

Akin Gump

STRAUSS HAUER & FELD LLP

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November 28, 2018

Via ECFS Non-Docketed Filing Module

Federal Communications Commission
International and Satellite Service
P.O. Box 979093
St. Louis, Missouri 63197-9000

**Re: Application for Authority to Deliver Programs to
Foreign Broadcast Stations XTRA-FM, XHTZ-FM, and XHRM-FM**

Dear Sir or Madam:

Local Media San Diego, LLC (“LMSD”), by its attorneys, hereby submits the instant application for authority from the Federal Communications Commission (“FCC” or “Commission”) to deliver programming to XTRA-FM, 91.1 MHz; XHTZ-FM, 90.3 MHz; and XHRM-FM, 92.5 MHz (collectively, “Stations”) following the change in control of LMSD as described herein.¹

LMSD holds a 325(c) permit to deliver programming to the Stations initially granted by the Commission on February 19, 2010, and most recently renewed on March 11, 2015 (“Current Authorization”). LMSD presently is a wholly-owned subsidiary of Local Media of America Holdings, LLC (“Local Media”). Pursuant to a Unit Purchase Agreement dated November 27, 2018, Local Media San Diego Holdings, LLC (“LMSD Holdings”) agreed to purchase from Local Media all of the outstanding membership units of LMSD (“Transaction”). The Unit Purchase Agreement obligates the parties to close the Transaction no later than December 31, 2018. Upon consummation of the Transaction, LMSD will become a wholly-owned subsidiary of LMSD Holdings. There will be no changes in the nature of the programming presently delivered to the Stations or the means by which such programming currently is delivered to the Stations as a result of the Transaction.

LMSD respectfully requests the expeditious processing of the instant Application. To the extent necessary, LMSD requests that the Commission refrain from terminating the Current Authorization until LMSD notifies it that the Transaction has been consummated.

¹ The Application is being submitted electronically as a non-docketed filing. *See* International and Satellite Services Fee Filing Guide (Sept. 4, 2018); Public Notice, DA 14-1838 (Dec. 16, 2014).

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Please do not hesitate to contact the undersigned with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom W. Davidson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom W. Davidson

cc: Mr. Brandon Moss, FCC

Enclosures

FOR COMMISSION USE ONLY File No.
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**United States of America
Federal Communications Commission
Washington, D.C. 20554**

APPLICATION FOR PERMIT TO DELIVER PROGRAMS TO FOREIGN BROADCAST STATIONS

(Carefully read instructions before filling out Form-RETURN ONLY FORM TO FCC)

1. Name of Applicant Street Address or P.O. Box City State Zip Code Telephone No.
Local Media San Diego, LLC
6160 Cornerstone Ct. E Suite 150
San Diego, CA 92121-3720
(include area code)
(858) 888-7000

2. Name and address to whom communication should be sent if different from item 1.

Name Street Address or P.O. Box City State Zip Code Telephone No.
Tom W. Davidson
Akin Gump Straus Hauer & Feld, LLP
1333 New Hampshire Ave. NW
Washington, DC 20036
(include area code)
(202) 887-4011

3. Legal identity of applicant: (only check one box)

☐ Individual ☐ Partnership ☐ Corporation ☐ Government Entity ☒ Other

If other specify: Limited Liability Company

4. Application is for:

☒ New Authorization ☐ Extension of Existing Authority

5. If applicant is an individual, is applicant a citizen of the United States? D/N/A ☐ YES ☐ NO

6. If applicant is a partnership, are all partners citizens of the United States: D/N/A ☐ YES ☐ NO

7. If applicant is a corporation: D/N/A

a. Under laws of what state was it organized:

b. Is more than one-fifth of the capital stock of the corporation owned of record or may it be voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? ☐ YES ☐ NO

c. Is any officer or director of the corporation an alien? ☐ YES ☐ NO

If the answer is Yes, give the following for each:

Name	Nationality	Position
------	-------------	----------

d. Is applicant directly or indirectly controlled by any other corporation? ☐ YES ☐ NO

If the answer is Yes, give the following for the controlling corporation

Name	Address	State in which organized
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e. Is more than one-fourth of the capital stock of the controlling corporation either owned of record, or may it be voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? ☐ YES ☐ NO

f. Is any officer or more than one-fourth of the directors of the corporation an alien? ☐ YES ☐ NO

If the answer is Yes, give the name, nationality and position of each and give the total number of directors of the corporation.

Name	Nationality	Position	Number of Directors
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g. Is the above-described controlling corporation in turn a subsidiary? ☐ YES ☐ NO

If the answer is Yes, attach as Exhibit No. _____ additional information answering the holding company questions in this paragraph for each company, including the organization having ultimate control.

8. a. If the applicant is an unincorporated association, give the following: D/N/A

Total number of members	Number of Alien Members (If any)
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b. State the following for alien officers or directors (if any):

Name	Nationality	Position
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9. a. What is applicant's principal business? Broadcasting
- b. Does applicant or any party to this application have any interest in, or connection with, any AM, FM, or TV broadcast station (either domestic or foreign), or any application pending before the Commission?
- ☒ YES ☐ NO
- If the answer is Yes, attach Exhibit No. _____ giving full particulars. See Exhibit I
10. Is applicant a representative of an alien or of a foreign government? ☐ YES ☒ NO
- If the answer is Yes, explain.
11. a. Has any radio station authorization previously issued to the applicant or party to this application been revoked, either by the Commission or by any court? ☐ YES ☒ NO
- b. Has any previous application by the applicant or party to this application been denied by the Commission or by a predecessor agency? ☐ YES ☒ NO
- If the answer to (a) and/or (b) is Yes, explain:
12. a. Has applicant or any party to this application been found guilty of any felony by any court? ☐ YES ☒ NO
- b. Has applicant or any party to this application been finally adjudged guilty by a federal court of the violation of the laws of the United States relating to unlawful monopoly, restraint of trade, and or unfair methods of competition? ☐ YES ☒ NO
- If the answer to (a) and or (b) is Yes, explain.

13. a. Address of studio or other place at which programs will originate:
6160 Cornerstone Court, Suite 150, San Diego, CA 92121

b. Telephone contact number:
(858) 888-7000

c. Email address:
nmckee@lmasandiego.com

14. State ownership of originating facilities
See Exhibit I

15. a. Describe the means whereby programs will be delivered to foreign station(s), including the names of any interconnecting common carriers.
Programming to be delivered by means of fiber optic transmission lines, with backup using traditional telephone lines and/or 4G cellular transmissions, if necessary.

Means of Transmissions include but are not limited to the following:

- ☐ Dedicated Wireline
- ☐ Internet (IP)
- ☐ Public Switched Telephone Network (PSTN)
- ☐ Private Microwave
- ☐ Private Radio (remote pickup)
- ☐ Common Carrier Microwave
- ☐ Common Carrier Radio
- ☐ Satellite
- ☐ Or combination of methods

b. List all call signs of private transmitters in the United States

Call Sign	Company Name

16. Coordinated foreign station to which programs will be provided: See Exhibit I

Callsign: City: State:

☐ AM Station

Frequency (kHz):

	<u>Daytime</u>	<u>Nighttime</u>
Coordinates:	° ' " NL	° ' " NL
	° ' " WL	° ' " WL

Operating power: _____

☐ FM Station:

Frequency: Channel: Class:

Mode of operation: Directional/Non-directional

Maximum Effective Radiated Power (kW):

Coordinates: ° ' " NL ° ' " WL

Antenna Height Above Average Terrain (HAAT):

Antenna Radiation Center Above Mean Sea Level (RCAMSL):

☐ TV Station:

Channel:

Mode of operation: Directional/Non-directional

Maximum Effective Radiated Power (kW):

Coordinates: ° ' " NL ° ' " WL

Antenna Height Above Average Terrain (HAAT):

Antenna Radiation Center Above Mean Sea Level (RCAMSL):

17. Attach as Exhibit No _____ a full explanation of the legal relationship between the applicant and foreign station(s) involved, including a copy of contract (if any) with foreign station(s).
See Exhibit I
18. a. Attach as Exhibit No _____ a statement as to whether program deliveries are to be intermittent or regularly scheduled , and the average number of hours, per day week and or month during which the foreign station(s) involved will broadcast s
See Exhibit I
- b. Attach as Exhibit No _____ a detailed description of the nature and character of the programming proposed and the language to be employed.
See Exhibit I
19. **Anti-Drug Abuse Act Certification.** Assignee/transferee certifies that neither assignee 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.
20. **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 applicant a Model EEO Program Report on FCC Form 396-A.
-

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CERTIFICATION

The APPLICANT acknowledges that all statements contained in this application and attached exhibits are material representations, and that the exhibits forming a part of this application are incorporated herein as if set out in full in the application. The undersigned certifies that the statements contained in this application are true, complete and correct to the best of his/her knowledge and belief and are made in good faith.

Signed and dated this 28th day of November, 2018.

Local Media San Diego, LLC
(Name of Applicant)

By

Darman R. McKee
(Signature)

CFO/COO
(Title)

WILLFUL FALSE STATEMENTS MADE ON THIS FORM
ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, SECTION 1001.

EXHIBITS furnished as required by this form:

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Signed and dated this, 28th day of November, 2018.

Local Media San Diego Holdings, LLC
(Name of Applicant)

By

Norman R. McKee
(Signature)

CFO
(Title)

WILLFUL FALSE STATEMENTS MADE ON THIS FORM
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U.S. CODE, TITLE 18, SECTION 1001.

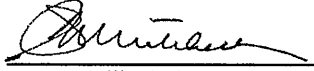
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Signed and dated this 28th day of November, 2018.

Local Media of America Holdings, LLC
(Name of Applicant)

By


(Signature)

Lee M. Mitchell

Authorized Signer

WILLFUL FALSE STATEMENTS MADE ON THIS FORM
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U.S. CODE, TITLE 18, SECTION 1001.

Exhibit I
Comprehensive Exhibit

Local Media San Diego, LLC (“LMSD” or “Company”) is filing the instant application (“Application”) for authority from the Federal Communications Commission (“FCC”) to deliver programming to XTRA-FM, 91.1 MHz; XHTZ-FM, 90.3 MHz; and XHRM-FM, 92.5 MHz (collectively “Stations”) following the change in control of LMSD as described herein.

The Stations, which serve the San Diego radio market, currently receive programming from LMSD pursuant to an authorization (“325(c) Authorization”) issued by the FCC under Section 325(c) of the Communications Act of 1934, as amended.¹ LMSD presently is a wholly-owned subsidiary of Local Media of America Holdings, LLC (“Local Media”).² On November 27, 2018, Local Media and Local Media San Diego Holdings, LLC (“LMSD Holdings”) entered into a Unit Purchase Agreement whereby LMSD Holdings agreed to purchase from Local Media all of the outstanding membership units of LMSD (“Transaction”).³ As described herein, upon consummation of the Transaction, LMSD will become a wholly-owned subsidiary of LMSD Holdings, which will be owned in part by individuals presently charged with responsibility for the day-to-day management of LMSD. Accordingly, the instant Application is being filed to obtain FCC approval for LMSD to deliver programming to the Stations pursuant to Section 325(c) upon consummation of the transfer of control of LMSD from Local Media to LMSD Holdings. LMSD does not anticipate that there will be any changes in the nature of the programming presently delivered to the Stations or the means by which such programming currently is delivered to the Stations as a result of the Transaction.

I. OWNERSHIP STRUCTURE

Upon consummation of the Transaction, LMSD will become a wholly-owned subsidiary of LMSD Holdings, a Delaware limited liability company. Control of, and management authority over, the business and affairs of LMSD Holdings is vested exclusively with a nine person board of managers (“Board”). Except with respect to rights to designate representatives to the Board,⁴ the members of LMSD Holdings have

¹ See IBFS File Nos. 325-NEW-20091221-00006 and 325-RWL-20150109-00001; see Section II below for more information regarding the nature of the programming.

² Local Media is a board-managed Delaware limited liability company ultimately controlled by Thoma Bravo, LLC (“Thoma Bravo”). See IBFS File No. 325-RWL-20150109-00001.

³ The Unit Purchase Agreement obligates the parties to close the Transaction no later than December 31, 2018, and thus the parties are submitting concurrently herein an application for special temporary authority (“STA”) to enable LMSD to continue to deliver the programming to the Stations under its new ownership structure until such time as the FCC processes the instant Application.

⁴ Pursuant to the operating agreement of LMSD Holdings (“LLC Agreement”), the members of LMSD Holdings are required to vote, or cause to be voted, their membership interests to ensure that the Board consists of: (A) three individuals designated by holders of a majority of Common Units (as defined herein) (“Common Representative”), (B) one individual designated by Mel Wheeler, Inc. for so long as Mel Wheeler, Inc. owns a specified number of preferred membership

no authority or power to act for, or on behalf of, LMSD Holdings in any manner. The initial Board of LMSD Holdings consists of John Gehron, Norman McKee, Steven McNeely, Jim Minarik, Chris Pacheco, Todd Schumacher, David Simmons, Leonard Wheeler, and Gregg Wolfson.⁵ The Board generally takes actions on matters by majority vote.⁶

The membership interests in LMSD Holdings consist of preferred membership units (“Preferred Units”) and common membership units (“Common Units” and, together with the Preferred Units, the “Membership Units”). Holders of Membership Units are entitled to one vote per Membership Unit. Holders of Preferred Units vote together as a single class, as is the case with holders of Common Units. The holders of Preferred Units are Mel Wheeler, Inc.,⁷ Trivest Investment Partners, LLC,⁸ Simmons Capital, LLC,⁹ John Gehron, Pacheco Family Trust, and Todd Schumacher. The holders of Common Units are Gregg Wolfson,¹⁰ Norman McKee,¹¹ and Tantara Capital Partners, LLC.¹² The following members of LMSD hold 5% or greater of the total Membership Units of LMSD Holdings: Mel Wheeler, Inc., Trivest Investment Partners, LLC, Simmons Capital, LLC, Gregg Wolfson, Norman McKee, and Tantara Capital Partners, LLC.¹³

units in LMSD Holdings (“Wheeler Representative”), (C) one individual designated by Trivest Investment Partners, LLC for so long as Trivest Investment Partners, LLC owns a specified number of preferred membership units in LMSD Holdings (“Trivest Representative” and, together with the Wheeler Representative, the “Preferred Representatives”), and (D) four individuals designated by the holders of a majority of the Membership Units (as defined herein) voting together as a single class (each individual, an “At-Large Representative”).

⁵ John Gehron and Steve McNeely presently are representatives of the board of Local Media, under the ownership of Thoma Bravo. Upon consummation of the Transaction, Mr. Gehron will serve as an At-Large Representative of the Board, and Mr. McNeely will serve as a Common Representative of the Board.

⁶ The following Board actions require a majority approval of the Board, where such majority includes the affirmative vote of at least one of the Preferred Representatives: (A) the incurrence of indebtedness outside of the ordinary course; (B) the entry into any related-party transactions; (C) a material change in the annual compensation of the executive officers of the Company or its subsidiaries; and (D) the hiring or promoting of any existing employee to the position of Chief Executive Officer of LMSD Holdings.

⁷ The following stockholders of Mel Wheeler, Inc. will hold 5% or greater indirect interests in LMSD: Leonard Wheeler, Clark V. Wheeler, and Steve J. Wheeler.

⁸ Troy Templeton is the sole member of Trivest Investment Partners, LLC that will hold a greater than 5% indirect interest in LMSD.

⁹ The David E. Simmons 201 Trust is the sole member of Simmons Capital, LLC that will hold a greater than 5% indirect interest in LMSD. David E. Simmons is the trustee of The David E. Simmons 201 Trust.

¹⁰ Mr. Wolfson presently is the Vice President and General Manager of LMSD. He has served in this position since 2010, when Thoma Bravo acquired control of LMSD.

¹¹ Mr. McKee presently is the Chief Operating Officer of LMSD. He has served in this position since 2010, when Thoma Bravo acquired control of LMSD.

¹² Steven McNeely, the sole member and manager of Tantara Capital, LLC, will hold a greater than 5% indirect interest in LMSD.

¹³ Mel Wheeler, Inc. and Trivest Investment Partners, LLC each hold approximately 26.7% of the total Membership Units of LMSD Holdings. Tantara Capital Partners, LLC holds approximately

Foreign Ownership. No party to this application is an alien, a foreign government, a corporation organized under the laws of a foreign country, or a representative of any of the foregoing.

Other Broadcast Interests. The following information is being provided in response to Item 9(b) on FCC Form 308:

- Norman McKee, Gregg Wolfson, Tantara Capital Partners, LLC, and Steven McNeely hold attributable interests in Black Diamond Broadcasting Holdings, LLC, the licensee of WGFN(FM), Glen Arbor, Michigan; WGFE(FM), Glen Arbor, Michigan; WMKC(FM), Indian River, Michigan; WGFM(FM), Cheboygan, Michigan; WCBY(AM), Cheboygan, Michigan; WWMK(FM), Onaway, Michigan; and WCHY(FM), Cheboygan, Michigan.
- Chris Pacheco holds an attributable interest in Fat Dawgs Broadcasting LLC, the licensee of KYNO(AM), Fresno, California and KFPT(AM), Clovis, California. Mr. Pacheco also holds an attributable interest in One Putt, the licensee of KFRR(FM), Woodlake, California; KJWL(FM), San Joaquin, California; and KJFX(FM), Fresno, California.
- David Simmons holds an attributable interest in Missoula Broadcast Company, LLC, the licensee of KDTR(FM), Florence, Montana; KYJK(FM), Missoula, Montana; and KKVU(FM), Stevensville, Montana.¹⁴
- Mel Wheeler, Inc. is the licensee of WVBE-FM, Lynchburg, Virginia; WXLK(FM), Roanoke, Virginia; WLNI(FM), Lynchburg, Virginia; WSLC-FM, Roanoke, Virginia; WFIR(AM), Roanoke, Virginia; WPLY(AM), Roanoke, Virginia; WSLQ(FM), Roanoke, Virginia; and WVBB(FM), Elliston-Lafayette, Virginia. Leonard Wheeler holds an attributable interest in Mel Wheeler, Inc. and the aforementioned broadcast stations. Mr. Wheeler also holds an attributable interest in WSIL-TV, Inc., licensee of KPOB-TV, Poplar Bluff, Montana and WSIL-TV, Harrisburg, Illinois.¹⁵

Except as provided above, and other than the Section 325(c) Authorization, neither the applicant nor any principal thereof holds an attributable interest in any

13.2% of the total Membership Units of LMSD Holdings. Mr. Wolfson and Mr. McKee each hold approximately 10% of the total Membership Units of LMSD Holdings. Simmons Capital, LLC holds approximately 6.4% of the total Membership Units of LMSD Holdings. All other members of LMSD hold less than 5% of the total Membership Units of LMSD Holdings.

¹⁴ The David E. Simmons Trust also is an attributable owner of the Missoula Broadcast Company, LLC and holds attributable interest in the broadcast stations listed in the text. *See supra* at n. 9 (indicating that The David E. Simmons Trust will hold a greater than 5% indirect interest in LMSD by virtue of its limited liability company interests in Simmons Capital, LLC).

¹⁵ Clark V. Wheeler and Steve J. Wheeler also are attributable owners of Mel Wheeler, Inc. and hold attributable interests in the broadcast stations licensed to Mel Wheeler, Inc. and WSIL-TV, Inc. as identified in the text. *See supra* at n. 7 (indicating that Clark V. Wheeler and Steve J. Wheeler will hold greater than 5% indirect interests in LMSD by virtue of their stock positions in Mel Wheeler, Inc.).

broadcast station licensed by the FCC, or pending application before the FCC for a new broadcast station.

II. NATURE AND DELIVERY OF THE PROGRAMMING

The information set forth in this Section II is being provided in response to Items 14, 17, 18(a) and 18(b) of FCC Form 308. Each of the Stations, which serve the San Diego radio market, is a FM broadcast radio station, licensed to Tijuana, B.C., Mexico. The originating facilities are owned by Comunicaciones Xersa, S.A. de C.V. ("Xersa"). Since the Section 325(c) Authorization was first issued to LMSD in 2010, LMSD has provided programming for the Stations pursuant to an Exclusive Promotional, Programming, and Sales Agreement ("Programming Agreement"). The Programming Agreement contains propriety information and will be provided to the FCC upon request. Program deliveries to the Stations include regularly scheduled and special feature programming for up to 24 hours per day, seven days per week, throughout the year, subject to Xersa's Mexican programming obligations. The program deliveries consists of entertainment, news, sports, weather, traffic, information and/or other broadcast material in the English language. The program deliveries following transfer of control of LMSD pursuant to the instant Application will be unchanged from the programming delivered to the Stations by LMSD under control of Thoma Bravo.

III. TECHNICAL INFORMATION

The following information is being provided in response to Item 16 on FCC Form 308:

Call Sign	Freq	Channel	Class	Mode of Operation	Maximum ERP (kW)	Coordinates	HAAT	RCAMSL
XHRM-FM	92.5	223	C1	Non-directional	100,000	32-30-14 117-02-43	593'	946'
XHTZ-FM	90.3	212	C	Non-directional	100,000	32-30-14 117-02-43	593'	946'
XTRA-FM	91.1	216	C	Non-directional	100,000	32-30-22 117-02-21	478'	898'