

Before the

FEDERAL COMMUNICATIONS COMMISSION RECEIVED

Washington, DC 20554

JUL - 2 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|--|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MM Docket No. 02-12 |
| Table of Allotments, |) | RM-10356 |
| FM Broadcast Stations, |) | RM-10551* |
| (Ash Fork, Chino Valley, Dolan Springs, |) | RM-10552* |
| Fredonia, Gilbert, Lake Montezuma, Payson, |) | RM-10553* |
| Peach Springs, Seligman, and Tusayan, Arizona; |) | TM-10554* |
| Moapa Valley, Nevada; and Beaver and Cedar |) | |
| City, Utah) |) | |

To: Assistant Chief, Audio Division

COMMENTS ON RESPONSE TO ORDER TO SHOW CAUSE

Infinity Radio Operations, Inc. ("Infinity"), by its counsel, hereby comments in opposition to the "Response To Order To Show Cause" filed by Route 66 Broadcasting, L.L.C. ("Route 66"), in the above-captioned proceeding on June 19, 2003 ("Response"). In the Response, Route 66 urges the Commission to consolidate the above-captioned proceeding (the "Ash Fork Proceeding") with MB Docket No. 02-124 (the "Amboy Proceeding"), in which Infinity is an interested party. Route 66's request for consolidation, which is unsupported legally and factually, is contrary to the public interest and should be rejected. The Ash Fork Proceeding and Amboy Proceeding should

No. of Copies rec'd 0+4
 JET:SCOE

each be decided independently on its own merits at the Commission's earliest opportunity.¹

The pertinent facts are that, on March 18, 2002, NPR Phoenix LLC ("NPR") filed a Counterproposal in this Ash Fork Proceeding proposing the substitution of Channel 254A for Radio 66's present Channel 277A at Seligman, Arizona. NPR gave Route 66 notice of that counterproposal. *See* Exhibit 1 (NPR's 3/18/02 Certificate of Service). On April 2, 2002, NPR and Spectrum Scan LLC filed a Joint Counterproposal in this docket proposing the substitution of Channel 227A, 265A, 267A, or 254A for Route 66's present channel. Route 66 similarly received notice of that counterproposal. *See* Exhibit 2 (4/2/02 Certificate of Service).

On July 12, 2002, with full knowledge of the proposals to change its Class A frequency in the Ash Fork Proceeding, Route 66 voluntarily consented to a separate proposal to change its channel in Seligman to 234C2. On July 15, 2002, Cameron Broadcasting, Inc. ("Cameron") filed Route 66's consent as Attachment M of a Counterproposal in the Amboy Proceeding, MB Docket 02-124. *See* Exhibit 3, p.3 (*Route 66's voluntary consent*). Cameron's Counterproposal in the Amboy Proceeding sought new frequency allocations for 11 stations, and Route 66's consent was necessary to Cameron's ultimate objective to reallocate Channel 234C from Kingman, Arizona, to Pahrump, Nevada, in that proceeding.² Infinity filed pleadings in the Amboy Proceeding explaining why Cameron's Counterproposal is defective and must be dismissed without

¹ Treating this aspect of Route 66's Response conservatively as a motion for consolidation, these comments are timely filed pursuant to 47 U.S.C. §§1.45(b) and 1.4(h).

² Spectrum Scan-Searchlight, LLC, to which Route 66's consent refers, is identified in footnote 1 of Cameron's Counterproposal as Cameron's consultant.

acceptance for numerous reasons. The issues that Infinity raised have been fully pleaded and are ripe for Commission action in the Amboy Proceeding.

On May 5, 2003, the Commission released an Order To Show Cause in this Ash Fork Proceeding directing Route 66 to show cause why Channel 227A should not be substituted for its present Channel 277A at Seligman. In its Response, which is unsupported by any legal authority or declaration of facts, Route 66 speculates that it “faces the prospect of changing its frequency twice in short order -- first to Channel 227A and then to Channel 234C2,” which it argues may cause detrimental disruptions. Response at 2. Route 66 urges the Commission to eliminate these potential disruptions by consolidating this Ash Fork Proceeding with the Amboy Proceeding (*id.*), which would ironically *ensure* that the orderly disposition and public interest benefits of *both* proceedings are disrupted and delayed.

Route 66’s consolidation request is unsound legally and equitably. First, contrary to the Response’s tenor, Route 66 is not being forced to make two channel changes. To the contrary, with full knowledge of the proposals to involuntarily change its Class A allocation in this Ash Fork Proceeding, Route 66 voluntarily and unconditionally granted its consent to make the second change in the subsequent Amboy Proceeding. From the consent it filed, nothing appears that would preclude Route 66 from withdrawing that consent should the speculative disruptions it cites ever occur. In any event, Route 66’s alleged predicament is of its own making. It essentially is asking the Commission to complicate and delay the resolution of two proceedings because it gave a consent with which it now has apparently become unhappy. The Ash Fork and Amboy Proceedings are each in a posture in which a dispositive decision can be made. To complicate and

encumber those independent proceedings with each other at this advanced stage would contravene the substantive public interest benefits at hand and disrupt the orderly processing and conclusion of Commission dockets.

Secondly, Route 66's concern is invalid because the defects in Cameron's counterproposal in the Amboy Proceeding mandate the dismissal of that counterproposal. The pleadings regarding those defects are ripe for action. Before the Commission consolidates two substantively independent proceedings and thereby intermingles numerous otherwise unrelated parties, it should determine whether Route 22's alleged concern has *any* possibility of materializing by acting on the pending motion to dismiss Cameron's counterproposal in the Amboy Proceeding. Such action will avoid needlessly and disruptively consolidating the Amboy Proceeding with the Ash Fork Proceeding. In this respect, the Commission's policy to disallow contingent or defective counterproposals is intended to preclude processing disruptions and additional burdens on Commission staff and resources precisely like those that would be engendered by granting Route 66's belated consolidation request.

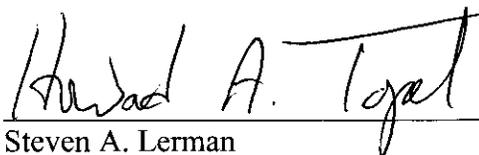
Furthermore, Route 66's consolidation request would require the Commission to open the dispositive issues that have been fully pleaded in the Amboy Proceeding to comments and reply comments from the numerous parties in the Ash Fork Proceeding, and the pleadings in the Ash Fork Proceeding to similar comments from the numerous parties to the Amboy Proceeding, or deny those parties participation. In contrast, the Commission has held that where, as here, the concern raised by the party seeking consolidation: (1) is unrelated or only marginally relevant to the substantive issues in the rule making, and (2) would require the Commission to open issues that have been fully

pleaded and are ripe for action to new pleadings from new parties, consolidation should be denied. *Pueblo, Colorado*, 10 FCC Rcd 7662 (All. Br. 1995).

For the foregoing reasons, Route 66's request to consolidate the Ash Fork and Amboy Proceedings should be denied. The Commission should decide each of those proceedings on its own merits at the Commission's earliest opportunity in each one.

Respectfully submitted,

INFINITY RADIO OPERATIONS, INC

By: 

Steven A. Lerman
Dennis P. Corbett
Howard A. Topel
John W. Bagwell (Admitted Virginia only)

Leventhal Senter & Lerman PLLC
2000 K Street, NW – Suite 600
Washington, DC 20006-1809
(202) 429-8970

Its Counsel

July 2, 2003
#184764

EXHIBIT 1

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED & INSPECTED
MAR 18 2002
FCC - MAILROOM

In re Amendment of Section 73.202(b))
of the Commission's Rules, Table of Allotments,) MM Docket No. 02-12
FM Broadcast Stations) RM-10356
(ASH FORK, ARIZONA))

To: The Chief, Allocations Branch, Mass Media Bureau

COUNTERPROPOSAL

NPR Phoenix, LLC (*NPR*), by its communications counsel, hereby files its Counterproposal in response to the Notice of Proposed Rule Making in the instant proceeding, DA 02-206, released January 25, 2002 (the *NPRM*).

1. In response to the Petition for Rule Making of Liberty Ventures III, LLC (*Liberty*), the FCC staff has issued the *NPRM*, which proposes the allotment of Channel 285A to Ash Fork, Arizona as a first local service. Schematically, the *NPRM*'s proposal is as follows:

| COMMUNITY | PRESENT | PROPOSED |
|-------------------|---------|----------|
| Ash Fork, Arizona | --- | 285A |

Liberty's reference point for its proposed allotment is site-restricted 13.6 km west of Ash Fork, at coordinates North Latitude 35° 12' 27", West Longitude 112° 37' 49".

2. *NPR* hereby advances the following Counterproposal. Rather than allotting Channel 285A as a first local service to Ash Fork, as *Liberty* suggests, the FCC should:

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

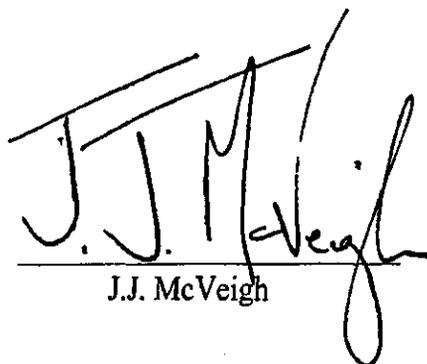
CERTIFICATE OF SERVICE

I hereby certify that I have this Eighteenth day of March, 2002, sent a copy of the foregoing COUNTERPROPOSAL by first class United States mail, postage prepaid, to:

Scott C. Cinnamon, Esq.
Law Offices of Scott C. Cinnamon, PLLC
1090 Vermont Avenue, Northwest,
Suite 800
Washington, D.C. 20005
Counsel to Liberty Ventures III, LLC

Route 66 Broadcasting, L.L.C.
422 West Highway 66
Seligman, Arizona 86337
Licensee of Radio Station KZKE(FM)

Prescott Radio Partners
9222 Loma Street
Villa Park, California 92861
Licensee of Radio Station KFPB(FM)



J.J. McVeigh

EXHIBIT 2

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

APR - 2 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Amendment of Section 73.202(b))
of the Commission's Rules, Table of Allotments,)
FM Broadcast Stations)
(ASH FORK, ARIZONA))

MM Docket No. 02-12
RM-10356

To: The Chief, Allocations Branch, Mass Media Bureau

JOINT REPLY COMMENTS

| | |
|---|--|
| <p>NPR PHOENIX, LLC</p> <p>JOHN J. McVEIGH, ATTORNEY AT LAW 12101 BLUE PAPER TRAIL COLUMBIA, MARYLAND 21044-2787 (301) 596-1655</p> <p>ITS COUNSEL</p> | <p>SPECTRUM SCAN, LLC</p> <p>HARRY F. COLE, ESQ. FLETCHER, HEALD & HILDRETH PLC 1300 NORTH SEVENTEENTH STREET, ELEVENTH FLOOR ARLINGTON, VIRGINIA 22209 (703) 812-0483</p> <p>ITS COUNSEL</p> |
|---|--|

DATE: APRIL 2, 2002

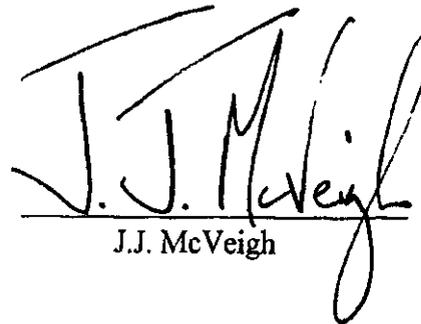
No. of Copies rec'd
List ABCDE

014

CERTIFICATE OF SERVICE

I hereby certify that I have this Second day of April, 2002, sent a copy of the foregoing **JOINT REPLY COMMENTS** by first class United States mail, postage prepaid, to:

| | |
|---|---|
| Scott C. Cinnamon, Esq. Law Offices of Scott C. Cinnamon, PLLC 1090 Vermont Avenue, Northwest, Suite 800 Washington, D.C. 20005 Counsel to Liberty Ventures III, LLC | MB Media Group, Inc. 251 Hilton Drive St. George, Utah 84770 Licensee, Station KXFF |
| Route 66 Broadcasting, L.L.C. 812 East Beale Street, Kingman, Arizona 86401 Licensee, Radio Station KZKE(FM) | Tusayan Broadcasting Company, Inc. P.O. Box 3085 Grand Canyon, Arizona 86023 Licensee, Station KSGC(FM) |
| Prescott Radio Partners 9222 Loma Street Villa Park, California 92861 Licensee, Radio Station KFPB(FM) | Deborah Comley 11204 Bowley Drive Louisville, Kentucky 40223 Proponent, New(FM), Beaver, Utah |
| Mr. Charles Crawford 4553 Bordeaux Avenue Dallas, Texas 75205 Petitioner, MM Docket No. 01-264 | Lawrence N. Cohn, Esq. Cohn & Marks 1920 N Street Northwest, Suite 300 Washington, D.C. 20036-1622 Counsel to Commenter, MM Docket No. 01-264 |



J.J. McVeigh

EXHIBIT 3

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

RECEIVED

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

MB Docket No. 02-124
RM-10446

JUL 15 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: John A. Karousos
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

COUNTERPROPOSAL OF CAMERON BROADCASTING, INC.

HARRY F. COLE
ALISON J. SHAPIRO

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

Counsel for Cameron Broadcasting, Inc.

July 15, 2002

No. of Copies rec'd 074
List ABCDE



ATTACHMENT M



DECLARATION

Under penalty of perjury, I hereby declare the following to be true and correct:

I am an officer of Route 66 Broadcasting L.L.C. ("Route 66"), which holds the license for FM radio station KZKE licensed to Seligman, AZ on channel 277A. Route 66 has been advised that a proposal to make certain changes in the FM Table of Allotments is being developed by Spectrum Scan-Searchlight, LLC ("Spectrum"), and that such proposal will entail a change of Route 66's channel and signal strength. KZKE will relocate from channel 277A to 234 C-2. Route 66 consents to this project -- including the change in Route 66's channel and upgrade to be proposed -- and will cooperate with Spectrum in connection with the submission and prosecution of that proposal.

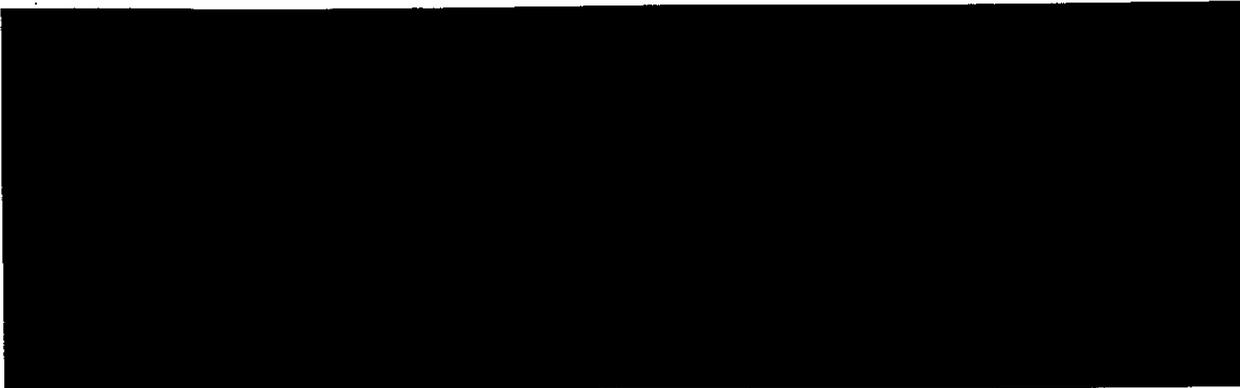
Route 66 Broadcasting, LLC.

By: [Signature]
Title: [Signature]
Date: 7-12-02

ACCEPTED:

SPECTRUM SCAN-SEARCHLIGHT, LLC

By: [Signature]
Title: [Signature]
Date: _____



CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Leventhal Senter & Lerman PLLC, hereby certify that on this 2nd day of July, 2003, caused copies of the foregoing "Comments on Response To Order To Show Cause" to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

Service List MM Docket No. 02-12

* R. Barthen Gorman, Esq.
Federal Communications Commission
Mass Media Bureau
445 Twelfth Street, SW – Room 3-A224
Washington, DC 20554

Matthew H. McCormick, Esq.
Reddy, Begley & McCormick, LLP
2175 K Street, NW, Suite 350
Washington, DC 20037

Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036-1600

John J. McVeigh, Esq.
12101 Blue Paper Trail
Columbia, MD 21044-2787

Harry F. Cole, Esq.
Alison J. Shapiro, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Arlington, VA 22209-3801

Deborah Comley
11204 Bowley Drive
Louisville, KY 40223

* Hand Delivered.

Scott C. Cinnamon, Esq.
Law Offices of Scott C. Cinnamon, PLLC
1090 Vermont Avenue, NW
Suite 800, #144
Washington, DC 20005

Prescott Radio Partners
9222 Loma Street
Villa Park, CA 92861

William H. Gormly
P.O. Box 51
Des Moines, NM 84818

Charles Crawford
4553 Bordeaux Avenue
Dallas, TX 75205

MB Media Group, Inc.
251 Hilton Drive
St. George, UT 84770

Denise B. Moline, Esq.
PMB No. 215, Suite 119
1212 South Napier Boulevard
Napierville, IL 60540-7349

Lawrence N. Cohn, Esq.
Cohn & Marks
1920 N Street, NW, Suite 300
Washington, DC 20036-1622

Service List MB Docket No. 02-124

*
Deborah A. Dupont
Media Bureau, Audio Division
Federal Communications Commission
445 Twelfth Street, SW – Room 2-A834
Washington, DC 20554

Mark N. Lipp, Esq.
J. Thomas Nolan, Esq.
Vinson & Elkins, L.L.P.
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004

Lee J. Peltzman, Esq.
Shainis & Peltzman, Chartered
1850 M Street, NW – Suite 240
Washington, DC 20036

Harry F. Cole, Esq.
Alison J. Shapiro, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Arlington, VA 22209-3801

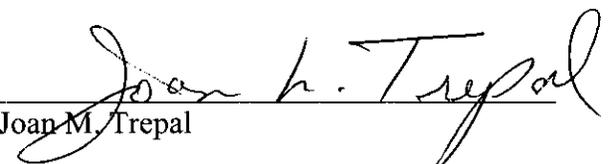
Marissa G. Repp, Esq.
F. William LeBeau, Esq.
Hogan & Hartson, L.L.P.
555 Thirteenth Street, NW
Washington, DC 20004

Anne Thomas Paxson, Esq.
Borsari & Paxson
4000 Albemarle Street, NW – Suite 100
Washington, DC 20016

Joseph D. Sullivan, Esq.
Latham & Watkins
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

Dean R. Brenner, Esq.
Crispin & Brenner, P.L.L.C.
1156 Fifteenth Street, NW, Suite 1105
Washington, DC 20005

JoEllen Masters, Esq.
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128


Joan M. Trepal