DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED

DEC 3 1 2002

FEDERAL COMMUNICATIONS
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 02-124
Table of Allotments	)	
FM Broadcast Stations	)	
(Amboy, California)	)	

TO: Assistant Chief, Audio Division
Media Bureau

RESPONSE TO REPLY
(TO CORRECT THE RECORD)

1. Cameron Broadcasting, Inc. ("Cameron") hereby responds to the Reply filed by Infinity Radio Operations, Inc. ("Infinity") relative to Cameron's Opposition to Infinity's Motion to Dismiss Cameron's counterproposal in the above-captioned proceeding. **As** set forth below, Infinity's Reply is based on a number of demonstrably inaccurate statements or suggestions.

2. In its Motion to Dismiss, Infinity has argued that a counterproposal filed in August, 2001 by Marathon Media Group, L.L.C. ("Marathon") in MM Docket No. 01-135 (Caliente, Nevada) should have foreclosed the filing of Cameron's counterproposal herein. In its Reply, Infinity claims that

> Not surprisingly, the Marathon proposal . . . was routinely accepted by the Commission ***after beingplaced in the FCC database,*** thereby providing public notice of its filing. Conspicuously absent from both Cameron's counterproposal and its Opposition is any explanation of why Cameron did not discover its conflict with the Marathon proposal in a search of the database, assuming one was conducted.

Infinity Reply at **3** (emphasis added). Infinity appears to be insinuating that Cameron failed to undertake a review of the Commission's database which would, Infinity implies, have disclosed the pendency of the Marathon proposal.

No. of Copies rec'd 0+4
List ABCDE

3. In fact, however, the Marathon proposal had ***NOT*** been entered into the Commission's database at the time of the preparation and filing of Cameron's counterproposal. Cameron's counterproposal was filed on July 15,2002. But as set forth in a Supplement filed by Marathon in MM Docket No. 01-135 on August 16,2002 -- ***i.e., a month AFTER Cameron's counterproposal was filed*** -- Marathon's proposal had theretofore ***still*** not been entered into the Commission's database. As set out in Marathon's Supplement (a copy of which is included as Attachment **A** hereto):

> On August 13,2001, Marathon filed a counterproposal in this proceeding. However, despite the passage of more than one year, to Marathon's knowledge the counterproposal has not appeared in the Commission's FM engineering data base. . . .

Marathon Supplement at 1. Thus, Infinity's suggestion of some lack of diligence on Cameron's part is flatly wrong.

4. Cameron has responded to Infinity's claims concerning the supposed mutual exclusivity with the Marathon counterproposal by noting that Marathon's counterproposal was itself mutually exclusive with a counterproposal filed in May, 2001 by FERN in MM Docket No. 01-69 (Parker, Arizona). As Cameron has already argued in its Opposition to Infinity's Motion to Dismiss, since FERN's counterproposal was timely filed in response to a notice of proposed rule making in that proceeding, FERN's counterproposal was entitled to protection from any later-filed mutually exclusive proposals until such time as FERN's counterproposal was acted upon. *E.g.*, *Pinewood, Sourth Carolina*, 5 FCC Rcd 7609 (MMB 1990).

5. Addressing that argument, Infinity attempts to belittle the FERN counterproposal, characterizing it as defective and claiming that the Commission "summarily dismissed it". Infinity Reply at 3. To be sure, the Commission's staff did ultimately dismiss FERN's counterproposal, *see* Report and Order, DA 02-1249, released May 24,2002, but not until May,

2002 -- ***more than a year*** after it was originally filed. Cameron is not sure how Infinity concludes that action taken after more than a year of deliberation could accurately be described as "summary".

6. Of course, during that year of deliberation, the FERN counterproposal was pending and, therefore, subject to protection from later-filed mutually exclusive proposals. In its August, 2002 Supplement *(see* Attachment **A** hereto) Marathon acknowledged that: (a) the Marathon counterproposal in MM Docket No. 01-135 (Caliente, Nevada) was filed on August 13,2001 -- *i.e.*, months ***AFTER*** FERN's counterproposal in MM Docket No. 01-69; and (b) FERN's counterproposal "was in conflict" with Marathon's counterproposal; and (c) FERN's counterproposal was not dismissed until May, 2002. In other words, Marathon has effectively conceded that its counterproposal was plainly foreclosed.

7. In an apparent effort to justify the fact that, notwithstanding all of these circumstances, Marathon filed its counterproposal in the first place, Infinity tries to suggest that Marathon might not have known about the FERN counterproposal when Marathon filed its counterproposal. The implication here appears to be that Marathon's counterproposal might have been filed in good faith ignorance of the pendency of the earlier-filed-and-cut-off, and mutually exclusive, FERN counterproposal. According to Infinity,

> a diligent search by Marathon, even of the FCC's own allotment database, would not have uncovered the FERN counterproposal.

Infinity Reply at **3.** Infinity seems to be implying that Marathon did not know and could not have known about the FERN counterproposal, and therefore that Marathon's submission of its proposal in MM Docket No. 01-135 (Caliente, Nevada) might somehow have been justified.

8. What Infinity fails to mention, however, is that Marathon's counsel had ***actual knowledge*** of the pendency of the FERN counterproposal in MM Docket No. 01-69 (Parker,

Arizona) well before the filing of the Marathon counterproposal because that counsel urged (in Reply Comments filed May 22,2001 -- three months before the filing of the Marathon counterproposal) that the FERN counterproposal should be dismissed. A copy of that pleading is included as Attachment B hereto. Thus, any suggestion that Marathon might somehow have been in the dark about the FERN proposal is contrary to the facts.

9. What is particularly surprising about Infinity's inaccurate suggestion in this last regard is that Infinity, too, was well aware **of** all these facts because Infinity, too, submitted comments in MM Docket No. 01-69 (Parker, Arizona) in opposition to FERN. A copy of a Motion to Strike filed by Infinity in that proceeding is included as Attachment C hereto. It is clear from that motion that Infinity not only participated in MM Docket No. 01-69, but that it was aware of the participation of Marathon's counsel therein. Further, Infinity's pleading in MM Docket No. 01-69 (Parker, Arizona) seems clearly to reflect Infinity's own recognition that FERN's counterproposal was in fact then pending and entitled to some consideration (even though Infinity believed that such consideration would ultimately lead to the dismissal of FERN's counterproposal). ***See*** Attachment C hereto at 8 ("if the FCC for any reason finds [FERN]'s counterproposal . . . to be acceptable"). That recognition runs counter to the notion, advanced by Infinity in its Reply, that the FERN counterproposal was "summarily dismissed."

10. In resolving the matters at issue in the above-captioned proceeding, the Commission

should base its decision on accurate facts, not demonstrably inaccurate assertions or suggestions.[1]

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street - 11th Floor
Arlington, Virginia 22209
(703) 812-0483

Counsel for ***Cameron Broadcasting,*** *Inc.*

December 31, 2002

[1] Of course, the **FCC** can best ensure that the public interest is served by simply accepting Marathon's revision to its counterproposal which eliminates the conflict between the proposals of Marathon and Cameron. By accepting this global solution, the **FCC** can avoid wasting its time and resources trying to determine who knew what and when, and thereby expedite the provision **of** improved service to the public.

ATTACHMENT A

DOCKET FILE COPY ORIGINAL ORIGINAL

RECEIVED

AUG 1 6 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter **of**	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 01-135
Table of Allotments	)	**RM-10154**
FM Broadcast Stations	)	
(Caliente, Nevada)	)	

To: Assistant Chief, Audio Division
Media Bureau

SUPPLEMENT

Marathon Media Group, L.L.C. ("Marathon"), licensee of Station KHUL (formerly KONY-FM), Kanab, Utah, by its counsel, hereby submits this supplement in the above-captioned proceeding. On August **13,2001,** Marathon filed a counterproposal in this proceeding. However, despite the passage of more than one year, to Marathon's knowledge the counterproposal has not appeared in the Commission's FM engineering data base, although the counterproposal was placed on Public Notice on October **23,2001.** While the reasons for this are unclear, Marathon desires to call the Commission's attention to certain events that have occurred since the filing **of** the counterproposal which may assist with its processing.

First, in MM Docket No. 01-69 (Parker, Arizona), the Commission released a Report and Order disposing of certain proposals that had been pending in that proceeding which may have had a bearing on the processing of this proceeding. DA **02-1249** (rel. May **24,** 2002). That action **is** now final. Specifically, Farmworker Educational Radio Network, Inc. ("FERN") had **filed** a counterproposal which included the allotment of Channel 234C0 to Searchlight, Nevada. That allotment was in conflict with Marathon's proposed substitution of Channel **233A for 291A at** Tecopa, California in its counterproposal in this proceeding. Significantly, **the** FERN

No. of Copies rec'd 0+4
List ABCDE

counterproposal was found to be defective on its face and was not accepted for filing, and the communities at issue therein were not added to the caption of the proceeding. Its dismissal, which is final, clears any concern regarding the spacing between the two conflicting proposals. Since that is the case, there would be no purpose in instituting a new proceeding to consider the substitution of Channel 233A at Tecopa, California. Similarly, the Commission, by Memorandum Opinion and Order, DA02-495, released March 1, 2002, dismissed an Application for Review of a Commission action denying a rule making petition to allot Channel 265C to Littlefield, Arizona. See Report and Order, 15 FCC Rcd 1026 (Allocations Br. 2000). That dismissal, which is now final, clears any concern regarding the spacing of the denied Littlefield proposal and Channel 265C, Moapa, Nevada and Channel 262C, Escalante, Utah

Second, in MB Docket No. 01-124 (Amboy, California), the Commission received a counterproposal filed on July 15, 2002 by Cameron Broadcasting, Inc. ("Cameron") that conflicts with this proceeding. Specifically, Cameron's counterproposal included the allotment of Channel 234C at Pahrump, Nevada. This allotment conflicts with Marathon's proposal to substitute Channel 233A at Tecopa, California as part of its counterproposal in this proceeding. On July 30, 2002, Marathon filed reply comments in MM Docket No. 01-124 (the Amboy proceeding) noting the conflict and requesting that the Cameron counterproposal be dismissed. There have been no responsive comments to that filing. It is likely that Cameron was simply unaware of Marathon's counterproposal because it was not in the engineering data base. Should a spacing conflict appear between the Amboy proceeding and this one, the Commission should resolve that conflict in Marathon's favor because it had clear priority in time over the Cameron filing. See Pinewood. South Carolina 5 FCC Rcd 7609 (1990); Benjamin, Texas, DA 02-1372

(released June 14, 2002), recons. pending and Mason. Texas, DA 02-1389 (released June 14, 2002), recons. oending.

Third, in its counterproposal in this proceeding Marathon proffered an alternate channel to satisfy the petitioner's interest in a second aural service at Caliente, Nevada. The petitioner failed to express an interest either in its originally requested channel or the alternate channel suggested by Marathon. It is the Commission's policy to dismiss a proposal in the absence of a continuing expression of interest *See Notice of Proposed Rule Making,* 16 FCC Rcd 12722, (2001), [Appendix, Paragraph 2] (2001); *Bridport, Vermont,* 5 FCC Rcd 6172 (1990). Thus, either by dismissing the Caliente proposal or allotting the alternative channel, the Commission can recognize that there is no conflict with any other proposal in this proceeding and no party is adversely affected by acceptance and consideration of the pleading. Marathon again urges the Commission to enter its proposal in the data base.

WHEREFORE, for the foregoing reasons, the Commission should process **and** grant Marathon's counterproposal in this proceeding.

Respectfully **submitted,**

MARATHON **MEDIA** GROUP, L.L.C.

By: Lee J. Peltzman (by MNL)

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

and

By: Mark N. Lipp

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

Its Counsel

August 16,2002

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 16" day of August, 2002, caused to be mailed by first class mail, postage prepaid, copies of the foregoing ''Supplement'' to the following:

* Ms. Sharon P. McDonald
Federal Communications Commission
445 12th Street, SW
Room 3-A226
Washington, DC 20554

Schleicher County Radio
c/o Randy Parker
25415 Glenn Lock
The Woodlands, Texas 77380
(Petitioner for Caliente)

James Marsh
d/b/a Amargosa Valley Broadcasting
2570 S. Eastern Avenue
Las Vegas, NV 89109
(Licensee of Station KPUP, Amargosa Valley, NV)

Richard Dean Hodson
P.O. Box 66
Tecopa, CA 92389-0066

Lisa M. Balzer

* HAND DELIVERED

::ODMA\PCDOCS\DC\87060\1

ATTACHMENT B

DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED
MAY 22 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

Amendment of Section 73.202(b)	)	
Table of Allotments	)	MM Docket No. 01-69
FM Broadcast Stations	)	RM- 10081
(Parker, Arizona)	)	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

McMullen Valley Broadcasting Company ("Petitioner"), by its counsel, hereby replies to the "Comments and Counterproposal" submitted by Farmworker Educational Radio **Network,** Inc. ("Farmworker") in this proceeding. As will be discussed, a portion of the Farmworker counterproposal is defective and should **be** dismissed. In support hereof, Petitioner states as follows:

1. Farmworker proposes to modify its permit on Channel 230C3 to specify Channel 248B1 at Parker, Arizona and modify its permit accordingly.[1] According to the Counterproposal, this change at Parker will allow Station KFLG-FM, Kingman, Arizona to change its community of license to Searchlight, Nevada and to downgrade its class of channel from Channel 234C to Channel

1. Farmworker seeks a nonadjacent channel change from Class C3 to Class B1. It is petitioner's position that a Class B1 facility which is protected to **its 57** dBu **whereas** the Class C3 is protected to its 60 dBu should be considered a higher class channel. As such the upgrade should be subjected to other expressions **of** interest by Public Notice. ***See*** 1.420(g) of the Commission's Rules and Modification of FM Broadcast Licensees to Higher Class Co-Channel or Adjacent Channels, **51** FR 20290 (1986). Petitioner hereby expresses an interest in applying for Channel 248B1 rather than Channel 247C3 at Parker.

No. of Copies rec'd 0+4
List A B C D E

234C0 provided certain channel or site changes are made at Caliente, Boulder City, and Henderson, Nevada and Baker, California.

2. Farmworker's counsel states that it "understands that .....the licensee of Station KSTJ(FM), (Boulder City, Nevada) will submit an application proposing relocation of its transmitter...." (at p. 3). Further, counsel states the licensees of Stations KSTJ(FM) and KFLG-FM have consented to the proposed changes" (at p. 4). Finally, Farmworker's counsel states that "[a]ppropriate reimbursement of reasonable expenses incurred in connection with the resulting changes will be made" (at p. 4). In the copy of the Counterproposal served on undersigned counsel, no statements by the licensees were submitted. Nor does the pleading does not reference any statements.

3. The Commission needs to be assured that the licensees of the stations affected by this proposal will implement the changes and that reimbursement will be made by the benefitting party. Here, the licensee of Station KFLG-FM, Kingman, Arizona itself, has not indicated that it will file an application to relocate its transmitter site to serve Searchlight, Nevada and downgrade its class of channel. The Commission can not assume that the licensee will make such changes. Presumably, the licensee of KFLG-FM is the benefitting party, not Farmworker. It is KFLG who should affirmatively state that it will reimburse the licensees of KSTJ, Boulder City, Nevada, KMXB, Henderson, Nevada and KKBK, Baker, California for its changes. *See* e.g., Detroit, Howe and Jacksboro, Texas, Antlers and Hueo, Oklahoma, 13 FCC Rcd 15591 (1998).

4. It is well settled that the licensee of an affected station can not be made to change its transmitter site or community of license without consent. *See* Greenville, Texas, 6 FCC Rcd 6048 (1991). It appears that the Boulder City licensee has not submitted a consent statement for the change in site and the Kingman station has not submitted its consent to change its community of

license to Searchlight. Presumably, the Baker and Henderson permittee/licensee would be involuntarily changed under the policy set forth in Columbus. Nebraska. Presumably, Farmworker will not reimburse any of the affected stations.

5. Without any commitment from the licensee of KFLG, Kingman as to its willingness to make the proposed changes and to reimburse the affected stations, and a consent statement from the Boulder City station, the Commission can not accept this proposal. Counterproposals must be correct at the time **of** filing. See Detroit. Texas, et al. supra and cases cited therein. The only proposed change that is acceptable for consideration in this proceeding is the substitution of Channel 248B1 for Channel 230C3 at Parker. However, Farmworker fails to clearly state that it will apply to change its transmitter site for Channel 248B1 at Parker. The rest of the proposal is too defective and speculative for acceptance in this proceeding. Furthermore, the Kingman change is more properly considered as a contingent proposal which can not be implemented unless and until **the** Parker change is granted and implemented.

6. Farmworker **suggests** an alternate channel (239C3) for Parker so that it may have its permit modified to Channel 248B1. Should the Commission determine that Channel 248B1 is not an upgrade and not made available for other expressions of interest, then Petitioner will accept the allotment of Channel 239C3 and will apply for that channel.

7. The Counterproposal is also deficient from a technical standpoint. The Commission requires that proposals that involve a change in community of license include a gain/loss study and a showing of 5 aural services remaining in the loss area. ***See*** e.g., Modification of FM and TV Authorizations to Specify a New Community of License 4 FCC Rcd 4870 (1989); recons. granted in part, 5 FCC Rcd 7094 (1990), Atlantic and Glenwood. **Iowa,** 10 FCC Rcd 8074 (1995).

8. Accordingly, in view of the multiple material defects, the **Farmworker** counterproposal should not be accepted in **this** proceeding except for the allotment of Channel 248B1 to **Parker as** an additional channel (instead of channel 247C3) or **as** a substitute for Channel 230C3.

Respectfully submitted,

MCMLJLLEN VALLEY BROADCASTING
COMPANY

By: Mark N. Lipp

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

May 22,2001

Its Counsel

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon L.L.P., do hereby certify that on this 22nd day of May, 2001, I have mailed the foregoing Reply Comments to the following:

* R. Barthen Gorman
Federal Communications Commission
Mass Media Bureau
445 12th street, SW
Room 3-A224
Washington, DC 20554

Anne Thomas Paxson, Esq.
Borsari & Paxson
2021 L Street, NW
Suite 402
Washington, DC 20036
(Counsel to Farmworker Educational Radio Network, Inc.)

Lisa M. Balzer

* Hand Delivered

60526.1

ATTACHMENT C

ORIGINAL

DOCKET FILE COPY ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JUN 20 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-69
Table of Allotments,	)	RM - 10081
FM Broadcast Stations.	)	
(Parker. Arizona)	)	

To: John A. Karousos, Chief
Allocations Branch, Policy and Rules Division
Mass Media Bureau

MOTION TO STRIKE FARMWORKER REPLY COMMENTS

Infinity Radio License Inc. ("Infinity"), licensee of KMXB(FM), Henderson, Nevada ("KMXB"), by its attorneys and pursuant to Section 1.45 of the Commission's Rules, respectfully moves to strike the Reply Comments filed by Farmworker Educational Radio Network, Inc. ("Farmworker") on May 22.2001 in the above-captioned rule making proceeding (the "Farmworker Reply"). The Farmworker Reply **is** an impermissible and untimely fundamental alteration of the May 7,2001 Farmworker Counterproposal in this proceeding **and** should **be** dismissed. In support whereof. the following is **shown**

1. On May 7,2001, Farmworker filed its Comments and Counterproposal in this proceeding (the "Counterproposal"),proposing to modify its construction permit for a new FM station on Channel 230C3 at Parker, Arizona, to specify **Channel 24881.** In **order** to accommodate this change, the Counterproposal also requested a change in the community of

153149

No. of Copies rec'd 0+4
List A B C D E

license for Station KFLG-FM, Kingman, Arizona to Searchlight, Nevada and a downgrade of KFLG-FM's channel class from Channel 234C to Channel 234C0, along with other site or channel change requests at Caliente. Boulder City, and Henderson, Nevada and Baker, California. Under the Counterproposal, KMXB's channel would change from 231C to 230C. In its May 22.2001 Reply Comments, Farmworker seeks to amend its Counterproposal to substitute a new reference point for the proposed relocation of KFLG-FM from Kingman, Arizona to Searchlight, Nevada.

2. The Farmworker Reply is an attempt to fundamentally alter the Farmworker Counterproposal. As originally filed, **the** Farmworker Counterproposal proposed to move KFLG-FM to Searchlight at coordinates 35-56-30 / 115-03-01. As the Engineering Statement of Benjamin Dawson attached hereto makes clear, Farmworker's original KFLG-FM Class CO counterproposal would place a city grade signal over the entire Las Vegas, Nevada Urbanized Area. That fact brings Farmworker's Counterproposal as originally filed within the ambit of Faye and Richard Tuck. Inc., 3 FCC Rcd 5374 (1988) ("Tuck"), which requires a highly detailed showing that Searchlight is sufficiently independent of Las Vegas so as to deserve a preference for first local service. In its Counterproposal, Farmworker failed to proffer, or even acknowledge the need for, the requisite Tuck showing, **The** Farmworker Reply seeks to amend the Searchlight allotment reference points to specify coordinates in Searchlight itself, which will "theoretically" pull the KFLG-FM city grade contour away from the Las Vegas Urbanized Area and, at least arguably, make Tuck inapplicable.

3. Such a fundamental change in the Counterproposal by way of Reply Comments is impermissible. It is well established that counterproposals must be "technically correct and substantially complete at the time of the filing." Strasburg, Colorado, 12 FCC Rcd 6065,6066 (1997) (citing Frederiksted and Charolotte Amalie, Virgin Islands, 12 FCC Rcd 2406 (1997)). Because of the Tuck showing ramifications, the proposed Searchlight reference point is basic to the Counterproposal and the attempt to change it by means of Reply Comments must be rejected out of hand. In Strasburg, supra, 12 FCC Rcd at 6066, the Commission held that where a counterproponent failed to provide engineering data specifying the exact coordinates of its proposed site and a technical study demonstrating compliance with the minimum distance and city grade coverage requirements, a counterproposal was technically and substantially incomplete. The Commission has also explained its policy that "allotment proposals must be technically correct at the time of the tiling in order to afford interested parties an opportunity to respond in reply comments." Arlington, McKinney, Celina, Terrell, Daineerfield, College Station, Caldwell, Howe, Texas, and Durant, Oklahoma, 8 FCC Rcd 4281,4282 (1993); Eldorado and Lawton, Oklahoma, 5 FCC Rcd 6737 (1990). Here, Farmworker bas fundamentally altered its original Counterproposal, thereby denying interested parties an opportunity to fully respond in reply comments, and making this Motion to Strike entirely appropriate.

4. Once the Farmworker Reply is stricken, Farmworker is left with a clearly incomplete Counterproposal for many of the reasons set forth in the Reply Comments filed on

May 22, 2001, by McMullen Valley Broadcasting Company ("McMullen's Reply"). First, as McMullen points out, the Commission requires that proposals involving a change in community **of** license must include a gain/loss study and a showing of at least 5 aural services remaining in the loss area. McMullen's Reply at **p. 3.** **See** also Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989); Atlantic and Glenwood. Iowa, 10 FCC Rcd 8074 (1995). Farmworker's counterproposal lacks such a showing.

5. Second, while there are substantial questions as to whether the Commission will entertain a request to change a community of license that does not originate with the affected licensee, Farmworker claims that H & R Broadcasting, Inc. ("H & R"), licensee of Station KFLG-FM. has consented to the proposed change. However, H & R has not itself expressed an intention to apply for the new channel if it is ultimately allotted to Searchlight. McMullen's Reply at p. 2. According to Commission policy, an expression of interest is required before a channel will be allotted to a community. See Sanford and Robbins. North Carolina, 12 FCC Rcd 1, 3 (1997) (explaining that the Commission "usually expect[s] expressions of interest to appear in the body of a counterproposal itself," **or** at least in its related engineering exhibit). Farmworker's Counterproposal is therefore fundamentally deficient because it fails to include the requisite expression by the affected licensee that it will apply for the new channel proposed to be allotted to Searchlight.

6. Third, as McMullen notes, the Commission requires all beneficiaries from another station's channel change to share in the reimbursement costs associated with such a change and

H & R has not affirmatively stated that it will reimburse Infinity, as the licensee of KMXB, Henderson, Nevada, for the change in frequency of KMXB, in accordance with Circleville and Columbus. Ohio, 9 RR 2d 1579 (1967).

7. Fourth, Farmworker failed to provide the required Tuck showing. See also Huntington Broadcastine Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General Inc. (KFRC), 5 FCC Rcd 3222 (1990) ("KFRC"). In Tuck, the Commission recognized that an applicant for a new frequency who hopes to compete in a lucrative metropolitan advertising market can "increase the probability of being awarded a license if it proposes a nearby town or suburb as its community of license, rather than the central city." 3 FCC Rcd at 5374. The Commission also recognized that to grant a first local transmission service to a community near a metropolitan center "would seem to contravene the original statutory mandate of section 307(b) 'to provide a fair, efficient, and equitable distribution of radio service' to ' the several States and communities.'" Id. (citing 47 U.S.C. § 307(b)). Because the coordinates originally proposed for KFLG-FM's proposed 70 dBu service contour at Searchlight entirely encompass the Urbanized Area of Las Vegas, Nevada, Farmworker was required to make the necessary showing under Tuck and KFRC in order to demonstrate that KFLG's move to Searchlight would serve the public interest. The failure to provide such evidence leaves Farmworker with a substantially incomplete counterproposal when filed.

8. If the FCC for any reason finds Farmworker's Counterproposal, whether or not modified by the Farmworker Reply, to be acceptable, then the Commission must require a Tuck

showing because the Counterproposal as originally filed demonstrated that a Searchlight facility will in fact serve the Las Vegas Urbanized Area. In the absence of a Tuck showing, the FCC should restrict H & R from later applying for a transmitter site from which it could place a city grade signal over the Las Vegas Urbanized Area. For example, allowing KFLG-FM, after the rule making is completed, to return to the original coordinates listed in Farmworker's Counterproposal, despite the absence of a Tuck showing, would sanction blatant gamesmanship and circumvention of Tuck. Under the special circumstances presented here, if the Counterproposal is not dismissed as substantially incomplete, the integrity of Tuck and the first local service preference must be safeguarded by special measures

CONCLUSION

For the reasons set forth above, Farmworker's Reply is defective and must be stricken.

Respectfully submitted,

INFINITY RADIO LICENSE INC.

By: Dennis P. Corbett

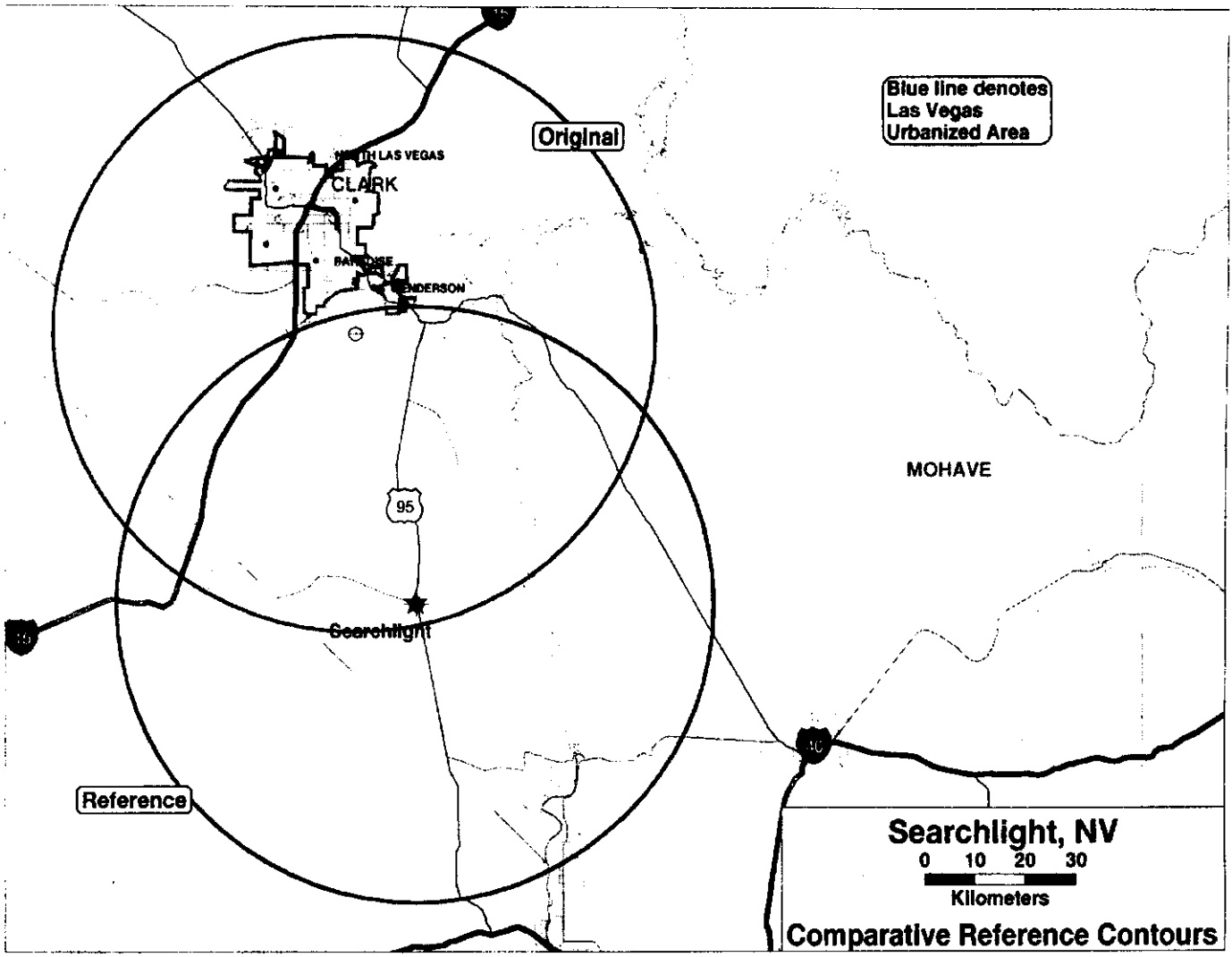
Steven A. Lerman
Dennis P. Corbett
Janet Y. Shih

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, DC 20006-1809
(202)429-8970

June 20,2001

Its Attorneys

153149


Blue line denotes
Las Vegas
Urbanized Area
Original
Reference
CLARK
MOHAVE
95
Searchlight
Searchlight, NV
0 10 20 30
Kilometers
Comparative Reference Contours

ENGINEERING STATEMENT

This Engineering Statement has been prepared on behalf of Infinity Radio License Inc., licensee of KMXB(FM), Henderson, NV, in connection with the comments and counterproposal and reply comments filed in MM Docket 01-69 (Parker, AZ et al) by Farmworker Educational Radio ("Farmworker").

The original Farmworker counterproposal specified a site for channel 234C0 (Searchlight, NV) located at the edge of the Las Vegas metropolitan area, at the coordinates NL 35 56 50 X WL 115 03 01.* The use of this site with maximum C0 facilities would have provided a "flat earth" 70 dBu contour to a distance of 59 km, which would cover all of the Las Vegas Urbanized Area.

The reply comments by Farmworker of May 22 attempted to revise the reference coordinates for the allotment proposal to the reference coordinates for Searchlight, NL 37 27 55 X WL 114 55 08. The revised 59 kM radius would therefore cover considerably less than 50% of the Las Vegas Urbanized Area.

The urbanized area of Las Vegas and the respective 59 km radii from the two sites are shown on the attached map.

June 19,2001

Benj. F. Dawson III, P.E.

BENJAMIN F. DAWSON III
STATE OF WASHINGTON
14027
REGISTERED
PROFESSIONAL ENGINEER
EXPIRES 06/14/02

* The text of the original Farmworker technical statement specifies NL 35 56 30, but NL 35 56 50 is specified in the attached technical exhibit Figure 7. Since NL 35 56 50 X WL 115 03 01 is the site of authorized FM facilities serving Las Vegas, it is assumed to be the correct location. The difference in distance is only 0.62 km.

CERTIFICATE OF SERVICE

I, Genevieve Edmonds, a secretary in the law firm of Leventhal, Senter & Lerman P.L.L.C., do hereby certify that on this 20th day of June, 2001, I have mailed the foregoing Motion to Strike Farmworker Reply Comments to the following:

* R. Barthen Gorman
Federal Communications Commission
Mass Media Bureau
445 12th Street, SW
Room 3-A224
Washington, D.C. 20554

Anne Thomas Paxson, Esq.
Borsari & Paxson
2021 L Street, NW
Suite 402
Washington, D.C. 20036
(Counsel to Farmworker Educational Radio Network, Inc.)

Mark N. Lipp, **Esq.**
James **E.** Morgan, **Esq.**
Shook, Hardy & Bacon LLP
600 14th Street, NW
Suite 800
Washington, D.C. 20005
(Counsel to McMullen Valley Broadcasting Company)

Clifford M. Harrington, **Esq.**
JoEllen Dinges, **Esq.**
Shaw Pittman
2300 N Street, NW
Washington, D.C. 20037
(Counsel to Baker Broadcasting, LLC)

Genevieve Edmonds

* Hand Delivered

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 31st day of December, 2002, I caused copies of the foregoing "Response to Reply (to Correct the Record) of Cameron Broadcasting, Inc." to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following persons:

Deborah A. Dupont
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.-Room 3-A224
Washington, D.C. 20554
(By Hand)

Marissa G. Repp, Esquire
F. William LeBeau, Esquire
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Counsel for KHWY, Inc.

Anne Thomas Paxson, Esquire
Borsari & Paxson
2021 L Sheet, N.W. - Suite 402
Washington, D.C. 20036
Counsel for Farmworker Educational Radio Network, Inc.

Joseph D. Sullivan, Esquire
Latham & Watkins
555 11th Street, N.W. - Suite 1000
Washington, D.C. 20004
Counsel for Beasley Broadcasting Of Nevada, LLC
(licensee of Station KSTJ(FM))

Dean R. Brenner, Esquire
Crispin & Brenner, P.L.L.C.
1156 15" Street, N.W. - Suite 1105
Washington, D.C. 20005
Counsel for Pahrump Radio, Inc.
(licensee of Station KNYE(FM))

Lee J. Peltzman, Esquire
Shainis & Peltzman, Chartered
1850 M Street, N.W. - Suite 240
Washington, D.C. 20036
Co-counsel for Marathon Media Group, LLC

Mark N. Lipp, Esquire
Shook, Hardy & Bacon, LLP
600 14" Street, N.W. - Suite 800
Washington, D.C. 20005
Co-counsel for Marathon Media Group, LLC

Matthew H. McCormick, Esquire
Reddy, Begley & McCormick, LLP
2175 K Sheet, N.W. - Suite 350
Washington, D.C. 20037-1845
Counsel for Route 66 Broadcasting, LLC
(licensee of Station KZKE(FM))

JoEllen Masters, Esquire
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1 128
Counsel for Baker Broadcasting, L.L.C
(licensee of Station KBKK-FM)

Howard **A.** Topel, Esquire
Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W. - Suite 600
Washington, D.C. 20006-1809
Counsel for Infinity Radio Operations, Inc
(licensee of Station KMXB(FM)

/s/ Harry F. Cole
Harry F. Cole