BEFORE THE

# Federal Communications Commission

WASHINGTON, DC 20554

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| In the Matter of | ) | |
| | ) | |
| An Inquiry Into the Commission's Policies | ) | MM Docket No. 93-177 |
| And Rules Regarding AM Radio Service | ) | FCC 08-228 |
| Directional Antenna Performance Verification | ) | |
| | ) | |
| Second Further Notice of Proposed Rulemaking | ) | |

To: The Commission

## COMMENTS OF THE CRAWFORD BROADCASTING COMPANY

Crawford Broadcasting Company ("Crawford") and its affiliates are licensees of 24 AM and FM commercial broadcast stations[1]. As such, we have great interest in the Commission's proposed new rules affecting antenna structure disturbance of nearby AM broadcast station antenna patterns. We tender the following comments in response thereto.

Crawford has a long history of dealing with antenna structures near its AM antenna sites, directional and non-directional. It has been our experience that Broadcast, Part 22 and Part 27 licensees do a reasonably good job of protecting nearby AM antennas, making the required notifications and, where necessary, measurements.

Our issue has long been with other licensees and permittees, specifically those operating pursuant to Part 90 and Part 15. Such entities construct or modify antenna structures close to AM antenna sites without making any notification, and the antenna structure then becomes an unintended (and unlicensed) element in the antenna system over which the AM licensee has no control. This, in turn, results in a de facto modification of the AM station license without the licensee's consent or due process.

We applaud the Commission for its recognition of this situation and the rules proposed to deal with it going forward. As such, we generally support the proposed rules as submitted, with a few additional comments.

As mentioned above, Crawford and its affiliates have for years dealt with the construction and modification of antenna and other structures near its AM antenna sites, many times to the detriment of the AM station's pattern. We are concerned that the proposed new rules do not address existing situations that would otherwise be covered by the procedures contained in the proposed rules.

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[1] Crawford affiliates include KBRT, Avalon, CA; KCBC, Riverbank, CA; KJSL/KSTL, St. Louis, MO; KKPZ, Portland, OR; KLZ/KLDC, Denver, CO; KLTT, Commerce City, CO; KLVZ, Brighton, CO; WDCX, Buffalo, NY; WDJC-FM/WYDE/WXJC, Birmingham, AL; WXJC-FM, Cordova, AL; WYDE-FM, Cullman, AL; WMUZ, Detroit, MI; WEXL, Royal Oak, MI; WRDT, Monroe, MI; WLGZ, Rochester, NY; WLGZ-FM, Webster, NY; WPWX, Hammond, IN; WSRB, Lansing, IL; WYRB, Genoa, IL; WYCA, Crete, IL

A case in point is that of Crawford affiliate station KKPZ, Portland, Oregon (1330 kHz, 5 kW, DA-U, FID 4113). A Part 90 tower was constructed less than one-quarter mile from the KKPZ directional pattern without regard to the destructive impact that the reradiating antenna structure would have on the KKPZ directional antenna pattern or the related de facto modification of the KKPZ broadcast license. Crawford attempted for more than one year to secure the Part 90 licensee's voluntary cooperation in detuning its antenna structure, during which time the Part 90 license disclaimed any obligation to resolved the harmful and destructive interference to KKPZ and the de facto modification of the KKPZ broadcast license. As a result, KKPZ has for years been expending resources to maintain a Special Temporary Authority (STA)[2] from the Commission to allow operation with parameters at variance to maintain monitor point field strengths within the licensed limits. In 2006, KKPZ filed a formal complaint with the Commission seeking an order requiring the Part 90 licensee to detune its tower. That complaint is still pending and a copy of the complaint and the Part 90 licensee's response are attached hereto for convenience. Unless the Part 90 tower is properly detuned, there is no hope of KKPZ returning to proper operation with its full licensed parameters, and neither the existing nor the proposed rules explicitly provide for correcting this longstanding condition.

The Commission has tentatively concluded that the proposed new rules will be applied prospectively for towers constructed after the new rules go into effect and not retroactively. It is not clear how the Commission will resolve the pending complaints which predate the new rules going into effect. KKPZ is suffering a long standing de facto modification of its licensed pattern through no fault of its own. In order to avoid confusion, the Commission should clarify and identify how it will respond to pending formal complaints such as that from KKPZ.

Crawford believes that the Commission should employ language to deal with existing situations wherein AM stations currently must operate with STA authority because of uncoordinated antenna structure construction near their arrays. This would force the licensees of the structures to take the necessary steps to remedy the pattern distortion and it would relieve both the AM station licensee and the Commission staff of the burden of frequent STA renewal.

I verify under penalty of perjury that the foregoing is true and correct.

CRAWFORD BROADCASTING COMPANY

W. Cris Alexander
Director of Engineering
2150 W. 29th Ave., Suite 300
Denver, CO 80211-3889

January 7, 2009

[2] The original STA application was filed 9/15/2003. It has subsequently been renewed six times, with the current STA set to expire 5/7/2009.

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November 7, 2006

RECV'D & INSPECTED
NOV 08 2006
FCC-GBG MAILROOM

Federal Communications Commission
Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, PA 17325

ATTN: Tracy Simmons (Public Safety)

RE: **Complaint against Tri-County Metropolitan Transportation District of Oregon Licensee of Part 90 Stations with authorized transmit/receive locations on Mt. Scott, Clackamas County, Oregon**

KWM615
WHK448
WHK453
WHK455
WNWY296
WPRM203
WPTI912
WPUC409

Dear Madam Secretary:

KPHP Radio, Inc., licensee of station KKPZ(AM) 1330 kHz, Portland, Oregon, Facility ID No. 4113, through counsel, respectfully replies to the response dated October 27, 2006, from Tri-County Metropolitan Transportation District of Oregon ("Tri Met") concerning the above-referenced matter. In support thereof, the following is shown.

KKPZ concurs with Tri Met's concessions that Tri Met's tower is disturbing KKPZ's antenna pattern; that special FCC authority is required for KKPZ to continue lawful broadcast operations; that detuning Tri Met's tower will remediate the adverse reradiation to KKPZ; and, that Tri Met has failed to detune or dismantle its tower. However, KKPZ opposes the inference that Tri Met is exempt from the Commission's newcomer policy and that precedent set forth in B&W Truck Service 15 FCC 2d 769 (1968) is inapplicable to the facts of this case.

Tri Met's narrow discussion that Part 22 of the Commission's rules does not govern the Part 90 land mobile services licensed to Tri Met misconstrues KKPZ's complaint and the relationship of Part 22 to the present case. KKPZ's complaint does not claim that Part 22 governs a Part 90 service; rather, KKPZ references Part 22 and related rules and policies as a means to discuss the newcomer policy and the Commission's broad goal of eliminating the

damaging effect of antenna structure construction and modification on previously authorized communications facilities. Tri Met does not deny the validity of, nor dispute the important public interest served by, the newcomer policy.[1]

Tri Met avers that it discussed matters with FCC staffer James LaFontaine and has an "understanding" that Mr. LaFontaine advised KKPZ "that no requirement existed for Tri Met to detune [KKPZ's] tower." Of course, reliance on the informal remarks of the FCC staff is wholly unavailing. It is a basic premise that interested parties are obligated to ascertain facts from official records and correspondence and may not rely upon informal inquiries to the Commission's staff. See, e.g., 220 Television, Inc., 81 FCC 2d 575 (1980); and P & R Temmer v. FCC, 743 F.2d 918, 931 (D.C. Cir. 1984).

The damaging effects of reradiation are caused primarily by the offending antenna structure itself, regardless of whether the tower is employed in the service of broadcast, auxiliary, cellular, private land mobile, or other use. For example, in Athens Broadcasting Company, Inc., 42 RR 2d 1659, 68 FCC 2d 920 (1978) the full Commission found that the newcomer policy was broad enough to require an AM radio permittee to remediate any damaging electromagnetic effect caused to a previously authorized CATV headend tower. No specific rule nor special condition on a construction permit was required to invoke the policy and compel the newcomer to remediate any adverse electromagnetic effect caused by tower construction. In the same way, the Commission requires no specific rule nor express condition upon an authorization to apply the newcomer policy to Tri Met. See, e.g., Amendment of Parts 2, 22, and 90 of the Commission's Rules 91 FCC 2d 1214, ¶32, (1982), where the Commission noted the applicability of the newcomer interference policy to Part 90 stations.

Tri Met claims that B&W Truck Service, supra, is inapplicable to the present situation solely because therein, the offending Part 90 tower was built at the wrong location. This claim is unavailing. In B&W Truck Service, the Part 90 tower structure created the reradiation, not the licensee's apparent failure to read a map. Any similar tower erected at the same location, whether or not authorized, would have similarly disrupted the AM station's pattern. There is no logical reason why the Commission should not apply the same policy to Tri Met's tower which causes a similar adverse effect to a preexisting AM station. The Commission has a long-standing mandate from the U.S. Court of Appeals to treat similar applicants similarly. Green Country Mobilephone, Inc. v. FCC, 765 F.2d 235 (1985).

Tri Met states that it is willing to detune its tower at KKPZ's expense. However, The newcomer policy provides that the newcomer is responsible, financially and otherwise, (emphasis supplied) for taking whatever steps may be necessary to eliminate objectionable

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[1]Tri Met's response fails to consider or rebut that Tri Met's tower violates §316 of the Act through the non-consensual indirect modification of KKPZ's broadcast license.

interference to an existing facility. Athens Broadcasting Company, Inc. Supra. Newcomer cooperation coupled with financial responsibility is conducive to the efficient conduct of the Commission business. Id. Tri Met fails to show any basis in law or policy to support the claim that an innocent damaged licensee is responsible to repair damage created by a later constructed or modified tower.

The Commission is respectfully requested to enforce its policies and order Tri Met to detune its tower at Mt. Scott. Absent the requested relief, the public interest will continue to be harmed through KKPZ operating with reduced service and perpetual special temporary authority.

Sincerely,

John S. Neely
Counsel to KPHP Radio, Inc.

cc: Lance Erz, Esq., Tri Met Assistant General Counsel

TRIMET

October 27, 2006

Federal Communications Commission
Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, PA 17325
Attn: Tracy Simmons (Public Safety)

Re: Complaint by KPHP Radio, Inc. against Tri-County Metropolitan Transportation District of Oregon

Dear Mr. Simmons:

I am writing in response to the letter sent to you on October 18, 2006, by attorney John Neely, on behalf of KPHP Radio, Inc., licensee of station KKPZ(AM) 1330 kHz, in Portland, Oregon ("KKPZ"), requesting that the Federal Communications Commission ("Commission") order the Tri-County Metropolitan Transportation District of Oregon ("TriMet") to detune a transmitter tower located on Mt. Scott in Clackamas County, Oregon ("Mt. Scott Tower").

**Chronology of Events**

TriMet is the mass transit agency for the Portland, Oregon metropolitan area. TriMet operates an extensive network of bus and rail lines, with 306,100 average bus/rail combined daily boardings (during fiscal year 2005). The Mt. Scott Tower is a self-supporting antenna tower that operates in support of TriMet's bus dispatch system, with additional tower space leased to Clackamas County, Pacificorp, and the City of Portland.

The Mt. Scott Tower was originally constructed in 1984, at a height of 60 feet. In 1989, Pacific Power and Light (now Pacificorp, a western United States utility company), was granted permission to add 60 feet to the tower. In 1992, the City of Portland was granted permission to extend the tower an additional 20 feet for its 911 operations. As a result, the Mt. Scott Tower now stands 140 feet tall, and is utilized for several important public purposes.

TriMet is licensed to operate the Mt. Scott Tower under CFR Title 47, Part 90, for Private Land Mobile Radio Services. Because TriMet is a Part 90 licensee, it does not believe that the rules set forth in 47 CFR Part 22 govern this situation. TriMet's position has been explained to KKPZ's representative on more than one occasion.

TriMet first became aware of this issue in July 2004, when KKPZ's John White called TriMet's Jim Cannon to request that TriMet, at its own expense, detune the Mt. Scott Tower, citing 47 CFR 22.371. Subsequent to his conversation with Mr. White, Mr. Cannon called James LaFontaine, Federal Communications Commission Portland Resident Agent, to inquire as to whether the Commission shared KKPZ's belief that that section of CFR 47, Part 22, required TriMet to detune the Mt. Scott Tower, in light of the fact that TriMet is a Part 90 licensee. Mr. LaFontaine checked with others at the Commission, and advised TriMet's Mr. Cannon that Part 22 addresses only systems licensed in the Public Radio Service, and since TriMet was a Part 90 licensee, and the Mt. Scott Tower supported no Part 22 operations, no such detuning requirement existed. It is TriMet's understanding that at about the same time, Mr. LaFontaine advised KKPZ's Mr. White that no requirement existed for TriMet to detune its tower, and granted KPHP waivers to continue broadcasting with the antenna pattern disturbance. At this point, TriMet thought the matter was closed, and took no further action. TriMet heard nothing further on the matter until KKPZ's Mr. White sent his December 28, 2005 letter to TriMet's Thomas Heilig (received by TriMet on January 3, 2006), again asserting that TriMet had an obligation to detune the Mt. Scott Tower.

On February 17, 2006, Mr. White sent a letter to Federal Communications Commission Portland Resident Agent Binh Nguyen. Shortly after receiving a copy of this letter, I spoke with Mr. Nguyen, restating TriMet's position that, as a Part 90 licensee, it did not believe that it was subject to the detuning requirements of Part 22, and asking if he or the Commission had a different interpretation of the requirements. Mr. Nguyen advised me that the Commission's counsel was looking into the matter. At that point, TriMet decided to await further word from the Commission on its interpretation of the rules before taking any further action. However, it should be stated that TriMet has always expressed its willingness to work with KKPZ to detune the antenna, at KKPZ's expense. KKPZ has rejected this offer, believing instead that TriMet should pay for the detuning work.

**47 CFR 22 Is Inapplicable To Part 90 Licensee TriMet**

KKPZ has repeatedly claimed that, although TriMet is a Part 90 licensee, the requirements of 47 CFR 22.371 apply to TriMet. However, 47 CFR 22.371 specifically applies only to "Public Mobile Service licensees," and TriMet, which is licensed under Part 90, is a "Private Mobile Radio Service." In an attempt to circumvent this fact, KKPZ relies upon *B&W Truck Service*, 15 FCC 2d 769 (1968). In *B&W Truck Service*, the Commission granted B&W Truck Service, a "Special Industrial Radio Service" licensee, a construction permit to build a base station at a specific location approximately 1 mile from a radio tower operated by radio station KCRC in Enid, Oklahoma. Despite the fact that the permit authorized construction at particular geographic coordinates, B&W Truck Service proceeded to build its tower in an unauthorized location approximately 1,000 feet from the KCRC tower, without notifying either the Commission or KCRC. Thereafter, B&W Truck Service abandoned the unauthorized tower, and constructed a second tower. The abandoned and unauthorized tower caused interference to KCRC's signal. The Commission held that because of B&W Truck Service's "continuing refusal to cooperate in resolving the *problem created by your unauthorized construction*" (emphasis added), B&W Truck Service must dismantle or detune the unauthorized tower.

The situation regarding the Mt. Scott Tower is quite different. Unlike *B&W Truck Service*, there is no contention that TriMet did not have the right to construct the Mt. Scott Tower in its current location when it was built in 1984. Neither is there any contention that the subsequent tower extensions in 1989 and 1992 were unauthorized. KKPZ's contention seems to be that, despite the fact that 47 CFR 22.371, on its face, applies only to "Public Mobile Service licensees," and despite the fact that TriMet is not licensed under Part 22 and is not a "Public Mobile Service licensee," it is still subject to the requirements of Part 22. TriMet respectfully disagrees with this contention.

As a Part 90 licessee, TriMet is obligated to comply with the requirements of Part 90, which it has done and is doing. However, TriMet does not believe that it has an obligation to comply with 47 CFR 22.371, and nothing in any of its conversations with Commission staffers have led it to believe otherwise. Nonetheless, TriMet remains happy to cooperate with KKPZ to allow the necessary detuning work to occur on the Mt. Scott Tower, at KKPZ's expense.

Sincerely,

Lance Erz
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cc: John Neely, Esq.
Jim Cannon, TriMet
Binh Nguyen, FCC- Portland Resident Agent

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October 18, 2006

RECV'D & INSPECTED
OCT 19 2006
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Federal Communications Commission
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Dear Sir:

KPHP Radio, Inc., licensee of station KKPZ(AM) 1330 kHz, Portland, Oregon, Facility ID No. 4113, through counsel, respectfully requests the Commission to order Tri-County Metropolitan Transportation District of Oregon ("Tri Met") to detune its communications tower which is causing re-reradiating interference and impermissible pattern disturbance to KKPZ. In support thereof, the following is shown.

KKPZ has operated with a tight directional pattern from a tower array situated on Mt. Scott, Clackamas County, Oregon since approximately 1948. The Commission's ULS database indicates that Tri Met's above-referenced Part 90 facilities were granted after 1948 and each have a transmit or receive location situated on Mt. Scott, less than one-quarter mile from KKPZ's directional tower array.

The Commission is well aware of the likely damaging electromagnetic effect of antenna structure construction and modification on previously authorized communications facilities. In Public Notice, 66 RR 2d 1777 (1989), the Commission stated that "[w]hether by imposition of specific conditions or by operation of law, a licensee building a new facility is obligated to take all the necessary steps to correct interference problems caused by new or modified construction."

Citing Sudbrink Broadcasting of Georgia, 65 FCC 2d 691 (1977); Athens Broadcasting Co., 68 FCC 2d 920 (1978); B&W Truck Service, 15 FCC 2d 769 (1968).

Although the Public Notice is phrased in terms of towers authorized pursuant to Part 22 of the rules, the concept of protecting existing licensees from adverse interference caused by newcomers is a long standing maxim of Commission policy.[1] B&W Truck Service, supra, (copy attached) acknowledges the applicability of this broad newcomer directive to Part 90 licensees. In B&W Truck Service, the full Commission ordered a Special Industrial Radio Service licensee, to dismantle or detune a tower causing pattern disturbance interference to KCRC(AM) Enid, Oklahoma. See, also, Amendment of Parts 2, 22, and 90 of the Commission's Rules 91 FCC 2d 1214, ¶32, (1982), where the Commission repeated the applicability of the newcomer interference policy to Part 90 stations.

Section 316 of the Communications Act of 1934, as amended, ("the Act") provides that the Commission shall not modify a broadcast license without first notifying the adversely affected licensee in writing and conducting a hearing. This requirement applies to both "direct" and "indirect" modification of station licenses. Western Broadcasting Company v. FCC 674 F2d 44, 49 (D.C.Cir. 1982). The grant of an authorization which indirectly modifies an extant license without affording the adversely affected party its "protest rights" guaranteed by §316 of the Act *requires* the Commission to rescind the grant of the offending authorization(s). R&S Media, 19 FCC Rcd 6300 ¶19-20 (Media Bureau 2004)

Commission rules require KKPZ to operate substantially at its licensed pattern. It is impossible for KKPZ to meet this standard at full licensed power due to re-radiation from Tri Met's tower which causes significant KKPZ pattern distortion. As a result and pursuant to §73.1560 of the Commission's rules, KKPZ has operated for many years with parameters at variance under special temporary authority (see, File No. BSTA-20030915AHO, as extended) so that its distorted pattern does not exceed the AM station's licensed directional parameters.

KKPZ works diligently to resolve detuning issues and eliminate re-radiation toward KKPZ. Counsel is advised that all area tower owners, *except* Tri Met, are cooperating with KKPZ and that even the elevated water storage tank under construction on Mt. Scott which is not subject to Commission authority is being detuned by the Sunrise Water Authority at its sole expense to prevent pattern distortions to KKPZ. Counsel is advised further that Tri Met's tower remains KKPZ's only source of AM pattern disturbance interference. The chronology of telephone, email and letter requests attached hereto shows KKPZ's repeated attempts to work with Tri Met to resolve the distortion caused to KKPZ. However, Tri Met has yet to detune its tower and resolve the distortion to KKPZ.

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[1] See, e.g., 47 CFR §73.1692 and a variety of consistent rules and policies.

Tri Met's failure to detune its tower violates FCC newcomer interference policies, and has caused a *de facto* modification of the KKPZ broadcast license. This non-consensual indirect license modification may be considered a violation of §316 of the Act. As noted above, violation of §316 requires recission of Tri Met's offending licenses. However, the violation might also be resolved by Tri Met following applicable policy and case law and promptly detuning its tower so that KKPZ may resume operating with full licensed parameters.

In conclusion, KKPZ has shown that due to factors beyond its control it is forced to operate with parameters at variance to accommodate the pattern distortion caused and perpetuated by Tri Met's failure to detune its tower at Mt Scott. The Commission is respectfully requested to enforce its policies and order Tri Met to detune its tower at Mt. Scott. This action is in the public interest as it complies with FCC policy; will not diminish Tri Met's licensed service area; will allow KKPZ to restore operation with full licensed parameters and serve the public to the full extent authorized and required by its long standing broadcast license; and will free Commission resources directed toward renewing and monitoring KKPZ's special temporary authority. In the alternative, the Commission is requested to rescind Tri Met's licenses pursuant to §316 of the Act and hold an administrative hearing to resolve the *de facto* modification of the KKPZ broadcast license. Absent the requested relief, the public interest will continue to be harmed through KKPZ operating with reduced service and perpetual special temporary authority.

Sincerely,

John S. Neely
Counsel to KPHP Radio, Inc.

Encs.

cc: Lance Erz, Esq., Tri Met Assistant General Counsel