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GEORGE R. BORSARI, JR.  
ANNE THOMAS PAXSON

March 7, 2015

VIA FEDERAL EXPRESS AND EMAIL

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Attn: Evan Morris, Video Division, Media Bureau

Response to Letter of Inquiry re  
KWWT, Odessa, TX (Facility ID No. 84410)  
File No. BRCDT-20140401AOT

Dear Ms. Dortch:

Winstar Odessa, Inc., licensee of television station KWWT, Odessa, Texas, by and through its attorneys, hereby submits this reply to the August 21, 2014, letter of Barbara A. Kreisman to the licensee. The facts in this reply are supported by the attached Declarations, submitted under oath, of James L. Primm, President and Chief Operating Officer of the licensee, and of Jayne Faltus, General Manager of KWWT.

First, it should be noted that, at all times during the renewal period, the station actually complied with the requirements for the broadcast of children's television programming. The circumstances demonstrate that there was no intention on the part of the licensee of KWWT to mislead or misrepresent the filing of that station's Children's Television Programming Reports.

The facts also confirm that the licensee made a series of mistakes having their genesis in the grave illness of its Chief Operating Officer. In 2005, Mr. Primm was diagnosed with congestive heart failure so severe that he was evaluated and recommended for a heart transplant. During the years 2005 through mid-2008, he of necessity delegated functions that he used to personally supervise to a series of general managers. Mr. Primm assumed his instructions to file the quarterly reports were being carried out properly, although he made no specific inquiry. In four instances, that proved not to be the case.

In October of 2008, shortly after the hiring of Jayne Faltus, who continues to be employed as General Manager at KWWT, the decision was made to move the station's main studio. Ms.

Faltus was instructed to inspect the contents of the local public inspection file to make certain that all documents that were required to be in the file were in fact in the file. As she was gathering up the documents, there apparently were four quarters of Children's Television Programming Reports that were present in the studio in draft form that in fact had not been filed with the FCC. They were mistakenly included in the station's public inspection file.

In 2013, the Commission adopted a new program requiring television licensees to maintain their public inspection files on the Commission's servers. In order to facilitate that changeover, the licensee understood that Commission staff would upload the Children's Television Programming Reports then on file with the Commission to the new online public inspection files. As the deadline for maintaining an online public inspection file grew nearer, Ms. Faltus realized that a large number of KWWT's quarterly Children's Television Programming Reports had not in fact been uploaded by the Commission to the station's online public file. Upon inquiry to the Commission staff, the station was instructed to undertake the responsibility of uploading sufficient documents to render the online public inspection file complete. Ms. Faltus simply compared the station's local public inspection file with the documents on file in the online public inspection file, noticed that a substantial number of Children's Television Programming Reports were not included in the online file, and uploaded those reports that were in the local public file without confirming that those reports had in fact been filed. Included with that upload were the draft reports for the 4<sup>th</sup> quarter of 2006 and the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> quarters of 2007, which had been found and placed in the local public file at the time of the KWWT studio move.

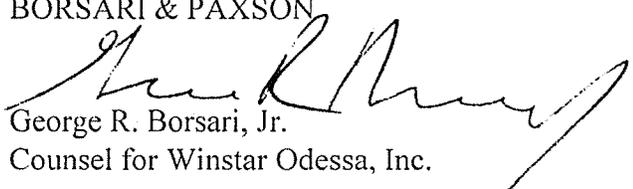
The station obviously made a mistake, but there was no intent to misrepresent the status of the reports or to deceive the Commission or anyone else. Rather, the station's current General Manager went to great lengths to ensure that KWWT was complying with the periodic reporting and online public file requirements, and the Chief Operating Officer had tried to ensure that those functions had been performed correctly.

With the current General Manager and the licensee's Chief Operating Officer and President working fulltime, this small station has demonstrated over the last six years its commitment to the policies, regulations, and requirements of the Federal Communications Commission, and the Commission can be assured that the station's compliance will continue.

Accordingly, the license of station KWWT should be renewed for the regular term.

Respectfully submitted,

BORSARI & PAXSON

  
George R. Borsari, Jr.  
Counsel for Winstar Odessa, Inc.

### **Declaration of James L. Primm**

I, James L. Primm, hereby declare as follows:

1. I am President of Winstar Odessa, Inc., licensee of television station KWWT, Odessa, Texas.

#### **2000 – 2005**

2. In 2000-2001, I oversaw construction of KWWT. Once I launched KWWT in February 2001 as a PAX TV affiliate, I consolidated traffic and billing and certain other functions, such as FCC compliance and filings, with our operation of several low power TV stations in Palm Springs, California, which also carried PAX TV. At that time, I personally prepared and supervised the preparation of our children's TV reports for KWWT. Reports would be prepared in Palm Springs, filed with the Commission, and copies faxed to our general manager in Odessa to be placed in the local public inspection file.
3. In the fall of 2001, I moved to Santa Maria, California, where I began operating a group of low power TV stations in that area (the "Central Coast"), all of which carried PAX TV. The Palm Springs office staff, which at that time consisted of one person, Ms. Mary Hutchings, added the Central Coast stations to its traffic and billing operations as well as FCC compliance filings. So, by 2001, Ms. Hutchings was preparing all of our children's TV reports, under my supervision.

4. In 2002, we moved traffic and billing and FCC compliance for the Central Coast stations to Santa Maria. We continued to manage traffic and billing and FCC compliance for KWWT from Palm Springs.
5. In 2005, I suffered severe congestive heart failure ("CHF"). This is a life-threatening condition where the heart becomes very weak and is unable to pump blood normally. I was hospitalized in intensive care for 12 days. I spent a number of additional days in the hospital in 2005. Because I was 42 years old at the time, I was considered a candidate for a heart transplant.
6. In late 2005, after undergoing a number of treatments in Orange County, CA, where I had been hospitalized, I went under the care of Dr. Howard Wayne of the Non-Invasive Heart Institute in San Diego. Dr. Wayne believed that despite the weakness of my heart, due to my relatively young age at the time, he could help me avoid a heart transplant through non-invasive techniques including drug therapies. Among other things, Dr. Wayne recommended that I significantly reduce my work schedule. This was necessary anyway, because I was very tired from the medications and, as a result of the CHF, I had a lot of difficulty doing normal activities, such as climbing stairs.
7. On October 1, 2005, KWWT became a WB affiliate with resulting changes to the children's TV programming. Palm Springs and the Central Coast stations remained PAX TV affiliates.

**2006 - 2007**

8. As a result of my medical condition, I delegated more of the operations to our managers in each of the markets. I was simply physically unable to provide the level of oversight I had previously managed to do. I continued to make my home in Santa Maria, California, and mainly reserved my travel activities for doctor's appointments in San Diego.
9. In the summer of 2006, Ms. Hutchings left our employ and Gwen St. Pierre assumed the duties of traffic and billing and FCC compliance matters for both our Palm Springs station and KWWT. I instructed Ms. Hutchings to train Ms. Pierre in maintenance of the public inspection files, including that of KWWT. The duties included preparation of the children's TV reports.
10. Due to my health issues, I arranged for the sale of the Central Coast stations in April of 2006. I kept one employee, Ms. Jill Petersen, to help me on a part-time basis with various projects.
11. On about Aug 1 2006, KWWT switched affiliations from WB to The CW, with resulting changes to the children's TV programming.
12. In about October of 2006, Ms. Petersen assumed the duties of traffic and billing for KWWT. I directed Ms. Petersen to work with Ms. St. Pierre to prepare the Issues/Programs lists and the children's TV reports for KWWT, among other things. It was my understanding that the children's

TV reports were being prepared by Ms. Petersen with input and training from Ms. St. Pierre.

13. The 4<sup>th</sup> Quarter 2006 children's report would have been due on January 10, 2007. 1<sup>st</sup> Quarter 2007 was due on April 10, 2007, 2<sup>nd</sup> Quarter 2007 was due on July 10, 2007 and 4<sup>th</sup> Quarter 2007 would have been due on January 10, 2008. Ms. Petersen and Ms. St. Pierre would have been responsible for filing these reports at that time.

14. Due to the prolonged recovery from congestive heart failure, I only worked part time and did not maintain a "hands-on" approach to the routine FCC filings. I had no reason to think that reports were not filed properly. In fact, I had every reason to believe that the staff had been filing the reports as they had always been filed before my illness.

#### **2008 – 2014**

15. In 2008, my heart improved significantly from the therapies that I received from Dr. Wayne. By mid-2008, I began to resume more active and full time duties with Winstar Odessa, Inc. and KWWT. I now maintain a full-time schedule.

16. In October of 2008, we hired Ms. Jayne Faltus as our Station Manager at KWWT. Ms. Faltus came to us with extensive experience in small market station management as she had spent a number of years at KPEJ-TV, the Fox affiliate in Odessa. Ms. Faltus assumed responsibility for traffic and billing and FCC compliance. I asked Ms. Faltus to review the local public inspection file and to ensure that it was updated properly.

17. At about the same time, Ms. Faltus and I decided to move the main studio location from 10715 E. Browder Rd, Gardendale, TX to 1901 E. 37<sup>th</sup> Street Suite 207 in Odessa. As a result, Ms. Faltus brought a number of files from the Browder Road studio to our new studio. She then assembled our public inspection file at the new offices, including the children's TV reports.
18. Ms. Faltus has prepared our children's TV reports since 2008 on a timely and consistent basis.
19. In 2013, the Commission required that all public inspection materials be placed online. Ms. Faltus called me and told me she was uploading all of our required public inspection file materials such as the Issues/Programs Lists. She noted that there were 24 children's TV reports not yet included. I instructed Ms. Faltus to call the Commission and ask that the missing reports be copied over from the Commission's KidVid database. Ms. Faltus was instructed by Commission staff to upload the copies she had in the local public inspection file.
20. Ms. Faltus did not know that four of the reports she had gathered at our old office on Browder Road were merely drafts or partially completed reports. She merely noted the dates and uploaded the reports in order to meet the Commission's online public inspection file deadline. In so doing, she uploaded the four reports in question, not realizing that those reports had never been filed, nor were they complete.

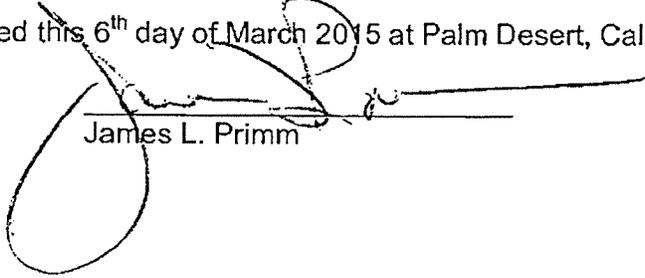
21. I did not know that unfiled copies of draft or partially completed reports had been sent from Palm Springs and/or the Central Coast. Further, I did not know nor in any way intend for those reports to be placed in the local public inspection file. Neither Ms. Faltus nor I knew she was uploading draft or partially completed children's TV reports that had never been filed. We never intended to improperly place unfiled reports in our local public inspection file nor did we intend to upload such reports to the online public inspection file. There was no intention on either of our parts to misrepresent the facts or mislead the Commission. All of the required children's programming was actually aired during the four quarters in question, and the inadvertent error was in the reporting of it, not the broadcast.

22. To summarize, due to my illness, I was only able to work part-time for several years. As a result, I relied on my staff in Palm Springs and the Central Coast to make certain ongoing FCC filings, including the children's TV reports for KWWT. The missing reports were supposed to be filed in 2007 and January 2008. During that time, the personnel changed at the stations as well as the person responsible for the reports. Further, during that time, we became associated with the CW, which required some changes to the children's TV reports from WB. These factors may have led to confusion on the part of the staff members responsible for filing the reports, resulting in unfiled reports and incomplete draft reports sent to the KWWT office in Odessa. When Ms. Faltus gathered all of the materials in

the Browder Road office as part of our move, she mistakenly included those draft reports in the local public inspection file. In 2013, when the FCC required the creation of an online public inspection file, the Commission did not move copies of all of our filed children's TV reports to our online public inspection file. Instead, Commission staff advised Ms. Faltus, general manager of KWWT, to upload all of the files from our local public inspection file onto the miscellaneous files of the children's TV report section of the online public inspection file. Ms. Faltus unwittingly included four unfiled draft, or partially completed reports in her upload of 24 children's TV reports.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of March 2015 at Palm Desert, California.



James L. Primm

## Declaration of Jayne Faltus

I, Jayne Faltus, hereby declare as follows:

1. I am general manager of television station KWWT, Odessa, Texas. I was hired on October 1, 2008 and have been continuously employed there as station manager or general manager since that time. I have been responsible for maintenance of the local public inspection file, including the children's TV reports contained therein.
2. Soon after being hired at KWWT, approximately mid-October of 2008, I undertook to move the main studio from 10715 E. Browder Road Gardendale, TX, to our current main studio location at 1901 E. 37<sup>th</sup> Street suite 207, Odessa, TX. The previous manager had left without providing me with much input or assistance as to the existence and location of station records and files.
3. As part of the move, I arranged for the relocation of the KWWT public inspection file, then housed at the Browder Road address to the new address.
4. I had previously been employed at KPEJ-TV, the local Fox affiliate in Odessa. At KPEJ, among other things, I was charged with the duty of building and maintaining the station's public inspection file. I, therefore, had some experience in the organization and maintenance of the public inspection file for a television station.
5. I recognized that the KWWT public inspection file was not completely organized and that a number of files at Browder Road appeared to belong

in the public inspection file but had not been placed in the file. This included a number of copies of the children's television reports.

6. I undertook to consolidate all of the required files into the local public inspection file. Although I did not study the children's television reports closely, I believed that the various files, previously scattered at the Browder Road office, belonged properly in the public inspection file. In any event, all of the files were moved from Browder Road to our new studio at 37<sup>th</sup> Street.
7. I have maintained the file in accordance with FCC rules since that time. Over time, I have added all of the children's television reports to our local file as I prepared each one for the preceding quarter. I don't recall reviewing the old materials I found scattered at the Browder Road office again after that time.
8. In 2013, the Commission ordered that all of our public inspection materials were to be placed in an online public inspection file. While I uploaded certain files from our local public inspection file, such as our Issues/Programs Lists, I noticed that the Commission had failed to transfer a number of our children's TV reports into the online public inspection file. It was my understanding that the Commission staff would move copies of the children's TV reports directly to the new online public inspection file.
9. As the deadline loomed for uploading all of our public inspection material to the online public inspection file, I noticed that the Commission staff had still not uploaded the children's TV reports for the 2<sup>nd</sup> Quarter 2004

through the 2<sup>nd</sup> Quarter 2010. I had been filing reports myself since I was hired in 2008, so I knew there were filed reports that were not being transferred.

10. I contacted the Commission by telephone on several different occasions by calling the person listed as the contact person at the Media Bureau who could help with children's TV reports. The first time I reached them, I asked if they could assist us by uploading the rest of our children's TV reports that had not already been copied over by the Commission from its own files. Initially, I was told to wait and the situation would be rectified by the Commission staff. I continued to check, but nothing was done over a period of at least one month.. As the deadline for loading our files onto the online public inspection file drew near, I called the children's TV help desk again. This time, the person informed me that they were too busy at that time to move the files. I asked if it would be acceptable to instead upload the reports from our local public inspection file and place them in the online miscellaneous file associated with children's TV so that we could meet the Commission's deadline for creation of our online public inspection file. The children's TV contact representative told me that it would be acceptable to upload the files onto the miscellaneous file associated with children's TV.

11. With time running short for the upload deadline, I began scanning each of the multi-page reports, with a total of 24 reports in all. I did not have an assistant and it was up to me, among my other duties, to scan and upload

all of the reports. I do not recall reviewing the reports as I uploaded them, other than to verify the quarter of the report. There was a great volume of paper and time was very short.

12. As part of the upload, I uploaded the four reports in question, 4<sup>th</sup> Quarter 2006, 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Quarter 2007, which I had found at the Browder Road office. All had been prepared prior to my arrival at the Station. I uploaded those reports, assuming that they had been filed. I did not know that the reports were drafts or partially completed reports that had been placed erroneously in the public inspection file when we moved from the Browder Road office. I completed the upload of all of the children's TV reports without reviewing their content, apart from noting the quarter to which each report related. In short, I uploaded the reports in question, not knowing that they were drafts and that they had not been filed.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of March, 2015 at Odessa, Texas.

  
\_\_\_\_\_  
Jayne Faltus