

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Construction Permit of	)	
	)	
KAZT, L.L.C.	)	
	)	File No. 0000142024
For a Television Translator Broadcast	)	Facility ID No. 35809
Station on Channel 30 at Flagstaff, Arizona	)	
(Call Sign K30DT-D)	)	

To: Marlene Dortch, Secretary  
Federal Communications Commission  
Attention: Media Bureau, Video Division

**PETITION FOR WAIVER**

KAZT, L.L.C. (“KAZT”), licensee of Television Translator K30DT-D (the “Station”), by its counsel and pursuant to Section 1.3 of the Commission’s Rules, hereby respectfully submits this Petition for Waiver to request a waiver of those portions of Section 73.3598 of the Commission’s Rules which require the filing of a license to cover application prior to the expiration date of a construction permit, and provide for the automatic forfeiture of the permit if such an application is not timely filed. As shown below, the requested relief is fully warranted.

KAZT completed construction of the digital facilities for the Station in accordance with the construction permit granted by the Commission in LMS File No. 0000142024, and commenced operation of those facilities, on April 1, 2021. Also on April 1, 2021, an application for a license to cover construction was completed in the Commission’s Licensing and Management System (“LMS”).<sup>1</sup> At that point, KAZT, believing that the license application had been filed on April 2,

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<sup>1</sup> See Exhibit A hereto, containing a screenshot of the LMS page showing that the license to cover application was created on April 1, 2021.

2021, commenced operation of the Station's new digital facilities assuming that such operation was permitted under program test authority.<sup>2</sup> KAZT further assumed that the requirement of Section 73.3598 of the Commission's Rules to file the license application by the July 13, 2021, expiration date of the construction permit also had been satisfied. However, due to an administrative oversight, KAZT had failed to file the license application on April 2, 2021, even though the application was ready to be filed consistent with the Station's underlying construction permit. KAZT did not realize that the license application had not been filed until its consulting engineer accessed LMS in connection with a subsequent matter on or about September 28, 2021, and immediately notified KAZT of that fact. Once apprised, the Station's consulting engineering immediately contacted FCC staff to make them aware of the situation.

Because KAZT completed construction of the Station's digital facilities in accordance with the construction permit and began operations prior to the construction permit expiration date, the only matter at issue is that KAZT inadvertently failed to "hit the LMS submit button" to file the license application that had been prepared and was ready to be filed. There have been numerous instances in which the Bureau has granted license applications where facilities were built prior to the construction deadline but the license application was filed after the permit expiration date.<sup>3</sup> As is generally understood, the Commission will grant a waiver of its Rules for good cause.<sup>4</sup> The Commission also is required to take a "hard look" at applications for waiver,<sup>5</sup> and to consider all

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<sup>2</sup> See 47 C.F.R. 74.14.

<sup>3</sup> See, e.g., *Clear Channel Broadcasting Licenses, Inc.*, 26 FCC Rcd. 7153 (2011) (affirming staff's *sua sponte* waiver of Section 73.3598(e) and acceptance of license application filed late where the facilities authorized in the construction permit were built before the expiration of the permit); *Letter to Richard F. Swift, et al. (KXFT-FM, Manson, Iowa)*, 24 FCC Rcd. 13483 (2009) (granting waiver where station construction was complete before expiration of the construction permit application and application for license to cover was filed after the permit expired); *WRFN-LP, Pasquo, Tennessee*, 24 FCC Rcd. 12426 (2009) (waiving the Commission's Rules to permit the late filing of the Application with no monetary penalty).

<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

relevant factors in making its decision.<sup>6</sup> KAZT respectfully requests that the Media Bureau do so here.

The automatic forfeiture provision was adopted to be sparingly used for a “singular and narrow purpose” – to conserve staff resources that were previously devoted to the task of cancelling expired permits and notifying the former permittees.<sup>7</sup> Waivers for good cause are within the Commission’s delegated authority<sup>8</sup> and the Commission has followed “long-standing precedent which establishes that unintended consequences of a Rule are a significant factor favoring a Rule waiver.”<sup>9</sup> The Commission has also stated that the “automatic forfeiture of the authorization of an operating station is a severe penalty which the Commission has been reluctant to impose absent an egregious violation of its Rules.”<sup>10</sup>

KAZT takes its obligations to comply with Commission Rules and file required forms seriously and has a long history of compliance with FCC rules. In this case, the Licensee voluntarily brought the administrative error to the attention of the Media Bureau once the issue was discovered. This was simple yet unfortunate administrative error. It would work a substantial hardship on KAZT, and upon those communities and viewers the Station serves, were the Bureau to decline to grant the relief requested hereby. The Station serves large rural areas of Coconino County, Arizona which have limited infrastructure services and strongly rely on local television service. Significantly, the Station also serves large numbers of members of the historically

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<sup>6</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

<sup>7</sup> *WRKH(FM), Mobile Alabama*, 23 FCC Rcd. 4526 (2008).

<sup>8</sup> 47 C.F.R. §§ 0.201, 0.283; *see also* 47 C.F.R. § 1.3.

<sup>9</sup> *See* *WRKH(FM)*.

<sup>10</sup> *See id.* at FN 37 *citing* *WAIT Radio v. FCC*, 418 F2d 1153 (D.C. Cir. 1969); *see, e.g., Mt. Baker Broadcasting Co.*, 3 FCC Rcd. 4777 (1988) (forfeiture, rather than enforcement action, deemed appropriate when permittee implemented facilities that did not conform with its construction permit; willfully misrepresented material facts in permittee’s request for construction permit extension; and failed to comply with Commission’s Order to file a license application within 10 days.).

underserved Native American community. These and other rural communities served obviously rely on the Station for continued local television service, including local news and weather alerts.

When taking into account the inequities that would result from the even a temporary loss of the Station's signal due to an inadvertent and purely administrative failure to submit a prepared application where both the actual construction and operation were completed in a timely manner, the harm to the public interest which would result from the Station being forced to go dark, and the Commission's treatment of similarly situated parties in the past, it is clear that good cause exists for grant of this waiver.

So that the Bureau is aware, the license application at issue was filed by the licensee on October 14, 2021.<sup>11</sup> KAZT hereby respectfully requests that the Commission waive those portions of Section 73.3598 of the Commission's Rules which require the filing of a license to cover application prior to the expiration date of a construction permit and provide for the forfeiture of a construction permit where such application is not timely filed and grant the pending license application. Such action would conform with Commission precedent and would strongly serve the public interest, particularly given the specific facts of this case.

Respectfully submitted,

***KAZT, L.L.C.***

By: /s/ Paul A. Cicelski  
Paul A. Cicelski  
David Burns

Lerman Senter PLLC  
2001 L Street, NW, Ste. 400  
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October 18, 2021

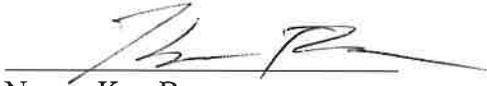
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<sup>11</sup> See LMS File No. 0000163742.

## DECLARATION

I, Ken Brown, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. I am the Chief Engineer of KAZT, L.L.C.
2. This Declaration is being provided in support of the Petition for Waiver to which it is attached.
3. The information provided in the Petition for Waiver to which this Declaration is attached is accurate and correct to the best of my knowledge, information and belief.

  
Name: Ken Brown

Date: October 14, 2021

## **EXHIBIT A**

## Saved Applications

[FAQ](#)

[View Facility ID's associated with this FRN.](#)

[File an Application](#)

Facility ID:  Find Applications:

[SAVED \(4\)](#) | [SUBMITTED \(1\)](#) | [DISPOSED \(174\)](#) | [REPORTS \(111\)](#) | [ASSIGNMENT/TRANSFERS \(9\)](#)

Showing 1 to 4 of 4

Actions	File Number	Facility ID	State	City	Service Code	Purpose	Description	Date Created	Date Saved
<a href="#">Delete</a>	Not Assigned	35809	AZ	FLAGSTAFF	LPT	License To Cover	K30DT-D License to Cover	04/01/2021	04/01/2021
<a href="#">Delete</a>	Not Assigned	35811	AZ	PRESCOTT	DTV	Children's TV Programming Report	2020 FCC Children's Programming Report	08/28/2019	01/29/2021
<a href="#">Delete</a>	Not Assigned	72618	AZ	PHOENIX	DCA	Administrative Update		01/04/2021	01/04/2021
<a href="#">Delete</a>	Not Assigned	35811	AZ	PRESCOTT	DTV	Minor Modification	TEST APPLICATION	02/06/2017	02/06/2017



(DRAFT COPY - Not for submission)

# License To Cover for LPTV Translator Application

File Number: | Submit Date: **04/01/2021** | Call Sign: **K30DT** | Facility ID: **35809** | FRN: **0006533111** | State: **Arizona** | City: **FLAGSTAFF**

Service: **LPT** | Purpose: **License To Cover 0000142024** | Status: **Saved** | Status Date: **04/01/2021** | Filing Status: **Active**

## General Information

Section	Question	Response
<b>Attachments</b>	Are attachments (other than associated schedules) being filed with this application?	Yes

## Fees, Waivers, and Exemptions

Section	Question	Response
<b>Fees</b>	Is the applicant exempt from FCC application Fees?	
	Indicate reason for fee exemption:	
	Is the applicant exempt from FCC regulatory Fees?	
<b>Waivers</b>	Does this filing request a waiver of the Commission's rule(s)?	
	Total number of rule sections involved in this waiver request:	
	Are the frequencies or parameters requested in this filing covered by grandfathered privileges, previously approved by waiver, or functionally integrated with an existing station?	

**Applicant  
Information**

**Applicant Name, Type, and Contact Information**

Applicant	Address	Phone	Email	Applicant Type
<b>KAZT, L.L.C.</b> Doing Business As: KAZT, L.L.C.	4343 E. CAMELBACK ROAD, SUITE 400 PHOENIX, AZ 85018 United States	+1 (928) 778- 6770	kbrown@aztv. com	Limited Liability Company

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**Authorization Holder Name**

- Check box if the Authorization Holder name is being updated because of the sale (or transfer of control) of the Authorization(s) to another party and for which proper Commission approval has not been received or proper notification provided.

**Contact  
Representatives  
(2)**

Contact Name	Address	Phone	Email	Contact Type
<b>Paul A. Cicelski</b> <i>Attorney</i> Lerman Senter PLLC	Paul Cicelski 2001 L Street, NW, Suite 400 Washington , DC 20036 United States	+1 (202) 416- 6756	pcicelski@lermansenter. com	Legal Representative
<b>Rajat Mathur , P. E .</b> <i>CONSULTING ENGINEER</i> Hammett & Edison, Inc.	HAMMETT & EDISON, INC. 470 THIRD STREET WEST SONOMA, CA 95476 United States	+1 (707) 996- 5200	rmathur@h-e.com	Technical Representative

## Alien Ownership

Question	Response
1) Is the applicant a foreign government or the representative of any foreign government as specified in Section 310(a) of the Communications Act?	No
2) Is the applicant an alien or the representative of an alien? (Section 310(b)(1))	No
3) Is the applicant a corporation, or non-corporate entity, that is organized under the laws of any foreign government? (Section 310(b)(2))	No
4) Is the applicant an entity of which more than one-fifth of the capital stock, or other equity or voting interest, is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any entity organized under the laws of a foreign country? (Section 310(b)(3))	No
5) Is the applicant directly or indirectly controlled by any other entity of which more than one-fourth of the capital stock, or other equity or voting interest, is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any entity organized under the laws of a foreign country? (Section 310(b)(4))	No
6) Has the applicant received a declaratory ruling(s) under Section 310(b)(4) of the Communications Act?	No
6a) Enter the citation of the applicable declaratory ruling by DA/FCC number, FCC Record citation, release date, or any other identifying information.	
7) Has there been any change in the applicant's foreign ownership since issuance of the declaratory ruling(s) cited in response to Question 6?	
7a) Enter the File or Docket Number of the Petition for Declaratory Ruling that the applicant has filed for its foreign ownership in connection with this application pursuant to Section 310(b)(4) of the Communications Act. It is not necessary to file a request for a foreign ownership declaratory ruling if the applicant attaches a showing that the requested authorization(s) is exempt from the provisions of Section 310(b)(4).	
8) Does the applicant certify that it is in compliance with the terms and conditions of the foreign ownership declaratory ruling(s) cited in response to Question 6?	
9) In connection with this application, is the applicant filing a foreign ownership Petition for Declaratory Ruling pursuant to Section 310(b)(4) of the Communications Act?	No

## Basic Qualifying Questions

Section	Question	Response
<b>Revoked Application</b>	Has the Applicant or any party to this application had any FCC station Authorization revoked or had any application for an initial, modification or renewal of FCC station Authorization denied by the Commission?	No
<b>State or Federal Convictions</b>	Has the Applicant or any party to this application, or any party directly or indirectly controlling the Applicant, ever been convicted of a felony by any state or federal court?	No

**Channel and Facility Information**

Section	Question	Response
Facility ID	35809	
State	Arizona	
City	FLAGSTAFF	
LPT Channel	30	

**Antenna Location Data**

Section	Question	Response
<b>Antenna Structure Registration</b>	Do you have an FCC Antenna Structure Registration (ASR) Number?	No
	ASR Number	
<b>Coordinates (NAD83)</b>	Latitude	35° 14' 25.0" N+
	Longitude	111° 35' 51.8" W-
	Structure Type	LTOWER-Lattice Tower
	Overall Structure Height	30.5 meters
	Support Structure Height	30.5 meters
	Ground Elevation (AMSL)	2816.4 meters
<b>Antenna Data</b>	Height of Radiation Center Above Ground Level	23.8 meters
	Height of Radiation Center Above Mean Sea Level	2840.2 meters
	Effective Radiated Power	1.73 kW

**Antenna  
Technical Data**

Section	Question	Response
<b>Antenna Type</b>	Antenna Type	Directional Custom
	Do you have an Antenna ID?	No
	Antenna ID	
<b>Antenna Manufacturer and Model</b>	Manufacturer:	PSI
	Model	PSILP4BA-30
	Rotation	165 degrees
	Electrical Beam Tilt	Not Applicable
	Mechanical Beam Tilt	Not Applicable
	toward azimuth	
	Polarization	Horizontal
<b>Elevation Radiation Pattern</b>	Does the proposed antenna propose elevation radiation patterns that vary with azimuth for reasons other than the use of mechanical beam tilt?	No
	Uploaded file for elevation antenna (or radiation) pattern data	
	Out-of-Channel Emission Mask:	Simple

**Directional Antenna Relative Field Values (Pre-rotated Pattern)**

Degree	Value	Degree	Value	Degree	Value	Degree	Value
0	1	90	0.95	180	0.23	270	0.95
10	0.98	100	0.87	190	0.22	280	0.98
20	0.96	110	0.77	200	0.21	290	0.99
30	0.93	120	0.63	210	0.23	300	0.97
40	0.93	130	0.47	220	0.35	310	0.94
50	0.94	140	0.35	230	0.47	320	0.93
60	0.97	150	0.23	240	0.63	330	0.93
70	0.99	160	0.21	250	0.77	340	0.96
80	0.98	170	0.22	260	0.87	350	0.98

**Additional Azimuths**

Degree	V <sub>A</sub>
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**Parties to the  
Application (0)**

Information not provided.

**Attributable Interest**

Section	Question	Response
<b>Equity and Financial Interests</b>	Applicant certifies that equity and financial interests not set forth by the applicant parties are non-attributable.	
<b>Other Authorizations</b>	Does the applicant or any party to the application have an attributable interest in any other broadcast station(s).	

**License  
Certifications**

Section	Question	Response
<b>Constructed Facility</b>	The facility constructed as authorized in the underlying construction permit.	Yes
<b>Special Operating Conditions</b>	The facility was constructed in compliance with all special operating conditions, terms, and obligations described in the construction permit. <b>An exhibit may be required.</b> Review the underlying construction permit.	Yes

**Legal  
Certifications**

Section	Question	Response
<b>Obligations</b>	Licensee/Permittee certifies that all terms, conditions, and obligations set forth in the underlying construction permit have been fully met.	
	Licensee/Permittee certifies that, apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect.	
<b>Character Issues</b>	Applicant certifies that neither applicant nor any party to the application has or had any interest in, or connection with:  (a) any broadcast application in any proceeding where character issues were left in unresolved or were resolved adversely against the applicant or party to the application; or  (b) any pending broadcast application in which character issues have been raised.	
<b>Adverse Findings</b>	Has the Applicant or any party to this application had an adverse finding or an adverse final action taken by any court or administrative body in a civil or criminal proceeding brought under any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?	

**Certification**

Section	Question	Response
<p><b>General Certification Statements</b></p>	<p>The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by authorization or otherwise, and requests an Authorization in accordance with this application (See Section 304 of the Communications Act of 1934, as amended.).</p>	
	<p>The Applicant certifies that neither the Applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to §5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §862, because of a conviction for possession or distribution of a controlled substance. This certification does not apply to applications filed in services exempted under §1.2002(c) of the rules, 47 CFR . See §1.2002(b) of the rules, 47 CFR §1.2002(b), for the definition of "party to the application" as used in this certification §1.2002 (c). The Applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.</p>	
<p><b>Authorized Party to Sign</b></p>	<p><b>FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID</b></p> <p>Upon grant of this application, the Authorization Holder may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in automatic cancellation of the Authorization. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of Authorization requested in this application.</p> <p><b>WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND /OR IMPRISONMENT (U.S. Code, Title 18, §1001) AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, §312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, §503).</b></p>	
	<p>I certify that this application includes all required and relevant attachments.</p>	
	<p>I declare, under penalty of perjury, that I am an authorized representative of the above-named applicant for the Authorization(s) specified above.</p>	

**Attachments**

Information not provided.

**Certification**

Section	Question	Response
<p><b>General Certification Statements</b></p>	<p>The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by authorization or otherwise, and requests an Authorization in accordance with this application (See Section 304 of the Communications Act of 1934, as amended.).</p> <p>The Applicant certifies that neither the Applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to §5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §862, because of a conviction for possession or distribution of a controlled substance. This certification does not apply to applications filed in services exempted under §1.2002(c) of the rules, 47 CFR . See §1.2002(b) of the rules, 47 CFR §1.2002(b), for the definition of "party to the application" as used in this certification §1.2002 (c). The Applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.</p>	
<p><b>Authorized Party to Sign</b></p>	<p><b>FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID</b></p> <p>Upon grant of this application, the Authorization Holder may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in automatic cancellation of the Authorization. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of Authorization requested in this application.</p> <p><b>WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, §1001) AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, §312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, §503).</b></p>	
	<p>I certify that this application includes all required and relevant attachments.</p>	
	<p>I declare, under penalty of perjury, that I am an authorized representative of the above-named applicant for the Authorization(s) specified above.</p>	