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

ORIGINAL

In the Matter of	)	
	)	
WKZF-FM, Inc.	)	FCC File No. BRH-950814UC
	)	MM Docket No. 96-110
For Renewal of License	)	
for Station WKZF(FM)	)	
Bayboro, North Carolina	)	

RECEIVED
AUG 28 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Honorable John M. Frysiak, Administrative Law Judge

MOTION FOR SUMMARY DECISION

DOCKET FILE COPY ORIGINAL

WKZF-FM, INC.

By: Rick D. Rhodes
Elizabeth A. Sims

Its Attorneys

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 728-0400 (phone)
(202) 728-0354 (fax)

August 28, 1996

No. of Copies rec'd

Table of Contents

Summary of Argument iii

I. FACTS 1

II. ARGUMENT 5

A. Because the Licensee Has Made Diligent Efforts to Return the Station to the Air, the License Should Be Expeditiously Renewed. 5

B. A Decision to Renew the Station's License Would Be Directly in Line with Sound Commission Precedent and in the Public Interest. 6

C. Because Time Is of the Extreme Essence, WKZF Cannot Wait until after Its Designated Hearing Date in October for the Commission to Decide Its Case. 8

D. Because the Issues Which Have Been Designated for Hearing Have Been Addressed Herein, Postponing a Decision in the Instant Proceeding Is Unnecessary. 12

III. CONCLUSION 15

Summary of Argument

The license for Station WKZF(FM), Bayboro, North Carolina, should be expeditiously renewed by summary decision in this proceeding. WKZF-FM, Inc., the licensee for the Station, has made good faith, diligent and measurable efforts to resume expeditiously on-air operations in Bayboro since it was assigned the license for the Station. As explained further herein, a decision to renew the WKZF(FM) license is consistent with Commission precedent and would best serve the interests of the people of Bayboro and Pamlico County. Moreover, because the Telecommunications Act of 1996 mandates that a license for a broadcast station that remains silent for more than twelve months automatically expires at the end of that period (or February 8, 1997, if such station was silent before the Act went into effect), there is no time to wait for the scheduled hearing in October to consider whether the license should be renewed in ordinary due course. Unless a summary decision is forthcoming, there will likely be insufficient time to prosecute and implement the licensee's pending facilities upgrade application that is necessary to return the Station to the air, and thus, the provision of service to the people of the Bayboro, North Carolina area will be further postponed, if not permanently discontinued. Because the licensee has been diligent in its efforts to return the Station to operation, and because avoidable loss of service was surely not the ultimate intent of Congress when the Telecommunications Act of 1996 was passed, the license for WKZF(FM) should be expeditiously granted in order to allow the Station to resume operations and serve the public of Bayboro.

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

In the Matter of	)	
	)	
WKZF-FM, Inc.	)	FCC File No. BRH-950814UC
	)	MM Docket No. 96-110
For Renewal of License	)	
for Station WKZF(FM)	)	
Bayboro, North Carolina	)	

To: The Honorable John M. Frysiak, Administrative Law Judge

MOTION FOR SUMMARY DECISION

Pursuant to Section 1.251 of the Commission's rules,[1] WKZF-FM, Inc. ("WKZF-FM"), licensee of Station WKZF(FM), Bayboro, North Carolina ("WKZF" or the "Station"), through its attorneys, hereby submits this Motion for Summary Decision in the above-referenced proceeding regarding the renewal of the license for the Station. In support thereof, the following is shown:

I. FACTS

The undisputed factual background of this proceeding demonstrates that WKZF-FM has made extensive efforts to return the Station to the air. WKZF has been off the air since mid-1993, when a previous licensee, Carolina Community Broadcasting, Inc. ("Carolina"), suspended operations for financial reasons. In a series of attempts to resume operation and return broadcast service to the Bayboro area, the Station was assigned to Sunbelt Media, Inc. ("Sunbelt") in

[1] 47 C.F.R. § 1.251.

November 1993 (FCC File No. BALH-930907GE), and the transaction was consummated by the parties on December 13, 1993.

Subsequently, as a result of its own financial difficulties, Sunbelt was also unable to return the Station to the air and thus assigned the license to WKZF-FM, the current licensee (FCC File No. BALH-940826GN), in the fall of 1994. The Commission granted the assignment to WKZF-FM in December 1994 and directed the new licensee to return the Station to the air within sixty days of consummation of the assignment.

WKZF-FM notified the Commission on March 20, 1995, that the assignment had been consummated on February 20, 1995, and requested authority to modify the condition imposed on the assignment to facilitate an engineering facility upgrade. The Commission consented to the request for time to seek authority for and execute an upgrade of the Station's facilities and required the licensee to return the Station to the air within 240 days of the date of consummation of the assignment (*i.e.* November 20, 1995).[2]

WKZF-FM filed the renewal application at issue herein on August 14, 1995, in which it reported in Section III, Item 3 that the Station remained off the air. WKZF-FM emphasized in an exhibit to that application that it was currently developing the engineering for the Station to apply for an upgrade to a Class C3 facility. This renewal application was filed less than three weeks after the Commission notified WKZF-FM in a letter dated July 25, 1996, that it could

[2] Letter to WKZF-FM, Inc. (Ref. 1800B3-GDG), dated July 25, 1995.

pursue the upgrade, clearly not enough time to have completed the work and returned the Station to the air.[3]

In June 1995, prior to the preparation of the renewal application, WKZF-FM engaged the services of professional engineering consultant Timothy L. Warner of Asheville, North Carolina. Mr. Warner was directed at that time to perform the technical work that would accompany the Station's upgrade application to the Commission. He first reviewed the Station's upgrade options on September 26, 1995. At that time, he proposed an engineering study to determine whether a directional antenna permitted under Section 73.315 of the Commission's rules would allow the Station to move to an existing tower near Arapahoe, North Carolina, in an effort to save both time and money in getting the station back on the air, due to the concerns discussed *supra* at note 3. As noted therein, the proposed new location also allows WKZF to serve a larger segment of the public.

On September 28, 1995, Mr. Warner sent a preliminary pattern proposal to Electronics Research, Inc. ("ERI") for its review. In October 1995, ERI responded with an antenna development proposal which solicited specific site information, including a survey of the existing

---

[3] It is important to note that the Station's former tower site was considered unsafe due to extensive deterioration of the tower prior to WKZF-FM's acquisition of the license. In fact, due to the safety threat and for related insurance purposes, the new licensee, who did not own the site, was not even allowed to inspect to former tower site upon receiving the license, even after repeated attempts to conduct a site review to determine whether repair of the tower site was feasible. WKZF-FM thus estimated at the time that it would take almost as much time, if not more, to return the Station to the air using the old site, due to zoning and reconstruction activity, assuming authorization was eventually received to enter the site premises, as it would to obtain authorization from the Commission to implement an upgrade to the Station's facilities at the currently proposed site. Moreover, using the proposed site allows the Station to serve a larger segment of the Bayboro community, and thus, was considered the better option.

Arapahoe tower site, to confirm the orientation of the tower. After lengthy discussions with Mr. Warner regarding the specific requirements needed by WKZF, Dennis Fornes, RLS, who was commissioned to provide the tower orientation, provided such data to ERI on January 12, 1996.

Mr. Warner also contacted the structural engineers at ERI to determine the strength of the existing Arapahoe tower. They collectively have determined that the only modifications that need to be made are the replacement of the guy wires immediately above the proposed directional antenna with non-conducting fiberglass rods connected to new guy wires. ERI then submitted an estimate for the costs of the tower work.

As the engineering work was being processed and analyzed, WKZF-FM was still ascertaining whether to invest its resources to reconstruct the former, dismantled site, to which it had repeatedly been denied access, or alternatively, to start anew from a different site. Accordingly, the work proposed by Mr. Warner and the ERI engineers was temporarily postponed. However, prior to the Commission's designation of the Station's renewal application for hearing, WKZF-FM, working in conjunction with its engineering consultants, completed the technical work and analysis of the proposed site which was needed to implement the upgrade of the Station and WKZF-FM is prepared to move forward with construction. An application for authority to make the proposed changes has been filed with the Commission.[4] According to delivery and installation time estimates given by technical consultants and equipment manufacturers selected by the licensee to provide equipment and substantially implement the

[4] The modification application was filed with the Commission on August 27, 1996. A copy of the application is attached hereto as Exhibit 1.

upgrade and necessary site construction activity, WKZF-FM is prepared to have the Station back on the air within 60-90 days of the Commission's grant of its pending modification application.

II. ARGUMENT

A. Because the Licensee Has Made Diligent Efforts to Return the Station to the Air, the License Should Be Expeditiously Renewed.

It is evident by WKZF-FM's efforts as described above that the licensee is committed to returning broadcast service to the public as soon as practically possible. At this moment, the licensee has the requisite financing and technical capability to put the Station back on the air and serve a substantially greater segment of the population around Bayboro, North Carolina, the Station's community of license, than the Station has ever served before. However, it can do nothing further until the Commission acts to renew its authorization and grants its pending modification application authorizing it to go forward with the upgrade facilities construction.

WKZF-FM recognizes the Commission's obligation to reclaim licenses for stations that are off the air for a prolonged period of time and are thus not serving the communities they are licensed to serve. However, because it is willing and able to return the Station to the air within *60-90 days* of the Commission's grant of its renewal application and grant of authority to construct modified facilities, it would in actuality be *contrary* to the public interest to take away WKZF's license at this point. As a result of such an action, service to the Bayboro area would be postponed even further as the lengthy administrative process of granting the license to another entity was undertaken; in fact, it is a distinct possibility that no license for a station to serve Bayboro would ever be issued should no new parties interested in applying for the license come forward.

Furthermore, the current licensee should not be held responsible for the actions (or failure to act, as the case may be) of former licensees over which it had no control. WKZF-FM took over the Station essentially from creditors of the former licensee who may have had no intention or capability of returning the Station to the air, but instead understandably wanted to sell it to reclaim as much of their original investment in the Station as possible. It has always been and continues to be WKZF-FM's intention to return the Station to air, as evidenced by its efforts and considerable expenditures described above. For this reason, and in the public interest, the Commission should grant WKZF's renewal application in an expeditious manner.

B. A Decision to Renew the Station's License Would Be Directly in Line with Sound Commission Precedent and in the Public Interest.

Historically, the Commission has rightfully empathized with licensees of silent stations who have made significant efforts to return their stations to the air.[5] The basis for these decisions has predominantly been that the public interest is best served by expeditiously returning service to the people in and surrounding the station's designated community of license. While done in the *name* of the public interest, as stated above, once the license is taken from the existing licensee and the station goes dark, or alternatively, once the station goes through the administrative process of reapplication by the current licensee and the subsequent hearings that would ensue, the public interest is actually thwarted in favor of rigid adherence to an inflexible

---

[5] *See Video Marketing Network, Inc., et al.*, 10 FCC Rcd 7611, 7613 (1995) (no hearing on licensee qualifications required where licensee had been forthright about past violations, intentional and unintentional, and had acted affirmatively to correct deficiencies); *Keyboard Broadcasting Communication*, 10 FCC Rcd 4489, 4490 (1995); *Cavan Communications*, 10 FCC Rcd 2873, 2876 (1995); *WINT-TV, Inc.*, 1986 FCC Lexis 4007 (1986); *Wasque Corp.*, 41 RR2d 419, 420 (1977).

policy. Where the existing licensee is willing and able to take actions to restore service, as in the instant case, license cancellation is clearly contrary to the underlying purpose of that policy, which is to serve the public interest by ensuring the license is held by a licensee who will return the station to the air and serve the community of license.

Moreover, where innocent creditors are involved, the Commission has held that a potential indirect benefit received by a possible wrongdoer who is a licensee of a station is substantially outweighed by the substantial equities in favor of the innocent creditors and the public interest in resumption of service.[6] As in *Second Thursday*, it would be grossly unfair to cause WKZF-FM's innocent creditors[7] to be penalized and lose their entire investment in the Station as a result of the excusable negligence of the previous licensees who did not take aggressive steps. As illustrated above, WKZF-FM has always intended in good faith and has exercised considerable diligence in efforts to return the Station to the air. Its failure to do so by November 20, 1995, the date by which the Station was originally directed to resume operations, was unavoidable due to the nature of the technical modifications that need to be made to get the Station back on the air and improve service coverage. However, even if the Commission finds some fault with regard to WKZF-FM's past actions, *Second Thursday* confirms that its innocent creditors should not be forced to lose their entire investment in the Station as a result.

---

[6] *Second Thursday Corp., et al., Memorandum Opinion and Order*, 19 RR2d 1199, 1200 (1970).

[7] WKZF-FM's creditors are Edward Bolding, in his individual capacity, and The Connelly Company.

WKZF-FM acknowledges its mistake in not separately notifying the Commission that the Station was not going to return to the air in time for the November 20, 1995 deadline.[8] However, the licensee was not represented by an attorney at that time and was mistakenly under the impression that its explicit admission on its renewal application that the Station was not on the air and that it intended to file a facilities change application with the Commission in order to resume broadcast operations was sufficient notice. Certainly, WKZF-FM's admissions in the Station's renewal application demonstrate that the licensee was attempting to keep the FCC fully informed on current developments.

C. Because Time Is of the Extreme Essence, WKZF Cannot Wait Until After Its Designated Hearing Date in October for the Commission to Decide Its Case.

Section 312(g) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "1996 Act"), states that the licenses of all broadcast stations that are silent for twelve consecutive months will be automatically terminated at the end of that period.[9] Under the language of the 1996 Act, it appears that the Commission has no discretion to grant extra time to any licensee, regardless of the circumstances surrounding a request for such an extension. Where the station was off the air prior to the implementation of

---

[8] Section 73.1940(a)(4) of the Commission's rules, 47 U.S.C. § 73.1940(a)(4), requires a licensee to notify the Commission if a station is going to discontinue operations for more than 30 days and seek temporary authority for the Station to remain silent. Additionally, Section 73.1750 requires a licensee to notify the FCC of permanent discontinuance of station operation and to forward the license and other authorizations for the station to the Commission for cancellation. 47 U.S.C. § 73.1750. While WKZF-FM admits its inexperience in not properly notifying the Commission under Section 73.1940(a)(4), it has at no time intended to permanently discontinue operation of the Station, and thus is not in violation of Section 73.1750.

[9] 47 U.S.C. § 312(g).

the 1996 Act, the twelve month period begins to run from February 8, 1996, the date on which the 1996 Act was signed into law.[10] Neither a Station's existing authorizations nor its pending applications will toll or extend the twelve month period that triggers expiration. As shown in the facts set forth above, WKZF was off the air well before the enactment of the 1996 Act. Therefore, if WKZF is not back on the air by February 8, 1997, the license for the Station will automatically expire.

In its Public Notice of May 22, 1996, the Mass Media Bureau expressed its recognition, in light of Section 312(g), of the need for expedient action on pending applications that are necessary to return a silent station to the air and established certain procedures to ensure such expedited processing.[11] These procedures, *inter alia*, included using the phrase "REQUEST TO EXPEDITE APPLICATION OF SILENT STATION" in a Station's transmittal letter submitted with such an application, along with the date on which the license will expire if it remains off the air.[12] As a result of this Public Notice, WKZF expected that its application for major change in the facilities of the Station would be processed expeditiously when it was filed.

---

[10] *See* FCC Public Notice, DA 96-818, released May 22, 1996 (citing *Order, Silent Station Authorizations*, FCC No. 96-218 (released May 17, 1996)) (Attached as Exhibit 2).

[11] *Id.*

[12] *Id.*

However, in an *Order* released July 1, 1996,[13] and a subsequently issued *Memorandum of Law and Policy* issued by the Mass Media Bureau two days later,[14] the accommodating position of the Mass Media Bureau as stated in its Public Notice of May 22, 1996, *supra* at n. 7, was essentially retracted.[15] In *Southwestern*, the renewal application for Station KLZK(FM), Brownfield, Texas, was designated for hearing as a result of the station's silent status. The Administrative Law Judge in that case, The Honorable Richard L. Sippel, stated that "there seems to be a tension if not a contradiction in the two policies."[16] He also directed the Mass Media Bureau to clarify the rationale behind a policy of different processing procedures for an application for modification filed by a licensee whose silent status has caused its renewal application to be designated for hearing from a similar application filed by a licensee whose renewal application has not been designated for hearing, especially in light of the "universally acknowledged main issue which is the most expeditious resumption of services."[17] Judge Sippel

---

[13] *In the Matter of Southwestern Broadcasting Corporation, Order*, MM Docket No. 96-104, FCC 96M-168, File No. BRH-900315UC (rel. July 1, 1996) ("*Southwestern*") (Attached as Exhibit 3), decided by *Summary Decision*, FCC 96D-04, released July 29, 1996 ("*Southwestern Summary Decision*") (Attached as Exhibit 4).

[14] Attached as Exhibit 5.

[15] Because the Mass Media Bureau contradicted a former Public Notice with a subsequent individual case decision, other licensees of dark stations did not have proper notice of the policy change. Moreover, the radical break in previous form was not only a refusal to *expedite* the processing of these applications at the Bureau level, it was an outright *refusal to act* on them until the renewal of the underlying application had been granted. Such a radical change in policy without adequate general notice to those who might be affected by the individual decision places an impossible burden on licensees of dark stations to somehow discover and appropriately react to the extreme policy change.

[16] Id. at 1-2.

[17] Id. at 2-3.

properly noted that, while the burden is on the licensee to show that it will return the silent station to the air in an expeditious manner, where the licensee has a facilities change application pending at the FCC, it needs cooperation from the Mass Media Bureau's processing staff to meet the statutory deadline.[18]

The Bureau's *Memorandum of Law and Policy* essentially states that a licensee in such a situation should take responsibility for "its alleged non-feasance" and not burden the Bureau's resources by forcing it to review and process such applications prior to a renewal grant showing that the licensee is deserving of such attention.[19] However, while the Bureau acknowledges that the nonfeasance is in fact only *alleged* until the hearing is concluded and any liability for the licensee's action or inaction is finally decided, it fails to address how the staff will possibly have time before the statutory deadline to consider the pending applications of licensees who ultimately have their licenses renewed. While WKZF-FM can sympathize with the Bureau's desire to avoid placing an extra burden on an already overburdened staff, there is little point in forcing the parties and the Commission to go through a renewal hearing if there will be no time under the statute to get authority to return the Station to the air even if the license is renewed.[20]

---

[18] *Id.* at 2.

[19] *Memorandum of Law and Policy* at 3.

[20] It is also important to note that only a handful of all renewal applications for stations which are currently off the air have been designated for hearing by the Mass Media Bureau. If the reason for designating these applications for hearing is in fact, as the Bureau states, to force the licensee to show that its "alleged non-feasance" is either nonexistent or excusable and that renewal of the license is warranted before any other Bureau action is taken, then all such renewal applications should be designated for hearing. It is grossly unfair to penalize some dark stations for such alleged non-feasance and not others. Moreover, the Bureau has not offered any reason, legitimate or otherwise, for this disparate treatment.

The situation created by the Mass Media Bureau's policy is a no-win situation for a licensee which finds itself in circumstances such as those in *Southwestern* and in the instant case, and consequently, a no-win situation for the public in the licensee's broadcast area who will likely be denied local broadcast service under the policy. The Mass Media Bureau has stated that it will not act on these pending modification applications while the renewal application is awaiting hearing, but a licensee cannot easily show its diligent and ongoing efforts to return the station to the air in a renewal proceeding if it does not have authority from the Mass Media Bureau to make the changes necessary to actually put the station back on the air. Regardless of what the policy is or is not, or should or should not be, the fact remains that while this circular reasoning is being debated between the Mass Media Bureau and the Commission, the statutory clock is ticking and the Commission has no authority or discretion to stop it. If the Commission does not issue a Summary Decision renewing WKZF's license immediately and direct the Mass Media Bureau to act on the licensee's facilities change application in an expeditious manner, the licensee will not have enough time before the statutory deadline of February 9, 1997 to implement the proposed changes and return the Station to the air.

D. Because the Issues which Have Been Designated for Hearing Have Been Addressed Herein, Postponing a Decision in the Instant Proceeding Is Unnecessary.

The issues which have been designated for hearing in October, as set forth in the Hearing Designation Order at paragraph 5, have been sufficiently addressed above. First, the Commission seeks to determine whether WKZF-FM has the capability and intent to expeditiously resume the broadcast operations of the Station. As described in detail above, WKZF-FM has made diligent efforts during the past year to return the Station to the air. It has

been financially and is now technically in the position to do just that, and is only waiting for the Commission to grant it the legal authority to do so. These actions show the licensee's willingness and capability to resume broadcast operations expeditiously.[21]

In *Southwestern*, the Commission ultimately decided that the licensee's choice to keep the station off the air for *over six years*, especially where there was little evidence of diligent efforts during that time, was sufficient to show that the licensee did not intend to expeditiously resume broadcast operations of the station.[22] In the instant case, however, the licensee has only held the license for sixteen months, during which time it has aggressively sought resumption of the Station's broadcast service to Bayboro. Furthermore, the Station has not resumed operation under the existing authorization because the former tower is no longer technically usable. Essentially, the licensee would have had to build a new tower to operate under the current authorization, only to have to build another one shortly thereafter in a different location, assuming that the currently pending upgrade application is eventually granted. WKZF was not in the financial position to simultaneously build a tower for temporary operation under the existing authorization and pursue a permanent upgrade of the Station's facilities at a different transmitter site. Moreover, WKZF concluded that potentially lengthy zoning proceedings and the added construction obligations that would result from building two towers, instead of one, would have prolonged the lack of service to Bayboro even further. Thus, using its best professional

---

[21] Moreover, if the Commission is concerned that a renewal grant would somehow benefit an underserving licensee, the grant could be conditioned upon having the Station back on the air before February 9, 1997. If the condition is not satisfied, the renewal grant is revoked.

[22] *Southwestern Summary Decision* at 6.

judgment, it chose to pursue solely the upgrade in order to effectuate service more quickly and to a greater segment of the public in the Bayboro area.

Secondly, in the upcoming hearing, the Commission also intends to determine whether WKZF-FM has violated Sections 73.1740 and/or 73.1750 of the Commission's rules regarding Commission notification when a station is off the air for a certain period of time. As acknowledged above, WKZF-FM now realizes that it technically should have notified the Commission when it could not return the Station to the air as quickly as originally anticipated. However, it was not represented by an attorney at that time and was mistakenly under the impression that its detailed admission on its renewal application that the Station was still not on the air pending an upgrade to the Station's facilities was sufficient notification to the FCC. The people of Bayboro should not be punished for the inadvertent mistake of a licensee who was unable to obtain counsel at an earlier time due to temporary financial constraints.

Lastly, the Commission seeks to determine, in light of the evidence shown under the first two issues, whether a grant of the renewal application would serve the public interest, convenience and necessity. Never has the licensee acted in bad faith with regard to attempts to resume broadcast operations of the Station and the public interest will not be served if the licensee is, in effect, given the "death penalty" as a reward for diligent actions taken thus far. As noted above, the result of such a penalty for the licensee would actually be a much greater harm to the people of Bayboro, North Carolina, for whom service would not likely be restored for an inordinately long time to come.

Bayboro is a rural community in eastern coastal North Carolina. It is the principal community and county seat of Pamlico County. The main industries in the area are commercial

fishing and agriculture. Because the only other radio service licensed to the entire county is out of Oriental, North Carolina, which is approximately ten miles away, the people of Bayboro would greatly benefit from a full time radio broadcast station licensed to and operated from their community. For example, an area broadcast station that aired local weather reports would aid area farmers and fishermen in the pursuit of their businesses, especially those reports dealing with hurricane preparedness. Additionally, a new radio station would create jobs and support schools in the community. Thus, the public interest would clearly be best served by granting WKZF's renewal application at this time.

III. CONCLUSION

For the reasons set forth above, WKZF-FM respectfully requests that the Presiding Officer issue a Summary Decision renewing the license for the Station and direct the Mass Media Bureau to process the licensee's pending modification application on an expedited basis. To do otherwise would be directly contrary to the public interest the Commission is obligated to preserve.

Respectfully submitted,

WKZF-FM, INC.

By: _____
Rick D. Rhodes

_____
Elizabeth A. Sims
(Licensed in Georgia Only)

Its Attorneys

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.,
Suite 200
Washington, D.C. 20036
(202) 728-0400 (phone)
(202) 728-0354 (fax)
August 28, 1996

DECLARATION OF KEITH ECKHARDT

I, Keith Eckhardt, President of WKZF-FM, Inc., licensee of Station WKZF(FM), Bayboro, North Carolina, do hereby state, under pain or penalty of perjury, that I have read the foregoing "Motion for Summary Decision" and that the facts contained therein are true and correct to the best of my knowledge, information and belief.

WKZF-FM, INC.

By: _____
Keith Eckhardt
President

Date: August 23, 1996

DECLARATION OF TIMOTHY L. WARNER, P.E.

I, Timothy L. Warner, P.E., professional engineering consultant for WKZF-FM, Inc., licensee of Station WKZF(FM), Bayboro, North Carolina, do hereby state, under pain or penalty of perjury, that I have read the foregoing "Motion for Summary Decision" and that the facts contained therein regarding engineering and steps taken thus far to implement the proposed upgrade to the facilities of WKZF(FM) are true and correct to the best of my knowledge, information and belief.

Timothy L. Warner

Timothy L. Warner, P.E.

Date: 15 August, 1996

EXHIBIT 1

IRWIN, CAMPBELL & TANNENWALD, P.C.
ATTORNEYS AT LAW
1730 RHODE ISLAND AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20036-3101
(202) 728-0400
FAX (202) 728-0354

RICK D. RHODES
(202) 728-0401 Ext. 113

August 27, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
Mass Media Services
P.O. Box 358195
Pittsburgh, PA 15251-5195

Re: Station WKZF-FM
Bayboro, North Carolina

Stop Code: 1800B

Dear Mr. Caton:

Transmitted herewith in triplicate on behalf of WKZF-FM, Inc., licensee of Station WKZF-FM, Bayboro, North Carolina, is an application for construction permit to upgrade the facilities of the station.

A check made payable to the FCC in the amount of $2,335.00 is enclosed to cover the required filing fee.

Should you have any questions, please contact the undersigned at the direct dial number above, or Elizabeth Sims, Esq., at (202) 728-0401 x111.

Very truly yours,

Approved by OMB
3060 - 0027
Expires 6/30/95

FCC 301

FEDERAL COMMUNICATIONS COMMISSON
WASHINGTON, D.C. 20554

FOR FCC USE ONLY

RECEIVED AUG 27 1996

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

FOR COMMISSION USE ONLY

FILE NO.

Section I -- GENERAL INFORMATION

1. APPLICANT NAME

WKZF-FM, INC.

MAILING ADDRESS (Line 1) (Maximum 35 characters)

107 Fairway Road

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

FILE COPY

CITY	STATE OR COUNTRY (if foreign address)	ZIP CODE
Jacksonville	NC	28546

TELEPHONE NUMBER (include area code)	CALL LETTERS	OTHER FCC IDENTIFIER (IF APPLICABLE)
(910) 347 - 9100	WKZF	BALH-940826GN

FOR MAILING THIS APPLICATION, SEE INSTRUCTIONS FOR SECTION 1 -- GENERAL INFORMATION B.

2. A. Is a fee submitted with this application? [X] Yes [ ] No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112) and go to Question 3.

[ ] Governmental Entity [ ] Noncommercial educational licensee

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (If required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)	M T R	0 0 0 1	$2,335	

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A)	(B)	(C)	FOR FCC USE ONLY
(2)		0 0 0 1	$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.	TOTAL AMOUNT REMITTED WITH THIS APPLICATION	FOR FCC USE ONLY
	$2,335	

3. This application is for: (check one box) [ ] AM [X] FM [ ] TV

(b) Channel No. or Frequency
250

(b) Principal Community	City	State
	Bayboro	NC

(c) Check one of the following boxes:

☐ Application for NEW station

☒ **MAJOR** change in licensed facilities; call sign: ..... WKZF

☐ **MINOR** change in licensed facilities; call sign: ..... _____

☐ **MAJOR** modification of construction permit; call sign: ..... _____

File No. of construction permit: ..... _____

☐ **MINOR** modification of construction permit; call sign: ..... _____

File No. of construction permit: ..... _____

☐ **AMENDMENT** to pending application; Application file number: ..... _____

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

4. Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

If Yes, state:

Call Letters	Community of License	
	City	State

SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. Does the applicant propose to employ five or more full-time employees? ☐ Yes ☒ No

   If Yes, the applicant must include an EEO program called for in the separate Broadcast Equal Employment Opportunity Program Report (FCC 396-A).

SECTION VII - CERTIFICATIONS

1. Has or will the applicant comply with the public notice requirement of 47 C.F.R. Section 73.3580? ☒ Yes ☐ No

2. Has the applicant reasonable assurance, in good faith, that the site or structure proposed in Section V of this form, as the location of its transmitting antenna, will be available to the applicant for the applicant's intended purpose? ☒ Yes ☐ No

   If No, attach as an Exhibit, a full explanation. Exhibit No. n/a

3. If reasonable assurance is not based on applicant's ownership of the proposed site or structure, applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure.

   Name of Person Contacted: Dr. Ronald W. Benfield

   Telephone No. *(include area code)*: (704) 878-9004

   Person Contacted *(check one box below)*

   ☒ Owner ☐ Owner's Agent ☐ Other *(specify)*

4. By checking Yes, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b). ☒ Yes ☐ No

The APPLICANT hereby waives 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 requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.65, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.