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Before the
Federal Communications Commission
Washington, D.C. 20554

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In re:

KNHT(FM), Rio Dell, CA)	
Facility ID No. 17412)	
State of Oregon Acting By and)	License BMLED-19991028AFZ
Through the State Board of Higher)	Dismissed Construction Permit
Education on Behalf of Southern)	Application BPH-20070720ABF
Oregon University)	
)	
KMDR(FM), McKinleyville, CA)	Construction Permit
Facility ID No. 170994)	BNPH-20070502AFH
William W. McCutcheon III)	Modification Application
)	BMPH-20071123ADQ
)	
KZCC (FM), Trinidad, CA)	Construction Permit
Facility ID No. 164090)	BMPH-20070523ADS
Airen Broadcasting Company)	License Application BLH-20071231AFD
)	

To: The Commission

Application for Review and Other Relief

State of Oregon, Acting by and Through the State
Board of Higher Education for the Benefit of
Southern Oregon University

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Date filed: January 8, 2009

Summary

The State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University ("the State of Oregon") files this Application for Review and Other Relief seeking review of a letter decision of the Audio Division, dated December 9, 2008, and signed by Peter Doyle ("Doyle *Letter Decision*"). The basis for seeking review is that the Doyle *Letter Decision* is in error for failing to effectuate the Commission's requirement, as set forth in the Commission's rulemaking order, *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes in Community of License in the Radio Broadcast Services*, Report and Order (MB Docket 05-210), 21 FCC Rcd.14212 (2006) ("2006 *Community of License Order*"), that applications to change community of license, where the applicant appears to be attempting to "game" the system, should be treated as if a waiver of the rule was necessary, rather than simply processed under the "first-come-first-served" process that this new rule now permits for most such applications. The application of Airen Broadcasting Company ("Airen") to change its community of license from McCloud, CA to Trinidad, CA, presents the exact types of red flags against which the Commission warned in the 2006 *Community of License Order*, but the Audio Division erroneously refused to implement the waiver requirement. The State of Oregon urges reversal of the Audio Division's decision with respect to Airen's application, and also seeks relief from an Order that specifically requires the State of Oregon, under threat of forfeiture, to file an application to relocate on Form 301 no later than January 8, 2009. The State of Oregon has also filed a Motion to Stay that Order, which violates the State of Oregon's procedural rights, disregards the expenses and other disruptions that will be caused by this forced relocation, and disregards evidence that Airen has not built an operable facility for Trinidad.

Table of Contents

	page
Introduction	2
Questions Presented	6
Factors That Warrant Commission Consideration	8
ARGUMENT	9
A. Applications to Change Community of License That Will Result in the Abandonment of a Community to Which the Applicant Provided First Local Service, or Where the Applicant Has Failed to Build in Its Initial Community of License, Are Disfavored and Require a Waiver Request	9
B. Airen Cannot Satisfy the Requirements for a Waiver of the Commission’s Policy Against Relocations That Deprive a Larger Community of First Local Service	14
C. The Audio Division Erroneously Failed to Take into Consideration the State of Oregon’s Informal Objection to Airen’s License Application	17
D. The State of Oregon and Its Taxpayers Should Not Be Required to Bear the Financial Burdens of Relocation and Are Unable to Do So at the Present Time	18
E. The Audio Division’s Threat to Fine the State of Oregon If It Did Not File an Application on Form 301 to Relocate to Channel 273 Violates Due Process and the Commission’s Own Procedural Rules	21
Relief Sought	23
Conclusion	23

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)	Request for Special Temporary Authority
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To: The Commission

Application for Review and Other Relief

The State of Oregon Acting By and Through the State Board of Higher Education on Behalf of Southern Oregon University ("State of Oregon"), through its counsel, files this Application for Review of the Letter Decision of December 9, 2008, which was signed by Peter H. Doyle, Chief, Audio Division, Media Bureau ("Doyle *Letter Decision*"). The Doyle *Letter*

Decision, inter alia, affirmed the November 19, 2007 *Letter Decision*, signed by Dale Bickel (“Bickel *Letter Decision*). The letter decision also granted the application of Airen Broadcasting Company (“Airen”) to change its community of license from McCloud, CA to Trinidad, CA, but added a condition precluding KZCC(FM) from commencing program tests with authorized facilities until such time as program tests commence for KMDR(FM) on channel 299C3. The Doyle letter also rejected the State of Oregon’s arguments in opposition to Airen’s application, affirmed the dismissal of the State of Oregon’s minor change application for NCE station KNHT(FM) (File No. BPH-20070729ABF), and ordered the State of Oregon to file a minor change application on Form 301 specifying future operation of KNHT(FM) on Channel 273C2. The State of Oregon has filed this Application for Review because it believes that the Doyle *Letter Decision* has misconstrued the Commission’s rules, is arbitrary and capricious and must therefore be reversed. The State of Oregon has also filed a Motion, to Stay the orders directed at the State of Oregon, set forth in the Doyle *Letter Decision*.

Introduction

On February 23, 2005, Airen prevailed in an auction and was awarded a construction permit for a commercial FM station on Channel 238C3 at McCloud, CA, a small town with a population of 1343 persons, according to the 2000 Census. Airen took no action to begin construction so that, two years later, it had gotten no further in building its station than the day the CP was first awarded.

On March 27, 2007, the Commission issued an *Omnibus Order*¹ in which it ruled on

¹ *Comparative Consideration of 76 Groups of Mutually-Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) (hereafter, “*Omnibus Order*”).

numerous long-pending mutually-exclusive applications for noncommercial educational (“NCE”) FM radio stations. Among the applications awarded was one filed by the State of Oregon for that same community of McCloud, California (File No. BPED-19950210MA). McCloud now had the prospect of a second FM service. Airen, which had not yet begun any construction in McCloud, wasted no time in seeking greener pastures. Despite the fact that its previously-granted construction permit provided a first local transmission service to McCloud, Airen apparently decided to shift the burden of providing that service to the State of Oregon while it “hopscotched” over to Trinidad. Although Trinidad appears an even smaller town (only 311 residents), Airen’s proposal would result in coverage of the much larger Humboldt County, whose population is almost 150,000. Since Airen had presumably paid a relatively low price for its McCloud application, and had not yet spent a cent on construction costs, it was relatively easy for Airen to abandon McCloud.

Airen’s proposal to move to Trinidad was filed on May 23, 2007. This first relocation was later amended so that a facility held by William McCutchen was moved from Channel 236C3 to 299C3 which, in turn, would require moving the State of Oregon’s existing NCE station KNHT(FM), which serves Rio Dell, CA, from Channel 297C2 to 273C2. The price for allowing Airen to game the system by jumping from McCloud to Trinidad (but, really, the more profitable Eureka) would be paid by the State of Oregon, which would be forced to incur the expense of moving to another frequency, where it would not easily be able to upgrade its signal to Class C1. When the State of Oregon pointed out to the Audio Division that Airen was abandoning the community where it had proposed to provide a first transmission service, the response of both Airen and the Audio Division was that the State of Oregon’s new NCE station

would take care of the residents of McCloud. After seeking to force the State of Oregon to “trade houses,” Airen also expected the State of Oregon to adopt the children it left behind.

The rule change that Airen and the Audio Division relied upon to support their claim that a “first come first served” mechanistic process permitted these forced relocations went into effect in 2006 as part of the Commission’s rulemaking proceeding *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes in Community of License in the Radio Broadcast Services*, Report and Order (MB Docket 05-210), 21 FCC Rcd.14212 (2006) (“2006 Community of License Order”). The 2006 Community of License Order, however, contained the Commission’s strong admonition to the staff regarding those who acted in bad faith to “hopscotch” from an unbuilt CP to a new, more profitable location².

Despite the language of the *Community of License Order*, the Audio Division, throughout this process, has not only failed to provide the close look required by the Commission for cases of this type, but has ignored the fact that Airen failed to request a waiver of its obligation to serve McCloud, as required by the *Community of License Order*. Rather, in violation of the Commission’s policies, the Audio Division in the Bickel *Letter Decision* provided little more than a rubber stamp of Airen’s proposal, evaluating this case on purely engineering grounds while ignoring these long-standing legal and policy implications raised by the State of Oregon and William McCutchen.

The Doyle *Letter Decision* likewise abdicated its responsibilities under the *Community of License Order*, ruling instead that it agreed that the process was “mechanical,” and going no further to explore the public interest concerns that the Commission had warned about in the

²2006 Community of License Order, at 14219-20.

rulemaking order. The Audio Division has therefore failed to conduct the appropriate public interest analysis that is required by Section 316 of the Communications Act, as the Commission specified must still occur despite the revision of procedures for changing a permittee's community of license.³ Additionally, the Doyle *Letter Decision* ignores the Commission's directive to employ "safeguards to ensure the public interest is served when the applicant has not built its current permitted facilities,"⁴ or when a proposed station relocation will deprive the original community of license of what had been proposed as first local transmission service. As the Commission indicated, such applications should be treated as waiver requests and scrutinized accordingly.⁵ The Doyle *Letter Decision*, like the prior Bickel *Letter Decision*, is little more than a rubber stamp on Airen's application, with no consideration of any of the public interest factors discussed by the Commission in the *Community of License Order*. The Audio Division has simply ignored the signals that Airen is engaging in the type of gamesmanship of which the Commission warned.

Furthermore, the Doyle *Letter Decision* fails to address the serious dislocation and attendant expenses that will fall upon the State of Oregon if Airen's proposed change is approved. As explained by Mr. Ronald Kramer in his Declaration, the State of Oregon lacks the funds to advance to pay for this forced relocation. Even if such funds were available to the State in these difficult financial times, Airen's previous actions – particularly its failure to build

³ See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes in Community of License in the Radio Broadcast Services*, Report and Order (MB Docket 05-210), 21 FCC Rcd.14212, 14219-20 (2006) (hereafter, "2006").

⁴ *Revision of Procedures R & O*, 21 FCC Rcd at 14220.

⁵ *Id.*, at 12228-31 (¶¶ 28 - 31).

anything in McCloud and the shoddy jerry-built facilities it patched together at its new location – raise strong doubts that Airen has the funds to make good on its promised reimbursement.

Finally, both the *Letter Decision* and Airen’s Reply demonstrate a cavalier disregard of the long-standing Congressional public policy to promote public broadcasting and to encourage radio stations to convert their facilities to HD technology which, as the State of Oregon explained in detail in its initial Response, has been identified as a major national goal by the federal government. The failure of the Audio Division to recognize the significance of these public policy issues, as well as its adoption – explicitly or implicit – of Airen’s denigration of the Commission’s adoption of section 307(b) to public broadcasting, raises policy implications that require resolution by the Commission itself, if not the federal courts.

Questions Presented

The questions presented by this Application for Review include the following:

1. Whether the process for changing the community of license for an unbuilt station, which will deprive the community of its first transmission service, pursuant to the Commission’s *2006 Community of License Order*, should properly be regarded as a purely “mechanical” process, as ruled by the Doyle *Letter Decision* or, rather, does the *2006 Community of License Order* require the Media Bureau staff to take a closer look at the transaction in question “to ensure the public interest is served when the applicant has not built its current permitted facilities?”⁶

2. Where, as here, an applicant for a community of license change appears to have abandoned a community for which the applicant would otherwise have provided a first local

⁶ *2006 Community of License Order*, 21 FCC Rcd at 14220.

transmission service, in order to “hopscotch” to a more lucrative market, or has not yet built on its original construction permit, does the *2006 Community of License Order* require the Media Bureau staff to require the applicant to seek a waiver along with its minor change application in order to prevent “gaming” of the system?⁷

3. Was it procedural error for the Media Bureau staff to fail to take into consideration the Informal Objection to Airen’s License Application (BLH-20071231AFD) that was filed by the State of Oregon, particularly where that Informal Objection included specific and graphic evidence demonstrating that, contrary to Airen’s sworn assertions in its License Application, Airen had failed to build an operable station?

4. Is it a violation of due process and Commission procedure for the Audio Division to threaten to fine the State of Oregon if it fails to file an application on Form 301 to move to Channel 273C2, even if the State of Oregon filed an application for review? Is Form 301 an appropriate form for use by NCE stations since it lacks several key elements of the Form 340 application?

5. Is it arbitrary and unreasonable for the Media Bureau staff to require the State of Oregon to assume the engineering, legal, and construction expenses of the forced relocation of its station from Channel 297C2 to Channel 273C2 without some mechanism in place to assure that Airen will, in fact, reimburse the State of Oregon for those costs? Is it unreasonable to permit the State of Oregon to upgrade to Class C1, the upgrade for which it filed on July 20, 2007 (BPED-20070720!BF), if it moves to Channel 273? As the State of Oregon’s engineers have

⁷ *Id.*, at 12219-20, 12228-31).

demonstrated, an upgrade to C1 can only be accomplished on Channel 273 by employing an expensive and difficult-to-engineer directional antenna. Therefore, the Channel 273 frequency is not an exact equivalent to Channel 297 and the State of Oregon cannot be made whole if it is forced to relocate.

6. Whether it is procedural error for the Audio Division to refuse to consider the State of Oregon's evidence, first raised in a Reply, that Airen had impermissibly commenced operations by rebroadcasting programming of the Educational Media Foundation, where this information involved recent actions of Airen that had occurred subsequent to the filing of the State of Oregon's initial pleadings, and could not have been discovered sooner, even with the exercise of diligence?

Factors That Warrant Commission Consideration

The actions taken in the Doyle *Letter Decision* by the Media Bureau staff pursuant to delegated authority warrant Commission consideration because they are in conflict with the specific language set forth in the 2006 *Community of License* Order which requires more than a mechanistic approach to determining the public interest elements of an application to change community of license where the original CP remains unbuilt and the applicant is abandoning its original community of license.

Furthermore, the Commission review of this *Letter Decision* is warranted because the Audio Division staff erroneously ruled on Airen's License Application without giving any consideration whatsoever of the arguments and important new evidentiary facts raised by the State of Oregon in its Informal Objection to that License Application. The staff, in fact, appears to have ignored that Informal Objection, which was filed by the State of Oregon on April 7, 2008

(a copy of this pleading, and its exhibits, is attached hereto as Exhibit 1).

Finally, Commission review is warranted of the staff's order that the State of Oregon must file a new Application for Construction Permit using the inappropriate Form 301, rather than Form 340, an order was coupled with the threat to fine the State of Oregon if it failed to so file or if it filed instead an Application for Review. Seeking review by the Commission of a staff order issued under delegated authority is a procedural right available to all parties pursuant to Rule 1.115 (47 C.F.R. § 1.115(a)).⁸

ARGUMENT

A. Applications to Change Community of License That Will Result in the Abandonment of a Community to Which the Applicant Provided First Local Transmission Service, or Where Applicant Has Failed to Build in Its Initial Community of License, Are Disfavored and Require a Waiver Request

In the *2006 Community of License Order*, the Commission warned that it would not permit abuse of the new procedures. Rather, where it appeared that applicants were abandoning communities that would otherwise have been provided a first local transmission service to “hopscotch” to more lucrative markets, or where the applicant had not even bothered to build a facility for which it had been granted a construction permit, the Commission sternly warned that it would take a close look and, in appropriate cases, require the applicant to seek a waiver along with its minor change application. *2006 Community of License Order*, at 12219-20, 12228-31.

⁸ Rule 1.115(a) states that “[a]ny person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.” For the staff to order the State of Oregon to file an inappropriate form within 30 days, and to threaten to fine the State of Oregon if it filed an application for review instead of the inappropriate for, constitutes not only procedural error but also a violation of due process, because it attempts to deprive the State of Oregon from exercising a procedural right that is or should be available to “any person aggrieved” by the *Doyle Letter Decision*.

Airen’s application implicates both these red-flag issues. What Airen proposes, as the State of Oregon and Mr. McCutchen both pointed out to the Audio Division, is the abandonment of the first local transmission service it had originally proposed for McCloud, CA, its present community of license, to move to another – smaller – community, Trinidad, CA. If that change is ultimately permitted by the Commission, Airen’s proposed new contour would encompass not only Trinidad but also Humboldt County and its population of almost 150,000.

This is precisely the type of relocation, removing a first local transmission service from one community, while claiming first local transmission service at another community, but really looking to a third (already well-served) market, that the Commission condemned in the *2006 Community of License Order*. A commenting party on the proposed rule had suggested that the Commission should “abandon our policy against removing the sole local transmission service at a community in order to allow it to become the first local transmission service at another community,” but the Commission rejected that proposal, restating its prior determination, from the *New Community MO & O*,⁹ that “such moves are strongly disfavored, [although] proponents can overcome this policy presumption with a proper showing.” *2006 Community of License Order*, 14,228-31, ¶¶ 28 - 34

What constitutes a “proper showing” in these cases? As the Commission explained, in the “rare circumstances” in which such “removal of local service might actually serve the public interest, for example, if the removal would result in providing first reception service to a

⁹ See *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 4873 (1989) (“*New Community R & O*”), recon. granted in part, 5 FCC Rcd 7094 (1990) (“*New Community MO&O*”).

significantly sized population,” granting a waiver request might be appropriate. As the Commission warned, however, while the bar to such waivers requests may sometimes be overcome, the bar itself is set high. *2006 Community of License Order*, at 14, 230, ¶ 30.

Airen’s proposal is not merely the simple relocation to a new community which it portrays but, rather, involved abandonment of its first local transmission service to McCloud, a move which – despite the streamlining of procedure proposed in the *2006 Community of License Order* – would nevertheless require a waiver of the underlying “policy presumption” which “strongly disfavors” such removals. As is clear from the Commission’s discussion of this issue in both the *New Community* proceeding and in the *Revision of Procedures R & O*, evaluation of such waiver requests requires much more than the cursory and mechanical application of the first come first served rule that the Audio Division has embraced in both letter decisions. The formula “first come first served application processing system,” may indeed be mechanically applied, but the obligation of the Commission staff before doing so is to first determine whether an applicant is entitled to routine application of the formula. Those applications that raise any of the red flags about which the staff has been warned in the rulemaking order must first satisfy the strict waiver standards before their application can be processed.

The Audio Division, in both letter decisions, ignored not only the Commission’s directive to “stand by our traditional insistence that the sole operating local transmission service in a community should not be removed absent a compelling public interest showing,” but also its reminder that many local transmission service removal cases “involve unique fact scenarios, and by definition waiver requests also involve unique fact situations that cannot ordinarily be anticipated by rule or procedure. Such applications, then, are better suited to case-by-case

analysis than to any ‘one size fits all’ test.”¹⁰ Both Audio Division decisions, in which the staff did little more than apply the first-come/first-served procedure (Bickel *Letter Decision* at 3, Doyle *Letter Decision* at 4-5), simply ignores the Commission’s directive to analyze and weigh the complex facts and competing public interest claims carefully in cases of where issues of unbuilt stations and abandonment of local transmission obligations are present.

Airen never built its proposed station in McCloud. It proposed to abandon McCloud, even though it had no way of knowing whether the State of Oregon would be able to build there. Nevertheless, Airen failed to seek a waiver. Furthermore, Airen had not proposed a “removal [that] would result in providing first reception service to a significantly-sized population,” as the Commission indicated would be necessary to satisfy waiver standards, in that Trinidad has only 311 residents. Airen tried to avoid a 307(b) community-to-community comparison by leaving it to the State of Oregon to take over Airen’s responsibilities to McCloud. Although the State of Oregon has, in fact, completed its McCloud facility and received a license, Airen and the Audio Division staff had no way of knowing this would subsequently occur when the Bickel *Letter Decision* was issued last year.

Reliance on the State of Oregon’s new McCloud facility, however, leads Airen to a contradiction. On the one hand, it argues that the State of Oregon is not providing a local service to Trinidad but only providing “reception” service. On the other hand, Airen tries to justify its abandonment of McCloud by pointing to the State of Oregon as the new provider of “local” service to McCloud. This characterization is misplaced. The State of Oregon has been granted a permit for McCloud in order to operate the new facility as a satellite station and has been granted

¹⁰*Id.*, at 12,230 (¶ 32).

a main studio waiver for this facility. Thus, while the State of Oregon fully intends to fulfill its obligations for dealing with local McCloud issues, it is not providing McCloud a locally-transmitted or locally-produced service but, rather, transmission of its network program service.

The State of Oregon finds it ironic that the Audio Division can completely disregard the policy implications of the Commission's recent re-interpretation of the "fair distribution" principles of section 307(b) in the context of NCE stations. As section 73.7002(b) of the Commission's rules, 47 C.F.R. §307(b), requires, a first local NCE service, to be credited, must serve at least 2000 persons and, if a competitor will also provide a first NCE service, then the winner must propose to cover a more significant population of at least 5000 persons more than its rivals. Yet Airen, which will provide a first local transmission service to only 311 persons in Trinidad, is permitted to abandon a population four times that size in McCloud, and is also permitted to dislocate the NCE service that the State of Oregon is presently providing for many thousands of people and that audience's reception of HD radio signals in addition to extinguishing service through K270AV in Mendocino. . The State of Oregon recognizes that first local transmission service and first local NCE service are not always the same thing, but it nevertheless questions what real policy benefit is obtained from the lack of any significant minimum numbers in the first-local-transmission context.

Airen's claim, adopted by the Doyle *Letter Decision*, that it could not be charged with abandoning McCloud because the State of Oregon was recently granted a construction permit to build in that community, ignores the procedural requirement that Airen should have made that argument in the context of seeking a waiver, rather than presuming that the State of Oregon would pick up the slack. As the Commission made clear, where there is no other "operating"

local transmission service in the original community,¹¹ close analysis under the standard for rule waivers should be required. Since the State of Oregon's facility was not operational at the time, Airen could point to no operational radio service in McCloud that would provide first service if Airen moved to Trinidad.

B. Airen Cannot Satisfy the Requirements for a Waiver of the Commission's Policy Against Relocations That Deprive a Larger Community of First Local Service.

Section 316(a) of the Communications Act, 47 U.S.C. § 316(a) states, in pertinent part:

Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with.

Airen argues that its proposal to remove first local transmission service from McCloud satisfies this standard and should be granted without having to satisfy the more demanding standards for a waiver, on the basis of a rather mechanical application of the section 307(b) test. It also argued that the Commission should ignore Airen's nearly three-year delay in building its facilities. The staff accepted these arguments and steadfastly refused to look below the surface at the warning signs in Airen's application.

As the Commission explained in the *2006 Community of License Order*, the fact that it is streamlining the procedure to be followed, that does not mean that applicants can ignore its pre-existing rules and policies to protect and promote the public interest. Rather, the Commission made it clear that it intends to "continue our policy disfavoring removal of sole local transmission service, subject to waiver of the policy upon a detailed showing that retention of a

¹¹ The Commission specified that "the sole *operating* local transmission service should not be removed" unless the tests for a waiver can be met (*emphasis added*).

local service at a station's current community is contrary to the public interest, convenience, and necessity." Airen failed to meet these requirements for waiver of the policy. The Audio Division's *Letter Decisions* likewise fail to explain why Airen is not being held to these waiver standards. Rather, both rulings accepted Airen's application at face value, without heeding the warning signs that Airen was acting in bad faith contrary to the public interest. The *Letter Decisions* seem untroubled by the fact that Airen's McCloud facility was never built, and ignore the State of Oregon's arguments that the Commission requires that such prior failures to build should be factored into the public interest analysis.

Airen cannot satisfy the waiver standards because it not only is guilty of neglecting to build the promised facility in McCloud, but it has abandoned a community whose population is four times greater than the community to which it will move. As the Media Bureau ruled in *In re Dismissed Application for Major Modification to Station KNUZ (AM), Bellville, TX*,¹² "the Commission prohibits the removal of an existing station representing a community's sole local transmission service." The *KNUZ* Letter Decision went on to note that "[t]he policy disfavoring removal of sole local transmission service was recently restated in" the *2006 Community of License Order*.¹³ The *KNUZ* decision is instructive, for while it recognizes that "this policy is subject . . . to waiver under appropriate circumstances," it goes to explain that "the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver. Rather, such a proposal 'is presumptively contrary to the public

¹² 22 FCC Rcd 19170, 19171 (2007) ("KNUZ"), citing *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("New Community R & O").

¹³ *KNUZ*, 22 FCC Rcd at 19171.

interest,’ ”¹⁴ a standard that calls for waiver analysis. The rationale for this presumption, as explained in *New Community R & O*, is because

[t]he public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.¹⁵

The two *letter decisions* give little or no consideration to the members of the public who listen to and have come to rely upon KNHT’s existing service. Neither the Bickel *Letter Decision* nor the Doyle *Letter Decision* gives any consideration to the significant number of listeners – much more than 311 – who will lose reception if the State of Oregon is not able to provide service as originally planned. Here, where Airen will provide first local transmission service to barely one-quarter of the number of people it will serve if it remains in McCloud, the *KNUZ* decision should have required the Audio Division to take a much closer and more critical look at Airen’s proposal, analyzing it under waiver standards. As the Bureau noted in *KNUZ*, “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.” *KNUZ* at 19171, n. 9, citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969). Furthermore, “the fact that a proposal would create a new local service (at the expense of an existing service) is not enough, by itself, to warrant a waiver.” *Id.*

As the Commission made clear in stressing the requirement for an *operating* radio service

¹⁴ *KNUZ*, at 19171-72, citing *New Community R & O*.

¹⁵ *Id.*, at 7097.

in the community before a waiver may be granted, Airen should not have been permitted, in a pleading first filed in May 2007, to rely upon a two-month old CP granted to the State of Oregon in March 2007 to claim a dispensation from its first local transmission obligations.

Likewise, Airen should not be permitted to benefit from its failure to build the facility in the community it originally proposed. To rule otherwise would not only allow Airen to bootstrap itself out of the requirement that it seek a waiver, but also reward it for failing to meet its obligation to provide the promised first local transmission service to McCloud. Yet that is exactly what the Audio Division has permitted here. The Commission's decision to allow changes in community of license, to be treated as minor changes, handled on a first-come/first-served basis, was made expressly contingent upon the imposition of various "safeguards" to prevent "gamesmanship" by such applicants.

One such safeguard was the "requirement that a broadcaster build its facilities" which, the Commission believed, would "suffice to discourage applicants from using the new procedure to 'hopscotch' across the country." This is why, the Commission explained, "any applications filed under our new procedures with the evident intent of undermining our allotment or other policies" should appropriately be addressed on a case-by-case basis,¹⁶ not by an automatic application of the rule or procedure, as the Audio Division has done here.

C. The Audio Division erroneously failed to take into consideration the State of Oregon's Informal Objection to Airen's License Application

On December 31, 2007, Airen filed a License Application (BLH-20071231AFD) for KZCC. The following March, 2008, new information came to the State of Oregon's attention

¹⁶2006 *Community of License Order*, at 14,220, ¶ 11.

regarding the poor quality apparatus and facilities that Airen was constructing . Acting with due diligence, the State of Oregon confirmed the information it had received by having one of its engineers, David Rose, access and evaluate the KZCC transmitter site. On April 7, 2008, the State of Oregon filed an Informal Objection to Airen's December 31, 2007 License Application in which it brought the shockingly poor quality of these facilities to the Commission's attention, even providing photographs of the site and equipment, such as it was. Clearly, if these photographs and the detailed evaluation of an experience engineer were accurate, Airen's License Application was not only seriously defective but also involved false certification regarding its readiness to commence broadcasting. The Audio Division, however, appears to have ignored the specific and graphic evidence provided by the State of Oregon, evidence that demonstrates that, contrary to Airen's sworn assertions in its License Application, Airen had failed to build an operable station. The State of Oregon contends that it was procedural error for the Audio Division to ignore the State of Oregon's filing, which is nowhere even mentioned in the Doyle *Letter Decision*. Furthermore, given the poor quality of the KZCC equipment and site, the Audio Division has now improvidently granted Airen an STA to broadcast on an interim basis. The State of Oregon urges the Commission to review the Informal Objection, Mr. Rose's Declaration, and the photographic exhibits in connection with its review of the Doyle *Letter Decision*.

D. The State of Oregon and Its Taxpayers Should Not Be Required to Bear the Financial Burdens of Relocation and Are Unable to Do So at the Present Time.

The order requiring the State of Oregon to change frequencies from 297C2 to 273C2 fails to provide any assurance that the financial burden of such relocation will not fall on the citizens

and taxpayers of the State of Oregon. Both *Letter Decisions* are premised upon Airen's promise that, as required, it "would reimburse McCutchen and the State of Oregon for the costs of changing channels as proposed." Airen has also claimed that the State of Oregon would suffer no harm from this forced relocation because it could still upgrade its facilities to Class C1, as sought by Oregon's July 20, 2007 Application, "on the channel proposed by Airen." Airen claimed that its engineer "points out that KNHT can upgrade by utilizing a hypothetical allocation reference site removed from its operating location . . ." Airen claims that the site its engineers have proposed is "suitable for tower construction" and that "KNHT can utilize a directional antenna on Channel 273C1 . . . which will serve only 433 persons less [*sic*] than SOU's proposed upgrade on its existing channel."

As the State of Oregon pointed out in its Petition for Reconsideration, its own engineers have determined that Airen's proposal would be both difficult and expensive, and would require changing from an omni-directional to the more difficult and expensive directional antenna. Furthermore, moving its tower to Airen's "hypothetical reference site" (since no reference coordinates were provided) would require acquisition of the land or negotiation of a lease and construction of a new tower, even before the expense of upgrading to HD. The Audio Division appears to have ignored this issue, which is not addressed anywhere in the Doyle *Letter Decision*.

The State of Oregon remains greatly concerned that the Commission lacks any enforcement mechanism that can truly compel Airen to reimburse Oregon for its relocation and additional upgrade costs, costs which the State of Oregon itself cannot afford at this time to expend, even if reimbursement were assured. The nation's current financial problems have had a

negative impact upon the State's education budget and have resulted in reduced revenue from fund-raising. As things stand at present, the State of Oregon simply cannot afford to comply with the Audio Division's order, although it has attempted to put together a Form 301 application, as ordered (copy attached as Exhibit 3).

Furthermore, no amount of money will compensate the 433 persons who will lose Jefferson Public Radio service as a result of the forced relocation of KNHT to Channel 273. Neither Airen nor the Audio Division, however, saw any problem with the loss of service to those 433 persons, although the number is greater than the 311 Trinidad residents who will receive a KZCC signal that had not previously done so.

The Audio Division was unpersuaded that loss of reception of an existing public radio service could be equated with the 311 Trinidad residents who will receive a first service if Airen's proposal is granted. However, if one were to truly weigh public interest benefits, one would have to take into account not only the 433 persons that will lose service if Airen pays the State of Oregon's expenses to move its tower and change from an omni-directional circular pattern to a directional one, but also the 4,739 persons who would have begun to receive KNHT's signal if its power increase application to C1 had been granted.

Without receiving advance payment from Airen that will cover relocation to a new tower site, purchase of a new directional antenna, and other attendant expenses, the State of Oregon is unable to certify that it has available funds to cover the amendment the Commission is requiring it to file on Form 301. Given Airen's failure to build its own proposed facility in McCloud and its failure to build an operable facility for Trinidad (*see* the description and photographs of the KZCC Rube-Goldberg-contraption facilities that was provided by engineer David Rose as

exhibits to the State of Oregon's Informal Objection, Exhibit 1), it does not appear that Airen has the funds to build a decent facility for KZCC, much less to reimburse Oregon for its expenses in moving KNHT to Channel 273C2 and upgrading its signal on this new channel to Class C1.

E. The Audio Division's Threat to Fine the State of Oregon if It Did Not File an Application on Form 301 to Relocate to Channel 273 Violates Due Process and the Commission's Own Procedural Rules.

The Audio Division's Order directs the State of Oregon to file an application for a construction permit on Form 301 "specifying Channel 273C2 . . . no later than 30 days from the date of this Letter. Failure to do so may result in the issuance of a Notice of Apparent Liability for Forfeiture to SOU." As noted in footnote 31 of the Doyle *Letter Decision*, "Rule 1.80, 47 C.F.R. § 1.80 establishes a base forfeiture of \$3,000 for failure to file a required form or information." The State of Oregon, under protest, submits the attached draft of Form 301, an application in process, which lacks complete engineering for the reasons set forth in the attached Declaration of Ronald Kramer, Exhibit 2. As Mr. Kramer explains, the unusually severe weather in the Pacific Northwest states, plus illnesses and holiday vacation absence on the part of the State of Oregon's engineers, has made it impossible to complete the engineering needed to accompany this application. Furthermore, the application is necessarily incomplete because the State of Oregon is unable to certify that it has the financial ability to construct the proposed facilities.

The State of Oregon has attempted in good faith to provide as much as it presently is able with respect to this Form 301 application because it is concerned that it will be penalized as threatened by the Audio Division for its inability to comply with the Order at the present time.

The State of Oregon has also filed a Motion to Stay this portion of the Audio Division's Order, which pleading is being filed contemporaneously with this Application for Review. This Motion to Stay is necessitated because the Audio Division, after threatening the State of Oregon with an onerous and punitive forfeiture, added that "the filing of a petition for reconsideration, application for review, or any other challenge to this letter decision shall not relieve SOU¹⁷ of its obligation to file the required minor change application. The staff did, however, acknowledge that Section 1.115(h)(2) of the Rules, 47 C.F.R. §1.115(h)(2), permits the State of Oregon to seek a Motion to Stay the effect of this order from which review is sought. The State of Oregon respectfully requests that the Commission grant this stay for the reasons set forth herein and in its Motion for Stay. It is clear from the Informal Objection, Airen is a long way from actually becoming operational. Not only were its facilities as of last March a total disaster and fire hazard, as explained by Mr. Rose in his Declaration, but it has recently – as of December 16, 2008 – filed yet another application, this one with respect to a construction permit to permit it to broadcast from an auxiliary site. It is not clear whether this auxiliary site will permit it to cover Trinidad, its proposed new community of license. The Commission has also, at least temporarily, reinstated the McCutchen application on Channel 236C3 rather than Channel 299. Therefore, no parties will be harmed if the Commission grants the State of Oregon's Motion to Stay for such time as it takes to resolve these various matters.

¹⁷Although the State of Oregon itself is the licensee for KNHT(FM), the Audio Division persists in referring to the State as "Southern Oregon University" or "SOU."

Relief Sought

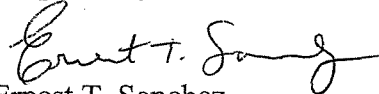
1. The State of Oregon requests that the Commission reverse the Doyle *Letter Decision* rulings that granted Airen's application to change its community of license and ordered the State of Oregon to move its facilities from Channel 297C2 to Channel 273 C2.

2. As set forth in the attached Motion for Stay, the State of Oregon seeks further relief in the form of an immediate stay of the Order in the Doyle *Letter Decision* that the State of Oregon must move its facilities to Channel 273C2. That stay should remain in effect until such time as it can be determined whether Airen should be required to file for a waiver with respect to its proposed change of community of license from McCloud to Trinidad, CA, and whether Airen falsified its License Application, as demonstrated by the State of Oregon's Informal Objection to that License Application, and if Airen's waiver request and license application are ultimately granted, whether the State of Oregon can be assured of payment from Airen for any expenses the State of Oregon may incur in moving its facilities from Channel 297 to Channel 273 and upgrading those facilities to Class C1.

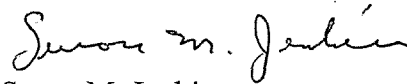
Conclusion. The Doyle *Letter Decision* must be reversed and this entire matter thoroughly reviewed by the full Commission. Airen's failure to request a waiver of the Commission's longstanding policies prohibiting abandonment of a community where the applicant sought to provide first local service and the Audio Division's unwillingness to follow the directives regarding waiver and closer looks contained in the 2006 Community of License Order has resulted in a situation where two broadcasters acting in good faith are being held hostage to Airen's greedy attempts to upgrade to a more lucrative market. Airen is not entitled to claim a 307(b) preference that not only avoids a public interest determination but results in an

overall allocation that is not truly in the public interest. The State of Oregon urges the Commission to review the Audio Division's rulings, dismiss Airen's application for failure to request an appropriate waiver, overrule the Audio Division's Order that the State of Oregon file a new application for Channel 273 on Form 301, and reinstate the State of Oregon's Application for a Minor Modification to upgrade its signal to Class C1 on its present Channel 297.

Respectfully submitted,



Ernest T. Sanchez



Susan M. Jenkins

Special Assistant Attorneys General

*Counsel for the State of Oregon Acting by and
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Robert W. Connell
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Oregon Department of Justice
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503-947-4532

Filed: January 9, 2009

Certificate of Service

I, the undersigned Susan M. Jenkins, certify that I have mailed, postage prepaid, on this 9th day of January 2009, a copy of the attached Application for Review of the State of Oregon, Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University, to the following persons:

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Sacramento, CA 95814

John M. Pelkey, Esq.
Garvey, Schubert Barer
1000 Potomac Street, NW
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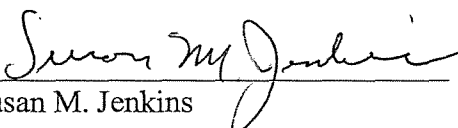

Susan M. Jenkins

Exhibit 1

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

In the Matter of:

Application for FM Broadcast License on Form)	
302-FM of Airen Broadcasting Company for)	
New FM Radio Broadcast Station KZCC (FM))	File No. BLH-20071231AFD
at Trinidad, CA, as Amended)	Facility I.D. # 164090

and

Off-Air Notification for Station KZCC (FM),)	
Trinidad, CA (March 31, 2008))	

To: Audio Division, Media Bureau

Informal Objection of the State of Oregon

The State of Oregon, Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University ("State of Oregon"), through its attorneys, files this Informal Objection¹ against the above-styled Application of Airen Broadcasting Company ("Airen") for an FM Broadcast License for radio station KZCC (FM) at Trinidad, California. The State of Oregon respectfully urges the Audio Services Division of the Media Bureau to deny Airen's Application for the following reasons:

1. Airen has failed to meet the conditions of its underlying construction permit, as amended, for this facility (File No. BMPH-20070523ADS);

¹ The State of Oregon is filing an Informal Objection rather than a Petition to Deny Airen's Application for a License to Cover Construction Permit because the information upon which this pleading is based did not come to light until the past few weeks, well after the deadline for filing a Petition to Deny. Regardless of the form of pleading, however, the information provided in this pleading is serious enough to require greater inquiry into the facts surrounding Airen's claim to have completed construction in accordance with the underlying permit, as well as into the fitness of Airen and its principals to serve as licensees.

2. Airen and its President, Suzanne E. Rogers, in filing Airen's Application for a License to cover the above-identified construction permit (File No. BLH-20071231AFD), misrepresented and falsely certified to the Commission that this facility was constructed as authorized in the underlying construction permit, and made other misrepresentations in that application regarding the condition of the facility, its transmitter, its power sources, and its main studio; and
3. Airen and its President, Suzanne E. Rogers, have made other misrepresentations to the Commission and the Media Bureau with respect to the construction of the KZCC transmitter and studio facilities, the alleged readiness of KZCC to begin operations, and Airen's compliance with the underlying construction permit, in various pleadings and FCC Forms filed since at least December 31, 2009, including the March 31, 2008 Declaration of Suzanne E. Rogers on Behalf of Airen Broadcasting Company, a Declaration which was filed in support of Airen's Partial Opposition to the Motion of William E. McCutcheon III for Stay and Other Relief, which Motion was filed by McCutcheon on March 20, 2008, and a February 26, 2008 letter to the Commission from Ms. Rogers re Off-Air Notification for Station KZCC (FM), Trinidad, CA.²

The basis for the State of Oregon's allegations regarding these misrepresentations on the part of Airen and Ms. Rogers is the attached Declaration of David Rose, the Assistant Director of Engineering for Jefferson Public Radio ("JPR"), the network of public radio stations licensed to the State of Oregon for the Benefit of Southern Oregon University. As Mr. Rose states in his Declaration, he personally visited the original Commission-authorized transmitter site for KZCC (FM), Trinidad, CA, on March 21, 2008, and photographed the conditions he observed at that site. The condition of the site and transmitter that Mr. Rose describes, and the photographs of the site which are provided as attachments to his Declaration, provide conclusive evidence that Airen has not constructed the facility that was authorized by its construction permit, as modified,

² See Partial Opposition to Motion for Stay and Other Relief, filed by Airen Broadcasting Company, in *Airen Broadcasting Company, KZCC (FM), Trinidad, CA* (BNPH-20041223ABI; Application BMPH-20070523ADS, as amended) (Exhibit 1, Declaration of Suzanne Rogers); *see also*, Letter to Commission from Suzanne E. Rogers, President, Airen Broadcasting Company, Re: Off-Air Notification for Station KZCC (FM), Trinidad, CA (February 26, 2008).

and that the facility at the original transmitter site is incapable of operation. In paragraph 3 of Ms. Rogers' March 31, 2008 Declaration, she states under penalty of perjury:

"Airen constructed station KZCC's transmitter and studio facilities by December 29, 2007, and filed its application for station license two days later, fully complying with the KZCC construction permit (See File No. BLH-20071231AFD). On February 16, 2008, Airen signed KZCC on the air and operated it for the better part of 3 days under program test authority. KZCC was shut down on the afternoon of February 18, 2008, due to audio equipment trouble that could not be immediately repaired. Despite being able to fix the audio equipment problem shortly thereafter, Airen had determined to remain off the air for a short time to adequately address power source issues which had become evident just prior to Airen's December construction" (Rogers Declaration, 3/31/2008, ¶3).

Thus, both in its amended Application for License and in Ms. Rogers' Declaration, Airen falsely represented to the Commission that KZCC (FM) was constructed in compliance with its construction permit. It has also represented, in its February 26, 2008 Off-Air Notification, and in Ms. Rogers' Declaration, that the station was on the air, broadcasting from its authorized transmitter site, from February 16 until sometime on February 18, 2008. Whether that claim was true may be subject to dispute, given the apparently-inoperable conditions at the KZCC main transmission site.

The Conditions at the KZCC Transmitter Site. Mr. Rose's sworn statement and the photographic evidence he provides, however, raise substantial questions of material fact regarding whether it was physically possible, as Ms. Rogers claims, to have successfully broadcast from the authorized transmitter site on February 16 to 18, 2008 (or, for that matter, at any time). Mr. Rose, who has been a professional broadcast engineer for over thirty years and is certified by the Society of Broadcast Engineers, describes a jerry-built series of inadequate, broken, and misused items, designed – like the Acme Corporation products and contraptions of

Roadrunner cartoon fame – to fail catastrophically.³ Mr. Rose describes the site as follows: the KZCC (FM) transmitter, he states, is “located in a wooded forest in which a small clearing had been made for the installation” (Rose Declaration, ¶5 A). No main studio is in evidence and, as Mr. Rose’s Declaration makes abundantly clear, there are no means to interconnect between a main studio located elsewhere and the transmitter site.

At that site, the KZCC (FM) antenna is “mounted atop an approximately 40-foot section of tower which was lashed to a pine tree. The tower was neither mounted on a concrete footing nor grounded.” The tower would, he notes, “serve as a very effective lightning rod which would conduct lightning energy directly into the transmitter inside the building [at the site] and is likely to be a fire hazard for the surrounding forested terrain” (Rose Declaration, ¶ 5B; photographs #1, # 2, and #3).

The transmitter itself “is installed in a Rubbermaid® pre-fabricated housing,” with no contact number on the attached Notice “for engineering-related questions” (Rose Declaration, ¶ 5C; photographs #5, #6). Not only is there “no electrical power to the site,” as Ms. Rogers admitted in her Declaration, but “[t]here is little evidence that a generator has ever been in place on the site. There is no room,” Mr. Rose explains, for a generator at the side of the building . . . [and] if a generator sat in front of the building, it would significantly obscure the small roadway/clearing in front of the building”(Rose Declaration, ¶¶5 D, 5E; photographs #4 and #5).

³ Wikipedia describes the Acme Corporation as “famous for outlandish and downright dangerous products that failed catastrophically at the worst possible times.” See Wikipedia, Acme Corporation, http://en.wikipedia.org/wiki/acme_corporation (as of April 6, 2008, at 12:08 EDT). The equipment at Airen’s transmitter site, as Mr. Rose describes it, might lead one to conclude that Airen had purchased an Acme Corporation “Radio-Station-in-a-Box” kit, which it then proceeded to set up in the most unlikely and dangerous place it could find.

Mr. Rose doubts that a generator could even be used in connection with Airen's transmitter because of where and how it is sited. As he explains: "Power from a generator would have to be applied directly to the transmitter's power input terminals (on the back side of the transmitter) since there is no power service entrance terminal on any building surface and no other power input device located at the site. Running cables from a generator located outside the building into the transmitter would require operating the transmitter with the front door of the building open, since the established method of applying power to the transmitter, via a floor conduit rising into the transmitter cabinet floor, is impractical because the building is sited on the ground and there is no provision for bringing in power in that fashion. . . . It would, in any event, be necessary to operate this transmitter with the building door open since there is no provision for venting heated air from the transmitter in any other manner" (Rose Declaration, ¶¶ 5F, 5G; photograph #8).

Mr. Rose goes on to describe the necessary elements that Airen's transmitter site lacks: there are "no telephone circuits[,] . . . no microwave relay receive antenna mounted on the tower or any adjacent structure and no cables for such an antenna [to] enter the building. Accordingly," Mr. Rose concludes, "there does not appear to be any means of feeding audio to this transmitter from any source – such as a Main Studio." No main studio was found anywhere at the site. Likewise, "no local audio originating equipment is in evidence. No audio processing or other audio input system is connected to the transmitter or even located on site" (Rose Declaration, ¶¶ 5H, 5I; photograph # 9). Thus, one can only conclude that Airen has failed to construct a main studio, although its Application for License (File No. BLH-20071231), as amended as recently as February 16, 2007, certifies in response to Section III, Question 5, that KZCC's main studio

location complies with 47 CFR § 73.1125. Airen is clearly in violation of this section of the Commission's rules, which requires all FM stations to maintain a main studio

With respect to the KZCC transmitter itself, Mr. Rose states that it is "a very old Bauer transmitter in very poor condition . . . dirty and, in my judgment would not be operable. The transmitter is in damaged condition," an example of such damage being a "bent – and likely defective – protective relay on the front panel. Furthermore, the transmitter not only lacks operable "relay circuits," but it does not even have a "rear cover." (Rose Declaration, ¶¶ 5J, 5K; photographs 10, 11). As Mr. Rose explains in the caption to photograph #10, "safety interlocks would normally prevent [the transmitter's] operation without back cover in place."

Perhaps most illustrative of the inoperable condition of the old, broken equipment at the KZCC site, Mr. Rose notes that "[t]he installed transmission line . . . contains a very large kink, located approximately 12 feet above ground. That kink is a fatal defect, so severe that any amount of energy applied to the transmission line would most likely cause so severe a VSWR-reflected power that a properly operating transmitter would automatically shut down, or failing to do so, would burn up" (Rose Declaration, ¶ 5L; photograph #7).

Finally, Mr. Rose explains that the transmitter has no provision for power. Thus, Ms. Rogers' claim – that, for the three days when KZCC was allegedly on the air using a portable generator – would have been impossible with the equipment at the site. The transmitter "appears to be a model which requires three-phase power. Portable generators are generally single-phase units. While three-phase units are available, they are quite large, usually truck-mounted, and I believe such a unit would be very difficult to move into this site, given the nature

of the dirt trail/road to the site which exists” (Rose Declaration, ¶ 5M; photographs ## 4, 5, 12).⁴

It appears that Airen, approaching the three-year deadline for completed construction, and having already failed to construct in McCloud, CA, its original city of license, likewise failed to construct an operable facility at its new site at Trinidad, CA, and is now attempting to disguise its failure to complete construction by employing various subterfuges, such as using an “auxiliary transmitter site” or studying solar power when it is obvious that no practical means exist to supply power to the transmitter at its main transmitter site.

Mr. Rose’s Declaration and photographic exhibits 1 - 12 (which he declares to be true and accurate depictions of the conditions at the KZCC Main Transmitter Site on March 21, 2008), along with Airen’s own admissions regarding its inability to provide power to its transmitter site, raise material questions of fact not only about whether Airen completed constructed its facility by December 29, 2007, as it claimed, or even by February 23, 2008, within the time period allotted by section 73.3598 of the Commission’s rules, 42 CFR § 73.3598, but also about whether Airen has constructed an operable facility at all. Playing “hide the ball” by shifting to auxiliary transmission facilities and speculating about solar power when its transmission site lacks basic operable equipment does not satisfy the requirements under Rule 73.3598. Throwing an inoperable and unsafe pile of equipment together in a clearing in the woods should not be deemed as compliance with this rule and would-be licensees should be

⁴Given the unsafe conditions described by Mr. Rose, including an ungrounded tower, an antenna tied to a pine tree, and lack of any rear cover for the transmitter, it is hardly surprising that, as Ms. Rogers reveals in her March 31, 2008 Declaration, Airen’s landlord refused to allow Airen to store a large quantity of diesel fuel at the transmitter site. A single lightning strike could well have ignited a forest fire in this heavily-wooded area. The public interest surely requires that licensees operate their facilities in a manner that does not pose a threat to public safety.

required not only to meet the three-year construction deadline, but to have actually constructed a genuine, workable facility before their time runs out. Airen has failed to do so and its construction permit should be deemed forfeited.

Furthermore, Mr. Rose's Declaration raises substantive questions of material fact regarding whether Airen and its President have made material misrepresentations in several Commission filings and pleadings, and whether Ms. Rogers has falsely certified, on Form 302, that KZCC's "main studio location complies with" Rule 73.1125 (Form 302, Section III, Question 5), that "the operating transmitter power output produces the authorized effective radiated power" (or any power) (Form 302, Section III, Question 6), or that the "facility was constructed as authorized in the underlying construction permit or complies with 47 C.F.R. Section 73.1690," and "in compliance with all special operating conditions, terms, and obligations described in the construction permit" (Form 302, Section III, Questions 7 and 8).

These substantive questions of material fact require that the Commission must not only deem Airen's construction permit forfeited for failure to build within the required period and deny Airen's Application for a License to Cover, but strongly suggest that it should open an inquiry into whether Airen and Ms. Rogers may have made material misrepresentations and false certifications regarding construction of the KZCC facility, its readiness to go on the air, and, indeed, whether KZCC went on the air at all on the days alleged by Ms. Rogers.⁵

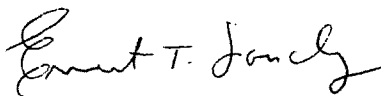
⁵ Even if the Commission were to doubt any of the specific elements of Mr. Rose's description, or were unable to determine the actual condition of the Airen transmitter site from his photographs, sufficient questions regarding that site, including public safety concerns, have nevertheless been raised by his Declaration and photographic exhibits to trigger an inspection of the site by the Commission before Airen could reasonably be permitted to resume test authority or be granted a license.

Section 73.3598(e) of the Commission's rules states that "[a]ny construction permit for which construction has not been completed and for which an application for license has not been filed [within the allotted 3-year period set forth in subsection (a) of that rule], shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission." Airen may have filed an application for a license to cover its construction permit within the 3-year period, with an amendment seeking permission to transmit on auxiliary power filed less than two weeks before its expiration, but it is obvious that Airen did not complete construction during the required period in accordance within its construction permit, as required by subsection (a) of section 73.3598. Airen has also either failed to construct or maintain a main studio as required by Rule 73.1125 or, if it has a main studio, has provided no means to interconnect that studio to its transmitter. Lack of a main studio or interconnection with a main studio constitutes independent grounds for forfeiture of Airen's construction permit.

Conclusion. For all these reasons, Airen has, therefore, forfeited its construction permit. Its license to cover should be denied, and its construction permit should be listed in the CDBS data base, as having expired on February 23, 2008. It appears inconceivable that Airen could have been on the air from February 16 - 18, operating from its main transmitter site, as Airen and its President claim. Not only has Airen failed to construct its station within the time period required and according to the terms authorized in its construction permit, but it appears to have made material misrepresentations regarding, and falsely certified, the underlying facts regarding construction for the KZCC (FM) facility. Inasmuch as character issues involving allegations of material misrepresentation have previously been raised – and are unresolved – with respect to other broadcast applicants with which the principles of Airen have been involved, these present

allegations deserve serious consideration by the Media Bureau and Commission. Not only should Airen be denied a license for KZCC, but a hearing should be scheduled to determine whether Airen and/or its president made material misrepresentations and/or false certifications in any pleadings, documents, or forms filed with the Commission. The State of Oregon urges the Commission to take appropriate action, in accordance with Rule 73.3598, to deny Airen a license to operate KZCC (FM), at Trinidad, CA.

Respectfully submitted,



Ernest T. Sanchez
Susan M. Jenkins
Special Assistant Attorneys General

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202-237-2814

*Counsel for the State of Oregon Acting by and
through the State Board of Higher Education for the
Benefit of Southern Oregon University*

Dated: April 7, 2008

Certificate of Service

I, the undersigned Susan M. Jenkins, certify that I have mailed, postage prepaid, on this 7th day of April, 2008, a copy of the attached Informal Objection to the following persons:

Suzanne E. Rogers, Esq.
Law Offices of Suzanne E. Rogers
455 Capitol Mall, Suite 210
Sacramento, CA 95814

John M. Pelkey, Esq.
Garvey, Schubert, Barer
1000 Potomac Street, N.W.
5th Floor, Flour Mill Building
Washington, D.C. 20007



Susan M. Jenkins

Declaration of David Rose

Declaration of David Rose

1. My name is David Rose. I am a professional broadcast engineer, certified by the Society of Broadcast Engineers (SBE), and have worked as a broadcast engineer for over thirty years, for more than two dozen radio stations in Wyoming, Arizona, California and Oregon. I make this Declaration based upon my own personal knowledge and am competent to testify to the matters set forth in this Declaration.

2. I am currently employed as Assistant Director of Engineering by Jefferson Public Radio ("JPR"), a network of public radio stations serving southern Oregon and northern California. I have served in this position for over five years. JPR is owned and operated by Southern Oregon University which is a component of the Oregon University System.

3. On March 21, 2008 I personally visited the FCC-authorized transmitter site for KZCC(FM), Trinidad CA to determine the nature of the installed facilities and evaluate their operational status. I personally took the photographs of that site which are included in this filing as Photographs 1 through 12. I also visited the site of the Auxiliary Transmitter which the licensee of KZCC(FM) had requested of the Commission and took photographs of that site (which are not included in this filings) because no construction by KZCC(FM) was in evidence at that Alternate Transmitter site.

5. With respect to KZCC(FM)'s FCC- authorized Main Transmitter site I observed the following:

- A. The transmitter was located in a wooded forest in which a small clearing had been made for the installation.
- B. The KZCC(FM) antenna was mounted atop an approximately 40 foot section of tower which was lashed to a pine tree. The tower was neither mounted on a concrete footing nor grounded. The tower would essentially serve as a very effective lightning rod which would conduct lightning energy directly into the transmitter and is likely to be a fire hazard for the surrounding forested terrain.
- C. The transmitter is installed in a Rubbermaid® pre-fabricated housing which is unlocked. The required Notice regarding officials who should be contacted with reference to the installation was located on the side of the transmitter inside the building. There is no contact number on that Notice for engineering-related questions.
- D. There is no electrical power to the site.
- E. There is little evidence that a generator has ever been in place on the site. There is no room for a generator at the side of the building (which is a wooded area). If a generator sat in front of the building, it would significantly obscure the small roadway/clearing in front of the building.

Declaration of David Rose, page 2

- F. Power from a generator would have to be applied directly to the transmitter's power input terminals (on the back side of the transmitter) since there is no power service entrance terminal on any building surface and no other power input device located at the site. Running cables from a generator located outside the building into the transmitter would require operating the transmitter with the front door of the building open, since the established method of applying power to the transmitter, via a floor conduit rising into the transmitter cabinet floor, is impractical because the building is sited on the ground and there is no provision for bringing in power in that fashion.
- G. It would, in any event, be necessary to operate this transmitter with the building door open since there is no provision for venting heated air from the transmitter in any other manner.
- H. The site has no telephone circuits. There is no microwave relay receive antenna mounted on the tower or any adjacent structure and no cables for such an antenna enter the building. Accordingly, there does not appear to be any means of feeding audio to this transmitter from any source – such as a Main Studio as is authorized in, and required by, the FCC Construction Permit for KZCC(FM).
- I. No local audio originating equipment is in evidence. No audio processing or other audio input system is connected to the transmitter or even located on site.
- J. The transmitter on site is a very old Bauer transmitter in very poor condition. It is dirty and, in my judgment would not be operable. The transmitter is in damaged condition, such as a bent – and likely defective – protective relay on the front panel.
- K. Virtually all transmitters of this power level have protective relay circuits to prevent energizing a the transmitter's high voltage circuits with the rear cover of the transmitter removed. There is no rear cover for this transmitter on site.
- L. The installed transmission line is 7/8 inch coaxial cable. That transmission line contains a very large kink, located approximately 12 feet above ground. That kink is so severe that any amount of energy applied to the transmission line would most likely cause so severe a VSWR-reflected power that a properly operating transmitter would automatically shut down or, failing to do so, would burn up

Declaration of David Rose, page 3

M. The Bauer transmitter appears to be a model which requires three-phase power. Portable generators are generally single phase units. While three-phase units are available, they are quite large, usually truck-mounted, and I believe such a unit would be very difficult to move into this site, given the nature of the dirt trail/road to the site which exists.

The photographs I took of the Main Transmission site consist of the following:

6.

#1: Tower overview shot showing top over tree tops with no lightning protection

#2: Looking up tower showing that it is tied to tree

#3: Base of tower tied to tree trunk showing no foundation

#4: Road to transmitter showing rope guy line across road

#5: Transmitter building showing transmitter too large for building operation

#6 Required notice shown on transmitter rather on outside of building:

#7: Damaged defective transmission line shorting out antenna

#8: Transmitter interior showing age and deterioration

#9: Exciter showing box condition and open exposure

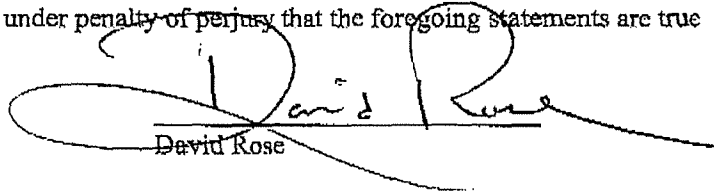
#10 Transmitter interior showing general inoperative condition

#11: Front panel showing damaged relay

#12: Transmitter rear view showing three phase transformer

7. Each of these photographs is a true and accurate depiction of the conditions that I observed at the Main Transmitter Site and have described in this Declaration.

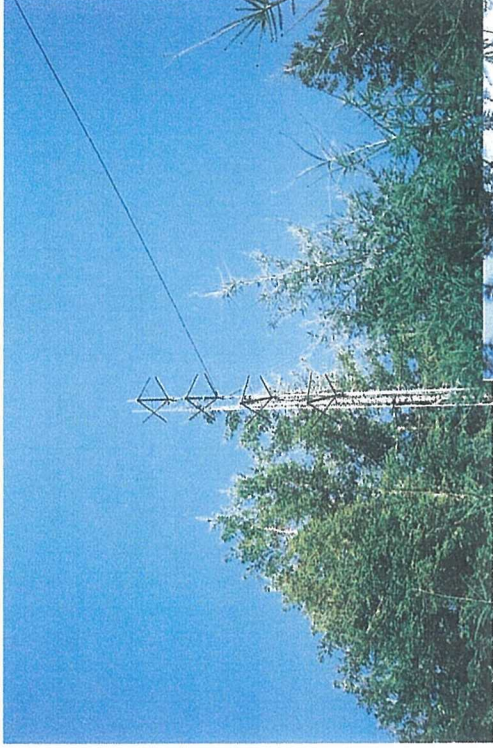
I hereby declare under penalty of perjury that the foregoing statements are true and correct.


David Rose

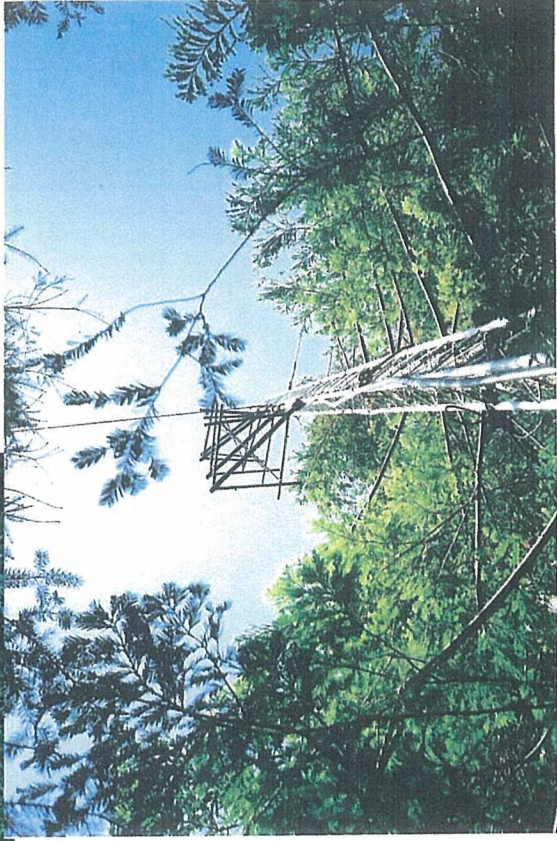
Date: April 4, 2008

Exhibits 1 through 12

KZCC Main Transmitter Site
March 21, 2008



#1
KZCC tower
overview shot



#2
KZCC tower
Looking up tower

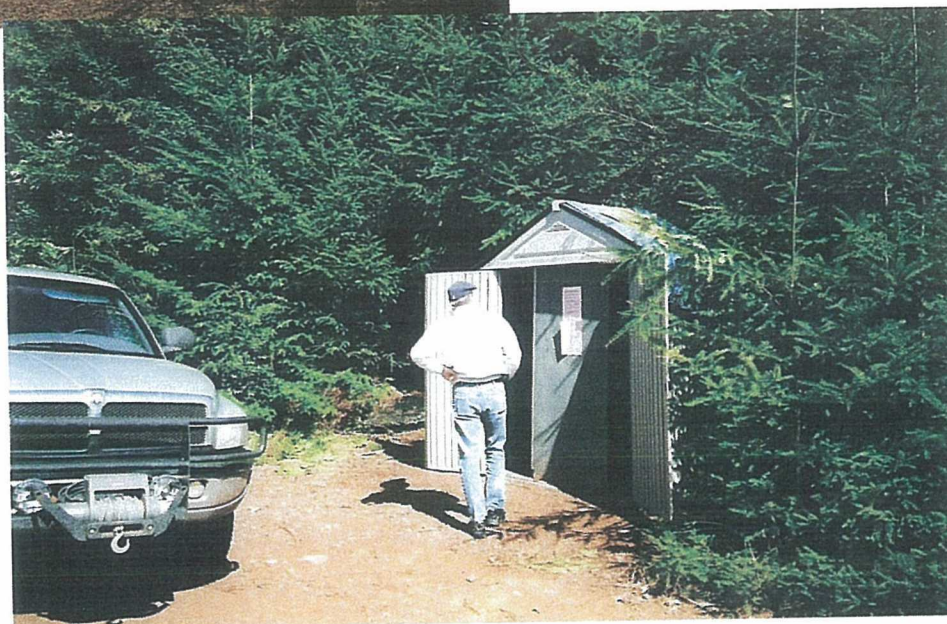


#3
KZCC Tower
Tied to tree trunk

Tower has no foundation or grounding



#4
Road to KZCC transmitter with
Tower guy line stretched across road



#5
KZCC transmitter
building and adja-
cent road—note
absence of space
beside building for
generator or fuel
tank

KZCC-95.5-FM

For information concerning this site

Contact the following persons

Craig Compton Administrative
Forester - Green Diamond 668-4424

Suzanne Rogers, Esq. (916) 448-8800

David Peck 442-9550 Gen. Manager
KZCC 95.5 FM

Theft of any equipment from this site
is investigated by the F.B.I.

#6
Required Notice posted on side of transmitter
inside building



#7
KZCC damaged/
defective transmission
line—Note significant
kink

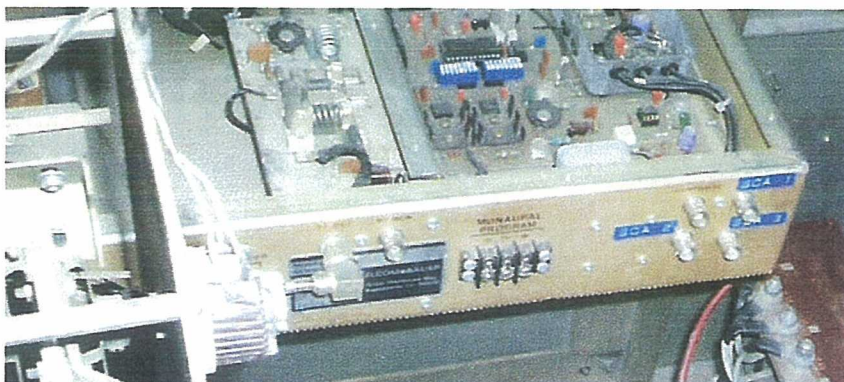
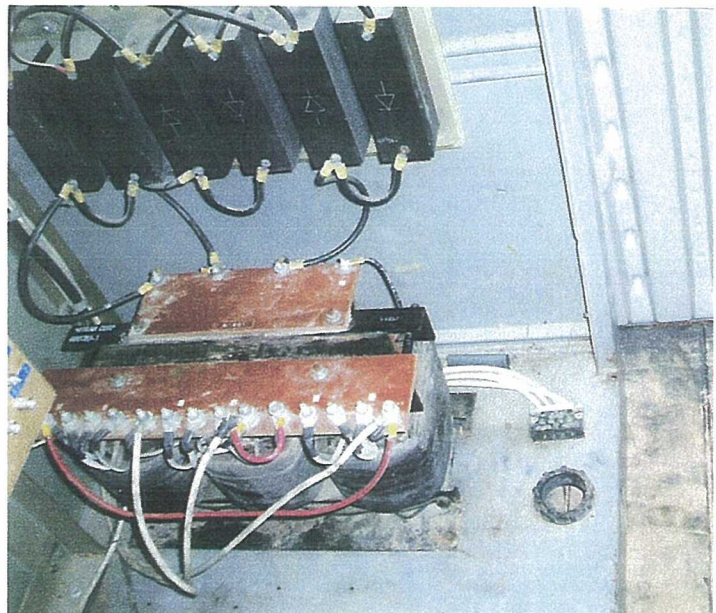
#8
KZCC transmitter interior

Power Input Terminals on block to far right;

Normal routing of Main Power Input to
Block Terminals would be through circular
floor opening

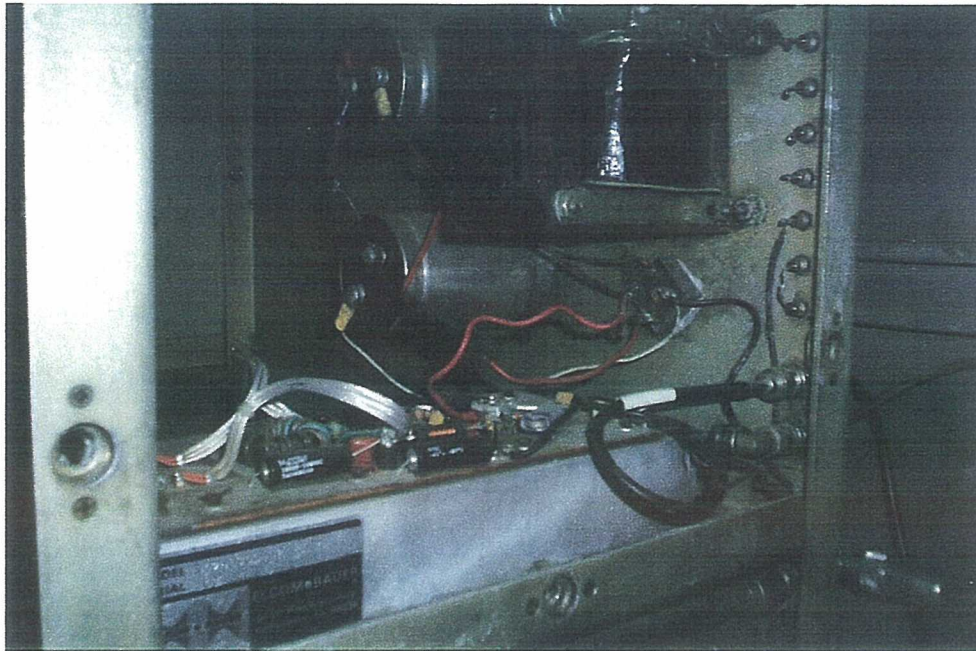
Power would have to be applied to transmit-
ter with rear cover removed; no rear cover
seen in the building. Transmitter would not
normally operate with rear cover removed as
safety interlocks would defeat operation.

Transmitter appears to be a 3-phase powered
unit. (Note three windings on transformer
and four wires (white) on power input block.



#9
KZCC transmitter

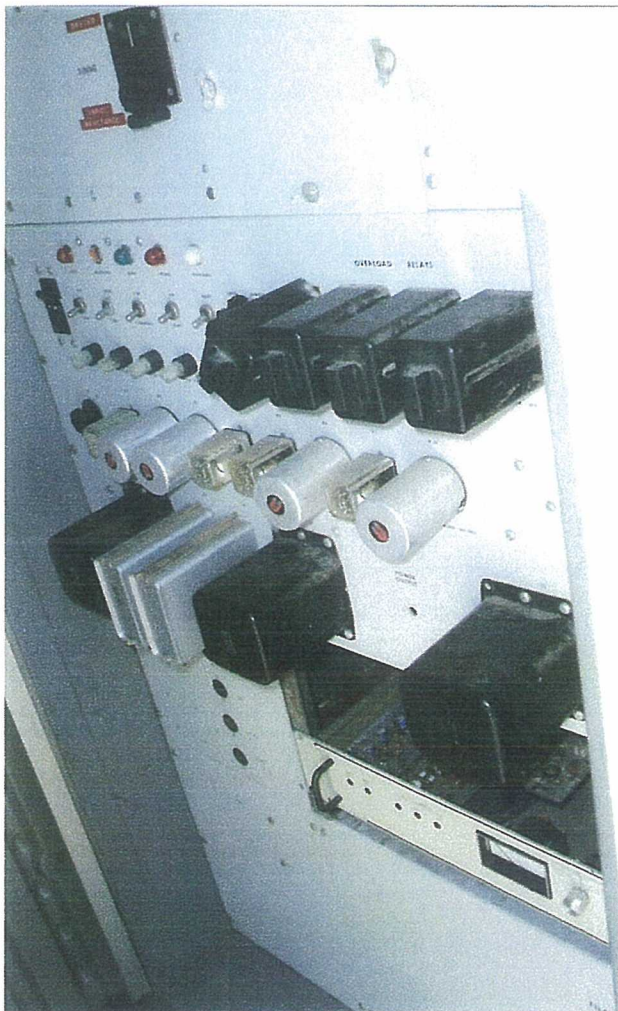
Exciter (uncovered) Rear Input
Terminals for Audio Input to
Transmitter



#10
KZCC transmitter
interior

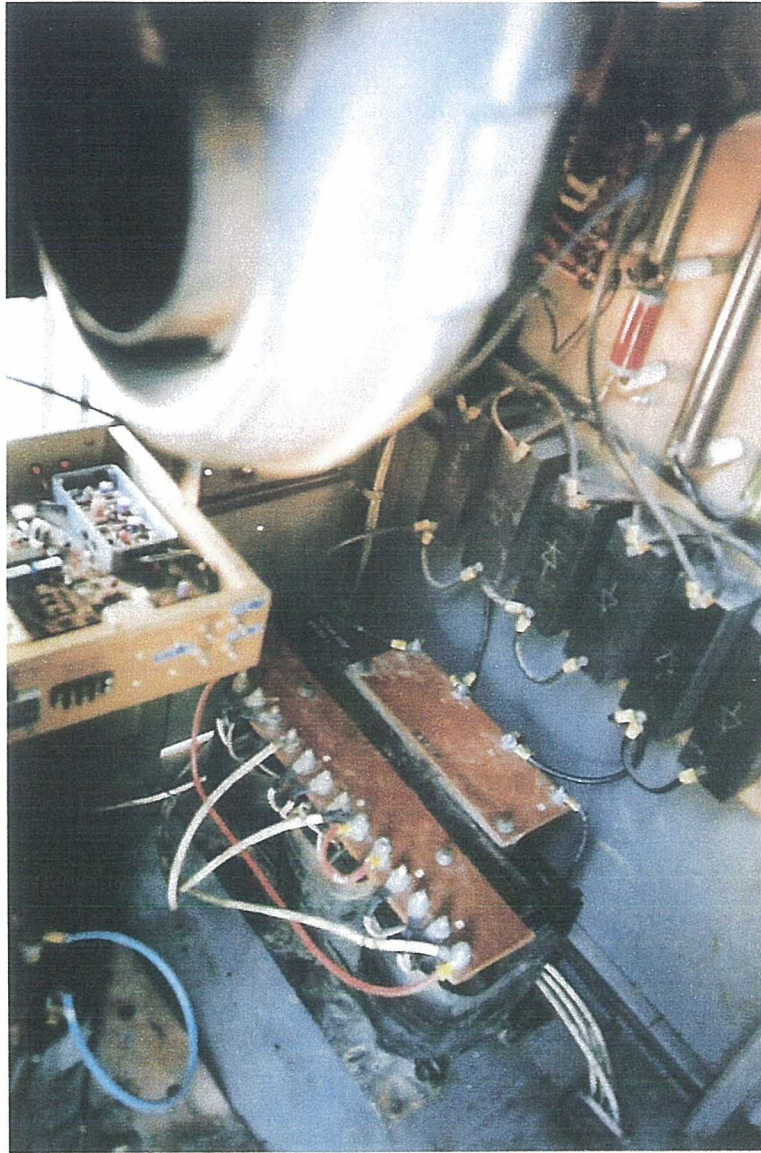
General Condition
Transmitter is
dirty and likely
inoperable

No rear cover on
transmitter; safety
interlocks would
normally prevent
its operation with-
out back cover in
place.



#11
KZCC Transmitter—front panel

Note protective relay on far left which is damaged
and potentially inoperable



#12 KZCC Transmitter—General View of Transmitter interior in power supply area

Exhibit 2

DECLARATION

1. My name is Ronald Kramer. I am Executive Director of Jefferson Public Radio (JPR), a network of public radio stations serving southern Oregon and northern California. I have served in this position for over thirty-three years. JPR is owned and operated by Southern Oregon University.

2. In connection with Jefferson Public Radio's station, KNHT(FM), Rio Dell/Eureka, CA, which is licensed to the State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University ("State of Oregon"), I received, on December 9, 2008, a copy of a letter from the FCC Audio Division, signed by Peter H. Doyle, which included an order and directive from Commission staff requiring the State of Oregon to file an application on Form 301 within 30 days to change KNHT(FM)'s frequency from 107.3 MHz to 102.5 MHz (that is, from Channel 297 to Channel 273).

3. Southern Oregon University is required by state law to be represented by the Attorney General of the State of Oregon. Therefore, this matter was turned over on December 9, 2008 to the appropriate staff in the Attorney General's office. That office, in turn, contracts with retained communication counsel for FCC representation. Coincidentally, that retainer had recently expired and had not yet been renewed, a situation which interrupted our authority to consult as necessary on this matter with communications counsel. We did not receive clear authority to consult with communications counsel on this matter until December 19, 2008.

4. On December 18, 2008 a series of extremely serious winter storms began throughout the Pacific Northwest. JPR's own offices were closed by Southern Oregon University on various days as a result of unsafe, or impractical, driving conditions. Many people were stranded in various parts of Oregon due to the close of many roads, including the interstate highways. In the Portland metropolitan area, severe weather continued for over a week during which period the U.S., Postal Service suspended all mail deliveries. Many areas were also without electricity.

5. JPR's retained engineering counsel, McClanathan and Associates, is based in Portland. However, Mr. McClanathan was stranded in Sisters, Oregon by heavy snows. On his final return to Portland, his office was without electricity and heat for an extended period.

6. This difficult period, falling during the December holidays, this period was further complicated by holiday vacation schedules by vendors whose consultation is a necessary part of such planning and which is particularly necessary to the preparation of the Form 301 application stipulated by the Commission staff. These matters included the feasibility of modifying KHNT(FM)'s existing antenna for so great a frequency change, the cost of replacing said antenna, the implications for KNHT having to go off the air as an

element of either modifying or replacing the station's existing Jampro Penetrator antenna, and issues surrounding special high-power bandpass filtering which exists as part of KNHT's transmission system in order to protect radio equipment of the Federal Aeronautics Administration (FAA). JPR's consultation on these matters required both the participation of Mr. McClanathan as well as JPR's Director of Engineering, Darin Ransom. Mr. Ransom, however, became ill with a serious stomach flu shortly after Christmas and was not capable of returning to work until January 3, 2009.

7. The author of this Declaration, Mr. Ronald Kramer, also became ill during this same period and was similarly handicapped in his ability to advance this matter as a result. For these reasons, it has not been feasible to entirely complete a standard Form 301 application of the type required by the Commission staff in its December 8, 2008 letter, within the time frame that letter stipulated.

8. The State of Oregon, in previous pleadings in this matter, has indicated that great financial expense and dislocation would result from effectuating the relocation of KNHT from Channel 297 to Channel 273, as ordered by the Audio Division in its December 8 letter decision. These economic challenges include my understanding that great expense would be involved in upgrading to a Class C1 service for KNHT and conversion to HD service by that station on Channel 273. Such expenses would include the required purchase of a directional antenna; the potential need to resort to a 4- or 6-bay transmitting antenna on Channel 273 (to newly adhere to ANSI radiation requirements arising for our being the party making the most recent changes on the site); the possibility that a 6-bay transmitting antenna cannot be accommodated on KNHT's present tower; the possible renegotiation of KNHT's tower lease should KNHT require more vertical tower space than it presently occupies, which would also consequently increase KNHT's monthly operating expenses for tower rent; in the alternative, it might possibly require the construction of a new tower or an entire relocation of KNHT; the need to newly fence this communications site in order to newly adhere to ANSI radiation requirements arising from our being the party making the most recent changes on the site; and the apparent likelihood that KNHT's existing translator K270AV, presently serving Mendocino, California, would become inoperable if KNHT were relocated to Channel 273. I wish to re-affirm at at this time this prior statement of with respect to such costs and expenses and also to add to these previously-raised issues the fact that neither the State of Oregon nor JPR nor SOU have funding to cover such expenses. The impact of the national financial problems is being felt within Oregon state government and the Oregon educational system, and is also reflected in lower revenues being donated or pledged to JPR. For these reasons, unless Airen is ordered to pay the costs directly to the State of Oregon or JPR, prior to any implementation of the proposed relocation, the State of Oregon and JPR will be financially unable to implement the needed changes for such relocation. Although the total amount of such expenses is difficult to fully predict with any exactitude, I can at this time roughly estimate those expenses as well exceeding \$50,000. For these reasons, also, the State of Oregon has explicitly advised the Commission, in a Financial Exhibit to Form 301 filed on January 8, 2009, that the State of Oregon is financially unable

to make the changes involved in moving KNHT to Channel 273. This financial inability will continue to prevent the ordered compliance unless sufficient funding to accomplish all costs associated with the FCC-mandated modification, as indicated by the Form 301 application that the State of Oregon is filing, under protest, in compliance with the Audio Division's Order on January 8, 2009, are deposited with the licensee for that purpose by Airen Broadcasting. Additionally, I estimate that, if forced to implement these changes, the monthly electrical costs for operating KNHT will increase by at least 25%. Furthermore, neither Airen nor the Audio Division has indicated any willingness on Airen's part to compensate the State of Oregon for the loss of the KNHT Mendocino translator or the loss in listeners in the Mendocino area.

I declare under penalty of perjury that the foregoing statements are true and correct.

1-07-2008
Date

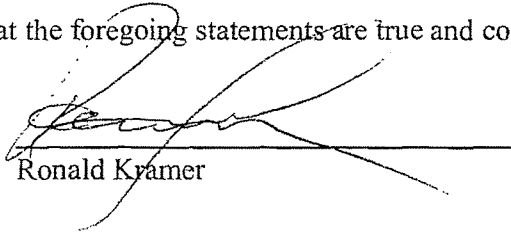

Ronald Kramer

Exhibit 3

Federal Communications Commission
Washington, D.C. 20554Approved by OMB
3060-0027 (January 2008)

FOR FCC USE ONLY

FCC 301**APPLICATION FOR CONSTRUCTION PERMIT
FOR COMMERCIAL BROADCAST STATION**FOR COMMISSION USE ONLY
FILE NO.
BPH - 20070720ABFRead INSTRUCTIONS Before Filling Out Form**Section I - General Information**

Legal Name of the Applicant ST OF OR ACTING B/T OR ST BRD OF H ED FOR SO. OR UNIV		
Mailing Address P.O. BOX 3175		
City EUGENE	State or Country (if foreign address) OR	ZIP Code 97403 -
Telephone Number (include area code) 5415526301	E-Mail Address (if available) KRAMER@SOU.EDU	
FCC Registration Number: 0005012299	Call Sign KNHT	Facility ID Number 17412
Contact Representative (if other than Applicant) RONALD KRAMER		Firm or Company Name JEFFERSON PUBLIC RADIO
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code) 5415526301	E-Mail Address (if available) KRAMER@SOU.EDU	
If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114): <input checked="" type="radio"/> Governmental Entity <input type="radio"/> Other <input type="radio"/> N/A (Fee Required)		
Application Purpose <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="radio"/> New station <input type="radio"/> Major Modification of construction permit <input type="radio"/> Minor Modification of construction permit <input type="radio"/> Major Amendment to pending application (a) File number of original construction permit: (b) Service Type: (c) DTV Type: </div> <div style="width: 45%;"> <input type="radio"/> New Station with Petition for Rulemaking or Counterproposal to Amend FM Table of Allotments <input type="radio"/> Major Change in licensed facility <input checked="" type="radio"/> Minor Change in licensed facility <input type="radio"/> Minor Amendment to pending application <input type="checkbox"/> NA <input type="radio"/> AM <input checked="" type="radio"/> FM <input type="radio"/> TV <input type="radio"/> DTV <input type="radio"/> Pre-Transition <input type="radio"/> Post-Transition <input type="radio"/> Both </div> </div>		

(d) Community of License:

City: RIO DELL

State: CA

(e) Facility Type

☒ Main ☐ Auxiliary

If an amendment, **submit as an Exhibit** a listing by Section and Question Number the portions of the pending application that are being revised.

[Exhibit 1]

OTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

Section II - Legal

Certification. Applicant certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Applicant further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.

☒ Yes ☐ No

Parties to the Application.

a. List the applicant, and, if other than a natural person, its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the applicant, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity. Attach additional pages if necessary.

(1) Name and address of the applicant and each party to the application holding an attributable interest (if other than individual also show name, address and citizenship of natural person authorized to vote the stock or holding the attributable interest). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and other entities with attributable interests, and partners.

(2) Citizenship.

(3) Positional Interest: Officer, director, general partner, limited partner, LLC member, investor/creditor attributable under the Commission's **equity/debt plus** standard, etc.

(4) Percentage of votes.

(5) Percentage of total assets (equity plus debt).

[Enter Parties/Owners Information]

Parties to the Application

List the applicant, and, if other than a natural person, its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the applicant, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity. Attach additional pages if necessary.

(1) Name and address of the applicant and each party to the application holding an attributable interest (if other than individual also show name, address and citizenship of natural person authorized to vote the stock or holding the attributable interest). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and other entities with attributable interests, and partners.

(2) Citizenship.

(3) Positional Interest: Officer, director, general partner, limited partner, LLC member, investor/creditor attributable under the Commission's **equity/debt plus** standard, etc.

(4) Percentage of votes.

(5) Percentage of total assets (equity plus debt).

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
HENRY LORENZEN, 222 SE DORION, PENDLETON, OR 97801	US	BOARD PRESIDENT	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
KIRBY DYESS, PO BOX 751, PORTLAND, OR 97207	US	VICE-PRESIDENT	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
DONALD W. BLAIR, 1 BOWERMAN DRIVE BEAVERTON, OR 97005	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
GERRY BLAKNEY, 345 N. MONMOUTH AVE., MONMOUTH, OR 97361	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
JAMES FRANCESCONI, 101 SW MAIN, STE 1800, PORTLAND, OR 97204	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
ADRIANA MENDOZA, 1704 K AVE, LA GRANDE, OR 97850	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
DALTON MILLER-JONES, PO BOX 751 PORTLAND, OR 97207	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
GRETCHEN S. SCHUETTE, 4000 LANCASTER DRIVE NE, SALEM, OR 97309	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets

HOWARD SOHN, PO BOX 1127 ROSEBURG, OR 97470	US	BOARD MEMBER	0	0
--	----	-----------------	---	---

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
JOHN E. VON SCHLEGELL, 920 SW 6TH AVE STE 1400, PORTLAND, OR 97204	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
TONY C. VAN VLIET 1530 NW 13TH STREET, CORVALLIS, OR 97330	US	BOARD MEMBER	0	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of Assets
THE STATE OF OREGON ACTING BY AND THROUGH THE STATE BOARD OF HIGHER EDUCATION FOR SOUTHERN OREGON UNIVERSITY	US	APPLICANT		

b. Applicant certifies that equity and financial interests not set forth above are non-attributable.

☒ Yes ☐ No
☐ N/A

See Explanation in
[Exhibit 2]

Other Authorizations. List call signs, locations, and facility identifiers of all other broadcast stations in which applicant or any party to the application has an attributable interest.

☐ N/A

[Exhibit 3]

Multiple Ownership.

a. Is the applicant or any party to the application the holder of an attributable radio joint sales agreement or an attributable radio or television time brokerage agreement in the same market as the station subject to this application?

☐ Yes ☒ No

[Exhibit 4]

If "YES," radio applicants must submit as an Exhibit a copy of each such agreement for radio stations.

b. Applicant certifies that the proposed facility complies with the Commission's multiple ownership rules and cross-ownership rules.

☒ Yes ☐ No

Radio applicants only: If "Yes," submit an Exhibit providing information regarding the market, broadcast station(s), and other information necessary to demonstrate compliance with 47 C.F.R. § 73.3555(a).

[Exhibit 5]

All Applicants: If "No," submit as an Exhibit a detailed explanation in support of an exemption from, or waiver of, 47 C.F.R. § 73.3555.

c. Applicant certifies that the proposed facility:

☒ Yes ☐ No

1. does not present an issue under the Commission's policies relating to media interests of immediate family members;

See Explanation in
[Exhibit 6]

2. complies with the Commission's policies relating to future ownership interests; and 3. complies with the Commission's restrictions relating to the insulation and non-participation of non-party investors and creditors.	
Character Issues. Applicant certifies that neither applicant nor any party to the application has or has had any interest in or connection with: a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or b. any pending broadcast application in which character issues have been raised.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 7]
Adverse Findings. Applicant certifies that, with respect to the applicant and any party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to any of the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another government unit; or discrimination.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 8]
Alien Ownership and Control. Applicant certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 9]
Program Service Certification. Applicant certifies that it is cognizant of and will comply with its obligations as a commission licensee to present a program service responsive to the issues of public concern facing the station's community of license and service area.	<input checked="" type="radio"/> Yes <input type="radio"/> No
Local Public Notice. Applicant certifies that it has or will comply with the public notice requirements of 47 C.F.R. Section 73.3580.	<input checked="" type="radio"/> Yes <input type="radio"/> No
0. Auction Authorization. If the application is being submitted to obtain a construction permit for which the applicant was the winning bidder in an auction, then the applicant certifies, pursuant to 47 C.F.R. Section 73.5005(a), that it has attached an exhibit containing the information required by 47 C.F.R. Sections 1.2107(d), 1.2110(i), 1.2112(a) and 1.2112(b), if applicable. An exhibit is required unless this question is inapplicable.	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A [Exhibit 10]
1. Anti-Drug Abuse Act Certification. Applicant certifies that neither applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.	<input checked="" type="radio"/> Yes <input type="radio"/> No
2. Equal Employment Opportunity (EEO). If the applicant proposes to employ five or more full-time employees, applicant certifies that it is filing simultaneously with this application a Model EEO Program Report on FCC Form 396-A.	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
3. Petition for Rulemaking/Counterproposal to Add New FM Channel to FM Table of Allotments. If the application is being submitted concurrently with a Petition for Rulemaking or Counterproposal to Amend the FM Table of Allotments (47 C.F.R. section 73.202) to add a new FM channel allotment, petitioner/counter-proponent certifies that, if the FM channel allotment requested is allotted, petitioner/counter-proponent will apply to participate in the auction of the channel allotment requested and specified in this application.	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A

certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

13. **Petition for Rulemaking/Counterproposal to Add New FM Channel to FM Table of Allotments.** If the application is being submitted concurrently with a Petition for Rulemaking or Counterproposal to Amend the FM Table of Allotments (47 C.F.R. Section 73.202) to add a new FM channel allotment, petitioner/counter-proponent certifies that, if the FM channel allotment requested is allotted, petitioner/counter-proponent will apply to participate in the auction of the channel allotment requested and specified in this application.

☐ Yes ☐ No ☐ N/A

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in 'good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

SECTION III PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name ROBERT A. McCLANATHAN, P.E. McCLANATHAN AND ASSOCIATES, INC.	Relationship to Applicant (e.g., Consulting Engineer) CONSULTING ENGINEER	
Signature <i>R. A. Mcclanathan</i>	Date JANUARY 6, 2009	
Mailing Address P.O. Box 939		
City PORTLAND	State or Country (if foreign address) OR	ZIP Code 97207-0939
Telephone Number (include area code) 503-246-8080	E-Mail Address (if available) BOBW7TDP@AOL.COM	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

SECTION III-B FM Engineering

TECHNICAL SPECIFICATIONS Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

1. Channel:	<u>273</u>																				
2. Class:	<input type="checkbox"/> A	<input type="checkbox"/> B1	<input type="checkbox"/> B	<input type="checkbox"/> C3	<input checked="" type="checkbox"/> C2	<input type="checkbox"/> C1	<input type="checkbox"/> C	<input type="checkbox"/> C0	<input type="checkbox"/> D												
3. Antenna Location Coordinates: (NAD 27)	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">40°</td> <td style="text-align: center;">30'</td> <td style="text-align: center;">03"</td> <td><input checked="" type="checkbox"/> N</td> <td><input type="checkbox"/> S Latitude</td> </tr> <tr> <td style="text-align: center;">124°</td> <td style="text-align: center;">17'</td> <td style="text-align: center;">08"</td> <td><input type="checkbox"/> E</td> <td><input checked="" type="checkbox"/> W Longitude</td> </tr> </table>											40°	30'	03"	<input checked="" type="checkbox"/> N	<input type="checkbox"/> S Latitude	124°	17'	08"	<input type="checkbox"/> E	<input checked="" type="checkbox"/> W Longitude
40°	30'	03"	<input checked="" type="checkbox"/> N	<input type="checkbox"/> S Latitude																	
124°	17'	08"	<input type="checkbox"/> E	<input checked="" type="checkbox"/> W Longitude																	
4. Proposed Allotment or Assignment Coordinates: (NAD 27)	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">°</td> <td style="text-align: center;">'</td> <td style="text-align: center;">"</td> <td><input type="checkbox"/> N</td> <td><input type="checkbox"/> S Latitude</td> </tr> <tr> <td style="text-align: center;">°</td> <td style="text-align: center;">'</td> <td style="text-align: center;">"</td> <td><input type="checkbox"/> E</td> <td><input type="checkbox"/> W Longitude</td> </tr> </table>											°	'	"	<input type="checkbox"/> N	<input type="checkbox"/> S Latitude	°	'	"	<input type="checkbox"/> E	<input type="checkbox"/> W Longitude
°	'	"	<input type="checkbox"/> N	<input type="checkbox"/> S Latitude																	
°	'	"	<input type="checkbox"/> E	<input type="checkbox"/> W Longitude																	
5. Antenna Structure Registration Number:	<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> FAA Notification Filed with FAA																				
6. Overall Tower Height Above Ground Level:	<u>55</u> meters																				
7. Height of Radiation Center Above Mean Sea	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>705</u></td> <td style="text-align: center;">meters (H)</td> <td style="text-align: center;"><u>705</u></td> <td style="text-align: center;">meters (V)</td> </tr> </table>											<u>705</u>	meters (H)	<u>705</u>	meters (V)						
<u>705</u>	meters (H)	<u>705</u>	meters (V)																		
8. Level: Height of Radiation Center Above Ground Level:	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>10</u></td> <td style="text-align: center;">meters (H)</td> <td style="text-align: center;"><u>10</u></td> <td style="text-align: center;">meters (V)</td> </tr> </table>											<u>10</u>	meters (H)	<u>10</u>	meters (V)						
<u>10</u>	meters (H)	<u>10</u>	meters (V)																		
9. Height of Radiation Center Above Average Terrain:	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>484</u></td> <td style="text-align: center;">meters (H)</td> <td style="text-align: center;"><u>484</u></td> <td style="text-align: center;">meters (V)</td> </tr> </table>											<u>484</u>	meters (H)	<u>484</u>	meters (V)						
<u>484</u>	meters (H)	<u>484</u>	meters (V)																		
10. Effective Radiated Power:	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>3.3</u></td> <td style="text-align: center;">kW (H)</td> <td style="text-align: center;"><u>3.3</u></td> <td style="text-align: center;">kW (V)</td> </tr> </table>											<u>3.3</u>	kW (H)	<u>3.3</u>	kW (V)						
<u>3.3</u>	kW (H)	<u>3.3</u>	kW (V)																		
11. Maximum Effective Radiated Power: (Beam-Tilt Antenna ONLY)	<input checked="" type="checkbox"/> Not applicable _____ kW (H) _____ kW (V)																				
12. Directional Antenna Relative Field Values:	<input checked="" type="checkbox"/> Not applicable (Nondirectional) <input type="checkbox"/> No rotation																				
Rotation: _____ °																					
Degree	Value	Degree	Value	Degree	Value	Degree	Value	Degree	Value	Degree	Value										
0		60		120		180		240		300											
10		70		130		190		250		310											
20		80		140		200		260		320											
30		90		150		210		270		330											
40		100		160		220		280		340											
50		110		170		230		290		350											
Additional Azimuths																					

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

CERTIFICATION

AUXILIARY ANTENNA APPLICANTS ARE NOT REQUIRED TO RESPOND TO ITEMS 13-16.
PROCEED TO ITEM 17.

13. **Availability of Channels.** The proposed facility complies with the allotment requirements of 47 C.F.R. Section 73.203. ☒ Yes ☐ No See Explanation in Exhibit No.

14. **Community Coverage.** The proposed facility complies with 47 C.F.R. Section 73.315. ☒ Yes ☐ No See Explanation in Exhibit No.

15. **Main Studio Location.** The proposed main studio location complies with 47 C.F.R. Section 73.1 125. ☒ Yes ☐ No See Explanation in Exhibit No.

16. **Interference.** The proposed facility complies with all of the following applicable rule sections. Check all those that apply. ☒ Yes ☐ No See Explanation in Exhibit No.

Separation Requirements.

a. ☒ 47 C. F. R. Section 73.207.

Grandfathered Short-Spaced.

b. ☐ 47 C.F.R. Section 73.213(a) with respect to station(s): _____ Exhibit No.
Exhibit Required.

c. ☐ 47 C.F.R. Section 73.213(b) with respect to station(s): _____ Exhibit No.
Exhibit Required.

d. ☐ 47 C.F.R. Section 73.213(c) with respect to station(s): _____ Exhibit No.
Exhibit Required.

Contour Protection.

e. ☐ 47 C.F.R. Section 73.215 with respect to station(s): _____ Exhibit No.
Exhibit Required.

17. **Environmental Protection Act.** The proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306 (i.e., the facility will not have a significant environmental impact and complies with the maximum permissible radio frequency electromagnetic exposure limits for controlled and uncontrolled environments). Unless the applicant can determine compliance through the use of the RF worksheets in Appendix A, an **Exhibit is required.** ☒ Yes ☐ No See Explanation in Exhibit No. 31

By checking "Yes" above, the applicant also certifies that it, in coordination with other users of the site, will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radio frequency electromagnetic exposure in excess of FCC guidelines.

18. **Community of License Change - Section 307(b).** If the application is being submitted to change the facility's community of license, then the applicant certifies that it has attached an exhibit containing information demonstrating that the proposed community of license change constitutes a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. Section 307(b)). ☐ Yes ☐ No ☒ N/A Exhibit No.

An exhibit is required unless this question is not applicable.

PREPARER'S CERTIFICATION ON PAGE 3 MUST BE COMPLETED AND SIGNED.

EXHIBIT 31

The purpose for this application is to Change the operating frequency of KNHT from 107.3 to 102.5 MHz and install a new antenna with one half wavelength vertical element spacing. An Environmental Assessment (EA) is categorically excluded under 47 C.F.R. Section 1.1306(b) of the FCC Rules and Regulations since the Applicant's proposal does not:

1. Involve a site location specified under 47 C.F.R. Section 1.1307(a)(1) through (7).
2. Involve high intensity lighting under 47 C.F.R. Section 1.1307(a)(8).
3. Result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b), (ANSI C95.1-1982 and ANSI C95.1-1991).

The existing antenna site is limited to authorized personnel by means of a locked access road gate some distance from the antenna support tower but should be considered an uncontrolled environment since farming access can occur in this area.

The Maximum Permissible Exposure (MPE) for controlled environments at the FM frequency of 102.5 MHz is 1000 uW/cm². The contributing radio frequency power density at a height of 2.0 meters above ground level from the KNHT antenna, radiating a total of 3.3 kW ERP-H and 3.3 kW ERP-V, is plotted on the attached Exhibit 31A. The maximum RF power density at all depression angles towards the ground from the Jampro four element antenna is less than 87 uW/cm².

Also installed on this antenna support structure is the three element FM antenna for radio station KJNY which operates with an antenna power of 6.0 kW H&V. The KJNY FM antenna center of radiation is mounted 49 meters above ground level and the contributing radio frequency power density at a height of 2.0 meters above ground level from the KJNY antenna is less than 10 uW/cm² as plotted on the attached Exhibit 31B. The combined RF power densities from both KNHT and KJNY at 2 meters above the ground at all areas surrounding the support structure is slightly less than 100 uW/cm².

The antenna supporting tower will be fenced at a radius of 10 meters surrounding the antenna support tower to prevent unauthorized access and signs will be placed on posts stating "Caution - high level radio frequency energy area - No Trespassing". Therefore, the proposed installation does comply with ANSI and FCC specified guidelines for uncontrolled human exposure to radio frequency radiation. The Applicant will instruct all personnel to terminate RF radiations from this antenna when service work requires that persons climb the tower for any purpose. The Applicant believes there will be no significant effect on the human environment regarding public exposure or occasional visits by technical personnel and that the warning signs will be sufficient for proper notification of a potential hazard.

Mode ☒ Reg ☐ Spd ☐ FM ☐ TV ☐ DET #65 ☐ DET Mod

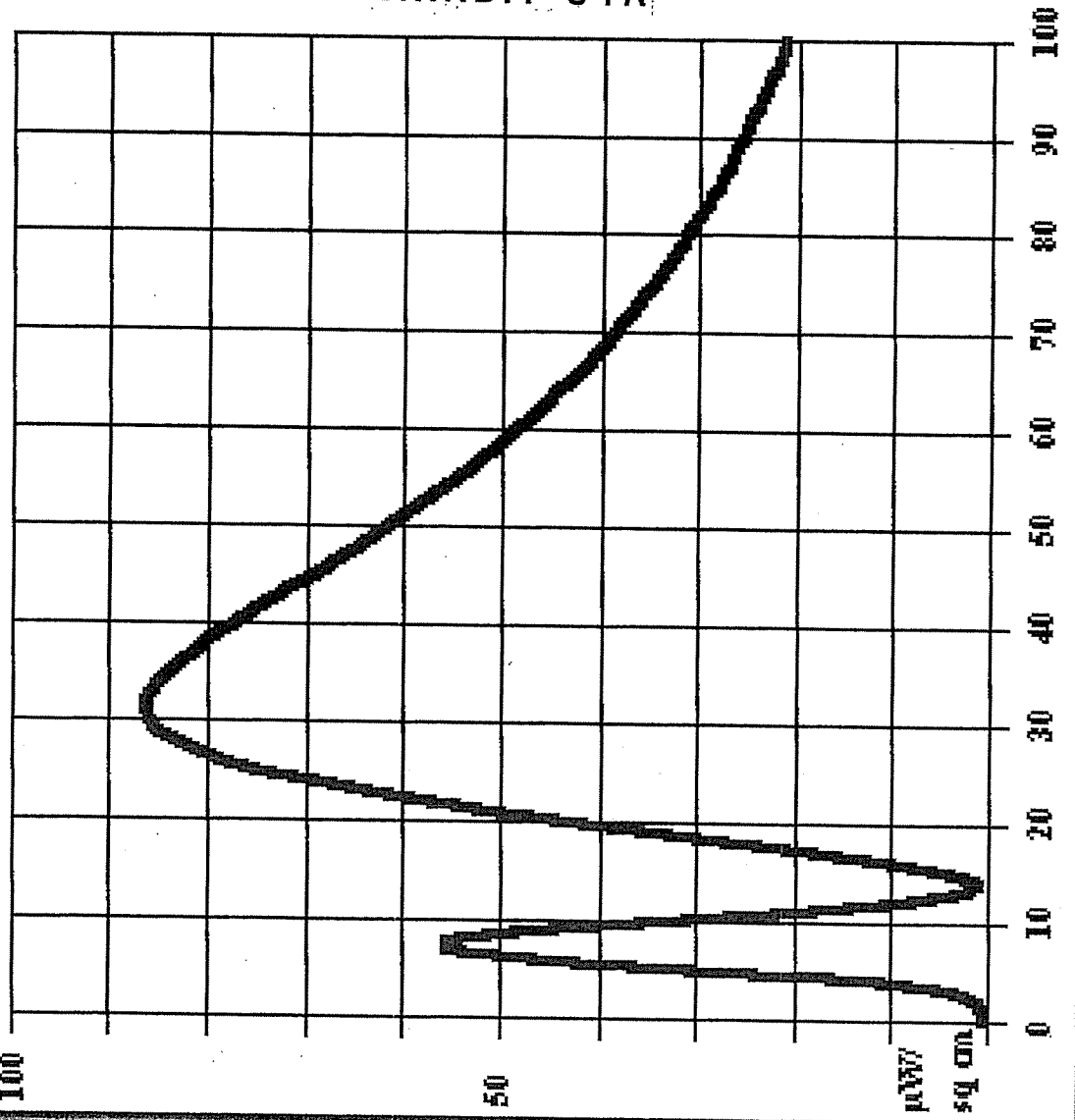
Antenna Parameters
H kW 3.3
V kW 3.3
of Bays 4 Spacing 0.5
COR Meters Above Ground 8
Dist. in Meters to Tower Base 31

EPA Antenna Types
☐ 1.) Dipole/Ring Stub
☐ 2.) Jampiro Double Y
☒ 3.) ERI/Jampiro Roto
☐ 4.) RCA (old BFG)
☐ 5.) Dielectric (BFC)
☐ 6.) Shively 6800

Max = 1000 $\mu\text{W}/\text{sq cm}$
Pwr Density % of Max Controlled
 86.308 8.6308 ☒ Yes ☐ No
 $\mu\text{W}/\text{sq cm}$

☐ 50 ☒ 100 ☐ 200 ☐ 500 ☐ 1000 ☐ 2000 ☐ 3000

Title KNHT Rio Dell, CA 102.5 mHz
ERI/Jampiro Roto, 4 Bays, Spc.= 0.5 W, Pwr H=3.3 Pwr V=3.3



Distance in Meters

Mode

Study

Method

☒ Reg
☐ Spd

☒ FM
☐ TV

☐ DEI #65
☒ DEI Mod

Antenna Parameters

H kW

V kW

of Bays Spacing

CDR Meters Above Ground

Dist in Meters to Lower Base

EPA Antenna Types

- ☐ 1.) Dipole/Ring Stub
- ☐ 2.) Jampiro Double V
- ☒ 3.) ERI/Jampiro Roto
- ☐ 4.) RCA (old BFG)
- ☐ 5.) Dielectric (BFC)
- ☐ 6.) Shively 6800

Print

Disk

Lab

Max = 1000 μ W/sq cm

Pwr Density % of Max Controlled

☒ Yes ☐ No

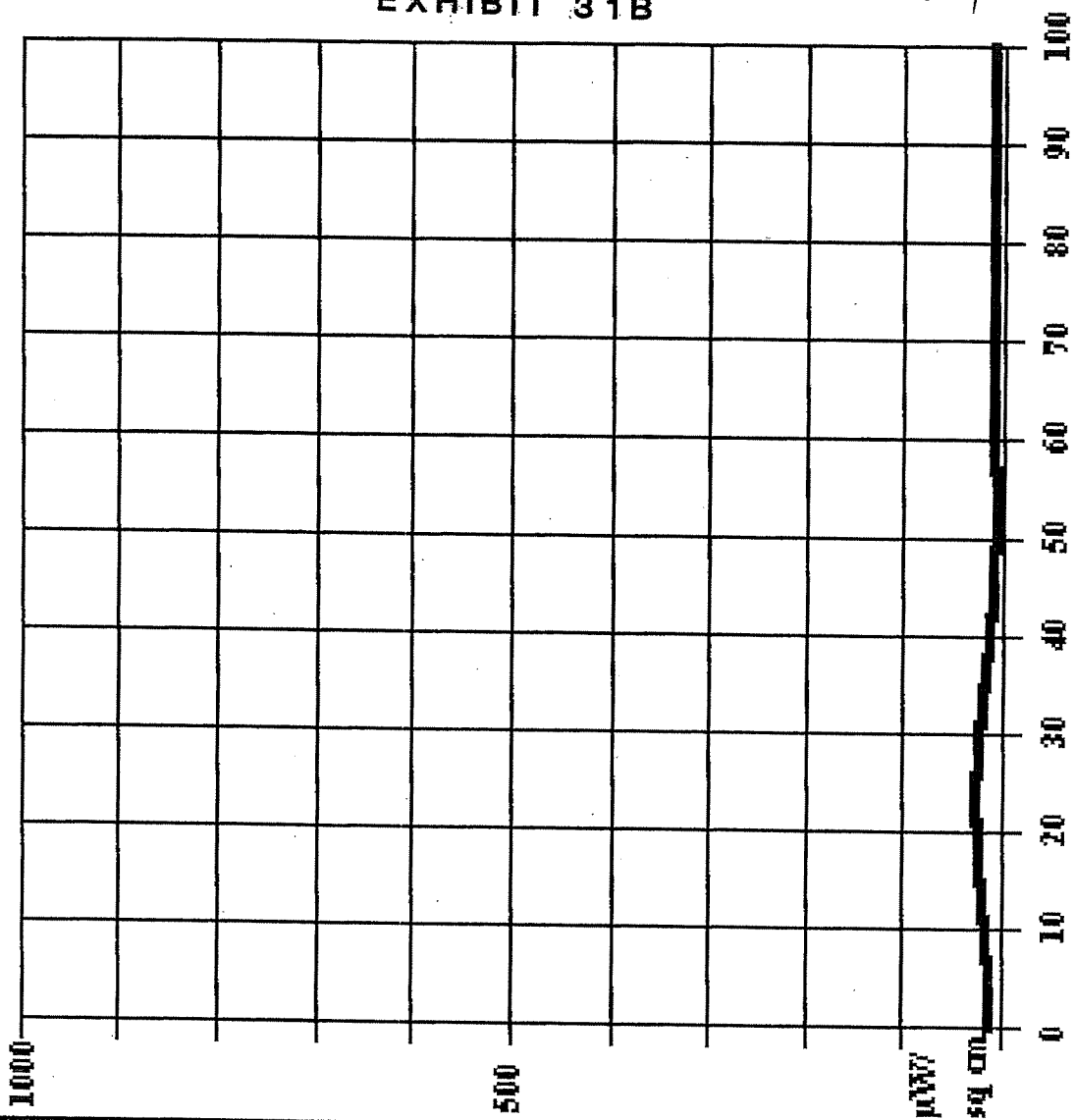
μ W/sq cm

Scale = μ W/sq cm

☐ 50 ☐ 100 ☐ 200 ☒ 500 ☐ 1000 ☐ 2000 ☐ 3000

Title

ERI/Jampiro Roto, 3 Bays, Spc.= 1 W, Pwr H=6 Pwr V=6



Distance in Meters

Exhibit 3**Description:** OTHER AUTHORIZATIONS

KSOR ASHLAND, OR 50622
KSMF ASHLAND, OR 63022
KSRG ASHLAND, OR 62105
KSJK TALENT, OR 62157
KSRS ROSEBURG, OR 62158
KSBA COOS BAY, OR 50616
KAGI GRANTS PASS, OR 61334
KSKF KLAMATH FALLS, OR 62071
KLMF LAMATH FALLS, OR 83854
KNHT RIO DELL, CA 17412
KNCA BURNEY, CA 50621
KNYR YREKA, CA 62967
KNSQ MT. SHASTA, CA 62957

Attachment 3**Exhibit 5****Description:** MULTIPLE AND CROSS OWNERSHIP STATEMENT

APPLICANT'S STATION, KNHT FM, IS LICENSED TO RIO DELL, CA. RIO DELL, CA IS COMMONLY CONSIDERED TO BE LOCATED WITHIN THE EUREKA, CA MARKET. THE APPLICANT IS NOT THE LICENSEE OF ANY RADIO OR TELEVISION STATION IN THE EUREKA, CA MARKET OTHER THAN KNHT.

Attachment 5**Exhibit 25****Description:** SECTION III B QUESTION 15 'MAIN STUDIO LOCATION'

APPLICANT HOLDS A WAIVER TO THE MAIN STUDIO RULE FOR KNHT FM, FACILITY ID 17412.

State of Oregon
Form 301
January 8, 2009
Financial Exhibit

The State of Oregon does not have sufficient internal funds to construct the proposed facilities and has no assurance that sufficient funds are or would be available from outside committed sources to construct the requested facilities. For these reasons, the State of Oregon is unable to provide the financial certification required of applicants for, and licensees of, noncommercial educational broadcast facilities.