

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Application of)
)
BLACKTAIL TV TAX DISTRICT)
)
For a Construction Permit for)
Low Power TV Station K67CZ,)
Kalispell, Bigfork, Etc., Montana)
Facility ID No. 5817)

File No. BPTT-20041004ADM

RECEIVED

MAR 24 2006

To: The Secretary
Attn: Media Bureau
Video Division

Federal Communications Commission
Office of Secretary

PETITION TO DISMISS OR DENY

Bluestone License Holdings Inc. ("Bluestone"), licensee of KCFW-TV, NTSC channel 9, and permittee of KCFW-DT, DTV Channel 38, both Kalispell, Montana, by its attorneys and pursuant to Section 73.3584 of the Commission's rules, respectfully requests that the Commission dismiss or deny the captioned application of Blacktail TV Tax District ("Blacktail") for a construction permit for a new low power television ("LPTV") station on Channel 39 at Kalispell, Bigfork, Etc., Montana (the "Application"). 1/ The Application specifies a site that is within the noise-limited perimeter of KCFW-DT's facilities on first adjacent channel 38, 2/ yet fails to satisfy the express prerequisite that it demonstrate that the ratio of the proposed LPTV station's field strength to that of KCFW-DT (the "L/D Ratio") is

1/ See *Public Notice*, "Low Power/Television Translators, Class A Television: Proposed Construction Permits," Report No. PGL06-1 (released Feb. 23, 2006). This petition is timely filed within 30 days of the release of the *Public Notice*.

2/ KCFW-DT's authorized facilities are located at 48° 0' 48" N, 114° 21' 55" W. The Application, as amended, specifies facilities located at 48° 0' 37.8" N, 114° 21' 46.2" W.

within the limits prescribed in the Commission's rules. The Application should not have been accepted for filing and therefore must be dismissed or denied.

The Commission's rules establish clear guidelines designed to protect digital TV stations from interference by new or modified LPTV stations. Specifically, Section 74.706(d) of the rules provides that "a low power TV . . . application *will not be accepted*" if the L/D Ratio fails to meet +48 dB for adjacent channel operations "at all points within the DTV noise-limited area if a low power TV . . . is located within the DTV noise-limited perimeter, *as demonstrated by the applicant.*" (Emphases added.) In other words, the burden under the rules was on Blacktail to demonstrate in the Application that its proposed facilities would not cause impermissible interference to KCFW-DT's first adjacent channel service at all points within KCFW-DT's noise-limited area.

Blacktail has failed to satisfy this essential requirement of the rule. It has neither provided any data or analysis demonstrating that the L/D Ratio within KCFW-DT's noise-limited contour satisfies the rule; nor, if the prescribed L/D Ratio is exceeded at any point therein, demonstrated that a waiver of the limitation is warranted. Accordingly, both the plain language of the rule and the public interest require dismissal or denial of the Application. 3/

In anticipation of the July 1, 2006, "use-it-or-lose-it" deadline, Bluestone is making a substantial commitment to the construction of KCFW-DT's facilities, and reasonably expects that in doing so it may rely on the interference protections afforded by the Commission's rules. Just as important, KCFW-DT provides valuable broadcast service to the Kalispell community, and the Commission's rules regarding the secondary low power service are meant to

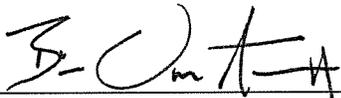
3/ BlueStone notes also that Blacktail did not even respond to Form 346, Section II, Question 14, regarding environmental matters and RF radiation exposure requirements. This significant omission by itself renders the Application unacceptable for filing.

ensure that the construction of a new LPTV facility does not disrupt that service. Grant of the Application in the absence of any demonstration by Blacktail that the proposal satisfies the interference limitations set out at Section 74.706(d) would undermine the Commission's rules and disserve the public interest.

The language of the rule is unequivocal. An application that does not demonstrate its satisfaction of the precondition in Section 74.706(d) "will not be accepted." For its failure to do so, Blacktail's Application must be dismissed or denied.

Respectfully submitted,

BLUESTONE LICENSE HOLDINGS INC.

By:  _____

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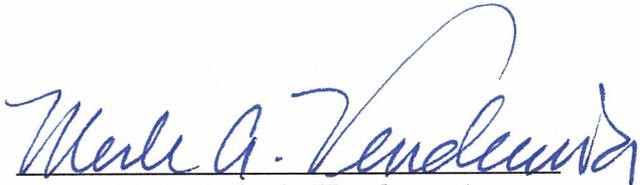
March 24, 2006

CERTIFICATE OF SERVICE

I, Merle A. Vendemmia, legal secretary at the law firm of Hogan & Hartson L.L.P. do hereby certify that on this 24th day of March 2006, I caused a copy of the foregoing "PETITION TO DISMISS OR DENY" to be served *via* first-class mail, postage prepaid, upon the following:

Hossein Hashemzadeh
Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
(By Hand Delivery and E-mail)

Steven Fite
Blacktail TV Tax District
115 6th Ave. West
Polson, MT 59860-2644

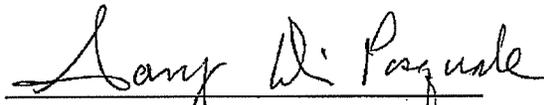

Merle A. Vendemmia

DECLARATION AND VERIFICATION

Sandy DiPasquale hereby deposes and states:

1. I am President of BlueStone License Holdings, Inc., licensee of station KCFW-TV, NTSC Channel 9, and permittee of KCFW-DT, DTV Channel 38, both Kalispell, Montana.
2. I have reviewed the Petition to Dismiss or Deny the application of Blacktail TV Tax District for a new Low Power/Television Translator Station at Kalispell, Bigfork, Etc., Montana.
3. The information contained in the Petition to Dismiss or Deny has been provided by persons with knowledge thereof under my direction and is true and accurate to the best of my knowledge, information and belief.
4. I declare under penalty of perjury that the forgoing is true and correct.

Executed on March 24, 2006.


Sandy DiPasquale