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May 20, 2005

Our File No. 21654-00100-61

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204-C  
Washington, DC 20554

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MAY 20 2005

Federal Communications Commission  
Office of Secretary

Reference: MM Docket No. 05-101  
RM-11159

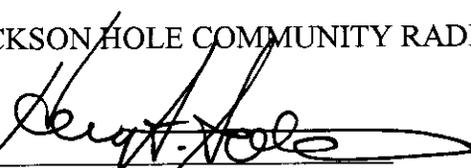
Dear Madam Secretary:

Handed to you herewith on behalf of Jackson Hole Community Radio, Inc., are an original and four (4) copies of its Reply Comments in the referenced proceeding.

Should you have any questions, please communicate directly with the undersigned.

Respectfully submitted,

JACKSON HOLE COMMUNITY RADIO, INC.

By: 

Henry A. Solomon  
Its Attorney

Enclosure

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List ABCDE

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

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MAY 20 2005

Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MB Docket No. 05-101  
Table of Allotments ) RM-11159  
FM Broadcast Stations )  
(Jackson, Wyoming) )

To: Secretary, Federal Communications Commission  
Attn.: Assistant Chief, Audio Division, Media Bureau

REPLY COMMENTS

Jackson Hole Community Radio, Inc. ("JHCR"), by its attorneys, replies to "Comments" filed by The University of Wyoming ("University") in the above-captioned matter. In support hereof the following is shown:

Technical Preclusion. Based on the preclusion criterion set forth in the *Second R&O*,<sup>1</sup> JHCR demonstrated that no channels are available in the FM reserved band at Jackson, WY. University cannot dispute the fact that JHCR satisfied this standard and that JHCR must locate its proposed station at the Snow King Mountain site currently occupied by KUWJ, University's FM station.

Second NCE Service. As confirmed in paragraph 2 of the *Notice of Proposed Rule Making* herein,<sup>2</sup> under the expanded criteria a proponent must also demonstrate that its proposed station "would provide a first *and/or* second NCE radio service..." (emphasis added). University contends that JHCR failed to satisfy the "second service" prong of the spectrum allocation test.<sup>3</sup>

<sup>1</sup> *Second Report and Order in Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 18 FCC Rcd 6691 (2003).

<sup>2</sup> DA 05-653, released March 14, 2005.

<sup>3</sup> In its *Report and Order in Reexamination of the Comparative Standards of Noncommercial Educational Applicants*, 15 FCC Rcd 7386, 7424 (2000), the Commission made it abundantly clear that NCE proponents "must

It claims that in addition to KUWJ there are several recently-granted NCE-FM construction permits and pending mutually exclusive applications for reserved band stations at Jackson. University argues that those permits and applications should be taken into account. JHCR urges that they not be taken into account. The permits and applications identified by University do not represent existing NCE radio services because the authorized and proposed “stations” are not operational: They provide no radio *services* at all. Moreover, there is no assurance that either of the two recently-granted permits will ever be implemented or that the pending applications will be granted.

University next argues that two full service NCE stations licensed to other markets provide reliable reception service to portions of the new NCE service area and should thus be taken into account. The stations are KUWA, Afton, WY and KBYI, Rexburg, ID. However, as confirmed on pages 3 and 4 of the attached Engineering Statement of Robert E. Culver, P.E. (“Exhibit E”), one of those stations operates at very low power and antenna height and both stations’ signals are significantly constrained by terrain barriers. In short, they do not provide reliable (if any) service to the Jackson area.

Finally, no consideration should be given to the LPFMs licensed to Jackson and Teton Village, Wyoming due to their secondary status. Full service FM stations, including subsequently authorized new stations, facility modifications and upgrades are not required to protect facilities specified in LPFM applications or authorizations. Indeed, LPFM stations that cannot meet these protection requirements may be forced off the air. *See* 47 C.F.R. § 73.809.<sup>4</sup>

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provide a first or second radio...NCE service.” This language, assumes that the community involved either has no current NCE *service* or one NCE-FM station on the air and providing *service*.

<sup>4</sup> KJHR-LP, Teton Village, WY, is owned by a village association. KJHB-LP, Jackson, is licensed to Teton School District #1.

In allotment proceedings the Commission deals with realities not hypotheticals. The reality is that only one NCE-FM provides *service* at Jackson—KUWJ, licensed to University. JHCR has demonstrated need for the allotment of Channel \*294C2 to Jackson, and expressed its determination to provide new NCE-FM service to a population that is far greater than 2,000.<sup>5</sup>

Proposed “First” Service Areas. University argues that JHCR failed to satisfy the “first” NCE service criterion. However, JHCR has proven that its proposed station will provide a *second* service to 100% of its 1 mV/m contour and to a population of significantly more than 2000 persons. Therefore, the fact that 35% of that area also will receive new service is irrelevant since JHCR has met its burden of proof by satisfying the second service criteria.

Other Matters. University speculates that JHCR may not be able to provide effective service to areas beyond University’s station’s service area from Snow King Mountain.

Speculation aside, as Exhibit E, states

the fact that service outside of the Jackson Hole valley from JHCR, or any other broadcaster in the valley, will be poor due to surrounding mountains and terrain obstruction, has no bearing on the allotment request” [before the Commission].

JHCR again emphasizes its willingness to provide a second local NCE-FM service to Jackson over Channel \*294C2.

Conclusion.

There is a need for new FM-NCE service at Jackson, WY. JHCR has satisfied all applicable criteria for allotment of Channel 294C, and reservation of that channel for

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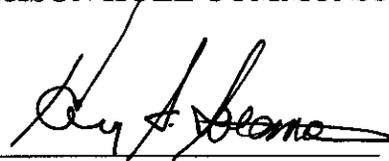
<sup>5</sup> See JHCR’s Petition for Rulemaking, filed June 4, 2004, Exhibit E, p. 2.

noncommercial educational use in that community.

Respectfully submitted,

**JACKSON HOLE COMMUNITY RADIO, INC.**

By:



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Its Attorney

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May 20, 2005

**EXHIBIT E**  
**ENGINEERING STATEMENT RE;**  
**RESPONSE TO THE UNIVERSITY OF WYOMING COMMENTS**  
**FCC NPRM MARCH 14, 2005**  
**ADDITION OF EDUCATIONAL RESERVED CHANNEL**  
**JACKSON HOLE COMMUNITY RADIO**  
**JACKSON, WYOMING**

**INTRODUCTION**

This engineering statement is prepared on behalf of Jackson Hole Community Radio, hereafter JHCR. It presents information relating to the current FCC Notice of Proposed Rule Making (NPRM) in Docket DA 05-653 to add channel 294 to Jackson Wyoming as an educational reserved channel. This statement is responsive to the comments presented by the University of Wyoming in opposition to that new allotment.

All information and material presented herein is based on current FCC Rules and policy. It also relies on guidance obtained from the FCC Rulemaking in MM Docket No. 95-31, Second Report and Order (R&O), dated March 4, 2003, titled; Reexamination of the Comparative Standard for Noncommercial Educational Applicants.

**BACKGROUND**

JHCR has proposed and the FCC has implemented an NPRM, released March 14, 2005, to add channel 294, and to reserve it to provide non-commercial community educational programming, to the town of Jackson, Wyoming. The University of Wyoming has objected to the proposal on the basis that the first or second new service, required under the FCC Rules, is not met. This statement will provide a rebuttal that the requirement is properly met.

## UNIVERSITY OF WYOMING OBJECTION

The University comments in its objection cites several facilities studied to determine other noncommercial educational service to Jackson. Those facilities, as extracted from the University filing, are listed below.

<u>CALL</u>	<u>CHAN.</u>	<u>LOCATION</u>	<u>ERP / HAAT</u>	<u>MI. / DEGREES</u>
KURT(CP)	206	JACKSON, WY	2.2kw / 1102ft.	0.0 - NA
KNIL (CP)	202	JACKSON, WY	2.35kw / 1073ft.	0.0 - NA
KUWJ(LIC)	212	JACKSON, WY	3.0kw / 1106ft.	0.0 - NA
KJHB-LP	249	JACKSON, WY	0.1kw / -502ft.	2.5 - 263
KJHR-LP	261	TETON VILLAGE, WY	0.1kw / -751ft.	8.5 - 337
KUWA(LIC)	217	AFTON, WY	0.4kw / -312ft.	43.7 - 195
KBYI(LIC)	263	REXBURG, ID	100kw / 692ft.	63.8 - 289

University states, "Although KUWJ(FM) is presently the only NCE station currently on the air serving the Jackson Community, there are multiple construction permits or applications for new NCE FM station serving Jackson" (University opposition at page 3, line 3). University further states, "Thus, JHCR's second service showing does not seem to take into account the recently-granted permits by Broadcasting for the Challenged on Channels 202 and 206 ... or the still-pending competing applications filed by Abundant Life Broadcasting and the Moody Bible Institute of Chicago for a new station at Channel 216..."

University confuses the preclusion of an application with service from an operating facility. Any new NCE FM application at Jackson is precluded by the multiple mutually exclusive and long standing applications, as cited by JHCR. They are all well beyond the time in which a competing application could be filed. Service, however, is provided only

by the one permitted, constructed and licensed facility, KUWJ on channel 212 licensed to the University of Wyoming. As required under the FCC Rules for requesting a new allocation, Jackson Hole Community Radio considered only licensed full power educational stations and did not take into account any un-authorized facility at the time of its petition.

## **JACKSON HOLE COMMUNITY RADIO SECOND SERVICE**

When JHCR filed its petition in late 2004 there was one licensed NCE FM facility serving Jackson. There were several applications which had been on file but unprocessed at the FCC since late 1998 and early 1999, more than six years prior to the JHCR petition. The applications, and other facilities, preclude new applications on all of the educational reserved band. As a result JHCR turned to the new FCC adopted relief for new NCE FM entrants.

The JHCR petition was filed four months before two of the long competing NCE FM applications at Jackson were granted Construction Permits. The FCC adopted the NPRM to add channel 294 as an NCE FM reservation to Jackson, Wyoming on March 14, 2005. This was two weeks prior to the Construction Permit grant dates for channels 202 and 206 mentioned above. The granted facilities have not been built and possibly may not be built and hence do not now, and may never, represent another service to Jackson. For the purpose of satisfying the FCC requirements for the new NCE FM allocation, they may not be considered.

University supplied a technical analysis of other services studying the seven facilities listed above. One of the facilities is licensed and two are long standing applications with recent, post petition construction permits, as discussed above. Two of the facilities, KUWA at Afton and KBYI at Rexburg, are distant facilities, one with very low power and antenna height. Both are seriously terrain obstructed from serving the Jackson market, the Jackson

Hole valley, as are the Jackson stations from serving areas outside of the valley. This technical terrain limitation was extensively discussed in the JHCR petition. The University supplied technical analysis, in the map at Attachment A, confirms the JHCR petition, showing that there is no service from these facilities to the Jackson Hole valley and the proposed JHCR service area.

The University technical analysis further includes two Low Power FM stations, KJHB-LP and KJHR-LP. Low Power stations are secondary services and can not be considered as "services" for the allocation considerations in this case.

## **OTHER MATTERS**

University raises *Other Matters* in its opposition and therein questions the extent of the area of first and second service from the proposed JHCR facility. University states that it, "is uncertain how the station will be able to serve residents living beyond KUWJ's contour by using a transmitter located on the same mountain site." University then reiterates the findings of its technical analysis, and in doing so it also reiterates the original JHCR analysis, by citing the *likelihood of only poor quality service, because of terrain obstruction beyond the Jackson Hole valley*. University must raise this issue because it presumes that JHCR must find other services outside of the valley to fulfill its first or second new NCE FM service threshold. University contends that JHCR does not provide a new second service within the Jackson Hole valley. University is incorrect.

As shown above, and in its petition for allotment, JHCR stated that it will supply a *second service over its entire service area* and JHCR will supply a first service in the valley area beyond the present KUWJ contour. The new first service area is not critical in the JHCR allotment request because of the 100% second service provided by JHCR which meets the FCC threshold. The fact that service outside of the Jackson Hole valley from

JHCR, or any other broadcaster in the valley, will be poor due to the surrounding mountains and terrain obstruction, has no bearing on the allotment request. The fact that other services outside of the valley provide only poor service inside the valley also has no bearing on the allotment request. The new service population is sufficiently defined by the population within the valley.

## **CONCLUSION**

At the time of the JHCR petition, there was one NCE FM facility serving the town of Jackson and the surrounding valley area defined by the surrounding mountains which form Jackson Hole. As a logical consequence, the new JHCR facility would become the second NCE FM service and would provide a second service to 100% of its service contour. That contour covers all of the community of Jackson with a current population in excess of 7,000.

Respectively Submitted;

By   
Robert D. Culver, P.E.  
Md. Reg. No. 19672

May, 2005

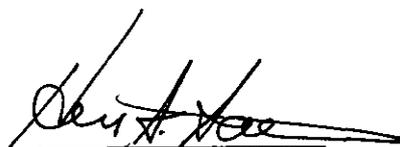
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Comments have been served by Hand Delivery or by First Class United States Mail, this 20<sup>th</sup> day of May, 2005, upon the following

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