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March 15, 2004

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
c/o 236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002
Attn: Audio Division, Media Bureau

Re: Petition for Rulemaking to Amend Section 73.202(b),
Table of Allotments, FM Broadcast Stations,
(San Luis Obispo and Buttonwillow, California)

Dear Ms. Dortch:

Transmitted herewith on behalf of AGM San Luis Obispo, L.P., licensee of radio station KKJG(FM), San Luis Obispo, California, are an original and four copies of a Petition for Rulemaking seeking to amend Section 73.202(b) of the Commission's rules.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP

Attorneys for
AGM San Luis Obispo, L.P.

By: 
Andrew S. Kersting

Enclosure

cc: Certificate of Service (w/ encl.) (by hand)

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

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MAR 15 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. ____
Table of Allotments,) RM-____
FM Broadcast Stations)
(San Luis Obispo and Buttonwillow,)
California))

To: Assistant Chief, Audio Division
Media Bureau

PETITION FOR RULEMAKING

AGM San Luis Obispo, L.P. ("AGM"), licensee of radio station KKJG(FM), San Luis Obispo, California, acting pursuant to Section 1.420(i) of the Commission's rules, 47 C.F.R. §1.420(i), hereby requests that the Commission institute a rulemaking proceeding for the purpose of amending the FM Table of Allotments to substitute Channel 251B1 for Channel 251B at San Luis Obispo, California, reallocate Channel 251B1 from San Luis Obispo to Buttonwillow, California, and modify the license for KKJG to specify Buttonwillow as its community of license in accordance with *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). In order to accommodate the proposed reallocation, AGM also proposes to substitute Channel 289A for Channel 251A at Wofford Heights, California, and substitute Channel 250A for Channel 289A at Kernville, California. Thus, AGM proposes to amend Section 73.202(b) of the Commission's rules as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
San Luis Obispo	227B, 241B, 246B1, 251B	227B, 241B, 246B1
Buttonwillow	265A	265A, 251B1
Wofford Heights	251A	289A
Kernville	289A	250A

As demonstrated herein, the proposed reallocation would result in a preferential arrangement of allotments because it would provide the community of Buttonwillow with its second local service and first competitive FM service while leaving at least nine (9) full-power radio stations licensed to the community of San Luis Obispo.

The city of Buttonwillow is an unincorporated community located in Kern County, California with a 2000 U.S. Census population of 1,226. The community has its own zip code, fire department, elementary school, local library, local health-care provider, at least two churches, and a local Chamber of Commerce. For those reasons, the Commission previously found that Buttonwillow is a community for allotment purposes. *See Shafter and Buttonwillow, California*, 17 FCC Rcd 22952 (Aud. Div. 2002) (allotting Channel 265A to Buttonwillow as the community's first local transmission service).

As demonstrated in the attached Engineering Statement of John J. Mullaney, the proposed allotment reference coordinates satisfy the minimum distance separation requirements with respect to all known licenses, construction permits, pending applications, and pending rulemaking proposals with the exception of the existing allotments of Channel 251A at Wofford Heights, California and Channel 289A at Kernville, California.¹ The allotment reference point is

¹ The reference coordinates for the proposed allotment are North Latitude: 35° 22' 00"; West Longitude: 119° 35' 45".

located approximately 13 kilometers west-southwest of Buttonwillow, would enable the station to operate from a site with an unobstructed view of the community, and would enable KKJG to provide the requisite 70 dBu contour over the entire community of license.

As stated above, the proposed reallocation of Channel 251B1 requires the substitution of Channel 289A in MB Docket No. 03-91, which proposes the use of Channel 251A at Wofford Heights, California. *See Wofford Heights, California*, 18 FCC Rcd 6410 (Aud. Div. 2003). Figure 2 to the attached Engineering Statement demonstrates that the proposed use of Channel 289A from the allotment reference coordinates at Wofford Heights proposed herein complies with all of the Commission's spacing requirements.² Similarly, Figure 3 to the Engineering Statement demonstrates that the proposed substitution of Channel 250A for Channel 289A at Kernville, California also complies with the Commission's spacing requirements.³

The balance of the public interest factors favors a grant of the proposed reallocation. KKJG currently serves 364,910 persons within its 60 dBu contour. The proposal to downgrade KKJG from Channel 251B to Channel 251B1 and reallocate Channel 251B1 from San Luis Obispo to Buttonwillow has the potential to serve 322,280 persons within KKJG's 60 dBu contour. Thus, the proposed reallocation of Channel 251B1 to Buttonwillow would result in a loss of service to 42,630 persons within KKJG's service contour. *See Engineering Statement at 3.* This loss of service, however, is more than offset by KKJG's proposed status as a second aural service and a first competitive FM service to Buttonwillow. Another public interest factor reflects the realities of aural service. The reallocation of Channel 251B1 to Buttonwillow would provide the community with the only on-air service it is likely to receive in the foreseeable future. Although

² The reference coordinates for the proposed allotment of Channel 289A at Wofford Heights are North Latitude: 35° 44' 53"; West Longitude: 118° 21' 40".

³ The reference coordinates for the proposed allotment of Channel 250A at Kernville are North Latitude: 35° 45' 50"; West Longitude: 118° 17' 40".

the allotment of Channel 265A to Buttonwillow became effective on December 31, 2002, it continues to remain vacant.⁴ It is unlikely that service will commence on Channel 265A at Buttonwillow in the foreseeable future because (1) the Commission has not yet rescheduled FM Auction No. 37, (2) the Channel 265A allotment at Buttonwillow was not included in FM Auction No. 37, and (3) there is no assurance that the Channel 265A allotment will even be included in the first FM auction following Auction No. 37 because the initial Buttonwillow allotment was not included among the initial 209 FM allotments that were allocated during the period of more than two-years immediately following the FM Auction No. 37 cut-off date.⁵ See, e.g., *Grants and Bosque Farms, New Mexico*, 18 FCC Rcd 11239, 11241 (Aud. Div. 2003) (recognizing that the Commission's auction procedures are "both uncertain and time-consuming . . . especially during the current hiatus in broadcast auctions").

Other factors also support the proposed reallocation. If the reallocation proposal is adopted, there will continue to be at least nine (9) full-power radio stations licensed to the community of San Luis Obispo.⁶ San Luis Obispo also will continue receive service from

⁴ See 67 Fed. Reg. 71,891 (December 3, 2002).

⁵ April 2000 was the approximate cut-off date for the 352 FM allotments that were included in FM Auction No. 37. The staff of the Media Bureau has informally advised representatives of AGM that 350 is approximately the maximum number of permits that can be made available for competitive bidding in one auction proceeding. Thus, it is unlikely that any additional FM construction permits will be made available for competitive bidding in FM Auction No. 37. During the period between April 2000 and July 2002, the Commission allocated 209 new FM channels which will be made available for competitive bidding sometime in the future. The Commission did not release a *Report and Order* allotting Channel 265A to Buttonwillow until November 15, 2002 (see *Shafter and Buttonwillow, California*, 17 FCC Rcd 22952 (Aud. Div. 2002)). Therefore, it is unclear whether the Channel 265A allotment will be included in the next FM after Auction No. 37.

⁶ The nine radio stations which would remain licensed to San Luis Obispo are the following: KJDJ(AM), KKJL(AM), KVEC(AM), KYNS(AM), KCBX(FM), KCPR(FM), KLVH(FM), KSLY-FM, and KZOZ(FM). Contemporaneous with the filing of the instant petition, the licensee of radio station KLRM(FM), San Luis Obispo, California, has filed a Petition for Rulemaking requesting the substitution of Channel 245B1 for Channel 246B1 at San Luis Obispo and the reallocation of Channel 245B1 from San Luis Obispo to Lost Hills, California.

KKJG, which would operate on Channel 251B1 at Buttonwillow. Therefore, the community of San Luis Obispo will continue to be well served. *See Temple and Taylor, Texas*, 12 FCC Rcd 13755, 13756 (Alloc. Branch 1997) (proposed reallocation would not create any underserved areas where the loss area would continue to receive service from a minimum of four FM and two AM stations).

In sum, then, the proposed reallocation of Channel 251B1 to Buttonwillow would provide the community with its second local broadcast service, its first competitive FM service, and its first on-air broadcast service. Thus, AGM's proposal would result in a preferential arrangement of allotments under the fourth allotment priority set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 92 n.8 (1982).

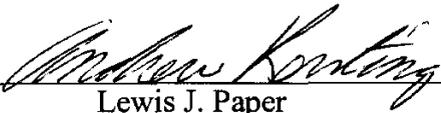
If the instant petition requesting the reallocation of Channel 251B1 to Buttonwillow is granted, AGM will file an application for a construction permit for the modified facility, and, if its application is granted, will promptly construct the new facility at Buttonwillow. In the unlikely event that a construction permit is issued for Channel 251A at Wofford Heights and/or Channel 289A at Kernville, California, AGM will reimburse the permittee (or licensee, as the case may be) of those stations for their reasonable and prudent costs associated with implementing the requested frequency changes. *See generally Circleville, Ohio*, 8 FCC 2d 159 (1967).

WHEREFORE, in light of the foregoing, AGM respectfully requests that the Commission (1) grant this Petition for Rulemaking, (2) amend the FM Table of Allotments by substituting Channel 251B1 for Channel 251B at San Luis Obispo, California, and reallocate Channel 251B1 from San Luis Obispo to Buttonwillow, California, and (3) modify the license for KKJG to specify Buttonwillow as its community of license.

Respectfully submitted,

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9049 SHADY GROVE COURT
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ENGINEERING EXHIBIT EE-RM:

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**MOVE Ch. 251B1 TO BUTTONWILLOW, CA
FROM SAN LUIS OBISPO, CA
SUBSTITUTE Ch. 289A FOR 251A AT WOFFORD HEIGHTS, CA
SUBSTITUTE Ch. 250A FOR 289A AT KERNVILLE, CA**

FEBRUARY 20, 2004

**ENGINEERING STATEMENT PREPARED ON BEHALF OF
AGM SAN LUIS OBISPO, L.P.
LICENSEE OF KKJG (FM) - SAN LUIS OBISPO, CA**

ENGINEERING EXHIBIT EE-RM:

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**MOVE Ch. 251B1 TO BUTTONWILLOW, CA
FROM SAN LUIS OBISPO, CA
SUBSTITUTE Ch. 289A FOR 251A AT WOFFORD HEIGHTS, CA
SUBSTITUTE Ch. 250A FOR 289A AT KERNVILLE, CA**

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5. Figure 2, Ch. 289A - RM - Wofford Heights, CA - Spec. Ref Site.
6. Figure 3, Ch. 250A - Vacant - Kernville, CA - Spec. Ref Site.

Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by AGM San Luis Obispo, L.P., to prepare the instant engineering exhibit in support of a rule making petition to amend the FM Table of Allotments.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

Executed on the 20th day of February 2004

ENGINEERING EXHIBIT EE-RM:

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**MOVE Ch. 251B1 TO BUTTONWILLOW, CA
FROM SAN LUIS OBISPO, CA
SUBSTITUTE Ch. 289A FOR 251A AT WOFFORD HEIGHTS, CA
SUBSTITUTE Ch. 250A FOR 289A AT KERNVILLE, CA**

NARRATIVE STATEMENT:

This engineering statement has been prepared on behalf of AGM San Luis Obispo, L.P., ("AGM"), licensee of Radio Station KKJG at San Luis Obispo, California. This engineering exhibit supports a petition to amend the FM table of allotments.

AGM proposes to allot Ch. 251B1 at Buttonwillow, CA, in lieu of its present operation of 251B at San Luis Obispo, CA, and to modify the license of KKJG accordingly. In order to accomplish this it is necessary to swap channels at two other communities (one RM-Add & one Vacant).

The city of San Luis Obispo, CA, will continue to be served by at least ten aural services (four AM & six FM) and grant of this proposal will result in the **second aural service** to Buttonwillow, CA, (1,266 persons, 2000 Census). Channel 265A is currently allotted to Buttonwillow and is presently vacant.

KKJG wishes to point out that the new city of license it seeks is on its existing channel (251) with a proposed location which is less than the separation specified by Section 73.207 (211 km) and, thus, is mutually exclusive with its existing authorization in accordance with Section 1.420(i) of the rules.

The proposed reference point is not within 290 kilometers (180 miles) of a United

States Border and, therefore, foreign concurrence is not required.

PROPOSAL

For the purposes of this rule making the allotment of **Ch. 251B1** will rely upon the use of a special reference point located 13 km west-southwest of **Buttonwillow, CA**

N. Latitude: 35° 22' 00" NAD-27
W. Longitude: 119° 35' 45"

The proposed reference site will provide an unobstructed view of the city of license and is located close enough to serve the entire community with the required 3.16 mV/M or 70 dBu contour.

Channel Allocation Studies

Figures 1 to 3 are channel studies demonstrating that the proposed use of the specified channel is in full compliance with the FCC's separation requirements. All of the studies rely on a special reference point which is well within the reference city grade radius of its proposed class and has an unobstructed view of the city. The studies indicate the actual & required separation in kilometers to all licenses, construction permits, applications, vacant allocations and pending rule makings. From these studies it can be determined that proposed reference points exceed all of these minimum separations provided the additional swaps are implemented. The **reference coordinates** relied upon are tabulated in the upper left portion of each of the channel studies.

Figure 1 demonstrates that the proposed relocation of Ch. 251B1 from the special reference coordinates for use by KKJG at Buttonwillow, CA, complies with the rules. The coordinates of the special reference point 13 km WSW of city are:

35-22-00 / 119-35-45. This proposal requires the substitution of the pending proposal in **Docket 03-91** which proposes use of Ch. 251A at Wofford Heights, CA.

Figure 2 demonstrates that the proposed use of Ch. 289A from the special reference coordinates for use at Wofford Heights, CA, complies with the rules. The coordinates of the special reference point 12 km NE of city are: **35-44-53 / 118-21-40.** This proposal requires the substitution of the vacant allotment on Ch. 289A at Kernville, CA

Figure 3 demonstrates that the proposed use of Ch. 250A from the special reference coordinates for use at Kernville, CA, complies with the rules. The coordinates of the special reference point 14 km NE of city are: **35-45-50 / 118-17-40.** This proposal requires the substitution of the pending proposal in **Docket 03-91** which proposes use of Ch. 251A at Wofford Heights, CA.

Public Interest Showing

The community of San Luis Obispo, CA, will remain well served with **at least 10** other aural services. All of the populations provided herein are based upon a computer analysis of the 2000 Census.

The downgrade and relocation of KKJG to 251B1 at **Buttonwillow, CA**, has the potential for 60 dBu service to 322,280 persons. KKJG presently serves 364,910 persons and thus, this represents a loss of 42,630 persons. However, KKJG believes this loss of raw population served is more than offset by the fact that KKJG will be the second aural service licensed to the city. Given the present freeze on new applications, KKJG's operation will most likely be the **first local service** to the community.

AGM has presented a plan which is a more efficient use of the limited frequency spectrum in & around California. All parties to the proceeding get channels

equivalent to what they have requested

Based upon the above information, AGM believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest.

SUMMARY

AGM San Luis Obispo, L.P., licensee of Radio Station KKJG at San Luis Obispo, California, requests that the FM Table of Allotments be amended as presented herein.

AGM requests that the Commission's FM Table of Allotments be revised as follows:

Community	Present	Proposal
San Luis Obispo, CA - KKJG	251B	Deletion
Buttonwillow, CA - KKJG	265A	265A & 252B1
Wofforf Heights, CA - RM	251A	289A
Kernville, CA - Vacant	289A	250A

Note: only the channels under discussion herein are shown in above table.

Based upon the information presented herein, AGM believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest. If granted, KKJG will quickly file an application for construction permit.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

February 20, 2004.

**AGM SAN LUIS OBISPO, L.P.
PROPOSED RULE MAKING - BUTTONWILLOW, CA**

REFERENCE		DISPLAY DATES
35 22 00 N	CLASS = B1	DATA 02-20-04
119 35 45 W	Current Spacings	SEARCH 02-20-04
----- Channel 251 - 98.1 MHz -----		

Call	Channel	Location	Dist	Azi	FCC	Margin
BA-1	251B1	BUTTONWILLOW-KKJG	CA 0.00	0.0	174.5	
KKJG	LIC 251B	San Luis Obispo	CA 96.33	269.9	210.5	-114.17 Self
RADD	ADD 251A	Wofford Heights	CA 99.05	66.0	142.5	-43.45 to BA-2
KDFOFM	LIC 253B1	Delano	CA 51.23	71.1	49.5	1.73
KDAR	LIC 252B1	Oxnard	CA 115.47	167.9	113.5	1.97
KSMJ	LIC-Z 249A	Shafter	CA 53.27	78.7	47.5	5.77
KHRN	LIC-N 252A	Huron	CA 103.14	334.1	95.5	7.64
KR-05R	252B1	Caruthers-KBHH	CA 127.13	352.3	113.5	13.63
FR-01	252B1	Kingsburg-KFYE	CA 127.32	352.3	113.5	13.82
KHRN.C	CP 252A	Huron	CA 110.93	335.9	95.5	15.43
KMGQ	LIC 248B	Santa Barbara	CA 99.03	199.5	70.5	28.53
BA-3	250A	KERNVILLE-ADD	CA 125.94	69.1	95.5	30.44
KLAXFM	LIC-Z 250B	East Los Angeles	CA 185.05	135.9	144.5	40.55

Substitute Ch. 289A for 251A at Wofford Heights, CA - using new reference site

Proposed Reference Site: 13 km WSW of City

<p>CH 251B1 - MOVE KKJG TO - BUTTONWILLOW, CA</p> <p>AGM SAN LUIS OBISPO, L.P. PROPOSED RULEMAKING PROPOSAL SAN LUIS OBISPO TO BUTTONWILLOW, CA</p>	<p>MULLANEY ENGINEERING, INC. GAITHERSBURG, MARYLAND</p> <p>FIGURE 1 FEBRUARY 2004</p>
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**AGM SAN LUIS OBISPO, L.P.
PROPOSED RULE MAKING - BUTTONWILLOW, CA**

REFERENCE		DISPLAY DATES
35 44 53 N	CLASS = A	DATA 02-20-04
118 21 40 W	Current Spacings	SEARCH 02-20-04
----- Channel 289 - 105.7 MHz -----		

Call	Channel	Location	Dist	Azi	FCC	Margin
BA-2	289A	WOFFORD-ADD	CA 0.00	0.0	114.5	
ALLO	VAC 289A	Kernville	CA 3.04	346.2	114.5	-111.46 to BA-3
KKDJ	LIC 287B	Delano	CA 68.51	247.9	68.5	0.01
KRAB	LIC-Z 291B1	Greenacres	CA 54.54	217.7	47.5	7.04
ALLO	VAC 289A	Lost Hills	CA 131.45	265.1	114.5	16.95
KOSS	LIC-N 288A	Rosamond	CA 101.27	169.4	71.5	29.77
KPWR	LIC-D 290B	Los Angeles	CA 170.84	170.9	112.5	58.34
KRNC	LIC 290B	Fresno	CA 175.56	327.3	112.5	63.06
RADD	ADD 235A	California City	CA 77.62	139.0	9.5	68.12

Substitute Ch. 250A for 289A at Kernville, CA - using new reference site

Proposed Reference Site: 12 km NE of City

<p>CH 289A - SUBSTITUTE - ADD - WOFFORD HEIGHTS, CA</p> <p>AGM SAN LUIS OBISPO, L.P. PROPOSED RULEMAKING PROPOSAL SAN LUIS OBISPO TO BUTTONWILLOW, CA</p>	<p>MULLANEY ENGINEERING, INC. GAITHERSBURG, MARYLAND</p> <p>FIGURE 2 FEBRUARY 2004</p>
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**AGM SAN LUIS OBISPO, L.P.
PROPOSED RULE MAKING - BUTTONWILLOW, CA**

REFERENCE		DISPLAY DATES
35 45 50 N	CLASS = A	DATA 02-20-04
118 17 40 W	Current Spacings	SEARCH 02-20-04
----- Channel 250 - 97.9 MHz -----		

Call	Channel	Location	Dist	Azi	FCC	Margin
BA-3	250A	KERNVILLE-ADD	CA 0.00	0.0	114.5	
RADD	ADD 251A	Wofford Heights	CA 27.53	260.9	71.5	-43.97 to BA-2
KMGV	LIC 250B	Fresno	CA 177.62	325.4	177.5	0.12
KLAXFM	LIC-Z 250B	East Los Angeles	CA 177.75	177.1	177.5	0.25
KSMJ	LIC-Z 249A	Shafter	CA 73.94	242.9	71.5	2.44
ALLO	VAC 252A	Ridgecrest	CA 46.19	105.0	30.5	15.69
KVVS	LIC 249A	Mojave	CA 87.82	172.4	71.5	16.32
KDFOFM	LIC 253B1	Delano	CA 74.76	248.4	47.5	27.26
BA-1	251B1	BUTTONWILLOW-KKJG	CA 125.94	249.8	95.5	30.44
BA-1A	251B1	BUTTONWILLOW-KKJG	CA 137.21	249.3	95.5	41.71
OX-2	247A	Randsburg,ADD	CA 73.39	125.5	30.5	42.89
KRXV	LIC 251B	Yermo	CA 157.47	122.5	112.5	44.97
ALLO	VAC 247A	Lamont	CA 81.69	220.8	30.5	51.19
RADD	ADD 247A	Trona	CA 83.42	89.8	30.5	52.92
LH-02	247A	Mcfarland, ALLO	CA 88.62	262.3	30.5	58.12
ALLO	VAC 247A	Mcfarland	CA 95.31	264.1	30.5	64.81

Substitute Ch. 289A for 251A at Wofford Heights, CA - using new reference site

Proposed Reference Site: 14 km EAST of City

CH 250A - SUBSTITUTE - VAC - KERNVILLE, CA

AGM SAN LUIS OBISPO, L.P.
PROPOSED RULEMAKING PROPOSAL
SAN LUIS OBISPO TO BUTTONWILLOW, CA

MULLANEY ENGINEERING, INC.
GAITHERSBURG, MARYLAND

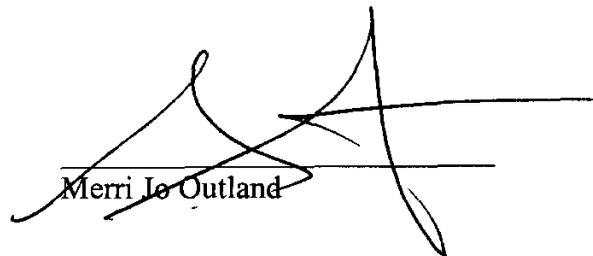
FIGURE 3
FEBRUARY 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2004, a copy of the foregoing
“Petition for Rulemaking” was hand delivered to the following:

John A. Karousos, Assistant Chief
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Federal Communications Commission
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