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RECEIVED

MAR 23 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 23, 2001

**BY HAND DELIVERY**

Magalie R. Salas, Esquire  
Secretary  
Federal Communications Commission  
Room TW-B204  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Amendment of Section 73.202(b),  
Table of Allotments, FM Broadcast Stations  
(Alva, Mooreland, Tishomingo, Tuttle,  
and Woodward, Oklahoma)  
MM Docket No. 98-155; RM-9082; RM-9133

Dear Ms. Salas:

Transmitted herewith on behalf of Chisholm Trail Broadcasting Co., Inc., are an original and four copies of its "Reply to Opposition to Motion for Leave to Accept Opposition to Petition for Reconsideration," filed in the above-referenced allotment rulemaking proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN  
& OSHINSKY LLP



Andrew S. Kersting  
Counsel for  
Chisholm Trail Broadcasting Co., Inc.

Enclosure

cc: Certificate of Service (w/ encl.) (by hand & first-class mail)  
Mr. Norman Goldstein (w/ encl.) (FCC) (by hand)

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

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**MAR 23 2001**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-155
Table of Allotments,	)	RM-9082
FM Broadcast Stations	)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,	)	
and Woodward, Oklahoma)	)	

To: Chief, Mass Media Bureau

**REPLY TO**  
**OPPOSITION TO MOTION FOR LEAVE**  
**TO ACCEPT OPPOSITION TO**  
**PETITION FOR RECONSIDERATION**

Chisholm Trail Broadcasting Co., Inc. (“Chisholm Trail”), by counsel, and pursuant to Section 1.45 of the Commission’s rules, hereby submits its reply to the “Opposition to Motion for Leave to Accept Opposition to Petition for Reconsideration,” filed March 14, 2001 (“Opposition”), by Ralph Tyler (“Tyler”) in the above-captioned proceeding. In support of this reply, the following is stated:

In his Opposition, Tyler argues that Chisholm Trail did not establish “good cause” for filing its Opposition to Petition for Reconsideration on February 28, 2001, one day beyond the applicable filing deadline, because it did not submit a declaration from the courier service or the law firm’s mail room employees explaining why Chisholm Trail’s opposition pleading was not timely filed with the FCC on February 27, 2001. Opposition, pp. 1-2.

In response to Tyler’s Opposition, attached hereto are three supporting declarations which collectively set forth that the facts and circumstances regarding

Chisholm Trail's attempt to file its Opposition to Petition for Reconsideration on February 27, 2001. Together, the declarations establish that the underlying facts are exactly as Chisholm Trail reported to the FCC in its "Motion for Leave to Accept Opposition to Petition for Reconsideration" ("Motion for Leave"), filed February 28, 2001.

Delphine Davis, who is the legal assistant to Chisholm Trail's FCC counsel, drafted and executed the attached "Statement for the Record" on her own initiative on February 28, 2001. *See* Appendix A. As reflected in her statement, Ms. Davis telephoned Capitol Filing Specialists, LLC ("Capitol Filing") at approximately 2:00 p.m. on February 27, 2001, to inform them that she had a package<sup>1</sup> that was to be delivered to the FCC Secretary's office in Washington, D.C. Ms. Davis states that the filing was later "dispatched" to the mail room at Dickstein Shapiro Morin & Oshinsky LLP ("DSMO")<sup>2</sup> for pick up by Capitol Filing. *Id.*

Ms. Davis' statement is supported by the attached declaration of Dave Christian, who is the Operations Manager for Archer Management Services ("Archer"). Archer provides photocopying, mail, fax, and messenger services on a contract basis to DSMO. Archer's on-site office is located on the lower level of the building in which DSMO's offices are located. *See* Appendix B, ¶1.

As reflected in Mr. Christian's declaration, Archer personnel received a telephone call from Ms. Davis at approximately 2:30 p.m. on February 27, 2001, informing them that a package was ready for pick up on the fourth floor of DSMO. Ms. Davis told Archer staff personnel that the package was to be delivered to the FCC by Capitol Filing later that day. Attached to Mr. Christian's declaration is a copy of an Archer/DSMO internal messenger

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<sup>1</sup> The package contained an original and four copies of Chisholm Trail's Opposition to Petition for Reconsideration, as well as additional service copies for FCC personnel.

<sup>2</sup> DSMO serves as Chisholm Trail's FCC counsel.

request reflecting that Kevin Barnes picked up the package from the fourth floor of DSMO at approximately 2:56 p.m. on February 27, 2001. Mr. Barnes brought the package to Archer's offices on the lower level of the building in which DSMO is located, and placed the package in an outgoing slot. As Mr. Christian explained, packages which are placed in that outgoing slot are picked up by couriers from Capitol Filing. *Id.* at ¶2.

Mr. Christian's declaration makes clear that the procedure set forth above concerning Ms. Davis' forwarding of the Chisholm Trail's opposition pleading to Archer's on-site location for pick up and delivery to the FCC is the same procedure that has been routinely followed by DSMO and Archer for some time. *Id.* at ¶3.

On the morning of February 28, 2001, Archer staff personnel realized that Ms. Davis' package had not been picked up by Capitol Filing the previous day. At approximately 11:00 a.m. on February 28, 2001, an Archer staff person telephoned Ms. Davis to inform her that the package which she intended to have delivered to the FCC the previous day had not yet been picked up by Capitol Filing. *Id.* at ¶4.

According to Archer's staff, the incident concerning Chisholm Trail's intended filing with the FCC on February 27, 2001, is the third time in the past year that Capitol Filing has failed to pick up a package at DSMO for delivery to the FCC. As a result, Archer and DSMO have instituted a new procedure for FCC filings that are to be picked up by Capitol Filing to ensure that they are delivered to the FCC in a timely manner. Whenever DSMO staff personnel have a package to be picked up at Archer's on-site office for delivery to the FCC's Portals location in Washington, D.C., DSMO personnel have been directed to send an e-mail to Archer's on-site office informing Archer personnel that (i) they have a package which is to be picked up by Capitol Filing, and (ii) the approximate time that the package is to be picked up. Archer will then notify the appropriate DSMO personnel from

whom the package was received if Capitol Filing has not picked up the package from Archer's on-site office by 6:00 p.m. that evening. *Id.* at 2.

The supporting declarations of Ms. Davis and Mr. Christian are further substantiated by the attached declaration of Ronnie Foreman, who is the Managing Member of Capitol Filing. Mr. Foreman states that he received a telephone call from Delphine Davis in the late morning of February 28, 2001. During the phone call, Ms. Davis informed Mr. Foreman that she telephoned the office of Capitol Filing on the afternoon of February 27, 2001, and requested that a package be picked up at DSMO's dispatch center and be delivered to the FCC prior to the close of the FCC secretary's office at 7:00 p.m. that day. Ms. Davis also told Mr. Foreman that the package which she had requested be delivered to the FCC the previous day had not yet been picked up from the dispatch center at DSMO. *See* Appendix C, ¶¶1-2.

According to Mr. Foreman, Capitol Filing maintains an internal log in which items are scheduled for pick up and delivery each day. Mr. Foreman stated that the log does not reflect Ms. Davis' pick up/delivery request on February 27, 2001. Mr. Foreman admitted that one of his staff people may have spoken to Ms. Davis on February 27, 2001, and, due to the constant flow of incoming telephone calls that day, inadvertently failed to record Ms. Davis' request in Capitol Filing's pick up/delivery log. Mr. Foreman also admitted that the failed pick up and delivery of Chisholm Trail 's FCC filing would not be the first time that a customer telephoned Capitol Filing to make a pick up/delivery request, the request was not entered into the log book, and Capitol Filing failed to make the requested delivery. *Id.* at ¶3.

As demonstrated above, the attached declarations make clear that Chisholm Trail and its FCC counsel acted diligently and with reasonable prudence to ensure that Chisholm Trail's Opposition to Petition for Reconsideration was delivered to the FCC Secretary's

office in a timely manner on February 27, 2001. The pleading was ready to be picked up and delivered to the FCC no later than 3:00 p.m. that day. Moreover, DSMO staff personnel and the law firm's in-house contractor followed routine procedure in attempting to ensure that the Opposition to Petition for Reconsideration was hand delivered to the FCC in a timely manner on February 27, 2001. Mr. Foreman's declaration indicates that the reason Chisholm Trail's opposition pleading was not picked up by Capitol Filing is because Ms. Davis' pick up/delivery request was never recorded in the courier service's internal log. Mr. Foreman admitted that this is not the first time that an incident like this has occurred. Furthermore, Mr. Christian's declaration establishes that this is the third time that Capitol Filing has failed to fulfill a pick up/delivery request at DSMO within the past year. Chisholm Trail respectfully submits that these facts collectively establish "good cause" to support Chisholm Trail's Motion for Leave.<sup>3</sup>

Tyler's Opposition implicitly acknowledges that he was not prejudiced by Chisholm Trail's February 28<sup>th</sup> filing, nor could he be because the courier service's failure to pick up and deliver Chisholm Trail's opposition pleading did not affect the copies of the pleading that were mailed to the parties to the proceeding on February 27, 2001.

In addition, Tyler's argument that Chisholm Trail's opposition pleading should be subject to the same jurisdictional requirements set forth in Section 405 of the

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<sup>3</sup> The reason that Chisholm Trail's counsel did not attempt to obtain the attached declarations to support its February 28, 2001, Motion for Leave is because, as stated therein, the undersigned counsel did discover that Chisholm Trail's Opposition to Petition for Reconsideration had not been filed with the FCC until approximately 11:00 a.m. on February 28<sup>th</sup>. At that time, Chisholm Trail's counsel made every effort to ensure that the opposition pleading and accompanying Motion for Leave were filed with the Commission that same day. Rather than relying on the same courier service that had failed to pick up the package the previous day, Chisholm Trail's FCC counsel requested one of the firm's paralegals to hand deliver Chisholm Trail's opposition pleading to the FCC (which is outside the paralegals' assigned duties), and requested that the paralegal provide him with a stamped-in copy of the filing as soon as the paralegal returned.

Communications Act that govern petitions for reconsideration is without any merit whatsoever. Indeed, Tyler failed to cite any precedent to support his novel proposition. *See* Opposition, p. 2.

Finally, Tyler's vigorous attack upon Chisholm Trail's Motion for Leave is rather ironic. Tyler does not hesitate to criticize Chisholm Trail's FCC counsel for his reliance upon his law firm's use of a well-recognized courier service in the Washington, DC area, which unfortunately resulted in an opposition pleading being filed one day beyond the applicable filing deadline. At the same time, however, Tyler has admitted in this proceeding that he was extremely dilatory in bringing material misrepresentations to the Commission's attention, even after he had complete knowledge of those misrepresentations.<sup>4</sup> In his December 11, 1998, declaration ("Tyler Declaration"), Tyler admits that on October 29, 1998, Randall Mullinax "misled" an FCC field inspector concerning KTSH's "technical facilities" during a conference telephone call between Tyler, Mullinax, and the FCC inspector.<sup>5</sup> Tyler's Declaration also claimed that he was concerned enough about Mullinax's misrepresentations to the FCC inspector that he called his FCC counsel immediately after Mullinax advised him that he had lied to the FCC inspector. *Id.* However, in a subsequent response to an FCC inquiry letter, Tyler admitted that he did not advise the Commission of Mullinax's misrepresentations until approximately six weeks

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<sup>4</sup> This assumes, of course, that Tyler had no knowledge of the contents of *his* October 1, 1998, letter to the FCC in which he stated that KTSH was off the air "due to antenna failure." *See* Letter dated October 1, 1998, from Ralph Tyler to Magalie Roman Salas, Esquire (copy appended to Chisholm Trail's November 3, 1998, Reply Comments as Appendix C).

<sup>5</sup> A copy of Tyler's Declaration is appended to Chisholm Trail's Opposition to Petition for Reconsideration as Appendix A.

later, and only after Chisholm Trail had brought these matters to the Commission's attention through the filing of its November 3, 1998, Reply Comments.<sup>6</sup>

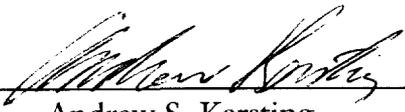
WHEREFORE, in light of the foregoing, Chisholm Trail Broadcasting Co., Inc. respectfully requests that the Tyler's Opposition to Chisholm Trail's Motion for Leave be DENIED, and that its Motion for Leave to Accept Opposition to Petition for Reconsideration be GRANTED.

Respectfully submitted,

Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, DC 20037-1526  
(202) 785-9700

Attorneys for

CHISHOLM TRAIL  
BROADCASTING CO., INC.

By:   
Andrew S. Kersting

March 23, 2001

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<sup>6</sup> See FCC Letter dated May 7, 1999; Letter dated June 18, 1999 from Ralph Tyler to Norman Goldstein, pp. 5-6. A copy of the FCC's May 7, 1999, inquiry letter and the relevant portions of Tyler's response thereto, dated June 21, 1999, are appended hereto as Appendix D).

**APPENDIX A**

**Statement by Delphine Davis**  
**(Dated February 28, 2001)**

**STATEMENT FOR THE RECORD**

I, Delphine I. Davis, on February 27, 2001 called the CFS courier service around 2pm for a Portals filing pickup for the Federal Communications Commission. The filing was dispatched to our mail room for pickup by the courier service.

On February 28, 2001, I received a call from the our firm's mail room stating that CFS courier did not pickup our Portals filing last night from the firm's mail room.



Delphine Davis

2/28/01

Date

**APPENDIX B**

**Declaration of Dave Christian**  
**(Dated March 20, 2001)**

## DECLARATION OF DAVE CHRISTIAN

I, Dave Christian, hereby declare and state the following:

1. I am the Operations Manager for Archer Management Services (Archer), which provides photocopying, mail, fax, and messenger services on a contract basis to the law firm of Dickstein, Shapiro, Morin & Oshinsky LLP (DSMO). Archer's on-site office is located on the lower level of an office building at 2101 L Street, NW, Washington, DC, in which DSMO is located. I have served as the Operations Manager of Archer for the past 4 month's, as Area Manager for the past 3 years and as the Site Manager at DSMO for 1 year.

2. Based on discussions with my staff, it is my understanding that our office received a telephone call from Delphine Davis at approximately 2:30 p.m. on February 27, 2001, informing us that a package was ready for pickup on the fourth floor of our building. The package, called in for pick-up by Ms. Davis, was to be delivered to the Federal Communications Commission (FCC) by Capitol Filing Specialists, LLC (Capitol Filing) later that day. Attached hereto is a copy of an Archer/DSMO internal messenger request reflecting that Kevin Barnes picked up the package from the fourth floor of DSMO at 2:56 p.m. on February 27, 2001. Mr. Barnes brought the package to Archer's offices on the lower level of the building in which DSMO is located and placed the package in an outgoing slot. Packages which are placed in the outgoing slot are picked up by couriers for DHL or Capitol Filing.

3. The procedure set forth above which Ms. Davis and Archer followed with respect to the intended filing of Ms. Davis' package with the FCC is the same procedure that has been routinely followed by DSMO and Archer for some time.

4. On the morning of February 28, 2001, Archer staff personnel realized that Ms. Davis' package had not been picked up by Capitol Filing the previous day. At approximately 11:00 a.m. on February 28, 2001, Jennifer Eason telephoned Ms. Davis to inform her that the

package which she intended to have delivered to the FCC the previous day had not yet been picked up by Capitol Filing.

4. I have been advised that this is the third time that Capitol Filing has failed to pick up a package for delivery to the FCC in the past 12 months. In light of this fact, Archer and DSMO have instituted a new procedure for FCC filings that are to be picked up by Capitol Filing. Whenever DSMO staff personnel have a package to be picked up at Archer's on-site office for delivery to either the FCC's Portals location in Washington, D.C. or the Mellon Bank in Pittsburgh, Pennsylvania, DSMO personnel have been directed to send an e-mail to Archer's on-site office (Rick Ray, Site Manager) informing Archer personnel that (i) they have a package which is to be picked up by Capitol Filing, and (ii) the approximate time that the package is to be picked up. Archer will notify the appropriate DSMO personnel from whom the package was received if Capitol Filing has not picked up the package from DSMO by 6:00 p.m. that evening.

I hereby certify that the statements set forth above are true and correct to the best of my knowledge and belief.

Signed and dated this 20<sup>th</sup> day of March, 2001.

  
\_\_\_\_\_  
Dave Christian  
Operations Manager

# AMS / DSMO INTERNAL MESSENGER REQUESTS

Date	2/27/01	Time Received	2:56	Time Completed	
Requestor	D. Carter	Phone Ext.			
Location	4	Assigned Messenger	H. W. W.		
<input type="checkbox"/> Fax Request	<input type="checkbox"/> Copy Request	<input checked="" type="checkbox"/> Other	Filing		
<input type="checkbox"/> Messenger Request	<input type="checkbox"/> Boxes (#)			Hand Truck	

**APPENDIX C**

**Declaration of Ronnie Foreman**  
**(Dated March 21, 2001)**

**DECLARATION OF RONNIE FOREMAN**

I, Ronnie Foreman, hereby declare and state the following:

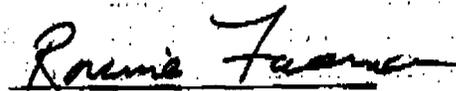
1. I am the Managing Member of Capitol Filing Specialists, L.L.C. (Capitol Filing). I have served in this position with Capitol Filing or a similar management position with its predecessor-in-interest, Berry Best, for the past three years.

2. In the late morning of February 28, 2001, I received a telephone call from Delphine Davis. Ms. Davis told me that she telephoned the office of Capitol Filing on the afternoon of February 27, 2001, and requested that a package be picked up at the dispatch center of the law firm of Dickstein Shapiro Morin & Oshinsky LLP (DSMO), which was to be delivered to the Federal Communications Commission (FCC) prior to the close of the FCC secretary's office at 7:00 p.m. that day. Ms. Davis also told me that the package which she had requested be delivered to the FCC the previous day had not yet been picked up from the dispatch center at DSMO.

3. Our log book, in which we enter items scheduled for pickup and delivery each day, does not reflect a request from Ms. Davis on February 27, 2001. Although it would be unusual, it is possible that one of our staff people spoke to Ms. Davis on February 27, 2001, and, due to the constant flow of incoming telephone calls that day, did not record Ms. Davis' request in our pickup/delivery log. On one previous occasion, we experienced a similar situation in which a customer telephoned our office to make a pickup/delivery request, the request did not get entered into our log book, and Capitol Filing did not make the requested delivery.

I hereby certify that the statements set forth above are true and correct to the best of my knowledge and belief.

Signed and dated this 21<sup>st</sup> day of March, 2001.



Ronnie Foreman  
Managing Member

**APPENDIX D**

**Copy of FCC Inquiry Letter, Dated May 7, 1999,**  
**and Relevant Portions of Ralph Tyler's Response Thereto,**  
**Filed June 21, 1999**

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

IN REPLY REFER TO:  
1800C1-JWS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ralph Tyler  
Licensee, KTSH(FM)  
5105 S. Shields Boulevard  
Oklahoma City, Oklahoma 73129

South Central Oklahoma Christian Broadcasting, Inc.  
Permittee, KAZC(FM)  
Route 5, Box 119  
Ada, Oklahoma 74820

Dear Licensee/Permittee:

The Commission has received information which raises questions about certain representations made by Ralph Tyler (“Tyler”) with regard to Station KTSH(FM), Tishomingo, Oklahoma. Those representations and related circumstances, in turn, raise questions about a representation made in the application of South Central Oklahoma Christian Broadcasting, Inc. (“SCOCB”) for the license to cover the construction of Station KAZC(FM), Tishomingo, Oklahoma. Finally, the representations of Tyler and SCOCB, when considered in conjunction with allegations from Chisholm Trail Broadcasting Co., raise questions about compliance with staffing requirements for KAZC’s main studio.

The Commission has not reached any determination with respect to these matters. However, in order that we may be more fully informed, we request answers to the questions asked herein.

I. By letter dated October 1, 1998, Tyler represented to the Commission that “due to antenna failure on September 28, 1998, the operation of KTSH(FM) has been temporarily suspended.” On October 29, 1998, KTSH engineer Randall C. Mullinax (“Mullinax”) apparently informed an FCC inspector that the “bullet in the lower bay [of the antenna] had failed.” Information submitted to the Commission indicates, however, that Mullinax deliberately took the station off the air and donated some of KTSH’s equipment to KAZC with Tyler’s knowledge and that none of the antenna bays for KTSH had been damaged prior to removal of the lowest bay by Mullinax. In view of the foregoing:

1. Who drafted the October 1, 1998, letter referenced above?

2. Who decided to temporarily suspend the operations of KTSH?
3. When was that decision made?
4. Who decided to donate KTSH equipment to KAZC?
5. What KTSH equipment was to be donated?
6. When was it decided that KTSH equipment was to be donated to KAZC?
7. When was the equipment actually donated?
8. When and how did KTSH communicate to KAZC that equipment was to be donated?
9. What understanding did anyone connected with KTSH have as to when KAZC was going to have a lease agreement for facilities at KAZC's specified tower site? Explain how such understanding was acquired, and identify the persons with the understanding.
10. Who authorized the retuning of KTSH's transmitter?
11. When was that decision made?
12. If Tyler did not make that decision, when was that decision communicated to Tyler?
13. Who authorized the removal of the bottom bay of KTSH's antenna?
14. When was that decision made?
15. If Tyler did not make that decision, when was that decision communicated to Tyler?
16. Did anyone connected with KTSH ever communicate to the Commission that the October 1, 1998, letter, did not completely and accurately relate why KTSH's operations were temporarily suspended? If yes, state when and how such information was communicated to the Commission. If not, explain why not.
17. Who is the FCC inspector referenced in the December 10, 1998, "Declaration of Randall C. Mullinax (which appears as an attachment to the December 14, 1998, "Response of Ralph Tyler")?"
18. When and how was it communicated to the FCC that information given by Mullinax to the FCC inspector (as described in his December 10, 1998, Declaration) was inaccurate?
19. Who authorized the repair of KTSH's facilities after it had ceased broadcasting in September 1998?
20. When did such occur?
21. Describe the steps taken to restore KTSH's facilities.
22. When did KTSH resume broadcasting?
23. What program service did KTSH use upon resumption of broadcast operations?

II. The construction permit application for KAZC (File No. BPED-970127MD) represented that the center of radiation for KAZC's 3-bay antenna would be at the same height above ground as the center of radiation for KTSH's 6-bay antenna (*i.e.*, 77 meters). It further represented that the KAZC antenna would be located on the opposite side of the tower from the KTSH antenna. The permit authorized construction of the requested facilities. KAZC's license application (File No. BLED-981002KA) represented that there were no differences between the facilities authorized in the KAZC

construction permit and the constructed facilities. However, it appears that KAZC commenced operations on September 29, 1998, with a single bay antenna located on the same side as the KTSH antenna at a height lower than that authorized. In view of the foregoing:

1. Explain why the KAZC license application represented there were no differences between the authorized and the constructed facilities.
2. When did anyone on behalf of KAZC enter into a lease for that station for space at the station's designated tower site?
3. Who on behalf of KAZC negotiated for space at the station's designated site?
4. When did such negotiations commence?
5. Provide a copy of the lease agreement for KAZC.
6. With respect to the 3-bay antenna described in KAZC's construction permit application, what efforts were made by anyone on behalf of KAZC to obtain such an antenna prior to October 2, 1998? As to any efforts described, identify all persons referenced, including any title(s) they hold in SCOCB.
7. When did anyone connected with KAZC learn that the antenna initially used for the station was not the antenna described in the construction permit application?
8. When was the KAZC antenna mounted at the location authorized in the station's construction permit?

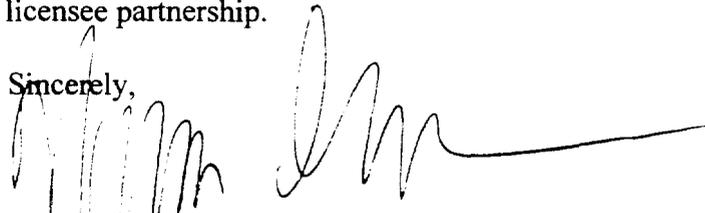
III. Information submitted to the Commission indicates that the individual(s) responsible for the operation of KTSH immediately prior to its shutdown on September 28, 1998, may have been the same as those responsible for KAZC's operation when it commenced broadcasting on September 29, 1998. Moreover, it appears that KAZC did not have a full-time employee at the station until as late as January 18, 1999, when Mike Huddleston ("Huddleston") became a full-time general manager. In view of the foregoing:

1. Describe how Station KAZC has complied with the main studio staffing requirements enunciated in *Jones Eastern of the Outer Banks, Inc.*, 7 FCC Rcd 7309 (1992); 10 FCC Rcd 3759 (1995) from September 29, 1998, to the date of this letter.

Pursuant to Section 73.1015 of the Commission's Rules, you are requested to respond to this inquiry. Please respond within thirty (30) days of the date of this letter. Failure to answer fully will constitute a violation under Section 73.1015 of our rules and may subject you to serious sanctions. Commission policy requires that responses to its

inquiries be signed by the licensee (or permittee), an officer or director of a licensee corporation, or a general partner of a licensee partnership.

Sincerely,

A handwritten signature in black ink, appearing to read 'Norman Goldstein', with a long horizontal flourish extending to the right.

Norman Goldstein, Chief  
Complaints and Political Programming Branch  
Enforcement Division  
Mass Media Bureau

cc: Gary S. Smithwick, Esq.  
William H. Crispin, Esq.  
Andrew S. Kersting, Esq.

LAW OFFICES  
SMITHWICK & BELENDIUK, P.C.

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GARY S. SMITHWICK  
ARTHUR V. BELENDIUK

COUNSEL

DIRECT DIAL NUMBER:

WILLIAM M. BARNARD  
JAMES K. EDMUNDSON  
ROBERT W. HEALY

June 21, 1999

(202) 822-1227  
E-Mail: jkewva@aol.com

Magalie Roman Salas, Esquire  
Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-A325  
Washington, D.C. 20554

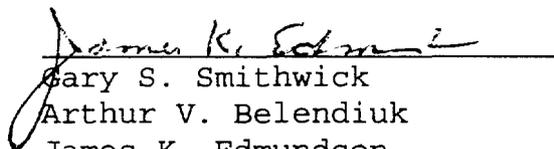
In re: Station KTSH(FM)  
Tishomingo, Oklahoma  
FCC Ref. 1800C1-JWS

Dear Ms. Salas:

Herewith on behalf of our client, Ralph Tyler, the licensee of Station KTSH(FM), Tishomingo, Oklahoma, are an original and two copies of his response to the letter, date stamped May 7, 1999 from Norman Goldstein, Chief, Complaints and Political Programming Branch, Enforcement Division, Mass Media Bureau.

Please direct inquiries concerning this submission to the undersigned.

Sincerely,

  
Gary S. Smithwick  
Arthur V. Belendiuk  
James K. Edmundson

Enclosures

cc with enclosures: Norman Goldstein, Chief  
Complaints and Political Programming Branch  
Leslie K. Shapiro, FCC  
William H. Crispin, Esquire  
Andrew S. Kersting, Esquire

June 18, 1999

Mr. Norman Goldstein, Chief  
Complaints and Political Programming Branch  
Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 3-A465  
Washington, D.C. 20554

In re: Station KTSH(FM)  
Tishomingo, Oklahoma  
FCC Ref. 1800C1-JWS

Dear Mr. Goldstein:

This is in response to your letter, date-stamped May 7, 1999, requesting information inter alia about certain representations made by me with regard to Station KTSH(FM), Tishomingo, Oklahoma. I understand that the Commission has not reached any determination with respect to these matters, but that in order that it may be more fully informed, has requested me to respond to the questions posed under Part I and South Central Oklahoma Christian Broadcasting, Inc. (hereafter "South Central"), permittee of Station KAZC(FM), Tishomingo, Oklahoma, to respond to the questions posed under Parts II and III. I have, however, reviewed South Central's responses and believe them to be correct. The responses below are keyed to the questions asked.

1. **Who drafted the October 1, 1998 letter referenced above?** Randall C. Mullinax drafted the October 1, 1998 letter. Ralph Tyler read and signed the

letter and authorized Mr. Mullinax to file it with the FCC.

2. **Who decided to temporarily suspend the operations of KTSH?** Mr. Tyler decided to temporarily suspend the operations of KTSH and authorized Randall Mullinax to take the station off-the-air.
3. **When was that decision made?** The decision was made on August 28, 1998 in consultation with Mr. Tyler's communications counsel, Gary S. Smithwick, and his engineering consultant, William G. Brown.
4. **Who decided to donate KTSH equipment to KAZC?** Mr. Tyler decided to donate KTSH equipment to KAZC.
5. **What KTSH equipment was to be donated?** The KTSH equipment to be donated was the station's transmitter, transmission line and miscellaneous studio equipment, a list of which is annexed hereto as Appendix A.
6. **When was it decided that KTSH equipment was to be donated to KAZC?** Mr. Tyler does not recall when he decided to donate KTSH equipment to South Central, but to his recollection such decision was made sometime subsequent to the grant of the construction permit to South Central on October 14, 1997.

Mr. Tyler acquired the KTSH construction permit from South Central, pursuant to Commission consent, granted March 10, 1996 (BAPH-960111B6) (FCC Report No. 43705, p. 13, released March 29, 1996). In the Agreement for the Assignment of Construction Permit, Mr. Tyler inter alia agreed to provide

12. **If Tyler did not make that decision, when was that decision communicated to Tyler? See Response to Paragraph 10.**
  
13. **Who authorized the removal of the bottom bay of KTSH's antenna? Mr. Tyler did not specifically authorize the removal of the bottom bay of the KTSH antenna. Mr. Mullinax obtained permission from KTEN-TV's then Chief Engineer (Bob Sailors) temporarily to install the KAZC one bay antenna in place of the KTSH bottom bay. Replacing the KTSH bottom bay with the KAZC one bay antenna would maintain approximately the same wind loading on the tower and would enable Mullinax to utilize the KTSH transmission line in the KAZC installation.**
  
14. **When was that decision made? See Response to Question 13.**
  
15. **If Tyler did not make that decision, when was that decision communicated to Tyler? Mr. Mullinax informed Mr. Tyler either shortly before or shortly after he replaced the KTSH bottom bay with the KAZC antenna.**
  
16. **Did anyone connected with KTSH ever communicate to the Commission that the October 1, 1998 letter, did not completely and accurately relate why KTSH's operations were temporarily suspended? If yes, state when and how such information was communicated to the Commission. If not, explain why not. In a Declaration dated December 11, 1998, and filed with the Commission with the December 14, 1998 Response of Ralph Tyler in Docket 98-155, Mr. Tyler advised the Commission that the October 1, 1998 letter did not completely and accurately**

relate why KTSH's operations were temporarily suspended. Copies of the Response were also sent to Mr. Glenn Greisman of the Audio Services Division, to the Washington office of the Compliance and Information Bureau and to Mr. James D. Wells of the Dallas Office of the Compliance and Information Bureau (see counsel's letter of December 14, 1998 annexed hereto as Appendix E).

17. **Who is the FCC inspector referenced in the December 10, 1998, "Declaration of Randall C. Mullinax (which appears as an attachment to the December 14, 1998, "Response of Ralph Tyler")?** The FCC inspector referenced in the December 10, 1998 Declaration of Randall C. Mullinax is Larry Brock.
18. **When and how was it communicated to the FCC that information given by Mullinax to the FCC inspector (as described in his December 10, 1998, Declaration) was inaccurate?** The FCC was advised that information given by Mr. Mullinax to the FCC inspector was inaccurate in the December 11, 1998 Declaration of Mr. Tyler and the December 10, 1998 Declaration of Mr. Mullinax, which are attached to the December 14, 1998 Response of Ralph Tyler filed in Docket 98-155. See also response to Question 16.
19. **Who authorized the repair of KTSH's facilities after it had ceased broadcasting in September 1998?** As stated in the above-referenced Declarations of Messrs. Tyler and Mullinax, the KTSH facilities were not in need of repair after it had ceased broadcasting in September, 1998.
20. **When did such occur?** See prior response.

Mr. Norman Goldstein, Chief  
June 18, 1999  
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Sincerely,

*Ralph H. Tyler*

Ralph Tyler

cc with enclosures: William H. Crispin, Esquire  
Andrew S. Kersting, Esquire

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of March, 2001, a copy of the foregoing  
REPLY TO OPPOSITION TO MOTION FOR LEAVE TO ACCEPT OPPOSITION  
TO PETITION FOR RECONSIDERATION was sent by first-class mail, postage prepaid,  
to the following:

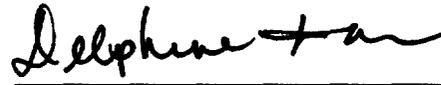
John A. Karousos, Chief\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
The Portals II  
445 Twelfth Street, S.W.  
Room 3-A266  
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Ms. Leslie K. Shapiro\*  
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Delphine Davis

\* Hand Delivered