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GARVEY SCHUBERT BARER

Please reply to ERWIN G. KRASNOW  
ekrasnow@gsblaw.com TEL EXT 2161

March 25, 2009

Our File No. 21723-00300-60

**DELIVERED BY HAND**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Avenue, NE, Suite 110  
Washington, DC 20002

**FILED/ACCEPTED**

**MAR 25 2009**

Federal Communications Commission  
Office of the Secretary

Re: Amendment of Section 73.202(b), Table of Allotments  
FM Broadcast Stations (Needles, California; Ehrenberg,  
First Mesa, Wickenburg, Kachina Village, and Williams, Arizona)

Dear Ms. Dortch:

On behalf of Rocket Radio, Inc., there is submitted herewith in response to the Public Notice released by the Commission on March 10, 2009 (Report No. 2883) an original and four copies of the Reply Comments of Rocket Radio, Inc. for inclusion in the above-captioned rulemaking proceeding.

Should any questions arise concerning this matter, kindly advise the undersigned.

Respectfully submitted,

**ROCKET RADIO, INC.**

By Erwin G. Krasnow  
Erwin G. Krasnow

No. of Copies rec'd 0+4  
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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

**FILED/ACCEPTED**

**MAR 25 2009**

*Federal Communications Commission  
Office of the Secretary*

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 08-85
Table of Allotments	)	RM-11427
New FM Broadcast Stations	)	RM-11517
(Needles, California; Ehrenberg, First	)	RM-11518
Mesa, Wickenburg, Kachina Village, and	)	RM-11519
Williams, Arizona)	)	

To: Office of Secretary  
Attn: Chief, Audio Division  
Media Bureau

**REPLY COMMENTS OF ROCKET RADIO, INC.**

Rocket Radio, Inc., by its attorneys, hereby submits its Comments in response to the Public Notice released by the Commission on March 10, 2009 (Report No. 2883), inviting the filing of comments on proposals to amend the Table of FM Allotments, Section 202(b) of the Commission's rules, that were submitted in this proceeding by Rocket Radio, Inc. ("Rocket Radio") (RM-11517), Univision Radio License Corp. ("Univision") (RM-11518), and Grenax Broadcasting, II, LLC ("Grenax") (RM-11519). In support thereof, the following is shown:

**I. Background**

In identically-worded Notices of Proposed Rule Making and Orders To Show Cause ("Notice") released in this proceeding on July 25, 2008 (DA 08-1713) and November 28, 2008 (DA 08-2629), the Commission sought comment on the following amendments to the FM Table of Allotments proposed by Michael Cusinato ("Cusinato"):

<u>Community</u>	<u>Channel</u>	
	<u>Present Allotment</u>	<u>Proposed Allotment</u>
Needles, California	---	287B1
Ehrenberg, Arizona	286C2	228C2
First Mesa, Arizona	247C	281C
Wickenburg, Arizona	287C2	286C2
Kachina Village, Arizona	286C2	246C2

In Comments, Response to Order to Show Cause, and Counterproposal filed on September 15, 2008, Grenax, the licensee of KFLX(FM), Kachina Village, Arizona, opposed the Cusinato proposal to substitute Channel 246C2 for Channel 286C2 at Kachina Village and to modify the license of KFLX accordingly. In order to avoid disruptions to listeners of KFLX and KHOV-FM, Wickenburg, Arizona, and to relieve the eventual permittee of a new Needles station of the financial burdens associated with any channel change for the two stations, Grenax asked that different coordinates be used in allotting Channel 287B1 at Needles. In the alternative, Grenax stated that if Channel 287B1 were to be allotted to Needles at the coordinates as proposed by Cusinato, Grenax requested, as a counterproposal, that Channel 285C2 be substituted for Channel 286C2 (KFLX's currently allotted channel) in lieu of Channel 246C2 as proposed by Cusinato. **Rocket Radio supports Grenax's counterproposal to substitute Channel 285C2 for Channel 286C2.**

Two other rulemaking petitions were filed on September 15, 2008, one by Rocket Radio and the other by Univision, both of which the Commission is now considering as counterproposals in this proceeding. Rocket Radio filed a Petition for Rule Making to allot Channel 287C2 to Williams, Arizona. Univision filed a Petition for Rule Making to upgrade the facilities of KHOV-FM by allotting Channel 286C0 at Wickenburg.

## **II. Allotment of Channel 287C2 to Williams Would Best Serve the Commission's Allocations Priorities and Thus, Would Be in the Public Interest**

As shown in the attached Engineering Statement of Joseph M. DiPietro, RFEngineers, Inc., which is hereby incorporated by reference herein, Channel 287C2 may be allotted to Williams in conformance with the minimum distance requirements of Section 73.207 of the Commission's rules and the community contour coverage requirements of Section 73.315, if the Commission were also to substitute Channel 228C2 for Channel 286C2 at Ehrenberg, Channel 281C for Channel 247C at First Mesa, and Channel 246C2 or Channel 285C2 for Channel 286C2 at Kachina Village.

### **A. Williams Has All the Attributes that the Commission Traditionally Associates with a Community**

The city of Williams qualifies as a community eligible for an allotment priority. According to the 2000 U.S. Census, Williams had a population of 2,842. The 2006 U.S. Census estimates that the population of the city is 3,094. Because of its location near the South Rim of Grand Canyon National Park, Williams is a major tourist stop. The city of Williams operates under the Council-Manager form of government and is served by the Williams Unified School District. Three schools, Williams Elementary Middle School, Williams High School, and Excel Education Center (which is not a part of the District) serve the city.

Clearly, Williams enjoys attributes that the Commission traditionally associates with a community. Incorporated communities listed in the U.S. Census are presumed to have the status of a community for allotment purposes. See Arnold and Columbia, California, 7 FCC Rcd 6302 (1992). Moreover, the Commission has previously held that Williams has the status of a community for allocations purposes by allotting to Williams an FM channel (Channel 244C2) and an AM channel (KYET, 1180 kHz).

## **B. Service to White and Gray Areas**

As explained in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982) (“Assignment Policies”), the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). Under Rocket Radio’s proposal, Williams will receive its second full-time aural transmission service (Priority 4). See Engineering Statement. In furtherance of Priority 1, 558 persons will receive a first local service (i.e., serving a “white area”). An additional 14 persons will receive a second full-time aural service (i.e., serving a “gray area”) (see Priority 2). As noted in the Engineering Statement and as explained below, the foregoing analysis is premised on removing from consideration KYET(AM), a station which has been dark and is not expected to resume operation at Williams. When KYET is removed from consideration, 558 persons would receive a first aural service and an additional 14 persons would receive a second aural service. Id. If KYET were to be included in the analysis, then 558 persons would receive a second full-time aural service.

## **C. KYET(AM) Will No Longer Operate as a Williams Station**

The FCC’s CDBS database lists KYET's status as “Licensed and Silent.” KYET went off the air on January 15, 2007 (BLSTA-20070125ABV) and did not resume operation until January 12, 2008 (BLSTA-20080711ADG). During the short period of time that it has not been silent, the station has operated at a temporary site using 50 Watts and a horizontal long wire antenna, 6-meters above the ground. On July 3, 2008, KYET again ceased operation. On February 2, 2009, KYET filed an application to relocate its transmitter and to change the community of license from Williams to Golden Valley, Arizona (BP-20090202AVS).

The licensee of KYET has advised the Commission that the station permanently lost its licensed site and despite an exhaustive search, has been unable to find a new permanent site at Williams. The licensee has no intention of resuming operation at Williams as evidenced by the application it filed on February 2, 2009, to relocate its transmitter site and to change community of license from Williams to Golden Valley, Arizona (BP-20090202AVS). Based on these facts, it is fair and reasonable to conclude that KYET is no longer a transmission service at Williams. Accordingly, KYET should not be included in the list of aural authorizations licensed to provide service to Williams.

### **III. Under the Commission's Allotment Priorities, the Proposed Williams Allotment Should be Favored Over the KHOV-FM C0 Proposal**

Rocket Radio's proposal is consistent with the proposed allotments at Ehrenberg, First Mesa, Wickenburg, and Kachina Village. It conflicts, however, with Needles and with Univision's C0 proposal. Needles may be disregarded, and indeed, must be dismissed, as discussed below. Thus, the Commission must determine as between Rocket Radio and Univision, which of the two is to be preferred. The facts clearly favor Rocket Radio.

As indicated above, Rocket Radio proposes to provide a second full-time aural transmission service and also to provide 558 persons with a first local service and 14 persons with a second local service (premised on KYET's discontinuance of service at Williams). By contrast, Univision does not propose to provide a first or second transmission service. Under the KHOV-FM Class C0 proposal, **no** persons will receive a first full-time aural service. The attached Engineering Statement shows that the majority of the gain in population, more than 800,000 persons, is in the southeast towards Phoenix. This area is presently served by a wide selection of commercial and non-commercial educational stations including KNAI, KPHF, KBAQ, KLNZ, KFLR-FM, KJZZ, KNIX-FM, KTAR-FM, KPKX, KDKB, KOOL-FM, KVIB,

KMVA, KYOT-FM, KMXP, KKFR, KESZ, KSLX-FM, KZON, KAJM, KZZP, KHOT-FM, KOMR and KMLE.

#### **IV. The Needles Petition Must be Dismissed**

Michael Cusinato, the original petitioner in this proceeding, has not submitted any comments or reply comments in support of his proposal to allot Channel 287B1 to Needles, California (RM-11427). Based on the undersigned counsel's review of the listing of documents filed in MB Docket 08-85 as evidenced by the Commission's Electronic Comment Filing System, Cusinato did not submit an expression of interest in response to the Notices of Proposed Rule Making released by the Commission on July 25, 2008, and November 28, 2008. In paragraph 12 of both Notices, the Commission expressly states that "a showing of continuing interest is required in Paragraph 2 of the Appendix before a channel will be allotted."<sup>1</sup> It has been the longstanding policy of the Commission to dismiss a rulemaking petition where, as here, the proponent of a channel change has not submitted an expression of interest. See, e.g., Bokchito and Clayton, Oklahoma, 22 FCC Rcd 19299 (Media Bureau 2007). In light of Cusinato's failure to file an expression of interest in response to either of the Notices released by the Commission in this proceeding, his rulemaking petition for Needles must be dismissed.

#### **V. Conclusion**

The proposed allotment of Channel 287C2 at Williams serves the public interest as it will result in a preferred arrangement of allotments in accordance with the criteria enunciated in Assignment Policies, by providing a second transmission service to a community, a first aural reception service (i.e., serving a "white area" population) and a second aural reception service (i.e., serving a "gray area" population).

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<sup>1</sup> Paragraph 2 of the Appendix clearly states that the proponent is expected to file comments "even if it only resubmits or incorporates by reference its former pleadings" and "should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly." The Commission warns proponents that the failure to file may lead to denial of the request.

For the reasons stated above, Rocket Radio submits that the allotment of Channel 287C2 at Williams would serve the public interest and accordingly, respectfully requests that the Commission adopt the following amendments to the FM Table of Allotments:

<u>Community</u>	<u>Present Allotment</u>	<u>Proposed Allotment</u>
Williams, Arizona	--	287C2
Ehrenberg, Arizona	286C2	228C2
First Mesa, Arizona	247C	281C
Wickenburg, Arizona	287C2	286C2
Kachina Village, Arizona	286C2	285C2

Rocket Radio hereby commits that if Channel 287C2 is allocated to Williams and if the Commission grants its application for a construction permit, it will construct the facilities promptly. Also, if Orders to Show Cause to Univision and Grenax are issued as set forth in the Notice, Rocket Radio hereby states that it will reimburse Univision and Grenax for their reasonable expenses in changing channels.

Respectfully submitted,

**ROCKET RADIO, INC.**

By: 

Erwin G. Krasnow, Esq.

John Wells King, Esq.

**GARVEY SCHUBERT BARER**

1000 Potomac Street, N.W.

Fifth Floor, Flour Mill Building

Washington, DC 20007-3501

Its Attorneys

Date: March 25, 2009

DC\_DOCS:683690.2



# RFEEngineers, Inc.

## Engineering Statement

This Engineering Statement is in support of the Petition for Rulemaking filed by Rocket Radio, Inc. requesting a change in the FM Table of Allotments to allot Channel 287C2 at Williams, Arizona (RM-11515).

The proposed community of license is not located in an urbanized area. The proposed allocation site is the site of FCC Registered Tower Number 1221567.

### 73.207 spacing:

As shown in Table 1, under the current arrangement, the proposed allocation site is short-spaced to KFLX, Kachina Village, AZ and KHOV-FM, Wickenburg, AZ. The Petition for Rule Making filed by Michael Cusinato to allot Channel 287B1 at Needles, CA (RM-11427) proposes, among other things, to substitute Channel 246C2 for Channel 286C2 at Kachina Village. Alternatively, Rocket Radio has no objection to the substitution of Channel 285C2 for 286C2 at Kachina Village. Either substitution removes the short-spacing of KFLX. Further, the rulemaking proposes to substitute 286C2 for 287C2 at Wickenburg. This removes the short-spacing of KHOV-FM.

Table 2 shows the 73.207 spacing after grant of the rulemaking. The allocation site is now fully spaced.

ID	City	St	Chan	CL	Stat	Prefix	ARN	Dist	Min 207	Clear 207
KFLX	KACHINA VILLAGE	AZ	286	C2	LIC	BLH	19991202ABY	69.56	130	-60.44
KHOV-FM	WICKENBURG	AZ	287	C2	LIC	BLH	19910830KD	130.18	190	-59.82
KVRD-FM	COTTONWOOD	AZ	289	C3	LIC	BLH	19971110KI	64.54	56	8.54

Table 1: 73.207 spacing prior to RM11427.

ID	City	St	Chan	CL	Stat	Prefix	ARN	Dist	Min 207	Clear 207
KHOV-FM	WICKENBURG	AZ	286	C2	ADD	RM	11427	130.18	130	0.18
KVRD-FM	COTTONWOOD	AZ	289	C3	LIC	BLH	19971110KI	64.54	56	8.54

Table 2: 73.207 spacing after grant of RM11427.

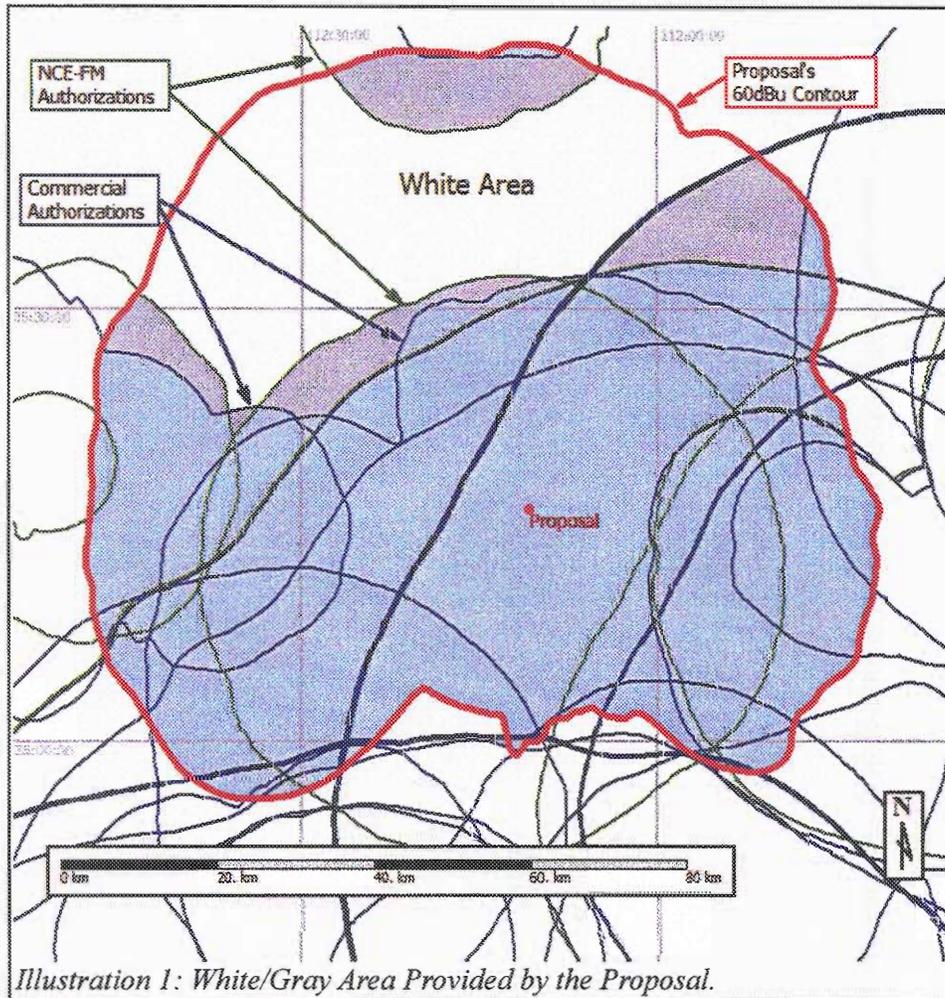
### Community of License Coverage:

The 70dBu class contour for a C2 (50kW at 150m) is 32.6km. This class contour, centered on the allocation site, encompasses 100% of Williams, AZ. The contour was created assuming uniform terrain.

Other aural services licensed to Williams are KYET (1180 AM) and KWMX (FM 244C2).

**White Area/ Gray Area:**

The attached Illustration, *White/Gray Area Provided by the Proposal*, details reception services in the region, depicting the 60dBu protected contours of all commercial and noncommercial-educational FM stations (there is no AM service to the White/Gray Area, so no AM contours are shown). Assuming a new station operating with maximum facilities at the allocation site, 558 persons would receive a first full-time aural service and an additional 14 persons would receive a second full-time aural service. Population counts are based on the 2000 Census. If authorized AM station KYET (presently dark) is included in the analysis 558 persons would receive a second full-time aural service.



*Illustration 1: White/Gray Area Provided by the Proposal.*

The green contours are from NCE authorizations, the blue contours are from Commercial authorizations and the red contour is from the proposed allotment. The blue shaded areas presently receive two or more AM or FM services, the gray shaded areas presently receive one FM service and the white area presently receives no AM or FM service.

**Population and Area of the Proposed Allotment:**

The population of a full facility station's 60dBu contour at the proposed allotment site is 8,405 persons. The area covered by the contour is 7,631km<sup>2</sup>.

**Transmission Services at Williams, AZ:**

Two aural services are presently licensed to serve Williams, AZ: KWMX(FM) and KYET(AM). The FCC's CDBS database lists KYET's status as "Licensed and Silent." KYET operations ceased on January 15, 2007 (BLSTA-20070125ABV) and were not resumed until January 12, 2008 (BLSTA-20080711ADG). Under a STA which was initially granted by the Commission on December 2, 2005, KYET operated at a temporary site using 50 Watts and a horizontal long wire antenna, 6-meters above the ground. On July 3, 2008, KYET again ceased operation. On February 2, 2009, KYET filed an application to relocate its transmitter and to change the community of license from Williams to Golden Valley, AZ (BP-20090202AVS).

The licensee of KYET has advised the Commission that the station permanently lost its licensed site and despite an exhaustive search, has been unable to find a new permanent site at Williams. As noted above, KYET has been dark since July 2008. The licensee has no intention of resuming operation in Williams as evidenced by its application to change community of license. Based on these facts, KYET should not be included in the list of aural authorizations licensed to provide service to Williams, Arizona.

In light of the above, Williams has only one aural transmission service, KWMX(FM), and accordingly, the Proposal should be considered as providing a second local broadcast transmission service to Williams. Moreover, if coverage by KYET is excluded, a study of reception services shows that the Proposal will provide a first aural reception service to 1690 km<sup>2</sup> ("white area") to 558 persons, see Illustration 1, *White/Gray Area Provided by the Proposal*.

**KHOV-FM C0 Proposal:**

The KHOV-FM proposal would increase the station's area of protected coverage from 8,574km<sup>2</sup> to 17,824km<sup>2</sup> and increase the population from 22,240 to 919,880. The gain area includes 357km<sup>2</sup> of White Space containing Zero population. The majority of the gain in population, more than 800,000, is in the southeast towards Phoenix. This area is presently served by a wide selection of commercial and non-commercial educational stations including; KNAI, KPHF, KBAQ, KLNZ, KFLR-FM, KJZZ, KNIX-FM, KTAR-FM, KPKX, KDKB, KOOL-FM, KVIB, KMVA, KYOT-FM, KMXF, KKFR, KESZ, KSLX-FM, KZON, KAJM, KZZP, KHOT-FM, KOMR and KMLE.

**FM Allotment Priorities:**

Based on the forgoing analysis, the proposed allotment of Channel 287C2 at Williams, AZ serves the public interest as it will result in a preferred arrangement of allotments in accordance with the criteria contained in Revision of FM Assignment Policies and Procedures, Second Report and Order, 90 FCC 2d 88 (1982) by providing a second transmission service to a community, a first aural reception service (i.e., serving a "white area" population) and a second aural reception service (i.e., serving a "gray area" population.).

RFEngineers, Inc.  
Joseph M. DiPietro, P.E.  
25 March 2009

**CERTIFICATE OF SERVICE**

I, Sharon Chichester, a secretary with the law firm of Garvey Schubert Barer, hereby certify that on this 25<sup>th</sup> day of March, 2009, copies of the foregoing REPLY COMMENTS OF ROCKET RADIO, INC. have been served by United States first class mail, postage prepaid, upon the following:

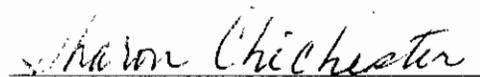
Michael Cusinato  
1705 Peridot Ct.  
Castle Rock, Colorado 80108

Scott R. Flick, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, DC 20037  
Counsel to Univision

Univision Radio License Corporation  
1999 Avenue of the Stars  
Suite 3050  
Los Angeles, California 90067

M. Scott Johnson, Esq.  
Fletcher, Heald and Hildreth, PLC  
1300 North 17th St., 11th Floor  
Arlington, VA 22209  
Counsel to Grenax

Grenax Broadcasting II, LLC  
10337 Carriage Club Drive  
Lone Tree, Colorado 80124

  
Sharon Chichester