

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 02-290
FM Broadcast Stations) RM - 10527
(Manila, Utah))

To: Assistant Chief, Audio Division
Media Bureau

COUNTERPROPOSAL

3 POINT MEDIA-FRANKLIN, LLC
MILLCREEK BROADCASTING, LLC

SANPETE COUNTY BROADCASTING
COMPANY

Lee J. Peltzman
Shainis & Peltzman, Chartered
1850 M Street, NW, Suite 240
Washington, DC 20036
(202) 293-0011

Shelley Sadowsky
Katten Muchin Zavis Rosenman
1025 Thomas Jefferson Street, N.W
East Lobby, Suite 700
Washington, DC 20007-5201
(202) 625-3500

Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon
600 14th Street, NW, Suite 800
Washington, DC 20005-2004
(202) 783-8400

Its counsel

M. KENT FRANDBSEN
FRANDBSEN MEDIA COMPANY, LLC
SUN VALLEY RADIO, INC.

Their counsel

David Oxenford
Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037-1128
202-663-8128

Their counsel

November 18, 2002

TABLE OF CONTENTS

| | | |
|------|--|----------|
| I. | PRELIMINARY MATTERS | 1 |
| II. | CONFLICT WITH THE NPRM | 2 |
| III. | COMPLIANCE WITH THE COMMISSION'S RULES | 3 |
| A. | CHANNEL 248C1, FRANKLIN, IDAHO TO CHANNEL 248C, COALVILLE, UTAH 3 | |
| 1. | Technical Analysis | 3 |
| 2. | Change in Community of License | 4 |
| B. | STATION KLGL, RICHFIELD, UTAH TO ELSINORE, UTAH..... | 5 |
| 1. | Technical Analysis..... | 5 |
| 2. | Change in Community of License | 6 |
| C. | STATION KNYN, FORT BRIDGER, WYOMING TO FRANKLIN, IDAHO | 7 |
| 1. | Technical Analysis..... | 7 |
| 2. | Change in Community of License | 9 |
| D. | STATION KGNT, SMITHFIELD, UTAH TO FORT BRIDGER, WYOMING | 9 |
| 1. | Technical Compliance | 9 |
| 2. | Change in Community of License | 10 |
| E. | STATION KKEX, PRESTON, IDAHO TO SMITHFIELD, UTAH | 10 |
| 1. | Technical Compliance | 10 |
| 2. | Change in Community of License | 10 |
| F. | STATION KDMG, CHANNEL 280C, NEPHI, UTAH | 11 |
| IV. | CONCLUSION..... | 11 |

SUMMARY

A group of permittees and licensees in Idaho, Utah and Wyoming propose to modify the facilities of their stations in order to provide better service to the public. If this proposal is granted, the community of Elsinore, Utah will receive its first local service, approximately 1000 residents of Utah will receive their first aural reception service (white area), and more than one and one-half million people will receive new radio service. Several vacant allotments will need to be modified in order to make these changes.

This proposal is in conflict with the proposal set forth in the Notice of Proposed Rule Making in this proceeding to allot Channel 249A to Manila, Utah, and thus is properly presented as a counterproposal in this proceeding. However, an alternate channel has been identified for allotment to Manila, so that the benefits of this counterproposal can be achieved as well as satisfying the petitioner's interest in a new station at Manila.

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COUNTERPROPOSAL

3 Point Media-Franklin, LLC ("3 Point"), permittee of an FM station to serve Franklin, Idaho; Millcreek Broadcasting, LLC ("Millcreek"), licensee of Station KMDG, Nephi, Utah; Sanpete County Broadcasting Company ("Sanpete"), licensee of Station KLGL(FM), Richfield, Utah; Sun Valley Radio, Inc. ("Sun Valley"), licensee of Station KKEX (FM), Preston, Idaho; Frandsen Media Company, LLC ("Frandsen Media"), licensee of Station KGNT(FM), Smithfield, Utah; and M. Kent Frandsen ("Frandsen"), licensee of Station KNYN(FM), Fort Bridger, Wyoming' (together, "3 Point-Sanpete-Frandsen"), by their respective counsel, submit this Counterproposal in the above-captioned proceeding.³ 3 Point-Sanpete-Frandsen request that the Commission amend the FM Table of Allotments to (i) delete Channel 248C1 at Franklin, Utah, and allot Channel 24XC at Coalville, Utah as that community's second local service; (ii)

³ 3 Point and Millcreek are under common ownership.
Frandsen Media, Frandsen, and Sun Valley are under common ownership.
See Notice of Proposed Rule Making, DA 02-2320 (rel. Sept. 27, 2002) ("NPRM")

delete Channel 248C at Richfield, Utah and allot Channel 249C to Elsinore, Utah as that community's first local service; (iii) delete Channel 244C1 at Preston, Idaho and allot Channel 244C1 to Smithfield, Utah; (iv) delete Channel 280A at Smithfield and allot Channel 280C at Fort Bridger, Wyoming; (v) delete Channel 256C1 at Fort Bridger and allot Channel 255C3 at Franklin, Idaho; and (vi) substitute Channel 256C for Channel 280C at Nephi, Utah. To effectuate this upgrade, further changes will be necessary as described herein.

I. PRELIMINARY MATTERS

I. If the Counterproposal is granted, 3 Point will file an application to modify the permit of the Franklin station to specify operation on Channel 248C at Coalville and construct the facilities if granted; Sanpete will file an application to modify the facilities of KLGL to specify operation on Channel 249C at Elsinore and construct the facilities if granted; Sun Valley will file an application to modify the community of license of KKEX to serve Smithfield on Channel 244C1 and construct the facilities if granted; Frandsen Media will file an application to modify the facilities of KGNT to specify operation at Fort Bridger on Channel 280C and construct the facilities if granted; Frandsen will file an application to modify the facilities of KNYN to specify operation at Franklin on Channel 255C3 and construct the facilities if granted; and Millcreek will file an application to modify the facilities of KMDG to specify operation on Channel 256C and construct the facilities if granted. The only other stations required to make changes are vacant allotments. 3 Point-Sanpete-Frandsen have entered into mutual agreements regarding the modifications to their respective stations and expect that the changes will be implemented smoothly and rapidly if and when the Counterproposal is granted

2. The following table summarizes the changes requested in this Counterproposal (listed alphabetically:

| City | Channel | |
|-----------------------------|----------|-------------|
| | Existing | Proposed |
| Dinosaur, Colorado (vacant) | 247C1 | 266C1 |
| Rangely, Colorado (vacant) | 279C1 | 295C1 |
| Franklin, Idaho | 248C1 | 255C3 |
| Preston, Idaho | 244C1 | ---- |
| Beaver, Utah (vacant) | 246A | 259A |
| Coalville, Utah | --- | 248C |
| Elsinore, Utah | --- | 249C |
| Monroe, Utah (vacant) | 257C2 | 264C2 |
| Nephi, Utah | 280C | 256C |
| Richfield, Utah | 2486 | --- |
| Smithfield, Utah | 280A | 244C1 |
| Fort Bridger, Wyoming | 256C1 | 280C |
| Wamsutter, Wyoming (vacant) | 266A | 234A |

II. CONFLICT WITH THE NPRM

3. As indicated in the attached Engineering Statement, Exhibit E, Figure I, this proposal, which would result in the allotment of Channel 248C to Coalville, Utah, conflicts with the NPRM proposal to allot Channel 249A to Manila, Utah. However, 3 Point-Sanpete-Frandsen offer an alternate channel, Channel 228A, for allotment to Manila. See Exhibit E, Figure 9. Thus, Manila can receive a first local service, while at the same time the benefits of this counterproposal can be achieved. If for some reason Channel 228A cannot be allotted to Manila, this Counterproposal would clearly be favored over the Manila proposal under the Commission's allotment priorities, since this Counterproposal offers a first local service to Elsinore, Utah with a population of 733 (2000 U.S. Census), and provides a first reception service (white area) to a population of 976. By contrast, the Manila proposal offers a first local service to a community of

only 308 and claims no white area coverage. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)

111. COMPLIANCE WITH THE COMMISSION'S RULES

A. CHANNEL 248C1, FRANKLIN, IDAHO TO CHANNEL 248C, COALVILLE, UTAH

1. Technical Analysis

4. As demonstrated in the Exhibit E, Figure 1, Channel 248C can be allotted to Coalville, Utah consistent with Section 73.207 of the Commission's Rules, provided that changes are made at Dinosaur, Colorado and Richfield, Utah, as discussed below. A 70 dBu signal can be provided to Coalville from the proposed reference point. *See* Figure 2.

5. The relocation of the Franklin station to Coalville will not change the coverage area but will increase the population of 1,548,152 able to receive a 60 dBu signal from the station. *See* Figure 3. Since the station is not yet operating there will be no loss in existing service to any area. As for potential loss of service, all areas will remain adequately served.

6. As shown in Figure 1, in order to allot Channel 248C to Coalville, vacant Channel 247C1 must be deleted at Dinosaur, Colorado. 3 Point-Sanpete-Frandsen propose to substitute Channel 266C1 for Channel 247C1 at Dinosaur. Channel 247C1 can be allotted to Dinosaur at the current allotment reference point provided Channel 234A is substituted for vacant Channel 266A at Wamsutter, Wyoming. *See* Exhibit E, Figure 23. Channel 234A can be allotted to Wamsutter at the current allotment reference coordinates with clear spacing. *See* Exhibit E, Figure 24

7. In addition, as discussed above, the allotment of Channel 248C at Coalville conflicts with the proposal in the *NPRM* to allot Channel 249A to Manila, Utah. 3 Point-

Sanpete-Frandsen offer an alternate channel, 228A to satisfy the petitioner's interest in a station at Manila. Channel 228A can be allotted to Manila at the petitioner's reference coordinates. See Exhibit E, Figure 9.

8. 3 Point, the permittee of the Franklin allotment, reiterates that it will apply for and construct the facilities at Coalville if this Counterproposal is granted.

2. Change in Community of License

9. In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Community of License"), the Commission stated that in order to grant a change in community of license: (1) the proposed use of the channel must be mutually exclusive with its current use; (2) the existing community of license must retain local service; and (3) the proposed arrangement of allotments must be preferred over the existing arrangement under the Commission's allotment priorities. The proposed change in community of license from Franklin, Idaho to Coalville, Utah satisfies these prerequisites. First, the proposed use of Channel 248C at Coalville is mutually exclusive with the current use of Channel 248C1 at Franklin. See Figure 1. Second, Franklin will not be deprived of local service since Station KNYN, Fort Bridger, Wyoming has agreed to change its community of license to serve Franklin as part of this Counterproposal as described below. Third, the Coalville proposal is preferred under the Commission's priorities. As a result of the proposal, a first local service would be provided at Elsinore, Utah (priority 3) and a first aural service would be provided to 976 persons (priority 1), as further described herein. Thus, when the existing arrangement of allotments is

compared against the proposed arrangement, the proposed arrangement is preferred since it furthers priorities (1) and (3). *See Revision of FM Assignment Policies and Procedures, supra*

10. Coalville is located outside any Urbanized Area, and the proposed signal will not cover more than 50 percent of any urbanized area. Therefore, this relocation does not implicate the Commission's policy concerning the potential migration of stations from underserved rural areas to well-served urban areas. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). Coalville, with a population of 1,382, clearly qualifies as a community for allotment purposes since the Commission previously allotted an FM channel (223C3) to Coalville.

B. STATION KLGL, RICHFIELD, UTAH TO ELSINORE, UTAH

1. Technical Analysis

11. In order to allot Channel 24XC to Coalville, Channel 248C must be deleted at Richfield, Utah. 3 Point-Sanpete-Frandsen propose to allot Channel 249C at Elsinore, Utah at a new transmitter site for use by Station KLGL. Channel 249C can be allotted to Elsinore in compliance with the Commission's spacing rules provided a channel substitution is made at Beaver, Utah. *See* Exhibit E, Figure 4. A 70 dBu signal can be provided to Elsinore from the proposed reference coordinates. *See* Figure 5. The relocation will result in a net gain of 103,166 persons able to receive a 60 dBu signal from the station. *See* Figure 6. The loss area will remain adequately served. *See* Figure 7.⁴ Sanpete, the licensee of KLGL, reiterates that it will apply for and construct the facilities at Elsinore if this Counterproposal is granted.

⁴ Although Figure 7 shows an area that will be left with one aural service, the move of Station KNYN, Ft. Bridger, Wyoming to Franklin, Idaho discussed at p. 7 herein, will cover this area. *See* Exhibit E, Figures 13-14.

12. In order to allot Channel 249C to Elsinore. Channel 259A must be substituted for vacant Channel 246A at Beaver, Utah. Channel 259A can be allotted to Beaver at the current allotment reference point in compliance with the Commission's spacing rules. See Exhibit E, Figure 10.

2. Change in Community of License

13. The proposed relocation of KLGL from Richfield to Elsinore satisfies the prerequisites of *Community of License, supra*. First, the proposed use of 249C at Elsinore is mutually exclusive with the current use of Channel 248C at Richfield. See Exhibit E, Figure 4. Second, Richfield will retain local service since Stations KCYQ(FM) and K SVC(AM) (as well as KUES(TV)) will remain licensed to Richfield. Third, the proposed arrangement of allotments is superior to the existing arrangement of allotments as demonstrated above. This relocation raises no urbanized area concerns.

14. The Town of Elsinore, Utah, is a community deserving of a first local service. Elsinore is a rural community located in Sevier County off U.S. Interstate Highway 70. Elsinore is listed in the U.S. Census 2000 with a population of 733. The U.S. Post Office associates ZIP Code 84724 with Elsinore and operates the Elsinore Post Office at 45 North Center Street. Elsinore's government functions independently of any other governmental units. According to Town of Elsinore Town Clerk, Jean Wood, the Town of Elsinore has an elected mayor and four council members. The mayor and council members serve four-year terms. Among the services provided by the town government are local planning and zoning, road maintenance, animal control and water. The Elsinore Volunteer Fire Department operates in Elsinore offering fire, rescue, EMS and other services to the citizens of Elsinore.

15. **The** Town of Elsinore has its own unique identity and history. Elsinore has a Scandinavian background. Known as “Little Denmark.” Elsinore was settled in 1874 by Danish immigrants. The town is known for **the** building “White Rock School” which later became the town hall and library and is **registered** as a historic landmark. *See* Exhibit A. According to **Ms.** Wood, the Town of Elsinore was incorporated in 1891.

16. Elsinore **businesses** include a wide variety of companies such as the Auto Wizard, Frost’s Cowboy Corral, DH Electric, Inc., Sevier Heating and Air Conditioning, **ServiceMaster**, Aspen Log Extremes, **Bugsmith Termite &** Pest Control, J.P. Telcom, Atlas Scale, Sunny Shopper and Marcy’s Saloon. *See* Exhibit A. Elsinore is home to a Church of Jesus Christ of Latter-day **Saints**. According **Ms.** Wood, among the **events** that are held in Elsinore are the Danish Annual **Celebration**, Memorial Day Seivice and July 24 Pioneer Day.

C. STATION KNYN, FORT BRIDGER, WYOMING TO FRANKLIN, IDAHO

1. Technical Analysis

17. To provide a replacement service at Franklin. Idaho and avoid depriving the community of its only local service, 3 **Point-Sanpete-Frandsen** propose to relocate Station **KNYN(FM)**, Channel 256C1, Fort Bridger. Wyoming to Franklin, Idaho and downgrade the **station** to Channel 255C3. Channel 255C3 can be allotted to Franklin consistent with Section 73.207 of the Commission’s **Rules**. *See* Exhibit E, Figure 11. **A 70 dBu** signal can be provided to Franklin from the **proposed** referencce point. *See* Figure 12. The relocation of KNYN to Franklin will result in a **net** gain in population of 1,835 **persons** able to receive a 60 **dBu** signal **from the** station, although the area **scrvcd** will decrease in **size**. *See* Figure 13.

18. A remaining services study is provided in Figure 14. Although the study discloses some area with one remaining service after the relocation, this gray area will be eliminated when Station KGNT relocates from Smithfield to Fort Bridger as part of this proposal, which is described immediately below. Portions of the loss area will have two, three, or four local services after the relocation. The services remaining in these loss areas are comparable to those of other relocations recently granted by the Commission. In *Scappoose and Tillamook, Oregon*, 15 FCC Rcd 10899 (2000), the Commission granted a reallocation from Tillamook to Scappoose even though it left 4,312 persons with four aural services, 2,461 persons with three aural services, and 19 persons with two aural services. In *Detroit Lakes and Barnesville, Minnesota*, 16 FCC Rcd 22581 (2001), the Commission granted a reallocation from Detroit Lakes to Barnesville even though it left 1,458 persons with four aural services, 449 persons with three aural services, and 54 persons with two aural services. Other reallocation cases have left substantial populations with only four aural services. See, e.g., *Earle, Arkansas, et al.*, 10 FCC Rcd 8270 (1995) (7,026 persons with 4 aural services). While leaving people with fewer than five aural services may not be desirable, it is merely a factor to be considered under priority (4). In this case, the overall gains of the Counterproposal, including advancing priorities (1) and (3) and providing new service to over 1,597,527 persons, militate in favor of its grant. See *Littlefield, Wolfforth and Tahoka, Texas*, 12 FCC Rcd 3215 (1997).

19. Frandsen, the licensee of KNYN, reiterates that it will apply for and construct the facilities at Franklin if this Counterproposal is granted.

2. Change in Community of License

20. The relocation of Station KNYN from Fort Bridger to Franklin satisfies the prerequisites of *Community of License, supra*. First, the proposed use of Channel 255C3 at Franklin is mutually exclusive with the current use of Channel 256C1 at Fort Bridger. *See* Exhibit E, Figure 11. Second, Fort Bridger will retain local service since Station KGNT, Smithfield, Utah has agreed to relocate to Fort Bridger as described immediately below. Third, the proposed arrangement of allotments is superior to the existing arrangement of allotments as demonstrated above.

D. STATION KGNT, SMITHFIELD, UTAH TO FORT BRIDGER, WYOMING

1. Technical Compliance

21. To provide a replacement service at Fort Bridger, Wyoming and avoid depriving the community of its only local service, 3 Point-Sanpete-Frandsen propose to upgrade Station KCNT, Channel 280A, Smithfield, Utah and relocate the station to Fort Bridger, Wyoming on Channel 280C. Channel 280C can be allotted to Fort Bridger consistent with Section 73.207 of the Commission's Rules, provided that changes are made at Nephi, Utah, as described below, and Rangely, Colorado. *See* Figure 15. As to Rangely, Channel 295C1 can be substituted for vacant channel 279C1 at the current allotment reference coordinates. *See* Exhibit E, Figure 22.

22. A 70 dBu signal can be provided to Fort Bridger from the proposed reference point, which is located at the center of the community. The relocation of KCNT to Fort Bridger will result in a net gain in area of 23,959 sq. km. able to receive a 60 dBu signal from the station, although the population will decrease by 55,626 persons. *See* Figure 16. The entire loss area will continue to be well served by more than five aural services. *See* Figure 17.

2. Change in Community of License

23. The relocation of Station KGNT from Smithfield to Fort Bridger satisfies the prerequisites of *Community of License, supra*. First, the proposed use of Channel 280C at Fort Bridger is mutually exclusive with the current use of Channel 280A at Smithfield. See Exhibit E, Figure 15. Second, Smithfield will retain local service since Station KKEX, Preston, Idaho has agreed to relocate to Smithfield as described immediately below. Third, the proposed arrangement of allotments is superior to the existing arrangement of allotments as demonstrated above.

24. Frandsen Media, the licensee of KGNT, reiterates that it will apply for and construct the facilities at Fort Bridger if this Counterproposal is granted.

E. STATION KKEX, PRESTON, IDAHO TO SMITHFIELD, UTAH

1. Technical Compliance

25. To provide a replacement service at Smithfield, Utah and avoid depriving the community of its only local service, 3 Point-Sanpete-Frandsen propose to have Station KKEX, Channel 244C1, Preston, Idaho, change its community of license to Smithfield. This change in community requires no physical change to the station's facilities. Channel 244C1 can be allotted to Smithfield consistent with Section 73.207 of the Commission's Rules. See Figure 18. A 70 dBu signal can be provided to Smithfield from the proposed reference point. See Figure 19. Since there is no change in facilities, there is no gain or loss in this relocation.

2. Change in Community of License

26. The relocation of Station KKEX from Preston to Smithfield satisfies the prerequisites of *Community of License, supra*. First, the proposed use of Channel 244C1 at Smithfield is mutually exclusive with its current use at Preston, since the facilities are the same.

See Exhibit E, Figure 18. Second, Preston will retain local service from **KACH(AM)**. Third, the proposed arrangement of allotments is superior to the existing arrangement of allotments as demonstrated above.

27. Sun Valley, the licensee of KKEK, reiterates that it will apply for and construct the facilities at **Smithfield** if this Counterproposal is granted.

F. STATION KDMG, CHANNEL 280C, NEPHI, UTAH

28. In order to allot Channel 280C at Fort Bridger, Wyoming, Channel 280C must be deleted at Nephi, Utah. 3 Point-Sanpete-Frandson propose to substitute Channel 256C for Channel 280C at Nephi and modify the license of **Station KDMG** accordingly. Channel 256C can be allotted to Nephi at the current KDMG transmitter coordinates provided that changes are made at Monroe, Utah and Fort Bridger, Wyoming. *See* Exhibit E, Figure 20. The change at Fort Bridger has already been discussed above. **As to** Monroe, Channel 264C2 can be substituted for vacant Channel 257C2 at Monroe at the current allotment reference coordinates. *See* Figure 21

29. Millcreek, the licensee of KMDG reiterates that it will apply for Channel 256C at Nephi and construct the facilities if this Counterproposal is granted.

IV. CONCLUSION

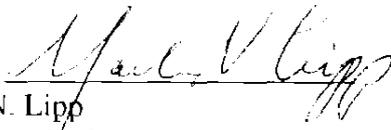
Grant of the Counterproposal is in the public interest because Elsinore, Utah will receive a first local service, a first reception service will be provided to 976 persons in an area of 1,597 sq. km. (white area) and an additional 1,597,527 people will receive radio service. An alternate channel has been offered to satisfy the petitioner's expression of interest in a first local service at

Manila, Utah. 3 Point-Sanpete-Frandsen are confident that the changes can be implemented smoothly and rapidly. Accordingly, the Commission should grant the Counterproposal,

Respectfully submitted,

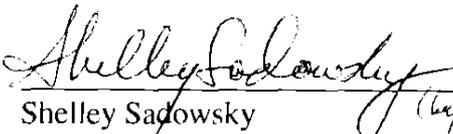
3 POINT MEDIA-FRANKLIN, LLC
MILLCREEK BROADCASTING, LLC

By: 
Lee J. Peltzman *(by PML)*
Shainis & Peltzman, Chartered
1850 M Street, NW
Suite 240
Washington, DC 20036
(202)293-0011

By: 
Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon
600 14th Street, NW
Suite 800
Washington, DC 20005-2004
(202) 783-8400

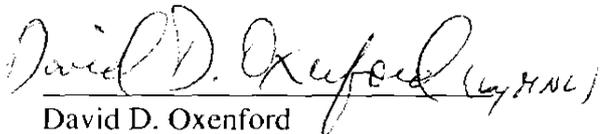
Their counsel

SANPETE COUNTY BROADCASTING
COMPANY

By: 
Shelley Sadowsky *(by PML)*
Katten Muchin Zavis Rosenman
1025 Thomas Jefferson Street, N.W
East Lobby, Suite 700
Washington, DC 20007-5201
(202) 625-3500

Its counsel

M. KENT FRANDSEN
FRANDSEN MEDIA COMAPNY, LLC
SUN VALLEY RADIO, INC.

By: 
David D. Oxenford *(by PML)*
Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037-1128
202-663-8128

Their counsel

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