

Contingent Applications Pursuant to Section 47 C.F.R. §73.3517(e)

Two pending contingent minor modification applications, which originally were filed concurrently, are being amended concurrently, as follows: (1) WKFC (Facility Id No. 164261) to change from Channel 270A at North Corbin, KY to Channel 270A at Hustonville, KY, Application File No. 0000145184; and (2) WKKQ (Facility Id No. 3954) to change from Channel 241C3 at Barbourville, KY to Channel 241C3 at North Corbin, KY, Application File No. 0000145185. Processing of the WKFC and WKKQ applications, as amended (the “Amended Contingent Applications”), pursuant to Section 73.3517(e) of the Commission’s rules is hereby requested. (Note that Radioactive, LLC, which previously submitted a third contingent application, for the minor modification of WPBK (Facility Id No. 164262) to change from Channel 275A at Crab Orchard, KY to Channel 275C3 at Hustonville, KY, Application File No. 0000145182, is requesting dismissal of Application File No. 0000145182, as such application is no longer part of the contingent application group. In addition, the request that the Commission issue an Order to Show Cause to the licensee of WOKH (Facility Id No. 71010), Springfield, KY, to modify its operations from Channel 274A to Channel 293A, is hereby withdrawn.)

The Amended and Restated Contingent Applications Agreement between the licensees of WKFC and WKKQ is attached.

AMENDED AND RESTATED CONTINGENT APPLICATIONS AGREEMENT

This Amended and Restated Contingent Applications Agreement (the “Agreement”) is made and entered into as of this 8th day of February, 2022, by and between RADIOACTIVE, LLC (“R/A”), the licensee of radio station WKFC(FM), North Corbin, Kentucky, FCC Facility ID No. 164241 (“WKFC”), and CHOICE RADIO CORPORATION (“Choice Radio”), the licensee of radio station WKKQ(FM), Barbourville, Kentucky, FCC Facility ID No. 3954 (“WKKQ”), and amends and supersedes that certain Contingent Applications Agreement between R/A and Choice Radio made as of April 5, 2021.

WHEREAS, pursuant to authorizations issued by Federal Communications Commission (“FCC”), WKFC is currently licensed for operation on Channel 270A at North Corbin, Kentucky; and WKKQ is currently licensed for operation on Channel 241C3 at Barbourville, Kentucky.

WHEREAS, the parties believe it would result in a preferential arrangement of FM allotments and better serve the public interest for WKFC to operate as a Class A station with Hustonville, Kentucky, as its community of license, and WKKQ to operate as a Class C3 station with North Corbin, Kentucky, as its community of license (the “Collective Community of License Changes”).

WHEREAS, the parties desire to submit simultaneously to the FCC contingent applications to seek construction permits, and thereafter to submit to the FCC license to cover applications, to obtain authority for, and to implement, the Collective Community of License Changes.

WHEREAS, R/A has committed to prepare the documentation necessary to establish that the Collective Community of License Changes will better serve the public interest and shall reimburse Choice Radio for FCC application filing fees for WKKQ to implement its portion of the Collective Community of License Change.

NOW, THEREFORE, in consideration of the mutual benefits and covenants set forth below, the parties hereby agree as follows:

1. Contingent Applications. Within two (2) business days of R/A’s notice to Choice, the following contingent applications, or amendments to pending applications, shall be filed with the FCC on the same day pursuant to Section 73.3517 of the FCC rules (the “Contingent Applications”):

a. R/A shall file via the FCC LMS system an application for the Minor Modification of a Licensed Facility for FM, or amendment to pending application File No. 0000145184, specifying operation of WKFC as a Class A station with Hustonville, Kentucky, as its community of license (the “WKFC Modification Application”).

b. On the same day, Choice Radio shall file via the FCC LMS system an amendment to pending application File No. 0000145185, specifying operation of WKKQ as a Class C3

station with North Corbin, Kentucky, as its community of license (the “WKKQ Modification Application”).

2. Prosecution of Applications.

a. The licensees of WKFC and WKKQ shall each use diligent efforts to obtain the FCC’s grant of the Contingent Applications, including the filing of any amendments, letters, or pleadings responding to FCC objections or requests, and opposing any third-party petitions or objections. R/A shall cover Choice Radio’s reasonable out-of-pocket expenses for such efforts, provided that the parties agree in advance to such expenditures.

b. Upon the grant of the WKKQ Modification Application, Choice Radio shall use its commercially reasonable efforts to file a covering license application (the “WKKQ License Application”) as soon as practical, time being of the essence, and in no event later than three (3) business days from the grant of the WKKQ Modification Application. R/A shall cover Choice Radio’s reasonable out-of-pocket expenses for such efforts, provided that the parties agree in advance to such expenditures.

c. None of the parties will submit any application, amendment, petition, response, pleading, or other document to the FCC or any other governmental authority concerning the Contingent Applications, the construction permits issued pursuant to the Contingent Applications, or the respective covering license applications (i) without first seeking the informal consent of the other parties to this Agreement to do so; (ii) that is inconsistent with the terms of this Agreement; (iii) that would diminish or delay the prospects for timely grants of the Contingent Applications; or (iv) that would diminish or delay the ability of R/A to construct and place into operation the modifications requested in the WKFC Modification Application.

d. Each party to this Agreement acknowledges to each other party that there is no assurance that the Contingent Applications will be granted by the FCC, and that FCC rule or policy changes, or changes in other facilities or factors outside the control of a party to this Agreement, could cause any of the Contingent Applications to be impossible of effectuation. No party to this Agreement is relying upon any technical, engineering or legal assurances, representations or covenants except as explicitly set forth in this Agreement.

3. Consideration.

a. In consideration of the mutual benefits and covenants set forth in this Agreement, Choice Radio acknowledges the payment by R/A of ONE HUNDRED DOLLARS (\$100.00), the adequacy and receipt of which is hereby acknowledged by Choice Radio.

b. The costs and expenses of the changes proposed in this Agreement to the parties’ own facilities shall be paid by the party to which the facility is licensed, except as expressly set forth in this Agreement.

4. Termination.

a. This Agreement shall commence on the date first written above and shall continue until such time as the parties hereto have discharged their respective obligations under this Agreement, unless this Agreement is earlier terminated pursuant to the terms of this Agreement.

b. If, within four (4) years of the date of this Agreement, the FCC fails to grant the Contingent Applications, or if the FCC denies or dismisses the Contingent Applications by a "Final Order" (as hereinafter defined), provided the terminating party is not in breach or default of this Agreement, either party may thereafter terminate this Agreement effective upon written notice to the other. In such event, all parties shall be relieved of their further duties and obligations hereunder with respect to the Contingent Applications. As used in this Agreement, the term "Final Order" means a written action or order issued by the FCC which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which no requests have been filed for administrative or judicial review, reconsideration or appeal and the periods provided by statute or FCC regulations for filing any such requests and for the FCC to set aside the action on its own motion have expired, or in the event of review, reconsideration or appeal, the FCC upholds the action and the period provided by statute or FCC regulations for further review, reconsideration or appeal has expired.

c. Because of the unique nature of the FCC authorizations that are the subject matter of this Agreement, any party may obtain specific performance, including seeking the issuance of a judicial order directing a party to file a specific application or seek a specific approval at the FCC, subject to obtaining any necessary FCC grants of applications or approvals, or to undertake specific actions such as the construction or modification of a party's broadcasting facility, as a remedy for the breach of this Agreement in addition to all other available legal or equitable remedies. Each party agrees to waive the defense in any such action for a decree of specific performance that the party bringing the action has no adequate remedy at law and will interpose no objection or opposition, legal or otherwise, as to the propriety of specific performance as a remedy. Should any party default in the performance of any of the requirements, terms or conditions of this Agreement which default results in the filing of an action for specific performance, a lawsuit or other action, the prevailing party or parties in such a lawsuit or action shall be entitled to an award of reasonable attorneys' fees and costs as shall be determined by the court.

5. Assignment. Should any assignment or transfer of the broadcast stations that are the subject of this Agreement take place, the rights and obligations of that party under this Agreement shall and must be assigned, assumed and transferred as a part of the assignment or transfer of such broadcast station.

6. Construction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Kentucky without regard to choice of laws principles. Any action brought under this Agreement shall be in either the state or federal court having jurisdiction over claims in Kentucky.

7. Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be sent by USPS Express

Mail, Federal Express or similar recognized overnight courier service, with all charges prepaid, and shall be deemed to have been duly delivered and received on the date of receipt (as shown on the delivery confirmation). All such notices, demands, and requests shall be addressed as follows:

- a. If to R/A:

Radioactive, LLC
1717 Dixie Highway
Suite 650
Ft. Wright, KY 41011
Attention: Randy Michaels

with a copy (which shall not constitute notice) to:

Marissa G. Repp, Esq.
Repp Law Firm
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006-1631

- b. If to Choice Radio:

Choice Radio Corporation
201-A East Main Street
Stanford, KY 40484
Attention: Jonathan L. Smith

with a copy (which shall not constitute notice) to:

Barry D. Wood
Wood & Maines PC3300 Fairfax Drive
Suite 202
Arlington, Virginia 22201

8. Miscellaneous.

a. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes any prior negotiations, agreements, understandings or arrangements between the parties with respect to the subject matter hereof.

b. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors or assigns. Except to the extent specified herein, nothing in this Agreement, express or implied, shall confer on any person

other than the parties hereto and their respective successors or assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

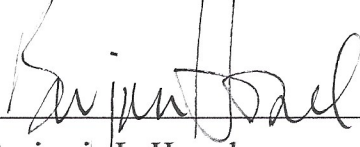
c. No term or provision of this Agreement may be amended, waived, discharged or terminated orally but only by an instrument in writing signed by the party against whom the enforcement of such amendment, waiver, discharge or termination is sought. Any waiver shall be effective only in accordance with its express terms and conditions.

d. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. Delivery of an executed counterpart signature page to this Agreement by facsimile or e-mail shall be deemed sufficient to render this Agreement effective.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as the date first set forth above.

RADIOACTIVE, LLC

By: 
Benjamin L. Homel
Its: Member and President

CHOICE RADIO CORPORATION


By: _____
Jonathan L. Smith
Its: President

IN WITNESS WHEREOF, the parties have executed this Agreement as the date first set forth above.

RADIOACTIVE, LLC

By: _____
Benjamin L. Homel
Its: Member and President

CHOICE RADIO CORPORATION

By: 
Jonathan L. Smith
Its: President