

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

In the Matter of )  
)  
Negotiated Channel Election Arrangement ) FCC File No. BFRECT-20050210ATW  
KVTN, Pine Bluff, AR )  
KATV, Little Rock, AR )  
  
Second Periodic Review of the ) MB Docket No. 03-15  
Commission's Rules and Policies )  
Affecting the Conversion )  
To Digital Television )  
  
To: Office of the Secretary  
ATTN: Media Bureau

**REPLY TO OBJECTION TO  
NEGOTIATED CHANNEL EXCHANGE ARRANGEMENT**

Agape Church, Inc. ("Agape") and KATV, LLC ("KATV"), licensees respectively of KVTN-DT, Pine Bluff, and KATV, Little Rock, Arkansas, hereby respond to the objection ("Objection") filed by the Arkansas Educational Television Commission ("AETC") to the above-captioned Negotiated Channel Exchange Arrangement ("NCA").<sup>1</sup> Pursuant to the NCA, Agape will acquire Channel 7, the analog channel currently operated by KATV, as its post-transition DTV channel. AETC, the licensee of KETS, Little Rock, Arkansas, claims that the NCA is not in the public interest. It claims that Channel 7 should be available during the second round of channel elections to stations, such as KETS, with analog and digital channel allotments in the low VHF band. As shown below, the public interest will be served by approval of the NCA. Specifically, the Commission's DTV election procedures contemplate agreements, such as the

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<sup>1</sup> As a party to the NCA, Allbritton Communications Co., the parent of KATV, LLC, joins in this Reply.

NCA, whereby parties negotiated for the use of channels currently assigned in the market. The NCA does not deprive AETC of a channel, since there is at least one other comparable channel available for election in the second round. Moreover, approval of the NCA will assure that service to KVTN's over-the-air viewers is not lost during the remaining years of the digital transition.

Background. KETS was assigned in-core Channel \*47 in the initial DTV Table of Allotments. In 2000 it requested and in 2001 the FCC agreed to substitute Channel \*5 for Channel \*47 upon a showing by AETS that operation on DTV Channel \*5 would serve the public interest by "enhancing KETS's and AETC's ability to provide high quality noncommercial educational programming." AETS Petition for Rulemaking, RM-10059, May 8, 2000; Report and Order, MM Docket No. 01-50, DA 01-1261, rel. May 25, 2001. In opposing the NCA, AETS now characterizes its chosen Channel \*5 DTV allotment as "obviously inferior and inadequate." Objection at 4.

The NCA Conforms with the Commission's NCA Procedures. At the heart of AETC's Objection is the claim that Channel 7 should be available for stations in the Little Rock market that will elect their DTV channels in the second round, unless such stations specifically agreed otherwise. This is incorrect. In the initial round of channel elections, the only station with the right to elect Channel 7 was KATV. The Commission's procedures specifically permitted KATV to negotiate and assign its rights to Channel 7 to another party, which it did in the NCA. Indeed, it appears that educational television licensees were among those who participated in such arrangements. *See*, *Twin Cities Public Television, Inc. and Fox Television Stations, Inc.*, BFRECT-20050210ATX, *see also*, *Young Broadcasting of San Francisco, Inc and KQED, Inc.*, BFRECT-20050210ATZ; *Post-Newsweek Stations, Orlando, Inc. and Daytona Beach*

Community College, BFRECT-20050210ABK; Young Broadcasting of Davenport, Inc. and Iowa Public Broadcasting Board, BFRECT-20050210ATY; WWLP Broadcasting LLC and WGBH Educational Foundation, BFRECT-20050210AFE; WSTM License Subsidiary, Inc and Public Broadcasting Council of Central New York, BFRECT-20050210ABL; KHQ, Incorporated and Spokane School District #81, BFRECT-20050210AHD. KETS could have approached KATV about use of Channel 7, but it failed to do so, despite the fact that KETS operates its analog facility from the KATV tower, which affords it an obvious connection with KATV that Agape did not have. KATV and KVTN were under no obligation to obtain AETC's consent to the channel arrangement. This requirement applied only where stations proposed to elect a channel not otherwise assigned in the market.

AETC's argues that it will be adversely affected if Channel 7 is not available for election in the second round and, therefore, because it was not a party to the NCA, that it has a right to object to the agreement, and that as a result the NCA should not be approved. This interpretation is too broad. If objections could be made on those grounds, stations like KETS would hold veto rights over every NCA negotiated involving currently-assigned channels. If the Commission intended to adopt such a draconian limit on NCAs, it would have explicitly done so. Adverse impact is limited, instead, to situations involving interference or loss of unoccupied channels. Therefore, AETC's statement that it was not a party to the NCA and was not contacted by the parties to the NCA concerning its terms raises no bar to approval of the NCA, since such notice and involvement was not required.

Alternative Channels Are Available to AETC. There is no need to disapprove the NCA in order for AETC to elect a channel that will meet its needs. Attached hereto is the Engineering Statement of L. Robert duTreil, Jr., Agape's engineering consultant (Attachment A). Mr. duTreil

conducted an allocation analysis concerning the possible use of VHF channels for KETS-DT and determined that Channel 10 would be a viable channel to replicate KETS-DT. *Statement* at 2. Operation on Channel 10 would offer cost savings in line with those AETC says it has achieved using Channel 12 at one of its other stations. *Objection* at 3. The FCC will base its analysis of KETS-DT on the certification AETC made in its Pre-Election Certification Form (Form 381) in which it specified BMPEDT - 20030509AAQ as its post-transition DTV facility. *See*, BCERET-20041104AND. As shown in the Statement, KETS can operate its certified post-transition facility using Channel 10. *Statement* at 2-3. Adding Channel 7 to the pool of available channels is unnecessary and unwarranted.

Public Interest Benefits of the NCA. KVTN operates on analog Channel 25 and is assigned digital Channel 24. Under the FCC's build-out rules, stations not affiliated with the top four networks who elect to remain on their assigned DTV channels, must complete construction of full power facilities by July 1, 2006. *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, FCC 04-192, rel. Sept. 7, 2004, para. 78. KVTN is subject to the July 1, 2006 deadline and, if allotted Channel 24 as its permanent DTV channel, would be required to complete construction of its full facilities by that date. If it elects to operate on a DTV channel other than its assigned channel, KVTN would continue to operate with its current reduced facilities until the end of the transition.

The Engineering Statement sets forth the consequences that DTV operation at full power on Channel 24 would have on over the air reception of Channel 25. Specifically, the Statement notes that operation on DTV Channel 24 at full power will cause a level of at least "slightly annoying" interference to a minimum of 12,625 viewers (2.1 percent) of Channel 25 over a substantial area within the southern and northwest portions of the KVTN Grade B contour.

*Statement at 2, Figure 1. At least some interference may in fact be caused to a much larger number of viewers. Statement at 2.*<sup>2</sup>

Agape, as a non-profit, religious broadcaster, relies on its viewers for its survival every bit as much as KETS relies on its viewers for support. Indeed, AETC has access to other sources of financial support that are wholly unavailable to Agape. KETS is eligible for federal and state funding to support its educational network. No such public funding is available to KVTN.

It is self-evident that viewers that cannot receive the KVTN signal will not support the station or its programming. Avoiding loss of over-the-air service is KVTN's number one priority. Therefore, Agape has perceived a mandate to change the DTV channel assignment for KVTN so that from the date it completes construction of its digital facilities until it ceases operation on analog Channel 25 at the end of the transition, it does not threaten its own viability by interfering with itself.

To that end, Agape filed a petition for rulemaking to substitute Channel 46 for Channel 24 at Pine Bluff, Arkansas. However, in anticipation of the channel election and repacking process in which it is now engaged, the Commission imposed a freeze on certain TV and DTV applications and petitions. *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, DA 04-1446, released August 3, 2004. Despite having filed in advance of the freeze, Agape concluded, on advice of FCC staff, that its petition for Channel 46 would not be processed prior to the channel repacking process.

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<sup>2</sup> Operating with the reduced DTV facilities currently authorized, KVTN does not cause any interference to reception of analog Channel 25.

Frustrated in its attempt to obtain Channel 46 through rulemaking, Agape resolved instead to elect Channel 46 in Round 1 and initiated contact with the licensees of potentially affected stations in the market, including AETC, to obtain their consent. This effort failed, in part because AETC would not consent to KVTN's use of Channel 46, despite its being first-adjacent to the channel originally assigned to KETS, which AETC found to be unacceptably expensive to operate.

As a back-up to its Channel 46 effort, Agape concurrently approached representatives of Allbritton Communications Company, parent of KATV, LLC, to discuss the possibility of using KATV's DTV Channel 22, on the assumption that KATV intended elect its analog Channel 7 as its permanent DTV channel. Ultimately, KATV decided instead to elect Channel 22 for its digital operations, and the parties negotiated the NCA for Channel 7. Again, upon advice of staff and absent any language to the contrary in the Commission's orders and notices concerning either the channel election process in general or NCAs in particular, Agape did not solicit the consent of other parties in the market. As noted above, except in cases involving unoccupied channels, global consent of other stations was not required.

AETC's argument boils down simply to this -- an assertion that, having turned in its analog and its hand-picked digital channel in favor of waiting to elect a channel in Round 2, it should have available to it the broadest possible selection of the most desirable channels. Its defense for this position is that its status as an educational broadcaster warrants its being assured of the right to operate at the lowest possible cost, despite having made no effort to secure a channel that would meet that objective. Instead, it chose to wait and it assumed the risk that another station in the market might elect the desirable channels.

The Commission must decide this case on the basis of what best serves the public interest. Absent interference or loss of service resulting from the NCA, which AETC has not alleged, the Commission has said only that it will not approve NCA's that "are otherwise inconsistent with the public interest." *Public Notice "DTV Channel Election Issues – Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification to FCC of Flash Cut Decisions,"* DA 05-273, released February 1, 2005, page 1. The opposite must also be true, that the Commission must approve those NCAs which can be shown to better serve the public interest. Such is the case here. The NCA is consistent with the procedures established by the FCC. Approval of the NCA will not deprive AETC of the ability to elect a channel that will meet its service needs and objectives. Agape wisely took affirmative steps to address the interference problem that its own channel allotments created. Indeed it invested considerable resources in engineering, in a petition for

rulemaking for Channel 46, in an attempt to craft a global NCA for Channel 46, and ultimately in the NCA with KATV for Channel 7.

Conclusion. For the reasons stated above, the NCA should be approved and Channel 7 should be assigned to KVTN for its post-transition DTV operation.

Respectfully submitted,

AGAPE CHURCH, INC.

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March 22, 2005

**ATTACHMENT A**

ENGINEERING STATEMENT  
IN SUPPORT OF REPLY TO OBJECTION  
TELEVISION STATION KVTN(TV)/-DT  
PINE BLUFF, ARKANSAS

This Engineering Statement was prepared on behalf of Agape Church, Inc. licensee of KVTN(TV)/-DT, Pine Bluff, Arkansas, in support of a reply to the objection filed by the Arkansas Educational Television Commission. KVTN(TV)/-DT is party to a negotiated channel arrangement under which KVTN-DT would operate its post-transition DTV facility on Channel 7.

The KVTN(TV) analog facility is licensed for operation on Channel 25 with a maximum peak visual effective radiated power (ERP) of 4,370 kW and an antenna height above average terrain (HAAT) 182 m. KVTN-DT is authorized for operation on Channel 24 with a maximum ERP of 725 kW and an antenna HAAT of 356 m.

Agape Church, Inc. has sought an alternative to first-adjacent DTV Channel 24 due to interference predicted to its analog operation on Channel 25. It is demonstrated herein that the KVTN-DT construction permit facility will cause significant predicted interference to the existing licensed analog facility of KVTN(TV).

Additionally, it is demonstrated herein that high-band VHF Channel 10 would be available for KETS-DT in the Little Rock market on the second round of elections. There is no meaningful difference between the same DTV facilities operating on either Channels 7 or 10. Therefore, Channel 10 can be considered an equivalent alternative to Channel 7 in the Little Rock market.

Predicted Interference to KVTN(TV) from KVTN-DT

An analysis has been conducted based on the procedures of FCC OET Bulletin No. 69, *Longley-Rice Method for Evaluating TV Coverage and Interference*

("OET-69"), to determine the magnitude of predicted interference to the analog operation of KVTN(TV) from the construction permit facility of KVTN-DT. The analysis was based on the desired-to-undesired (D/U) ratio outlined in OET-69 for lower first-adjacent DTV-into-Analog relationship, which is given as -14 dB. Based on this analysis it was determined that the predicted interference to KVTN(TV) from KVTN-DT would be 12,625, based on 2000 Census data. This is 2.1% of the KVTN(TV) baseline Grade B service population of 599,419. The predicted cells of interference to KVTN(TV) are illustrated herein at Figure 1.

The D/U ratio for lower first-adjacent DTV-into-Analog is -14 dB based on FCC OET-69. However, it is noted that this D/U ratio is based on so-called CCIR Grade 3, or CCIR3, subjective performance quality, which is graded as "slightly annoying" level of interference\*. A level of no interference or "threshold of visibility" (TOV) is found at a much lower D/U of approximately 0 dB for a desired signal of moderate strength.† Therefore, there is the potential for greater interference to first-adjacent station KVTN(TV) than otherwise anticipated based on CCIR3 performance levels.

#### Channel 10 is Available for KETS-DT in the Second Round

An allocation analysis was conducted concerning the possible use of VHF channels for KETS-DT in Little Rock. To conduct the analysis, a facility equivalent to that of KETS-DT on Channel 5 was employed. The analysis was conducted based on the FCC procedures for evaluating post-transition DTV facilities using the 0.1% interference criteria. All channel elections that have been submitted to the FCC were taken into consideration in the evaluation.

The analysis reveals that Channel 10 would be a viable channel to replicate KETS-DT that could be available in the second round. Figure 2 herein is a

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\* See Sgrignoli, Gary, "Interference Analysis of Co-Sited DTV and NTSC Translators," *IEEE Trans. Broadcast*, vol.51, no. 1, Mar. 2005.

† *Digital HDTV Grand Alliance System Record of Test Results from Transmission & Objective Test*, Oct. 1995. Advanced Television Test Center (April 19-Jul 21, 1995).

summary of the allocation analysis for Channel 10. As indicated, the 0.1% criteria would be met for the assumed KETS-DT facility to all pertinent allotments and assignments.

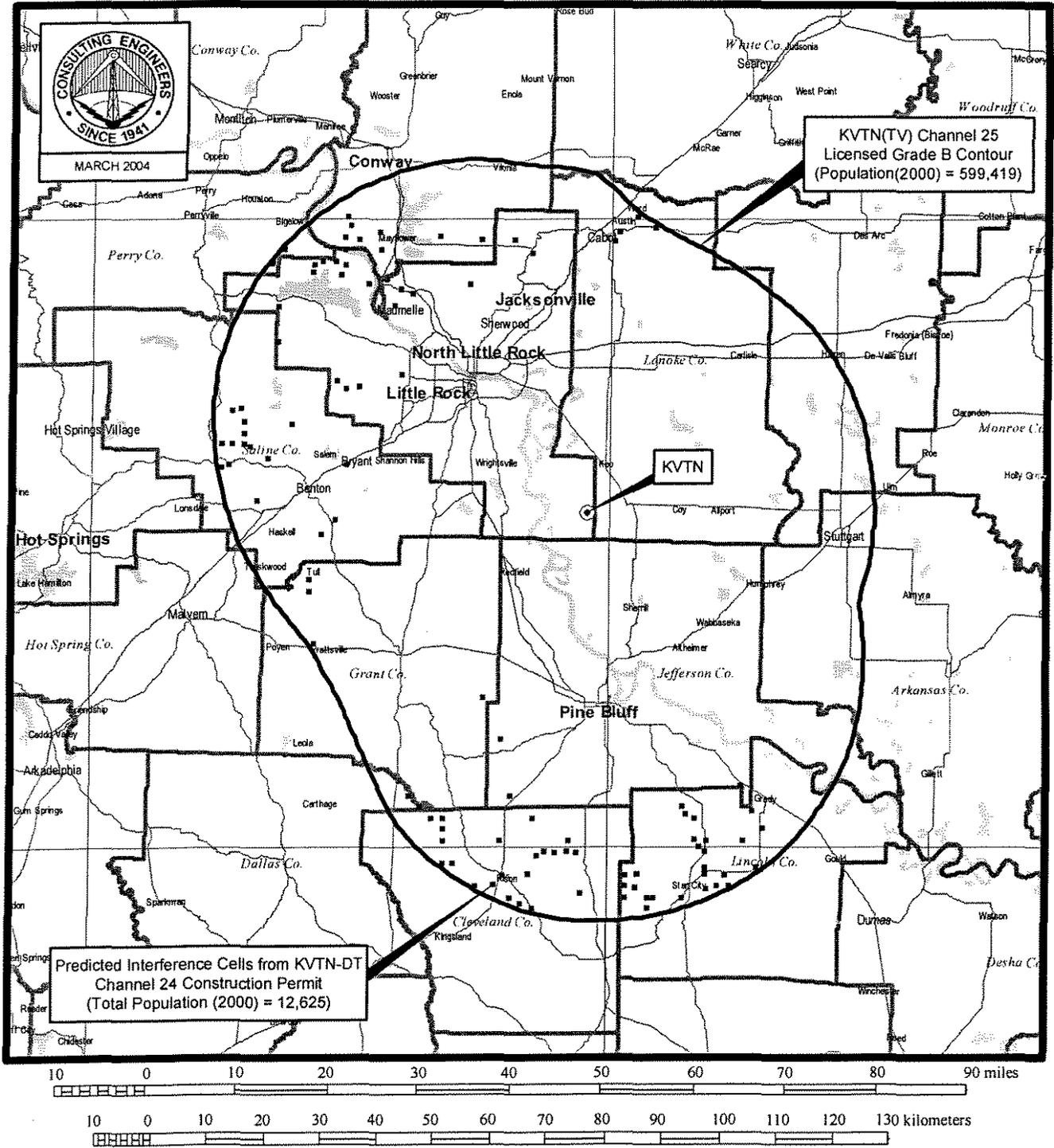


Louis Robert du Treil, Jr., P.E.

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March 21, 2005

Figure 1



## PREDICTED INTERFERENCE TO KVTN(TV)

TELEVISION STATION KVTN(TV)-DT  
PINE BLUFF, ARKANSAS

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

ENGINEERING STATEMENT  
 IN SUPPORT OF REPLY TO OBJECTION  
 TELEVISION STATION KVTN(TV)/-DT  
 PINE BLUFF, ARKANSAS

Summary of Allocation Analysis for KETS-DT on Channel 10 at Little Rock, Arkansas  
 (Facilities = Channel 10, 8 kW, FCC Pattern ID 59247, 631 m AMSL, 547 m HAAT)

Stations Potentially Affected by Proposed Station						
Facility Number	Channel	Call	City State	Distance (km)	Status	Facilities
1	9	KETG	ARKADELPHIA AR	101.5	LIC	Elected Channel 13
2	9	KETG	ARKADELPHIA AR	101.5	CP	
3	9	KAFT-TV	FAYETTEVILLE AR	224.4	LIC	BPRM-20000823AAD
4	9	KAFT	FAYETTEVILLE AR	224.4	CP MOD	BMPEDT-20031003ACC
5	9	KAIT	JONESBORO AR	198.6	CP	Elected Channel 8
6	9	KAIT-DT	JONESBORO AR	198.5	PLN	
7	10	KTVE	EL DORADO AR	151.6	LIC	Elected Channel 27
8	10	KFDF-CA	FORT SMITH AR	225.3	LIC	BLTVA-20011031ABC
9	10	KOLR	SPRINGFIELD MO	315.6	LIC	KOLR-DT, Channel 10, 20 kW, 1013 m AMSL
10	10	WBMS-CA	JACKSON MS	303.7	LIC	BLTVA-20031020AAN

Stations Potentially Affected by Proposed Station						
Facility Number	Channel	Call	City State	Distance (km)	Status	Facilities
11	10	WBMS-CA	JACKSON MS	300.7	CP	BPTVA-20040223AQL
12	10	WMAB-DT	MISSISSIPPI STATE MS	307.7	LIC	BPRM-20010629ACP
13	10	WMAB-TV	MISSISSIPPI STATE MS	307.7	LIC	BLEDT-20030326ABX
14	10	KTEN	ADA OK	398.3	LIC	Elected Channel 26
15	10	KTUL	TULSA OK	352.1	LIC	BLCDT-20030519ADL
16	10	KTUL	TULSA OK	352.1	LIC	BPRM-20010525ADC
17	10	WKNO	MEMPHIS TN	232.5	LIC	Elected Channel 29
18	10	KLTV-TV	TYLER TX	349.5	APP	Elected Channel 7
19	10	KLTV	TYLER TX	349.5	CP MOD	
20	11	KTHV	LITTLE ROCK AR	47.4	LIC	Elected Channel 12

Summary of Interference Analysis for Worst-Case Scenarios							
Facility Number	Interference Population Before Analysis	Interference Population After Analysis	Baseline Population	Net Change in Interference	Percent of Baseline	Permissible Percent of Baseline	Result
1	Elected Channel 13						
2	Elected Channel 13						

Summary of Interference Analysis for Worst-Case Scenarios							
Facility Number	Interference Population Before Analysis	Interference Population After Analysis	Baseline Population	Net Change in Interference	Percent of Baseline	Permissible Percent of Baseline	Result
3	--	--	--	*	0.000	--	pass
4	--	--	--	*	0.000	--	pass
5	Elected Channel 8						
6	Elected Channel 8						
7	Elected Channel 27						
8	--	--	--	*	0.000	--	pass
9	--	--	--	*	0.000	--	pass
10	--	--	--	*	0.000	--	pass
11	--	--	--	*	0.000	--	pass
12	20917	20917	374446	0	0.000	0.1	pass
13	--	--	--	*	0.000	--	pass
14	Elected Channel 26						
15	--	--	--	*	0.000	--	pass
16	40084	40084	1185457	0	0.000	0.1	pass
17	Elected Channel 29						
18	Elected Channel 7						
19	Elected Channel 7						
20	Elected Channel 12						

\*Proposal causes no interference.

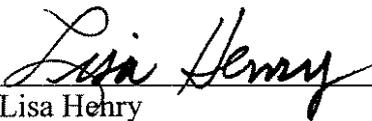
Certificate of Service

I, Lisa Henry, do hereby certify that a true and correct copy of the foregoing “**Reply to Objection to Negotiated Channel Exchange Arrangement**” was sent by UPS Overnight Mail this 22<sup>nd</sup> day of March, 2005, to the following:

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\* **BY HAND**

  
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Lisa Henry