

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 06-11
FM Broadcast Stations) RM-11304
(Crowell, Texas))

FILED/ACCEPTED

NOV 17 2006

To: Marlene H. Dortch, Secretary
Federal Communications Commission
Attn: Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

LKCM Radio Group, LP ("LKCM"), licensee of Station KFWR(FM), Mineral Wells, Texas, and Fort Worth Media Group G.P., LLC ("FWMG") licensee of Station KYBE(FM), Frederick, Oklahoma,¹ (together with LKCM-LICO, the "Proponents"),² hereby petition for reconsideration of the Media Bureau's (the "Bureau") decision to dismiss the Proponents' Counterproposal in this proceeding.³ The sole issue in this proceeding is whether the public, including the Proponents, received adequate notice that, on January 12, 2006, the FCC reinstated the Archer City Permit (defined in paragraph 2) almost 15 months after it had expired. As the Proponents will demonstrate herein, the answer is no, and thus the FCC must (i) reinstate the

¹ LKCM Radio Licenses, L.P. ("LKCM-LICO") is the proposed assignee of KFWR (BALH-20060331ADK) and KYBE (BALH-20060331AFT).

² FWMG and LKCM-LICO are wholly-owned subsidiaries of LKCM.

³ See *Crowell, Texas, Report and Order*, 21 FCC Rcd 10686 (Med. Bur. 2006) ("*Crowell R&O*"). The *Crowell R&O* was published in the Federal Register on October 18, 2006. See 71 Fed. Reg. 61455 (Oct. 18, 2006). Thus, this Petition for Reconsideration is timely. See 47 C.F.R. § 1.429(d).

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Proponents' Counterproposal and consider it on the merits in this proceeding, and (ii) rescind the reinstatement of the Archer City Permit.⁴ In support hereof, the Proponents state as follows:

I. BACKGROUND – PROPONENTS' COUNTERPROPOSAL.

1. The Proponents' Counterproposal proposed to, *inter alia*, (i) modify the facilities of KFWR to specify operation on Channel 240C at a new site, and (ii) modify the facilities of Station KJKB(FM), Jacksboro, Texas, to specify operation on Channel 248A through the issuance of an Order to Show Cause. If granted, the Counterproposal would (1) provide first local services to three communities (Springer, Oklahoma; Rochester, Texas; and Megargel, Texas) with a combined population of 1,203 persons, (2) provide a total net gain in aural service to approximately 645,000 persons, and (3) eliminate existing short-spacings. Collectively, these benefits would further priorities 3 and 4 of the FCC's allotment priorities.⁵

2. In order to allot Channel 248A at Jacksboro, Texas, the Proponents proposed to change the channel and site of the vacant allotment at Archer City, Texas from Channel 248C2 to Channel 299C2. The Bureau, however, dismissed the Proponents' Counterproposal. The Bureau believed that Channel 248C2 at Archer City was not a vacant channel because Texas Grace Communications ("Texas Grace") still held a valid construction permit for that channel under the call sign KRZB(FM) (BPH-19990217IB) (the "Archer City Permit"). However, as demonstrated in the Proponents' "Response to Opposition" filed in this proceeding on August 2, 2006,⁶ the Archer City Permit expired on October 26, 2004, and thus the Proponents could

⁴ The Proponents are contemporaneously filing a Petition for Reconsideration of the FCC's decision to reinstate the Archer City Permit. If, as the Proponents contend, the FCC did not provide adequate notice of such reinstatement, then the time for filing petitions for reconsideration has not commenced.

⁵ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁶ It is unclear from the *Crowell R&O* if the Bureau even considered the Proponents' Response to Opposition. This pleading was not mentioned anywhere in the *Crowell R&O*. At the very least, it was incumbent upon the FCC to consider the arguments raised by the Proponents. In not doing so, the FCC's decision to dismiss the Proponents'

change the channel and site of the vacant allotment at Archer City pursuant to the FCC's policies.⁷

II. BACKGROUND – ARCHER CITY PERMIT.

3. The FCC is familiar with the history of the Archer City Permit, but it is worth repeating here:⁸

Texas Grace received its initial permit to construct KRZB(FM) on October 7, 1996. In October 2001, the Commission denied Texas Grace's request for additional time to construct, finding that Texas Grace was not entitled to "tolling" under Section 73.3598(b) of the Commission's rules. The Commission clarified that tolling is appropriate only in the narrow circumstances enumerated in that rule section. It rejected a tolling claim based on health problems of Texas Grace's principal. It also found that KRZB's community of license change from Olney to Archer City, Texas did not create a new station entitled to a new construction period, and rejected encumbrance arguments based on associated rulemaking proceedings. Nevertheless, the Commission observed that prior to its clarification therein, "[a] permittee, like Texas Grace, might have concluded that reliance on mere facilities modifications involving frequency or class would be insufficient to trigger tolling, but that a facility change coupled with a community of license change might be treated differently."⁹ To avoid unfairness to Texas Grace, the Commission modified Texas Grace's existing permit, by waiver, to provide it with an additional three years to construct. In so doing, the Commission expressly stated that the construction permit would automatically cancel unless Texas Grace completed construction and filed an application to license the authorized facilities by October 26, 2004. Additionally, the Commission advised that Texas Grace would not be eligible for further extension of the October 26, 2004, construction deadline because Texas Grace had already received well in excess of three unencumbered years to construct.

In 2003, Texas Grace filed additional requests for tolling, which the staff denied or dismissed. On January 29, 2004, the staff denied reconsideration in two

Counterproposal was arbitrary and capricious. *See Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1173 (D.C. Cir. 1994) (court remanded rule making decision because the FCC failed to consider significant comments).

⁷ *See, e.g., Eldorado, Texas, et al.*, 15 FCC Rcd 9179 (2000). The Commission will modify reference coordinates of vacant allotments in rule making proceedings where other changes to the FM Table of Allotments are proposed. *See also, Fair Bluff, North Carolina*, 10 FCC Rcd 9255 (1995).

⁸ This history is taken from the FCC's most recent written (published or unpublished) decision on this matter. *See Texas Grace Communications, Memorandum Opinion and Order*, 20 FCC Rcd 4820, ¶¶ 2-4 (2005) (some footnotes have been omitted) (the "Second Texas Grace MO&O").

⁹ *See Texas Grace Communications, Report and Order*, 16 FCC Rcd 19167, 19171 (2001) (the "First Texas Grace MO&O").

separate letters. The first letter (bearing a staff reference number 1800B3-GDG) found that the staff had properly concluded that Texas Grace was not entitled to an additional six months to construct the station as a result of an alleged error by the Federal Aviation Administration (“FAA”) (“*FAA Reconsideration Denial*”). The second letter (bearing a staff reference number 1800B-IB) affirmed the initial staff determination that Texas Grace was not entitled to an additional 17 months based on events in rulemaking proceedings, including changes in the station’s interference protection (“*Rulemaking Reconsideration Denial*”). The *Rulemaking Reconsideration Denial* also dismissed as untimely two submissions filed August 21, 2003, (the “*August Submissions*”). The *August Submissions*, similar in many ways, both sought to expand Texas Grace’s 17-month rulemaking-related claim to 23 months following the July 25, 2003, release of a rulemaking order. The two *August Submissions* differed primarily in that one pleading sought to amend Texas Grace’s petition for reconsideration and the other sought consideration of the same facts as a new tolling request.

On February 3, 2004, the staff issued a consolidated Public Notice announcing, among other things, its January 29, 2004 actions on Texas Grace’s various requests. Applications for Review were due within 30 days of public notice, *i.e.*, by March 4, 2004. On March 8, 2004, Texas Grace filed three documents: an application for review of the *FAA Reconsideration Denial*, an application for review of the *Rulemaking Reconsideration Denial*, and a petition for reconsideration concerning dismissal of the *August Submission* that Texas Grace had intended as a tolling request. On March 19, 2004, Texas Grace submitted amendments to each of these documents.

4. In the *Second Texas Grace MO&O*, released on March 1, 2005, the Commission dismissed Texas Grace’s (i) March 8, 2004 Application for Review, (ii) March 8, 2004 Petition for Reconsideration, and (iii) March 19, 2004 amendments. In doing so, it expressly stated that the Archer City Permit was “*automatically cancelled*” on October 26, 2004.¹⁰ Since the March 1, 2005 *Second Texas Grace MO&O* decision, the FCC has not released, or to undersigned counsel’s knowledge, even written a decision in that proceeding. Yet, on January 12, 2006, the Archer City Permit was inexplicably reinstated with a new expiration date of February 11, 2008 (See Exhibit A). This expiration date was once again changed by the Bureau to July 5, 2008 (See Exhibit B) and this change was only disclosed in the Public Notice Comment section of the

¹⁰ *Second Texas Grace MO&O*, 20 FCC Rcd 4820 at ¶10 (emphasis added).

Archer City Permit with the notation of “Expiration date adjusted in response to 6/14/2006 Request for Adjustment” (See Exhibit C).

III. THE BUREAU DID NOT PROVIDE ADEQUATE NOTICE OF THE REINSTATEMENT OF THE ARCHER CITY PERMIT.

5. Before filing their Counterproposal, the Proponents had thoroughly researched the status of the Archer City Permit. They found two published decisions by the full Commission. The first was the *First Texas Grace R&O* issued on October 26, 2001, and the second was the *Second Texas Grace MO&O* issued on March 1, 2005.¹¹ The Proponents also had researched the CDBS database prior to filing their Counterproposal. They found no indication of the filing of a license to cover the Archer City Permit. Moreover, the Proponents reviewed the “Legal Action Information” section of the CDBS entry in connection with the Archer City Permit (File No. BPH-19990217IB). That section (copy appended as Exhibit E hereto) extends for over two full pages and contains entry after entry reflecting dismissals or denials of applications for review and petitions for reconsideration filed by Texas Grace. The history is entirely consistent with the published and unpublished Commission decisions discussed above. Additionally, the “Legal Action Information” section of CDBS shows the dismissal, on January 12, 2006, of yet another Texas Grace petition for reconsideration.¹²

6. The Proponents acknowledge that the CDBS entry for the Archer City Permit application now shows an expiration date of July 5, 2008, and that the “Public Notice Comment”

¹¹ The Proponents also found numerous unpublished letters dismissing various pleadings and requests filed by Texas Grace over the years. See Exhibit D. These letters are further evidence that the FCC had considered this matter thoroughly and that the Archer City Permit automatically expired on October 26, 2004.

¹² There is additional evidence that the public and the Bureau believed that the Archer City channel was a vacant allotment due to the expiration of the Archer City Permit on October 26, 2004. First, no less than three separate rule making proposals were filed after the October 26, 2004 expiration of the Archer City Permit, which all sought to modify the vacant Archer City channel. See (i) MB Docket No. 04-410, (ii) proposal for Channel 251A at Electra, Texas, and (iii) proposal for Channel 248C1 at Holliday, Texas. Also, the Bureau, in a June 9, 2006 Letter referred

section of the CDBS entry reflects that the construction permit was “reinstated” on January 12, 2006. Yet these entries are entirely inconsistent with all published and unpublished decisions regarding the Archer City Permit and with the relevant “Legal Action Information” section of CDBS. Moreover, the “Correspondence Folder” section of the CDBS entry in connection with the KRZB construction permit is entirely blank and to undersigned counsel’s knowledge has been since the Archer City Permit was granted. It reflects no subsequent decisions, no staff letters, no correspondence of any kind indicating that the published decisions by the Commission -- emphasizing that the construction permit automatically cancelled as of October 26, 2004 -- have somehow been overturned.¹³

7. Assuming that the Archer City Permit had been reinstated at the time the Proponents filed their Counterproposal, the Commission’s notice of the reinstatement was ambiguous, internally inconsistent, and altogether insufficient to provide the public with adequate notice as required by the Administrative Procedure Act (APA). For all the Proponents could discern at the time of filing, the CDBS entry indicating reinstatement of the Archer City Permit was a clerical error. It was at odds with all published and unpublished Commission decisions on the matter, not to mention a lengthy CDBS “legal action” section that confirmed denial of all Texas Grace’s attempts to obtain additional time to construct. If the Archer City Permit has in fact been reinstated, there is no correspondence, staff letter, or published decision of which the Proponents are aware that reverses the last five years of Commission decisions.

8. In the *Crowell R&O*, the Bureau cites a January 17, 2006 Public Notice, which announces the reinstatement of the Archer City Permit and implies that this provided adequate

to the Archer City channel as the “vacant Channel 248C2 at Archer City, Texas” (See [Exhibit F](#)) and the call sign for the station was changed to DKRZB for a period of time (See [Exhibit G](#)).

¹³ The Proponents also searched the FCC’s public files for KRZB and found no written decision to reinstate the Archer City Permit or to subsequently extend the expiration date from February 11, 2008 to July 5, 2008.

notice to the public that the Archer City Permit had been reinstated.¹⁴ This is the Broadcast Applications Public Notice that was released on that date and assigned the report number 26152.¹⁵ However, when the FCC gave the public notice of the reinstatement of the Archer City Permit it was required to notify the public through the Broadcast Actions Public Notice and not the Broadcast Applications Public Notice.¹⁶ Thus, the Bureau's attempt to notify the public of its inexplicable reinstatement of the Archer City Permit without written explanation was grossly inadequate. Further, the public was never officially notified of the Bureau's decision to change the expiration date of the Archer City Permit from February 11, 2008 to July 5, 2008 as the only reference to this decision was an entry in CDDBS.

9. The Bureau's failure to follow its procedures for providing public notice of the reinstatement of the Archer City Permit is also a violation of the APA, which requires an agency to follow its own rules.¹⁷ Moreover, Section 706 of the APA directs a reviewing court to vacate, as arbitrary and capricious and an abuse of discretion, a decision of the Commission that departs from existing precedent.¹⁸ Here, the Bureau departed from its own rules and failed to follow precedent when it published its decision to reinstate the Archer City Permit on the Broadcast Applications Public Notice rather than on the Broadcast Actions Public Notice. Because the Proponents did not have adequate notice of the reinstatement of the Archer City Permit, they

¹⁴ 21 FCC Rcd 10686, at n. 10.

¹⁵ See *Broadcast Applications, Report No. 26152*, Public Notice (Med. Bur., Jan. 17, 2006). See Exhibit H.

¹⁶ According to the Bureau's website (www.fcc.gov/fcc-bin/audio/appinfo.html), Broadcast Actions Public Notices are "a list of actions (grant, deny, dismiss, etc.) taken by the staff on various types of broadcast applications." Broadcast Applications Public Notices, on the other hand, are "a list of broadcast applications received or accepted for filing." See Exhibit I. Thus, because the reinstatement of the Archer City Permit was "an action taken by the staff," notice should have been through the Broadcast Action Public Notice.

¹⁷ See *Way of Life Television Network, Inc. v. F.C.C.*, 593 F.2d 1356, 1359 (D.C. Cir. 1979) (citing *Union of Concerned Scientists v. Atomic Energy Commission*, 499 F.2d 1069, 1082 (D.C. Cir. 1974)).

¹⁸ See 5 U.S.C.A. § 706; *WLOS TV, Inc. v. F.C.C.*, 932 F.2d 993, 995-96 (D.C. Cir. 1991) (citing *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 852 (D.C. Cir. 1970)).

could not modify their Counterproposal to protect the Archer City Permit and thus were deprived of a meaningful opportunity to participate. This imposition of liability without properly notifying the public of relevant factual information violates the APA's requirement—embodied in notions of due process—that administrative agencies provide reasonable notice of the standards by which they will judge a regulated entity's conduct.¹⁹

10. Where, as here, the Counterproposal's acceptability is at stake, "elementary fairness compels clarity in the notice of the material required as a condition for consideration."²⁰ The Commission's notice of the Archer City Permit's reinstatement—assuming such reinstatement has in fact occurred—was anything but clear. Quite the contrary, given the Commission's published decisions on the matter, the apparent *sub silentio* revision of the CDBS database to reinstate the permit resulted in reference material available to the Proponents that was "so obscure as to elude a conscientious reader."²¹ The Proponents cannot fairly be penalized for relying on the Commission's explicit published and unpublished decisions in the face of unexplained and inconsistent entries in CDBS.

11. Texas Grace has had over ten years to build the facilities for KRZB and yet there is no evidence that it has even commenced construction at the Archer City site. Instead, it continues to disregard the FCC's rules because it knows that it can go back to the FCC and get more time to build even after the Commission has declared that the Archer City Permit was "*automatically cancelled*" on October 26, 2004. In addition to violating basic notions of due

¹⁹ *Cf., Satellite Broad., Inc. v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987) (citing *Gates & Fox v. OSHRC*, 790 F.2d 154, 156 (D.C. Cir. 1986)) (just as an agency must provide notice of rules, it must also provide notice of relevant factual information).

²⁰ *Salzer v. FCC*, 778 F.2d 869 (D.C. Cir. 1985) (quoting *Radio Athens, Inc. (WATH) v. FCC*, 401 F.2d 398, 404 (D.C. Cir. 1968)).

²¹ *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351 (D.C. Cir. 1993). As the *McElroy* court noted, "obscurity and imprecision" in the Commission's public notices "collide with the Commission's responsibility . . . of issuing intelligible orders."

process, the Commission's decision to give Texas Grace an additional seven years to build its facilities has resulted in the warehousing of valuable spectrum for over a decade. As the Bureau is well aware, the three year time period to complete construction was implemented in 1999 to "strike a balance between the fundamental public interest in expediting new broadcast service and preventing the warehousing of spectrum, and our recognition that there are some legitimate obstacles that may prevent construction."²² This balance has not been struck in the Archer City proceeding as Texas Grace has successfully warehoused spectrum for ten years without bringing service to the public.

12. The Proponents' Counterproposal would have (1) provided first local services to three communities (Springer, Oklahoma; Rochester, Texas; and Megargel, Texas) with a combined population of 1,203 persons, (2) provided a total net gain in aural service to approximately 645,000 persons, and (3) eliminated existing short-spacings. However, these public interest benefits were disregarded so that a construction permit that has been in existence for a decade -- and in all likelihood will never be built -- could continue be protected.²³ This is clearly contrary to the FCC's mandate to "provide a fair, efficient, and equitable distribution of radio service" to the public.²⁴

²² *Streamlining of Mass Media Applications, Rules, and Processes*, 14 FCC Rcd 17525, 17539 (1999); *see also*, *Birach Broadcasting Corporation*, 20 FCC Rcd 5764 (2005).

²³ Normally, the Proponents would have the option to correct the alleged error and refile their Counterproposal as a new petition for rule making. However, due to the freeze on the filing of new petitions for rule making to amend the FM Table of Allotments, the Proponents have been prohibited from refiling. *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Notice of Proposed Rule Making*, 20 FCC Rcd 11169, ¶ 47 (2005).

²⁴ 47 U.S.C. § 307(b).

IV. CONCLUSION.

For the foregoing reasons, the Proponents respectfully request that the FCC (i) reinstate the Proponents' Counterproposal and consider it on the merits in this proceeding, and (ii) rescind the reinstatement of the Archer City Permit.

Respectfully submitted,

LKCM RADIO GROUP, LP

FORT WORTH MEDIA GROUP G.P., LLC

LKCM RADIO LICENSES, L.P.

By: Marnie K. Sarver
Marnie K. Sarver
Scott Woodworth

Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006
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Their Attorneys

Dated: November 17, 2006

EXHIBIT A

RIC



United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION CONSTRUCTION PERMIT

Authorizing Official:

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

Official Mailing Address:

TEXAS GRACE COMMUNICATIONS
POST OFFICE BOX 8481
GULFPORT MS 39506

Facility ID: 79024
Call Sign: KRZB
Permit File Number: BMPH-19990217IB

Grant Date: February 07, 2000

This permit expires 3:00 a.m.
local time, February 11, 2008.

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

Commission rules which became effective on February 16, 1999, have a bearing on this construction permit. See Report & Order, Streamlining of Mass Media Applications, MM Docket No. 98-43, 13 FCC RCD 23056, Para. 77-90 (November 25, 1998); 63 Fed. Reg. 70039 (December 18, 1998). Pursuant to these rules, this construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration. See Section 73.3598.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee: TEXAS GRACE COMMUNICATIONS

Station Location: TX-ARCHER CITY

Frequency (MHz): 97.5

Channel: 248

Class: C2

Hours of Operation: Unlimited

callsign: KRZB

Permit No.: BMPH-19990217IB

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: Non-Directional

Antenna Coordinates: North Latitude: 33 deg 51 min 40 sec
West Longitude: 98 deg 38 min 52 sec

	Horizontally Polarized Antenna	Vertically Polarized Antenna
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Effective radiated power in the Horizontal Plane (kW):	50	50
Height of radiation center above ground (Meters):	138	138
Height of radiation center above mean sea level (Meters):	455	455
Height of radiation center above average terrain (Meters):	150	150

Antenna structure registration number: 1206672

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 The permittee/licensee must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

*** END OF AUTHORIZATION ***

EXHIBIT B

United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION CONSTRUCTION PERMIT

Authorizing Official:

Official Mailing Address:

TEXAS GRACE COMMUNICATIONS
POST OFFICE BOX 8481
GULFPORF MS 39506

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

Facility ID: 79024

Grant Date: February 07, 2000

Call Sign: KRZB

This permit expires 3:00 a.m.
local time, July 05, 2008.

Permit File Number: BPH-19990217IB

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

Commission rules which became effective on February 16, 1999, have a bearing on this construction permit. See Report & Order, Streamlining of Mass Media Applications, MM Docket No. 98-43, 13 FCC RCD 23056, Para. 77-90 (November 25, 1998); 63 Fed. Reg. 70039 (December 18, 1998). Pursuant to these rules, this construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration. See Section 73.3598.

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Station Location: TX-ARCHER CITY

Frequency (MHz): 97.5

Channel: 248

Class: C2

Hours of Operation: Unlimited

Callsign: KRZB

Permit No.: BPH-19990217IB

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Transmitter output power: As required to achieve authorized ERP.

Antenna type: Non-Directional

Antenna Coordinates: North Latitude: 33 deg 51 min 40 sec

West Longitude: 98 deg 38 min 52 sec

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the Horizontal Plane (kW):	50	50
Height of radiation center above ground (Meters):	138	138
Height of radiation center above mean sea level (Meters):	455	455
Height of radiation center above average terrain (Meters):	150	150

Antenna structure registration number: 1206672

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 The permittee/licensee must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

*** END OF AUTHORIZATION ***

EXHIBIT C



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Public Notice Comment

BPH-19990217IB CP TO CHG STRUCTURE HGT, HAAT, TL & ERP

Construction Permit Reinstated 1/12/2006.

Expiration date adjusted in response to 6/14/2006 Request for Adjustment.

EXHIBIT D

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

February 16, 1999

In Reply Refer To:
1800B3-GDG

Texas Grace Communications
P.O. Box 398
Wichita Falls, TX 76307

In re: KRZB(FM), Olney, TX
File No. BPH-960201MB
(Facility No. 79024)

File No. BPH-981127JC
Application to Replace
Expired Construction Permit

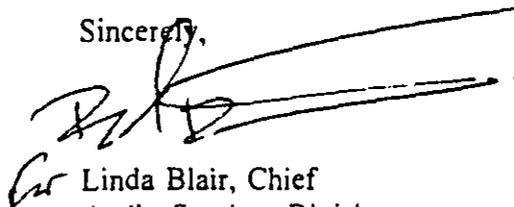
Dear Permittee:

On October 7, 1996, we granted a construction permit to construct a new commercial FM station to serve Olney, Texas. This permit, as extended, expired November 26, 1998. Pursuant to the Report and Order ("Streamlining of Mass Media Applications, Rules, and Processes") in MM Docket No. 98-43, FCC 98-281 (Released November 25, 1998) at paragraph 89 [63 F.R. 70040, 70044 (December 18, 1998)], the subject permit is entitled to a three year construction period.

Therefore, the Commission's internal and public databases have been revised to reflect that the subject construction permit period expires on October 7, 1999. Accordingly, the pending application to replace the subject expired construction permit IS DISMISSED AS MOOT.

If you believe that the above expiration date is not correct, please notify Glenn Greisman, Industry Analyst, no later than 20 days from the date of this letter by mail. Any questions concerning the content of this letter should be directed to Mr. Greisman by phone (202-418-2772), fax (202-418-1410), or e-mail (ggreisma@fcc.gov).

Sincerely,



Linda Blair, Chief
Audio Services Division
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

79024

RIC

December 14, 2000

In Reply Refer To:
1800B3-GDG

Certified Mail-Return Receipt Requested

Texas Grace Communications
Attn: Dave Garey
P.O. Box 398
Wichita Falls, TX 76307

In re: KRZB(FM), Archer City, TX
Facility No. 79024
File No. BPH-19960201MB, as modified by
File No. BMPH-199902171B

Dear Mr. Garey:

This letter concerns: (i) the staff's October 20, 2000 denial of Texas Grace Communications ("Texas Grace") request that the referenced construction permit be treated pursuant to the tolling provisions of 47 C.F.R. §73.3598(b)(i), and (ii) the petitions for reconsideration and for an emergency motion for stay of the October 20, 2000 denial of its tolling request, filed November 17, 2000 by Texas Grace. For the reasons detailed below, Texas Grace's petitions will be denied and dismissed.

Background. The Commission granted the referenced application to construct a new facility to serve Olney, Texas on Channel 248C2 on October 7, 1996, requiring that permittee Texas Grace complete construction by April 7, 1998. Upon approval of Texas Grace's application implementing the approved change of community of license to Archer City, Texas on February 7, 2000, this date was extended by one year to February 7, 2001. On March 5, 1999, Texas Grace requested that KRZB's permit be treated as tolled pursuant to the Commission's tolling rules to recognize various administrative review and "act of God" encumbrances pursuant to the *Report and Order* in MM Docket 98-43 ("*Streamlining R&O*"). 13 FCC Rcd 23056, 23092 (1998) [63 Fed. Reg. 70039 (December 18, 1998)], *recon. denied (Streamlining MO&O)* 14 FCC Rcd 17525 (1999). The staff denied this request on October 20, 2000, stating that none of the events cited by the permittee constituted tolling events as those events are defined in the *Streamlining R&O* and, consequently, that the February 7, 2001 expiration date remained unchanged.

Applicable Standards. A petition for reconsideration must be based on facts or changed circumstances that the petitioner, through the exercise of ordinary diligence, could not have learned prior to his last opportunity to present such matters, and/or on material errors or omissions in the underlying opinion. See 47 C.F.R. §§1.106(c) and (d). To secure grant of its petition, therefore, Texas Grace must establish that the staff incorrectly applied the Commission's tolling criteria to its circumstances or that there are new facts/changed circumstances that warrant reconsideration of the staff's action.

Under the applicable tolling standards, permits are tolled for administrative review and acts of God. For tolling purposes, administrative review is defined as those periods where the Commission staff considers "petitions for reconsideration and applications for review within the Commission of the grant of a construction permit or a permit extension, and any appeal of any Commission action thereon." *Streamlining R&O*, 13 FCC Rcd at 23091. The Commission defines "acts of God" for tolling purposes as those weather-related natural disasters such as tornadoes, earthquakes, floods, and hurricanes that clearly encumber a permittee's ability to construct authorized facilities. *Id.*

Discussion. Texas Grace argues that the staff erred in not recognizing several matters as "administrative review" or "acts of God." It also raises several new circumstances. In summary, Texas Grace raises the following seven arguments:

- (1) Texas Grace's permit was encumbered by administrative review during the rulemaking proceeding in MM Docket 97-225 (October 22, 1997-September 23, 1998). Texas Grace initiated this proceeding to change its community of license from Olney, Texas to Archer City, Texas¹;
- (2) Texas Grace's permit was encumbered by administrative review during the rulemaking proceeding in MM Docket 99-23 (January 22-December 3, 1999). Texas Grace filed a successful counterproposal in this Tipton, Oklahoma proceeding to change KRZB's channel from 248C2 to 248C1, a channel change which Texas Grace did not implement²;
- (3) Texas Grace's permit is encumbered by administrative review pending in MM Docket 00-148 (August 18, 2000-present). The joint petitioners propose in this ongoing proceeding to substitute Channel 230C1 for Texas Grace's channel 248C2;
- (4) Texas Grace's permit was encumbered during the processing of its initial tolling request;
- (5) Texas Grace's permit was encumbered by the loss of some 14 months of construction time as the result of several surgeries and resultant recuperation periods endured by Texas Grace's sole proprietor;

¹See *Notice of Proposed Rulemaking* in MM Docket 97-225, 12 FCC Rcd 17512 (1997) and *Report and Order* in MM Docket 97-225, 13 FCC Rcd 18920 (1998).

²See *Notice of Proposed Rulemaking* in MM Docket 99-23, 14 FCC Rcd 1068 (1999) and *Report and Order* in MM Docket 99-23, 14 FCC Rcd 21161 (1999).

- (6) A member of the Commission's staff allegedly told Texas Grace that it would have a full three years after the move to Archer City to construct;
- (7) The staff did not provide Texas Grace equitable treatment pursuant to the provision in the *Streamlining MO&O* allowing qualified permittees an extra year to construct.

Rulemaking requests, consideration of tolling requests, and health issues are not "tolling events" as defined by the Commission in the *Streamlining R&O*. The appropriate forum for any effort to widen the tolling criteria was provided during the Commission's consideration and reconsideration of rulemaking MM Docket 98-43. Texas Grace did not participate in that proceeding. However, the Commission did consider three petitions that argued that a permit should be considered encumbered by a rulemaking petition affecting the station's frequency and/or class. Similarly, it considered three petitions that sought to expand the scope of "act of God" tolling events. In both instances, the Commission denied these requests for reconsideration. *Streamlining MO&O*, 14 FCC Rcd at 17539.

Turning to the remaining allegations raised by the petitioner in its tolling request and/or petition for reconsideration, we reject Texas Grace's claim that its Archer City, Texas permit is entitled to three additional years to construct. The Commission's rules, 47 C.F.R. 73.3598(a), state that "each original construction permit for the construction of a new FM station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed." *See also Streamlining R&O*, 13 FCC Rcd at 23091. Texas Grace's February 7, 2000 grant of the Archer City, Texas permit did not fall into either of the named categories and thus does not receive three years to construct the modified facility. Regarding the alleged contrary verbal advice of a staff member, reliance on such advice neither binds the Bureau nor prevents it from enforcing Commission regulations.³

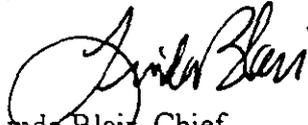
Finally, Texas Grace's contention that it did not receive equitable treatment pursuant to the mandate in the *Streamlining MO&O* is incorrect. That action provided relief to permittees like Texas Grace who held valid authorizations on February 16, 1999, the effective date of the *Streamlining R&O*, by adding an additional year from the *Streamlining MO&O*'s December 21, 1999 effective date (or on the existing expiration date, whichever is later), to such permits. Texas Grace's Archer City permit received the "later" date of February 7, 2001, and therefore the permittee received the relief promised in the *Streamlining MO&O*.

Accordingly, Texas Grace's petition for reconsideration IS DENIED. Given this action, Texas Grace's associated Motion to Stay IS DISMISSED AS MOOT and the

³ It is well settled that a person relying on informal advice given by Commission staff does so at his own risk. *See Texas Media Group, Inc.*, 5 FCC Rcd 2851, 2852 (1990), *aff'd sub. nom. Malkin FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991).

February 7, 2001 expiration date for completion of the authorized facilities to serve Archer City, Texas remains unchanged.

Sincerely,

A handwritten signature in cursive script that reads "Linda Blair".

Linda Blair, Chief
Audio Services Division
Mass Media Bureau

cc: John C. Trent. Esq.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

79024
REC

In reply refer to:
1800B3

March 5, 2001

Mr. Dave Garey
Texas Grace Communications
P.O. Box 398
Wichita Falls, TX 76307

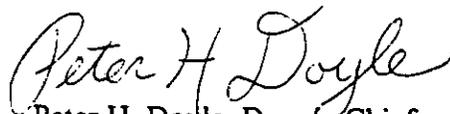
Re: KRZB(FM), Archer City, TX
File No. BMPH-19960217IB

Dear Mr. Garey:

This letter is written at your request regarding the construction deadline for the above-captioned construction permit (the "Permit") of Texas Grace Communications ("Texas Grace").

Texas Grace has filed an application for review of a prior staff action concerning the Permit. Should the Commission grant review, the Commission's *Order* will specify a new construction deadline. In the event that the Commission denies review, Texas Grace will have 79 days to complete construction and file a covering license application, commencing on the date such an *Order* is released. Failure to timely file a license application will result in the automatic cancellation of the Permit.

Sincerely,



Peter H. Doyle, Deputy Chief
Audio Services Division
Mass Media Bureau