

LAW OFFICES

**COHN AND MARKS LLP**

JOEL H. LEVY  
ROBERT B. JACOBI  
ROY R. RUSSO  
RONALD A. SIEGEL  
LAWRENCE N. COHN  
RICHARD A. HELMICK  
WAYNE COY, JR.  
J. BRIAN DE BOICE  
JEROLD L. JACOBS  
JOSEPH M. DISCIPIO

SUSAN V. SACHS  
KEVIN M. GOLDBERG

**SUITE 300  
1920 N STREET N.W.  
WASHINGTON, D.C. 20036-1622**

OF COUNSEL:  
MARCUS COHN (1913-2001)  
LEONARD H. MARKS  
RICHARD M. SCHMIDT JR.

TELEPHONE (202) 293 3860

FACSIMILE (202) 293-4827

HOME PAGE WWW.COHNMARCS.COM

DIRECT DIAL  
(202) 452 4831

E MAIL ADDRESS  
rah@cohnmarks.com

November 18, 2002

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**VIA HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Portals II, Filing Counter, TW-A235  
445 12th Street, S.W.  
Washington, D.C. 20554

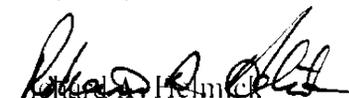
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: MB Docket No. 02-289  
RM-10526**

Dear Ms. Dortch

Submitted on behalf of Scott D. Parker are an original and four (4) copies of his comments in the above-captioned Notice of Proposed Rule Making to allocate Channel 300C1 to Idaho Falls, Idaho.

Very truly yours

  
Richard A. Helmick

cc: Ms. Sharon P. McDonald (FCC Rm 3-A226)  
David D. Oxenford, Jr., Esq.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

# Federal Communications' Commission

In the Matter of )  
 ) MB Docket No. 02-289  
Amendment of Section 73.202 (b). ) RM-10526  
Table of Allotments, FM Broadcast Stations )  
(Idaho Falls, Idaho) )

To: Chief, Audio Division, Media Bureau

## COMMENTS OF SCOTT D. PARKER

Scott D. Parker ("Parker"), through his counsel, hereby withdraws his expression of interest for the allotment of Channel 300C1 to Idaho Falls, Idaho, as that community's six local commercial FM transmission service. Pursuant to Section 1.420 (j) of the Commission's Rules there is set forth as an attachment a declaration of Parker regarding his (a) withdrawal of interest in the above-captioned matter and (b) request for approval of reimbursement by Sand Hill Media Corporation of his out-of-pocket expenses (in the amount of \$1,150) incurred in connection with this rule making matter, together with a copy of the associated agreement between Parker and Sand Hill Media Corporation.

Parker is also the sole general partner of Alpine Broadcasting Limited Partnership ("Alpine"), licensee of FM Broadcast Station KYZK, Channel 298, Sun Valley, Idaho. Sand Hill has separately agreed to pay Alpine consideration for reducing the power of KYZK as proposed by Alpine in

Application File No. BPH-20020308ABI which would allow Sand Hill further flexibility to modify KWEO should the Commission adopt Sand Hill's counterproposal in this matter

Respectfully submitted

SCOTT D. PARKER

By:



Richard A. Helmick

COJIN AND MARKS LLP  
1920 N Street, N.W., Suite 300  
Washington, D.C. 20036

His Attorneys

November 18, 2002

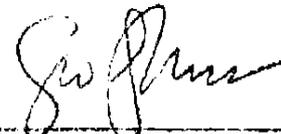
**DECLARATION**

**Scott D. Parker ("Parker") hereby declares as follows:**

**Pursuant to the attached Agreement with Sand Hill Media Corporation ("Sand Hill"), permittee of FM Broadcast Station KQEO, Channel 296, Idaho Falls, Idaho, I have agreed not to prosecute my petition for rule making (MB Docket No. 02-289, RM-10526) to allot Channel 300C1 at Jdnho Falls, Idaho, thereby enabling Sand Hill to file a minor change application to increase the power of KQEO. in consideration of such Agreement, Sand Hili will reimburse mc for expenses (an itemization of such expenses is attached) incurred in the preparation and filing of his rule making petition.**

- 2. I hereby affirm under penalty of perjury that, in return for my withdrawal of interest In MB Docket No. 02-289, I have neither received nor will receive any money or other consideration in excess of legitimate and prudent expenses as set forth in the attached itemization.**

Dated: 11-18-02

  
\_\_\_\_\_  
Scott D. Parker

**REIMBURSABLE EXPENSES**  
**CHANNEL 300C1, IDAHO FALLS, ID RULE MAKING**

Engineering (allocation study)	\$ 450.00	
Legal (Cohn and Marks LLP)	\$ 650.00	
Miscellaneous (telephone, fax, postage)	<u>\$ 50.00</u>	
	\$1 150.00	Total

## AGREEMENT

**THIS AGREEMENT** ("Agreement") is entered into this 13th day of November, 2002 by and between Sand Hill Media Corporation ("Sand Hill") and Scott D. Parker ("Parker").

### **WITNESSETH:**

**WHEREAS**, Parker filed with the Federal Communications Commission ("FCC") a Petition for Rule Making ("Petition") proposing to amend the Table of FM Allotments, Section 73.202(b) of the FCC's rules, to allot Channel 300C1, 107.9 MHz, to Idaho Falls, Idaho;

**WHEREAS**, the FCC issued a Notice of Proposed Rule Making (DA 02-2320) in response to the Petition filed by Parker;

**WHEREAS**, Sand Hill is the permittee of station KQEO(FM), Idaho Falls, Idaho, and as such, desires to increase the effective radiated power of KQEO from that currently specified in the station's permit by upgrading the Station's class under FCC rules (the "KQEO Upgrade");

**WHEREAS**, allotment of the new channel proposed in Parker's Petition would be mutually exclusive with the KQEO Upgrade;

**WHEREAS**, Parker has agreed to withdraw his interest in the Idaho Falls proceeding in exchange for reimbursement of his expenses incurred with respect thereto; and

**WHEREAS**, the Parties believe that a settlement upon the terms set forth in this Agreement will serve the public interest in that it will resolve the pending proceeding before the FCC and save unnecessary expense and consumption of FCC resources.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. **Dismissal of Interest.** Parker shall cease prosecution of his Petition and agrees that he will make no additional filings in the Idaho Falls proceeding except as necessary to express withdrawal of his expression of interest in the proceeding to the FCC. On or before November 18, 2002, Parker shall state that he has no intent to file an application for the channel proposed in the Petition and shall file with the FCC a request for approval of this agreement in accordance with Section 1.420(j) of the FCC's Rules.

2. **Consideration.** In consideration of Parker's withdrawal of interest in the Idaho Falls proceeding, Sand Hill shall reimburse Parker for the legitimate and prudent expenses incurred in the preparation and prosecution of his Petition, as approved by the FCC, provided, however, that such amount shall not exceed \$3,000.00 (the "Reimbursement Amount"). Prior to

payment of the Reimbursement Amount by Sand Hill, Parker shall have provided Sand Hill and the FCC with a written itemization of the Reimbursement Amount.

3 **Final Action.** The obligations of Sand Hill to make any payment hereunder are expressly conditioned upon the FCC taking “Final Action” approving the KQEO Upgrade For purposes of this Agreement, an action by the FCC shall be a “Final Action” when the time for filing any requests for administrative or judicial review of such action, or for the FCC to reconsider such action on its own motion, has lapsed without any such filing or motion having been tiled or, in the event of any such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken, and the time for seeking further administrative ofjudicial review with respect to the action shall have expired without any request for such further review having been filed

4 **Authorization and Binding Obligation.** The parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms

5. **Notices.** All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and, pending the designation of another address, addressed as follows

If to Sand Hill:

Sand Hill Media Corporation  
P O Box 570  
Logan, Utah 84321  
Attn Ryan G Frandsen, President

With a copy (which shall not constitute notice) to

David D Oxenford, Esq  
Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037-1128

If to Parker:

Scott D Parker  
P.O. Box 2158  
Ketchum, ID 83340

With a copy (which shall not constitute notice) to:

Richard A. Helmick, Esq.  
 Cohn and Marks LLP  
 1920 N Street, NW, Suite 300  
 Washington, DC 20036

6. **Entire Agreement.** Except as otherwise set forth herein, this Agreement constitutes the entire understanding of the parties, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by both parties.

7. **Enforcement.** Should the parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court. The parties recognize that this Agreement confers a unique benefit, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, the parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and agree to waive any defense that there is an adequate remedy at law for breach of this Agreement.

8. **Specific Performance.** In the event that Parker fails to perform his obligations set forth herein, money damages alone will not be adequate to compensate Sand Hill for its injury. Therefore, **Parker** agrees and acknowledges that in the event of his failure to perform his obligations contemplated hereby, Sand Hill shall be entitled, in addition to any other rights and remedies on account of such failure, to specific performance of the terms of this Agreement and of Parker's obligations hereunder. If any action is brought by Sand Hill to enforce this Agreement, Parker shall waive the defense that there is an adequate remedy at law, and Sand Hill shall be entitled to receive from Parker all court costs, attorney's fees and other out-of-pocket expenses incurred by Sand Hill in enforcing its rights under this provision.

9. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and assigns, provided however that neither party may voluntarily assign this Agreement without the express written consent of the other party.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Idaho without application of conflicts of laws principles.

11. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12. **Counterparts.** This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by each of the parties.

13. **Attorney's Fees.** In the event of a dispute between the parties to this Agreement, Sand Hill or Parker, as the case may be, shall reimburse the prevailing party for its reasonable legal fees and other costs incurred in enforcing its rights or exercising its remedies under this

Agreement Such right of reimbursement shall be in addition to **any** other right or remedy that the prevailing party may have under this Agreement

*[remainder of the page intentionally left blank]*

- 5 -

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above

**SAND HILL MEDIA CORPORATION**

By:   
Ryan G. Frandsen  
President

**SCOTT D. PARKER**

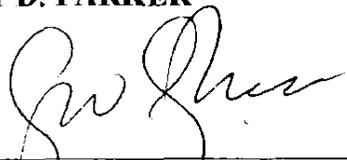
\_\_\_\_\_  
Scott D. Parka

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement or have caused this Agreement **to** be executed on their behalf **to** be effective **as** of the date **first** set forth above

**SAND RILL MEDIA CORPORATION**

By: \_\_\_\_\_  
Ryan G. Frandsen  
President

**SCOTT D. PARKER**

  
\_\_\_\_\_  
Scott D. Parker

**CERTIFICATE OF SERVICE**

I, Richard A. Helmick, hereby certify that on November 18, 2002, a copy of the foregoing "Comments of Scott D. Parker" was sent by First Class mail, postage prepaid, to the following:

Ms. Sharon P. McDonald\*  
Audio Division  
Media Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 3-A226  
Washington, DC 20554

David D. Oxenford, Jr., Esq.  
Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20037  
Counsel for Sand Hill Media Corporation

\*By hand Delivery



Richard A. Helmick