inc., hereby declare under penalty of perjury that the factual statements made in the foregoing Opposition to Motion to Dismiss are true and correct to the best of my knowledge, information and belief.



Jeff Littlejohn

June 24, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of June, 2002, I have caused a copy of the foregoing Reply Comments to be delivered, by first-class mail, to the following:

W. Kenneth Ferree, Chief*
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 3-C740
Washington, DC 20554

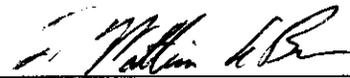
Roy J. Stewart, Chief*
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(Counsel to American General Media of
Texas, Inc.)



F. William LeBeau

*/ By Hand Delivery