

ORIGINAL

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. _____
FM Broadcast Stations) RM - _____
(Eagle, Fort Morgan, and Hudson, Colorado,)
Bayard and Bridgeport, Nebraska, and)
Douglas and Fort Laramie, Wyoming))

To: Assistant Chief, Audio Division
Media Bureau

WITHDRAWAL OF PETITION FOR PARTIAL RECONSIDERATION

On-Air Family, LLC ("On-Air"), licensee of KBRU-FM, Fort Morgan, Colorado, and Salisbury Broadcasting Colorado, LLC ("Salisbury"), licensee of KTUN(FM), Eagle, Colorado (together, "Joint Petitioners"), by their counsel, hereby withdraw their request for partial reconsideration of the dismissal of their Petition for Rule Making.¹

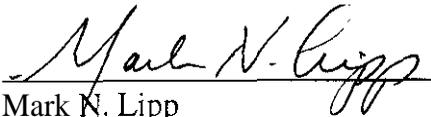
In compliance with Section 1.420(j) of the Commission's Rules, a copy of an agreement relating to the withdrawal is attached. The agreement provides for KOLT-FM, Bridgeport, Nebraska, to consent to downgrade to Class CO and receive compensation in exchange. As a result of this downgrade to Class CO, the Joint Petitioners no longer need KOLT to change channels as set forth in their Petition for Rule Making. Neither On-Air nor Salisbury will receive any consideration from the licensee of Station KOLT, Tracy Broadcasting Corp.

On-Air's and Salisbury's certifications pursuant to Section 1.420(j) are attached.

¹ The Petition for Rule Making was filed on July 19, 2002. The Commission dismissed the Petition for Rule Making on February 6, 2003. See Letter from John A. Karousos to Mark N. Lipp et al. (February 6, 2003). The Joint Petitioners filed their request for partial reconsideration on March 10, 2003.

Respectfully submitted,

ON-AIR FAMILY, LLC.
SALISBURY BROADCASTING
COLORADO, LLC

By: 
Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon
600 14th Street, NW
Suite 800
Washington, DC 20005-2004
(202) 783-8400

Their counsel

March 25, 2003

CERTIFICATION

Salisbury Broadcasting Colorado, LLC certifies that it received no compensation in exchange for the withdrawal of the rule making proposal filed jointly with On-Air Family, LLC on July 19, 2002. The withdrawal was part of an agreement relating to the downgrade of KOLT-FM, a copy of which has been furnished to the Commission.

I declare that the foregoing is true and correct to the best of my knowledge, information and belief.

SALISBURY BROADCASTING
COLORADO, LLC

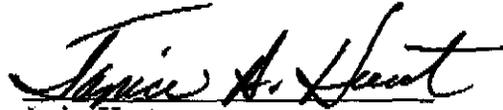

Charles Salisbury

CERTIFICATION

On-Air Family, LLC certifies that it received no compensation in exchange for the withdrawal of the rule making proposal filed jointly with Salisbury Broadcasting Colorado, LLC on July 19, 2002. The withdrawal was part of an agreement relating to the downgrade of KOLT-FM, a copy of which has been furnished to the Commission.

I declare that the foregoing is true and correct to the best of my knowledge, information and belief.

ON-AIR FAMILY, LLC


Janice Hunt

FACILITIES MODIFICATION AGREEMENT

This Facilities Modification Agreement is made and entered into this ____ day of March, 2003, between On-Air Family, LLC ("*On-Air*"), licensee of Radio Station KBRU-FM, Fort Morgan, Colorado; KAGM Joint Venture ("*KAGM-JV*"), a Colorado joint venture; and Tracy Broadcasting Corporation ("*Tracy*"), licensee of Radio Station KOLT-FM, Bridgeport, Nebraska.

WHEREAS, KAGM-JV and On-Air have entered into a joint venture to upgrade the facilities of KBRU-FM: and

WHEREAS, On-Air has filed an application to modify the facilities of KBRU-FM (the "*KBRU Application*") contingent upon the downgrade of Station KOLT-FM from Channel 276C to 276C0 (the "*CO Downgrade*"), with the understanding that neither the KBRU Application nor the CO Downgrade can be granted unless both are granted together; and

WHEREAS, at On-Air's request the FCC has issued an Order to Show Cause to Tracy proposing to order the CO Downgrade; and

WHEREAS, Tracy has responded to the Order to Show Cause stating its intention to maintain Class C facilities for KOLT-FM; and

WHEREAS, under the terms and conditions set forth herein Tracy agrees to accommodate the KBRU Application by consenting to and then implementing according to the terms hereunder the CO Downgrade as discussed more fully herein; and

WHEREAS, the parties believe the facilities modifications set forth above will serve the public interest;

NOW THEREFORE, for the foregoing reasons and the mutual covenants and agreements set forth herein, KAGM-JV, Tracy, and On-Air hereby agree as follows:

1. No later than five (5) business days after the date hereof, Tracy shall submit to the FCC a statement consenting to the CO Downgrade and withdrawing its expression of interest in filing a Class C application. KAGM-JV shall reimburse Tracy for its reasonable and documented legal and engineering fees incurred in connection with this Agreement up to a maximum of _____. KAGM-JV's payment obligations under Section 2 hereof are expressly conditioned on (a) the grant by the FCC of the KBRU Application and (b) such grant's becoming Final. For the purposes of this Agreement, a "*Final*" action is an action that is no longer subject to further administrative or judicial review under applicable law. On-Air and KAGM-JV will use commercially reasonable efforts to obtain, and will not impede, the Final grant of the KBRU Application.

2. KAGM-JV shall pay to Tracy, or to an escrow agent as directed by Tracy, as reimbursement for the CO Downgrade according to the terms hereunder the amount of _____ (the "*Reimbursement Payment*"), delivered by

KAGM-JV on the later of (a) the date that the grant by the FCC of the KBRU Application becomes Final (the “**Finality Date**”) or (b) the closing date of an assignment or transfer of the license of KBRU-FM from On-Air to a party other than an affiliate of On-Air or KAGM-JV (the “**KBRU Closing Date**”), provided that if the KBRU Closing Date occurs before the Finality Date, such payment shall be paid into escrow as described in Section 3, and provided further that if the Finality Date occurs before the KBRU Closing Date, Tracy shall be entitled to receive interest on the principal amount from and after the Finality Date at a fixed rate that is one and one half percent (1-½ %) over the prime lending rate published in the Wall Street Journal on the Finality Date.

3. KAGM-JV shall execute, and On-Air shall guarantee, a promissory note in favor of Tracy, substantially in the form attached hereto as Attachment 1, to secure the payment set forth in Section 2. The promissory note shall provide that Tracy shall be entitled to receive the amount set forth in Section 2 on the specified date, provided that if the KBRU Closing Date occurs before Finality Date, then no later than one business day after the KBRU Closing Date (a) KAGM-JV shall place into escrow from the closing proceeds (i) the principal amount of the promissory note and (ii) a mutually agreed-upon estimate of the Tax Liability Payment as set forth below; and (b) Tracy shall cancel the promissory note. The escrow funds, together with accumulated interest at the escrow agent’s commercial rate, shall then be paid to Tracy on the Finality Date unless this Agreement terminates pursuant to Section 5. A form escrow agreement is attached hereto as Attachment 2. KAGM-JV and Tracy each shall promptly execute such instructions to the escrow agent as shall be necessary to disburse the funds held in escrow pursuant to the terms of this Agreement.

4. In addition to the Reimbursement Payment, KAGM-JV shall pay to Tracy an amount that represents that portion of Tracy’s state and local tax, due in the taxable year in which the Reimbursement Payment is constructively received by Tracy, which is attributable to Tracy’s receipt of the Reimbursement Payment (the “**Tax Liability Payment**”). Tracy shall cooperate in good faith with KAGM-JV to secure the most favorable tax treatment for the Reimbursement Payment consistent with applicable law, and shall furnish KAGM-JV and its accountants sufficient financial information to permit KAGM-JV to independently calculate the Tax Liability Payment. Provided that Tracy has furnished such financial information, KAGM-JV shall pay pro rata portions of the Tax Liability Payment to Tracy from time to time when Tracy’s tax payment or payments, including quarterly estimated tax payments (if required), are due until the entire Tax Liability Payment has been paid, provided that, if the Tax Liability Payment has been placed in escrow pursuant to Section 3(a)(ii) above, such payments shall be made from the funds held in escrow. At the time when Tracy’s tax on the Reimbursement Payment is paid in full Tracy shall refund to KAGM-JV any overpayment, and KAGM-JV shall pay to Tracy any underpayment, of the Tax Liability Payment. Tracy’s obligation to furnish financial information hereunder shall continue in full force and effect until the final tax accounting for the Reimbursement Payment is complete.

5. On-Air hereby guarantees KAGM-JV’s performance hereunder, and shall be liable for all of KAGM-JV’s obligations should KAGM-JV be in breach or material default hereunder. As security for this guaranty, On-Air shall grant Tracy a first priority security interest

in the proceeds of a sale of KBRU-FM pursuant to a security agreement substantially in the form attached hereto as Attachment 3.

6. If the FCC dismisses or denies the KBRU Application then this Agreement shall terminate on the date such dismissal or denial becomes Final. If this Agreement terminates pursuant to this Section 5, then, and only in that event, all parties shall be released from all obligations hereunder, including the payment obligations of Section 2, and any and all funds held in escrow shall be returned to KAGM-JV.

7. No later than five (5) business days after execution hereof, On-Air shall request the dismissal of its pending petition for rule making involving KBRU and KOLT. Each party agrees that it will interpose no objection to the filings (including, without limitation, the KBRU Application), of any other party to change channel, class, equipment, antenna location and/or community of license consistent with the terms of this Agreement. Each party shall cooperate with the requests of the other party to coordinate the submission of applications or related filings with the FCC.

8. KAGM-JV shall not be entitled to assign its interest in this Agreement to any person **or** entity without the written permission of Tracy, provided that such permission shall not be unreasonably withheld, conditioned, or delayed, and in any event KAGM-JV shall remain liable for its obligations hereunder. Tracy agrees that it will not assign or transfer its license for Station KOLT-FM unless it causes the assignee **or** transferee thereof to assume Tracy's obligations under this Agreement in a manner reasonably satisfactory to On-Air and KAGM-JV. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto.

9. If any term or provision of this Agreement is determined to be void, unenforceable or contrary to law, the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for either party.

10. This Agreement sets forth the entire understanding of the parties hereto at the time of execution and delivery hereof with respect to the subject matter hereof and may not be amended except by written amendment signed by all parties. All prior agreements between the parties with respect to the subject matter hereof shall be of no further force or effect. The undersigned each represents and warrants that it has the requisite authority to bind its respective party to the terms and obligations **of** this Agreement.

11. If any party breaches its obligations under this Agreement, the other parties shall each have the right to **seek** injunctive relief and/or specific performance in addition to their remedies at law. The breaching party agrees to waive any defense as to the adequacy of the other parties' remedies at law and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy.

12. This agreement may be signed in counterparts with the same effect **as** if the signature on each counterpart were on the same instrument.

13. Except to the extent required by law, neither Tracy, On-Air, nor KAGM-JV shall disclose the existence of this Agreement or make known any of its terms to any person other than its attorneys, engineers, and representatives to whom disclosure is necessary to effectuate the purposes of this Agreement and who are similarly bound to hold the existence of this Agreement and its terms in confidence.

14. This Agreement shall be governed by and construed according to the laws of the State of Colorado, specifically excluding its choice-of-laws provisions.

(signatures appear on next page)

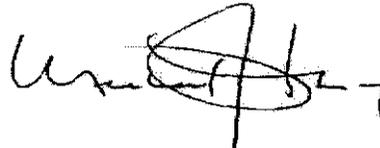
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

KAGM JOINT VENTURE

By: _____
Edward F. Seeger

By: _____
Anthony S. Brandon

TRACY BROADCASTING CORPORATION

A handwritten signature in black ink, appearing to read "Michael J. Tracy", written over a horizontal line.

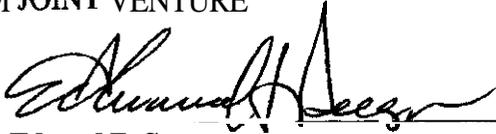
By: _____
Michael J. Tracy

ON-AIR FAMILY, LLC

By: _____
Janice Hunt

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

KAGM JOINT VENTURE

By: 
Edward F. Seeger

By: _____
Anthony S. Brandon

TRACY BROADCASTING CORPORATION

By: _____
Michael J. Tracy

ON-AIR FAMILY, LLC

By: _____
Janice Hunt

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

KAGM JOINT VENTURE

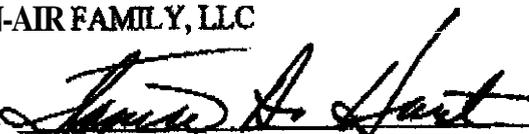
By: _____
Edward F. Seeger

By: _____
Anthony S. Brandon

TRACY BROADCASTING CORPORATION

By: _____
Michael J. Tracy

ON-AIR FAMILY, LLC

BY:  _____
Janice Hunt

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

KAGM JOINT VENTURE

By: _____
Edward F. Seeger

By: Anthony S. Brandon
Anthony S. Brandon
CHARLES H. SAMIS, JR.

TRACY BROADCASTING CORPORATION

By: _____
Michael J. Tracy

ON-AIR FAMILY, LLC

By: _____
Janice Hunt

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 25th day of March, 2003 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **“WITHDRAWAL OF PETITION FOR PARTIAL RECONSIDERATION** to the following:

Tracy Broadcasting Corporation
P.O. Box 532
Scottsbluff, Nebraska 69363
(Licensee of KOLT-FM)

Audrey P. Rasmussen, Esq.
Hall Estill Hardwick Gable Golden & Nelson, PC
11202th Street, NW, Suite 700
Washington, DC 20036-3406
(Counsel to Tracy Broadcasting Corporation)


Lisa M. Balzer