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July 24, 2003

VIA HAND-DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
Portals II – 12th Street Lobby
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445 12th Street, S.W.
Washington, D.C. 20554

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JUL 24 2003

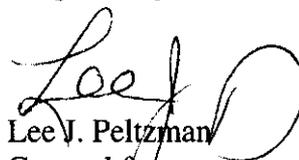
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: MM Docket No. 02-73
RM-10400, 10741 and 10742
(Cameron, Arizona, et. al.)
Joint Reply Comments to Public Notice**

Dear Ms. Dortch:

Transmitted herewith, on behalf of NPR Phoenix, LLC and 3 Point Media-Arizona, LLC, are an original and four (4) copies of their Joint Reply Comments to Public Notice in the above-referenced proceeding. In the event the Commission has any questions with respect to the filing of this these Joint Reply Comments, please contact the undersigned.

Respectfully submitted,



Lee J. Peltzman
Counsel for
3 POINT MEDIA-ARIZONA, LLC

Enclosures

cc: Deborah Dupont (w/encl.) – *via hand delivery*

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

In re Amendment of Section 73.202(b))
of the Commission's Rules, Table of Allotments,)
FM Broadcast Stations)
(CAMERON ET AL., ARIZONA))

MM Docket No. 02-73
RM-10400, RM 10741, JUL 24 2003
and RM-10742

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Chief, Allocations Branch, Mass Media Bureau

JOINT REPLY COMMENTS TO PUBLIC NOTICE

NPR Phoenix, LLC (*NPR*), the licensee of station KEDJ, Channel 280C2, Gilbert, Arizona, Facility ID No. 54944, and 3-Point Media-Arizona, LLC (3-Point), the licensee of station KVNA-FM, Channel 248C, Flagstaff, Arizona, Facility ID No. 68566, and the successor-in-interest to Arizona Radio Partners, LLC (*ARP*), by their respective communications counsel, hereby file Joint Reply Comments to the Commission's Public Notice, Report No. 2613 (released July 9, 2003) in this proceeding.

I. BACKGROUND

A. THE PETITION AND THE NPRM

1. Prompted by the Petition for Rule Making of McCody Broadcasting Group, Inc. (*McCody*), the FCC staff issued the Notice of Proposed Rule Making in the instant proceeding, 17 FCC Red 5944 (2002) (the *NPRM*). The *NPRM* proposed to allot Channel 246A to Cameron, Arizona as a first local service, using the reference point North Latitude 35° 50' 30", West Longitude 111° 24' 48". *McCody* timely filed Comments expressing continued interest in

a Cameron allotment. McCody has since filed a Motion to Withdraw its expression of interest in the Cameron allotment.

B. COUNTERPROPOSALS

2. NPR timely advanced a Counterproposal involving several different communities. Among other things, the NPR Counterproposal suggested allotting any of several alternative channels to Cameron rather than the proposed Channel 246A. NPR also suggested, among other things, to substitute Channel 280C1 for Channel 280C2 at Gilbert, Arizona, and to modify the license of NPR's station KEDJ accordingly. NPR also suggested the imposition of a slightly different site restriction than that then proposed by the petitioner, Sierra H Broadcasting, Inc., in connection with its requested shift of Channel 282C from Payson, Arizona to Lake Montezuma, Arizona (no RM or Docket number had as of then been assigned). NPR asserted that adoption of its Counterproposal would provide both valuable new local service and substantially more efficient use of the spectrum than would the simple allotment of Channel 246A to Cameron.

3. ARP also timely advanced a Counterproposal in this proceeding. Rather than allotting Channel 246A to Cameron, ARP asked the FCC, among other things: to allot an alternative Channel (Channel 289A, 238A, or 241A) to Cameron as a first local service; to allot Channel 247C to First Mesa, Arizona as a first local service; to substitute Channel 248C at Dewey-Humboldt, Arizona for Channel 248C at Flagstaff, Arizona, and to modify the license of station KVNA-FM accordingly, thereby providing Dewey-Humboldt with a first local service. ARP asserted that its Counterproposal would result in a preferential rearrangement of allotments (the creation of first local service, the amelioration of grey area, and overall, more efficient use of the spectrum). ARP provided a statement of consent from the licensee concerning a proposed

downgrading and relocation of Safford, Arizona, station KXXQ, and requested the issuance of a show-cause order to the licensee of Globe, Arizona station KRXS-FM for a proposed frequency shift. ARP pledged to reimburse the Globe licensee.

4. Tusayan Broadcasting Company, In. (*TBCI*), the licensee of station KSGC(FM), Channel 221A, Tusayan, Arizona, FCC Facility ID No. 68417, also sought leave to advance a Counterproposal in this proceeding. Rather than allotting Channel 246A as a first local service to Cameron, as the NPRM had proposed, TBCI asked the FCC to instead allot Channel 293C1 to Cameron instead of Channel 246A.

C. GLOBAL RESOLUTION

5. NPR's Counterproposal and ARP's Counterproposal, as filed, were mutually exclusive. NPR and ARP achieved an engineering solution to resolve the mutual exclusivity and, in Joint Reply Comments, advanced a Global Resolution of this proceeding by means of Joint Reply Comments on the deadline for Reply Comments specified in the NPRM. With respect to TCBI's Counterproposal, neither APR nor NPR objected to the allotment of Channel 293C1 at Cameron, and the NPR component of the Global Resolution advanced the allotment of either Channel 293A or Channel 293C1 at Cameron. The NPR component of the Global Resolution noted that other channels were also available for use at Cameron. The ARP Component of the Global Resolution included a statement of consent from the licensee of Globe station KRXS-FM, eliminating the need for any Orders to Show Cause in this proceeding.

6. On February 6, 2003, NPR filed a Supplement to Reply Comments noting that Sierra H Broadcasting, Inc., had filed a Motion to Withdraw its Petition for Rule Making, which had conflicted with the proposed upgrade of station KEDJ. NPR therefore pointed out that the NPR

Component of the Global Resolution no longer needed to advance a different site restriction for Sierra H's proposed Lake Montezuma allotment. NPR therefore sought to withdraw that aspect of the Global Resolution as no longer necessary.¹

7. By means of the July 9 Public Notice, the Commission accepted TCBI's Counterproposal for rule making and accorded it the rule-making number RM-10741. By means of the same Public Notice, the Commission accepted the Global Resolution for rule making as a Counterproposal in this proceeding and accorded it the rule-making number RM-10742.

II. ARGUMENT

8. There is no need for the FCC to choose between TCBI's proposal (RM-10471) and the Global Resolution (RM-10472), because the NPR Component of the Joint Resolution accommodates the allotment of Channel 293C1 to Cameron, Arizona, as a first local service. If the staff deems it advisable, for the sake of precedent, the staff can simply treat TCBI's late-filed Counterproposal as Reply Comments voicing support for NPR's Channel 293C1 proposal. Such treatment will not prejudice the other parties to this proceeding, and will result in greater spectral efficiency. See, e.g., Taylorville et al., Illinois, 7 FCC Rcd 2099 (1992) at n. 9.

9. Moreover, in discussing the Global Resolution, the Public Notice proposes, at line item 2, to alternatively allot Channel 289A to Cameron as a second local service. ARP originally proposed Channel 289A as one of three alternative channels to Cameron, to eliminate the conflict

¹Sierra H has since filed a Petition for Rule Making seeking to relicense its Payson station to Camp Verde instead of to Lake Montezuma. See Notice of Proposed Rule Making in MB Docket 03-160, DA 03-2263 (released July 14, 2003). The Camp Verde proposal uses station KAJM's licensed site as the reference point and does not conflict with this proposed upgrade of NPR's station KEDJ.

between the NPRM's proposed Channel 246A and other aspects of APR's originally filed Counterproposal. NPR, in the NPR Component of the Global Resolution, proposed any of several alternative channels as a first local service to Cameron, including Channel 293C1.

10. TCBI appears to have continued interest in the allotment of Channel 293C1 to Cameron. However, as noted above, the original Cameron Petitioner has filed a Motion to Withdraw its Petition and Comments. Therefore, only one expression of interest in a Cameron allotment remains. Due to longstanding FCC policies not to allot FM channels absent continuing expressions of interest,² and to allot multiple channels only to accommodate multiple expressions of interest,³ there is no need to further consider the allotment of a second commercial FM channel to Cameron in this proceeding.

11. Also in discussing the Global Resolution, the Public Notice proposes, at line item 8, to substitute Channel 231C2 for Channel 231C1 at Safford, Arizona (the allotment occupied by station KXKQ-FM). However, the Global Resolution advanced the substitution of Channel 232C2 for Channel 231C1, not Channel 231C2.

12. Also in discussing the Global Resolution, the Public Notice states, at line item 12, that the substitution of Channel 280C1 for Channel 280C2 at Gilbert, Arizona (the allotment occupied by NPR's station KEDJ), requires Mexican concurrence. It appears that the FCC has previously obtained such concurrence. The CDBS FM Engineering Data Base contains an "FA" data field that indicates an allotment's international status. The FA data-field entry for KEDJ's present allotment indicates that Channel 280C2 at Gilbert has previously been coordinated as a

²See, e.g., Charlotte, Texas, 15 FCC Rcd 15773 (2000).

³Albion, Nebraska, 10 FCC Rcd 11927 (1995).

Class C1 allotment for international purposes. This apparently occurred during the course of MM Docket No. 95-105.⁴ See Exhibit A. The reference coordinates of the proposed Channel 280C1 allotment at Gilbert⁵ are further from the Mexican border than the reference coordinates of the present Channel 280C2 allotment.⁶ Hence, there does not appear to be any need for further international coordination for Channel 280C1 at Gilbert.

13. As the Public Notice recites, various of the other allotments that comprise the Global Resolution require Mexican concurrence. NPR and 3-Point request that, if the staff has not yet received such concurrence, then the staff expeditiously proceed to issue a Report and Order implementing the Global Resolution, consistent with the approach taken in Nogales, Vail, and Patagonia, Arizona, 16 FCC Rcd 20515 at para. 11 (M.M. Bur. 2001):⁷

As Vail and Patagonia are located within 320 kilometers (199 miles) of the U.S.-Mexico border, Mexican concurrence has been requested, but not received, for Channel 253A and Channel 283A at Vail, as special negotiated, restricted allotments. Concurrence has also been requested for Channel 251A at Patagonia. However, rather than delay DWAR's opportunity to file its modification application for Channel 253A at Vail, or general applications for Channel 283A at Vail and Channel 251A at Patagonia, we allot those channels at this time. If construction permits are granted prior to the receipt of formal concurrence in the allotments by the Mexican government, the authorizations will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico."

⁴MM Docket No. 950-109 was the proceeding that changed KEDJ's community of license and the underlying entry in the FM Table from Coolidge, Arizona to Gilbert, with no change in Class or frequency (Channel 280C2).

⁵North Latitude 33° 25' 39", West Longitude 111° 28' 03".

⁶North Latitude 33° 22' 37", West Longitude 111° 28' 55".

⁷Application for Review dismissed, 17 FCC Rcd 20125 (M.M. Bur. 2002)

14. Also in discussing the Global Resolution, the Public Notice proposes, at line item 13, to change the reference point for the reallocation of Channel 282C from Payson, Arizona to Lake Montezuma, Arizona (the allotment occupied by station KAJM), as proposed by Sierra H Broadcasting, Inc. However, as noted above, Sierra H has filed a Motion to Withdraw that proposal, and the staff has today granted that request. See Order, DA 03-2349 (released July 24, 2003). Accordingly, there is no further need to consider the change in that proposed allotment's reference point as a part of the Global Resolution. The issue is now moot.

15. The staff's prompt adoption of the Global Resolution will enable the expeditious introduction of:

- a first local service to Cameron, Arizona;
- a first local service to Dewey-Humboldt, Arizona
- a first local service to First Mesa, Arizona;
- upgraded service to Gilbert Arizona; and
- a second or third local service to Grand Canyon Village, Arizona.

Each party separately incorporates by this reference its earlier showings that all communities involved in its Component of this Global Resolution are worthy of first or additional or enhanced local services, as the case may be. All respective elements of the NPR Component and of the ARP Component (now the 3-Point Component) comport with the Commission's technical requirements concerning full spacing and city-grade service. Each Component stands on its own merits and complies with all pertinent Commission policies.

16. The Global Resolution represents a significantly more efficient use of the spectrum than the NPRM, or adopting one of the original Counterproposals would offer. Spectral

efficiency is a "paramount" consideration under § 307(b) of the Communications Act. Endicott, New York, 51 FCC 2d 50, 51 (1975). Accordingly, the FCC has a long history of favoring multiple allotments over single ones. See, e.g., Stuart and Boone, Iowa, 5 FCC Rcd 4537 (M.M. Bur. 1990), recons. den., 6 FCC Rcd 6036 (1991) Miami, West Virginia, 58 Rad. Reg. (P & F) 2d 146, 148 (M.M. Bur. 1985); Micanopy and Williston, Florida, 50 Rad. Reg. (P & F) 2d 1425 (B. Bur. 1982); Marshfield, Massachusetts, 33 Rad. Reg. (P & F) 2d 611, 613 (B. Bur. 1975).

IV. CONCLUSION

For the reasons stated above, the FCC should promptly adopt a Report and Order implementing the Global Resolution in this proceeding.

Respectfully submitted,

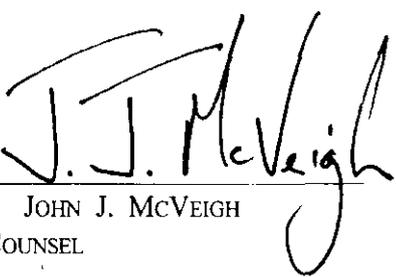
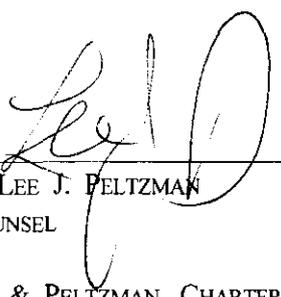
<p>NPR PHOENIX, LLC</p> <p>BY  JOHN J. MCVEIGH ITS COUNSEL</p> <p>JOHN J. MCVEIGH, ATTORNEY AT LAW 12101 BLUE PAPER TRAIL COLUMBIA, MARYLAND 21044-2787 (301) 596-1655</p>	<p>3-POINT MEDIA-ARIZONA, LLC</p> <p>BY  LEE J. PELTZMAN ITS COUNSEL</p> <p>SHAINIS & PELTZMAN, CHARTERED 1850 M STREET NW, SUITE 240 WASHINGTON, D.C. 20036 (202) 293-0011</p>
<p>DATE: JULY 24, 2003</p>	

EXHIBIT A

Owner:	NPR PHOENIX, LLC
Callsign:	KEDJ
Channel:	280 : 103.9 MHz
Class:	C2
Status:	USE
Latitude (NAD27):	N33:22:37
Longitude (NAD27):	W111:28:55

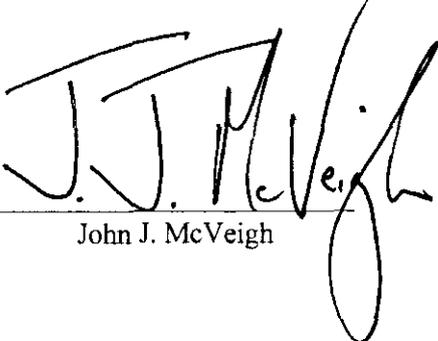
ERP: 0
Max ERP: 0
Ant HAAT: 0
Ant AGL: 0
Ant AMSL: 0
Ant Rotation: 0
Base AMSL: 0
Beamtilt: N
Dir Ant: N
73-215: N
City Served: GILBERT
State: AZ
Cutoff Date:
CP Exp Date:
ARN:
Service: FA
File Prfx:

Docket No:	95-109
Twr Reg #:	
Border:	M
Dist Bdr:	198
Intl Class:	C1
Intl Status:	USED

CERTIFICATE OF SERVICE

I hereby certify that I have this Twenty-Fourth day of July, 2003, sent a copy of the foregoing **JOINT REPLY COMMENTS** by first class United States mail, postage prepaid, to:

McCody Broadcast Group, Inc. 885 Third Avenue, 34th Floor New York, New York 10022 (Petitioner, MM Docket No. 02-73)	Denise B. Moline, Esq. PMB No. 215 1212 South Naper Boulevard, No. 119 Naperville, Illinois 60540 Counsel to Tusayan Broadcasting Company, Inc.
Barry A. Friedman, Esq. Thompson Hine, LLP 1920 N Street North West, Suite 800 Washington, D.C. 20036 Counsel to Sierra H Broadcasting, Inc.	



John J. McVeigh