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February 12, 2020

via e-mail

Ms. Marlene Dorch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

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Federal Communications Commission
Office of the Secretary

Re: Station KYPK-LD
Facility No. 190359
Yakima, WA

Dear Ms. Dorch:

Ron Blevins, by his attorney, hereby responds to and requests reconsideration of the Commission's letter dated January 13, 2020 ("*Letter*"), issued with regard to Station KYPK-LD (Facility No. 190359) and KGfZ-LD (Facility No. 57511). With respect thereto, the following is stated:

As noted in the Commission's *Letter*, Station KGZF-LD has a lengthy and convoluted history. The Station was originally operated in analog mode on channel 49 (File No. BLTTL-20040616AAK). The Station's analog channel 49 was subsequently displaced in 2017 by the Commission's Incentive Auction and the Station obtained a digital displacement Channel 31 (File No. 0000029757). By so doing, the Station then modified its operations from analog channel 49 to digital channel 31 completing its digital transition. That Station is now a digital license. In the case of Station KYPK-LD, the Station was displaced by the Incentive Auction in 2017 and the Station eventually obtained digital Channel 32 (File No. 0000029399).

The Commission's concerns were addressed by the licensee in a letter dated December 23, 2019, a copy of which is attached hereto. As noted therein, Mr. Bevens is of the belief that there is an administrative error, insofar as a previous application for displacement channel (File No. 0000004728), which originally was filed on September 30, 2015, has already been dismissed by the Commission on August 23, 2017. Nevertheless, the Commission's January 13, 2020 *Letter* does not address the information provided on behalf of Mr. Bevens in the December 23, 2019 Letter.

The Commission's *Letter* states in relevant part: "This letter is to direct that you discontinue use of digital companion channel 32. Further, submit a Cancellation request on the Media Bureau's LMS filing system pursuant to the instructions below. You may continue

to operate the Station on digital channel 31.” *Letter* at 1. In support thereof, the *Letter* provides citations to the Commission’s *Second Report and Order* in its LPTV digital transition proceeding, *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 26 FCC Rcd 10732 (2011), and the *Further Notice of Proposed Rule Making* that preceded the issuance of that *Second Report and Order*, *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 25 FCC Rcd 13833 (2010). *Letter* at 1 n.1.

It is believed that the *Letter*’s reliance on the Commission’s *Report and Order* issued in 2011 is misplaced, and does not address the situation currently in existence. In this case, the FCC’s *Letter* specifically is requiring the surrender of Channel 32 – the claimed digital companion channel. However, in the *Report and Order*, the Commission clearly adopted the following options, whereby a licensee may:

- (1) "flash cut" their existing analog facility to digital (at which time their analog license will be replaced by a new digital license) or (2) to surrender their analog station license and continue operating their digital companion channel. Stations that have already completed their digital conversion will not be required to submit a notification.

26 FCC Rcd 10752, ¶ 42. See also, *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, *Further Notice of Proposed Rulemaking*, 25 FCC Rcd 13833, ¶ 29 (2010) ("At the end of their digital transition, low power television stations may choose to continue operating on their digital companion channel and return the license for their analog channel" . . . (or) "may choose to flash cut to digital operation on their analog channel."). Under neither "option" did the FCC contemplate the surrender of a digital companion channel license. Therefore, under the strict wording of the *Report and Order*, under neither option is Mr. Bevins required to "surrender" his existing digital companion channel, as directed in the Commission’s *Letter*. Moreover, it also should be noted that Mr. Bevins also does not have an "analog station license" to surrender. Therefore, the Commission’s *Letter* goes beyond the directives and procedures adopted by the Commission in the Commission’s *Report and Order*.

Stations KPYK-LD (Facility No. 190359) and KGFZ-LD (Facility No. 57511) provide valuable programming to the Yakima area. Mr. Bevins is in the process of compiling information that will be filed with the Commission shortly that will detail the programming provided on the Stations, the community service aspects of the Stations, and which will detail the strong community support enjoyed by the Stations in the Yakima area. It will be demonstrated that the continued existence of *both* of these two Stations is of value to viewers in the Yakima area, and therefore is in the continued public interest.

Therefore, it is respectfully requested that the Commission’s *Letter* issued on January 13, 2020, be rescinded. The *Letter* is not warranted based upon the Station’s history, nor is it warranted based upon adopted Commission procedures.

If there are any questions, please contact this office.

Very truly yours,

Dan J. Alpert

Counsel for Ron Bevins

Attachment 1



VIA EMAIL

December 23, 2019

Shaun Maher
Federal Communication Commission
445 12th St SW
Washington, D.C. 20554

Dear Mr. Maher:

Thank you for providing us the opportunity to address the issue brought to our attention this month. In our phone call, you advised me that we had two digital companion channels associated with Facility ID (FIN) 57511. Of course, a digital companion channel is meant to be one digital companion to one analog channel. We assert, though, that we currently do not have any digital companion channels associated with any facilities affected by the repack. We believe that an administrative error mistakenly identifies FIN 57511 with several digital companion channels. The purpose of this letter is to provide you with the conclusions of our research which relied heavily on factual, historical information retained in the FCC Licensing and Management System and on the memory of staff and consultants on duty at the time.

Because of the incentive auction and repack, three of our licenses were displaced. To reduce confusion around the various call signs associated with the stations, these are hereinafter referred to at least by their unique Facility ID, either 57511, 57522, or 190359. Please refer to Exhibit 1, Call Sign Matrix, showing the different call signs in use for these three facilities.

Per our research during the past few weeks, several clear conclusions have emerged from the available information:

Conclusion: No Construction Permit was ever granted for a digital companion channel.

On September 30, 2015, prior to the incentive auction, we filed for a digital companion channel to facility 57511. The requested channel was 36. A year later, in December 2016, we filed an amended application which superseded the original. However, that application was not processed. Eventually, as the incentive auction concluded and repack began, we realized that our analog channel for facility 57511, being out-of-core, would be displaced anyway, so we decided to withdraw our application. It was within our displacement application for facility 57522 file number 29321 (not 57511) that we requested that the application for a digital companion channel be withdrawn. Please find a copy of this document attached hereto as Exhibit 2.

It is compelling that no application for a digital companion channel nor construction permit for the same was ever issued for any of our facilities affected by the repack, and therefore no digital companion stations were ever built.

Conclusion: Three LPTV licenses existed prior to repack; barring any permanent displacements from primary stations, there should be three after repack.

We have held three Yakima TV station licenses for nearly 30 years. It is our understanding that, except for an unrealized scenario where a primary station, during their post-auction repack demanded our spectrum, an authorized LPTV station cannot be deprived of that license without some sort of administrative notification and action. We entered the incentive auction and repack process with three licenses. It is therefore consistent that we would emerge from this process with the same number of licenses.

Conclusion: Multiple authorizations and transactions with the FCC support our assertions.

Multiple filings followed for each of our facilities displaced by the incentive auction and repack. Each request in these filings were granted by an FCC official. Especially as it pertains to FIN 57511, the facility that is the focus of your inquiry, there exists an Application for Displacement, Application for Legal STA, Construction Permit, and License to Cover. All of these transactions were granted. If something was awry in the status of this facility, like two digital companion channels, it is my belief that there would have been some question, some inquiry to our staff. In that condition, it is very likely that any and all of these applications would have been dismissed.

Conclusion: Annual regulatory fees paid this year for the three subject facilities do not match the fees assessed for the same three going back to the early 1990's. The change and timing of assessed fees do not match any application for licenses displaced by the incentive auction and repack.

There are currently six facilities for which we are required to pay annual regulatory fees. Three of those were affected by the incentive auction and repack. Exhibit 3 to this letter is a printout of fees paid in 2018 for all licenses held under our FRN. Exhibit 4 shows how, for this year, we were only charged for two of the three affected facilities that we normally pay. While the clerk's note for the first line states "exempt activity" since digital companions are exempt from fees, prior years' fees were never forborne like they were this year. That only 2019's fees were not assessed yet all prior years' fees were properly assessed is an indication that a status change occurred sometime in 2018 or early 2019. No applications or transactions were submitted in that timeframe. The '18 to '19 date range is not congruent with any documentation showing an application for a digital companion channel.

Again, Mr. Maher, thank you for the opportunity to explain our position and for taking the time to investigate our conclusions. Based on this information, all of which is verifiable in the LMS, we respectfully request your assistance to remedy the errant information in whatever FCC database incorrectly states that we have a digital companion channel for FIN 57511. Should you have any questions, please call or email me at my contact information shown in the header of this letter. Thank you.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Orson Bevin". The signature is fluid and cursive, with a large initial "O" and a long, sweeping underline.

Orson Bevin,
Projects Manager