FEDERAL COMMUNICATIONS COMMISSION

445 12th Street SW
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio/

PROCESSING ENGINEER: Dale Bickel
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1411
MAIL STOP: 1800B3
INTERNET ADDRESS: dale.bickel@fcc.gov

July 9, 2007

Appaloosa Broadcasting Company, Inc.
288 South River Road
Bedford, NH 03110

In re: KIMX (FM), Nunn, CO
Appaloosa Broadcasting Company, Inc.
Facility ID No. 82007
Application BPH-20070131ADT

Dear Applicant:

This letter refers to your application to change the community of license for KIMX from Laramie, WY to Nunn, CO, and to change the channel from 244C2 to 245A. To accommodate these changes, your application proposes the involuntary substitution of Channel 246C1 for Channel 245C1 at Terrytown, NE, and the modification of the license for KCMI, Terrytown, NE from Channel 245 C1 to Channel 246C1.

However, were KCMI to move to Channel 246C1 at its licensed transmitter site, it would not meet the minimum separation requirements of Section 73.207 with respect to a vacant allotment on Channel 247A at Wheatland, WY. You believe that this allotment, which was made in MB Docket 05-98, was a clerical error and in fact does not exist. We do not agree. A check of the pleadings in that proceeding shows that Channel 247A at Wheatland was part of a counterproposal filed by Kona Coast Broadcasting, Inc., which was dismissed by the *Report and Order*. However, it was also part of the "universal solution" offered by the parties, and was subsequently adopted by the Commission.[1] We find no error in the allotment of Channel 247A to Wheatland, WY. And even should some error have in fact occurred, MB Docket 05-98 is final and not subject to appeal.

Consequently, we conclude that KCMI cannot be moved to Channel 246C1. This deficiency renders the present application unacceptable for filing and subject to dismissal. Pursuant to 47 C.F.R. § 73.3522(a)(6), "an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff." Additionally,

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[1] See the *Reply Comments* filed May 20, 2005 in MB Docket 05-98 (http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517621577), and the *Report and Order* in MB Docket 05-98, DA 06-9, 21 FCC Rcd 47 (2006) at paragraph 7.

47 C.F.R. Section 73.3564(a) states that, [a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for amendment will be dismissed with no further opportunity for corrective amendment." *See* Appendix B in the *Report and Order* in MM Docket 91-347, 7 FCC Rcd 5074, 57 Fed. Reg. 34872, released July 27, 1992. Accordingly, this letter constitutes your opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3522(a)(6). The amendment must be electronically filed no later than 30 days from the date of this letter. Failure to timely file an acceptable amendment will result in the dismissal of the application pursuant to 47 CFR Section 73.3568(a)(1).

Sincerely,

Dale E. Bickel
Senior Electronics Engineer
Audio Division
Media Bureau

cc: Thomas Hine, LLP
: Mr. Victor A. Michael, Jr.