

Conclusions of Law

10. The Motion for Summary Decision will be granted and the issues will be resolved in WPVG's favor. Pursuant to Section 1.251 of the Commission's Rules, in order to warrant summary decision a party must show that there is no genuine issue of material fact remaining for determination at the hearing. In order to sustain such a motion, it must be established that the truth is clear, that the basic facts are undisputed, and that the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts. *Big Country Radio, Inc.*, 50 FCC 2d 967 (Rev. Bd. 1975). WPVG has met this stringent test.

11. With respect to Issue 1, WPVG has established that the factual basis for the specification of this issue was in error. Thus, the Licensee has shown that the relevant portion of the *HDO* was premised upon the erroneous assumption that no application to relocate the station's transmitting antenna had been filed prior to the issuance of the *HDO*. However, as shown by WPVG, an application for a new transmitter site had been filed on April 18, 1996, and was accepted for filing by *Public Notice* dated May 13, 1996. Both of those events took place prior to the adoption and release of the *HDO*. By filing its application for a new transmitter site, and by diligently prosecuting and seeking the expedited processing of that application, WPVG has demonstrated that it is earnestly seeking to restore the station to the air as promptly as possible. Indeed, it appears that the Audio Services Division is ready and willing to grant WPVG's modification application as soon as FAA approval is obtained. Consequently, WPVG has satisfied its burden of showing that it has the capability and intent expeditiously to resume the broadcast operations of its station, and Issue 1 is resolved in its favor.

12. Turning to Issue 2, it must be concluded that, although the Licensee did not violate Section 73.1750 of the Commission's Rules, it was in violation of Section 73.1740(a)(4) of the Rules for a brief period of time. Such violation, however, does not reflect adversely upon the basic qualifications of WPVG to remain a Commission licensee.

13. Section 73.1750 of the Commission's Rules provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

The Licensee did not violate this section of the rules. WPVG clearly had the intention to restore the station to operation. This is demonstrated by the fact that it located a new site for its transmitter, prepared and filed the requisite application for that site, and has diligently prosecuted its application since that time. Further, there is no evidence that WPVG intended to discontinue permanently the operation of its station.

14. Section 73.1740(a)(4) of the Commission's Rules provides, in pertinent part:

In the event that causes beyond the control of a licensee make it impossible . . . to continue operating, the station may . . . discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of . . . discontinued operation. . . . In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

The Licensee was in violation of this provision of the rules for approximately two months. Thus, WPVG's special temporary authority to remain silent expired on March 27, 1996, but no written request for an extension of that authority was made until May 30, 1996. However, this violation is partially mitigated by the fact that the Licensee did notify the Commission within 30 days of the expiration of the special temporary authority that the station remained silent. Specifically, in its April 18, 1996, cover letter accompanying WPVG's modification application, the Licensee stated that the station was off the air, and would remain off the air until the station was built after the Commission issued a construction permit. As noted above, this rule violation does not impact adversely upon the Licensee's basic qualifications. Cf. *Video Marketing Network, Inc.*, 10 FCC Rcd 7611, 7613 (MMB 1995); *Cavan Communications*, 10 FCC Rcd 2873 (ALJ 1995). Therefore, Issue 2 is resolved in the Licensee's favor.

Ultimate Conclusion

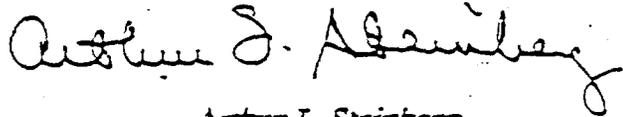
15. In sum, it has been concluded that the Licensee has the capability and intent expeditiously to resume the broadcast operations of WPVG(AM) consistent with the Commission's Rules, that the Licensee did not violate Section 73.1750 of the Commission's Rules, and that the Licensee did violate Section 73.1740(a)(4) of the Rules for a brief period of time. It has been further concluded that the Licensee's rule violation is not disqualifying. It is, therefore, ultimately concluded that the public interest, convenience and necessity would be served by a grant of the Licensee's renewal application. Cf. *Video Marketing Network, Inc.*, *supra*; *Keyboard Broadcasting Communication*, 10 FCC Rcd 4489 (MMB 1995); *Cavan Communications*, *supra*. However, the grant will be conditioned on the resumption of broadcast operations on or before February 8, 1997. *HDO* at para. 4; 47 U.S.C. § 312(g).

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by WPVG, Inc., on August 15, 1996, IS GRANTED and Issues 1, 2 and 3 ARE RESOLVED in the Licensee's favor.

IT IS FURTHER ORDERED that, unless an appeal from this Summary Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Sections

1.251(e) and 1.276 of the Rules, the above-captioned application of WPVG, Inc., for renewal of license for Station WPVG(AM), Funkstown, Maryland, IS GRANTED subject to the condition that the station SHALL RESUME broadcast operations on or before February 8, 1997.¹

FEDERAL COMMUNICATIONS COMMISSION



Arthur L. Steinberg
Administrative Law Judge

¹ In the event exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release pursuant to Sections 1.251(e) and 1.276(d) of the Rules.

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

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

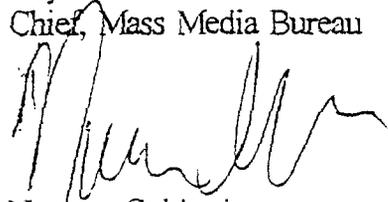
To: Administrative Law Judge
John M. Frysiak

MOTION TO DISMISS

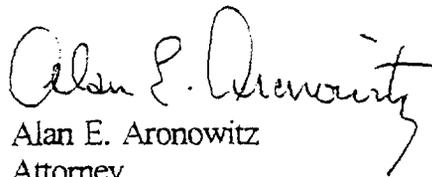
1. On September 13, 1996, WKZF-FM, Inc. ("WKZF"), filed a "Reply to Mass Media Bureau's Opposition to Motion for Summary Decision and Countermotion for Summary Decision" in this proceeding. Such a pleading is neither contemplated nor authorized by Section 1.251 of the Commission's Rules, 47 C.F.R. §1.251. Section 1.45(c) of the Commission's Rules provides that additional pleadings may be filed only if specifically requested or authorized by the Commission. Therefore, WKZF's pleading is subject to summary dismissal.

2. Accordingly, the Mass Media Bureau requests that WKZF's pleading be dismissed.¹

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints &
Political Programming Branch



Alan E. Aronowitz
Attorney
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Federal Communications Commission
2025 M Street, N.W.
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Washington, D.C. 20554
(202) 418-1430

September 17, 1996

¹ However, should the Presiding Judge accept WKZF's unauthorized pleading, the Bureau respectfully requests the opportunity to address the matters raised therein.

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 17th day of September 1996, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Motion to Dismiss**" to:

WKZF-FM, Inc.
c/o Rick D. Rhodes Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, DC 20036-3101

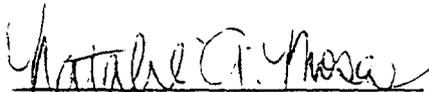

Natalie C. Moses
Natalie Moses

EXHIBIT B

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

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

Appearances

Rick D. Rhodes, Esq., Elizabeth A. Sims, Esq. on behalf of WKZF-FM, Inc. and Alan E. Aronowitz, Esq. on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF
ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: September 20, 1996

Released: September 24, 1996

Preliminary Statement

1. By Hearing Designation Order, DA 96-96-724, released May 9, 1996 ("HDC"), the Assistant Chief, Audio Services Division, Mass Media Bureau ("Bureau"), designated for hearing the application of WKZF-FM, Inc. ("WKZF") for renewal of license for FM Station WKZF, Bayboro, North Carolina. The following issues were specified:

- (1) To determine whether WKZF-FM, Inc. has the capability and intent to expeditiously resume the broadcast operations of WKZF-FM, consistent with the Commission's Rules;
- (2) To determine whether WKZF-FM, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules; and
- (3) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

The HDC further provided that, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation. HDC at para. 6. The HDC placed upon the Licensee, WKZF, both the

burden of proceeding with the introduction of evidence and the burden of proof. Id. at para. 9. A prehearing conference was held on June 19, 1996 and on June 28, 1996. A telephone conference was held on September 6, 1996 at which time procedural dates were suspended pending ruling on the WKZF's Motion for Summary Decision filed August 28, 1996. Mass Media Bureau's Opposition to Motion for Summary Decision and Countermotion for Summary Decision was filed September 5, 1996 and Reply thereto by WKZF on September 13, 1996.¹ Mass Media Bureau's Motion to Dismiss WKZF's Reply was filed September 17, 1996.

Findings of Fact

2. The HDO recited the following facts as the basis for the specification of the issues in this proceeding. WKZF has been off the air since July 24, 1993 when the previous licensee, Carolina Community Broadcasting, Inc. ("Carolina") suspended operations for financial reasons. On November 17, 1993, the Commission approved the application (File No. BALH-930907GE) for the voluntary assignment of WKZF's license from Carolina to Sunbelt Media, Incorporated ("Sunbelt"). Carolina and Sunbelt consummated this transaction on December 13, 1993. Sunbelt, however, did not return to station to broadcast operations, filing instead on August 26, 1994 an application (File No. BALH-940826GN) to assign the station's license to WKZF-FM, Inc. The Commission approved this assignment on December 23, 1994, requiring the assignee to resume operations within sixty days of consummation of the approved assignment. HDO at para. 2. WKZF-FM, Inc. filed on March 20, 1995 both its notification that the assignment was consummated February 20, 1995 and its request to modify the conditioned assignment, stating that it was in the process of "engineering a facility upgrade as allocated by the Federal Communications Commission." The Bureau approved the new licensee's request, modifying the conditioned assignment to require operations within 240 days from the date of consummation, i.e., November 20, 1995. Letter to WKZF-FM, Inc. (Ref. 1800B3-GDG), dated July 25, 1995. On August 14, 1995, WKZF-FM, Inc. filed its renewal application, reporting in Section III, Item 3 of its application that the station was still off-air and reiterating in Exhibit 2 to the application that it was "currently developing the engineering for the station to apply for the C3 allocation." HDO at para. 3. The Commission approved the upgrade of the Bayboro, North Carolina allocation from Channel 250A to Channel 250C3 on August 31, 1992. Report and Order in MM Docket No. 91-237, 7 FCC Rcd 6305 (1992). The upgrade was effective November 12, 1992, and the Commission's action required that the licensee submit the appropriate application (FCC Form 301) implementing the upgrade by February 12, 1993. No application implementing the C3 upgrade has been filed by any of the approved licensees since the Commission's action in August 1992. Further, WKZF-FM has neither notified the Commission that it resumed broadcast operations nor has it indicated that it has made any progress in implementing the C3 allocation. Thus, WKZF-FM has been off-air for over two years, is not presently authorized to remain silent, and has not demonstrated that broadcast operations can be resumed expeditiously. Consequently, WKZF-FM, Inc. is in apparent violation of Sections 73.1740 and 73.1750 of the Commission Rules. HDO at para. 4.

¹ WKZF's Reply is an unauthorized pleading, and as such IS DISMISSED. See Section 1.251 and Section 1.45(c) of the Commission's Rules.

3. Pursuant to Section 1.251 of the Commission's Rules, in order to warrant summary decision, a party must show that there is no genuine issue of fact for determination at the hearing. To sustain a motion for summary decision, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967 (Rev. Bd. 1975). The Bureau and WKZF assert that the facts of this case are not in dispute.

4. In addition to the facts related in the HDO, WKZF asserts that subsequent to its request of March 20, 1995 to the Commission for permission to upgrade the facilities, it engaged in June 1995 the services of professional engineering consultant Timothy Warner to assist in the preparation of the upgraded application.

5. WKZF filed the subject renewal application on August 14, 1995. Therein, it noted that the station remained off the air, but that it was developing the engineering to apply for the facilities upgrade.

6. Mr. Warner first reviewed the station's upgrade options on September 26, 1995 and proposed an engineering study to determine whether the use of a directional antenna on an existing tower near Arapahoe, North Carolina, which would save time and money and would allow service to a larger area, would be consistent with the Commission's Rules Section 73.315. WKZF avers that the former licensee's tower site was considered unsafe due to the extensive deterioration of the tower and that even after it became the station licensee, WKZF was not permitted to inspect the station's tower site to determine whether repair was feasible. WKZF estimated at the time that it would take almost as much time, if not more, to return the station to the air using the former authorized site, as it would to obtain authorization from the Commission to implement an upgrade to the station's facilities at the currently proposed site.

7. WKZF states that as the engineering work was being processed and analyzed, it was still ascertaining whether to invest its resources to reconstruct the former, dismantled site, or alternatively, to start anew from a different site. As a result, the work proposed by Mr. Warner and other consulting engineers was temporarily postponed. WKZF avers that prior to the designation of the renewal application for hearing, however, it and its consulting engineers completed the technical work and analysis of the proposed new site. WKZF filed an application for authority to make the proposed changes with the Commission on August 27, 1996. WKZF alleges that, according to delivery and installation time estimates given by technical consultants and equipment manufacturers selected by it to provide equipment and substantially implement the upgrade and necessary site construction activity, it is prepared to have the station back on the air within 60-90 days of the Commission's pending modification application.

Conclusions of Law

8. WKZF argues that it has always been and continues to be its intention to return the station to air and that it presently has the requisite financing and technical capability to put the station back on the air. WKZF pleads that it cannot do anything further until the Commission acts to renew its authorization and

operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. no later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

15. Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

Issue (3) seeks to determine whether, in light of the evidence adduced, grant of the subject renewal of license application would serve the public interest, convenience and necessity.

16. As the Bureau notes in opposition to WKZF's Motion, it is WKZF's burden to demonstrate that its own predesignation conduct was not dilatory. To meet this issue WKZF's asserts that it was not represented by an attorney, that it never intended to remain permanently silent and that it believed that stating in its renewal application that it was silent but will be filing a facilities change application was adequate notice. These assertions are not sufficiently probative to meet its burden of proof. Nor is WKZF's post designation filing of the modification proposal dispositive of the issue. It is in light of WKZF's actions or lack thereof and not that of prior licensees that the issue of public interest, convenience and necessity hinges. Since the adequate proof is lacking, WKZF's Motion for Summary Decision in its favor must be denied.

The Bureau's Countermotion

17. From all the above, it is clear that, absent a modification of facilities, WKZF cannot return the station to the air and that it is the Bureau's policy not to process modification applications of silent stations that have been designated for hearing. In light of this, it is clear that WKZF cannot return the station to the air and cannot meet its burdens under the designated issues.

Bureau's Counter-motion for Summary Decision to Deny WKZF's renewal application must be granted.

Accordingly, IT IS ORDERED that the Motion for Summary Decision, filed August 28, 1996, by WKZF-FM, Inc. IS DENIED.

IT IS FURTHER ORDERED that the Counter-motion for Summary Decision, filed September 13, 1996, by the Mass Media Bureau IS GRANTED.

IT IS FURTHER ORDERED that the renewal application of WKZF-FM, Inc. (File No. BRH-950814UC) for renewal of license for Station WKZF-FM Bayboro, North Carolina IS DENIED and the station's license IS CANCELLED.²

IT IS FURTHER ORDERED that the hearing scheduled for October 1, 1996 IS CANCELLED and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



John M. Frysiak
Administrative Law Judge

² In the event exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d)

EXHIBIT C

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

In the Matter of) MM Docket No. 96-104
)
Southwestern Broadcasting Corporation) File No. BRH-900315UC ⁷
)
For Renewal of License)
for Station KLZK(FM))
Brownfield, Texas)

ORDER

Adopted: November 14, 1996 : Released: November 15, 1996

By the Commission:

1. By this Order the Commission directs the Mass Media Bureau to reinstate nunc pro tunc and expeditiously process a minor modification application filed May 8, 1996 by Southwestern Broadcasting Corporation ("Southwestern"), licensee of Station KLZK(FM), Brownfield, Texas, to modify its facilities to operate on Channel 282C2. KLZK, which is licensed as a Class A FM station,¹ is currently off the air. By Hearing Designation Order ("HDO"), DA-96-657, released April 29, 1996, Southwestern's application for renewal of license of KLZK was set for hearing on issues to determine whether Southwestern has the capability and intent to expeditiously resume the broadcast operation of KLZK(FM), consistent with the Commission's rules, and whether Southwestern has violated 47 C.F.R. §§73.1740 and/or 73.1750 which provide, respectively, that a station may not discontinue operation for more than thirty days without Commission authorization, and that a licensee shall notify the Commission of permanent discontinuance of operation. The HDO further provided that any grant of renewal would be conditioned on the expeditious resumption of operation.

2. In a Summary Decision (S.D.), 11 FCC Rcd 9120 (ALJ 1996), Administrative Law Judge Richard L. Sippel (ALJ) denied Southwestern's renewal application and cancelled its station license. The ALJ recited that, at a June 6, 1996 prehearing conference, the parties indicated that they would attempt to negotiate a consent order to resolve the proceeding. The ALJ also indicated that, in view of Section 403(l) of the Telecommunications Act of 1996,² which added a new Section 312(g) to the Communications Act of 1934, 47 U.S.C. §312(g), under

¹The Bureau upgraded the allotment for KLZK from Channel 280A to Channel 282C2 in 1988. Report and Order, 3 FCC Rcd 6158 (M. M. Bur. 1988).

²Pub. L. No. 104-104, 110 Stat. 56 (1996).

which a broadcast station's license will automatically expire upon the station's failure to broadcast for a consecutive twelve-month period, an important element in a viable settlement would be the Mass Media Bureau's expeditious review of the application filed by Southwestern on May 8, 1996. At a further conference held June 27, 1996, however, the Bureau indicated that despite its extant policy of expeditiously processing applications to assist silent stations in danger of losing their authorizations as a result of the new legislation, see Procedures Announced for Expedited Processing of Applications Filed by Silent Broadcasting Stations (Public Notice)("Expedited Processing"), DA 96-818, released May 22, 1996, the Bureau would not expedite the processing of Southwestern's application because it was filed after release of the HDO. In the circumstances, the ALJ authorized Southwestern to seek summary decision, which it did on July 5, 1996; the Bureau filed a countermotion for summary decision on July 19, 1996. The ALJ granted the Bureau's motion. The Bureau subsequently dismissed Southwestern's application. Southwestern has filed exceptions. In view of the fact that its license will be terminated automatically if it does not resume operation of KLZK before February 9, 1997, Southwestern urges the Commission, first, to issue an order directing the Bureau to process the KLZK modification application and, second, to hold the proceeding in abeyance until Southwestern returns KLZK to the air or the statutory deadline occurs. The Bureau opposes this relief.

3. In determining whether a licensee of a silent station has the requisite capability and intent to expeditiously restore broadcast operations, the Commission's current practice is to consider steps the licensee has taken during the course of the proceeding to return its station to the air. See Keyboard Broadcasting Communication, 10 FCC Rcd 4489 (M. M. Bur. 1995) (matter resolved favorably where, despite questions relating to station's silence for over three years, licensee took steps after designation for hearing to overcome equipment and other problems to return to the air); Cavan Communications, 10 FCC Rcd 2873 (ALJ 1995) (license renewed without objection by the Bureau where licensee acted promptly after designation to make necessary repairs and enter into a Local Marketing Agreement in order to return to the air); David Lee Communications, Inc., 9 FCC Rcd 1656 (ALJ 1994) (license renewed with support of the Bureau where, after designation, licensee entered into time brokerage agreement and resumed operations). Although the Bureau would distinguish these cases, noting that Southwestern failed to take any steps toward resumption of operations prior to the HDO, we believe the better reading of this precedent is that it is not fatal even if the steps taken by the licensee occur after the HDO, whether or not action is required by the Bureau. Furthermore, as noted, the Bureau, in Expedited Processing, announced its policy to assist stations facing the statutory deadline contained in 47 U.S.C. §312(g) by expeditiously acting on applications that are required to return a silent station to the air. The Bureau did not indicate in Expedited Processing an exception to this policy for actions taken after designation for hearing.

4. In this case, following issuance of the HDO on April 29, 1996, Southwestern promptly obtained a new transmitter site for KLZK to operate on Channel 282C2 and filed its application for the new facilities on May 8, 1996. In addition, it prepared a projection of expenses and

obtained a bank letter to cover the costs of construction and initial operation. Assuming favorable action on its application, we estimate it will take approximately sixty days following receipt of a permit for Southwestern to construct the proposed facilities and return KLZK to the air. Although the Bureau has declined to process the application for Channel 282C2 because it was filed post-designation, we are unable to discern a convincing basis for the Bureau's position in light of the aforementioned precedent, which gives decisional weight to efforts made by the licensee after designation to restore service, and the Bureau's own stated intention in Expedited Processing to come to the aid of silent stations in need of expedited application processing. Indeed, there is nothing in the language of Expedited Processing to indicate that the Bureau will not apply expedition to applications filed during the course of a hearing proceeding and the Bureau has offered no sufficient rationale for its refusal to do so here. Therefore, in view of the exigencies of this case, we direct the Bureau to reinstate nunc pro tunc and process Southwestern's May 8, 1996 application on an expedited basis and, if the application is technically complete and otherwise grantable, to issue a construction permit by December 6, 1996 so as to afford sufficient time for Southwestern to construct and resume operations prior to the statutory deadline.³ If the Bureau is unable to complete action on the application within the specified time frame, or, as a consequence of other extrinsic factors, the licensee cannot resume operations before February 9, 1997, the licensee may petition the Commission for such further relief as may be appropriate at that time. While these steps are in progress, we will hold this proceeding in abeyance.

5. ACCORDINGLY, IT IS ORDERED. That the Mass Media Bureau IS DIRECTED to reinstate nunc pro tunc and process Southwestern Broadcasting Corporation's May 8, 1996 modification application in accordance with this order.

6. IT IS FURTHER ORDERED That the August 28, 1996 Consolidated Brief and Exceptions and the application of Southwestern Broadcasting Corporation (File No. BRH-900315UC) for renewal of license of Station KLZK(FM), Brownfield, Texas, ARE HELD IN ABEYANCE pending further order of the Commission.⁴

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

³As noted above, following release of the S.D., the Bureau dismissed Southwestern's modification application. Southwestern should be prepared to resubmit its application and provide any ancillary information needed by the Bureau to meet its December 6, 1996 deadline.

⁴If Southwestern is successful in returning KLZK to the air before the statutory deadline, the General Counsel is delegated authority to reverse the S.D. and grant renewal of license.