

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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AUG - 2 2006

Federal Communications Commission
Office of Secretary

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))	

To: Marlene H. Dortch, Secretary
Federal Communications Commission
Attn: The Chief, Allocations Branch, Audio Division

RESPONSE TO OPPOSITION

LKCM Radio Group Licenses, LP ("LKCM-LICO"), licensee of station KFWR, Mineral Wells, Texas and station KYBE, Frederick, Oklahoma, along with LKCM Radio Group, LP ("LKCM") and Fort Worth Media Group GP, LLC ("FWMG")¹ (the "Proponents"), hereby respond to the June 13, 2006 opposition (the "Opposition")² filed by Texas Grace Communications ("TGC") in connection with the Proponents' March 13, 2006 Counterproposal (the "Counterproposal") in the above-captioned proceeding.

TGC claims still to be the permittee of station KRZB(FM), Archer City, Texas. Stripped of its vitriol and overblown rhetoric, the Opposition maintains that the Counterproposal is impermissible because TCG continues to hold a valid construction permit for KRZB on Channel 248C2 at Archer City. The Counterproposal considered Channel 248C2 at Archer City a vacant allotment based on published Commission decisions (none of which have been reversed in writing) that rejected TGC's efforts to

¹ FWMG and LKCM-LICO are wholly-owned subsidiaries of LKCM.
² The pleading's full title is "Opposition to Illegal March 13, 2006 'Counterproposal' filed by Kevin D. Prigel d/b/a LKCM Radio Group, L.P., Fort Worth Media Group GP, LLC, and LKCM Radio Licenses, L.P.—With Request for Its Immediate Dismissal."

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List A B C D E

obtain further time in which to construct KRZB, and on CDBS database information likewise indicating that TGC's efforts to toll or extend the KRZB construction permit had been finally denied. Even if TGC is correct that the Commission did reinstate the Archer City permit prior to the Counterproposal's filing, that action is so unexplained and inconsistent with previous published decisions, and CDBS notice of the action so ambiguous, that the Proponents cannot fairly be charged with knowledge of the reinstatement.

Before filing their Counterproposal, the Proponents had thoroughly researched the status of TGC's construction permit for Archer City. They found two published decisions by the full Commission. The first, issued on October 26, 2001, denied TGC's application for review of various staff decisions that rejected its requests to toll the construction permit.³ Nonetheless, based on a possible lack of clarity in its tolling policy as it related to certain facility modifications, the Commission granted a waiver of those rules and afforded TGC three years from the decision's release date—*i.e.*, until October 26, 2004—to complete KRZB's construction and file a covering license application.⁴

The second published Commission decision, issued on March 1, 2005, dealt with multiple appeals by TGC of two January 29, 2004 staff letters which, in turn, had denied multiple requests by TGC to again extend the time for constructing KRZB. The Commission denied those appeals as untimely, and, in addition, found TGC's justifications for tolling/extension to be insufficient.⁵ The March 1, 2005, decision also emphasized the last-chance nature of its earlier 2001 action providing TGC an additional

³ See Texas Grace Communications, 16 FCC Red 19167 (2001).

⁴ Id., ¶ 17.

⁵ See Texas Grace Communications, 20 FCC Red 4820 (2005).

three years, until October 26, 2004, to complete construction under a permit initially issued in 1996:

In so doing, the Commission expressly stated that the construction permit would automatically cancel unless [TGC] completed construction and filed an application to license the authorized facilities by October 26, 2004. Additionally, the Commission advised that *[TGC] would not be eligible for further extension of the October 26, 2004, construction deadline* because [TGC] had already received well in excess of three unencumbered years to construct.

* * *

. . . [W]hen the Commission waived Section 73.3598 and extended [TGC's] construction deadline to October 26, 2004, the permittee had already received an unencumbered construction period in excess of the three years specified in the rule. On that basis, the Commission advised [TGC] *it would be ineligible for any further extension of the October 26, 2004, construction deadline and that its construction permit would expire automatically on that date unless it had completed construction and timely filed a license application*. In these circumstances, no event arising during the additional three-year period that began October 26, 2001 . . . constituted a tolling event within the meaning of the rule or provided a basis for a further extension of the permit's expiration date. *In accordance with our Texas Grace order, the KRZB(FM) construction permit automatically cancelled.*⁶

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 KRZB construction permit. Moreover, the Proponents reviewed the "Legal Action Information" section of the CDBS entry in connection with the KRZB construction permit application (File No. BPH-19990217IB). That section (copy appended as Exhibit A 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 TGC. The history is

⁶ Id., ¶¶ 2, 10 (footnote omitted; emphases added).

entirely consistent with the published Commission decisions discussed above.

Additionally, the “Legal Action Information” section of CDBS shows the dismissal, on January 12, 2006, of yet another TGC petition for reconsideration.⁷

The Proponents acknowledge that the CDBS entry for the KRZB construction permit application now shows a permit expiration date in 2008, and that the “Public Notice Comment” section of the CDBS entry reflects that the construction permit was “reinstated” on January 12, 2006.⁸ Yet these entries are entirely inconsistent with all published decisions regarding the KRZB construction 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.⁹ 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.

In short, assuming that the KRZB construction 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 warrant the Counterproposal’s dismissal. For all the Proponents could discern at the time of filing, the CDBS entry indicating reinstatement of the KRZB construction permit was clerical error. It was at odds with all published Commission decisions on the matter, not

⁷ See Exhibit A, p. 3.

⁸ The Proponents assume, but cannot definitively confirm, that these changes to the database were present when the Proponents reviewed CDBS prior to filing their Counterproposal. Additionally, the Proponents observe that the CDBS entry now reflects July 5, 2008, as the permit’s expiration date, and the “Public Notice Comment” section contains an additional entry reading: “Expiration date adjusted in response to 6/14/2006 Request for Adjustment.” See Exhibit B hereto. These latter changes in CDBS are apparently recent and were not reflected at the time the Counterproposal was filed.

to mention a lengthy CDBS “legal action” section that confirmed denial of all TGC attempts to obtain additional time to construct. If the KRZB construction 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.

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.”¹⁰ The Commission’s notice of the Archer City construction 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.”¹¹ The Proponents cannot fairly be penalized for relying on the Commission’s explicit published decisions in the face of unexplained and inconsistent entries in CDBS.

Accordingly, the Proponents respectfully request the Commission to reject TGC’s Opposition and proceed to place the Counterproposal on public notice.

⁹ See Exhibit C hereto.

¹⁰ 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)).

¹¹ 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.”

Verification

I, Kevin D. Prigel, hereby verify that the foregoing Response to Opposition is true and correct and was not interposed for the purpose of delay.

Respectfully submitted,

**LKCM RADIO GROUP, L.P.
FORT WORTH MEDIA
GROUP GP, LLC
LKCM RADIO LICENSES, LP**

By: 
Kevin D. Prigel
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August 2, 2006

EXHIBIT A



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Legal Action Information

File Number: BPH-19990217IB

Legal Comments

Comments: (none)

Legal Actions

Filed Date: 01/16/2001 **Action Id:** 15379 **Parent Id:** application

Type: Application for Review

Status: Denied

Status Date: 10/26/2001

Submitted By:

Company:

Comment: (none)

Filed Date: 06/09/2003 **Action Id:** 19239 **Parent Id:** application

Type: Petition for Reconsideration

Status: Denied

Status Date: 01/29/2004

Submitted By: TEXAS GRACE COMMUNICATIONS

Company:

Comment: PETITION FOR RECONSIDERATION FILED 6/9/03 BY ("GRACE")

Filed Date: 08/21/2003 **Action Id:** 19549 **Parent Id:** application

Type: Petition for Reconsideration

Status: Dismissed

Status Date: 01/29/2004

Submitted By:

Company:

Comment: (none)

Filed Date: 08/21/2003 **Action Id:** 19550 **Parent Id:** application

Type: Supplement

Status: Dismissed

Status Date: 01/29/2004

Submitted By:

Company:

Comment: (none)
Filed Date: 12/29/2003 **Action Id:** 20464 **Parent Id:** application
Type: Petition for Reconsideration
Status: Denied
Status Date: 01/29/2004
Submitted By:
Company:
Comment: PETITION FOR RECONSIDERATION FILED 12/29/03
Filed Date: 03/08/2004 **Action Id:** 21031 **Parent Id:** application
Type: Application for Review
Status: Dismissed
Status Date: 03/01/2005
Submitted By:
Company:
Comment: (none)
Filed Date: 03/08/2004 **Action Id:** 21032 **Parent Id:** application
Type: Petition for Reconsideration
Status: Dismissed
Status Date: 03/01/2005
Submitted By:
Company:
Comment: (none)
Filed Date: 03/08/2004 **Action Id:** 21796 **Parent Id:** 21032
Type: Application for Review
Status: Dismissed
Status Date: 03/08/2004
Submitted By:
Company:
Comment: (none)
Filed Date: 03/08/2004 **Action Id:** 21798 **Parent Id:** application
Type: Application for Review
Status: Dismissed
Status Date: 03/01/2005
Submitted By:
Company:
Comment: (none)
Filed Date: 03/31/2005 **Action Id:** 24063 **Parent Id:** application

Type: Petition for Reconsideration
Status: Dismissed
Status Date: 01/12/2006
Submitted By:
Company:
Comment: (none)

EXHIBIT B

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Application Search Details

File Number: BPH-19990217IB
Call Sign: KRZB
Facility Id: 79024
FRN:
Applicant Name: TEXAS GRACE COMMUNICATIONS
Frequency: 97.5
Channel: 248
Community of License: ARCHER CITY, TX
Application Type: MINOR CHANGE TO A LICENSED FACILITY
Status: GRANTED
Status Date: 02/07/2000
Expiration Date: 07/05/2008
Tolling Code:
Application Service: FM
Disposed Date: 02/07/2000
Accepted Date: 03/03/1999
Last Public Notice: 02/14/2000
Last Report Number: 44670
Authorization [View Authorization](#)
Engineering Data [View Engineering Data](#)
Legal Actions [View Legal Actions](#)
Positional Interest Info [View Positional Interest Info](#)
PN Comment [Public Notice Comment](#)
Correspondence Folder [View Correspondence Folder](#)



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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 C

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Correspondence Folder

Informal Filings

Date Filed	Informal Filing Type	Details
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No correspondence available

Imported Letters

Letter Date	Description	Details
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No letters available

CERTIFICATE OF SERVICE

I, Claudia L. Cartagena, hereby certify that on this 2nd day of August, 2006, I caused copies of the foregoing “**Response to Opposition**” to be mailed via first-class postage prepaid mail to the following:

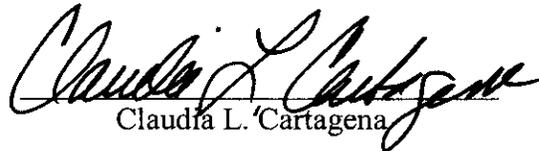
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