

Before the
FEDERAL COMMUNICATIONS COMMISSION RECEIVED
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JUL 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 02-124
Table of Allotments,)
FM Broadcast Stations.) RM-10446
(Amboy, CA))

To: Assistant Chief, Audio Division

REPLY COMMENTS OF KHWY, INC.

KHWY, Inc. ("KHWY"), by its attorneys, hereby submits reply comments in continued support of the Commission's proposal to allot Channel 237A as a first FM allotment at Amboy, California, 1/ and to underscore its concerns regarding the now-ungrantable counterproposal ("Counterproposal") that was filed by Cameron Broadcasting, Inc. ("Cameron").

The allotment of Channel 237A to Amboy, California, as proposed in the Notice, will advance each of the Commission's first three FM allotment priorities by:

1/ *Amboy, California*, Notice of Proposed Rule Making, MB Docket No. 02-124 (released May 24, 2002) (the "Notice"). The Notice was issued in response to KHWY's Petition for Rule Making (the "Petition"), which was submitted February 11, 2002, and included KHWY's statement of intention to apply for and, if awarded the permit for the allotment, to construct the allotted facility. KHWY also submitted timely comments on July 15, 2002 (the "Comments"), which incorporated the Petition in its entirety and reiterated KHWY's statement of intention.

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- providing the first radio service to a "white area" of 3,680 square kilometers, including significant stretches of heavily traveled Interstate 40 and historic Route 66;
- providing the second radio service to a "gray area" of 1,239 square kilometers, including additional miles of Interstate 40 and Route 66; and
- providing the first local transmission (and reception) service to the community of Amboy, California.

In response to the Notice, Cameron submitted the Counterproposal, which would have entangled the proposed Amboy allotment, and its overwhelming public interest benefits, in a complicated scheme requiring 11 allotment changes. 2/ Under Commission precedent, the validity of the Counterproposal was dependent on the consent of the licensees of nearly all of the existing stations that were required to be changed under the Counterproposal, including that of KJUL License, LLC ("KJUL-LLC"), the licensee of KSTJ(FM), Boulder City, Nevada. (Under the Counterproposal, KSTJ(FM) was to be downgraded from a Class C to a Class C0 station, and the Commission refuses to accept any counterproposal dependent on a downgrade without the consent of the station's licensee. 3/ But KJUL-LLC has

2/ Specifically, the Counterproposal proposes that Amboy be allotted Channel 231A, rather than the channel – Channel 237A – that was proposed in the Notice in order to make Channel 237A available as a second FM allotment to Desert Center, California, which is not a census-designated place. Under the Counterproposal, the crucial Amboy allotment will be subject to nine other allotment changes, while the second Desert Center allotment, at least as a technical matter, could move forward without delay.

3/ See, e.g., *Columbia City, Florida*, Report & Order, 14 FCC Rcd 21165 at n.1 (Allocations, 1999).

now formally withdrawn its conditional consent for the Counterproposal. ^{4/}
Accordingly, the Counterproposal must be dismissed.

The dismissal of the Counterproposal confirms that the Commission should immediately allot Channel 237A at Amboy, California, as proposed in the Notice. Neither the Counterproposal (nor any other filing in this proceeding) challenged the extensive public interest benefits that would result from Amboy being allocated its first FM allotment or Amboy's right to its own local transmission service. The Counterproposal also did not dispute that the public interest benefits of a new FM allotment to Amboy, including the provision of a first aural transmission service to a large and completely unserved area, which includes Amboy and several miles of heavily traveled Interstate 40 and historic Route 66, far outweigh, under the Commission's established allotment criteria, all of the other asserted benefits that would have resulted from the Counterproposal, as none of Counterproposal's ten other changes will eliminate any white or gray area or provide a first local transmission service to any community.

In fact, even without KJUL-LLC's timely withdrawal of consent to the Counterproposal, the Commission should not have deemed the Counterproposal to better serve the public interest than the initial Amboy proposal. First, the Counterproposal created the substantial risk that the proposed Amboy allotment, with its overwhelming public interest benefits, would never have been able to be implemented. Instead of allotting Amboy Channel 237A, which would not have

^{4/} KJUL License, LLC, Motion to Dismiss Counterproposal (filed July 24, 2002).

been dependent on any other changes to the Commission's FM Table of Allotments, the Counterproposal required nine other allotment and facility changes to occur before the allotment of Channel 231A at Amboy could become operational. Because each of these preconditions was likely to delay or preclude KHWY's effort to bring a first local service to the white area in and near Amboy, California and Interstate 40, it was questionable as to whether the Counterproposal better served the public interest than the straightforward proposal for the Amboy allotment set forth in the Notice. ^{5/} Second, the Counterproposal may have been deficient on its face. For example, the Counterproposal had not made clear whether Pahrump, Nevada, a community that is only marginally larger than Kingman, Arizona, should be allowed to obtain its third FM channel by taking one of Kingman's two operating FM stations, especially when the new Pahrump channel will serve, according to the Commission's *Tuck* precedent, the well-served Las Vegas Urbanized Area. It also did not explain why Desert Center, which is not even a census-designated place, merits a *second* FM allotment.

^{5/} At the very least, in light of the immense public interest benefits of an FM service at Amboy, the Commission should have adopted the Counterproposal only upon conditions sufficient to ensure that any allotment to Amboy would not be unnecessarily delayed or denied because of the complexity of the Counterproposal. For example, the Commission would have been right to impose and enforce strict time limits on the filing of all the construction permit applications necessary to implement the Counterproposal. KHWY also would have asked that, in the event that any permit application necessary to the Counterproposal was not timely or properly filed, or any of Cameron's promises regarding the consent or reimbursement of the relevant licensees became invalid, the Commission automatically would revise the FM Table of Allotments to assign Channel 237A to Amboy rather than to Desert Center.

KHWY, in its Petition and Comments, has detailed the many reasons for the Commission to allot Channel 237A at Amboy, California. KHWY has demonstrated that Amboy, which has its own post office, zip code and businesses, is a community for purposes of the Commission's allotment priorities. KHWY has explained – and the Commission has acknowledged – the importance of providing local radio service to residents and motorists who depend on such local sources for emergency news, traffic and weather information, as well as other programming. 6/ And the only other party – REC Networks (“REC”) – to have submitted comments with regard to the substance of the Amboy allotment “urges the Commission to grant Channel 237A to Amboy, California.” 7/ Accordingly, there is no question that the proposed Amboy allotment would advance the public interest.

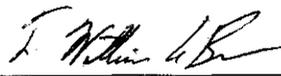
6/ See, e.g., Petition at 4 (citing *Yermo and Mountain Pass, California*, Report & Order and Memorandum Opinion & Order, 45 RR 2d 58, 60-61 (Broadcast Bureau, 1979)).

7/ See Comments of REC Networks at 3 (filed on June 7, 2002).

For all the foregoing reasons, including that the Counterproposal is no longer grantable under established Commission policy, the Commission, as promptly as possible, should adopt the Notice's proposed allotment of Channel 237A at Amboy, which will provide the first aural reception service to thousands of motorists traveling on Interstate 40 and historic Route 66 and the first aural reception and local transmission service to the community of Amboy.

Respectfully submitted,

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July 30, 2002

CERTIFICATE OF SERVICE

I, Charlene Jones, hereby certify that on this 30th day of July, 2002, a copy of the foregoing Reply Comments was sent by first-class mail, postage prepaid, to:

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