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27 February 2023

Prepared for KORE Broadcasting, LLC
K239CM, Eugene, Oregon

ALLOCATION CONSIDERATIONS

On 27 February 2023 an allocation analysis was performed using data from the commission's LMS and CDBS current as of 27 February 2023. The software to perform this analysis was provided by V-soft Communications. A copy of this study is attached.

This analysis revealed two assignments requiring further study. These are the licensed second channel adjacent Class C 1 facilities of KEHK, Brownsville, Oregon and the first channel adjacent Class C0 facilities of DKYTE, Independence, Oregon.

As regards KEHK the 100 dBu interfering contour of the proposed facility is entirely encompassed by the KEHK 60 dbu protected contour. The applicant chooses to show that no actual interference will occur because there is no population in the area of predicted interference. A U/D methodology will be used to predict the areas of interference.

The KEHK signal strength at the proposed transmitter site is equal to is 149.5 dBu. Interference will occur when the ratio of undesired signal to desired signal exceeds 40 dB. Therefore, the area of interference to KNDD is bounded by the proposed 189.5 dBu contour. The distance to this contour is significantly less than 1 meter.

The antenna is to be installed at the 40-meter level of an existing 85-meter tower. Therefore, the proposed interfering is greater than 39 meters above ground in all directions.

The applicant believes that this demonstrates conclusively that the operation proposed herein will not interfere with KEHK in any area in which there are listeners.

As regards DKYTE, the KYTE license was cancelled as a matter of law as of 6 January 2023. See attached letter.

Attached also is a map exhibit demonstrating the relationship of the proposed 60 dBu coverage contour and the primary station 2 mV/m contour.

Gray Frierson Haertig & Assoc. Portland, Oregon											
Kore Broadcasting, LLC Eugene, Oregon											
REFERENCE CH# 275D - 102.9 MHz, Pwr= .25 kW, HAAT= 237.7 M, COR= 436 M 44 00 06.00 N. Average Protected F(50-50)= 20.17 km 123 06 51.60 W. Omni-directional											
DISPLAY DATES DATA 02-27-23 SEARCH 02-27-23											
CH CITY	CALL	TYPE STATE	ANT STATE	AZI <--	DIST FILE #	LAT LNG	PWR(kw) HAAT(M)	INT(km) COR(M)	PRO(km) LICENSEE	*IN* (Overlap in km)	*OUT*
272C1 KEHK Brownsville		LIC _EN OR		305.8 125.8	0.07 BLH19940919KA	44 00 07.40 123 06 54.30	100.000 280	9.7 478	70.4 Cumulus	-31.9*	-71.5*
274C0 DKYTE Independence		LIC _CN OR		339.1 158.8	94.77 BLH20170911AAL	44 47 49.40 123 32 36.30	37.000 648	130.8 1011	88.3 Yaquina Bay Communications	-58.7*	-28.1
275C1 KSJJ Redmond		LIC _CN OR		87.2 268.3	126.61 BMLH20060419AAH	44 02 48.40 121 31 54.10	100.000 270	130.7 1845	31.0 Gcc Bend, LLC	-24.7*	34.1
277D K277CT Cottage Grove		LIC _CN OR		167.1 347.2	25.52 BLFT20140321AEW	43 46 40.40 123 02 36.30	0.250 460	1.1 460	16.0 Mckenzie River Broadcastin	6.1	5.5
276D K276IH Mapleton		LIC _CN OR		275.4 94.9	58.53 0000200269	44 02 56.20 123 50 37.00	0.140 253	28.3 460	18.5 Coast Broadcasting Company	9.4	8.5
276D K276BU Corvallis		LIC _CN OR		349.9 169.7	72.09 BLFT19921120TB	44 38 23.40 123 16 29.30	0.015 326	19.0 473	12.8 Oregon Public Broadcasting	30.1	24.9
276A KRSB-FM Roseburg		LIC _CN OR		192.9 12.7	90.66 BLH6794	43 12 23.40 123 21 51.30	2.750 94	46.0 363	28.4 Brooke Communications, Inc	28.9	38.4
274C KCNA Cave Junction		LIC _CN OR		193.1 12.7	198.86 BLH19850513KH	42 15 29.40 123 39 42.20	100.000 602	130.0 1255	81.4 Opus Broadcasting Systems,	53.5	87.8
Terrain database is NGDC 30 SEC , R= 73.215 qualifying spacings or FCC minimum Spacings in KM, M= Margin in KM In & Out distances between contours are shown at closest points. Reference zone= West Zone, Co to 3rd adjacent. All separation margins (if shown) include rounding. Ant Column: (D= DA Standard, Z= DA 73.215, N= Not DA 73.215, _= Omni), Polarization (C,H,V,E), Beamtilt(Y,N,X) "*"affixed to 'IN' or 'OUT' values = site inside restricted contour.											



Federal Communications Commission
Washington, D.C. 20554

January 6, 2023

In Reply Refer to:
1800B3-TSN

EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

David Miller
Yaquina Bay Communications, Inc.
P.O. Box 1430
Newport, OR 97365
dmiller@ybcradio.com

Re: KYTE(FM), Independence, Oregon
Facility ID No. 9848
Application File No. 161122
Application for Renewal of License

Dear Licensee:

This letter is to inform you that the license of Station KYTE(FM), Independence, Oregon (Station), licensed to Yaquina Bay Communications, Inc. (Licensee), has expired pursuant to section 312(g) of the Communications Act of 1934, as amended (Act).¹

Licensee filed an application to renew the Station's license on September 29, 2021.² PACNW Broadcasting, LLC (PACNW), licensee of station KPPT-FM, Depoe Bay, Oregon, filed an October 4, 2021, informal objection to the Renewal Application (Informal Objection),³ and Outlaw Music Association (OMA), licensee of co-channel low-power FM station KIEV-LP, Camas, Washington, filed a December 31, 2021, Petition to Deny the Renewal Application (Petition).⁴ Both the Informal Objection and Petition allege Licensee's unauthorized operation of Station from a transmitter site that does not provide the requisite community coverage of Independence, Oregon, the community of license,⁵ and further allege that the Station caused interference to PACNW's and OMA's stations. Licensee did not file an opposition to either the Informal Objection or the Petition.

On January 23, 2014, Licensee filed an application for a minor modification to the Station's license, seeking to change the Station's community of license from Newport, Oregon, to Independence, Oregon.⁶ Licensee sought authorization to relocate its transmitter from 44° 47' 50" North Latitude, 123° 32' 32" West Longitude (the Newport Site) to 44° 50' 33" North Latitude, 123° 44' 3" West Longitude

¹ 47 U.S.C. § 312(g).

² Application File No. 0000161122 (filed Sept. 29, 2021) (Renewal Application).

³ Pleading File No. 162733.

⁴ Pleading File No. 178368.

⁵ 47 CFR § 73.315(a).

⁶ File No. BPH-20140123BBU.

(the Bald Mountain Site) from which it would provide principal community coverage to Independence. The application was granted on April 10, 2014. In response to Licensee's request,⁷ the Media Bureau (Bureau) granted tolling due to inclement weather and other extenuating circumstances, thereby extending the expiration date for the construction permit to September 3, 2017.⁸ Licensee filed an application for license to cover the minor modification construction permit on September 11, 2017,⁹ which the Bureau granted on February 21, 2018.

On May 30, 2018, citing an inability to operate from the Bald Mountain Site "until generator is sent and returned from manufacturer for warranty replacement," and stating that the generator was the only power source at the Bald Mountain Site, Licensee requested a technical Special Temporary Authorization (STA) to operate from a site located at 44° 45' 22" North Latitude, 124° 2' 57" West Longitude (the Otter Crest Mountain Site).¹⁰ The Station had previously broadcast from the Otter Crest Mountain Site while still licensed at Newport, Oregon.¹¹ STA was granted until December 1, 2018. Licensee did not seek an extension or further technical STA. The next application that Licensee filed was the Renewal Application.

PACNW and OMA provided spectrum analyzer readings indicating that Station is still broadcasting from the Otter Crest Mountain Site,¹² in support of their allegations that the Station is still broadcasting from that site despite expiration of the STA to broadcast from Otter Crest Mountain. Additionally, PACNW stated that it has been receiving interference from Station. Both PACNW and OMA produced plots demonstrating that, from the STA site, Station cannot provide the requisite 70 dBμ principal community signal over Independence, its community of license.¹³

Because the information in the record indicated that the Station may have been operating with unauthorized facilities for more than twelve consecutive months, from December 1, 2018, to at least February 1, 2022, the date its license expired, the Bureau sent a Letter of Inquiry (LOI) to Licensee on September 19, 2022.¹⁴ In the LOI, the Bureau requested, *inter alia*, that Licensee "provide a chronological description of KYTE's operational status for **all periods of either operation or silence** from December 1, 2018, to the present. This description must indicate the exact location (ASRN or geographic coordinates) of KYTE's transmitter and antenna for each relevant time period, including the effective radiated power and antenna height above ground level, and the start and stop dates for each period of operation or silence."¹⁵

⁷ See Letter from David J. Miller, President/GM, Yaquina Bay Communications, Inc., to Marlene H. Dortch, Secretary, FCC (Mar. 13, 2017).

⁸ See http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/comment.pl?Application_id=1574946&File_number=BPH-20140123BBU.

⁹ File No. BLH-20170911AAL.

¹⁰ File No. BSTA-20180530AAS.

¹¹ File No. BLH-19921028KA (covering File No. BPH-19910424ID).

¹² Informal Objection, Exhibit 1; Petition, Attachments A and B.

¹³ Informal Objection, Exhibit 4; Petition Exhibit 1.

¹⁴ Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to David Miller, Yaquina Bay Communications, Inc. (Sept. 19, 2022).

¹⁵ *Id.* at 3 (boldface emphasis in original).

Licensee responded to the LOI on October 10, 2022.¹⁶ In its LOI Response, Licensee recounted that it had moved the Station to the Bald Mountain Site, and was working with the State of Oregon to have permanent power provided to the site, where the State also had facilities.¹⁷ According to Licensee, due to budget constraints the State of Oregon did not provide power to the site, forcing Licensee to purchase two generators with which to operate its transmitter.¹⁸ However, Licensee mistakenly purchased generators designed as backup and not primary generators, one of which failed and was returned to the manufacturer.¹⁹ The manufacturer advised Licensee that the generator was not designed for primary use, and further advised that it had failed due to the use of bad propane fuel.²⁰ Licensee's efforts to rectify the situation with the generator manufacturer, the propane supplier, and its insurer were unsuccessful.²¹ Because of the pandemic, Licensee was unable to afford to purchase a new generator, and it further lost its lease to the Bald Mountain Site.²²

As a result of losing the Bald Mountain Site, Licensee confirms that it filed for special temporary authorization (STA) to return to the Otter Crest Mountain Site, but states that it "failed to realize that [the STA] was for just a short period of time."²³ Licensee states that due to the need to avoid interference to other stations it has been difficult to locate another site from which it could provide community coverage to Independence.²⁴ Licensee finally states that it has offered the Station for sale and has an interested buyer that would like to re-establish service from the Bald Mountain Site, and asks that we grant a short-term renewal to enable it to consummate the assignment of the Station license.²⁵ Licensee did not provide the requested chronological description of KYTE's operational status for all periods of either operation or silence from December 1, 2018, to the present.²⁶

Section 312(g) of the Act provides that if a broadcast station fails to transmit broadcast signals with its authorized facilities for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license to promote equity and fairness.²⁷ The Station license expired pursuant to section 312(g) because the Station was operating with unauthorized facilities for more than 12 months, from December

¹⁶ E-mail from David Miller, Yaquina Bay Communications, Inc., to Thomas Nessinger, Senior Counsel, FCC Media Bureau, Audio Division (Oct. 10, 2022, 4:00 p.m. EDT) (LOI Response).

¹⁷ *Id.* at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* Licensee also states that all interference issues with PACNW's station KPPT-FM have been rectified, as have interference issues with OMA's KIEV-LP. Licensee further states that KIEV-LP is not protected from Station's operations at either site. *Id.*

²⁵ *Id.*

²⁶ See *supra* note 15.

²⁷ 47 U.S.C. § 312(g). See also 47 CFR § 73.1740(c).

1, 2018, to February 1, 2022.²⁸ Licensee in its LOI Response confirms that it operated continuously from the Otter Crest Mountain Site from December 1, 2018, the date its STA to operate from that site expired, until its license expiration date, February 1, 2022. Although Licensee states that it was not aware of the limited duration of its STA to operate from the Otter Crest Mountain site, all STAs issued by the Bureau are, by definition, temporary, and an initial grant of STA does not exceed 180 days.²⁹ Moreover, the expiration date of an STA is clearly printed on the instrument of authorization, and such was the case here.³⁰ Finally, while section 312(g) does allow the Commission to extend or reinstate a station license if the license holder prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness, none of those exceptions applies here. Although it appears that Licensee encountered its share of difficulties in effectuating the change of community of license to Independence, we must balance that against the fact that it operated the Station for over three years without any authorization to operate from the Otter Crest Mountain Site, from which it does not provide the requisite 70 dBμ principal community signal over Independence, its community of license.

With regard to PACNW's and OMA's claims of interference to their respective stations' operations, the action taken herein will eliminate any further interference from the Station, and to that extent the Petition and Informal Objection are dismissed as moot.

We find that the Licensee has failed to provide any documentation to refute the allegations that the Station operated for over 12 consecutive months with unauthorized facilities. Therefore, the Commission's public and internal databases HAVE BEEN MODIFIED to indicate that the broadcast license for the referenced Station is EXPIRED, that the Station's license is CANCELLED as a matter of law, and that the Station's call sign is DELETED. In addition, the Station's license renewal application (Application File No. 0000161122) IS DISMISSED AS MOOT. The Informal Objection to the license renewal application (Pleading File No. 0000162733) and the Petition to Deny the license renewal application (Pleading File No. 0000178368) ARE GRANTED to the extent discussed herein and are in all other respects DISMISSED as moot.

Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower be maintained until the tower is dismantled. Accordingly, the owner of the tower where the referenced Station's transmitting antenna is located is required to maintain the tower in the manner prescribed by our rules and the terms of the cancelled license.³¹

²⁸ See *Kingdom of God, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 3654 (2017), *aff'd*, *Kingdom of God, Inc. v. FCC*, No. 17-1132, 719 Fed. Appx. 19, 20 (Mem), (D.C. Cir. Apr. 10, 2018) ("it strains credulity to suggest that the reference to 'broadcast signals' in § 312(g) includes unauthorized and unlicensed transmissions."); *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008) (*Eagle Broadcasting*), *aff'd sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid license expiration under section 312(g)).

²⁹ 47 CFR § 73.1635(a)(4). See also *Eagle Broadcasting*, 23 FCC Rcd at 601, para. 26 (broadcaster's claim that it was "merely confused" about the status of its permit did not provide a creditable basis for grant of an exception to section 312(g)).

³⁰ See E-mail from Dale Bickel, Senior Electronics Engineer, FCC Media Bureau, Audio Division, to David Miller, Yaquina Bay Communications, Inc. (June 4, 2018, 12:42 p.m. EDT).

³¹ See 47 U.S.C. § 303(q); 47 CFR §§ 17.1 *et seq.* and 73.1213. See also *Streamlining the Commission's Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4293 (1995) (tower owner bears primary responsibility for maintaining tower painting and/or lighting).

Please direct any questions concerning the content of this letter to Thomas Nessinger, Senior Counsel, phone (202-418-2709), or e-mail (Thomas.Nessinger@fcc.gov).

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Richard J. Hayes, Jr., Esq. (fcclaw@rjhayes.com), Counsel to PACNW Broadcasting, LLC
David Stepanuyk (david@outlaw.fm), President, Outlaw Music Ass'n

Gray Frierson Haeretig & Assoc.

Prop

Latitude: 44-00-06 N
Longitude: 123-06-51.60 W
ERP: 0.25 kW
Channel: 239
Frequency: 95.7 MHz
AMSL Height: 436.0 m
Horiz. Pattern: Omni
Vert. Pattern: No

■ Proposed 60 dBu Contour
■ KORE-AM 2 mV/m Contour

