

KXVA-DT Phased Transition STA Extension Request  
Exhibit 36

Bayou City Broadcasting ("BCB"), permittee of KXVA-DT, Abilene, Texas hereby seeks an extension of its special temporary authority ("STA") to continue operating with its reduced-power DTV facilities authorized in File No. BDSTA-20090113ABZ pending completion of construction of its final, post-transition digital facilities authorized in BEPCDT- 20080317ADK, together with extension of this construction permit. KXVA-DT is a station which did not have a paired digital channel but rather had to flash cut to digital operation. BCB seeks grant of this STA extension pursuant to the Commission's policies regarding phased transition and special relief for stations located in small markets, as those policies were outlined in the Commission's *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 07-91, released December 31, 2007 ("Third Periodic Review").

BCB has only recently become the licensee of KXVA. Indeed, the closing on its purchase of KXVA, along with other television and Class A television stations, from Sage Broadcasting Corporation did not take place until July 31, 2009, less than three months ago. Prior to BCB's acquisition of the station, Sage Broadcasting had previously sought and been granted extensions of its DTV construction permit based upon that licensee's financial situation. See File No. BEPCDT-20090113ABY, granted January 23, 2009. This grant demonstrated that the Commission had concluded that the prior licensee's dire financial constraints excused its inability to complete construction of the final DTV facilities up until that point.

Despite the financial constraints, interim, reduced-power digital facilities were constructed for KXVA, and BCB continues to operate those facilities that it acquired. This interim DTV operation provides service to 94.8% of the population within the prior analog service contour and 92.6% of population within the predicted service contour of the full and final DTV facilities authorized in the outstanding construction permit. Moreover, KXVA also has faced a technical challenge in that it was required to flash-cut to digital rather than to operate a companion digital channel.

Financial issues, including the current state of the credit market, continue to limit KXVA's ability to complete its final DTV facilities. Even before the closing on KXVA BCB ordered a full-power digital transmitter and paid a downpayment on it. Before BCB can complete the purchase and arrange for delivery and installation of the transmitter, it must be certain that it can pay the remaining cost of the equipment. In order to be able to make the final payments, however, BCB must obtain financing for this significant capital outlay. With the current economic conditions, BCB has been unable to obtain such financing. Despite its persistent and diligent efforts, in the current financial climate, BCB has not found a lender willing to advance funds for a start-up business with a new television licensee. Accordingly, additional time is needed to complete the process begun by BCB of construction of the final KXVA DTV facilities.

In addition, the Commission made specific provision for additional regulatory flexibility for stations in the circumstances of KIDY by providing the opportunity for special relief for noncommercial stations and stations located in small markets. *Id.* at ¶ 97. The Commission

there defined “Small Market” stations as those which are not top four network affiliates in markets 1-100 and stated that it would consider, on a case-by-case basis, allowing such small market stations a reduced service requirement when circumstances warrant this additional flexibility. KIDY clearly fits the definition of a Small Market station, and its history of financial problems and its current situation demonstrate that special consideration is warranted.

KIDY serves the very small Abilene-Sweetwater, Texas, market as the local Fox affiliate. This DMA is ranked as market number 165. Therefore, KXVA qualifies as a Small Market Station. Indeed, the entire DMA has only 115,310 television households. *Television and Cable Factbook 2009* at A-2174. Obviously, a market with such a small population base creates special challenges in financing the substantial capital outlays necessary to complete construction of final, full-power DTV facilities, particularly in the current economy. In addition, BCB believes that it is the only 100% African-American owned Fox affiliate in the country. BCB is exactly the type of broadcaster for which this flexibility was designed. BCB needs the extra time, now that it is the permittee of KXVA-DT, to secure financing of the final digital facilities and complete final construction of those facilities.

BCB is fully cognizant of the Commission’s ultimate goal of ensuring that final, post-transition facilities commence service to viewers as quickly as possible. BCB is fully committed to that goal as well. It has previously demonstrated that commitment by making a downpayment on the necessary equipment even before acquiring the station. In the interim until the authorized DTV facilities can be completed, BCB will continue the operation of the interim digital facilities that serve virtually all of the predicted digital construction permit population, with 92.6% coverage. Clearly, from a public interest standpoint, such very slightly reduced service is far preferable to no service at all, particularly in a market with only three other full-power television stations that provide coverage of the central communities in the market. *Television and Cable Factbook 2009* at A-2174, A-2369.

Accordingly, pursuant to the flexibility provided by paragraphs 94-96 and 97 of the *Third Periodic Review*, Bayou City Broadcasting respectfully requests the Commission grant it an extension of its STA to continue interim operation of its DTV facilities, together with a concurrent extension of the KXVA digital construction permit.