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JUN 15 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 15, 2001

BY HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th 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 "Opposition to Application for Review," filed in the above-referenced 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
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and Woodward, Oklahoma))	

To: The Commission

**OPPOSITION TO
APPLICATION FOR REVIEW**

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June 15, 2001

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SUMMARY

As demonstrated herein, the *Report and Order* and *Memorandum Opinion and Order* properly denied Tyler's proposal to reallocate Channel 259C3 from Tishomingo to Tuttle, Oklahoma.

It is undisputed that Station KAZC does not provide a city-grade signal to any portion of Tishomingo, and that only 23% of those people who currently receive service from Station KTSH reside within KAZC's 60 dBu service contour. Accordingly, the Mass Media Bureau's Allocations Branch (the "Bureau") properly found that the removal of KTSH from Tishomingo would violate the policy expressed in the *Change of Community* rulemaking orders in which the Commission announced that "the public has a legitimate expectation that existing service will continue." *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990) (reconsideration order). Moreover, the proposed reallocation of KTSH from Tishomingo to Tuttle would further deprive a substantial underserved area such that 8,900 people would be left with only two nighttime services. Thus, the Bureau properly concluded that Tyler's reallocation proposal would not result in a preferential arrangement of allocations.

Although Tyler initiated the filing of an application on the eve of the reconsideration deadline in this proceeding which sought to upgrade Station KAZC to a Class C3 facility, it is well established that the Commission will not accept proposals that are contingent upon the final approval of changes involving other broadcast stations. Thus, the Bureau properly declined to consider the pending KAZC modification application in analyzing Tyler's reallocation proposal. Furthermore, the circumstances surrounding the preparation and filing of the KAZC modification application, as well as the initial technical proposal set forth therein, provide further evidence that Tyler is the real-party-in-interest in

KAZC and that the station continues to be nothing more than a pawn in his scheme to move KTSH from rural Oklahoma into a bedroom community of Oklahoma City. Therefore, even assuming, *arguendo*, that the Commission elects to consider the KAZC modification application in connection with Tyler's Application for Review, the Commission would need to address the serious and repeated misrepresentations that Tyler made to the Commission in connection with his reallocation proposal as well as the uncontroverted evidence which establishes that Tyler is the real-party-in-interest in KAZC.

For all of these reasons, Tyler's Application for Review should be denied.

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

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To: The Commission		

**OPPOSITION TO
APPLICATION FOR REVIEW**

Chisholm Trail Broadcasting Co., Inc. (“Chisholm Trail”), licensee of Station KNID(FM), Alva, Oklahoma, by counsel, and pursuant to Section 1.115(d) of the Commission’s rules, hereby submits its opposition to the Application for Review, filed May 31, 2001, by Ralph Tyler (“Tyler”), which seeks review of the Mass Media Bureau’s Allocations Branch’s *Report and Order*, DA 00-2885 (released December 22, 2000), and *Memorandum Opinion and Order*, DA 01-929 (released April 13, 2001) (“*MO&O*”), in the above-captioned proceeding. In support of this opposition, the following is stated:

I. Introduction.

On December 22, 2000, the Mass Media Bureau’s Allocations Branch (the “Bureau”) released the above-referenced *Report and Order*, which, *inter alia*, denied Tyler’s proposal to reallocate Channel 259C3 from Tishomingo, Oklahoma to Tuttle, Oklahoma. The Bureau properly found that the city-grade contour of Station KAZC(FM), Tishomingo, does not cover any portion of the Tishomingo community, and that only 23% of those people who currently receive service from Station KTSH are within KAZC’s 60

dBu service contour. *Report and Order* at ¶16. Accordingly, the Bureau found that Station KAZC does not constitute a satisfactory replacement for KTSH at Tishomingo in accordance with *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) (“*Change of Community R&O*”), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (“*Change of Community MO&O*”). Therefore, the Bureau concluded that Tyler’s proposed reallocation of Channel 259C3 from Tishomingo to Tuttle effectively constituted a request to remove the community’s sole existing service, and, thus, triggered the same allotment priority as his proposal to bring a first local service to Tuttle. *Report and Order* at ¶16. Based on its analysis of the respective communities of Tishomingo and Tuttle, the Bureau found that Tyler failed to present a sufficiently compelling public interest benefit to warrant the removal of what, in effect, is Tishomingo’s sole local aural service. *Id.* at ¶17.

On reconsideration, the Bureau affirmed its earlier determination that Station KAZC does not constitute “an adequate substitute and that the removal of Station KTSH would be analogous to the removal of a sole local service.” *MO&O* at ¶4. Although the Bureau acknowledged that KAZC’s pending application for a construction permit (File No. BMPED-20010126ABC) may eventually enable the noncommercial station to replicate Station KTSH’s existing service to the Tishomingo community, the Bureau properly concluded that the pending KAZC modification application is analogous to a vacant allotment or unconstructed permit, neither of which cures the disruption to the public’s legitimate expectation of continued service. *Id.* Therefore, the Bureau denied Tyler’s reconsideration petition.

II. Tyler's Application for Review.

Tyler claims that the Bureau erred by concluding that KAZC does not constitute an adequate replacement service for KTSH at Tishomingo. In support of his position, Tyler relied upon four allotment cases which involved facts substantially different from those presented by Tyler's reallocation proposal. Without citing any supporting precedent, Tyler also argued that the Bureau erred by not considering Station KAZC's pending modification application which, if granted, would enable KAZC to replicate KTSH's existing service contour.

III. The Bureau Properly Concluded that Tyler's Reallocation Proposal Would Not Result in a Preferential Arrangement of Allotments.

The only case cited by Tyler which involved a reallocation proposal that left a community with a noncommercial FM station as its only local transmission service is *Everglades City, LaBelle, Estero, and Key West, Florida*, 15 FCC Rcd 9427 (A.B. 2000) ("*Estero*"). See Application for Review, p. 6. Although Tyler claims that the *Report and Order* is inconsistent with *Estero*, the facts in *Estero* are substantially different from those concerning Tyler's reallocation proposal. Tyler seeks to remove a Class C3 facility from Tishomingo and leave the community with a noncommercial FM station which operates with only 1.75 kilowatts of power. In *Estero*, on the other hand, both the commercial and noncommercial station operated with Class A facilities.¹ Moreover, unlike KAZC, the noncommercial station in *Estero* did not provide an inferior signal to its assigned community such that it (i) failed to provide a city-grade signal to any portion of its community of license, and (ii) placed a 60 dBu service contour over only 23% of those people who were receiving service from the commercial station which sought to leave the

¹ Although the commercial station in *Estero* was operating on a Class C3 allotment, it did not file an application to upgrade to a Class C3 facility until after the Bureau issued a Report and Order in that proceeding. See File No. BPH-20000717ABN.

community. In addition, although the reallocation proposal in *Estero* resulted in a loss of service to over 17,000 people, the loss of service did not warrant the denial of the proposal because the entire loss area would continue to be well served. 15 FCC Rcd at 9430-31. In this case, however, 25% of the area between the KTSH and KAZC service contours -- which encompasses 8,900 people -- would receive only two nighttime services.² Therefore, unlike the proposal in *Estero*, Tyler's reallocation proposal would further deprive a large underserved area of available nighttime service.

Furthermore, both the commercial and noncommercial stations in *Estero* were licensed facilities. Unlike KAZC, the noncommercial station in *Estero* did not make material misrepresentations in submitting its license application to the Commission, and was not the subject of a pending Informal Objection.³ There was no issue concerning whether the station's program test authority should be revoked. Therefore, despite Tyler's reliance upon *Estero*, the facts in *Estero* are markedly different from those concerning Tyler's reallocation proposal.

Tyler also cites *Pauls Valley and Healdton, Oklahoma*, 14 FCC Rcd 3932 (A.B. 1999), in which the Bureau granted a Class C3 FM station's change-in-community-of-license proposal and left the station's former community with a daytime-only AM station. Unlike KAZC, however, which does not provide a city-grade signal to any portion of Tishomingo, the AM station in *Pauls Valley* provided a city-grade signal to its entire community of license. There also was no evidence in *Pauls Valley* that the AM station's 60

² See Tyler Application for Review, p. 7.

³ Chisholm Trail filed an "Informal Objection and Request to Revoke Program Test Authority" ("Informal Objection") against the KAZC license application on December 21, 1998, which demonstrated that Tyler's long-time station engineer made material misrepresentations of fact in completing the technical portion of KAZC's pending license application.

dBu service contour would cover only 23% of those people who previously received service from the departing FM station. Further, unlike Tyler's reallocation proposal, there was no indication that the loss of the FM station would further deprive a substantial underserved area of available nighttime service by leaving nearly 9,000 people with only two nighttime services.

Tyler also relies upon two other cases in which the Bureau granted an FM station's change-in-community-of-license proposal and left a community with only a daytime-only AM station. See Application for Review, pp. 5-6, citing *Ravenswood and Elizabeth, West Virginia*, 10 FCC Rcd 3181 (A.B. 1995) ("*Ravenswood*"), and *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (A.B. 1992) ("*Scotland Neck*"). Both of these cases, however, are distinguishable from Tyler's reallocation proposal. In *Ravenswood*, the FM station's former community of license continued to be served by at least five full-time reception services and a construction permit had been issued for a new FM station in the community. 10 FCC Rcd at 3181. Moreover, all but 86 people in the loss area would continue to receive five full-time reception services, and those 86 people would continue to be served by four full-time reception services. *Id.* at n. 4. In addition, a significant portion of the gain area was underserved such that (i) 918 people received only two full-time reception services; (ii) 1,082 people were served by only three full-time reception services; and (iii) 6,056 people received only four full-time reception services. *Id.*

The reallocation proposal in *Scotland Neck* also did not involve an underserved loss area. *Scotland Neck* continued to be served by seven FM stations as well as the daytime-only AM station licensed to that community. Unlike KAZC, the daytime-only AM station would continue to provide a city-grade signal to *Scotland Neck*. Moreover, unlike KTSH, the Class C3 FM station which moved to Pinetops, North Carolina,

continued to place a 60 dBu service contour over its former community of license. 7 FCC Rcd at 5113.

Although Tyler claims that the Bureau's *Report and Order* is inconsistent with Commission precedent, as demonstrated above, the cases cited by Tyler are substantially different from Tyler's reallocation proposal. In this case, the following facts are undisputed: (1) KAZC does not provide a city-grade signal to any portion of Tishomingo; (2) KAZC provides a 60 dBu service contour to *only 23%* of the people that currently receive service from KTSH; (3) the loss of KTSH would result in a substantial underserved area encompassing 8,900 people who would receive only two nighttime reception services; and (4) the Tishomingo community would lose a much needed local transmission service which various community leaders desperately seek to retain.⁴

In analyzing Tyler's reallocation proposal, the Bureau properly applied the appropriate legal standard set forth in the *Change of Community MO&O*. In comparing the relative coverage provided by Stations KTSH and KAZC to the Tishomingo community, the Bureau properly concluded that Tyler's reallocation proposal would violate the "legitimate expectation" of Tishomingo residents that the existing service they currently receive from Station KTSH will continue. *Change of Community MO&O*, 5 FCC Rcd at 7097.

⁴ As stated in the *Report and Order*, Chisholm Trail's comments in this proceeding contained letters from the mayor of Tishomingo, the President of the Johnston County Chamber of Commerce, and pastors of several local churches. Each of the various letters sought to retain Station KTSH, stating that the local radio station provided a needed service to the Tishomingo community. See *Report and Order* at ¶8.

IV. The *Report and Order* Is Consistent With Section 307(b) of the Communications Act, FCC Rules, and Commission Precedent.

Although not altogether clear, Tyler appears to argue that because Station KAZC is assigned to the Tishomingo community for Section 307(b) purposes, the Bureau erred in comparing the level of service provided by KAZC and KTSH. Tyler contends that because KAZC provides the minimal level of service to Tishomingo required by Section 307(b) of the Communications Act of 1934, as amended (the “Act”), the Bureau erred in concluding that KAZC does not constitute an adequate replacement service for KTSH at Tishomingo.⁵ As demonstrated below, however, Tyler misconstrues the relationship between Section 307(b) and the Commission policy reflected in *Change of Community R&O* and *Change of Community MO&O*.

A. Change in the FCC’s Technical Rules.

Prior to January 19, 2001, FM stations operating in the reserved band were not required to provide any level of signal strength to their community of license. However, in the *Second Report and Order* in MM Docket No. 98-93, the FCC modified its rules to require noncommercial FM stations to provide a minimum field strength signal of 60 dBu over at least 50% of the station’s community of license, or 50% of the population within that community.⁶ See 47 C.F.R. §73.515. Based on this change in the Commission’s technical rules regarding noncommercial FM stations, Tyler draws the following conclusion:

⁵ See Application for Review, pp. 4-6, and notes 8 and 12.

⁶ *Second Report and Order* in MM Docket No. 98-93, 1998 *Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, FCC 00-368 (released November 1, 2000) (“*Streamlining Order*”). The changes in the Commission’s technical rules became effective on January 19, 2001. See *Id.* at ¶49; 65 Fed.Reg. 79773 (December 20, 2000).

The Commission has, therefore, specifically found that a NCE-FM station satisfies Section 307(b) by providing 60 dBu service to 50% of the area or population of its community.

Application for Review, p. 6, n. 12.

The fact that the FCC now requires noncommercial FM stations to provide a 60 dBu signal to 50% of their community of license or 50% of the community's population has little relevance in this proceeding because KAZC already exceeded that requirement. Thus, the change in the Commission's technical rules has no impact whatsoever on KAZC's coverage of Tishomingo.

Furthermore, the mere fact that the Commission established a requisite level of signal strength that noncommercial FM stations must provide to their community of license in order to promote the objectives of Section 307(b) does not alter the Commission policy set forth in the *Change of Community MO&O*. In order to seek a reallocation of a station's existing authorization pursuant to Section 1.420(i) of the Commission's rules, the proposal must comply with the *Change of Community MO&O*, in which the Commission expressly stated that the public has a "legitimate expectation that existing service will continue." 5 FCC Rcd at 7097. Thus, the Commission's action requiring noncommercial FM stations to provide a minimum field strength signal to their community of license does not mean that a station which either meets or exceeds that signal-strength floor necessarily provides the requisite degree of service needed to ensure that the public's "reasonable expectation" of continued service is satisfied. Indeed, Tyler's proposal would deprive the entire Tishomingo community of city-grade service. Moreover, only 23% of those people who currently receive service from KTSH reside within KAZC's 60 dBu service contour. Further, as stated above, Tyler's reallocation proposal would result in a substantial underserved loss area because 25% of the area between the KTSH and KAZC service contours, which encompasses 8,900 people, would be left with only two nighttime services.

See Application for Review, p. 7. As a result, the proposed reallocation of KTSH from Tishomingo to Tuttle would clearly contravene the policy established in the *Change of Community MO&O*. Therefore, despite Tyler's suggestions, the *Report and Order* does not conflict Section 307(b) and is consistent with the *Change of Community* orders pursuant to which Section 1.420(i) of the Commission's rules was adopted.

B. *Valley Broadcasters*.

Tyler's argument that the Bureau erred by conducting a comparative analysis of the coverage provided by Stations KTSH and KAZC fails to recognize that the *Report and Order* is entirely consistent with the full Commission's decision in *Valley Broadcasters, Inc.*, 5 FCC Rcd 2785 (1990). *Valley* did not involve a reallocation proposal filed pursuant to Section 1.420(i) of the Commission's rules, but, rather, was a traditional Section 307(b) case which involved competing applications for new AM stations in different communities. The Commission was required to "look to the relative needs of the respective proposed service areas for a 'reception service' . . . and to the relative needs of the proposed community of license for a new 'transmission service'" *Valley Broadcasters*, 5 FCC Rcd at 2787, citing, *inter alia*, *Kent Ravenna Broadcasting Co.*, 44 FCC 2603 (1961).

The Section 307(b) issue in *Valley* involved a noncommercial FM station operating with 18 watts, which had been authorized to increase power to 100 watts. 5 FCC Rcd at 2787-88. The Commission noted that it previously had amended its rules to, *inter alia*, encourage Class D educational FM stations to increase their operating power to the minimum Class A power level of 100 watts.⁷ In light of these and other developments concerning noncommercial FM stations, the Commission stated that there no longer was

⁷ 5 FCC Rcd at 2788, citing *Second Report and Order, Noncommercial Educational FM Stations*, 44 RR 2d 235, 246 (1978).

any question that all noncommercial FM stations had an obligation to serve the programming needs of their respective communities.⁸ The Commission therefore held that “there is no legitimate public interest purpose served in exempting all noncommercial educational stations from transmission service analyses” 5 FCC Rcd at 2788.

After noting that the grant of the power increase for the 18-watt noncommercial FM station to 100 watts was consistent with its current policy concerning noncommercial FM stations, the Commission concluded that the authorized power increase:

. . . raise[d] a question of fact as to whether Valley’s proposal will bring a first competitive nighttime service to Mount Vernon. Because the ALJ closed the record without considering the existence of KSVR(FM)’s noncommercial service and before its increase in power, there is no evidence in the record as to what portion of Mount Vernon will be able to receive KSVR(FM) either day or night, or the effect, if any, of this service on the transmission service analysis in this case.

5 FCC Rcd at 2788 (emphasis added).

Tyler has essentially argued that because Station KAZC satisfies Section 307(b) of the Act by providing a 60 dBu signal to 50% of the area or population of Tishomingo, it necessarily constitutes a local transmission service for purposes of Section 1.420(i) of the Commission’s rules.⁹ Thus, according to Tyler, the 18-watt station in *Valley Broadcasters* would constitute a sufficient transmission service at Tishomingo to permit KTSH to move to Tuttle so long as the noncommercial station complied with Section 73.515 of the FCC’s rules by placing a 60 dBu signal over 50% of Tishomingo. Contrary to Tyler’s position, however, the Commission in *Valley* did not hold that the mere existence of a noncommercial FM station operating with either 18 watts or 100 watts of power necessarily dictated that Valley’s proposal would not bring a first competitive nighttime

⁸ *Id.*, citing *Public Broadcasting*, 98 FCC 2d 746, 752 (1984).

⁹ *See* Application for Review, pp. 4-6.

service to the proposed community. Indeed, *Valley* does not hold that any noncommercial FM station, regardless of operating power, constitutes a sufficient transmission service such that it would provide a community such as Tishomingo with a sole local transmission service in accordance with the policy established in the *Change of Community MO&O*. Instead, the Commission made clear in *Valley* that the noncommercial FM station must be included in the transmission service analysis, and the authorized power increase raised a question of fact concerning whether Valley's proposal would bring a first competitive nighttime service to the proposed community. Because the ALJ closed the record without considering the noncommercial station or its authorized power increase in the transmission service analysis, the Commission could not determine what portion of the subject community would be able to receive the noncommercial station either day or night, "or the effect, if any, of this service on the transmission service analysis" 5 FCC Rcd at 2788.

The Bureau's analysis in the *Report and Order* is entirely consistent with the Commission's decision in *Valley*. The Bureau did not exclude KAZC from its transmission service analysis, but expressly considered KAZC's coverage of the Tishomingo community relative to that of KTSH.¹⁰ As stated above, the Bureau properly determined that, due to KAZC's limited coverage of the Tishomingo community (*i.e.*, KAZC does not provide a city-grade signal to any portion of Tishomingo and provides a 60 dBu signal to only 23% of those persons presently receiving service from KTSH),¹¹ KAZC does not constitute a satisfactory replacement for the loss of existing service provided by KTSH in a manner consistent with the *Change of Community MO&O*.

¹⁰ The Bureau expressly noted that service provided by noncommercial FM stations is to be considered in the transmission service analysis. *Report and Order* at ¶16, n.18, citing *Valley Broadcasters*.

¹¹ *Report and Order* at ¶16.

V. The KAZC Modification Application Should be Given No Consideration In This Allotment Proceeding.

On January 26, 2001, Station KAZC filed an application to upgrade to a Class C3 facility (File No. BMPED-20010126ABC). If the KAZC modification application is granted and the construction permit were to be implemented, KAZC would replicate 100% of KTSH's existing city-grade and service contours. Accordingly, Tyler claims that the Bureau should have considered the pending KAZC modification application. Application for Review, p. 7.

It is well established that the Commission will not accept proposals that are contingent upon the final approval of changes involving other broadcast facilities. See *Littlefield, Wolfforth and Tahoka, Texas*, 12 FCC Rcd 3215, 3219 (A.B. 1997), citing *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (Policy & Rules Div. 1996); see also *Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd 13181, 13183 (A.B. 1997) (because some authorized facilities are never built and licensed, the Commission "cannot assume that such facilities are in existence for the purpose of resolving related rulemaking matters"). Furthermore, in the *Change of Community MO&O*, the Commission stated:

We specifically wish to clarify that replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be considered in favor of the proposal, does not adequately cure the disruption to "existing service" occasioned by removal of an operating station. From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a . . . radio set.

5 FCC Rcd at 7097.

In this case, the Commission can have no assurance that KAZC's modification application will be granted, and, even assuming, *arguendo*, that it is granted, that the modified facilities will ever be constructed. South Central Oklahoma Christian Broadcasting, Inc. ("South Central"), the nominal permittee of KAZC, filed a license

application for the station on October 2, 1998 (File No. BLED-19981002KA), which currently remains pending. The KAZC license application has not been granted because Chisholm Trail filed an Informal Objection against the application on December 21, 1998, which demonstrated that the application contains numerous misrepresentations of material fact. The Informal Objection also established that the only reason KAZC was able to commence program tests just three weeks before the October 19, 1998, comment deadline in this proceeding was that Tyler deliberately took KTSH off the air, lied to the Commission and an FCC field inspector regarding the status of KTSH's antenna system, and "donated" the "KTSH transmitter, transmission line, and studio equipment and the engineering services necessary to complete the KAZC installation."¹² In light of the substantial misrepresentations which were made to the FCC in connection with KAZC's commencement of program tests and the filing of its license application, there is a substantial question concerning whether KAZC's program test authority will be revoked, and, thus, whether the station's modification application will be granted.

Moreover, even assuming, *arguendo*, that the KAZC modification application is granted, there is reason to question whether the construction permit would ever be implemented without Tyler "donating" KTSH's existing transmission equipment. South Central previously held a construction permit for KTSH, but was never able to put the station on the air.¹³ Indeed, the only reason that KAZC even exists is because Tyler needed

¹² See Declaration of Ralph Tyler, dated December 11, 1998; Declaration of Randall C. Mullinax, dated December 10, 1998 (copies appended hereto as Appendix A). A complete analysis of the facts and circumstances by which KTSH was deliberately taken off the air and KAZC commenced program tests is set forth in Chisholm Trail's Reply Comments, which were filed in this proceeding on November 3, 1998 (hereinafter "Reply Comments").

¹³ South Central acquired the KTSH construction permit in September 1994. After filing an application to replace an expired permit for the station on September 21, 1994 (File No. BPH-940921JE), South Central later filed three applications to extend the (footnote continued on next page)

to put the noncommercial station on the air in order to have any chance of moving KTSH from Tishomingo to Tuttle.¹⁴ Therefore, because the Commission does not accept proposals that are contingent upon the final approval of changes involving other broadcast facilities, and “cannot assume that such facilities are in existence for the purpose of resolving related rulemaking matters,”¹⁵ the Bureau properly did not consider the pending KAZC modification application in its analysis of Tyler’s reallocation proposal.

Finally, Tyler makes the rather curious claim that the Bureau “failed to explain why it did not give KAZC an opportunity to upgrade its facilities before ruling on [his] Petition for Reconsideration,” and “erred in not allowing KAZC a reasonable opportunity to upgrade its facilities.” Application for Review, p. 8. Tyler essentially contends that the Bureau should have held this allotment proceeding in abeyance pending the Commission’s action on another station’s pending application and possible implementation of a potential construction permit. Tyler failed to cite any precedent, however, to support his novel proposition.

If the Commission were to accept Tyler’s position, this allotment proceeding conceivably could continue indefinitely because it effectively would be held hostage to KAZC’s pending modification application and the possible implementation of the requested upgrade. Indeed, if the Bureau were to revoke KAZC’s program test authority due to the numerous misrepresentations of material fact that were made to the Commission by Tyler and his long-time station engineer in connection with KAZC’s commencement of

KTSH permit, but never put the station on the air. See File Nos. BPH-950216JA, BMPH-951107JA, and BMPH-960218IC.

¹⁴ See, e.g., Chisholm Trail’s Reply Comments, pp. 11-17.

¹⁵ *Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd at 18183, citing *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (Policy & Rules Div. 1996).

program tests and pending license application, and Tyler were to seek administrative and judicial reconsideration and/or review of the FCC's decisions, the Commission could not issue a decision in this allotment proceeding until after Tyler exhausted his administrative and judicial appeals and the Commission's decision concerning the KAZC license application becomes a final order. This result would create an unworkable situation for the Commission and would conflict with principles of administrative finality.¹⁶

As demonstrated above, the Bureau properly applied the well-established principle that the Commission will not accept proposals that are contingent upon the final approval of changes in other broadcast facilities. The Bureau's analysis of the comparative coverage of KTSH and KAZC was correct at the time the *Report and Order* and *Reconsideration Order* were issued, and those orders should be affirmed on that basis. In the event that the KAZC modification is subsequently granted and the resulting construction permit is implemented, Tyler would be free to re-file his allotment proposal at that time.

VI. The KAZC Modification Application Provides Further Evidence that Tyler Is the Real-Party-in-Interest in KAZC.

The timing of the filing of the KAZC modification application and the nature of KAZC's initial technical proposal provides further evidence that Tyler is the real-party-in-interest in KAZC and that he continues to have complete control of the station.

¹⁶ It is well established that the Commission has the authority to adopt procedural rules in order to promote the goals of administrative orderliness and finality. As the Commission has previously recognized, it would be extremely difficult for the FCC to process applications and rulemaking petitions without enforcing appropriate procedural rules. *See, e.g., In the Matter of Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 8 FCC Rcd 4743, 4744 (1993), citing *Ashbacker Radio Corporation v. FCC*, 326 U.S. 327, 333 n. 9 (1945).

Tyler's consulting engineer, William G. Brown, prepared the technical portion of the KAZC modification application.¹⁷ Mr. Brown executed the technical portion of the KAZC modification application on January 18, 2001, one day prior to the effective date of a change in the Commission's technical rules permitting KAZC to seek to upgrade to a Class C3 facility.¹⁸ The modification application was filed on Friday, January 26, 2001, the last business day immediately prior to the deadline for filing Tyler's Petition for Reconsideration of the *Report and Order*. The KAZC modification application did not appear on an FCC public notice until nearly two weeks later, on February 8, 2001.¹⁹ Nevertheless, Tyler was able to attach a copy of the application to his reconsideration petition which was filed on the first business day immediately following the filing of the KAZC modification application. The facts that (i) Tyler provided the engineering services necessary to prepare the KAZC modification application, (ii) Tyler directed his consulting engineer to prepare the engineering portion of the application even before the Commission's rule change in the *Streamlining Order* went into effect, (iii) Tyler was able to incorporate the KAZC modification application into his Petition for Reconsideration despite the fact that the application was filed with the FCC just one business day prior to the filing of his reconsideration petition, and (iv) the KAZC modification application did not appear on an FCC public notice until 13 days after the filing of Tyler's reconsideration petition; all make it abundantly clear that Tyler was the impetus behind KAZC's modification application.

¹⁷ See File No. BMPED-20010126ABC ("KAZC Modification Application").

¹⁸ See 65 Fed.Reg. 79773 (December 20, 2000); 47 CFR §73.509.

¹⁹ See *Public Notice*, Report No. 24918 (released February 8, 2001).

Furthermore, the technical proposal originally set forth in the KAZC modification application provides additional evidence of Tyler's control of KAZC.²⁰ The tower upon which the KTSH and KAZC antennas are mounted is approximately 411 meters above ground.²¹ KTSH operates with a six-bay antenna on one side of the tower with its center of radiation at 76.93 meters above ground, while KAZC operates with a single-bay antenna on the opposite side of the tower with its center of radiation at 77 meters above ground.²² Although the KAZC modification application proposed to raise the center of radiation of KAZC's antenna approximately one meter in height, this increase in height was due only to the fact that KAZC proposed to replace its single-bay antenna with a six-bay antenna that is identical to the one currently being used by KTSH.²³

Because KAZC initially proposed to mount its six-bay antenna on the same tower with only one meter separating the center of radiation of the KTSH and KAZC antennas, it was abundantly clear that the two Class C3 stations would cause intolerable interference to each other if they were to operate as proposed in the KAZC modification application. Although the KAZC modification application acknowledged the likelihood of such interference,²⁴ it raised the obvious question: Because the top of the supporting

²⁰ The KAZC modification application was amended on April 30, 2001, in direct response to allegations that Chisholm Trail raised in its Opposition to Petition for Reconsideration, filed February 28, 2001. Nevertheless, the technical proposal contained in KAZC's original modification application, filed January 26, 2001, constitutes strong probative evidence of Tyler's intent at the time he filed his Petition for Reconsideration in this proceeding one day later.

²¹ This height excludes the television antenna mounted at the top of the tower. *See* KAZC Modification Application, Exhibit I.

²² *Id.*; *see also* KAZC construction permit (File No. BPED-19970227MD).

²³ *See* KAZC Modification Application, Section V-B, Question 12(b), and Exhibits 1 and 6 thereto.

²⁴ Tyler's consulting engineer stated:

(footnote continued on next page)

structure is over 411 meters above ground, and the only other antenna on the tower is mounted at the top of the supporting structure (*i.e.*, approximately 333 meters above KAZC's proposed antenna height), why would KAZC have chosen to mount its antenna at a height of only 78 meters above ground and within one meter of the KTSH antenna when so much additional tower space was available? As the Commission is well aware, if KAZC were to mount its antenna slightly higher on the tower with an appropriate downward adjustment in its operating power, it still would be able to operate with maximum Class C3 facilities, and the potential for interference between KTSH and KAZC would be dramatically reduced.

The reason that the KAZC modification application initially proposed to locate the station's antenna within one meter of KTSH's six-bay antenna is clear. The record in this proceeding establishes that Tyler has been the impetus behind the very existence of KAZC. In his continuing effort to have KAZC constitute a satisfactory replacement service at Tishomingo, Tyler initiated the filing of the KAZC modification application by directing his consulting engineer to prepare the engineering portion of the application even before the rule changes in the *Streamlining Order* became effective to ensure that it was filed prior to the deadline for seeking reconsideration of the *Report and Order*. Tyler had no intention of KTSH and KAZC operating simultaneously from the same tower with KAZC operating as a Class C3 station. Assuming, *arguendo*, that the KAZC modification

As is the current condition for KAZC, the proposed antenna will be located adjacent to KTSH We understand that the increase in power of KAZC may create or receive interference from being located near KTSH. In the event that it is determined that interference is created by this proposal, KAZC will ensure that the necessary filters are installed in both stations to eliminate interference in accordance with the Commission's Rules.

KAZC Modification Application, Technical Statement, p. 1.

application is granted, the only means by which KAZC would implement its Class C3 construction permit would be if Tyler once again takes KTSH off the air and “donates” the KTSH antenna and transmission line to KAZC, and re-tunes KTSH’s existing transmitter to operate on KAZC’s noncommercial frequency.²⁵ In this regard, it is no coincidence that the KAZC modification application initially proposed that KAZC would operate with a “6-bay Jampro JMPC-6X antenna system,” which just happens to be the same antenna system currently used by KTSH. *See* KAZC Modification Application, Exhibit 6. Indeed, Tyler’s December 11, 1998, declaration establishes that “[i]t had always been my intent to donate [the KTSH transmission] equipment to KAZC, but because of the FCC [comment] deadline I decided to do it sooner than I had planned.”²⁶ As Chisholm Trail has demonstrated throughout this proceeding, Tyler never intended for KTSH and KAZC to operate simultaneously, but, rather, sought to “donate” the KTSH transmission equipment to KAZC for the sole purpose of enabling KTSH to move from the rural community of Tishomingo to the Oklahoma City bedroom community of Tuttle.

The facts outlined above establish that the KAZC modification application is an impermissible attempt on the part of Tyler to enhance his reallocation proposal long after the October 19, 1998, comment deadline. Tyler had every opportunity at the comment stage of this proceeding to propose a replacement service at Tishomingo to support his

²⁵ Tyler notified the FCC by letter dated October 1, 1998, that KTSH had “temporarily suspended” operations on September 28, 1998, “*due to antenna failure.*” *See* Letter dated October 1, 1998, from Ralph Tyler to Magalie Roman Salas, Esquire (emphasis added) (copy appended to Chisholm Trail’s Reply Comments as Attachment C). KAZC commenced program tests on the following day, September 29, 1998. *See* “Comments of Ralph Tyler,” filed October 19, 1998, Attachment. However, in Tyler’s June 18, 1999, response to an inquiry letter from the FCC’s Enforcement Bureau, Tyler admitted that “the KTSH facilities were not in need of repair after it had ceased broadcasting in September, 1998.” *See* Letter dated June 18, 1999, from Ralph Tyler to Norman Goldstein, p. 6, item 19 (copy appended hereto as Appendix B).

²⁶ *See* Appendix A, p. 1, ¶4.

reallotment proposal. He made the voluntary decision, however, to forego such a proposal. Instead, Tyler chose to take KTSH off the air, “donate” the station’s transmission and studio equipment to KAZC so the noncommercial station could go on the air by the comment deadline in this proceeding, and make a series of material misrepresentations to the Commission. Now that the FCC has issued a decision which denied his reallotment proposal, Tyler has attempted to enhance his proposal years after the comment deadline by asking the Commission to refrain from acting on his reallotment proposal until the KAZC modification application -- which he engineered -- is granted and he can implement the requested upgrade. Tyler’s latest effort to enhance his proposal through KAZC should not be permitted. *See Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941) (a party may not “sit back and hope that a decision will be in its favor, and then, when it isn’t, parry with an offer of more evidence. No judging process in any Bureau of government could operate efficiently or accurately if such a procedure were allowed” (footnote omitted)).

Furthermore, as demonstrated above, the KAZC modification application constitutes strong evidence that Tyler has been, and continues to be, the real-party-in-interest in KAZC. For this reason alone, the proposed reallotment of Station KTSH should be denied.

VII. Conclusion.

As demonstrated herein, the Bureau properly determined that the proposed reallotment of Channel 259C3 from Tishomingo to Tuttle, Oklahoma, would be inconsistent with the policy established by the Commission in the *Change of Community MO&O*. Accordingly, the Bureau properly concluded that removing KTSH from Tishomingo would not result in a preferential arrangement of allotments.

Furthermore, despite Tyler’s control of Station KAZC and his continued efforts to use KAZC as a means to support his reallotment proposal, it is well established that the

Commission will not accept proposals that are contingent upon the final approval of changes involving other stations. Therefore, the Bureau properly declined to consider the KAZC modification application in its analysis of Tyler's reallocation proposal. Nevertheless, even assuming, *arguendo*, that the Commission elects to consider the KAZC modification application in connection with Tyler's Application for Review, the Commission would need to address the serious and repeated misrepresentations that Tyler made to the Commission in connection with his reallocation proposal as well as the uncontroverted evidence which establishes that Tyler is the real-party-in-interest in KAZC.

WHEREFORE, in light of the foregoing, Chisholm Trail Broadcasting Co., Inc. respectfully requests that the Application for Review, filed May 31, 2001, by Ralph Tyler be DENIED.

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

June 15, 2001

APPENDIX A

Declarations of Ralph Tyler and Randall C. Mullinax

DECLARATION OF RALPH TYLER

I, Ralph Tyler, declare under penalty of perjury that to the best of my knowledge and belief the following information is true and correct.

I am the owner of KTSH (FM) Tishomingo, Oklahoma. I am the party responsible for the actions of my employees and I am fully prepared to bear the consequences of their actions.

I have known Randall "Randy" C. Mullinax for over twenty years. Over the years I have come to rely on his good judgment and technical expertise. In 1976 I hired him to be chief engineer of a station I owned at the time. Randy Mullinax was the chief engineer of the station during the approximately eleven years that I held a majority interest in that station. After I sold my interest in the station I continued to have contact with Randy Mullinax through a radio tower business I own. If there were any technical problems concerning placement of antennas or potential interference I would refer them to Randy Mullinax. In February 1998 Randy Mullinax was hired by Tyler Media Group, a company owned by my sons. Through Tyler Media Group, I have contracted for Randy Mullinax's engineering services for KTSH (FM).

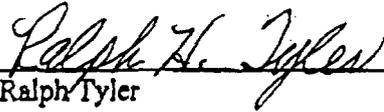
I am seeking FCC approval to relocate KTSH from Tishomingo to Tuttle, Oklahoma. Before KTSH can be moved to Tuttle at least one other station had to be licensed to Tishomingo, Oklahoma. There was an FCC rule making comment deadline approaching on October 19, 1998, and I felt the best way to answer certain questions posed by the FCC in the rule making proceeding was to assist noncommercial educational station KAZC to get on the air by donating the KTSH transmitter, transmission line, and studio equipment and the engineering services necessary to complete the KAZC installation. It had always been my intent to donate this equipment to KAZC, but because of the FCC deadline I decided to do it sooner than I had planned.

On October 1, 1998, Randy Mullinax presented me with a letter for my signature notifying the FCC that KTSH was off the air. I signed the letter without discussing it with him. On October 29, 1998, an FCC inspector visited KTSH's studio and transmission facility. During his inspection of the facility, the FCC inspector called me. The questions the FCC inspector was asking were technical in nature and I did not possess the expertise to be able to answer them. I asked Randy Mullinax to join the conversation. Randy Mullinax and the FCC inspector then spoke about the technical facilities of KTSH. I believed Randy Mullinax was answering the FCC inspector's questions truthfully and accurately. After the conversation was completed, Randy Mullinax advised me that he had misled the FCC inspector. I called my communications attorney and advised him of what had just happened.

I did not know that misstatements were made until after the conversation with the FCC inspector. My office is approximately 100 miles from Tishomingo and I did not personally supervise the engineering work done at KTSH. In making this declaration I am in no way seeking to deflect responsibility for what happened. KTSH is my station and I am the party ultimately responsible for its operation. I should have paid more attention to what was written in

the October 1, 1998 letter. I should have been better informed as to the technical state of the KTSH facility. Had I done a better job I could have prevented this problem.

Executed this 11th day of December, 1998.



Ralph Tyler

DECLARATION OF RANDALL C. MULLINAX

I, Randall C. Mullinax, declare under penalty of perjury that to the best of my knowledge and belief the following information is true and correct.

Since 1969 I have been employed as an engineer at various radio and television stations and at Sprint PCS. In February 1998, I was hired by Tyler Media Group, Inc. as its director of engineering. Tyler Media Group has an agreement with Ralph Tyler pursuant to which I provide engineering services for Ralph Tyler's radio station, KTSH (FM), Tishomingo, Oklahoma.

Ralph Tyler wants to relocate KTSH (FM) from Tishomingo to Tuttle, Oklahoma. As I understand it, before KTSH (FM) could be moved to Tuttle, noncommercial educational station KAZC had to go on the air in Tishomingo. I also understand that it had always been Ralph Tyler's plan to donate the KTSH transmission line, transmitter and studio equipment to KAZC and to provide the engineering services necessary to complete the KAZC installation. Because of the FCC deadline this was being done sooner than originally planned.

In late September, 1998, the bottom bay of the KTSH antenna was removed and the KAZC antenna installed. The KAZC antenna was mounted at the KTSH location because at that time there was no tower lease agreement in place to permit KAZC to mount its antenna. This now has been rectified and the KAZC antenna has been mounted as specified in KAZC's construction permit.

I retuned the KTSH transmitter to KAZC's frequency and supervised the antenna crew that installed the KAZC antenna. On October 1, 1998 I drafted a letter for Ralph Tyler's signature advising the FCC that KTSH was off the air. Because one bay of the KTSH antenna was down and the antenna was not working to specifications, I wrote that KTSH was off the air due to antenna failure. I presented the letter to Ralph Tyler without discussing it with him.

On October 29, 1998, an FCC inspector visited the KTSH studio and transmitting facility. The FCC inspector called Ralph Tyler who asked me to participate in the telephone call. The FCC inspector wanted to know why KTSH was off the air. I told the FCC inspector that the bullet in the lower bay had failed and that as a result, I had called in a tower crew. I also told him that I had purchased a new bullet from a local surplus electronics dealer. The FCC inspector asked for the name and telephone number of the tower crew and the electronics dealer, which I provided.

After the telephone call with the FCC inspector, I called the tower company and the electronics dealer and asked them to verify what I had told the FCC inspector.

When the FCC inspector called I should have advised him of the true situation. Instead I panicked and perpetuated a false statement. I further compounded my mistake by calling the tower crew and the electronics dealer and asking them to verify a story I knew not to be true. I have been employed in the broadcast industry as an engineer for almost thirty years. I have

always been a good and conscientious employee and have never had any trouble with the FCC. In this one instance I failed to exercise the good judgement that has served me well during my career. I made a mistake that will never be repeated.

Executed this 10 day of December, 1998


Randall C. Mullinax

APPENDIX B

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?

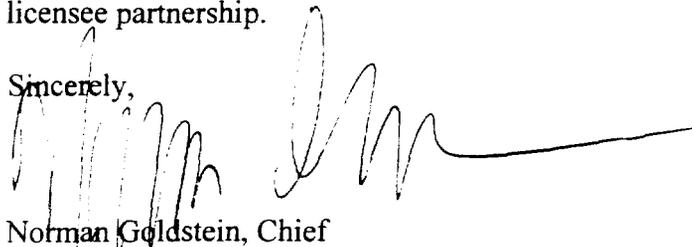
III. Information submitted to the Commission indicates that the individual(s) responsible for the operation of KTSH immediately prior to its shutdown on September 28, 1998, may have been the same as those responsible for KAZC's operation when it commenced broadcasting on September 29, 1998. Moreover, 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.

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DIRECT DIAL NUMBER:

June 21, 1999

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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

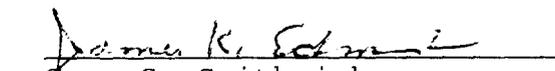
In re: Station KTSH(FM)
Tishomingo, Oklahoma
FCC Ref. 1800C1-JWS

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

Mr. Norman Goldstein, Chief
June 18, 1999
Page 2

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**

Mr. Norman Goldstein, Chief
June 18, 1999
Page 6

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 15th day of June, 2001, a copy of the foregoing
OPPOSITION TO APPLICATION FOR REVIEW was sent by first-class mail, postage
prepaid, to the following:

The Honorable Michael Powell*
Chairman
Federal Communications Commission
The Portals II, Room 8-B201
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Kathleen Abernathy*
Commissioner
Federal Communications Commission
The Portals II, Room 8-A204
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Michael Copps*
Commissioner
Federal Communications Commission
The Portals II, Room 8-A302
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Kevin Martin*
Commissioner
Federal Communications Commission
The Portals II, Room 8-C302
445 Twelfth Street, S.W.
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The Honorable Gloria Tristani*
Commissioner
Federal Communications Commission
The Portals II, Room 8-B115
445 Twelfth Street, S.W.
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Mr. Roy J. Stewart*
Chief, Mass Media Bureau
Federal Communications Commission
The Portals II, Room 2-C347
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Washington, DC 20554

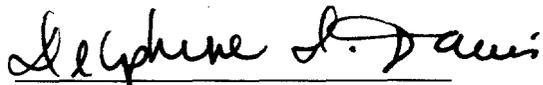
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Delphine Davis

* Hand Delivered