

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of: )  
 )  
KEVN, Inc. )  
 )  
KEVN-TV, Rapid City, SD ) FCC File Nos. BPCDT-19991019ABB *et al.*  
Facility ID No. 34347 )  
 )  
KIVV-TV, Lead, SD ) FCC File Nos. BPCDT-19991019ABJ *et al.*  
Facility ID No. 34348 )  
 )  
MB Docket No. 03-15 )

To: The Secretary  
Attn: Deputy Chief, Media Bureau

**FURTHER SUPPLEMENT TO PETITION FOR RELIEF**

KEVN, Inc. (“Licensee”), licensee of FOX affiliate KEVN-TV, NTSC Channel 7 and DTV Channel 18, Rapid City, South Dakota (“KEVN”), and television satellite station KIVV-TV, NTSC Channel 5 and DTV Channel 29, Lead, South Dakota (“KIVV,” and, together with KEVN, the “Stations”), hereby submits this further supplement (“Further Supplement”) to its pending request for relief in connection with the digital transition process established in *Report and Order*, “Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television,” FCC 04-192 (released Sept. 7, 2004) (“*Second Periodic Review Order*”) and the *Public Notice*, “DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline,” DA 06-1255 (released June 14, 2006) (the “*June 14 Public*

Notice”). 1/ As it has previously explained to the Commission, 2/ Licensee seeks relief from the July 1, 2006, “use-it-or-lose-it” deadline for KEVN and KIVV because severe financial constraints render it incapable of constructing “full, authorized facilities” as specified in its “Pre-Election Certification Form” on FCC Form 381 (FCC File No. BCERCT-20041105AYE) and “Digital Channel Election Form First Round Election” on FCC Form 382 (FCC File No. BFRECT-20050210APB). 3/

Licensee’s pending Petition, as supplemented, seeks a waiver of the July 1, 2006 “use-it-or-lose-it” buildout requirement until the end of the digital transition so that it may continue to receive interference protection to the full extent of its certified replication facilities. 4/ Licensee has demonstrated that KEVN will be unable to satisfy the build-out milestone due to severe financial constraints imposed on Licensee in connection with bankruptcy proceedings before the United States Bankruptcy Court for the District of South Dakota. As described in the Petition and Supplement, Licensee has been working diligently to return the

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1/ This Further Supplement is timely filed pursuant to *Public Notice*, “DTV Channel Election Issues – Media Bureau Extends Filing Deadline for Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline to July 7, 2006,” DA 06-1372 (released June 29, 2006) (extending replication/ maximization interference protection deadline to July 7, 2006).

2/ See Petition for Relief Seeking Extension of the July 1, 2006 Interim Digital Construction Deadline,” filed on May 13, 2005 (the “Petition”), as supplemented on August 19, 2005 (the “Supplement”). Copies of the Petition and Supplement are attached hereto.

3/ In addition, as discussed below, Licensee hereby notifies the Commission of its intent to commence full facilities digital operation on its satellite station, KIVV, at the end of the transition period, pursuant to paragraph 102 of the *Second Periodic Review Order*, as amplified in the *June 14 Public Notice*.

4/ See *June 14 Public Notice* at 5, n.9 (instructing that licensees operating pursuant to a construction permit with facilities smaller than required to comply with paragraph 78 of the *Second Periodic Review Order* may “file a request for waiver of the interference protection deadline” in order to continue to receive interference protection).

Stations to financial viability. 5/ Although the bankruptcy proceedings have concluded, the Stations remain in critical condition due to restrictions imposed on Licensee by its principal creditor and the court-approved plan of reorganization.

As described in the Petition and Supplement, between August 2001 and June 2003, Licensee spent approximately \$375,000 to enable the Stations to broadcast digitally at low power on both of their DTV channels in order to meet the Commission's deadline for commercial television stations to construct digital facilities. KEVN and KIVV have been broadcasting on their digital facilities at reduced power since June 25, 2003. Licensee also has met each of the deadlines applicable to the Commission's channel election process. But the very expenditures related to KEVN's and KIVV's digital build-outs and launch of digital operations caused Licensee significant financial distress and, ultimately, required it to seek bankruptcy protection.

Because the DTV build-outs had depleted Licensee's financial resources without any return whatsoever on that investment, Licensee was unable in the Summer of 2003 to continue making interest payments to its lender, Finova Capital Group, Inc. ("Finova"). 6/ Ultimately, Finova commenced an action to foreclose on the assets of the Stations and for appointment of a receiver. As a result, Licensee was forced to file for bankruptcy protection under Chapter 11 of the Federal Bankruptcy Code in the United States Bankruptcy Court for the District of South Dakota (the "Court").

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5/ Proprietary financial information in support of the requested relief was submitted as Attachment B to the Petition. Additional financial information can be made available upon request, subject to confidential treatment.

6/ As described in the Petition, Finova previously had tried to block Licensee from using its available funds for the DTV build-outs and threatened a foreclosure proceeding if the build-outs caused Licensee to miss any required payments to Finova.

Thereafter, Licensee's financial resources for engineering consultation and analysis were severely limited as a result of its obligation to operate with reduced expenses and in accordance with a budget filed with the Court. In order to timely file KEVN's Digital Channel Election Form and meet the Commission's deadline, Licensee was forced to rely upon an initial engineering consultation recommending that Licensee select KEVN's assigned DTV channel for post-transition operation because, according to the engineer, UHF frequencies would be operationally advantageous following the digital transition. Without the financial resources to undertake additional research and obtain more sophisticated analysis, Licensee had no option other than to rely on this assessment.

Now, however, it is clear that relying upon this preliminary engineering analysis in order to meet the Commission's filing deadline within the constraints of Licensee's court-approved budget was a grave error. In connection with the process of obtaining proposals to upgrade its current STA digital facilities to full, authorized digital facilities, Licensee has learned of the costly ramifications of the channel election it made for KEVN.

Specifically, Licensee has determined that the capital costs associated with the build-out of KEVN to full facilities on DTV Channel 18 will be forty percent higher than a build-out on its current NTSC Channel 7. For example, a digital UHF transmitter alone will cost approximately \$375,000, whereas digital VHF transmitters are available for approximately \$200,000. In addition, Licensee will be required to incur approximately \$90,000 in antenna and transmission line expense that would have been obviated had it elected to conduct permanent digital operations on Channel 7. Furthermore, Licensee has learned that the larger UHF transmitter necessary for post-transition operation on DTV Channel 18 may require the construction of an addition to KEVN's transmitter facility, whereas a new VHF transmitter

would fit within the facility's existing space. Altogether, Licensee estimates that it could avoid nearly \$500,000 in capital expense if it were able to use its current NTSC Channel 7 for KEVN's post-transition operations rather than its assigned DTV Channel 18. For a small market station that has been in financial peril such a difference is critical.

In addition, Licensee has determined that the ongoing operating expense on NTSC Channel 7 would be significantly less than on DTV Channel 18 because the VHF solution would be far more efficient, minimizing energy consumption and reducing power costs. The UHF transmitter for DTV Channel 18 will require 25 kW of power to operate, whereas the VHF transmitter for NTSC Channel 7 would require only 3 kW, resulting in (a) additional power costs at rates of approximately \$40,000 annually (based on 2005 energy rates), and, of course, (b) an unnecessary consumption of electrical power in a world increasingly imperiled by such consumption. Accordingly, Licensee has been seeking informal guidance from the staff for some time in an attempt to maintain its Channel 7 operation at KEVN post-transition. This will require a further waiver and modification application. Failing approval to do so, KEVN will need to redesign its Channel 18 facilities in order to increase power and antenna height (placing the new antenna at the top position currently being used for analog operation) in an effort to approach replicating service. Failure to do so would result in loss of service and increase in under-served areas within the Rapid City DMA.

For a station struggling to survive, even the more limited cost of constructing full facilities on NTSC Channel 7 would be a challenge; meanwhile, the increased financial burden of constructing full facilities at this time on DTV Channel 18 – a burden resulting from an erroneous engineering analysis that was a function, in turn, of Licensee's historically limited financial resources – could be fatal. As described in the Petition and Supplement, Licensee now

is operating under a plan of reorganization, dated March 15, 2005, approved by the Court in *In re: KEVN, Inc.* (File No. 03-50592), *Order of Final Decree* (the “Plan”), a copy of which was submitted with the Petition. <sup>7/</sup> The Court’s approval of the Plan obligates Licensee to remit the vast majority of its excess cash flow to its principal creditor and earmarks additional funds for the repayment of general creditors. Licensee’s obligations under the Plan severely limit the funds available for completing the build-out of KEVN to full facilities. <sup>8/</sup> In fact, since seeking bankruptcy protection in November 2003, in addition to paying operating expenses, Licensee has made a total of \$1,320,386 in pre-bankruptcy payments to creditors.

As described in the Petition, Licensee’s good faith efforts to satisfy the Commission’s digital build-out requirements and promote the digital transition were one of the key triggers of its bankruptcy proceeding. To date, Licensee has spent approximately \$375,000 to construct digital facilities at both KEVN and KIVV. Meanwhile, *it has not received one penny of revenue from either station’s digital operations.* The relief requested herein and in the Petition and Supplement would enable Licensee to continue to serve viewers in its communities

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<sup>7/</sup> In the Supplement, Licensee noted that the federal Base Realignment and Closure Commission (the “BRAC”) was, at that time, considering decommissioning Ellsworth Air Force Base in Rapid City, which, as the second largest employer in South Dakota, would have further weakened an already soft television advertising market in the Stations’ home DMA. Although the BRAC ultimately decided not to close Ellsworth AFB altogether, operations at the base are being consolidated. *See, e.g., “Some Ellsworth AFB Jobs Going to Texas,” Sioux City Journal* (online edition), March 31, 2006.

<sup>8/</sup> By separate letter notification being filed concurrently herewith, Licensee has notified the Commission of its intent to activate full digital facilities for KIVV at the end of the transition period and on its assigned DTV channel 29, pursuant to its election on its “Digital Channel Election Form First Round Election.” *See* FCC File No. BFRECT-20050210APT. *See June 14 Public Notice* at 5-6 (confirming that satellite stations “are not subject to the July 1, 2006 interference protection deadline and are not required to seek a waiver of the deadline in order to retain their DTV interference protection”).

as it strives to satisfy the terms of the court-ordered Plan, without disrupting the ultimate transition to digital television in the Rapid City market.

Shifting resources within Licensee's severely constrained budget in order to fund additional digital construction at this time would clearly be contrary to the public interest. For example, KEVN currently produces highly-rated local newscasts twice daily and a regularly scheduled local public affairs program. The production costs for this programming are in excess of \$600,000 annually. KEVN would like to continue to provide these services to Rapid City viewers, but, in its current circumstances, would have to curtail or eliminate them in order to fund the construction necessary to satisfy the July 1, 2006 build-out milestone. <sup>9/</sup>

Licensee has attempted to re-structure in order to locate a source willing to provide the funds necessary to allow the DTV build-outs to proceed, but those efforts have not been successful. It appears that the most likely way to proceed is to continue to defer construction and to build capital reserves from operating income, after the required debt payments. Even this approach is a hurdle due to the need to spend funds to maintain quality public services, such as the recent need to upgrade to a new electronic newsroom system at a cost of approximately \$75,000.

Finally, grant of the relief sought under the Petition, the Supplement, and this Further Supplement will ensure comity with the bankruptcy laws while not creating any

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<sup>9/</sup> Furthermore, preliminary engineering analysis now indicates that the preferred full facilities build-out configuration on Channel 18 is likely to necessitate top-mounting KEVN's digital antenna on its existing tower and dismounting and relocating the existing NTSC Channel 7 antenna to a lower tower position, with a resulting loss in existing analog FOX network service. Reconfiguring the KEVN NTSC and DTV facilities in this manner prior to the end of the digital transition would contravene established Commission policy because it would create an analog loss area and a FOX network white area. Particularly in the small Rapid City market, where digital set penetration is low, this would likely have the effect of depriving a substantial number of viewers of free over-the-air service.

troubling precedent for the Commission. 10/ The requested relief is limited to a small-market licensee with an established record of local news and community service struggling to survive following bankruptcy and to maintain its high level of service to its communities of license. Permitting Licensee to defer completion of digital construction for the limited period requested herein will facilitate the reasonable implementation of full-power digital service to the Rapid City market while avoiding the disruptions of service that could result from compliance.

This is truly a unique case that must be distinguished from the many other DTV transition waiver requests pending before the Commission. First, it was compliance with the wasteful requirement to build low-power DTV facilities at both of its stations by June 2003 (when there was no way to afford higher power facilities) that propelled Licensee into a costly and difficult bankruptcy and saddled Licensee with pre-bankruptcy payments to creditors of \$34,109 monthly, making it very difficult to accrue funds from operations to build new higher power digital facilities. 11/ Licensee could have delayed construction of the low power DTV facilities and satisfied its lender, but it took its regulatory responsibilities seriously and had to stave off a resulting foreclosure action by its lender by seeking relief from the bankruptcy court. Second, the court mandated restrictions on expenditures during the bankruptcy proceeding made it impossible for Licensee to get adequate engineering consultation to plan for the transition, causing Licensee to make a costly error in electing to substitute Channel 18 for Channel 7 at

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10/ See, e.g., *San Diego Television, Inc., Debtor-in-Possession*, 11 FCC Rcd 14689 (1996), at ¶ 13 (Commission is “cognizant of [its] obligations under its public interest mandate to consider the national policy underlying other federal laws” such as the bankruptcy laws, *citing LaRose v. FCC*, 494 F.2d 1145, 1146 (D.C. Cir. 1974)).

11/ Basically, almost none of the expenditures for the low-power DTV facilities can be salvaged in the conversion to full power.

KEVN. 12/ Third, without further guidance from the Commission, Licensee cannot plan and prepare the modification applications necessary to determine the best alternative scenarios for facilities on Channel 18 and satellite Channel 29. 13/

WHEREFORE, based on the foregoing, Licensee requests the following specific relief; namely that the Commission:

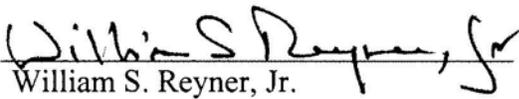
- Permit Licensee to amend its digital channel election for KEVN-DT to specify its current NTSC Channel 7 in lieu of its assigned DTV Channel 18.
- Continue to allow KEVN to defer build-out of higher power facilities until the February 17, 2009 transition deadline;
- Allow Licensee additional time to file modification applications for both KEVN and KIVV for their final DTV facilities; and
- Waive the July 7, 2006 interference protection deadline pursuant to footnote 9 of the June 14 Public Notice.

Respectfully submitted,

**KEVN, INC.**

Of counsel:

Mace J. Rosenstein  
Tarah S. Grant  
Hogan & Hartson L.L.P.  
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Washington, DC 20004  
202-637-5600

By:   
William S. Reyner, Jr.  
President

July 7, 2006

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12/ Licensee has since retained Cohen, Dippell and Everist, P.C. to provide analyses and guidance in planning the conversion to higher power DTV.

13/ Given that satellite station KIVV is used to complement and enhance KEVN's coverage of the Rapid City DMA, it would be premature and a waste of both Licensee and Commission resources to perform the analyses necessary to determine the tower and antenna configurations necessary to achieve appropriate coverage by KIVV until Licensee is able to establish the service contours for KEVN on either Channel 18 or Channel 7, subject, in turn, to further guidance from the Commission.

## **Attachment A**

HOGAN & HARTSON  
L.L.P.

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REDACTED – FOR PUBLIC INSPECTION

May 13, 2005

*BY HAND DELIVERY*

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

**Re: KEVN, Inc., Debtor-in-Possession  
Petition for Relief Seeking Extension of the July 1, 2006  
Interim Digital Construction Deadline**

Dear Ms. Dortch:

Enclosed herewith for filing on behalf of KEVN, Inc., Debtor-in-Possession (“KEVN”), is the original and four copies of the redacted version of its Petition for Relief Seeking Extension of the July 1, 2006 Interim Digital Construction Deadline (the “Petition”). Because the Petition and certain of its exhibits contain information that is confidential and proprietary and therefore is competitively sensitive, both this redacted version and a confidential version of these materials are being filed concurrently.

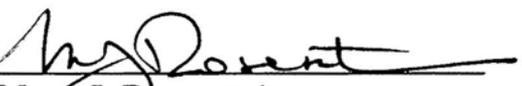
An additional copy of the redacted version of this Petition is enclosed to be stamped as received and returned *via* our courier.

HOGAN & HARTSON L.L.P.  
Ms. Marlene H. Dortch  
May 13, 2005  
Page 2

Please direct any questions regarding this submission to the licensee  
and undersigned counsel.

Respectfully submitted,

**Hogan & Hartson L.L.P.**

By:   
Mace J. Rosenstein  
Tarah S. Grant

Counsel for KEVN, Inc.

Enclosure

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**RECEIVED**

MAY 13 2005

Federal Communications Commission  
Office of Secretary

In the Matter of: )  
)  
KEVN, Inc., Debtor-in-Possession )  
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KEVN-TV, Rapid City, SD ) FCC File Nos. BPCDT-19991019ABB *et al.*  
Facility ID No. 34347 )  
KIVV-TV, Lead, SD ) FCC File Nos. BPCDT-19991019ABJ *et al.*  
Facility ID No. 34348 )

To: The Secretary  
Attn: Deputy Chief, Media Bureau

**PETITION FOR RELIEF SEEKING EXTENSION  
OF THE JULY 1, 2006 INTERIM DIGITAL CONSTRUCTION DEADLINE**

KEVN, Inc., Debtor-in-Possession (“Licensee”), licensee of FOX affiliate KEVN-TV, Channel 7, Rapid City, South Dakota (“KEVN”) and its satellite station, KIVV-TV, Channel 5, Lead, South Dakota (“KIVV,” and, together with KEVN, the “Stations”), hereby requests an extension of the interim digital construction deadline established in *Report and Order*, “Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television,” FCC 04-192 (released Sept. 7, 2004) (“*Second Periodic Review Order*”).

As the Commission is aware, on November 20, 2003, KEVN, Inc. sought protection under Chapter 11 of the Federal Bankruptcy Code, and the bankruptcy filing resulted in the involuntary assignment of the licenses of the

Stations from KEVN, Inc. to Licensee. 1/ Despite KEVN, Inc.'s prior efforts and Licensee's continuing diligent efforts to meet the deadlines specified by the Commission in connection with the digital transition, Licensee is concerned that the Stations will be unable to satisfy the applicable July 1, 2006 interim build-out requirement and therefore seeks an extension of that deadline, as further described below. 2/

Between August 2001 and June 2003, Licensee spent approximately \$375,000 to enable the Stations to broadcast digitally at low power on their DTV frequencies in order to meet the Commission's deadline for commercial television stations to construct digital facilities. The Stations have been broadcasting on their digital facilities at reduced power since June 25, 2003. The Stations also have met each of the deadlines applicable to the Commission's channel election process. 3/ But the very expenditures related to the Stations' initial digital build-out and launch of digital operations caused Licensee significant financial distress and, ultimately, required it to seek bankruptcy protection. Specifically, because the DTV

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1/ See FCC File No. BALCT-20031222ABW (granted January 21, 2004).

2/ Pursuant to the *Second Periodic Review Order*, the Stations have elected to operate permanently on their assigned digital channels and therefore will be required to construct "full, authorized facilities" by the July 1, 2006, deadline. The Stations are in the Rapid City Designated Market Area, which is currently ranked 178 by Nielsen; KEVN reaches an estimated 75,310 television households and KIVV reaches an estimated 19,670 television households.

3/ See FCC File Nos. BCERCT-20041105AYE (FCC Form 381 certification for KEVN); BFRECT-20050210APB (FCC Form 382 channel designation for KEVN); BCERCT-20041105AXR (FCC Form 381 certification for KIVV); and BFRECT-20050210APT (FCC Form 382 channel designation for KIVV).

build-out had depleted Licensee's financial resources without *any* return whatsoever on that investment, Licensee was unable in the summer of 2003 to continue making interest payments to its lender, Finova Capital Group, Inc. ("Finova"). Ironically, Finova previously had tried to block Licensee from using its available funds for the DTV build-out and threatened a foreclosure proceeding if the build-out caused Licensee to miss any required payments to Finova. Ultimately, Finova filed a complaint in the United States District Court for the District of Arizona in September 2003 (CV03-1797-PHX-SMM) seeking to foreclose on the assets of the Stations and for appointment of a receiver. As a result, Licensee was forced to file for bankruptcy protection under Chapter 11 of the Federal Bankruptcy Code in the United States Bankruptcy Court for the District of South Dakota (the "Court") on November 20, 2003 (File No. 03-50592).

Throughout the bankruptcy proceeding, Licensee has been required to pay 80 percent of its available cash flow to Finova. Licensee has filed a plan of reorganization that is awaiting approval by the Court. This plan requires Licensee not only to continue monthly interest payments to Finova, but also to pay Finova 75 percent of available excess cash flow. In addition, Licensee will pay its general trade creditors on a monthly basis 50 percent of its pre-petition indebtedness over the next four years. Accordingly, because of this financial distress and the requirements being imposed by the principal creditor and the Court, only limited funds are available for upgrading to full-power digital operations. In addition, very little, if any, of the equipment used to commence low-power digital operations at the

two stations can be used in the upgrade. Obviously the problem is only exacerbated by the need to upgrade satellite station KIVV as well as parent station KEVN.

Based on current estimates and quotes from equipment vendors, it would cost Licensee approximately \$1,400,000 to meet the July 2006 build-out requirements. 4/ Currently, Licensee has approximately [BEGIN PROPRIETARY INFORMATION] \$ [END PROPRIETARY INFORMATION] in available cash. 5/ Accordingly, more time is necessary to enable Licensee to accrue additional funds from the operation of the Stations; meanwhile, as noted above, under the terms of the reorganization plan pending Court approval, for the foreseeable future the vast majority of Licensee's excess cash flow is to be paid to its principal creditor, with additional funds earmarked for repayment of general creditors. Therefore, Licensee requests that it be permitted to extend the date for completion of KEVN's and KIVV's conversion to full-power digital until the later of November 30, 2007 or the conclusion of the digital transition period. 6/

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4/ See Exhibit A, which includes an itemized schedule of estimated expenses associated with the completion of the build-out for the Stations.

5/ See Exhibit B, which is a balance sheet for KEVN Inc. for the period ending March 31, 2005. Licensee requests that Exhibit B and the related discussion of certain financial matters contained in the body of this petition be withheld from public inspection. These materials constitute highly proprietary and confidential financial information that is competitively sensitive. Licensee is separately submitting a redacted version of this petition for the Commission to make available to the public.

6/ While Licensee recognizes that the Commission may prefer to address extension requests in six month increments, given (i) the magnitude of this construction effort, (ii) the need to accumulate capital through station operations over a period in excess of six months, and (iii) the limited construction season in

It is imperative that the Commission act expeditiously on this request as Licensee expects final approval of its reorganization plan from the Court later this month. 7/ Licensee therefore needs to have in place a feasible plan for fulfilling its obligation to upgrade its digital facilities, consistent with the obligations being imposed by the Court. Licensee firmly believes that the circumstances confronting it – namely, the struggle to emerge from bankruptcy while being saddled with almost \$1,800,000 in DTV build-out expenses 8/ in the 178<sup>th</sup> market where only one other stand-alone station is required to do likewise 9/ – are precisely the type of circumstances the Commission was contemplating when it provided a mechanism for seeking extensions of the deadline.

In setting the July 1, 2006 deadline, the Commission noted that it would grant extensions for stations that are unable to provide the required service due to “severe financial constraints or circumstances beyond a station’s control.” 10/

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South Dakota due to severe winter weather conditions, it is both appropriate and necessary to provide for a longer extension.

7/ See Exhibit C, Amended Plan of Reorganization, dated March 15, 2005.

8/ This figure represents the sum of \$375,000 previously spent on low-power digital plus the estimated \$1,400,000 required to complete the upgrade to full-power.

9/ The CBS affiliate in the market, KCLO-TV, is a satellite of KELO-TV in Sioux Falls, SD and originates no programming. The NBC affiliate, KNBN, was granted a construction permit for analog Channel 21 in April, 2000 and was therefore not assigned a DTV channel allotment. The station therefore will simply flash-cut to digital on its existing analog channel at the end of the transition period. Thus, the only other stand-alone station that will build out separate digital facilities in the market will be KOTA (the ABC affiliate).

10/ *Second Periodic Review Order*, at ¶ 87.

The Commission stated that broadcasters seeking a waiver of the July 1 deadline on the basis of financial hardship should make a showing similar to that required to obtain a waiver of the initial digital construction deadlines on financial hardship grounds. <sup>11/</sup>

Granting the Stations an extension of the July 1, 2006 deadline would be consistent with the Commission's prior decisions. In its *Fifth Report and Order*, at ¶ 77, the Commission announced that it would be prepared to grant an extension of the applicable construction deadline where, as here, a broadcaster has been unable to complete construction "due to circumstances that are either unforeseeable or beyond the licensee's control if the licensee has taken all reasonable steps to resolve the problem expeditiously." In its *First DTV Order*, at ¶ 41-47, the Commission recognized, in particular, that some smaller-market stations might need additional time to plan and construct their digital facilities given the expense involved in conversion and the historically low profitability of these stations.

Licensee's status in bankruptcy is precisely the type of circumstance "outside of the control of the station" that the Commission previously has concluded warrants grant of an extension – and it continues to do so. Thus, for example, in *DTV Build-Out Requests for Extension of the Digital Television Construction*

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<sup>11/</sup> *Id.*, citing *Report and Order*, "Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service," 12 FCC Rcd 12809 (1997) ("*Fifth Report and Order*"), at ¶ 77; and *Memorandum Opinion and Order on Reconsideration*, "Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television," *on recon.*, 16 FCC Rcd 20594 (2001) ("*First DTV Order*"), at ¶¶ 46-47.

*Deadline, Commercial Stations with May 1, 2002 Deadline*, FCC 03-250 (2003), at ¶¶ 28-36, the Commission granted extensions to several stations that were subject to lender-imposed financial restrictions limiting the amount of funds available for digital construction, and to another licensee subject to bankruptcy proceedings that similarly severely restricted its ability to expend resources for digital construction.

Again, in *DTV Build-Out Requests for Extension of the Digital Television*

*Construction Deadline, Commercial Stations with May 1, 2002 Deadline*, FCC 04-124 (2004), at ¶¶ 20-29, the Commission granted extensions to several stations that were able to demonstrate that the costs of meeting the Commission's build-out requirements exceeded the stations' financial resources. More recently, in *DTV Build-Out Requests for Extension of the Digital Television Construction Deadline, Commercial Stations with May 1, 2002 Deadline*, FCC 05-67 (2005), at ¶¶ 20-31, the Commission granted an extension to a licensee whose parent company was undergoing a reorganization in bankruptcy.

More generally, the Commission has endeavored to grant relief to stations that are experiencing financial hardship where the public interest will be served by doing so. For example, the Commission has established criteria for waivers of its multiple ownership restrictions for "failing stations" <sup>12/</sup> and has

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<sup>12/</sup> See *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12935-40 (1999), *recon. granted in part*, 16 FCC Rcd 1067 (2001). See also, e.g., *Application of Hispanic Keys Broadcasting, Inc. and Sonia Broadcasting Company, LLC For Consent to the Assignment of License WVIB(TV)*, 19 FCC Rcd 4603 (2004) (granting a failing station waiver of the television duopoly rule).

created procedures to waive, reduce, or defer payment of its regulatory fees based on financial hardship. <sup>13/</sup> The Commission also has stated explicitly that it is “cognizant of [its] obligations under its public interest mandate to consider the national policy underlying other federal laws” such as the bankruptcy laws. <sup>14/</sup> The grant of an extension to the Stations to complete their digital build-out as requested herein would fulfill the Commission’s obligation to harmonize its policies with those underlying the bankruptcy laws.

Licensee submits that the public interest will be served by grant of this request. First, it would provide a reasonable timetable to upgrade existing low-power digital facilities for two stations that have no other choice due to restrictions imposed by the bankruptcy process. Second, based on its discussions with retailers in the market, Licensee believes that very few viewers have actually purchased DTV sets to view KEVN’s and KIVV’s existing digital broadcasts of FOX programming. Third, this is a case of a licensee that takes its regulatory responsibilities seriously – indeed, *it defied its lender’s demands in order to meet the initial requirement to build low-power digital facilities at both KEVN and its*

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<sup>13/</sup> See 47 U.S.C. § 159(d) and 47 C.F.R. §1.1166. See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, 18 FCC Rcd 15985 at ¶ 13 (2003) (finding that bankruptcy “generally represents sufficient evidence of financial hardship to warrant granting a waiver”).

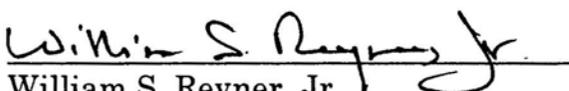
<sup>14/</sup> *Application of San Diego Television, Inc., Debtor-in-Possession, and KTTY, Inc. for the Assignment of the License of Station KTTY(TV)*, 11 FCC Rcd 14689 (1996), at ¶ 13 (granting a permanent waiver of the television duopoly rule in order for the licensee to resuscitate a bankrupt station), citing *LaRose v. FCC*, 494 F.2d 1145, 1146 (D.C. Cir. 1974). See also *Telemundo, Inc. v. F.C.C.*, 803 F.2d 513 (D.C. Cir. 1986)

*satellite station*. Finally, a grant of this request – which is limited to a bankrupt licensee in a very small market burdened with the need to build two full-power digital stations rather than a single digital facility – will not create any troubling precedent for the Commission. Rather, the Commission will be acting to encourage rather than stifle the reasonable implementation of full-power digital service to this small market while avoiding the disruptions of service that could follow another bankruptcy.

WHEREFORE, KEVN, Inc., Debtor-in-Possession, respectfully requests that the Commission expeditiously grant the relief requested herein and thereby provide Licensee and the Court with more certainty regarding the Stations' continued ability to provide free over-the-air broadcast service – both analog and digital– to the viewers of Rapid City, South Dakota.

Respectfully submitted,

**KEVN, INC., DEBTOR-IN-POSSESSION**

By:   
William S. Reyner, Jr.  
President

Of counsel:

Mace J. Rosenstein  
Tarah S. Grant  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street NW  
Washington, DC 20004  
202-637-5600

May 13, 2005

**Exhibits**

- Exhibit A            Estimated Remaining Construction Expenses
- Exhibit B            KEVN, Inc. Balance Sheet for the Period Ending March 31, 2005  
                          [REDACTED]
- Exhibit C            Amended Plan of Reorganization, dated March 15, 2005

**Exhibit A  
Estimated Remaining Construction Expenses**

<b>KEVN-DT Full Power Cost Analysis</b>	<b>Cost</b>	<b>Tax</b>	<b>Sub-Total</b>
Transmitter-Mask Filter-Heat exchanger	\$475,000.00	\$27,740.0000	\$502,740.0000
Transmission Line	\$ 42,000.00	\$ 2,452.8000	\$ 44,452.8000
Antenna	\$ 52,500.00	\$ 3,066.0000	\$ 55,566.0000
RF Components	\$ 2,000.00	\$ 116.8000	\$ 2,116.8000
Test Equipment	\$ 55,000.00	\$ 3,212.0000	\$ 58,212.0000
Tower Analysis	\$ 5,000.00	\$ 292.0000	\$ 5,292.0000
Engineering Studies	\$ 10,000.00	\$ 584.0000	\$ 10,584.0000
Tower Crew (line/antenna installation)	\$ 25,000.00	\$ 1,460.0000	\$ 26,460.0000
Shipping	\$ 5,000.00	\$ 292.0000	\$ 5,292.0000
Tower modifications (parts & labor)	\$ 5,000.00	\$ 292.0000	\$ 5,292.0000
		\$ -	\$ -
PSIP Generator	\$ 7,000.00	\$ 408.8000	\$ 7,408.8000

<b>Sub-Total</b>	<b>\$683,500.00</b>	<b>\$ 39,916.40</b>
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<b>Total</b>	<b>\$ 723,416.40</b>	
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<b>KIVV-DT Full Power Cost Analysis</b>	<b>Cost</b>	<b>Tax</b>	<b>Sub-Total</b>
Transmitter-Mask Filter-Heat exchanger	\$475,000.00	\$27,740.0000	\$502,740.0000
Transmission Line	\$ 36,500.00	\$ 2,131.6000	\$ 38,631.6000
Antenna	\$ 48,000.00	\$ 2,803.2000	\$ 50,803.2000
RF Components	\$ 2,000.00	\$ 116.8000	\$ 2,116.8000
Test Equipment	\$ 25,000.00	\$ 1,460.0000	\$ 26,460.0000
Tower Analysis	\$ 5,000.00	\$ 292.0000	\$ 5,292.0000
Engineering Studies	\$ 10,000.00	\$ 584.0000	\$ 10,584.0000
Tower Crew (line/antenna installation)	\$ 25,000.00	\$ 1,460.0000	\$ 26,460.0000
Shipping	\$ 5,000.00	\$ 292.0000	\$ 5,292.0000
Tower modifications (parts & labor)	\$ 5,000.00	\$ 292.0000	\$ 5,292.0000

<b>Sub-Total</b>	<b>\$636,500.00</b>	<b>\$ 37,171.60</b>
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<b>Total</b>	<b>\$ 673,671.60</b>	
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**Exhibit B**  
**Balance Sheet for the Stations**

[REDACTED]

**Exhibit C**  
**Amended Plan of Reorganization, dated March 15, 2005**

See attached.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

\*\*\*\*\*

In re:  
KEVN, INC.,  
xx-xxx-4127,

Case #03-50592  
Chapter 11

**AMENDED PLAN OF REORGANIZATION  
DATED MARCH 15, 2005**

Debtor.

\*\*\*\*\*

**I.  
RETENTION OF JURISDICTION**

United States Bankruptcy Court, District of South Dakota, shall retain jurisdiction of this case until completion of the Plan or any modification thereof.

**II.  
APPOINTMENT OF DISBURSING AGENT**

Debtor shall be the disbursing agent and shall timely disburse all of the cash payments provided for herein.

**III.  
PROVISIONS FOR REJECTION OR ACCEPTANCE OF  
EXECUTORY CONTRACTS AND LEASES**

Subject to 11 U.S.C. §365, Debtor assumes the following Executory Contracts and Leases: None.

**IV.  
ADMINISTRATIVE EXPENSES**

Administrative expenses, other than attorney fees, shall be paid on the effective date of the Plan. Trustee fees and clerk fees owed upon the effective date of the Plan shall be paid at that time. Administrative claims for attorney fees and expenses shall be paid upon court approval.

Debtor will file monthly operating reports and pay U.S. Trustee fees until the case is closed.

The effective date of the Plan shall mean the 11<sup>th</sup> day following the entry of an Order of Confirmation.

**V.**  
**PRIORITY CLAIMS**

This Plan provides no payment or treatment to priority claimants. At the date of filing, Debtor was not in arrears as to any priority claims.

**VI.**  
**CLASSIFICATION OF CLAIMS.**

The claims of creditors shall be divided into Classes as follows:

Class 1: FINOVA Capital Corporation;

Class 2: Barter/Trade Creditors;

Class 3: Administrative Convenience Claims;

Class 4: Unsecured Creditors;

Class 5: Subordinated Creditors; and

Class 6: Shareholder.

**VII.**  
**UNIMPAIRED CLAIMS AND INTERESTS**

The following claims are specified as unimpaired by 11 U.S.C. §1124, namely: Class 6.

**VIII.**  
**IMPAIRED CLAIMS**

The following claims are specified as impaired: Classes 1, 2, 3, 4 and 5.

**IX.**  
**TREATMENT OF CLASSES OF CLAIMS**

Class 1: FINOVA Capital Corporation. As of January 31, 2005, this creditor's claim was \$3,763,154.72. Upon confirmation, this creditor's claim shall be

paid over the amortized period of twenty (20) years, with interest at the rate of 7.5% per annum. The monthly payment in the amount of approximately \$30,000.00 shall begin the fifth day of the month following confirmation. The exact treatment of this creditor's claim shall be in accord with the "Term Sheet" attached as Exhibit "A" to this Plan and intended to be a part hereof as if set out in full.

In the event substantially all of Debtor's assets are sold or a controlling interest in the holding company which owns Debtor is sold, at any time after confirmation, then the remaining debt owed this creditor under the plan, shall be due and payable.

This creditor shall retain its lien positions until paid in accordance with the Plan. Upon final payment, this creditor shall release all liens, mortgages and encumbrances of record. Debtor shall insure, maintain, replace and repair the assets secured by this creditor, through the course of the Plan, so as to retain the value of the assets, absent ordinary wear and tear.

Class 2 – Barter/Trade Creditors. Prepetition, creditors Mckie Ford and Northwest Communications agreed to sell equipment to Debtor as a trade for future advertising. These creditors delivered the equipment and are entitled to trade. The trade allowance will continue until paid in full. Any unsecured creditor may elect to be treated with this class.

Any ballots filed by this class of creditors shall be counted with the unsecured Class 4 creditors for purposes of cramdown.

Class 3: Administrative Convenience Unsecured Creditor Class: This Class shall consist of the following claimants: All unsecured creditors who timely file a Proof of Claim or are listed on Debtor's Schedules that are not listed by Debtor as disputed, contingent or unliquidated and have claims less than \$2,000.00, or elect to reduce their claim to the sum of \$2,000.00.

Debtor estimates that this Class will consist of approximately ten (10) creditors with a total indebtedness of approximately \$12,000.00. This Class of creditors will be paid 50% of their claim within thirty (30) days of the effective date of the Plan, without interest. Any creditor in this Class may elect full payment of its claim. Any creditor in this Class who elects full payment, shall be paid 100% of its claim within two (2) years of the effective date of the Plan, without interest. If any creditor in this Class fails to elect a preferred payment, Debtor may make such election for such creditor.

Debtor requests that the court approve as reasonable and necessary, and for administrative convenience, this separate Class of claims for unsecured creditors.

Class 4: Unsecured Creditors: This Class shall consist of all unsecured creditors, (except Class 5 creditors), with claims that exceed \$2,000.00, who have timely filed a Proof of Claim which is not properly objected to or listed on Debtor's Schedules that are not listed by Debtor as disputed, contingent or unliquidated, or those creditors who have obtained a Court Order allowing their claim.

Debtor estimates this Class of creditors to be owed approximately \$740,000.00. These claimants shall have the election to have their claims treated as follows:

- A) Fifty percent (50%) of their allowed claim, without interest, paid with equal monthly payments over a term of seven (7) years. The first payment to be made within thirty (30) days from the effective date of the Plan, and continuing monthly thereafter for a full term of seven (7) years, or
- B) One hundred percent (100%) of their allowed claim, with interest at the rate of 4% per annum, paid over a term of twenty (20) years, with the first monthly payment to begin within thirty (30) days from the effective date of the Plan.
- C) If any creditor fails to elect the preferred treatment, or fails to ballot on the Plan, then that creditor's claim shall be paid in accordance with subdivision A of this Class, which is fifty percent (50%) of its claim paid over a term of seven (7) years, without interest.

In the event Debtor's assets are sold after confirmation, the remaining debt owed this class of creditors shall be immediately due and payable. This class of creditors may be pre-paid, pro-rata, if funds are available per Debtor's discretion.

Class 5: Subordinated Creditors: Amcito Partner's claim in the amount of \$454,575.35, and a portion of Bill Reyner's claim in the amount of \$454,575.35, for the purposes of this Plan, will be subordinated. These claims will continue to bear interest at the rate of 4% per annum with the first monthly payment to begin on December 31, 2013. The monthly payments will be amortized over twenty years.

In the event Debtor's assets are sold, then these claims shall be due in full.

Class 6: Shareholder: The sole shareholder, Mission TV, LLC, shall retain its shares of stock previously issued. Debtor's charter shall provide that Debtor shall not issue nonvoting equity security. There is only one class of stock. Upon

confirmation, Mission TV, LLC has agreed to issue key employee ownership interests.

In order to retain the current management team which has taken so long to put together, in recognition of their success and importance to the Stations and to assure that the Plan can be achieved as proposed, Debtor proposes to create incentive awards as follows. Mission TV, LLC will issue additional conditional ownership interests, granting the General Manager, Chief Financial Officer and Sales Manager 5% ownership each and the Chief Engineer, News Director and Production Manager 2% ownership each, thus placing 21% ownership of the Debtor in the hands of the current management team. Such interests will not vest until the respective employee has continued as an employee of the Stations for a period of five years following date of Plan confirmation, unless the Stations are sold at an earlier time and the employee is employed at the time of sale.

**X.**  
**MEANS FOR PLAN'S EXECUTION**

Debtor shall retain all property of the estate. Debtor shall adhere to the above described payment schedules and such payments shall be made from the proceeds of Debtor's continued operation. All property of the estate shall be vested in Debtor upon the effective date of the Plan.

**XI.**  
**NEW POST-FILING INDEBTEDNESS**

No new post-filing indebtedness, other than what has been set out in this Plan, has been incurred by Debtor which are in arrears or not current.

**XII.**  
**CONCLUSION**

It is respectfully submitted that Debtor has given every thought to the complex problems confronting it and, with the assistance of counsel, has devised and formulated this Plan, with the hope that equitableness and fairness of the Plan will be considered by the parties in interest whose consent is necessary to confirm. It is sincerely hoped that all creditors will join in the consent of the Plan, so that they, as well as Debtor, will receive the maximum results.

Respectfully submitted this 15<sup>th</sup> day of March, 2005.

KEVN, INC.

By: /s/ William S. Reyner, Jr.  
Its: President

Prepared by: /s/ Clair R. Gerry  
Stuart, Gerry and Schlimgen, Prof. LLC  
Clair R. Gerry  
507 W. 10<sup>th</sup> Street  
PO Box 966  
Sioux Falls, SD 57101-0966  
Telephone: (605) 336-6400  
Fax: (605) 336-6842

## **Attachment B**



constraints imposed on Licensee in connection with ongoing bankruptcy proceedings before the United States Bankruptcy Court for the District of South Dakota (the "Court"). Licensee therefore requested an extension of the deadline until the later of November 30, 2007 or the conclusion of the digital transition period.

On July 13, 2005, the Court issued an Order of Final Decree ("Final Decree") terminating the bankruptcy proceeding described in the Petition. *In re: KEVN, Inc.* (File No. 03-50592), *Order of Final Decree* (attached hereto). Upon issuance of the Final Decree, Licensee requested and has received Commission consent to the involuntary assignment of the Stations' licenses from KEVN, Inc., Debtor-in-Possession, to KEVN, Inc. See FCC File Nos. BALCT-20050729AXD, AXE.

The issuance of the Final Decree is further support mandating a grant of the Petition. Pursuant to the Final Decree, Licensee is obligated to implement the plan of reorganization, dated March 15, 2005, approved by the Court (the "Plan"), a copy of which was submitted with the Petition. The Court's approval of the Plan now obligates Licensee to pay the vast majority of its excess cash flow to its principal creditor, Finova Capital Group, Inc. ("Finova"), and earmarks additional funds for the repayment of general creditors. More specifically, as described in the Petition, the Plan requires Licensee not only to make monthly payments of principal and interest to Finova but also to pay Finova 75 percent of its

available excess cash flow going forward. \*/ In addition, the Plan requires Licensee to pay its general trade creditors on a monthly basis 50 percent of its pre-petition indebtedness over the next four years.

Licensee's obligations under the Plan will preclude the accumulation of funds necessary to complete the timely build-out of the Stations to full-power digital operation. Indeed, as described in detail in the Petition, the entire amount of Licensee's currently available cash is only approximately 18 percent of the amount that would have to be expended in order to complete the build-out of the Stations by the July 1, 2006 deadline. Simply stated, it will not be possible for Licensee to accrue the funds needed for digital construction from the revenues generated by the operation of the Stations in time to satisfy the July 1, 2006 build-out deadline.

Meanwhile, recent developments in the Rapid City market threaten to diminish still further the Stations' ability to generate sufficient revenue to support the digital build-out. The federal Base Realignment and Closure Commission (the "BRCC") recently announced its recommendation that Ellsworth Air Force Base in Rapid City be closed. *See, e.g.*, "South Dakota Praying for Soft Landing if Base Closes," *Omaha World-Herald*, May 15, 2005; "Ellsworth Air Force Base Impact Widespread," *Rapid City Journal* (online edition), May 5, 2005. The decommissioning of Ellsworth AFB, the second largest employer in South Dakota, would further weaken an already soft television advertising market in the Stations' home DMA. The base employs approximately 4,000 military and civilian personnel

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\*/ During the bankruptcy proceeding, Licensee was not required to make principal payments to Finova.

and contributes an estimated \$278 million to the state economy, much of which is derived from Rapid City area jobs and services that support the base's employees and their families. There is no doubt that the closure of the base would have a devastating effect on the community's military-driven economy.

As Licensee noted in the Petition, the Commission stated in the *Second Periodic Review Order* that it would grant extensions for stations that are unable to meet the July 1, 2006 deadline due to "severe financial constraints or circumstances beyond a station's control." *Second Periodic Review Order* at ¶ 87. The Commission recently affirmed its willingness to grant such relief. *See Public Notice, "DTV Channel Election Issues -- Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline,"* DA 05-1636 (released June 15, 2005). The financial constraints imposed on Licensee by the Plan clearly constitute a circumstance "outside of the control of the station" that warrants grant of an extension. Significantly, as demonstrated in the Petition, the Commission has granted extensions of prior build-out deadlines to stations that were subject to lender-imposed financial restrictions limiting the amount of funds available for digital construction. *See* Petition at 6-7. Indeed, the Commission generally is sensitive to the effects of compliance with construction requirements on applicants that are experiencing severe financial hardship and has granted waivers accordingly. *See, e.g., Request of Galaxy Telecom, L.P. for Waiver of Section 11.11(a) of the Commission's Rules*, 17 FCC Rcd 11,805 (2002) (granting 36-month waiver of EAS

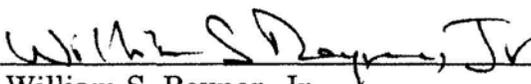
equipment installation deadline to cable system operating pursuant to court-ordered plan of reorganization).

Furthermore, given that a federal bankruptcy court has reviewed, approved, and ordered Licensee to comply with the Plan, the Commission's grant of an extension of the build-out deadline for the Stations would be consistent with the Commission's recognition of the need to harmonize its policies with those underlying the federal bankruptcy laws. *See, e.g., San Diego Television, Inc., Debtor-in-Possession*, 11 FCC Rcd 14689 (1996), at ¶ 13 (Commission is "cognizant of [its] obligations under its public interest mandate to consider the national policy underlying other federal laws" such as the bankruptcy laws, *citing LaRose v. FCC*, 494 F.2d 1145, 1146 (D.C. Cir. 1974)).

In light of the Court's approval of the Plan, Licensee respectfully requests that the Commission expeditiously grant the extension requested in the Petition so that it can formulate a financially viable plan to build out the digital facilities of the Stations. Licensee's obligations under the Plan, as ordered by the Court, clearly necessitate such relief.

Respectfully submitted,

**KEVN, INC.**

By:   
William S. Reyner, Jr.  
President

Of counsel:

Mace J. Rosenstein  
Tarah S. Grant  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street NW  
Washington, DC 20004  
202-637-5600

August 19, 2005

**Exhibit**

Order of Final Decree (File No. 03-50592)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re: ) Bankr. No. 03-50592  
) Chapter 11  
KEVN, INC. )  
Tax I.D. No. 75-2254127 ) ORDER FOR FINAL DECREE  
Debtor. )

Upon consideration of the Application for Final Decree filed by Debtor on July 7, 2005; and

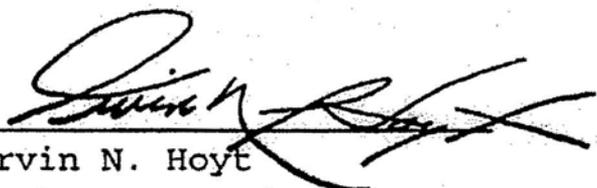
IT APPEARING that a plan of reorganization was confirmed on May 19, 2005, and that the plan has been substantially consummated by the commencement of payments or the distribution of property as provided by the plan; and

IT FURTHER APPEARING that affected parties have fully complied with the Court's Post-confirmation Order Setting Certain Deadlines entered May 19, 2005, and that the bankruptcy estate has been fully administered,

IT IS HEREBY ORDERED that pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022 this case is CLOSED.

So ordered this 13th day of July, 2005.

BY THE COURT:

  
Irvin N. Hoyt  
Bankruptcy Judge

NOTICE OF ENTRY  
Under F.R. Bankr. P. 9022(a)  
Entered

JUL 13 2005

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court