



November 16, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 03-15
KSBY-DT (San Luis Obispo, California)
Facility ID No. 19654
Request for Waiver of July 1, 2006 Replication/Maximization Deadline

Dear Ms. Dortch:

KSBY Communications, Inc. ("KSBY"), permittee of KSBY-DT, San Luis Obispo, California (the "Station"), by its attorneys hereby respectfully requests an extension of the Commission's replication/maximization interference protection deadline for the Station. Circumstances beyond its control continue to prevent KSBY from implementing its maximized facilities.¹ Despite KSBY's considerable efforts, the U.S. Forest Service still has not issued the permit necessary to complete construction of the Station.

Background

Over two years ago, shortly after it became the new owner,² KSBY sought permission from the U.S. Forest Service to complete DTV construction of the Station. KSBY made clear to the U.S. Forest Service – and it has reiterated this fact on numerous other occasions – that time was of the essence to complete construction of the Station. KSBY required permission from the U.S. Forest Service because it had to bury the power lines on property that the U.S. Forest Service maintains. Despite hiring its own archaeologist and taking every other possible measure to expedite processing of the permit application, KSBY has not yet received approval from the U.S. Forest Service. On July 7, 2006, KSBY was forced to request a waiver from the Commission of the replication/maximization deadline.³ On May 18, 2007, the Commission

¹ See FCC File No. BPCDT-19991012AAY.

² See FCC File No. BALCT-20041105AOV.

³ See KSBY Communications, Inc., *Request for Waiver of July 1, 2006 Replication/Maximization Deadline*, in MB Docket No. 03-15 (filed July 7, 2007).

agreed that KSBY's circumstances met the standards for a waiver and granted a six-month extension.⁴

Construction of Certified Facilities Prevented

KSBY seeks another extension of the replication/maximization deadline because it continues to await U.S. Forest Service issuance of the requisite permit. KSBY has taken extraordinary steps to facilitate the processing the permit application, including the submission of no less than four formal requests for expedited processing.⁵ With little other recourse, KSBY has appealed to the good offices of its Congressional representative to help bring the U.S. Forest Service's review to its completion.

Over the last two years, KSBY has responded promptly to every request for information from the U.S. Forest Service. After each response, the Forest Service has assured KSBY that it had all the necessary information to finish processing the permit request. Nevertheless, just this week the U.S. Forest Service yet again has requested that KSBY provide additional information – which KSBY will supply without delay.

If not for this lack of approval from the U.S. Forest Service, KSBY could complete construction of the Station. All other unrelated aspects of construction are complete. Indeed, all that remains to be done is comparatively minor. KSBY has arranged for the electric utility company to begin work as soon as the Forest Service grants KSBY's permit application. As such, KSBY estimates that it can commence Station operations within twelve weeks of Forest Service approval. The few remaining steps are:⁶

<u>Task</u>	<u>Estimated Completion Date</u>
Dig trenches and bury power lines	Two weeks after obtaining permit
Power up and test transmitter, etc.	Eight weeks after obtaining permit
Begin full power operations	Twelve weeks after obtaining permit

Satisfaction of Waiver Standard

KSBY submits that this extension request satisfies the standards for an extension of the DTV replication/maximization deadline, including the proposed stricter standards set forth in the

⁴ See DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines, *Order*, 20 FCC Rcd 9750, ¶ 30 (2007).

⁵ See Attachment A

⁶ In KSBY's discussions with the U.S. Forest Service, the agency has not provided KSBY with an estimate as to when its approval would be forthcoming. Accordingly, KSBY cannot estimate when construction of the Station will be complete, but only that it will complete construction within eight weeks of receiving U.S. Forest Service approval.

Third Periodic Review NPRM.⁷ The Commission tentatively concluded that it would eliminate several categories that previously would have warranted a waiver but that it would continue to grant requests where construction is delayed because of “reasons beyond a station’s control,” including delays caused by governing bodies.⁸ KSBY believes this instant waiver request satisfies this standard.⁹ KSBY cannot complete construction of its maximization facilities because until it receives the necessary U.S. Forest Service trenching approval.

Based upon the foregoing, KSBY believes that it has shown good cause for the Commission to extend its waiver of the July 1, 2006 deadline for the Station. Should any questions arise, please contact the undersigned.

Respectfully submitted,

/s/

Scott S. Patrick

cc: Shaun Maher (FCC)

⁷ See Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Notice of Proposed Rulemaking*, 22 FCC Rcd 9478, ¶ 83 (2007) (“*Third Periodic Review*”).

⁸ See *Third Periodic Review NPRM*, 22 FCC Rcd 8478 at ¶ 83 (stating that the Commission would grant extensions for delays caused by the Commission, courts, international coordination, or other similar reasons beyond a station’s control).

⁹ KSBY also believes that its request satisfies the standard set forth in the *Second Periodic Review* because it has been unable to meet the applicable deadline due to “circumstances beyond a station’s control.” See Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279, ¶ 87 (2004).

ATTACHMENT A

June 20, 2007

VIA OVERNIGHT MAIL

Ms. Vicki Collins
USDA Forest Service
Assistant Forest Lands Staff
Los Padres National Forest
6755 Hollister Avenue
Goleta, CA 93117

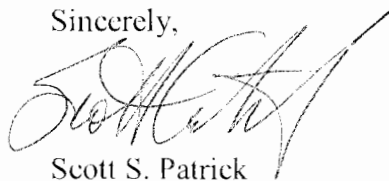
Re: KSBY(TV) (San Luis Obispo, California)
Request for Conditional Use Permit
EXPEDITED PROCESSING REQUESTED

Dear Ms. Collins:

I am writing on behalf of television station KSBY(TV) (San Luis Obispo, California) to request expedited processing of the station's request for a conditional use permit to complete construction of new full power digital television ("DTV") facilities. Station KSBY(TV) is under Congressional orders to complete construction of the DTV station. To complete this construction, KSBY(TV) must bury power lines on property managed by the Forest Service and accordingly requested the necessary Conditional Use Permit. KSBY(TV) is running out of time to complete this construction, so we very much would appreciate it if the Forest Service could expedite processing of KSBY(TV)'s request for a Conditional Use Permit.

Our understanding is that the Forest Service has all the information it needs to complete processing, but if that is not the case or if circumstances change please do not hesitate to contact me or the station. If there is anything we can do to help expedite processing, please let us know.

Sincerely,



Scott S. Patrick

cc: Mr. Andrew Suk
Mr. Tim Perry
Mr. Bill Ingram



Scott S. Patrick

D 202.776.2885 E spatrack@dowlohn.com

July 5, 2007

VIA OVERNIGHT MAIL

Ms. Vicki Collins
USDA Forest Service
Assistant Forest Lands Staff
Los Padres National Forest
6755 Hollister Avenue
Suite 150
Goleta, CA 93117

Re: KSBY(TV) (San Luis Obispo, California)
Request for Conditional Use Permit
SECOND REQUEST FOR EXPEDITED PROCESSING

Dear Ms. Collins:

I am writing on behalf of television station KSBY(TV) (San Luis Obispo, California) to ask again for expedited processing of the station's request for a conditional use permit to complete construction of new full power digital television ("DTV") facilities. As we explained in our initial request of June 20th seeking expedited processing, KSBY(TV) is under Congressional orders to complete construction of the DTV station. To comply with federal construction deadlines, KSBY(TV) must obtain a use permit from the Forest Service as soon as possible.

From the outset in late 2005 when KSBY(TV) personnel first contacted the Forest Service, the station has attempted to stress the urgency of this permit request. The Forest Service was kind enough to advise at that time that, to obtain speedier processing, KSBY(TV) should hire its own archaeologist for the site study. KSBY(TV) followed this advice and was able to submit the completed permit application with site studies over one year ago on May 17, 2006. Subsequently, KSBY(TV) has responded promptly to all requests by the Forest Service for additional information (*i.e.*, for photographs and station ownership transfer). KSBY(TV) has attempted in all regards to facilitate the expeditious processing of the permit application.

As such, we hereby ask again for expedited processing of the permit application. In addition, I would very much appreciate it if you could call me at 202-776-2885 and provide us with the application's status. Our understanding is that the Forest Service has all the information it needs to complete expeditious processing. If that is not the case, however, I

USDA Forest Service

July 5, 2007

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hope you can take this opportunity to let me know. If there is anything at all that we can do to facilitate this process, I hope you will let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Patrick", with a stylized, cursive script.

Scott S. Patrick

cc: Mr. Andrew Suk
Mr. Tim Perry
Mr. Bill Ingram

August 3, 2007

VIA OVERNIGHT MAIL

Ms. Vicki Collins
USDA Forest Service
Assistant Forest Lands Staff
Los Padres National Forest
6755 Hollister Avenue, Suite 150
Goleta, CA 93117

Re: KSBY(TV) (San Luis Obispo, California)
Request for Conditional Use Permit
THIRD REQUEST FOR EXPEDITED PROCESSING

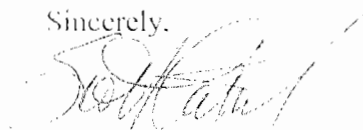
Dear Ms. Collins:

I again am writing on behalf of television station KSBY(TV) (San Luis Obispo, California) to urge the Forest Service for expedited processing of the station's request for a Conditional Use Permit to complete construction of new full power digital television ("DTV") facilities. As we explained in our prior requests of June 20th and July 5th, Congress has ordered KSBY(TV) and other broadcast television stations to complete construction of their full power DTV facilities. To comply with federal construction deadlines, KSBY(TV) must obtain a use permit from the Forest Service as soon as possible. KSBY(TV) personnel first contacted the Forest Service nearly two years ago, and its request for a Conditional Use Permit has been pending for over a year.

KSBY(TV) has diligently followed the Forest Service's instructions since stressing from the outset the urgency of its request, and it has responded promptly to all of the Forest Service's requests for additional information. KSBY(TV) has attempted in all regards to facilitate the expeditious processing of the permit application.

Accordingly, we hereby ask again for expedited processing of the permit application. Our understanding is that the Forest Service has all the information it needs to complete processing, but please call me at 202-776-2885 to verify that this is the case.

Sincerely,



Scott S. Patrick

cc: Mr. Ken Heffner
Mr. Andrew Suk
Mr. Tim Perry
Mr. Bill Ingram

September 27, 2007

VIA OVERNIGHT MAIL

Ms. Vicki Collins
USDA Forest Service
Assistant Forest Lands Staff
Los Padres National Forest
6755 Hollister Avenue, Suite 150
Golcta, CA 93117

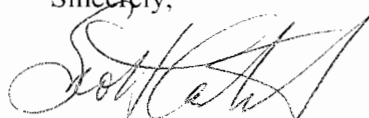
Re: KSBY(TV) (San Luis Obispo, California)
Request for Conditional Use Permit
FOURTH REQUEST FOR EXPEDITED PROCESSING

Dear Ms. Collins:

I again am writing on behalf of television station KSBY(TV) (San Luis Obispo, California) seeking expedited processing of the station's request for a Conditional Use Permit to complete construction of new full power digital television ("DTV") facilities. As we previously have explained in great detail, Congress has ordered KSBY(TV) and other broadcast television stations to complete construction of their full power DTV facilities, and to comply KSBY(TV) must obtain a use permit from the Forest Service as soon as possible.

We repeatedly have asked the Forest Service to contact us in the event anything is preventing processing of the use permit request. Given the lack of response, we only can assume that the Forest Service has all the information it needs to complete processing, and, indeed, we understand informally that the Forest Service has been poised for some time to act. We hope this is the case, and we accordingly urge the Forest Service to respect the directive of Congress and complete its processing of KSBY(TV)'s request expeditiously.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott S. Patrick', written over a horizontal line.

Scott S. Patrick

cc: Mr. Ken Heffner
Mr. Andrew Suk
Mr. Tim Perry
Mr. Bill Ingram