



2. **Background.** KKYK-LP<sup>1</sup> was a qualified Class A-eligible analog television station operating out-of-core on Channel 58 in 2009 when its then-owner, Equity Media Holdings Corporation, entered Chapter 11 bankruptcy. The station was sold out of bankruptcy that same year to Pinnacle Media, LLC (File No. BALTTL-20090814AAK). Within six months of this acquisition, Pinnacle filed an application seeking a construction permit for a digital low power displacement to an in-core channel, Channel 16 (BDISDTL-20100524AHW). After nearly six months of no action by the Commission, the Video Division staff instructed Pinnacle (by phone) to amend its application to protect a second-in-time low power station. Despite disagreeing with the Video Division's interference determination, Pinnacle complied for the sake of expediency, submitting an amended application on January 28, 2011. After yet *another* five months of Commission processing, the displacement authorization was finally granted on May 23, 2011 (the "Digital CP").

3. During the year-long processing delay, Pinnacle received notice on June 6, 2011 that the tower which had been specified in the displacement permit ("Tower A", for ease of reference) was unavailable because of lack of space. Pinnacle immediately began to review options for use of its existing (analog) tower for the new digital channel, only to be given notice that this tower was also fully loaded. Pinnacle, unable to find an alternate tower, began working with the owner and tenants of Tower A to share an antenna so that the KKYK digital station could operate on Tower A without occupying additional space. Pinnacle eventually resolved to acquire a custom-manufactured digital antenna that could be shared with another tenant, even

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<sup>1</sup> The station's call sign changed from KLRA-CD in 2013. Because KLRA-CD and KKYK-CD exchanged call signs, it is easy to confuse the two stations. This Petition relates only to Facility ID 57548, which will be referred to as "KKYK".

though it required a substantial power reduction (from 15kW to 0.8 kW). A minor modification of the Digital CP was filed on February 6, 2012 (BMPDTL-20120206AAJ), and was granted on February 16, 2012 -- *six days before* the Cut-Off Date. Pinnacle acquired and installed the custom antenna, then filed the license to cover on July 12, 2012 (BLDTA-20120712ABV), which license was quickly granted on July 18, 2012.

4. That same day, Pinnacle filed with the Commission an application to swap Class A television station licenses with KMYA, LLC, in a tax-free exchange (BALTTL-20120718ABE). This was necessitated by the extreme loss in power that resulted from the modifications to enable use of Tower A. The assignment application was not granted until December 12, 2012.

5. During the pendency of the assignment application, the need to file a separate application to convert the new digital facilities from out-of-core Class A-eligible to in-core Class A-licensed on Channel 16 was inadvertently overlooked. The appropriate license application was filed on October 10, 2012, and granted on October 23, 2012 (BLDTA-20121012ACZ). Thus, the Digital Facilities began operation on July 12, 2012, and the television station was fully authorized as a digital Class A as of October 23, 2012.

6. ***Discussion.*** In the *Incentive Auction Report & Order*, 29 FCC Rcd 6567 (2014), the Commission determined that certain full power and Class A television facilities were subject to mandatory protection for purposes of auction eligibility and post-auction repacking. *Id.* at paras. 184-89. The stations to be afforded mandatory protection, the Commission concluded, would be only those facilities which were in operation as of February 22, 2012. *Id.* at para. 186. In order to be operating, the Commission noted, such station facilities had either a granted license

or had on file an application for a license to cover the authorized construction permit specifying the facilities. *Id.*

7. The Commission further determined that, where appropriate, it would exercise its discretion to extend protection to certain other facilities. Among those facilities to be protected are “Class A facilities authorized by construction permits to implement Class A stations’ mandated transition to digital operations.” *Id.* at para. 194. Specifically, the Commission concluded that equities favored extending protection to Class A stations which did not have digital facilities authorized by the February 22, 2012 deadline, provided that extension of such discretionary protection would be limited to those facilities that were licensed by the Pre-Auction Licensing Deadline (May 29, 2015). *Id.* at para. 216. Finally, the Commission concluded that it would further serve the public interest to extend discretionary protection to Class A station facilities authorized on or before April 5, 2013.<sup>2</sup>

8. KKYK was not included in Appendix A of the *Eligible Facilities PN*, which specified which facilities will be accorded protection in the Incentive Auction for repacking and relinquishment purposes. This exclusion is clear error on the part of the Commission and must be corrected. As demonstrated above, the KKYK Class A Digital Facilities were authorized in a construction permit on February 16, 2012, which was prior to the Cut-Off Date for Class A digital transition construction permits to be protected in the auction. The Class A Digital Facilities were licensed by October 23, 2012, which satisfies the requirement that Class A digital construction permits eligible for protection be licensed by the Pre-Auction Filing Deadline. As both authorization dates fall squarely in the timeframes for which the Commission

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<sup>2</sup> April 5, 2013 is the date the Media Bureau issued its Public Notice announcing the backward-looking February 22, 2012 cut-off. *See* 28 FCC Record 4364 (2013) (the “*Freeze PN*”).

has concluded it should afford discretionary protection, the Commission must grant Eligible Entity Status to the Digital Facilities.<sup>3</sup>

9. KKYK is a Class A television station and has been operated as such by Licensee and its predecessor. As reflected in its online public file, KKYK has since 2009 met all the requirements of Class A operation despite being allocated to an out-of-core channel. Licensee cannot speak to the actions or omissions of the pre-2009 licensee, Equity Media Holdings Corporation (as itself and as debtor-in-possession) with regard to efforts to obtain an in-core channel. Licensee does rely, however, on the fact that the Commission determined the Class A eligibility remained in effect throughout the decade during which the out-of-core operation occurred. Moreover, Licensee and the previous licensee, Pinnacle Media, can and do confirm that at all times since the 2009 acquisition KKYK has provided Class A television service to the public of Little Rock. From 2009 to 2012, the station served the growing Spanish-speaking community in the Little Rock-Pine Bluff metropolitan region as the Univision affiliate and producer of local news and programming specifically of interest to the Hispanic audience of central Arkansas. Even during the time period in which Pinnacle endeavored to build the Digital Facilities, Pinnacle arranged for the station to be rebroadcast on a digital subchannel of another Class A station in the market to ensure the digital transition did not strand the local audience without Spanish programming. The programming was in such demand, in fact, that the majority of local cable providers carried the station despite the lack of any must-carry obligation to do so.

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<sup>3</sup> In anticipation of such protection, Licensee filed an FCC Form 2100, Schedule 381 Pre-Auction Technical Certification Form on July 7, 2015. *See* File No. 0000002976.

10. Upon the drastic reduction in power and subsequent station swap, KKYK became a Me-TV affiliate, broadcasting on its digital primary channel 16.1 the Nielsen-rated popular network offering family-friendly programming. KKYK also broadcasts, on its digital subchannels, Soul of the South (on 16.2), an African American-owned and -programmed network focused on serving the needs and interests of the black community in the South, as well as Cozi TV (on 16.3), which offers a mix of family-friendly classic television series, movies, and first-run lifestyle programming. In addition, KKYK continues to provide locally-produced news and programming to its community. It would therefore be an affront to the public interest not to ensure the Digital Facilities are protected in the Incentive Auction.

11. Licensee presumes, pursuant to the language of the *Incentive Auction Report & Order* at Section III.B.3.d.ii, that the Commission treated the Digital Facilities as ineligible because the station was, at the time of the Cut-Off Date, only a Class A-eligible station, because it was operating on an out-of-core channel. Licensee believes it is inequitable to impose such a severe hardship on a broadcast station whose owners endeavored to obtain an in-core digital channel to convert to Class A. KKYK's situation is not meaningfully different from that of KHTV-CD, which was granted relief in the *Incentive Auction R&O*. See *id.*, at para. 235. KKYK's attempt to obtain an in-core channel was stymied not by faults of its own but by the Commission's own inexplicably long application processing time. It is patently unfair and unreasonable for the Commission to treat KKYK-CD differently from KHTV-CD given that the only apparent distinction between the stations was that KHTV-CD had filed an Class A license application that allowed the station to go on record prior to the Cut-Off Date with certifications that it was meeting all of the Class A requirements. The Commission itself notes that this application was submitted to cover a construction permit that was *dismissed*, thus the license application on

which the Commission relies for this certification was erroneously allowed to remain pending until 2012 when the replacement applications were filed for KHTV-CD. *See id.* at para. 235 and n. 728. The Commission fails to explain why the certification included in an invalid application should carry more weight than the certification of ongoing Class A eligibility required to be made by any other Class A station. In KKYK's online public file are certificates of Class A eligibility covering 2009 to the present. The fact that the FCC found KKYK Class A-eligible upon issuing the digital in-core Class A permit in February 2012 indicates that it also found sufficient evidence that the station maintained its Class A eligibility throughout the time it took to obtain an in-core station. Because the Commission fails to provide a reasonable explanation for the apparent disparate treatment, it must treat KKYK equally with KHTV-CD and extend discretionary protection to the Digital Facilities.

12. What makes this particular set of circumstances even more compelling is the fact that, but for Pinnacle's acquisition of the station from the bankrupt prior licensee, the station likely would not have survived. Pinnacle and Licensee have provided community-focused Spanish-language programming<sup>4</sup> to an under-represented minority population. The public interest is

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<sup>4</sup> Among the local programs produced by and/or aired on KKYK are:

- *Asi Es! Arkansas*, an award-winning 30 minute weekly community news show that has been the air for almost 5 years. It covers stories on immigration, health, education, entertainment, local events, and community affairs.
- *Razorbacks En Espanol*, a 30-minute weekly Spanish-language sports show covering local sports and events, Razorback spots from the University of Arkansas, national and international sporting events, and other local sports stories of interest. It has been on the air over 10 years!
- *Que Pasa*, a weekly educational bilingual show which teaches kids and adults about Spanish and English and the cultural similarities and differences. Papa Rap (Al Lopez), who hosts the show, is a well-known personality and Latino leader in Arkansas who works in the Springdale School System to help bridge the gap with Latino families.

surely on the side of rewarding local broadcasters who provide such public services. Instead, what the Commission has done is akin to punishing the current licensee (and Pinnacle) for the prior failure of a licensee who succumbed to the financial collapse of 2007-2008. Most egregiously, the Commission deigns to hold KKYK to a crucial deadline of which neither Licensee nor Pinnacle had had prior notice – a critical deadline that also appears to be arbitrarily waived for some stations (KHTV-CD) and not others.

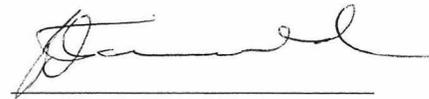
13. It is clear that the Commission must extend its discretionary protection to protect the KKYK Digital Facilities with regard to the Incentive Auction and the repack. However, assuming, *arguendo*, that the Commission fails to afford such discretionary protection, the Commission nevertheless is mandated, at minimum, to include the KKYK Analog Facilities, which were operated in compliance with the Class A rules, in the list of facilities eligible for protection in the repacking and for relinquishment in the reverse auction. As the Commission noted in the *Incentive Auction Report & Order*, 47 U.S.C. § 336(f)(6)(A) instructed that an out-of-core Class A-eligible LPTV station must be afforded primary status protection as a Class A facility immediately upon issuance of the in-core channel construction permit, and thereafter must be accorded a Class A license simultaneously upon the filing of a license to cover that in-core channel permit. *See id.* at para. 232 and n. 717. If the Commission insists on defying the statutory mandate to afford Class A protection to the permitted in-core facilities, then at the bare minimum the FCC must extend protection to the original analog Class-A eligible out-of-core LPTV facilities.

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- *Noticiero Arkansas*, the only local Spanish newscast in Arkansas, airing every Wednesday at 5 and 10 pm covering local news, weather, sports, national and international news.

14. *Conclusion.* As set forth herein, the Commission must extend discretionary Incentive Auction protection to the Digital Facilities of KKYK. In the alternative, and only as a Hail-Mary to restore some of the rights the Licensee is entitled to as a Class A licensee, the KKYK Analog Facilities must be included in the eligible station list for protection in the Incentive Auction.

July 9, 2015

Respectfully submitted,



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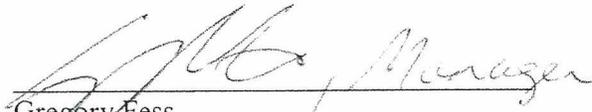
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## DECLARATION OF GREGORY FESS

I, Gregory Fess, do hereby declare under penalty of perjury, that:

1. I am Co-President of KMYA, LLC, the FCC licensee of KKYK-CD, Little Rock, Arkansas, Facility ID 57548 (the "Station").
2. I am also the majority member of Pinnacle Media, LLC, the prior licensee of the Station (then KLRA-LP/LD/DC). Throughout the time that Pinnacle Media was licensee of the Station, I was fully engaged in the operation of the Station, ensured maintenance of Class A eligibility, and personally oversaw the efforts to obtain an in-core channel and convert the Class-A eligible low power station to an in-core digital Class A.
3. The facts and representations stated in the enclosed Petition for Eligible Entity Status submitted on behalf of KMYA, LLC are true and accurate to the best of my knowledge and belief.

Executed on this 9<sup>th</sup> day of July, 2015.

  
Gregory Fess