

April 17, 2009

Attachment B to Exhibit 32

**Addendum to Section 307(b) Narrative
for
Application of Meadows Media, LLC
to
Increase Power of Station KLVF at Las Vegas, New Mexico**

I. Introduction & Summary

This exhibit will serve to respond to the letter that the Audio Division directed to Meadows Media, LLC on March 13, 2009. In order to set the stage for this response, and to allay certain concerns reflected in the March 13 letter, we will first describe the history of the projected plans for relocation of station KLVF to Pecos, New Mexico, the difficulties encountered in effectuating that project, and its subsequent abandonment. We will then turn to the specific matters raised in the March 13 letter. In particular, we will demonstrate that under both historic ways of analyzing such matters and more modern constructs, the current application to increase the power of station KLVF in Las Vegas will optimize the public interest as it relates to this FM channel assignment.

Specifically, we will establish that:

1. Meadows Media originally proposed the move to Pecos in good faith and in the belief that from the new tower location, and with the assistance of a booster, Meadows would be able to serve both Pecos and a considerably larger overall population. Those hopes were dashed when effectuation of the booster proposal was blocked.
2. Meadows Media did not engage in “gamesmanship” or “manipulation” in basing its original engineering showing on actual terrain and the Longley-Rice method of predicting signal propagation.
3. The instant Meadows proposal, when analyzed using uniform terrain, will promote service to white, gray and underserved rural areas.
4. KLVF will provide a first fulltime aural service to a number of local residents and a large mobile audience on Interstate 25, as well a second fulltime aural service.

5. The perceived “loss area” in and around Santa Fe has abundant service, whereas the rural gain area is poorly served at present.

6. KLVF has never broadcast to the “loss” area, and therefore the hypothetical Pecos assignment is not a service on which the public has come to rely.

This exhibit is not intended to supplant the other Section 307(b) considerations that the applicant has presented previously. Rather, the detail set forth in the original application, including the information supplied as to the remarkable level of public service provided by KLVF in its present incarnation, remains valid. However, the applicant has conducted a new engineering analysis based on methodology described by the Audio Division in the March 13 letter, and the results of that work (Appendix 6 hereto) supplant Exhibit 1 to Attachment A to the original Exhibit 32.

Finally, Attachment A stressed (at pages 11-12) that approval of the instant application will facilitate increased minority ownership of broadcast stations, as it represents the only unfulfilled condition for the sale of KLVF to Baca Broadcasting. Commission policy, as expressed on countless occasions, supports the elimination of barriers to minority ownership. Yet the March 13 letter completely ignored this aspect of Meadows’ proposal, as well as the exemplary record of local public service compiled by the owners of Baca Broadcasting in their current capacity as local managers for Meadows of KLVF. As such, the March 13 letter effectively erects a new and entirely unnecessary obstacle to this specific opportunity to increase ownership of FM stations by Americans of Hispanic heritage. In the application context, as contrasted with a channel allotment rulemaking, it is appropriate to consider the specific merits of the service that will be rendered by actual owners, and not guesswork about what some generic set of owners might do.

II. Background

Turning back to the beginning of this matter, the original proponent of changing the city of license of KLVF to Pecos was KFUN/KLVF Inc., a corporation owned by Dennis Mitchell. He filed the petition for rulemaking to make the channel allotment change on January 16, 2002.

An important part of that modification would have been the additional population to be served with the new Pecos facility. However, it would not have been as simple as it may sound for the station to actually reach that additional population, due to terrain anomalies in this part of New Mexico.

Specifically, almost all of that additional population evidently resides in the immediate vicinity of Santa Fe, New Mexico, at the foot of the **western** slope of the

Sangre de Cristo Mountain range. In contrast, the proposed transmitter site was approximately 40 km **east** of Santa Fe. The Sangre de Cristo Mountains rise to heights in excess of 12,000 feet in the path between the transmitter site and the principal 'gain area' population. Perpendicular to this path are several ridges running generally north to south. The westernmost of these ridges skirts the eastern boundary of Santa Fe. Thus, these mountains would have entirely blocked actual reception in Santa Fe of the signal of the proposed Pecos facility of KLVF.

Meadows Media, LLC acquired the license for station KLVF from KFUN/KLVF Inc. on June 4, 2004. As such, Meadows stepped into the shoes of KFUN/KLVF Inc. with respect to the rulemaking proposal to change the city of license of KLVF to Pecos. Meadows at that time sincerely believed that the reallocation to Pecos would be in the public interest, primarily because of the gain in overall population to be served, as described in Meadows' comments in support of the reallocation filed on August 9, 2004. Because of the terrain obstructions noted above, Meadows Media expected to provide the signal of KLVF to the Santa Fe area via use of an on-channel booster.

Effective November 28, 2005, after a wait of almost four years from Mr. Mitchell's submission of the petition for rulemaking, the Audio Division finally issued a Report and Order reallocating KLVF's FM channel (264C3) from Las Vegas to Pecos, subject to certain conditions, including the submission of an application for specific facilities serving Pecos, and the inauguration of program tests with the Pecos facility. *See Cimarron, Las Vegas and Pecos, New Mexico*, 20 FCC Rcd 16255 (Audio Div. 2005).

On January 17, 2006, Meadows Media filed an application on FCC Form 301 (File No. BPH-20060117AFE) for a permit for construction of facilities to implement the rulemaking change. As part of that application, Meadow Media prepared a map (Appendix 1 hereto) showing the 60 dbμ contour of KLVF's proposed Pecos facility using the Commission's 'standard' contour prediction method, which considers actual terrain, but only in the range from 3 to 16 km from the proposed transmitter site. That map purports to predict that KLVF would have an excellent signal in Santa Fe.

Meadows Media was, however, under no illusion as to the accuracy of the standard method's prediction of the signal strength that KLVF would have in the Santa Fe area, given local terrain. A study made using the much more sophisticated "Longley-Rice" method (Appendix 2) showed that there would have been no listenable signal in Santa Fe. This was the expected result based on the applicant's knowledge of local terrain.

The extent of the terrain obstructions on the path between Santa Fe and the transmitter site of the Pecos facility is illustrated by the profile graph attached hereto as Appendix 3. Note that the "average terrain" from 3 to 16 km on the path west (toward Santa Fe) from the transmitter site lies far below the transmitter site elevation; hence the

standard method's prediction that the KLVF signal would be strong in Santa Fe. But not only is there one major obstruction *within* 16 km from the transmitter site on that path, but no fewer than seven additional ridges effectively block the signal over the *next* 18 km (i.e., in the area that lies between 6 and 24 km east toward the transmitter site from Santa Fe).

Accordingly, Meadows also filed, on May 18, 2006, an application (File No. BNPFTB-20060518ACZ) on FCC form 349 for a permit for construction of a booster facility in Santa Fe. Attached hereto as Appendix 4 are maps showing the booster's anticipated coverage relative to the 60 dbμ contour of KLVF's Pecos facility (using the Commission's 'standard' contour prediction method). The first of these maps shows the predicted coverage of then-proposed KLVF facility as a whole, while the second focuses in on the city limits of Santa Fe. These same maps were exhibits 10-2 and 10-3 to the booster application.

Unfortunately, in the multi-year period of delays involved in the Commission's review of the request for reallocation of KLVF from Las Vegas to Pecos, and in consideration of the ensuing Form 301 and Form 349 applications, the situation on the ground in Santa Fe was changing in ways that Meadows Media had not anticipated.

Notably, in August 2005, IHR Educational Broadcasting became the licensee of noncommercial educational FM station KXXQ, Milan, New Mexico. KXXQ operates on FM channel 264 (100.7 MHz), the frequency also occupied by KLVF. In early 2006, IHR filed an application (File No. BLFT-20060321AAH) for a license for an FM translator facility in El Dorado, New Mexico, on the southern edge of Santa Fe.

That translator station itself (K283AQ) would not have interfered with Meadows Media's planned Santa Fe booster, nor would Meadow Media's booster have caused interference to the output channel of the translator. However, IHR became concerned that the booster would interfere with reception by the IHR translator of its input frequency, namely 100.7 MHz, the frequency shared by station KXXQ and station KLVF. Therefore, on July 3, 2006, IHR petitioned to deny the Meadows Media booster application, raising the issue of interference to the translator's input channel.

Notwithstanding the petition to deny, the Audio Division granted Meadows Media's booster application. The Division was evidently working from the premise that the booster application could be denied based only on actual interference as opposed to predicted interference. Nevertheless, Meadows Media's technical consultant advised the applicant that the proposed booster operation in Santa Fe would, without question, interfere with the ability of K283AQ to receive (in El Dorado / Santa Fe) the signal of the parent station, as the latter communities are very far from the KXXQ transmitter site and consequently the main KXXQ signal is weak in the Santa Fe area.

There could be no point in building the booster facility only to then see it be shut down at the behest of IHR. This is the principal reason why Meadows Media did not proceed to construct the booster. Correspondingly, frustration over that key aspect of the applicant's efforts to expand service was a major part of why Meadows Media abandoned the planned change in the city of license of KLVF to Pecos.

This does not mean that Meadows Media was insincere in its stated wish to serve the community of Pecos primarily. Will Sims, majority owner of Meadows, lived in Pecos for many years and is intimately familiar with the needs of that community. Yet in radio station operation it is also necessary to make payroll, pay the rent, music license fees, FCC regulatory fees and other bills. KLVF would not have been able to survive solely on revenues from Pecos without the ability to reach the larger Santa Fe area as well. Indeed, both of the stations that are licensed to Pecos presently employ on-channel boosters in Santa Fe, and could not exist without the coverage provided by those boosters.

While Meadows Media was engaged in reevaluating the project, its owners also came to realize that the public interest would best be served, after all, by leaving KLVF in Las Vegas, and by assigning the station's license to Baca Broadcasting. Joseph and Loretta Baca, the principals of Baca Broadcasting, have been managing KLVF for Meadows Media for the past several years.

The purchase of KLVF would have been beyond their means at the outset of Meadows Media's plans to move to relocate KLVF to Pecos. However, by 2008 they succeeded in qualifying for a loan guaranteed by the Small Business Administration to purchase the station and thereby continue to serve Las Vegas as they had done in the past.

In the original Section 307(b) exhibit to the instant application, Meadows explained that changed circumstances precipitated the decision to leave KLVF licensed to Las Vegas. However, the applicant did not detail all of the history set forth above.

To that extent, Meadows may have inadvertently contributed to some confusion on the part of the Commission's staff. In particular, in the original application, Meadows did not dwell on the issue of the once-perceived 'gain area' possible in connection with the move to Pecos. That was because, with the loss of the booster, service to the 'gain area' had become an unattainable dream.

Meadows trusts that the foregoing will serve to allay any suspicion that any significant number of persons will, as the result of retention of KLVF in Las Vegas, actually be deprived of FM service that they could otherwise receive. Rather, it would be the move to Pecos that would deprive listeners of service to which they have become accustomed, as explained in more detail in Section VI and VII below.

III. Meadows Media Did Not Engage in “Gamesmanship” in Presenting Data to the FCC on Anticipated Service to Underserved Rural Areas.

We now turn to the concerns expressed in the March 13 letter from the Audio Division. It is troubling that the letter appears, without justification, to impute improper motives to Meadows Media. The applicant is accused, at page 2 of the letter, of “gamesmanship” for the use of actual terrain data in calculating the number of persons in underserved areas who would receive a new service from the KLVF power increase at Las Vegas.¹ The March 13 letter asserts that the Commission has “never accepted such showings” for the “purpose of Section 307(b) gray and white area determinations.”

It is thus implied that Meadows was “manipulating coverage showings” due to the assumption of uniform terrain in the FM allotment proceeding that led to the 2005 decision approving the planned relocation to Pecos, as contrasted with the “use of actual terrain” in evaluating the merits of the proposed power increase in Las Vegas. Sadly, these accusations do not comport with the comments that Meadows Media filed on August 9, 2004 in support of the proposed reallocation to Pecos. There, Meadows’ engineer responded to the request in the rulemaking Notice (*Las Vegas and Pecos, New Mexico*, 19 FCC Rcd 10222 (Audio Div. 2004)) for “information describing the size and population of [the petitioner’s] predicted gain and loss areas.” Unfortunately, the Division provided no guidance as to the method to be used in calculating such areas.

Meadows’ engineer has always worked in the real world of station construction and operation, and not solely in the paper world of FCC allotment procedures. Thus, he was not aware that the practice in the rulemaking context had been to assume uniform terrain for the purpose of ascertaining gain and loss areas. Accordingly, he prepared his calculations of the gain and loss areas using the Radiosoft program that relies on actual terrain. His engineering statement (Appendix 5 hereto), submitted with Meadows’ comments, stated that the existing KLVF operation in Las Vegas encompassed an area of 1,311 sq. km. with a population of 19,031. He went on to observe that the “proposed KLVF operation, using the proposed site near Pecos, will cover an area of 4,923 square kilometers and a population of 87,174 within the proposed 60 dbu contour,” for a “gain area” population of 68,143.

The Audio Division's Report & Order, issued 14 months later, made no reference to Meadows’ claim that the net gain area had a population of 68,143. Rather, the Division stated that relocation to Pecos would produce a “net gain in service to 52,059 people.” There was no criticism of the numbers supplied by Meadows’ engineer. Nor

¹ As seeming support for the proposition that the use of actual terrain data on a channel assignment application constitutes “gamesmanship,” the March 13 letter cited to *Jerrold Miller, Esq.*, 12 FCC Rcd 9362 (MB 2008). The *Miller* case involved an unauthorized pleading filed in response to a Motion for Reconsideration by the opposing party, and an attempt to protect multiple facilities. Any resemblance to the instant case is strained, at best.

was there any discussion of the FCC's methodology, of “uniform terrain” assumptions, or of the reason why the FCC's staff came up with a much smaller gain area population figure than that provided by Meadows.

Accordingly, there was no basis for the Audio Division to have assumed that Meadows Media was playing fast and loose with the Commission in recognizing the existence of terrain variations in the engineering material filed with the instant application. Meadows Media obviously did not understand, in 2004, that its coverage analysis in the rulemaking context should have been based on uniform terrain. Likewise, there is no particular reason why Meadows Media would, in 2008, have understood that the staff would view uniform terrain as the only measure of coverage in evaluating the instant application to increase power in Las Vegas and forego the Pecos assignment. Just possibly, therefore, the applicant could be forgiven for not having realized that the FCC always assumes uniform terrain in such matters.

Then, of course there is the fact that the FCC does not always assume uniform terrain, even in the rulemaking context. *See, e.g., Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988); *see also Creswell Oregon*, 4 FCC Rcd 7040 (1989) and *Sonora, California*, 6 FCC Rcd 6042 (1991).

Woodstock permits consideration of actual terrain if certain factors are satisfied, and they actually *are* satisfied in this case. A specific transmitter site had been identified and inasmuch as it is an existing structure no FAA approval is required. Meadows, in its 2006 application (File No. BNPFTB-20060518ACZ) received FCC approval to use that site. As the result of land use restrictions, spacing constraints and terrain problems, it was deemed to be the only practicable site for the 2006 Pecos facility. Space was available at that site for Meadows, and Meadows planned to build there until the unforeseen problem with IHR's translator derailed those plans.

It is not necessary for purposes of the instant 2008 application for Meadows to seek treatment under *Woodstock*, given that the merits of Meadows' proposal are amply apparent using the uniform terrain method favored in the March 13 letter (see Sections IV through VI below). In addition, a demand that the application be considered under *Woodstock* might lead to further delay in securing a grant of the application. Accordingly, Meadows is not requesting treatment under *Woodstock*. Meadows invokes *Woodstock* here only to suggest that Meadows had the right under *Woodstock* to seek consideration of coverage derived from actual terrain data, and should not have been criticized by the agency for basing its initial presentation on actual terrain.

Regardless of the applicant's confusion over the method to be followed in ascertaining the gain area population in 2004, by the time the instant application was filed in 2008 Meadows had no particular reason to know that uniform terrain must be assumed in determining coverage. By that time, the matter was not the subject of an FM channel

allotment rulemaking. Rather, Meadows pursued the proposal to upgrade KLVF in Las Vegas in the context of a specific *application* for specific facilities.

Moreover, whereas the March 13 letter states that the Commission has “never accepted such showings” for the “purpose of Section 307(b) gray and white area determinations,” in actual fact the FCC has *many* times evaluated *application proposals* using actual terrain data. For example, for decades in comparative hearing proceedings, the merits of competing applications were evaluated under the “areas and populations” criteria of Section 307(b) using actual terrain data. Where service to white or gray areas could be shown, or where a third, fourth or fifth service would be provided, or merely where one applicant’s engineering demonstrated a significant coverage margin over its competitors, preferences were awarded, and sometimes the distinctions were deemed sufficiently important to support the award of a permit on Section 307(b) grounds alone, without consideration of the standard comparative issue.

Significantly, the Commission has repeatedly recognized that its rationale for generally not permitting the petitioner *in a rulemaking proceeding* for an allotment for a new station to use actual terrain data was the lack of certainty as to the eventual transmitter site location. *See, e.g., Cloverdale, Alabama*, 12 FCC Rcd 2090 (MM 1997) (principal city coverage context). Indeed, at the rulemaking stage frequently even the identity of the eventual owner was as yet unknown. A different situation is presented where the petitioner is already the licensee of an existing station and is merely pursuing an on-channel upgrade where competing proposals are not considered.

In any event, Meadows Media was consistent in its methods between the comments it submitted at the rulemaking stage and the showing made in the current application. It used actual terrain both times. Thus it ill behooves the Audio Division to accuse Meadows of “manipulation” or “gamesmanship” in this matter. Meadows may have been naive, but it was not attempting to mislead.

Further proof of Meadows’ good faith is that the supposedly “manipulated” methodology in the application yielded results that were *not* as useful for Meadows’ case as the uniform terrain method used by the staff in preparing its letter of March 13. Thus, Meadows had claimed credit for new second through fourth service to a total of 1,019 people. However, the Audio Division staff, in footnote 9, observed that using the uniform terrain method, the Meadows proposal would provide a new service to more than **2,732** people in underserved areas. It is therefore absurd to suggest that Meadows would have engaged in deliberate “gamesmanship” or “manipulation” in order to hurt its own cause.

Similarly, the March 13 letter accused Meadows of not including “all of the existing FM stations that overlap the gain area.” Again, where Meadows was looking at the matter based on actual terrain, and in light of the intimate knowledge that Meadows’

principals have of the local terrain and on the actual reception of broadcast signals in this part of New Mexico, they knew that other existing FM stations fail to provide actual service to the critical segments of the gain area. If Meadows's engineer had known that the Audio Division was only interested in an analysis based on uniform terrain assumptions, Meadows of course would have brought these other stations into the analysis. The uniform terrain assumption is more favorable for the Section 307(b) aspects of the instant application than reference to actual terrain, even after considering all signals theoretically reaching the new KLVF service area from other markets. Therefore, Meadows is *happy* to have Audio Division use the gain areas resulting from its Las Vegas proposal based on the uniform terrain assumption. Meadows would have used uniform terrain data in the first place if it had realized that that was what the Division wanted. Accordingly, it is unfortunate that the March 13 letter states that Meadows' work in this regard is "inexplicable." A simple telephone inquiry to the applicant as to its methodology would have provided the needed explication.

IV. When Analyzed Using Uniform Terrain, the Meadows Las Vegas Proposal Promotes Service to Rural Areas.

In light of the position of the Audio Division as set forth in the March 13 letter, Meadows commissioned the firm of DuTreil, Lundin & Rackley, Inc. ("DLR") to analyze the coverage of Meadows' proposed Class C2 facility in Las Vegas using the assumption of uniform terrain. The firm produced the technical study attached hereto as Appendix 6. Figure 4 to that study depicts the gain area resulting from the KLVF upgrade as against the hypothetical (uniform terrain) coverage that the facility that Meadows was authorized to build in Pecos would have provided.

As graphically shown on Figure 4 to Appendix 6, the "gain area" covers 4,976 sq. km. (1,921 square miles). This is contrasted with the "loss" area of 1,261 sq. km. (487 square miles). The gain area is thus almost *four times* as large as the hypothetical loss area. More importantly, the gain area is not well served, while the perceived "loss area" is extremely well served.

In the rural West there are not nearly as many available radio stations choices as one finds in more populous areas. As shown on Figure 2 to Appendix 6, the relatively few available listening options in Las Vegas become fewer and fewer as one travels east, north or south from Las Vegas. Substantial areas east and north of Las Vegas currently have only one fulltime aural service. The KLVF upgrade would provide a *first* fulltime aural service to a further segment between Las Vegas and Wagon Mound, New Mexico.

Using population "centroids," DLR calculates the white area population as 13, and the gray area population (summing the two gray area segments) as 100. The northern gray area segment includes the community of Ojo Feliz. Ojo Feliz has a substantial number of homes, as can be seen from the satellite view of the community on Google

Maps. Its only existing service comes from station KTAO in Taos, New Mexico. KTAO focuses on Taos and other communities on the western slope of the Sangre de Cristo Mountains, whereas KLVF focuses on the eastern slope.

As the FCC is well aware, last week wildfires raged through the Southwest, destroying over a hundred homes and killing three people in Montague County, Texas. See, http://www.cleburnetimesreview.com/local/local_story_102140944.html. Notably, Montague County has no FM station licensed to any local community.

If a similar event should threaten Ojo Feliz after KLVF were forced to move to Pecos (which would be the same thing as forcing KLVF to go bankrupt and silent), what radio station would provide a timely warning? As shown elsewhere herein, KLVF is operated as a model of local service, with the most complete and timely weather, traffic and emergency programming of any station in the area. The value of that programming will only expand as KLVF is allowed to increase power to reach remote areas like Ojo Feliz. Coincidentally, on this date a massive snowstorm is bearing down on major portions of Interstate 25 located in Colorado, north of the KLVF service area. Severe storms are also not unknown in the section of I-25 between Las Vegas and Trinidad, Colorado. In that regard, weather broadcasts by KLVF could prove critical.

Even though the white and gray resident population figures are not large in the abstract, the lack of current service is important to the people living there as well as to people who are passing through. Indeed, isolated ranch families, and those who live elsewhere but work on such ranches, need to be able to rely on radio for emergency information to a greater extent than those living in cities with abundant alternative means of communication. Further, the Commission should recognize that the applicant's Las Vegas proposal is not being compared to the proposal of a competing applicant who would serve hundreds of people in some other area.

In addition to the "first 60 dbu service" area detailed in Appendix 6, Meadows also claims Priority 1 credit for service to the permanent population of Wagon Mound, New Mexico, in light of Commission policy holding that a signal strength of 300 uV/m is "a level of service recognized by the Commission as adequate in rural areas, in the absence of interference from other stations." *Yermo and Mountain Pass, California*, 45 RR 2d 58 (1979), at n. 7.

In Wagon Mound and the surrounding area, KLVF's signal will be the strongest fulltime aural signal available, and will exceed 300 uV/m. There is no other station in this direction with which KLVF could interfere.²

² KGFT, Pueblo, Colorado, the nearest cochannel station, lies far to the north of Wagon Mound and the path south from the KGFT transmitter site is characterized by uneven terrain, with elevations rising above 7500 feet AMSL.

The 2000 census population of Wagon Mound was 369. This number, when added to the 13 people who will receive a first 60 dbμ service from KLVF, provides a decisional “priority 1” preference mandating the assignment of KLVF to Las Vegas as a Class C2 facility, even without reference to the mobile population discussed in Section V.

The population of Wagon Mound is 87.7% Hispanic. See <http://www.city-data.com/city/Wagon-Mound-New-Mexico.html>. Thus there is an added public interest factor here, related to service to a hitherto completely unserved minority population.

V. KLVF Will Provide a First Fulltime Aural Service to the Mobile Audience on Interstate 25.

As with permanent residents of remote areas, the mobile audience is also benefitted where local radio is available for emergency information and other news and services. It is highly significant that a major interstate highway, Interstate 25, passes through the white and gray area that would receive service from KLVF if the instant application is granted. Interstate 25 is the only north-south interstate in the 900 mile stretch between Las Vegas, Nevada and Wichita, Kansas. It is the main link between Denver and points south. The New Mexico Department of Transportation estimates traffic on I-25 at approximately six thousand vehicles per day north of Las Vegas, New Mexico. See Appendix 7.

In *Yermo and Mountain Pass, California, supra*, the Commission’s Allocations Branch assigned new FM channels to Yermo and Mountain Pass, California. The Branch acknowledged that a showing of service to unserved and underserved areas justified the assignments even though they did not conform to the Branch’s normal policy of assigning Class B stations to large communities.

Both Yermo and Mountain Pass (estimated population of 250-260) were too small to support new radio stations on their own, but Interstate 15 passed through these hamlets. Thus, the main purpose of the proposals was to provide a first aural service to a stretch of I-15 between Barstow, California and the Nevada border. An estimated 8 million people traveled along the highway every year, averaging about 22,000 per day. The Mountain Pass station would also provide a first FM service to 671 people in 6,055 sq. km., and a second FM service to 91 people in 517 sq. km. The Yermo station would likewise provide a first and second FM service to substantial populations, though not a first fulltime aural service.

After determining that Yermo and Mountain Pass were communities, the Branch stated, “we recognize that the transient population on Interstate 15 also has a need for radio service though this need may well be unrelated to the needs of either Yermo or Mountain Pass.” The Branch concluded that the Yermo request was “part of a plan to

provide much needed service to a large transient population....Thus, there is much public benefit from the proposal....” *Yermo* at para. 9.

Significantly, as alluded to above, the Commission gave credit for even a 15 mile stretch of highway that would not receive 60 dbμ service from the new stations. It would, however, receive a signal intensity of “at least 300 uV/m in this area, which is a level of service recognized by the Commission as adequate in rural areas, in the absence of interference from other stations, as is the case here.” *Yermo* at note 7.

Similarly, in New Mexico the segment that would receive a first service of 60 dbμ or better from the upgraded signal of KLVF borders on a very extensive area that presently receives no fulltime aural service of 60 dbμ or better. To the northeast of the KLVF “first service” area, extending outward to and past Wagon Mound, KLVF's signal will be the strongest one available, and will exceed 300 uV/m. While the residents of this area, outside residents of Wagon Mound, may be relatively few, the mobile audience is large, and it is when people are traveling that radio listening is the highest.

Along the same lines, in *Amboy, Baker, and Desert Center, California; Kingman, Mohave Valley, Parker, and Seligman, Arizona; and Boulder City, Caliente, Henderson, and Pahrump, Nevada*, 19 FCC Rcd 12405 (2004), the Allocations Branch allotted Channel 237A to Amboy, California even though it had a population of only 20 people. The Branch did so upon finding that the allotment would provide a first aural reception service to 3,680 sq. km., “including more than 10 kilometers of Interstate 40...” and a second aural service to 1239 sq. km. *Amboy*, at para. 12. The Branch, in the *Amboy* decision, scarcely mentioned the permanent population of the subject “white” and “gray” areas at all. The population may have been no more than the 20 residents of Amboy, judging from the opinion. However, the mobile population, estimated at “22,500 motorists per day,” was deemed adequate to support the allotment as satisfying priorities 1 and 2 for service to white and gray areas.

Based on KLVF's “extended service” on Interstate 25 beyond the predicted 60 dbμ contour, and the *Yermo* case, it is not merely a question of the seven km. stretch of Interstate 25 that passes through the predicted 60 dbμ “first service” area of KLVF, or the additional two km of the proposed second 60 dbμ service, but of many more kilometers of this highway where KLVF will provide adequate service to the large mobile audience of truckers and other travelers.

Following the *Yermo* and *Amboy* precedents, the constituent base that will rely on the improved signal of KLVF as a Las Vegas station cannot be ignored. The station already plays an important role to the traveling public, including truckers, by directing broadcasts at them and inviting them to stop in Las Vegas. The proposed power boost will amplify the public interest inherent in KLVF's service.

VI. The Perceived “Loss Area” Has Abundant Service, Whereas the Gain Area Is Poorly Served at Present.

A principal focus of the Audio Division's March 13 letter was concern for the perceived “loss area” occupied by 45,672 persons who would be deemed to receive service from KLVF in Pecos, assuming uniform terrain. March 13 letter at fn. 9.

Unfortunately, as indicated above, severe terrain obstructions preclude service to all but a few of the 45,672 “loss area” residents. See Appendix 3. However, even assuming that these residents would receive service from KLVF's formerly authorized facility at Pecos, such service is not nearly as significant under Section 307(b) as the service to be added to underserved areas east of the mountains by KLVF as a Las Vegas station.

Appendix 6 sets forth a simplified *Greenup* study. Its details are well detailed there and the findings of that study need not be repeated here in their entirety. However, Appendix 6 demonstrates that the “loss area” alluded to in the Division’s March 13 letter has, for all practical purposes, from 24 to 28 existing services. Accordingly, the “service value index” for the subject area is only 2,061.

This is a far cry from the net “loss” of 42,057 mentioned in the March 13 letter. The “loss” area SVI is indeed on the same order of magnitude as the SVI of the gain area surrounding Las Vegas on the north, east and south. Using the figures set forth in fn. 6 of the March 13 letter, for the majority of the gain area population, KLVF will provide a third, fourth or fifth fulltime aural service. Using the “centroids” method of population counting, and with the sophisticated mapping software employed by DLR, the gain area may be somewhat larger than perceived by the Commission, and contrary to the statement made in the March 13 letter, KLVF would clearly provide service to certain white and gray areas. However, in any event the SVI for the Las Vegas upgrade would be on the order of at least 981, or approximately 1350 if KLVF receives credit for its first (50 dbμ) service to Wagon Mound as discussed above.

Specifically, the composite gain area SVI premised on the resident population would consist of a first service of at least 382 people, plus second service of 100 (divided by 2 = SVI of 50), a third service to 1,326 per the Audio Division’s calculations (1,326 divided by 3 = 442), a fourth service to 959 (divided by 4 = 240), a fifth service of 447 (divided by 5 = 89), and, for the remainder, a sixth service to 883 (883 persons divided by 6 = 147). The sum of these numbers is 1,350. Treating the remaining gain area as receiving a sixth service is proper. As shown on Figure 4 of Appendix 6, the only portion of the gain area that is truly well served is that on the southwest margin, and within the 60 dbμ contours of the stations broadcasting from Sandia Crest near Albuquerque. However, that service segment (a wilderness west of Aurora, New Mexico) appears to be

nearly devoid of centroids. It may therefore be deemed unpopulated for purposes of SVI calculations.

Adding in an SVI factor for the mobile population passing through the white area of 6,101, the total SVI for the gain area is 7,451, or more much than three times as large as the SVI for the “loss” area in and around Santa Fe.

In the March 13 letter, the Audio Division cites *Tullahoma, Tennessee and Madison, Alabama*, 18 FCC Rcd 17636 (MB 2003) to support the notion that delivery of service to underserved areas does not offset the negative factors of the creation of an underserved area elsewhere, and extremely large net “loss” in the number of persons served (here, through the withdrawal of theoretical service to Santa Fe). However, *Tullahoma* involved a much larger net loss area population of 164,802 (a loss of 191,795 people served compared with a gain of 26,993) people in 7,881 square kilometers (a loss area of 8,126.7 square kilometers compared to a gain of 245.2 square kilometers). Further, Meadows is not *creating* and underserved area. Rather, Meadows is *remedying* a significant lack of service in large rural areas.

For Meadows, the perceived “lost” population number in the Santa Fe area is less than a quarter of the loss area population in *Tullahoma*. Yet even if KLVF had actually been built in Pecos, the citizens of Santa Fe would never have received the station due to the intervening Sangre de Cristo Mountains. As shown above, the Santa Fe population should not be included in any “loss” analysis because it is an illusory loss. *Tullahoma* is fully distinguishable on this basis alone.

The March 13 letter also cites *Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, Texas*, 7 FCC Rcd 5613 (MMB 1992)³ for the concept that service to underserved areas is of minimal importance as against a competing proposal for additional service to a vastly larger (albeit much better served) population.

Seabrook involved mutually exclusive parties seeking to modify their channels. The first proposal, at Seabrook, would serve 256,984 additional listeners and 3,780 square kilometers compared to 112,356 individuals and 5,754 square kilometers for the second and competing proposal. In order to offset the disadvantage of this overall population difference, the second proposal (for Huntsville) would have provided a second fulltime aural service to 455 listeners and an area of 245 square kilometers. The second proposal also provided a third fulltime aural service to an area of 937 square kilometers and a population of 18,629 persons, a fourth fulltime aural service to an area of 1,709 square kilometers and a population of 11,309 persons, and a fifth such service to an area of 882 square kilometers and a population of 8,243 persons.

³ A 2008 date was assigned to *Seabrook* in the March 13 letter, suggesting that this case was decided subsequent to the issuance of the *Streamlining Order*. However, the actual date of *Seabrook* was 1992

The Bureau deemed that number of second service individuals (455) to be *de minimis* in light of the overall service gains that would result from first proposal. The Bureau also looked past the third, fourth and fifth aural listeners, concluding, “[w]e do not believe the additional second through fifth nighttime reception service that the Huntsville proposal may provide outweighs the fact that the Seabrook proposal will provide additional reception service to twice as many people.”

Although the Bureau discounted the third, fourth and fifth service numbers of the Huntsville proposal, there was an overwhelming difference in the number of additional individuals to be served. Possibly the case might have turned out differently if the Huntsville proponent had bothered to perform a *Greenup* study demonstrating the abundance of service in the area to be reached by the Seabrook station. Further, the difference in the numbers served in Meadows’ case is approximately a quarter of that in *Seabrook*, and the “loss area” population in the Santa Fe vicinity is negligible when the impediment posed by the Sangre de Cristo Mountains is taken into consideration.

In any event, the trivialization of the priority two gray area service to be provided by the Huntsville petitioner does not seem consistent with current Commission policy, and it is likely that *Seabrook* would be decided differently today. Indeed, the exaltation of gross service numbers in *Seabrook* under priority four represents a policy that, if followed *in extenso* would leave very little service in rural areas, and a plethora of service in metropolitan areas even beyond what currently exists.

In sum, in view of the extremely well served nature of the “loss” area, it would be unfair and inequitable under Section 307(b) to value the an additional service there over the provision of service to the poorly served farm and ranch regions in the Las Vegas gain area.

VII. KLVF Has Never Broadcast to the “Loss” Area, and Therefore the Hypothetical Pecos Assignment Is Not a Service on which the Public Has Come to Rely.

In the original Section 307(b) exhibit, Meadows pointed out that its service to Pecos and the gain area around Santa Fe was a service on which the public had not come to rely. Therefore, as recognized in numerous Commission decisions, any concerns about loss in service do not rise to the same dimension as the withdrawal of an actual service on which the public *does* rely.

Inexplicably, this factor was not recognized in the March 13 letter except in an offhand “notwithstanding” dismissive reference. Yet it is a well-known principle of FM channel assignment regulation. For example, in *Chatom, Alabama*, 12 FCC Rcd 7664 (Alloc. Br. 1997), the Branch noted that the reallocation of station WFOV, Chatom, to Grove Hill would not injure residents of its initially-authorized service area:

[A]s Station WFOV(FM) is an unbuilt facility, the residents of that community will experience no loss of existing service if its proposal is adopted....

....Station WFOV(FM) is not constructed. Therefore, we do not consider its removal from Chatom to present the parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service that the public has become reliant on. (Citations omitted.) Moreover, the reallocation will not result in the relocation of Station WFOV(FM) from a rural to an urban area.

Chatom at paragraphs 3-4.

See also, Old Forge, New York, 21 FCC Rcd 2470 (Audio Div. 2006) and cases cited therein, as well as the cases cited in Attachment A, at 12-13.

In contrast, the exceptional service rendered by KLVF in Las Vegas **is a service on which the public has come to rely, and does rely** to a tremendous extent. A forced extinction of that service in Las Vegas would constitute a major *disservice* to the community.

Even the *Tullahoma* decision, cited in the March 13 letter, supports Meadows Media's position. There, the Commission affirmed that **the public has a legitimate expectation that the existing service will continue and the weight to be accorded that public expectation is substantial**. Here, the "*existing service*" is that provided by Meadows Media *in Las Vegas*. Meadows Media has never broadcast from Pecos with KLVF. The community of Las Vegas will lose a long standing, essential public service if the FCC were to somehow require Meadows Media to "move" in actual fact to Pecos.

Meadows never left the Las Vegas market. It surrendered its construction permit for Pecos without any complaint when effectuation of the gains projected for that move faded like the Cheshire cat. Under the teaching of *Tullahoma*, the public of Las Vegas has a legitimate expectation that KLVF will be there broadcasting the kinds of news, information and public affairs programming (as discussed in Appendices 8 and 9) that the community has come to rely upon.

VIII. Under the *Streamlining* Report & Order, the FCC Is to Expedite Channel Assignments in the Public Interest.

In *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) (the *Streamlining Order*), the FCC stated that the FM service is relatively mature

now, and “the same detailed rule making procedures [as used for new FM channel assignments] are not as essential when dealing with changes to authorized stations not subject to competing applications.”⁴ That language should not only be viewed as reflecting the decision to condense what had been a five step process (first, petition; second, Notice of Proposed Rulemaking; third, comments; fourth, Report & Order, and fifth, construction permit application) into one step. It also demonstrates a greater willingness to consider the needs of the applicant and of the service areas in terms of operating realities and with greater flexibility so as to fulfill the FM channel assignment priorities in a more efficient and sensible fashion, and with less emphasis on legalistic minutiae.

The principle of simplification certainly supports a grant of the KLVF application. Rather than force KLVF into a move that no longer is economically feasible due to changed circumstances, or to require it to abandon a pattern of actual, outstanding public service, the spirit of the *Streamlining Order* argues for an increase in power that will enhance the superior service provided by the Baca family in the past as managers for Meadows, and soon as owners of KLVF.

In light of the emphasis in the *Streamlining Order* on the conversion of the process of changing cities of license by applications (rather than rule makings) by specific existing licensees (rather than unknown future owners), it is appropriate under Section 307(b) to consider the **actual service provided by actual operators**.

This does not mean that precedent must be thrown overboard. Instead, the approach argued for here is consistent with jurisprudence under Section 307(b) going back many decades. For example, in *The Price Broadcasters, Inc. v. FCC*, 295 F.2d 166 (DC Cir. 1961), the Court affirmed an FCC decision in which the agency held that “the public interest would better be served by permitting a superior existing station to expand its coverage....”

Not only would the successful applicant have provided service to certain white and grey areas, but its record, like that of KLVF, was exemplary. The Court noted that in the proceedings below, “the manner in which Station WGET has served Gettysburg and Adams County was documented in minute detail,” including its ‘most generous’ offers of its facilities to the numerous civic, religious, educational, social and other public service organizations in Gettysburg and Adams County. [The hearing examiner] found that if WGET is the ‘successful applicant, its programming will be modified so as to devote more time and attention to the activities in the areas and communities which do not now receive primary service from the station.’”

⁴ The *Streamlining Order* is not mentioned in the March 13 letter. Yet the decision of the Commission in the *Streamlining Order* to discontinue the FM Table of Allotments for existing stations and to do away with the “rulemaking” process for FM channel assignment for such stations is an most important factor supporting the grant of the Meadows Media application.

Meadows has already documented the service now provided by KLVF, and is supplementing that here with further details as shown on Appendices 8 and 9. As indicated above, upon effectuation of the power increase sought in the instant application, KLVF will expand its service to provide even greater attention to the unmet needs of Wagon Mound, Mora and remaining population of the gain area, including the mobile population on Interstate 25, highway 104 and other routes.

IX. Historically, KLVF Has Never Been Associated with the Santa Fe and Albuquerque Markets.

KLVF should be allowed to remain in Las Vegas because in Las Vegas it serves a fully independent small market, whereas the proposed relocation to Pecos was premised on KLVF largely serving the Santa Fe market. Pecos by itself, with fewer than 1400 residents, is not large enough to support one radio station on its own, much less three radio stations. Thus, sheer economics would have directed Meadows to sell time on KLVF as a Pecos station primarily in Santa Fe.

Curiously enough, the need for local service in Santa Fe is to a large extent a function of the reality that several of the stations licensed to Santa Fe also cover Albuquerque, and are therefore in the Albuquerque radio market as defined by Arbitron. Most if not all of the Class C FM stations licensed to Santa Fe reach both Albuquerque and Santa Fe, whether from Sandia Crest or Peralta Ridge. *See* Appendix 6, Figure 3. Therefore, the number of signals in Santa Fe is many times what is available in Las Vegas, as discussed above. Further, the community of Las Vegas and its hinterland are very far from being part of the Albuquerque radio scene. Multiple mountain ranges, as well as sheer distance, dictate that result. This is true even though FM station KBAC is licensed to Las Vegas. KBAC serves Santa Fe through a booster. It has a large enough audience there to be deemed a “home” station to the Santa Fe market. Such a result is not possible for KLVF, even if it were licensed to Pecos, due to the loss of its booster opportunity, as described above.

The Arbitron radio market metro map showing the Albuquerque and Santa Fe markets is at http://www.arbitron.com/downloads/Arb_US_Metro_Map_09.pdf. San Miguel County, of which Las Vegas is the seat, is not in the Albuquerque metro or the Santa Fe metro. Consequently, what the Audio Division may view as a “move” from Pecos to Las Vegas is actually a “move out” to a needful community, and not a “move in” to a large market. Ironically, excessive focus on gross population numbers tends to press FM channel assignments into the large markets, because obviously that is where the big population numbers are. However, the greater needs are in the more remote areas like Las Vegas.

The history of KLVF's advertising base reflects its strong identification with Las Vegas. The station manager has supplied counsel for Meadows with detailed advertising client data extending back several years. Because of the volume of this material, the applicant does not suppose that the Commission's staff would want to review it in its entirety. However, it will be made available upon request. Further, copies of monthly sales logs for 2008 will be supplied to the Commission separately, under a request for confidential treatment, as these documents contain sensitive proprietary information.

Suffice it to say here that the vast majority of accounts on KLVF's air are and always have been businesses local to Las Vegas and the immediate surrounding area. Only a handful of the entities buying time on KLVF constitute Santa Fe or Albuquerque businesses, though on occasion such firms purchase time on KLVF in order to encourage Las Vegas residents to make the hour-long trek into Santa Fe, or the two-hour drive to Albuquerque, to shop.

X. Conclusion

Based on the foregoing, the interests of efficiency and equity would be served by the prompt grant of the instant application, so that Baca Broadcasting can complete its purchase of KLVF.

Further, it is apparent from analysis of the facts presented in Appendix 6 that northeastern New Mexico has been severely short-changed in terms of radio service, notwithstanding the several existing stations and unbuilt channel assignments extant in Las Vegas. These stations and relatively low power assignments do not satisfy the needs of the white and gray areas adequately. Moreover, KLVF surpasses them in the quality and intensity of its existing local service.

Fairness demands that the needs of residents of Las Vegas and of Wagon Mound as well as the rest of the poorly served "gain area" be given precedence over the illusory needs of residents of the Santa Fe "loss area" for a 25th to 29th service. Under the traditional FM channel assignment criteria, the instant application merits credit under priorities one, two and four, while the needs of the "loss area" (which has not yet come to rely on service from KLVF, to the minor extent that some small segments of the "loss area" *could* receive such service. The inchoate Pecos assignment merits at best only a marginal priority four).

In particular, the Commission should recognize the manifold public interest benefits inherent in the application to increase the operating power of station KLVF. In contrast, a fixation on the erstwhile plan to serve the Pecos "gain area" would be arbitrary and unreasonable in light of the failure of Meadows' plans for a booster in Santa Fe, and the severe terrain obstructions that would frustrate off air reception of KLVF in the Santa Fe area entirely.

Finally, the historic underrepresentation of minorities in broadcast ownership supports a grant. Baca Broadcasting is ready and waiting to close on the approved assignment of the KLVF license. The only hurdle remaining is the grant of the instant application.

Consequently, the only reasonable outcome is to confirm that Meadows Media's proposal would serve the statutory mandate for distribution of broadcast channels among the various communities based on what is "*fair, efficient, and equitable.*"