

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

In the Application of:	)	
	)	
LEVINE/SCHWAB PARTNERSHIP d/b/a	)	BNP-20140715ABO
SCHWAB MULTIMEDIA LLC	)	BMP-20190522AAJ
Facility No. 161348	)	BMP-20201026AAC
	)	
For Tolling of the Construction Permit	)	
For Station KWIF(AM), Culver City, CA	)	
	)	
To: The Commission	)	
	)	
	)	

**Application for Review**

COMES NOW, Levine/Schwab Partnership (“LSP”) the permittee of KWIF(AM) by and through counsel, and pursuant to Section 1.115 of the Commission’s Rules, hereby submits this Application for Review of the Media Bureau’s Letter Ruling (“Letter Ruling”)<sup>1</sup> (1800B3-HOD) dated December 7, 2020 denying the tolling request (“Tolling Request”) filed by LSP in connection with the above captioned original application and the dismissal of the all application listed above.

In this Application for Review, LSP will demonstrate that the Media Bureau misapplied certain Commission policies and ignored facts in denying the Tolling Request. LPS will also demonstrate that the rejection of Tolling and the dismissal of the underlying construction permit applications runs directly contrary to is contradictory to the purpose and goals of the AM Revitalization.

In support hereof, Praise submits the following:

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<sup>1</sup> Letter form Albert Shuldiner to Levine/Schwab Partnership d/b/a Schwab Multimedia LLC, DA 20-1457 (December 7, 2020).

## Questions Presented

- i. Whether the Media Bureau's Letter Ruling is supported by substantial evidence in the Record as a whole.
- ii. Whether the Media Bureau ignored the unique circumstances of this matter with respect to COVID-19
- iii. Whether the Media Bureau's Letter Ruling is contradictory to the purpose and goals of the AM Revitalization proceeding.

### Media Bureau Ignored Evidence in the Record.

#### Background

1. For 17 years LSP began its journey to obtain this AM permit. The KWIF Construction Permit began as part of Auction 84 in 2004 (originally filed as BNP-20040130ATD). This permit was awarded in Auction 84 and was the last AM auction proceeding conducted by the Commission<sup>2</sup> and the Construction Permit was issued after LSP was the prevailing bidder at auction in 2014 in MX Group 84-31, paying \$265,850.00 for the permit<sup>3</sup>, and resulting in the grant of the above captioned Construction Permit on November 2, 2016. The Construction Permit called for diplexing of the KWIF facilities using ASR #1015921 and #1015922 at the coordinates specified in the Construction Permit. The diplexing landlord for the duplexing site rescinded the verbal agreement it had with LSP to use the site after KABC (AM) relocated to the site. Because of the KABC move, LSP was forced to relocate its proposed facility. A new location was found, that being the old KIIS main/KEIB auxiliary ("KIIS") site. Subsequently, LSP requested and

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<sup>2</sup> Commission staff have informally stated on several occasions that no further AM auctions are contemplated by the Commission.

<sup>3</sup> See Public Notice, DA-14-678, released May 20, 2014.

initially received a modification of the Construction Permit<sup>4</sup>, but that modification application was rescinded by the Audio Division recently due to inadvertent nonconsideration of an informal objection filed against the modification application. Because of this ongoing informal objection, LSP again has had to again search for a new home, and one has been found within the city limits of Culver City. An application for this location has been submitted to the Commission. With the onset of the COVID-19 pandemic, a tolling of the Construction Permit was requested and granted by the staff on March 24, 2020. An extension of that tolling was submitted September 17, 2020 and denied by the Staff on September 25, 2020 and the Petition for Reconsideration was denied December 7, 2020.

2. The Staff denied LSP's initial tolling request extension and subsequent denial of reconsideration on several grounds: (1) That COVID-19 restrictions in California are not applicable to radio stations since radio stations are essential service; (2) LSP has not provided information showing efforts towards construction of the facility (such as leases etc.); (3) LSP failed to provide air quality information with regards to wildfires; (4) That the translator construction waiver is not applicable to this station because it is in a different service; and (5) Procedural Grounds.

3. The staff ignored the evidence presented. The staff conveniently said the addition information presented by LSP in the Petition for Reconsideration was "barred" under Section 1.106(c) of the Rules. The information provided by LSP specifically addressed the issues raised the Tolling denial. In that denial, staff said that LSP "had not submitted any

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<sup>4</sup> BMP-20190522AAJ, granted February 5, 2020.

evidence that it had tried to construct the Station, or provide COVID evidence and air quality evidence”. (Letter Ruling at page 3) The Staff lists the multiple items provided by LSP but goes on to say “[n]one of this evidence relates to events occurring or circumstances which changed after Schwab filed its Tolling Request. Further, none of this evidence was unknown to Schwab at the time it filed the Tolling Request. Given this, we do not believe the public interest requires consideration of the evidence or arguments that rely upon it. We therefore dismiss the new evidence proffered by Schwab, and dismiss those portions of the Petition that rely upon it.” (Letter Ruling at page 3). Wait a minute ... the Staff denied the evidence that specifically addressed the concerns raised in the tolling rejection? The Staff goes on to state that they “do not believe” the public interest requires consideration. In essence, that means is Staff chose not to review evidence and simply want to get rid of the matter on a procedural theory. The Staff’s willful ignorance of the facts presented in the Petition is simply arbitrary.

Media Bureau ignored the unique circumstances of  
this matter with respect to COVID-19

4. In this case the Staff has ignored the simple fact that we are in a devastating pandemic and the State of California has been crushed by the pandemic. The Staff states that radio station operations are “essential services”. LSP agree that it is true that radio station operations are considered “essential services”, but the staff fails to recognize that this AM station is an unbuilt new (and presumably final) AM facility and construction, equipment delivery and the like related to building the station are subject to restrictions. The Staff in its prior March 24, 2020 tolling authorization recognized that tolling of the KWIF CP should be granted due to the ongoing COVID-19 epidemic preventing

construction efforts. The Commission further acknowledged this ongoing problem on a broader scale in its September 10, 2020 *Public Notice*<sup>5</sup>. Specifically, the Media Bureau said it “is aware that shutdowns associated with the pandemic have forced stations to halt construction, have disrupted equipment availability and deliveries, and have interrupted travel for tower and equipment installers. In addition, the pandemic has compounded the severe financial difficulties experienced by many AM stations, including the significant loss of advertising revenue due to economic disruptions and the need to cover breaking news and air public service announcements relating to the pandemic. These financial difficulties, in some cases, may have caused AM stations to delay construction of authorized cross-service translators.” The exact same rationale for delays in construction of authorized cross-service translators for AM licensees applies to the delays in construction of AM Station KWIF. The staff in the Tolling Denial said that the Deadline PN was limited to a specific group of stations and KWIF was not part of that group. We respectfully state that the Staff has missed the point. The Deadline PN acknowledged the COVID-19 pandemic “have forced stations to halt construction, have disrupted equipment availability and deliveries, and have interrupted travel for tower and equipment installers.” This is exactly the same situation faced by LSP. The Staff and the Commission have in multiple other contexts tolled construction permits or waived the application of Section 312(g) for silent stations in excess of one (1) year due to acts of God such as Hurricanes Harvey, Irma and Maria in 2017 and Hurricane Michael in 2018. The far-reaching effects of COVID-19 pandemic, while different than the physical damage incurred by a hurricane, is no less devastating and the same obstacles presented in the aftermath of a hurricane

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<sup>5</sup> Media Bureau Announces *Availability of Construction Deadline Waivers for Certain FM Translator Stations Awarded in Auction 99 and 100*, *Public Notice*, DA 20-1059 (release September 10, 2020) (“Deadline PN”).

(obtaining materials, securing personnel, functioning of governmental agencies) are exactly the same obstacles presented by COVID-19, particularly in Los Angeles County, which has widely been identified as the epicenter of the “second wave” of COVID cases in the United States<sup>6</sup> during the relevant time period.

Bureau’s Letter Ruling is contradictory to the purpose and goals of the AM Revitalization

5. The Commission established AM Revitalization in the *AM Revitalization Proceeding, MB Docket No. 13-249*. In the *Notice of Proposed Rule Making, FCC 13-139 (released October 31, 2013)* the Commission stated the following:

The AM broadcast service is the oldest broadcasting service. For decades, it has been an integral part of American culture. Today, AM radio remains an important source of broadcast entertainment and information programming, particularly for locally oriented content. AM broadcasters provide unique, community-based programming to distinguish themselves from other media sources in an increasingly competitive mass media market. For example, all-news/talk, all-sports, foreign language, and religious programming formats are common on the AM band. Indeed, over 90 percent of all news/talk stations operate on the AM band. Local programming is also prevalent on the AM dial, including discussions of local news, politics and public affairs, traffic announcements, and coverage of community events such as high school athletic contests. *Id.*, at para. 3.

In light of the Commission’s recognition of the importance of AM Radio with regard to local programming, and with further consideration of the fact that KWIF the very *last* new AM Station, for which AM Revitalization was expressly developed to assist, the staff denial runs directly contrary to what has previously acknowledged. On this alone, the LSP tolling request must be granted.

## CONCLUSION

As demonstrated by the facts and matters above, LSP’s request for further tolling of should have been granted given the extenuating circumstances and the ongoing multiple efforts

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<sup>6</sup> <https://abc7.com/los-angeles-county-coronavirus-covid-19-update-la-hospitalizations/8923379/>

of permittee LSP to construct this final new AM station despite the myriad of obstacles included being at the literal epicenter of a devastating pandemic. The denial of further tolling of this Construction Permit also runs counter to the express rationale of the Commission's AM Revitalization Policy as well as the Commission's recent pronouncements concerning the tolling of construction permits for cross-service translators, as well as myriad Commission decisions permitting waivers of 312(g) and tolling of construction permits for acts of God, natural disasters, and other events beyond the control of licensees and permittees.

WHEREFORE, the foregoing premises considered, LSP submits that good cause exists for the grant of this Application for Review, the grant of the KWIF Tolling Request.

RESPECTFULLY SUBMITTED,  
LEVINE/SCHWAB PARTNERSHIP



By: \_\_\_\_\_  
Anthony T. Lepore, Esq.  
Its Counsel

*And*

By:  \_\_\_\_\_  
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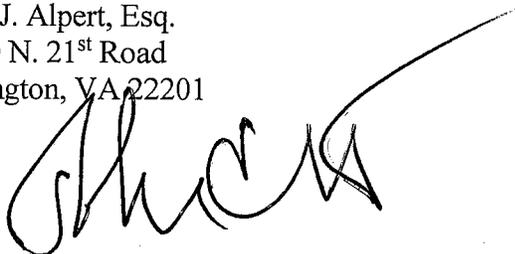
CERTIFICATE OF SERVICE

I, John C. Trent, Esq., do hereby certify that copies of the "Application for Review" have been sent via email only this 7th day of January 2021, to the following:

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A handwritten signature in black ink, appearing to read "John C. Trent", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping flourish extending to the right.

John C. Trent, Esq.