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Federal Communications Commission  
Office of Secretary

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.202(b) ) MB Docket No. 03-141  
Table of Allotments ) RM - 10703  
FM Broadcast Stations )  
(Sierra Vista and Corona de Tucson, Arizona )

To: Assistant Chief, Audio Division  
Media Bureau

**REPLY COMMENTS**

Cochise Broadcasting, LLC ("Cochise"), licensee of Station KKYZ(FM), Sierra Vista, Arizona, by its counsel, hereby submits its reply comments in the above-captioned proceeding. *Notice of Proposed Rule Making*, DA 03-2091 (rel. July 3, 2003) ("*Notice*"). Cochise proposes to substitute Channel 267C3 for Channel 269C2 at Sierra Vista,<sup>1</sup> reallocate Channel 267C3 from Sierra Vista to Corona de Tucson as the community's first local transmission service, and modify the license for Station KKYZ to reflect the changes. The Christian Country Network, Inc. ("CCN") filed a counterproposal. No other comments were received by Cochise. For the reasons given below, CCN's counterproposal is defective and should be dismissed.

1. First, the CCN counterproposal should be dismissed for failure to include a verification pursuant to Section 1.52 of the Commission's Rules. That rule requires that any document filed by a party not represented by counsel be signed and verified. Although CCN's counterproposal bears a signature, the statements are not verified to be true and correct by the individual whose signature appears on the document. Lack of verification is a fatal defect in any

<sup>1</sup> The *Notice* incorrectly recited the class of channel at Sierra Vista. On August 5, 2002, the Commission granted Cochise a construction permit which explicitly amended the FM Table of Allotments to delete Channel 269A and add Channel 269C2 at Sierra Vista. File No. BPH-20001023AEO. That action is now final.

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counterproposal, and warrants dismissal regardless of technical merit. *Lincoln, Missouri, et al.* 7 FCC Rcd 3015 (1992), *recon. denied*, 11 FCC Rcd 6372 (1996), *recon. denied*, 12 FCC Rcd 4987 (1997), *review denied*, 17 FCC Rcd 6119 (2002). The Commission stated that the verification requirement is strictly enforced in allocations proceedings because of the “significant potential for abuse of the allotment process” posed by non-bona fide expressions of interest. 17 FCC Rcd at 6123. That potential for abuse exists here, because Cochise has filed an acceptable proposal with which CCN’s proposal could be mutually exclusive. Therefore, Cochise would be adversely effected by the acceptance of CCN’s expression of interest. The law could not be clearer: CCN’s counterproposal should be dismissed. *See also Lancaster, Groveton and Milan, New Hampshire*, 15 FCC Rcd 5620 at n. 3 (2000) (dismissal of counterproposal for lack of verification).

2. The counterproposal suffers from another fatal procedural defect. It fails to set forth coordinates at which the proposed allotment is to be made, and it contains no statement or engineering demonstration that the requested allotment can be made in compliance with the Commission’s Rules. *See Big Spring, Sterling City and Coahoma, Texas*, 7 FCC Rcd 4834 (1992) (“we expect petitioners to submit, at a minimum, an engineering statement designating exact site coordinates and demonstrating compliance with all relevant domestic and international minimum spacing requirements”); *Liberty, New York*, 8 FCC Rcd 4085 (1993) (dismissing counterproposal for lack of engineering study). CCN’s counterproposal fails to meet even this minimum pleading standard, and should be dismissed for this reason as well.

3. Even if the Commission were to evaluate CCN’s counterproposal on its merits, it does not meet technical requirements for acceptability. CCN proposes to retain the current allotment at Sierra Vista and add Channel \*267C3 at Corona de Tucson as a new non-

commercial education (“NCE”) allotment. However, this proposal is patently defective. This proposal assumes that Cochise would remain on Channel 269A at Sierra Vista. But Cochise has a valid permit for Channel 269C2 which would need to be downgraded to Class A in this rule making proceeding in order to allot Channel 267C3 to Corona de Tucson as a new allotment. Such a downgrade without the licensee’s consent is unprecedented and contrary to the public interest.

4. Moreover, assuming that CCN’s proposed allotment of Channel 267C3 at Corona de Tucson used the same coordinates as Cochise’s proposed allotment, the accompanying engineering statement demonstrates that not only does CCN’s proposal fail to protect Cochise’s Class C2 permit but it also fails to protect Cochise’s pending application for Channel 269C1 at Sierra Vista. *See* File No BPH-20021218ANF. Applications are entitled to cut-off protection from subsequently filed rule making proposals. *Conflicts between Applications and Petitions for Rulemakings to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1991) *aff’d in pertinent part*, 8 FCC Rcd 4743 (1993) CCN’s failure to protect Cochise’s application also renders the counterproposal defective *See Roxton, Texas*, 12 FCC Rcd 13933 (1997).

5. In addition, CCN cannot reserve Channel 267C3 for an NCE allotment. The Commission recently announced that any reservation of an NCE channel in the commercial band must demonstrate that two criteria are satisfied. (i) the station would provide a first NCE service to at least 10 percent of its service area and 2000 persons, and (ii) the use of a reserved-band channel is technically precluded. *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 18 FCC Rcd 6691, 6702-07 (2003). CCN has not demonstrated that either of these factors are true here. Therefore, its attempt to reserve Channel 267C3 for NCE use is not entitled to consideration.

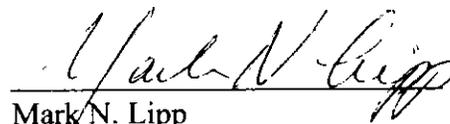
6. Finally, these defects can no be cured because counterproposals can not be considered unless they are acceptable when filed. *See e.g., Broken Arrow and Bixby, Oklahoma and Coffeyville, Kansas*, 3 FCC Rcd 6507 (MM Bureau). The Commission should not issue the public notice to permit reply comments for this counterproposal.

7. For all of the foregoing reasons, CCN's counterproposal is patently defective and should be dismissed without further consideration. Cochise hereby restates its continuing interest in applying for Channel 267C3 at Corona de Tucson, Arizona. If this allotment is granted, Cochise will file an application for Channel 267C3 at Corona de Tucson, and will promptly construct the facilities if the application is granted. The Commission should grant the proposal.

Respectfully submitted,

COCHISE BROADCASTING, LLC.

By:



Mark N. Lipp  
J. Thomas Nolan  
Vinson & Elkins, LLP.  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 639-6500

Its Counsel

September 9, 2003

**TECHNICAL ANALYSIS**  
**COUNTERPROPOSAL FILED BY CHRISTIAN COUNTRY NETWORK, INC.**

Cochise Broadcasting LLC ("Petitioner") filed its original Petition for Rulemaking on September 10, 2002 requesting that the Commission delete Channel 269C2 for KKYZ FM at Sierra Vista, Arizona and allocate Channel 267C3 for KKYZ's use at Corona de Tucson, Arizona

On July 14, 2003, Christian Country Network, Inc ("CCN") filed its Comment and Counterproposal ("Counterproposal") requesting that Channel 269A remain in Sierra Vista for KKYZ's use and that Channel 267C3 be allocated to Corona de Tucson for non commercial use.

**COUNTERPROPOSAL IS CLEARLY DEFECTIVE**

Petitioner shall clearly demonstrate hereinbelow that CCN's Counterproposal was clearly defective when it was filed and that it remains clearly defective today. The following analysis is offered:

1. Because CCN's Counterproposal offered no engineering data, it must be assumed that CCN proposed to "piggyback" off of Petitioner's engineering. Petitioner's proposal, specified a new community of license which required mutual exclusivity with its existing authorizations. CCN's Counterproposal is, therefore, short spaced to the same existing authorizations. Specifically, CCN's Counterproposal is short spaced by 15.0 km to Petitioner's Class C2 authorization BPH-20001023AEO for KKYZ at Sierra Vista which was authorized August 5, 2002. CCN's Counterproposal was also short spaced by 35.0 km to Petitioner's Class C1 application BPH-20021218ANF for KKYZ at Sierra Vista filed December 12, 2002. Thus, when CCN filed its Counterproposal on July 14, 2003, it was clearly defective when filed.

2. Even though CCN's Counterproposal is short spacing to existing authorization and protected applications, CCN offers no engineering data of any kind, whatsoever, in its support. It does not even offer even the most basic and necessary geographic coordinates for its proposal let alone channel spacing studies, required community coverage demonstrations and its compliance with the US-Mexican Treaty (Channel 267C3 at Corona de Tucson is short spaced to Mexico). This information is vital to determine the proposal's compliance with the Commission's rules and international treaties.

**EXHIBIT 1**  
**CHANNEL SPACING STUDY**

COMSTUDY SEARCH

CHANNEL 267 CLASS C3 AT 31-57-24 0 N, 110-41-38.0 W.

CALL	CITY	ST CHN CL	DIST	SEP	BRNG	CLEARANCE
	CORONA DE TUCSON	AZ 267 C3	0 00	153 00	90 0	-153 0
	AGUA PRIETA	SO 267 B	129 46	211 00	123 7	-81 5
	SASABE	SO 266 B	97 44	145 00	236 2	-47.6
KKYZ	SIERRA VISTA	AZ 269 C1	32 86	76 00	139 8	-43 1 *
KKYZ	SIERRA VISTA	AZ 269 C1	41 03	76 00	144 2	-35 0 **
KKYZ	SIERRA VISTA	AZ 269 C2	41 03	56 00	144 2	-15 0 ***
KZMK	SIERRA VISTA	AZ 265 A	60 39	42 00	138 9	18 4
KUAT-FM	TUCSON	AZ 213 C	50 89	31 00	357 8	19.9
KKYZ	SIERRA VISTA	AZ 269 A	61 51	42 00	134.7	19.5
	SASABE	SO 270 B	97 44	77 00	236 2	20 4
KZON	PHOENIX	AZ 268 C	199 32	176 00	320 4	23 3

NOTE.

- \* KKYZ CLASS C1 APPLICATION BPH-20021218ANF (AS AMENDED)
- \*\* KKYZ CLASS C1 APPLICATION BPH-20021218ANF (AS EXISTED ON 07/14/03)
- \*\*\* KKYZ CLASS C2 CONSTRUCTION PERMIT GRANTED 08/05/02

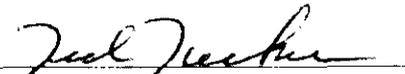
## ENGINEER CERTIFICATION

I, Ted Tucker, do hereby certify that I personally prepared the foregoing technical analysis for Cochise Broadcasting LLC and that I am qualified to do so

My qualification as an FM engineer are a matter of record with the Commission. I have personally prepared and submitted nearly 100 applications, amendments, petitions, rulemaking proceedings, comments, replies, Special Temporary Authorizations, and other filings including domestic and international short spacing studies. I have personally installed and constructed numerous FM Stations, FM Translator Stations, Studio Transmitter Links, Low Power Televisions Stations and auxiliary transmitters. Many of these installations involved directional antenna systems.

I hold a valid General Class Radio Telephone License (formerly First Class) and have a Bachelor of Science degree from the University of Arizona.

Date SEPTEMBER 9, 2003

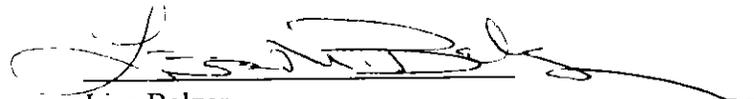
By   
Ted Tucker

**CERTIFICATE OF SERVICE**

I, Lisa Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 9th day of September, 2003 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

\* Victoria McCauley  
Federal Communications Commission  
445 12th Street, SW  
Room 2-C222  
Washington, DC 20554

George Smith  
Christian Country Network, Inc.  
P.O. Box 111  
Klamath Falls, OR 97601

  
Lisa Balzer

\* HAND DELIVERED