

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Received & Inspected
JUN 17 2013
FCC Mail Room

In re: Application of)
)
POCATELLO CHANNEL 15, LLC) KPIF, Pocatello, Idaho
) BMPCDT-20080620AHZ
) Facility ID No. 86205
)

To: Office of the Secretary
Attention: The Commission

APPLICATION FOR REVIEW

Pocatello Channel 15, LLC (“Pocatello”), licensee of KPIF(TV), Pocatello, Idaho seeks pursuant to Sections 1.104 and 1.115 of the Commission’s rules, Commission review of the November 28, 2012 letter ruling to the Chief, Video Division¹ (“Letter Ruling”) (Attachment A) denying Pocatello’s March 14, 2011 Petition for Reconsideration. The basis of the March 14, 2011 Petition was a February 16, 2011 letter ruling by the Associate Chief, Video Division, Media Bureau, finding that Pocatello’s license to provide an analog television service on Channel 15 was terminated by statute on June 13, 2009, and that while Pocatello was granted a construction permit to flash-cut to digital operations, that construction permit expired on June 12, 2009, and Pocatello has not filed for a permit extension or a license to cover construction of a digital facility.

¹ The instant submission is being filed at the present time since undersigned counsel did not receive the November 28, 2012 letter. This may have been a result of how the letter was addressed. When counsel learned of the letter ruling he immediately notified Commission staff and followed up on the notification with a letter dated May 16, 2013 (Attachment B).

Pocatello in its Petition for Reconsideration stated that it commenced digital broadcasting prior to the curtailment of analog operations but it had inadvertently failed to file a license application due to a change of counsel. In its Petition for Reconsideration it was represented that digital operations commenced on June 11, 2009.²

It is urged that the Commission reverse the draconian cancellation of the KPIF license and permit Pocatello to submit a license application. Attached to the instant submission is documentation supporting the fact that equipment had been ordered for the digital upgrade. This equipment was ordered well in advance of the analog cessation date. *See* Attachment D. In addition, also included in Attachment D is a copy of a check in the amount of \$84,000, in payment of Axcera invoice No. 11050-1. Furthermore, also attached is an e-mail from Nick Davidson of Oregon Trail Broadcasting to Kevin Bae confirming the installation (Attachment E).

In WKLC, Inc., DA 12-1428, the licensee was given a forfeiture for failing to timely file its license application (the license application was filed approximately four (4) years after the construction permit had expired). The licensee explained that it had in fact completed construction and began operating the station pursuant to program test authority before the permit expired. The licensee argued that it had failed to file the license application predicated on inadvertence. *See also Clear Channel Broadcasting, Inc., Memorandum Opinion and Order*, 26 FCC Rcd 7153 (2011) (“Clear Channel II”), aff’ing *Clear Channel Broadcasting, Inc., Memorandum Opinion and Order*, 21 FCC Rcd 8677 (MB) 2006) (Clear Channel I). Pocatello acknowledges that the cases cited deal with radio as opposed to television. However, Pocatello submits that this is a distinction without a difference. Furthermore, the Commission is required

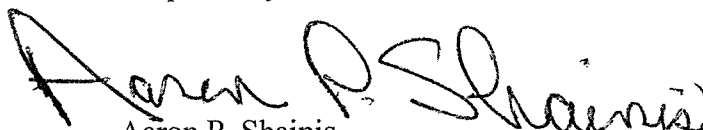
² In the Petition for Reconsideration, which was signed by counsel, Pocatello stated the following: “...the undersigned has been advised that digital operation commenced on June 11, 2009 has been operating since that date.” In the November 28, 2012 Letter Ruling, the Media Bureau states that the identity of who advised counsel is not provided. In this regard, undersigned counsel was advised of the date of commencement of digital operations by Kevin Joel Bae, the Vice President and Secretary of Pocatello. *See* Declaration of Mr. Bae (Attachment C).

to treat similarly situated applicants alike. *See Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

Conclusion

It is urged that in light of this submission the Commission reinstate the KPIF license and thus, permit Pocatello to submit a license application. The Bureau's action in terminating the Pocatello license was draconian. In this regard, the Bureau, in response to Pocatello's February 16, 2011 Petition could have articulated its concerns and requested a supplemental showing. It is unconscionable to terminate a license for a ministerial failure (i.e. not timely submitting a license application).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aaron P. Shainis". The signature is fluid and cursive, with the first name "Aaron" being the most prominent part.

Aaron P. Shainis
Counsel for
Pocatello Channel 15, LLC

Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036
202-293-0011

June 13, 2013

ATTACHMENT A



Federal Communications Commission
Washington, D.C. 20554

November 28, 2012

Pocatello Channel 15, LLC
Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036

Re: Petition for Reconsideration of Cancellation of License
KPIF(TV), Pocatello, Idaho
Facility ID No. 86205

Dear Counsel:

This is in regard to the petition for reconsideration filed by Pocatello Channel 15, LLC (Pocatello) of our letter of February 16, 2011, cancelling Pocatello's license for KPIF(TV) and deleting its call sign.¹ That letter decision explained that we took these actions because Pocatello's license to provide an analog television service on channel 15 was terminated by statute on June 13, 2009, and that while Pocatello was granted a construction permit to flash-cut to digital operations, that construction permit expired on June 12, 2009, and Pocatello neither filed an application for a permit extension nor for a license to cover construction of a digital facility.²

Pocatello argues that it started digital broadcasting prior to the curtailment of analog operations, but that it inadvertently failed to file a license application due to a change of counsel. Pocatello proposes that as a condition to reinstatement, it should be required to file a license to cover its digital permit.

We reject Pocatello's contention that a change of counsel excuses a failure to construct and file the requisite license application prior to the expiration of the construction permit. As we pointed out in our letter, the construction permit to flash-cut to digital operations expired on June 12, 2009.³ We do not find that change of counsel constitutes compelling circumstances justifying waiver or extension of this deadline.

Second, we do not find persuasive Pocatello's assertion that it constructed the facility prior to the expiration of the construction permit. Counsel for Pocatello submits that he "has been advised

¹ See Petition for Reconsideration of Cancellation of License of KPIF, Pocatello, Idaho, Facility ID No. 86205 (filed Mar. 21, 2011) (Petition), Att. A (Letter from Kevin R. Harding, Associate Chief, Video Division, Media Bureau, Federal Communications Commission, to Pocatello Channel 15, L.L.C. (rel. Feb. 16, 2011) (Harding Letter)).

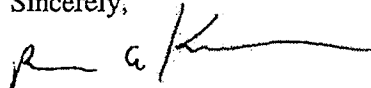
² Harding Letter at 1 (citations omitted).

³ Harding Letter at 1.

that digital operation commenced on June 11, 2009 and has been operating since that date," but does not submit any documentary evidence or affidavit to support that claim, nor does he identify who advised him of the date that digital operation commenced. In light of the insufficiency of the evidence provided, we do not find grounds to reconsider our decision to cancel the license for KPIF(TV).

ACCORDINGLY, IT IS ORDERED that the petition for reconsideration filed by Pocatello Channel 15, LLC IS DENIED.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', written over the typed name.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Shainis & Peltzman, Chartered

Counselors at Law

Aaron P. Shainis
aaron@s-plaw.com

Lee J. Peltzman
lee@s-plaw.com

Suite 240
1850 M Street, N.W.
Washington, D.C. 20036

(202) 293-0011
Fax (202) 293-0810
e-mail: shainispeltzman@s-plaw.com

May 16, 2013

VIA E-MAIL (david.brown@fcc.gov)

David Brown
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: KPIF(TV)
Pocatello, Idaho
Facility ID No. 86205**

Dear David:

I am writing this as a follow-up to my conversation with you of yesterday. As I advised you, the first time that I was advised of the Commission's November 28, 2012 letter denying the Petition for Reconsideration with respect to KPIF(TV), Pocatello, Idaho was on May 14, 2013. I advised you in the course of our conversation that I believed the problem was the way the letter was addressed. Accordingly, I will be seeking leave to file an application for review based on these circumstances. As I advised you, I will be using the date of May 14, 2013 to calculate when the application for review would be due. If I have somehow misunderstood our conversation please advise me immediately. Once again, I thank you for your consideration.

Sincerely yours,

Aaron P. Shainis

ATTACHMENT C

DECLARATION


Kevin Joel Bae hereby declares under penalty of perjury the following:

I am the Vice President, Secretary of Pocatello Channel 15, LLC (Pocatello), the licensee of KPIF, Pocatello, Idaho.

KPIF commenced digital operations on June 11, 2009. Due to inadvertence, Pocatello did not file a license application. This omission was occasioned by a change in FCC counsel.

Reinstatement of the KPIF license will permit Pocatello to continue to provide service to the Pocatello market.

June 12, 2013


Kevin Joel Bae

ATTACHMENT D

Fax

To: Mike Russo From: KM
Fax: (724) 873-8105 Pages: including cover page 6
Phone: (724) 873-8100 Date: ~~11/17/2008~~ 11/26/08
Re: _____ CC: _____

☒ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

- Mike! Ref: P.O. # 112608
1. please take care of him by 2/15/09.
 2. 1st - KPIF (Pocahontas, ID)
CH. 15.
 3. 2nd - KEJB
thanks

(u)

CONFIDENTIALITY NOTE

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AT (847)674-0864, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

**Axcera.**

P.O. Box 525
Lawrence, PA 15055-0525
724-873-8100 p
724-873-8105 f
www.axcera.com

DIGITAL BROADCAST TRANSMITTER ORDER DETAIL CONFIRMATION

Thank you for your order of the Axcera **transmitter** specified below. Our understanding of the technical details specific to your order are listed on this document. Please confirm these details by signing and returning this form, showing any changes that are needed. **Return form even if there are no changes.** Please return as soon as possible, as this confirmation is critical to meeting your delivery requirements.

Customer KM Communications KPIF PO# _____

Axcera Product(s) Conversion HP30SDW Axcera Order # 11050

AC Line Voltage 480

Number of Phases ☐ One ☒ Three; If three phases ☐ Delta ☒ Wye

AC Line Frequency ☐ 50Hz ☒ 60Hz

Altitude 5,500 feet above sea level

Channel 15 Indicate offset (if required) _____

Carrier Frequency Range 476-482 MHz

Call letters for code identifier N/A

Required Output Power _____ watts

Output power calibration _____ watts = 100%

Transmitter use: ☒ Full Service (FCC Part 73) or ☐ Low Power (FCC Part 74)

Other information needed:

☐ If box is checked, see enclosed floor plan (for multiple cabinet configurations only).

Axcera Contact: Jeff Heldman Phone: 724-873-8100 Ext. 262

Please sign, acknowledging agreement with above order details.

Date 12-10-08 Signature [Signature] Title General Manager



103 Freedom Dr. Lawrence, PA 15055 U.S.A.
phone: 724-873-8100 fax: 724-873-8105

INVOICE

INVOICE NO.	11050-1
DATE	04/08/09

SOLD TO:	SHIP TO:
----------	----------

Customer Number: 18483
KM Communications
3854 W. Jarvis Avenue
Skokie, IL 60076

TBD

QUANTITY:	040209DTV	TERMS: Upon Receipt	F.O.B.	ORIGIN
P.O. DATE:	04/02/09	SHIP DATE:	SHIP VIA:	
BOX:				

ITEM	QTY	MATERIAL DESCRIPTION	UNIT PRICE USD	TOTAL USD
1	1	35% down payment due for the following:	84,000.00	84,000.00
		Digital Upgrade for KEJB = \$129,600.00:		
		- Visionary HP160DAW Digital Conversion		
		- RF System Conversion		
		- Bird-5000-EX Power Meter		
		- Installation/Conversion		
		- Dual Exciter Option		
		Digital Upgrade for KPIF = \$110,400.00:		
		- Visionary HP80SAW Digital Conversion		
		- RF System Conversion		
		- Bird-5000-EX Power Meter		
		- Installation/Conversion		
		- Dual Exciter Option		
		Terms are:		
		\$84,000.00 - 35% down payment (representing this invoice)		
		\$158,000.00 - 65% balance due prior to shipment		
		\$240,000.00 - Purchase Price		

Sub-total:	84,000.00
Shipping and Handling:	
TOTAL AMOUNT DUE THIS INVOICE: \$	84,000.00

When remitting payment via check:
AXCERA, LLC
103 FREEDOM DRIVE
LAWRENCE, PA 15055
ATTENTION: CHRISTY FENNELL
724-873-8100 EXT 183

When remitting payment via wire transfer:
FIRST COMMONWEALTH BANK
ABA # 043306826 FOR CREDIT TO ACCT OF
AXCERA, LLC
ACCOUNT # 7110176726

THIS DOCUMENT HAS A COLORED BACKGROUND AND MICROPRINTING. THE REVERSE SIDE INCLUDES AN ARTIFICIAL WATERMARK.

KM Communications, Inc.

3654 W. Jarvis Avenue
Skokie, IL 60076
847-674-0864

Bank Of Lincolnwood

4433 W Touhy Ave
Lincolnwood, IL 60646-1820
847-675-2800

3523

DATE 4/10/2009

70-2255/719

PAY TO THE
ORDER OF

Axcera

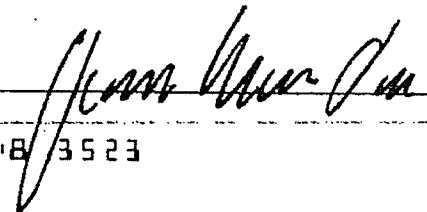
\$ **84,000.00

Eighty-Four Thousand and 00/100***** DOLLARS

Axcera
103 Freedom Drive
Lawrence, PA. 15055-0525

MEMO

Inv. 11050-1 / Quote B-14904-4



⑆071922557⑆ 02⑈0189⑈8 3523



103 Freedom Drive, P.O. Box 525
Lawrence, PA 15055-0525
724-873-8100 t
724-873-8105 f
www.axcera.com

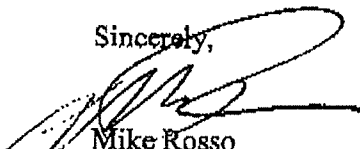
TO: Mr. Bae & Kevin	FROM: Mike Rosso
COMPANY: KM Communications	PAGES TO FOLLOW: 6
FAX NUMBER: 847-674-9188	DATE 10/22/08
SUBJECT: KEJB & KPIF Revised Proposal	

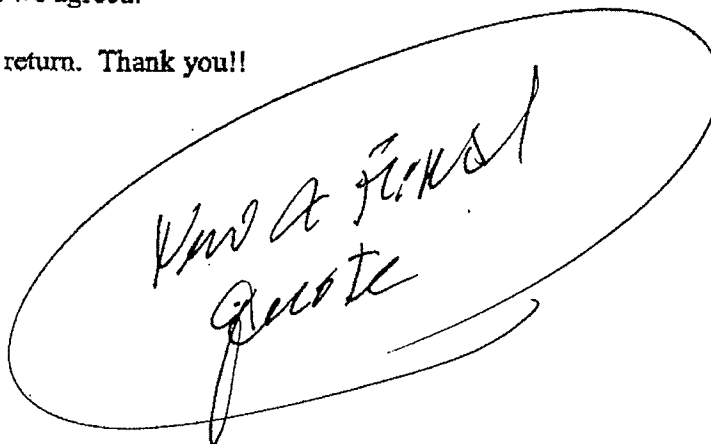
Mr. Bae,

I have revised the pricing for KEJB & KPIF and consolidated them into one quotation for a total price of \$270,000 as we agreed.

Just sign the quotation and return. Thank you!!

Sincerely,


Mike Rosso
Sr. Vice President, Sales
Axcera



P. V. #



103 Freedom Drive, P.O. Box 525
Lawrence, PA 15055-0525 USA
724-873-8100 t
724-873-8105 f
www.axcera.com

Quotation B-14904-3
October 22, 2008

Page 1 of 6

Prepared for: Mr. Bae
KM Communications
KEJB & KPIF
Transmitter Digital Conversions

Prepared By: Mike Rosso
Sr. Vice President, Sales

Payment Terms 35% Down payment with order, balance due when available for shipment. Prices are in US Dollars and do not include shipping charges, export duties or fees, state, federal, or local sales, use or excise taxes. Applicable sales taxes will be invoiced at time of shipment.

All prices are quoted F.O.B. origin.

Terms & Conditions Except as set forth on this page, all goods and services provided by Axcera are subject to Axcera's Standard Terms and Conditions (rev. 10/06) attached hereto.

Late Payment Past due amounts are subject to late payment service charges of 1.5% per month (18.0% APR).

Estimated Ship Date 90 - 120 days after receipt of purchase order and down payment.

Delivery schedule assumes that Axcera has received all pertinent technical information including channel frequencies, encoding schemes, and any special configurations required by the customer. Changes to the purchase order must be submitted in writing and could affect the estimated ship date.

Quotation Expiration Estimated ship date and prices are valid for a period of 30 days from the date of this quotation.

Returns Returns will not be accepted without authorization from Axcera and freight charges must be prepaid.

Cancellation/ Restocking A minimum 20% cancellation/restocking charge will be made on any portion of an order that is canceled or any goods that are returned.

Accepted by:

KM Comm.
Company
By: *[Signature]* 11/26/08
Signature Date
Title: *Director*

[Signature]
Mike Rosso

Quotation B-14904-3
October 22, 2008

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KEJB & KP1F

KEJB - VISIONARY® IOT TRANSMITTER DIGITAL UPGRADE

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	1	Visionary® HP160DAW Digital Conversion Includes the following:	\$50,000	\$50,000
1A	1	Axcera Axciter™ 8-VSB Digital Modulator with AXACT™ Fully ATSC compliant modulator accepts an MPEG-2 digital bit stream and modulates it to an 8VSB signal. AXACT™ (Axcera Adaptive Correction Technology) provides pre-correction which automatically tracks and corrects for distortions, both linear and non-linear, in the complete transmitter system.		
1B	1	Axcera Upconverter Accepts the output of the Axciter™ 8-VSB modulator and produces on-carrier RF for any TV channel. The upconverter is based on proven dual-conversion technology using low noise PLL sources. Both the modulator and upconverter can be locked to an external 10 MHz reference for synchronization or precise frequency control.		
1C	1	Axcera Advanced Control System (ACS) Upgrade metering, control system and GUI for DTV functionality		
1D	1	Interconnect Wiring Harness		
1E	2	Instruction Manuals		
2	1	RF System Conversion Includes: Constant Impedance Mask Filter (STF) Couplers Standard Configuration Interconnect	\$69,200	\$69,200
3	1	Bird 5000-EX Power Meter Includes: 5011 Terminating Power Sensor	\$3,625	\$3,625

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
4	1	Installation/Conversion See attached "Conversion Description" to follow.	\$30,000	\$30,000

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5	1	Dual Exciter Option (Axciter™) Adds an additional exciter for full redundancy. Includes switcher to provide automatic switchover to backup exciter in the event of a main exciter failure.	\$35,000	\$35,000

Quotation B-14904-3
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KEJB & KPIF

KPIF - VISIONARY® IOT TRANSMITTER DIGITAL UPGRADE

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	1	Visionary® HP80SAW Digital Conversion Includes the following:	\$45,000	\$45,000
1A	1	Axcera Axciter™ 8-VSB Digital Modulator with AXACT™ Fully ATSC compliant modulator accepts an MPEG-2 digital bit stream and modulates it to an 8VSB signal. AXACT™ (Axcera Adaptive Correction Technology) provides pre-correction which automatically tracks and corrects for distortions, both linear and non-linear, in the complete transmitter system.		
1B	1	Axcera Upconverter Accepts the output of the Axciter™ 8-VSB modulator and produces on-carrier RF for any TV channel. The upconverter is based on proven dual-conversion technology using low noise PLL sources. Both the modulator and upconverter can be locked to an external 10 MHz reference for synchronization or precise frequency control.		
1C	1	Axcera Advanced Control System (ACS) Upgrade metering, control system and GUI for DTV functionality		
1D	1	Interconnect Wiring Harness		
1E	2	Instruction Manuals		
2	1	RF System Conversion* Includes: Constant Impedance Mask Filter (STF) Couplers Standard Configuration Interconnect	\$59,495	\$59,495
3	1	Bird 5000-EX Power Meter Includes: 5011 Terminating Power Sensor	\$3,625	\$3,625

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
4	1	Installation/Conversion See attached "Conversion Description" to follow.	\$20,000	\$20,000

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5	1	Dual Exciter Option (Axciter™) Adds an additional exciter for full redundancy. Includes switcher to provide automatic switchover to backup exciter in the event of a main exciter failure.	\$35,000	\$35,000

Subtotal: \$350,945

Discount: \$80,945

Total: \$270,000

(KPIF: \$126,500 & KEJB: \$143,500)

*RF System for KPIF will support a Maximum TPO of 15kW

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October 22, 2008

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KEJB & KPIF

CONVERSION DESCRIPTION

Axcera will provide the following:

- Removal of existing analog only RF components from system.
- Installation of the new DTV RF components as listed in quotation.
- Removal of existing NTSC exciter from system.
- Installation of new exciter system.
- Conversion of Advanced Control System.
- General system training on site at time of installation.
- Perform proof of performance.
- Two copies of the detailed proof of performance report for FCC filing.

Customer is responsible for the following unless otherwise specified in the quotation:

- ✓ • FCC construction permit.
- ✓ • Building or room to accommodate Axcera supplied equipment. Building should contain appropriate lighting, heat, ventilation and sanitary facilities for an adequate working environment.
- ✓ • Permits, inspections and all applicable codes and ordinances.
- ✓ • Union workers or licensed tradesmen, if required to perform certain parts of the installation.
- ✓ • Installation and sweeping of waveguide/coaxial cable from the output of the supplied transmitter's RF system.
- ✓ • Installation of the antenna.
- ✓ • Installation of any customer supplied equipment that interfaces with the transmitter.
- Heavy equipment necessary for offloading and moving heavy items to their proper location.
- Additional expenses incurred by Axcera due to delays that are out of Axcera's direct control.
- Transportation to and from site if it requires something other than a standard motor vehicle.
- Removal and disposal of asbestos and all asbestos coated materials.
- Disposal of all removed NTSC components including exciter and RF system.
- Trash disposal.

Quotation B-14904-3
October 22, 2008

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KEJB & KPIF

AXCERA STANDARD TERMS AND CONDITIONS

All orders placed with Axcera, LLC ("Axcera") are subject to these terms and conditions and all additional terms and conditions presented on or accompanying an Axcera Quotation or Order Acknowledgment. Axcera specifically rejects all inconsistent or additional provisions in Buyer's printed forms. Within this document: (a) "Product" will mean equipment and goods sold by Axcera to Buyer; (b) "Software" will mean software and firmware provided by Axcera to Buyer, either separately or as part of a Product; and (c) "Service" will mean any service provided by Axcera to Buyer.

1. **ORDERS.** All orders are subject to written acceptance by Axcera, in its sole discretion, even if taken elsewhere by a salesperson, selling agent or representative. After acceptance of Buyer's order, Axcera will be paid at its standard rates for any agreed to changes including any changes in drawings, designs, specifications and shipment or Service dates.
 2. **PRICE.** Unless otherwise stated, prices quoted for the Product and/or Software only, not including any Services, will remain valid for thirty (30) days from Quotation date. Errors or omissions in price are subject to correction. Unless otherwise stated freight, customs fees, duties, freight forwarder fees, consular fees, taxes however designated and all other costs after shipment are to be paid by Buyer. Prices are in U.S. Dollars.
 3. **PAYMENT.** Unless otherwise stated, terms of payment are 35% down payment with order, balance due when available for shipment within the United States and Canada; payable at Axcera's discretion through irrevocable letter of credit or 100% net cash. Invoices will be rendered as shipments are made. Late charges of 1.5% per month or the maximum permitted by law on outstanding balances may be charged.
 4. **SHIPMENT/SERVICE.** Shipment and Service dates are estimated in good faith but are not guaranteed by Axcera. After an order is accepted, Buyer may not change shipment and Service dates without Axcera's written consent. Axcera will not be held liable for any late delivery or similar charges. Shipments will be made F.O.B. Axcera's shipping point. Orders may be tendered in partial shipments.
 5. **TITLE, RISK OF LOSS AND INSURANCE.** Title, risk of loss and insurance responsibilities pass to Buyer upon delivery of Products and Software by Axcera to a shipping agent or carrier.
 6. **CANCELLATION/CHANGES.** If Buyer cancels or changes an order in whole or in part, Buyer agrees to pay for all Services and work in process for the portion canceled or changed including a cancellation fee as determined by Axcera. Axcera reserves the right to cancel an accepted order in whole or in part if, in Axcera's judgment, Buyer's financial condition does not justify the terms of payment specified.
 7. **INSPECTION.** Axcera will inspect Products prior to shipment in accordance with its normal practices. Axcera reserves the right to charge for other inspections or tests requested by Buyer.
 8. **LICENSES AND PERMITS.** It is Buyer's responsibility to procure import and/or export licenses and comply with U.S. and other applicable import and/or export regulations if Buyer intends to export or re-export Products and/or Software.
 9. **PACKING.** Products will be packed or packaged for U.S. shipment in accordance with standard commercial practices. Axcera will charge a reasonable fee for packing and/or packaging for export shipment or to comply with Buyer's instructions.
 10. **TECHNICAL DATA.** All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, computer software and all parts thereof, and all other information, technical or otherwise which was developed, made or supplied by Axcera as part of or in the production of any Product or Software or the performance of any Service sold, rendered or licensed hereunder will be and remain the sole property of Axcera (or its licensor, if any).
- Buyer agrees that Software is hereby licensed (not sold) subject to the terms set forth in the applicable Software license. Buyer acknowledges that the Software contains information and trade secrets proprietary to or licensed to Axcera. No change, modification, defacement, alteration, reverse engineering, disassembly, decompilation or reproduction of such Software or disclosure of programming content to other parties is allowed without the express written consent of Axcera. Software is unpublished and any copyright notices placed thereon will not be deemed to constitute publication. Buyer agrees to require compliance with all terms of the applicable Software license by any future user of the Software.
11. **INFRINGEMENT.** Axcera will hold Buyer harmless from any loss, damage or expense (including reasonable attorney fees) resulting from infringement of U. S. Patents, trademarks or copyrights in connection with the purchase or use of Axcera designed Products and/or Software. If Buyer is prevented from using any Axcera designed Product or Software by injunction or court order because of such infringement, Axcera will, at its expense and election, either: (a) obtain the right for Buyer to continue using such Product or Software; (b) replace such Product or Software with a non-infringing substitute; (c) modify such Product or Software to make it non-infringing; or (d) grant Buyer a credit for such Product or Software in accordance with Axcera's depreciation policy. Axcera will solely control and defend or settle, at its option, any action or suit for which it is responsible hereunder. Buyer must promptly notify Axcera of any claim of infringement for which Axcera is responsible and cooperate fully in the defense of any such claim.

Axcera has no obligation or liability under this Article for any claim based on: (a) use of any Product or Software with equipment, devices or programs not designed by Axcera; (b) use of any Product or Software in a manner other than for which it was intended; (c) modification of any Product or Software; or (d) Axcera's adherence to Buyer's instructions or directions, in which case Buyer will hold Axcera harmless from any loss, damage or expense (including reasonable attorney fees) resulting therefrom.

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KEJB & KPIF

AXCERA STANDARD TERMS AND CONDITIONS cont'd

12. **RETURNS.** Products and Software may not be returned without prior authorization from Axcera. Authorized returns may be subject to a restocking charge with transportation charges paid by Buyer.

13. **WARRANTY.**

- a. Axcera warrants each new product (excluding software products) manufactured and sold by Axcera against defects in material and workmanship, under normal use and service, for a period of one (1) year from the date of shipment from Axcera's plant, when operated in accordance with Axcera's operating instructions. This warranty shall not apply to tubes, fuses, batteries or bulbs.
- b. Axcera warrants that (a) Axcera designed Software will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of shipment from Axcera's plant, and (b) hardware accompanying such Software will be free of defects in materials and workmanship under normal use and service for a period of one (1) year from date of shipment from Axcera's plant.
- c. Warranties are valid only when and if (a) Axcera receives prompt written notice of breach within the period of the warranty, (b) the defective Product is properly packed and returned by the Buyer (transportation and insurance prepaid), and (c) Axcera determines, in its sole judgment, that the Product is defective and not subject to any misuse, neglect, improper installation, negligence, accident, or (unless authorized in writing by Axcera) repair or alteration. Axcera's exclusive liability for any personal and/or property damages (including direct, consequential or incidental) caused by the breach of any or all warranties, shall be limited to the following: (a) repairing or replacing (in Axcera's sole discretion) any defective parts free of charge (F.O.B. Axcera's plant), and/or (b) crediting (in Axcera's sole discretion) all or a portion of the purchase price to the Buyer.
- d. Equipment furnished by Axcera, but not bearing its trade name, shall bear no warranties other than the warranties extended by the manufacturer at the time of delivery to the Buyer. **NO WARRANTIES, WHETHER STATUTORY, EXPRESSED OR IMPLIED, AND NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, OTHER THAN AS SPECIFIED HEREIN, SHALL APPLY TO THE EQUIPMENT FURNISHED HEREUNDER.**

14. **IN NO EVENT WILL AXCERA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER IN CONTRACT, TORT OR OTHERWISE. TO THE EXTENT POSSIBLE UNDER APPLICABLE LAW, THE TOTAL LIABILITY OF AXCERA SHALL BE LIMITED TO THE AMOUNTS PAID TO AXCERA BY BUYER FOR THE PRODUCT, SOFTWARE OR SERVICE ON WHICH THE CLAIM IS BASED.**

15. **FCC RULES.** Axcera warrants that in all quotations for Axcera Product that are subject to FCC rules, either: (a) the Axcera Product complies with all FCC rules governing such Product; or (b) the Axcera Product will comply with all FCC rules governing such Product before delivery of the Product to the Buyer.

16. **GENERAL PROVISIONS.**

- a. Axcera reserves the right to subcontract any obligation hereunder.
- b. No waiver will be valid unless in writing and no waiver granted will release Buyer from subsequent strict compliance herewith.
- c. Axcera is not liable for failure or delay in fulfilling its obligations under these Terms and Conditions due to causes beyond its control.
- d. The laws of the Commonwealth of Pennsylvania, U.S.A. will apply to all transactions hereunder. Any action hereunder will be brought solely in the Commonwealth of Pennsylvania, U.S.A. Any claim, except for nonpayment, will be brought within one (1) year of shipment or completion of Service, and Buyer will be liable for any collection costs or attorney fees.
- e. Claims for non-conforming orders must be submitted within thirty (30) days from shipment date.
- f. These Terms and Conditions together with Axcera's Order Acknowledgment constitute the entire agreement between the parties with respect to the subject matter hereof and supersede any prior or contemporaneous agreement or representation written or oral. Any amendment hereto must be written and signed by Axcera.

ATTACHMENT E

Aaron Shainis

To: Aaron Shainis
Subject: FW: KPIF Conversion to Digital

----- Forwarded message -----

From: "Nick Davidson" <NDavidson@kpvi.com>
Date: Jun 12, 2013 9:07 PM
Subject: KPIF Conversion to Digital
To: "Kevin Bae" <kevinbae@kmcommunications.com>
Cc:

Hi Kevin

My records show that I assisted Jeff Hoffman with the installation of an AXCERA Television Digital Exciter (AXCTER) on 11 June 2009. The previous week we also installed an E2V Tube and Cavity that Jeff had sent out from your IOWA station. Jeff had all the equipment for the installation including the PSIP generator and analog-to- digital conversion equipment which we setup on-site. We had a problem with the Axciter within the first week or so but Axcera promptly sent us out another one that has been working reliably ever since.

Regards

Nick Davidson (KA7WZK)
208-251-0366 Cell anytime please

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________(*)____/
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Oregon Trail Broadcasting
902 East Sherman St
Pocatello, Idaho 83201
208-232-6666

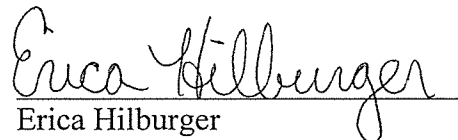
CERTIFICATE OF SERVICE

I, Erica Hilburger, do hereby certify that copies of the foregoing "Application for Review" were sent via First Class U.S. Mail, postage prepaid, this 13th day of June, 2013 to the following:

Barbara A. Kreisman, Esq.*
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
barbara.kreisman@fcc.gov

David Brown, Esq.
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
david.brown@fcc.gov

* Also sent via email


Erica Hilburger