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May 17, 2004

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MAY 17 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**By Hand Delivery**

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554

RE: Opposition to Petition for Rulemaking – MB Docket 04-82  
Pima, Arizona - Channel 296A

Dear Ms. Dortch:

Desert West Air Ranchers Corporation, by and through its attorneys, hereby submits this Opposition to the Petition for Rulemaking filed by Calvary Chapel of Tucson in the above-referenced proceeding.

Should there be any questions regarding this Petition, please contact undersigned counsel.

Sincerely,  
  
Susan A. Marshall  
Lee G. Petro

Counsel for Desert West Air  
Ranchers Corporation

Enclosures

cc: As shown in Certificate of Service

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

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In the Matter of:

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
  
(Pima, Arizona)

}  
}  
}  
}  
}  
}  
}

MB Docket No.: 04-82  
RM-10877

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

TO: CHIEF, MEDIA BUREAU

**OPPOSITION TO  
PETITION FOR RULEMAKING**

Desert West Air Ranchers Corporation ("Desert West"), by and through its attorneys, hereby submits this Opposition to the reservation of Channel 296A, Pima, Arizona, for noncommercial use. Calvary Chapel of Tucson submitted a Petition for Rulemaking on November 20, 2003 (the "Petition"), in response to the *Public Notice*<sup>1</sup> establishing a filing window for reserving existing, vacant commercial FM allotments. On March 26, 2004, the FCC released a Notice of Proposed Rulemaking proposing the reservation of the allotment for NCE use.<sup>2</sup>

As discussed in the attached Engineering Study of Hatfield and Dawson Consulting Engineers, the Petition must be denied. Specifically, the Engineering Study provided by Calvary Chapel in support of the Petition does not meet the threshold requirement that all NCE reserved channels are technically precluded from operating at Pima, Arizona. The engineering study provided by Calvary Church erroneously rejected all twenty NCE channels due to the perceived

<sup>1</sup> *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, DA 03-2990 (rel. Sept. 30, 2003) (the "Public Notice").

<sup>2</sup> *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Various)*, 19 FCC Rcd 5333 (2004).

interference caused by KUAT-TV, Tucson, Arizona. However, the quick rejection of all twenty reserved channels arbitrarily ignores the possibility that an allotment could be made within the reserved band in compliance with Section 73.525(c) of the Commission's rules. This failure directly undermines the showing prepared by Calvary Chapel, and must result in the dismissal of the Petition.

Therefore, Desert West Air Rancher Corporation respectfully requests that the Commission dismiss or deny the Petition for Rulemaking seeking to reserve Channel 296A at Pima, Arizona.

Respectfully submitted,

**DESERT WEST AIR RANCHERS CORPORATION**

By:



Susan A. Marshall

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Its Counsel

May 17, 2004

**EXHIBIT A**

**ENGINEERING STATEMENT**

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### Engineering Statement

This Engineering Statement has been prepared on behalf of Desert West Air Ranchers Corp., in support of comments filed in MB Docket No. 04-82. In this proceeding, Calvary Chapel of Tucson ("Calvary" or "Petitioner") has requested that the Commission reserve Channel 296A at Pima, Arizona, for non-commercial use.

In support of their petition, Calvary has failed to fully demonstrate that there are no reserved-band channels available for use at Pima. Thus, this allotment does not qualify for reservation, and Calvary's reservation request should be denied.

### Discussion re Petitioner's Preclusion Study

Petitioner bases its conclusion that no reserved-band channel is available on the simple fact that each of the studied transmitter sites is "inside the KUAT-TV Channel 6 F(50,50), 47 dBuV/m Grade B contour and would cause interference to the TV Channel 6 station. Therefore, it has been demonstrated that all 20 NCE-FM channels would be precluded at this site."

That blanket statement is wholly insufficient to establish that no reserved-band channel is available for use at Pima. The mere presence of an unspecified area of interference caused to TV Channel 6 does not render a reserved-band channel unusable. In order to reach this conclusion, it would be necessary to demonstrate that the resulting interference area caused to KUAT-TV would encompass in excess of 3,000 persons, as per Section 73.525(c).

If the Petitioner's blithe rejection of all reserved-band channels due to TV Channel 6 interference is disregarded, then their preclusion analysis indicates that:

**Allotted Site:** Channels 202A, 203A, 204A, 206A, 207A, 215A, 216A, 218A, and 219A should be available for use at the Allotted Site with minimum Class A facilities.

**North Site:** Channels 207A and 215A should be available for use at the North Site with maximum Class A facilities.

**East Site:** Channels 204A, 206A, 207A, 215A, and 216A should be available for use at the East Site with maximum Class A facilities.

**South Site:** Channels 204A and 219A should be available for use at the South Site with maximum Class A facilities.

**West Site:** Channels 204A and 206A should be available for use at the West Site with maximum Class A facilities.

(There are numerous vacant "allotments" in the reserved band which apparently create conflict with some of these channels. But those "allotments" are merely placeholders in the US-Mexico FM Agreement and are not entitled to interference protection domestically )

By way of example, the relevant 79.5 dBu interfering contour for a Channel 218A minimum Class A facility at the Allotted Site would encompass just 2,022 persons. This figure would satisfy Section 73.525(c) as a permissible level of interference to KUAT-TV Channel 6. Petitioner has not indicated any other reasons why Channel 218A is unavailable for use at Pima at the Allotted Site. It is very likely that others of the available channels also satisfy Section 73.525(c) with respect to KUAT-TV

**Conclusion**

The Petitioner has failed to definitively demonstrate that no reserved-band channel would be available for use at Pima. Their blanket statement that the presence of KUAT-TV Channel 6 prevents the use of any reserved-band channel is flawed in that it ignores the fact that a reserved-band channel can be used within the Grade B contour of a TV Channel 6 station if the resulting interference area contains less than 3,000 persons.

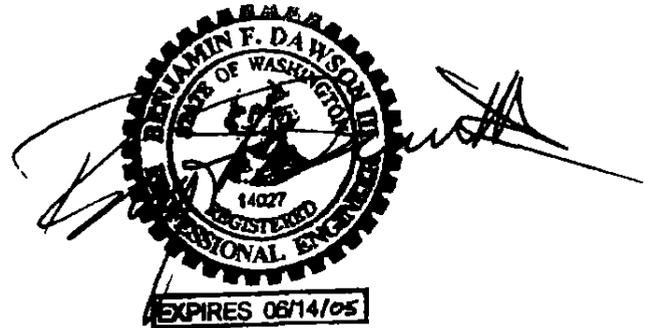
Therefore, the NCE reservation request in MB Docket 04-82 by Calvary Chapel of Tucson must be denied.

I hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

May 17, 2003



Erk C. Swanson

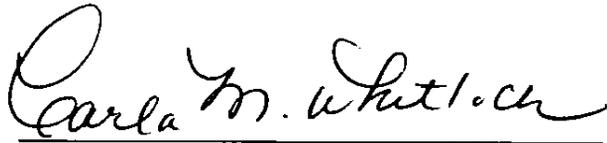


Benjamin F. Dawson III, P.E.

**CERTIFICATE OF SERVICE**

I, Carla M. Whitlock, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Opposition" was sent this 17<sup>th</sup> day of May, 2004, by first-class United States Mail, postage prepaid to:

David A. O'Connor, Esquire  
Holland & Knight, LLP  
2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, D.C. 20006-6801  
Counsel for Calvary Chapel of Tucson

A handwritten signature in cursive script that reads "Carla M. Whitlock". The signature is written in black ink and is positioned above a horizontal line.

Carla M. Whitlock