

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
International Aerospace Solutions, Inc.)	
)	
AM Broadcast Station KTHO)	Renewal File No. 0000155930
South Lake Tahoe, California)	
FCC Facility ID 51528)	
)	
FM Translator Station K251BK)	Renewal File No. 0000155931
South Lake Tahoe, California)	
FCC Facility ID 146398)	
)	
Extension of Special Temporary Auth.)	CDBS File No. BESTA-20210803AAA
For Station KTHO)	
)	
Special Temporary Authority for)	
Operation of Station K241BK)	CDBS File No. BSTA-20210820AAA

To: Chief, Audio Division

PETITION FOR RECONSIDERATION

International Aerospace Solutions, Inc. ("IAS"), by counsel, hereby petitions the Audio Division for reconsideration of the letter (the "Letter") dated November 15, 2021, by which the Division dismissed the above-captioned license renewal applications and cancelled the licenses for AM broadcast station KTHO and FM broadcast translator station K241BK, both licensed to serve South Lake Tahoe, California.

As will be shown below, the Division should reconsider its actions in this matter in light of the information that IAS is submitting at this time; in consideration of the overarching value of the Communications Act in preserving and promoting local broadcast service, in recognition of the exceptional circumstances presented by the Covid19 Pan-

demic, pursuant the *President's Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government*, Executive Order 13985, issued January 20, 2021; and pursuant to the Americans with Disabilities Act of 1990, as amended (42 USC Title 42, chapter 126, § 12101 *et seq.*)

Viewed in terms of a licensee who has acted in good faith to serve the public interest in an underserved community (notwithstanding the challenges presented by its owner's disability and the Covid19 Pandemic), equity and fairness compel reinstatement of the stations' licenses, reinstatement and grant of the license renewal applications and of the application for extension of the special temporary authority permitting operation of KTHO at its temporary transmitter and antenna site, and reinstatement of the STA for operation of K241BK at that same site.

I. The Public Interest in the Preservation of Local Service Is Paramount.

Darrell Wampler is IAS' principal owner. As detailed in his Declaration (attached), he has poured his entire life's savings into KTHO radio in order to provide a valuable service to residents of South Lake Tahoe and surrounding communities in the Tahoe Basin. Mr. Wampler's Declaration is incorporated herein in its entirety by this reference.

Unfortunately, Mr. Wampler suffers from Parkinson's Disease, and is therefore unable to execute on certain tasks in the way he would have been able to some years ago. For that reason, he is preparing to transfer ownership of KTHO, including its FM translator, to a member of a minority group. Specifically, the station's engineer, Eli Cavazos, proposes to purchase KTHO, thereby providing the service area with its first minority-

owner broadcast facility. In order for that to happen, obviously the licenses for the stations need to be reinstated.

One may be tempted to feel that Mr. Wampler deserves to be punished for the difficulties he has suffered in connection with the loss of the station's licensed transmitter site, and consequent slowness in providing the Audio Division with the myriad items requested in its letters earlier this year. However, a focus on Mr. Wampler's problems would be misplaced, as the Commission's primary mandate is to promote and preserve service to the public through free, over the air broadcasting, and not on the sadistic infliction of pain on well-meaning but licenses challenged by physical limitations as well as by the stresses of the Covid19 shutdowns and resulting loss of crucially-needed advertising revenue.

That is especially significant in the case of KTHO, which has provided the only competitive radio service to South Lake Tahoe for many years. Creation of a monopoly in the area would be contrary to the public interest, as any monopoly operator has little incentive to optimize service, given that listeners have no where else to go, and advertisers have no other radio medium through which to reach customers and potential customers.

In addition, KTHO's public service role is unusually significant in light of the unique geographic and meteorological nature of the Tahoe Basin. This was graphically demonstrated just a few months ago, when a massive wildfire threatened numerous homes on the outskirts of South Lake Tahoe, and potentially even the city itself. Delivery of timely emergency information to local resident via radio can be a matter of life and

death in such a situation. Accordingly, even if the public interest were to justify cancellation of a license of a station in a better-served market based on operation at a site other than the authorized site for a time, such a policy would be at war with larger considerations of the public interest in South Lake Tahoe.

It is important to consider that no one was harmed by KTHO's operation at the temporary site during the period when IAS lacked the proper guidance as to the need for, and how to seek special temporary authority for the operation following IAS's sudden and unjustified eviction from the licensed site. IAS was careful, during this period, to ensure that it emitted no interference harmful to any other station, and its signal at no time extended beyond the bounds of the licensed facilities.

As a result, the proper balancing of the public interest in preservation of KTHO's service as against its peccadilloes in terms of FCC filings, militates in favor of a grant of this petition.

II. Need for Flexibility in Demanding Information from Licensees Suffering from Disabilities.

As explained in Mr. Wampler's declaration, he suffers from a degenerative disease that has impeded his ability to manage all of the stresses associated with the operation of KTHO from day to day, and so he was overwhelmed by the multitudinous list of items demanded by the staff in the inquiry letter. Nevertheless, the desired material has since been assembled, to the best of his ability, and has been supplied to the staff member who requested it. That list of demands may have been designed to smoke out a situation where a licensee claimed that a station was on the air, but was actually not operating.

With KTHO, however, there can be no question that station was on the air and providing service to the public, even though the operation has been losing money since the start of the Pandemic and there has been no financial incentive to keep it on the air. This will be apparent from review of the EAS logs and other documents supplied to the Audio Division.

Whatever action might be appropriate with regard to a licensee who is not suffering from disability, the law requires different treatment when it comes to those suffering from disability. Specifically, the Americans with Disabilities Act of 1990, as amended (42 USC Title 42, chapter 126, § 12101 *et seq.*), requires that agencies make special accommodations for those operation under their authority who suffer from disabilities. Mr. Wampler has, in his Declaration, has detailed the nature of the degenerative disease from which he suffers. In light of Congressional policy required fair accommodation for those dealing with disabilities, it would only be fair and equitable for the Commission to forgive Mr. Wampler for his delay in responding to the inquiry from the Audio Division.

III. Equity and Fairness Require Reinstatement of the Authorizations for KTHO and K241BK.

This is not a situation where either station was silent for a year or more, and therefore failed to serve the public interest during that time. On the contrary, KTHO and its translator were supplying valuable local news, weather and emergency information throughout. To the extent that the stations may have failed to secure special authority to operate from the temporary locations to which they resorted when they were thrown off the license transmitter site, license cancellation is not required by the text of the statute.

It has only been visited on certain licensees as a function of a sort of ersatz policy whereby the agency has chosen to treat an emergency operation not blessed in advance by an STA grant as the same as no service at all.

Whatever validity that policy may have in normal times, we are now in extraordinary times. The Covid19 Pandemic has crippled the broadcast industry in general, and nowhere more than in the Tahoe Basin, with its small population and economy dependent on tourism revenues that virtually disappeared during the Pandemic. In addition, the policy as applied elsewhere has never been applied so as to impose the death penalty on a station whose owner was struggling with disability.

In the initial years following the enactment of Section 312(g), that provision was only administered so as to precipitate license cancellation against stations that were entirely silent for an entire year. It was only later that the Media Bureau evolved the theory that operation from an unauthorized, temporary site was the same as no operation at all. There is no evidence in the legislative history of Section 312(g) to support such an interpretation. But even the application of Section 312(g) so as to precipitate the loss of licenses for stations that had been completely silent for a year produced unfair and draconian results in some circumstances.¹ Consequently, the statute was revised to permit extension of licenses even for stations that had been silent for more than a year where equity and fairness would be served by such a result.

¹ The undersigned once discussed this matter with Senator Robert Bennett, who had voted for Section 312(g) as proposed by the Commission. The Senator was stunned to learn that, per the FCC's interpretation at that time, there was no room for consideration of any waivers or exceptions where the station in question had been silent due to circumstances beyond the control of the licensee.

This is such a case. Not only do equity and fairness come into play in respect of Mr. Wampler's disability, but as discussed in his Declaration, the Commission's interest in avoiding the creation of local radio monopolies also supports reinstatement of the licenses of KTHO and its translator. There is nothing "equitable" or "fair" about a monopoly.

To the extent that the policy of treating operation from a site that has not quite yet been blessed by a formal STA grant as no operation at all might be viewed as requiring the demise of KTHO, IAS suggests that the Commission should reevaluate that policy in light of present conditions. It was one thing to adopt such a policy at a time when there was robust demand for broadcast licenses, but that situation has changed completely. With declining broadcast revenues in recent years – accelerating to a plunge during the Covid19 Pandemic, especially in small markets, there is no longer anyone clamoring to acquire the KTHO and K241BK licenses in the event the cancellation were made permanent.

Thus the assumptions underlying the policy when originally formulated are no longer valid. In such circumstances, the law requires an administrative agency to reassess its policies and, in the case of the FCC, scrap outdated regulations in favor of once more responsive to the evolving public interest. See *Bechtel v. FCC*, 957 F.2d 873 (1992):

While the Commission is correct that changes of policy require a rational explanation, it is also true that changes in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy or explain its failure to do so. In the rulemaking context, for example, it is settled law that an agency

may be forced to reexamine its approach "if a significant factual predicate of a prior decision ... has been removed." WWHT, Inc. v. FCC, 656 F.2d 807, 819 (D.C.Cir.1981); see also American Horse Protection Ass'n v. Lyng, 812 F.2d 1, 5 (D.C.Cir.1987); Geller v. FCC, 610 F.2d 973, 979 (D.C.Cir.1979) (per curiam). The Commission's duty is even more pressing when the policy is embodied not in a binding regulation issued after public notice and comment but in a general statement of policy such as the 1965 Policy Statement at issue here. See Pacific Gas & Elec. v. FPC, 506 F.2d 33, 38-40 (D.C.Cir.1974). The Commission's necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise, see FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 814, 98 S.Ct. 2096, 2121-22, 56 L.Ed.2d 697 (1978), implies a correlative duty to evaluate its policies over time to ascertain whether they work — that is, whether they actually produce the benefits the Commission originally predicted they would. Cf. FCC v. WNCN Listeners Guild, 450 U.S. 582, 603, 101 S.Ct. 1266, 1278-79, 67 L.Ed.2d 521 (1981) ("[T]he Commission should be alert to the consequences of its policies and should stand ready to alter its rule if necessary to serve the public interest more fully."). As we have previously said:

When the agency applies [a general] policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy.

Pacific Gas, 506 F.2d at 38-39.

In light of the Court's teaching in *Bechtel*, the FCC is not bound to pursue hidebound policies from the past that can no longer be shown to serve the public interest. Rather, more updated and enlightened regulation would recognize that an overly expansive application of Section 312(g) is contrary to the broader public interest goals of the Communications Act, and that it is in the public interest to moderate such a policy so as to permit the preservation of service provided by stations like KTHO. That is especially true where, as here, the ministerial omission of an STA request in the initial crisis of relocation was not intentional, and was subsequently cured by a grant of STA approving the facilities in question.

IV. Reinstatement Is Required Consistent with the Policies Expressed in President Biden's Jan. 20 Executive Order.

Compellingly, reinstatement of these licenses would also comport with the FCC's duty to comply with the *President's Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government*, Executive Order 13985, issued January 20, 2021. There, President Biden directed all government agencies to consider policies that would advance racial equity *and* more equitable treatment of the disabled, particularly where the delivery of service to underserved communities is at issue.

Here, the Tahoe Basin constitutes an undeserved community, if one reflects on the collapse in effective service that will be occasioned by the monopoly on local radio service that would be created by the disappearance of KTHO and K241BK. Restoration of these stations would bring back competition in radio service there, much to the benefit of the community and especially in terms of public safety. Further, through reinstatement of the licenses, there is a clear path to a future in which these stations would be owned by Eli Cavazos (a member of a minority group). Notably, this would be a first minority-owned station in the Tahoe Basin.

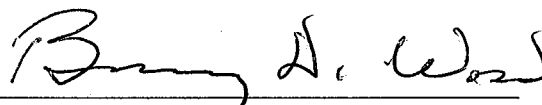
Mr. Wampler has, in his Declaration, committed unequivocally to pursue such an assignment to Mr. Cavazos or an entity controlled by him, once the licenses and other authority for operation of KTHO and K241BK are reinstated, and the pending applications granted.

Indeed, a disposition of the stations is required by Mr. Wampler's disability and the prognosis that it will only worsen as time progresses.

In light of the foregoing, IAS requests that the Division reinstate the stations' licenses, return the license renewal applications to pending status and grant them, reinstate and grant of the application for extension of the special temporary authority permitting operation of KTHO at its temporary transmitter and antenna site, and reinstate the pre-existing STA for operation of K241BK at that site.

Respectfully submitted,

INTERNATIONAL AEROSPACE SOLUTIONS, INC.

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Its Counsel

Dated: December 20, 2021

DECLARATION OF DARRELL WAMPLER

I, Darrell Wampler, hereby state as follows:

1. I am the principal owner of International Aerospace Solutions, Inc., which has for many years been the licensee of AM radio broadcast station KTHO and FM broadcast translator station K241BK, South Lake Tahoe, California. The other owners are only passive investors, and so the full burden of operating the stations has always fallen on my shoulders.

2. I am providing this statement in connection with requests from the FCC for information about the stations, and IAS's request for reconsideration of the November 15 letter cancelling these stations' licenses.

3. A few years ago, I contracted Parkinson's Disease. This is a chronic, progressive, debilitating illness. More and more, it interferes with my ability to fulfill basic functions throughout the day. Sometimes it impedes my ability to function at all. Recent demands necessary to operate the station have become overwhelming just in terms of the basic operation. On top of that, in this past year, the need to respond to certain issues regarding the broadcast properties have been almost insurmountable.

4. To an extent, I anticipated that this would happen. As I result, I made the decision to ready the stations for sale to a qualified minority broadcaster. The engineer who has been assisting with the technical aspects of the operation of the stations over the last three years is ready, willing and able to proceed with the purchase. The problem that

I face now is that such sale will only be possible if the license cancellation is reversed and the stations are allowed to resume service to the community.

5. KTHO and its affiliated FM translator station are located in the High Eastern Sierra Mountains, adjacent to the Nevada border. The Tahoe Basin is exceptionally deep, with high mountains surrounding it that block signals from other markets that could otherwise be received here.

6. The station performs a service that is far beyond what is commonly provided by radio stations in typical metropolitan areas and suburbs. KTHO broadcasts news and information regarding fires, wildfires, inclement weather, road conditions, snow closures and quickly changing school schedules. Without such information, life for the local residents and visitors becomes more complicated and even dangerous than it would be otherwise. As an example, earlier this year immense wildfires destroyed thousands of acres of national forest and private forest lands near our community of license. There was a very serious prospect of the conflagration descending on South Lake Tahoe in a nightmare scenario akin to the destruction of the community of Paradise, California, with massive loss of life and property. Because evacuation from South Lake Tahoe could only take place on a very few roads, in some ways this was an even more dangerous situation than the Paradise fire. Fortunately, at what seemed like almost the last minute the fire was stopped, but in the meantime KTHO demonstrated the critical need that the community has for its service as a source of emergency communications.

7. In the absence of KTHO there would be only one other facility that services the market. Both facilities are subject to inclement weather conditions. In particular, electrical power and internet service in the communities ringing Lake Tahoe can change from moment to moment. If KTHO were gone permanently, this would create a situation where the public safety would be dependent on a single point of failure.

8. The previous licensee of KTHO (Live Wire Media or "LWM") sold IAS the license and studio equipment only. They retained the transmitter towers and real estate. This organization has been difficult to deal with since the beginning. After ten years of keeping up with payments and re-forecast compensation, we fell slightly behind. There was a meeting with Steve Coombs, the principal of LWM, to discuss a cure of the situation. At that meeting, I was given a notice to become current within a mere twenty two days, or exit the facility. At that time, I handed Live Wire Media a check for \$3,000 as a sign of good faith. In the prior twelve months I had paid LWM \$30,000 of an annual \$36,000 rental under the agreement, so the arrearage was not enormous. Mr. Coombs accepted that payment. He also stated that if I showed some progress toward the sale of the station, there would be no reason to execute on any eviction. I then presented LWM with evidence of a notice of intent from a potential buyer. Notwithstanding Mr. Coombs' promise to me, he answered that this was "not good enough."

9. It was this calamity that caused IAS to relocate the station's transmitting facilities to a temporary antenna site, on property of its engineer and potential buyer. As detailed in the requests file with the FCC for special temporary authority, both the AM station and the FM translator have been operating from that same site.

10. In addition to the above problems, shutdowns caused by the COVID 19 pandemic have severely crippled the station's revenues, which are almost solely dependent on direct ad buys from local businesses. Profits have been non-existent since the pandemic arrived in California. Without the ability to make any money from the operation, we have limiting to operating KTHO as a public service, and have not been able to focus adequately on assembling all of the items on the lengthy list of documents requested by the Commission.

11. In order to launch and continue operations at the station, I took my entire retirement plan (401(k) savings), and plowed it into KTHO. In addition, I borrowed money from friends and family. Without the existence of KTHO going forward, I will have no ability to recover the amounts that I personally invested, amounting about \$550,000. In addition, friends and family who supported the operation will not be able to recover any monies owned to them. The same is true for the station's many third party creditors. This will be devastating, especially considering that with my disability I need resources in order to secure the treatments that I need to survive the coming years.

12. I do want to apologize for my inability to respond in a timely manner to the FCC's request for information about the stations. If it were not for my disability I would have assembled all of the numerous papers demanded by the FCC long ago. During this entire time to respond, we have been struggling with the pandemic emergency and the challenge of operating with hardly any staff, in addition to my health problems.

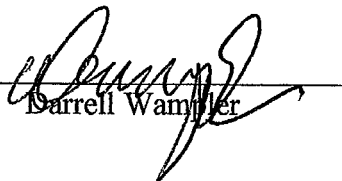
13. As to the operation, to my knowledge the AM station has always been operating when the FM translator was on the air. However, sometimes due to equipment

problems the AM was operating with very minimal power. I can only conclude that it must have been at one of those times that the Commission's field engineering staff had trouble picking up the AM signal. Fortunately, most of the service area is within line of sight of the FM translator, so despite its minimal power it has provided substantial service to our listeners.

14. Our goal has always been to meet the intent of the law as far as broadcasting locations are concerned. The temporary site is located near to the former licensed site, and with reduced power we have been careful to avoid any interference to protected stations.

15. In terms of our search for a replacement location once Mr. Coombs jettisoned us from the licensed site, this has been a challenging affair. The Tahoe Regional Planning Agency will not allow new construction of towers in the area. Therefore, we had to investigate and make do with temporary structures, none of which fit the entire needs of the radio station. Moving forward, we plan to find the best situation possible for enhancement of our service to the public.

16. I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my personal knowledge and recollection. Dated December 20, 2021.


Darrell Wampler