

Request for Extension of STA to Remain Silent and for Extension of License Under Section 312(g) of the Communications Act of 1934, as Amended, and for Tolling of Construction Permit

Request to Extend STA and License

Lilly Broadcasting, L.L.C. ("Lilly"), holder of the Commission authorization for television translator station W34FR-D (analog station W07BJ), Ithaca, NY (Facility ID 71512) (the "Station"), hereby supplements its pending request that the current special temporary authority ("STA") for the Station to remain silent be extended until July 10, 2022, and that a concurrent extension of the Station's license under Section 312(g) of the Communications Act of 1934, as amended, be granted until July 10, 2022 so as to permit Lilly to complete work on the Station's digital displacement facilities (LMS File 0000179421).¹ This supplement is being provided at the request of Commission staff.

On May 3, 2021, the Station was granted extension of its STA and its license until January 10, 2022.² In its request to further extend the STA and license, Lilly recounted how it had been unable to locate the owner of the site at which the Station's current analog facilities are located, which is also the site at which the Channel 34 digital displacement facilities are to be built under the Station's digital displacement construction permit ("CP"), and was compelled to seek an alternative site.

Initially Lilly planned to relocate the displacement facilities on a tower owned by Ithaca College and entered into discussions with the College to lease space on that tower. However, in June, 2021, Mike Kobylka, Chief Engineer for Lilly, made a visual inspection of the Ithaca College tower and determined that the location on the tower at which the Station's antenna would have to be placed (approximately 60 feet above ground level) was too close to the tree line and would not allow for a good quality signal to be broadcast to viewers.³

Lilly then entered into discussions with Saga Communications which owns a tower (the "WHCU Tower") in the Ithaca area.⁴ While the WHCU Tower initially appeared promising, after further investigation it was determined in August of 2021 that the WHCU Tower did not have the ability to support the equipment necessary for the Station's facilities.

While there were two other Saga towers (co-located at the same site) which may have been able to accommodate the Station, while those were being considered Lilly became aware in early September 2021 that Family Life was constructing a new tower in the Ithaca area. Lilly began discussions with Family Life in early September regarding locating on this new tower, which discussions continued into

¹ A supplement to the pending request to extend that construction permit until July 10, 2022 is being filed contemporaneously with this filing.

² STA extension granted in LMS File 0000163459; License extended under Section 312(g) by Letter dated May 3, 2021 from Barbara Kreisman, Chief, Video Division, Media Bureau.

³ See photo of the tower taken by Mr. Kobylka on June 18, 2021 attached as Exhibit A. The Station's antenna would have had to have been installed below the existing equipment on the tower.

⁴ See e-mails between Mr. Kobylka, Thomas Atkins, VP and Director of Engineering for Saga, and Benjamin VanPatten of Cayuga Radio Group attached as Exhibit B.

late December 2021.⁵ This site was not previously available because construction of the tower was not completed until late December, 2021 when as noted in the December 27, 2021 e-mail from Mr. Snavelly electric power was hooked up.⁶ In addition, the Station requires an internet connection to supply programming and internet service was not connected to the tower until January 2022.

Lilly has negotiated a lease with Family Life and is preparing an application for minor modification of its CP to specify the new site. Lilly ordered the transmitter for the Station in January, that transmitter has been delivered, and Lilly understands that the tower site is ready for installation of the transmitter. Lilly did not order the antenna sooner because the antenna will be a custom-made directional antenna and it is necessary to determine the site from which the Station would be operating before the antenna design could be completed.

Due to the unavailability of the initially proposed tower, and the delays in finding an alternative location, Lilly has been unable to construct the new facilities and recommence broadcasts due to circumstances beyond its control. A viable site was not available until late December, 2021 when the Family Life tower was completed. Even at that time construction would not have been possible because the custom directional antenna had to be designed, ordered and received, the CP had to be amended to specify the new site, and it is difficult in any case to schedule tower crews for work in northern New York in Winter due to uncertain weather conditions.

Lilly anticipates that, subject to grant of a minor modification of the Station's CP, construction could commence in the Spring or early Summer at which time weather conditions should permit installation of the antenna on the tower. Barring supply chain or other delays in the production and shipping of necessary equipment, and assuming a timely grant of a modified CP, Lilly expects construction to be completed by June, 2022. In the meantime, an extension of the Station's license and STA to remain silent will be necessary to provide time to order and install equipment and obtain a modification to the CP.

Request to Toll Construction Permit

Lilly has also requested that the Commission waive the provisions of Section 73.3598 of its rules and toll the construction period under its construction permit until July 10, 2022. That request is currently pending in LMS File No. 0000179437.

The Commission will grant a waiver of its rules for good cause.⁷ The Commission also is required to take a "hard look" at applications for waiver,⁸ and to consider all relevant factors in making its decision.⁹ For its part, the Media Bureau has recognized that "long-standing precedent...establishes that unintended

⁵ See e-mails among Brian Lilly, Mr. Kobylka and Rick Snavelly of Family Life attached as Exhibit C.

⁶ See Exhibit C.

⁷ 47 C.F.R. § 1.3. The Media Bureau is authorized to act by delegated authority on waiver requests pursuant to Sections 0.61(h) and 0.283 of the Commission's rules.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). The court also noted the importance of the waiver process as a "safety valve procedure" in special circumstances. *Id.* at 1157.

⁹ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

consequences of a Rule are a significant factor favoring a Rule waiver.”¹⁰ The intent of the Commission’s construction period rules was to provide limits on the period during which a permittee could hold a permit without constructing, and to thereby prevent the “warehousing of scarce spectrum.”¹¹

As explained above, the Station’s license should be extended under Section 312(g). However, the Station was displaced as a result of the broadcast incentive auction and can no longer operate on its licensed channel. As a result, the Station has no value unless the displacement facilities can be constructed. Once the license extension has been granted in order to enable the Station to be sold and restitution made, it would clearly be an unintended consequence of the Commission’s construction period rules if the displacement facilities could not be built due to expiration of the construction permit. This case thus presents the prospect of precisely the sort of “unintended consequences” which support a waiver request.

For the above reasons, JBS urges the Commission to grant an extension of the Station’s license under Section 312(g) of the Communications Act, and to toll the construction period under the Station’s construction permit, in both cases until July 10, 2022.

¹⁰ *WRKH(FM), Mobile, Alabama*, 23 FCC Rcd 4526, 4530 (Audio Div. 2008).

¹¹ See *1998 Regulatory Review-Streamlining of Mass Media Applications, Rules and Processes, Report & Order*, 13 FCC Rcd 23056, 23093 (1998).

EXHIBIT A



EXHIBIT B

From: Ben VanPatten <BVanPatten@cyradiogroup.com>
Sent: Monday, July 26, 2021 5:10 PM
To: Tom Atkins <tatkins@sagacom.com>; Mike Kobylka <MKobylka@wicu12.com>
Subject: Re: rent space on WHCU AM

Sounds great, thank you!

Benjamin VanPatten
Cayuga Radio Group
Ithaca, New York
(607) 280-5956

From: Mike Kobylka <MKobylka@wicu12.com>
Sent: Monday, July 26, 2021 4:12:43 PM
To: Tom Atkins <tatkins@sagacom.com>; Ben VanPatten <BVanPatten@cyradiogroup.com>
Subject: Re: rent space on WHCU AM

CAUTION: This email originated from outside of Saga Communications. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks Tom,

Hi Ben,

I am checking to see if we can make the WFIZ / WQNY Site work.

I will be in touch in next few days.

Thanks Mike

From: Tom Atkins <tatkins@sagacom.com>
Sent: Monday, July 26, 2021 1:37 PM
To: Ben VanPatten <BVanPatten@cyradiogroup.com>
Cc: Mike Kobylka <MKobylka@wicu12.com>
Subject: RE: rent space on WHCU AM

Ben,

Meet Mike Kobylka from Lilly Broadcasting. They are interested in leasing tower space from us. Initially Mt. Pleasant but given the load on that tower, Mike and I discussed at length WFIZ and WQNY sites. Please reach out to Mike as he may have some questions for you. I informed him we have a had a couple of tenants leave the WFIZ tower.
Mikes contact info is mkobylka@wicu12.com Cell- 814 450 2146

Mike, Ben's cell # is 607-280-5956

Tom Atkins

Vice President/Director of Engineering
Saga Communications, Inc.
73 Kercheval Avenue
Grosse Pointe Farms, Michigan 48236
Ph. 313-886-7070
Direct. 313-343-8873
Cell. 716-983-9164



From: Mike Kobylka <MKobylka@wicu12.com>
Sent: Friday, July 23, 2021 3:38 PM
To: tatkins@sagacom.com
Subject: rent space on WHCU AM

CAUTION: This email originated from outside of Saga Communications. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Tom

Mike Kobylka here from Lilly Broadcasting NBC CBS in Erie Pa

My boss Brian Lilly talked with Chet the GM in Ithaca and he gave us your contact info.

I need tower space in Ithaca around 275 - 300ft for a low power UHF Ch 34 side mount Antenna

less than 20 ft long, being fed with 1 5/8 Heliax. I don't have exact specs for the Antenna, I will be

ordering from DiElectric. My TPO will be around 2kw and i would want to use a Kintronics Iso-coupler

on the hot AM daytime tower for WHCU. I understand you have a FM mounted near top of tower (4bay?)

We have many mutual friends including Tom Barney who hired me as a 17-year-old kid in 1979.

Location is pretty critical , i am moving off the Spectrum Tower nearby.

Could we talk sometime next week and see if we can make this work?

Please advise. Thanks! Mike Kobylka mkobylka@wicu12.com Cell 814 450 2146

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EXHIBIT C

From: Rick Snavelly <ricksnavely@familylife.org>
Sent: Monday, December 27, 2021 10:44 AM
To: Mike Kobyłka <MKobyłka@wicu12.com>
Cc: Brian Lilly <bl@brianlilly.com>; John Coulter <johncoulter@familylife.org>
Subject: RE: Thursday Afternoon Meeting

Hi Mike,

Here is a sample lease that we've come up with for your antenna on our Enfield tower. Please let me know if this works for you. The electric is now hooked up and we are ready to move forward. John will be installing a permanent fiber internet once we receive what has been ordered.

Rick



Rick Snavelly
Chief Executive Officer
Family Life | familylife.org
PO Box 506 Bath, NY, 14810, USA
7634 Campbell Creek Road. Bath, NY 14810
T: [800.927.9083](tel:800.927.9083) x 217



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From: Mike Kobyłka <MKobyłka@wicu12.com>
Sent: Friday, October 22, 2021 4:32 PM
To: Rick Snavelly <ricksnavely@familylife.org>
Cc: Brian Lilly <bl@brianlilly.com>
Subject: Re: Thursday Afternoon Meeting

Hi Rick,

YES I got the OK to proceed.

\$1100 per month including electric is good with me.

We would like to do a 3 year lease, with options to renew .

please send me the agreement and I will have it signed and returned.

We need to have our CP modified to the new site, we will try and expedite they want us on the air in January. I'm glad its not a 1000ft tower to rig during the winter.

Thanks Mike

From: Rick Snavelly <ricksnavely@familylife.org>

Sent: Friday, October 22, 2021 3:52 PM

To: Mike Kobylka <MKobylka@wicu12.com>

Subject: FW: Thursday Afternoon Meeting

Hi Mike,

I am curious when you would be interested in moving forward with the installation of your antenna on our Ithaca tower. We are hoping to have everything set in the next month or so.

Rick

Rick Snavelly

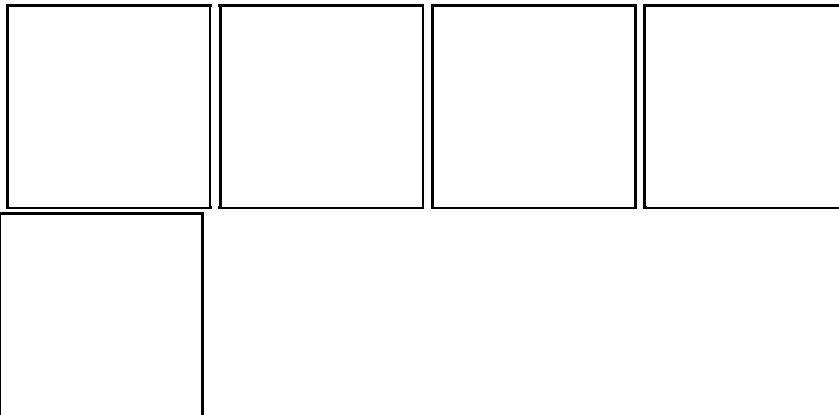
Chief Executive Officer

Family Life | familylife.org

PO Box 506 Bath, NY, 14810, USA

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From: Rick Snavelly

Sent: Monday, October 18, 2021 3:02 PM

To: Mike Kobylka <MKobylka@wicu12.com>

Subject: RE: Thursday Afternoon Meeting

Hi Mike,

Sorry for the delay in getting back to you. We just came through our Sharathon season which is all consuming!

Yes, let's move forward with starting with the \$1,100/month which would include electric. John and crew are busy getting everything ready in the transmitter building and are just waiting for the electric company to work with us in getting power to the site. Hopefully that won't take too long!

I was supposed to meet with Brian last month before I had to rush my wife to the hospital. I think he wanted to talk about our 98.7 translator there in Erie. If you want to touch base with him and see if there still might be interest I would appreciate it. Based upon what certain translators are going for in different markets, we were looking at \$175,000 for it. We have been told that translators are going for \$.85/person reached in the primary coverage area. This translator reaches 237,147 in the primary coverage area (L-R map included using 2 meters for height of listeners). This works out to be about \$.74/person.

Let me know what you think about this.

Rick

From: Mike Kobylka <MKobylka@wicu12.com>

Sent: Monday, September 27, 2021 2:35 PM

To: Rick Snavelly <ricksnavely@familylife.org>

Subject: Re: Thursday Afternoon Meeting

Hi Rick,

we would only be using a small amount of Electricity , less than \$100 per month, we are also looking for high speed internet for a video stream.

how would we calculate the electric use?

the LP FM that you have on our TV tower in Erie includes the Electric

and i would like to do the same at your site, any internet we use, we will pay the entire bill.

i was thinking \$1100 per month including the Electric, can we make that work ?

Please advise. Thanks! Mike

From: Rick Snavelly <ricksnavely@familylife.org>

Sent: Monday, September 27, 2021 1:55 PM

To: Mike Kobylka <MKobylka@wicu12.com>

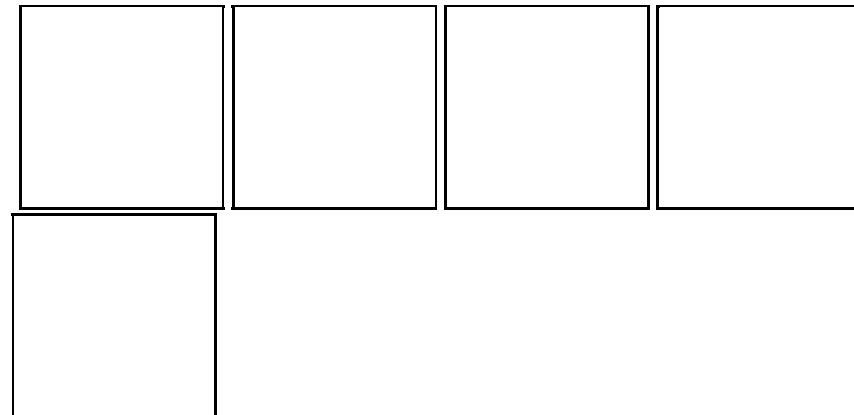
Subject: RE: Thursday Afternoon Meeting

Hi Mike,

To give you an idea of our thoughts, we would be looking at \$1,200/month plus utilities with a 3% annual increase for your setup. Let me know if that meets your expectations.

Rick

Rick Snavelly
Chief Executive Officer
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From: Mike Kobylka <MKobylka@wicu12.com>
Sent: Wednesday, September 15, 2021 3:50 PM
To: Brian Lilly <bl@brianlilly.com>; Rick Snavelly <ricksnavely@familylife.org>
Subject: Re: Thursday Afternoon Meeting

Hi Rick

Mike Kobylka here, Lilly Chief Engineer.

I spoke with John C last week and he told me about the new tower you are building.

I understand there will be your 4 bay FM as high as it can go on the tower.

We propose and 8 Bay Low Power UHF antenna, about 8 inches in diameter, and 8 ft long, total weight under 200lb.

We would like to feed with 1 5/8 air heliax and would like to be as close to the bottom of your FM bays, at least 150 ft , we would be on a single leg side mount.

Total power 10 amps 208/240 single phase.

Thanks! Mike

From: Brian Lilly <bl@brianlilly.com>
Sent: Wednesday, September 15, 2021 2:39 PM

To: Mike Kobylka <MKobylka@wicu12.com>
Subject: Fwd: Thursday Afternoon Meeting

Sent from my iPad

Begin forwarded message:

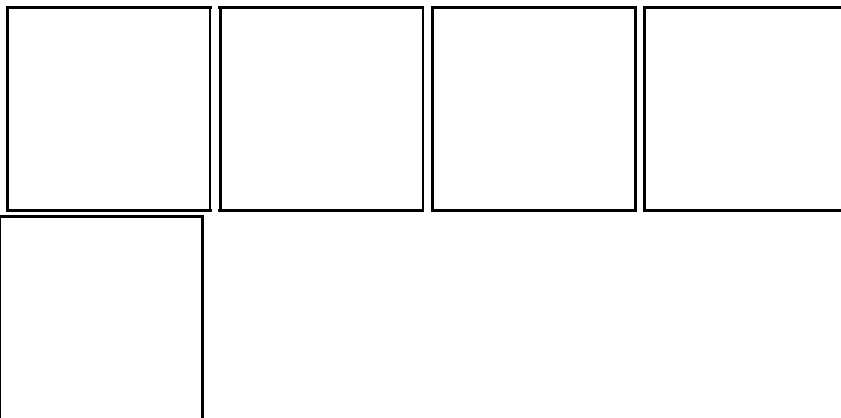
From: Rick Snavely <ricksnavely@familylife.org>
Date: September 15, 2021 at 2:26:05 PM EDT
To: Brian Lilly <bl@brianlilly.com>
Subject: RE: Thursday Afternoon Meeting

Hi Brian,

Do you know how much space and power you would need at our Ithaca tower site? I also would need to know if there is a certain height you would need. We have other interested parties for getting on this tower and we're trying to coordinate things.

Rick

Rick Snavely
Chief Executive Officer
Family Life | familylife.org
PO Box 506 Bath, NY, 14810, USA
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T: [800.927.9083](tel:800.927.9083) x 217



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From: Brian Lilly <bl@brianlilly.com>
Sent: Thursday, September 9, 2021 10:24 AM

To: Rick Snavely <ricksnavely@familylife.org>

Subject: Re: Thursday Afternoon Meeting

Ric, Thinking of your wife and a safe recovery. Best, Brian

Sent from my iPad

On Sep 9, 2021, at 10:23 AM, Rick Snavely <ricksnavely@familylife.org> wrote:

Brian,

I had to rush my wife to the hospital as she thought she was having a heart attack. She is having tests done now. The pressure in he chest has subsided somewhat. Her pulse was 181 and he heart was beating out of her chest. I think I will have to cancel our meeting this afternoon.

Ric

Sent from my iPhone

Rick Snavely

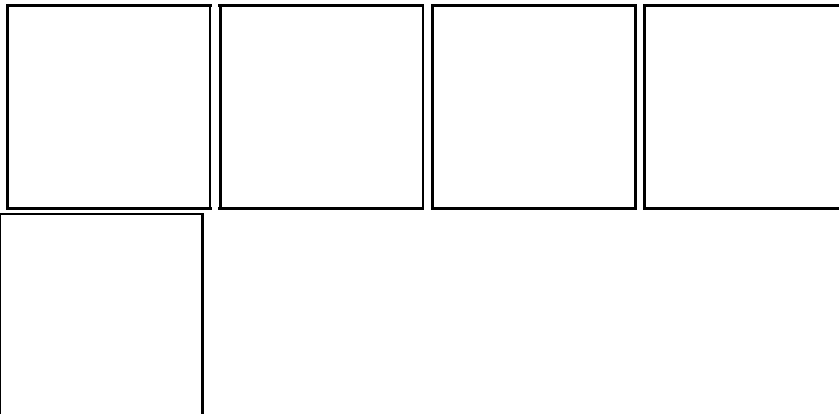
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On Sep 7, 2021, at 3:32 PM, Brian Lilly <bl@brianlilly.com> wrote:

Confirmed. See you there

Sent from my iPad

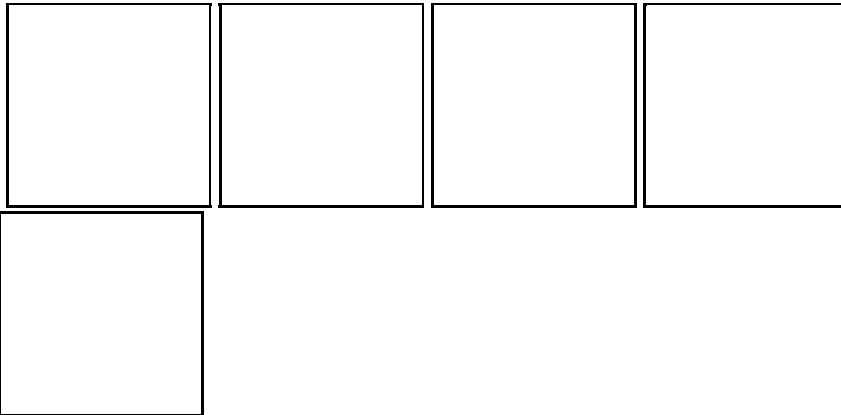
On Sep 7, 2021, at 3:23 PM, Rick Snavelly <ricksnavelly@familylife.org> wrote:

Brian,

How about at Dunkin Donuts off of Victory Highway in Painted Post?

Rick

Rick Snavelly
Chief Executive Officer
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From: Brian Lilly <bl@brianlilly.com>
Sent: Tuesday, September 7, 2021 2:56 PM
To: Rick Snavelly <ricksnavelly@familylife.org>
Subject: Re: Thursday Afternoon Meeting

Rick, 2:30 works. Where is the best place to meet? Brian

Sent from my iPad

On Sep 7, 2021, at 1:15 PM, Rick Snavelly <ricksnavelly@familylife.org> wrote:

Hi Brian,

I look forward to meeting with you. Would 2:30 be too late for you? I ask because I have a lunch engagement that day and I want to make sure that I can do that and meet with you also.

Thanks!

Rick

<~WRD0004.jpg>

Rick Snavelly
Chief Executive Officer
Family Life | familylife.org
PO Box 506 Bath, NY, 14810, USA
7634 Campbell Creek Road. Bath, NY 14810
T: [800.927.9083](tel:800.927.9083) x 217

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From: Brian Lilly <bl@brianlilly.com>
Sent: Tuesday, September 7, 2021 12:56 PM
To: Mike Kobylka <MKobylka@wicu12.com>
Cc: Rick Snavelly <ricksnavely@familylife.org>
Subject: Re: Thursday Afternoon Meeting

Rick, Nice to e meet you. Are you available this Thursday? The 9th? I could meet you at 2pm. Best, Brian

Sent from my iPad

On Sep 7, 2021, at 12:14 PM, Mike Kobylka <MKobylka@wicu12.com> wrote:

Brian, Meet Rick Snavelly.

Rick is available on Thursday Sept 12 around 2pm.

Brian will be in the Corning area, Could you guys please connect via Email and firm up a time and place to meet?

Discussion about Erie 98.7 signal.

Also may want to be on New tower in Ithaca NY.

Ricks # 607-776-4151 ext 217.

Thanks! Mike Kobylka Chief Engineer Lilly Broadcasting.