

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment to Section 73.202(b),)
Table of Allotments)
FM Broadcast Stations)
(Markham, Ganado and Victoria,)
Texas))

MB Docket No. 07-163
RM-11385
RM-11416

FILED/ACCEPTED
JUN - 7 2009
Federal Communications Commission
Office of the Secretary

To: The Secretary
For transmission to: Chief, Audio Division

CONDITIONAL CONSENT TO LICENSE MODIFICATION

Victoria RadioWorks, Ltd., licensee of Station KVIC(FM), Victoria, Texas ("KVIC"), hereby responds to the Order to Show Cause ("Order"), DA 09-840, released in this proceeding on April 17, 2009. In the Order the Commission affords KVIC an opportunity to show why its license should not be modified to specify operation on Channel 284C3 in lieu of its present assignment, Channel 236C3. The Order was issued in response to a counterproposal filed by Fort Bend Media Broadcasting Company ("Fort Bend"), which seeks an upgrade of Station KHTZ(FM), Ganado, Texas. If Fort Bend counterproposal is approved, KHTZ would move from Channel 284C2 to Channel 235C. This upgrade cannot be achieved without the proposed change in frequencies by KVIC.

KVIC conditionally supports Fort Bend's proposal. The only condition to KVIC's support is that the FCC, in approving the counterproposal, simultaneously modify the license of Station KHTZ to specify operations on Channel 235C2, thereby removing Channel 284C2 as a bar to KVIC's immediate commencement of operations on Channel 284C3. As shown in the attached engineering statement, such a license

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modification for KHTZ at Ganado could be accomplished at that station's current site and at the same power and height above average terrain as are now employed by KHTZ. This plan has the following public interest advantages.

KVIC would be able to begin full-power non-directional operations immediately on Channel 284C3 if KHTZ changes frequencies to Channel 235C pending construction of its Class C facility on that channel. This would mean a substantial improvement in service for KVIC, which currently operates with a power of 6.5 kW pursuant to a license issued under Section 73.215 of the rules. This is one half of the power normally authorized for a Class C3 station at KVIC's height above average terrain (140 meters). KVIC has a construction permit (File No. BMPH-20061220AA) which authorizes operation with 13 kW ERP but with a directional antenna that provides the same protections afforded by the Section 73.215 facility now being used. That construction permit expires November 7, 2009.

The Order presents untenable choices for KVIC. Should it invest the substantial resources necessary to build out its directional facility on Channel 236C3 before the CP expiration date in November 2009, or should it continue to operate with substandard facilities pending implementation of Fort Bend's upgrade and the abandonment of Channel 284 at Ganado? Implementing the directional operation on an interim basis would work a serious hardship on KVIC because none of the expenditures it would incur in that connection could be recouped from Fort Bend.¹ In short, if Fort Bend is afforded more than three years to construct new facilities on Channel 235, neither alternative is acceptable. During those three years, KVIC would have to protect KHTZ's "lame duck"

¹ Fort Bend would have to reimburse KVIC's expenses in replacing its directional antenna with a non-directional facility that would accommodate operations on Channel 284, but would not be required to pay for the directional antenna itself.

license on Channel 284C2 at Ganado pending implementation of the upgrade on Channel 235C. For these reasons, KVIC is willing to abandon its directional CP and immediately implement non-directional operations on Channel 284C3 with no reimbursement expected from Fort Bend.

This would serve the public interest by allowing for a speedy service improvement by KVIC. Since Channel 235 is immediately available for use at the KHTZ site, and can provide service that replicates the service now being provided, there is no public interest reason not to order an immediate change. Moreover, as noted, KVIC would not seek any reimbursement from Fort Bend if this proposal is adopted. This saving by Fort Bend would offset any expenses that would be incurred by Fort Bend in migrating KHTZ to Channel 235C2 on an interim basis.

The suggested KHTZ license modification can be accomplished through the filing of a Form 302-FM since the underlying authorization will have been modified through the adoption of the counterproposal and this proposal, and since the facilities at Ganado would be identical. Section 73.1690 (Modification of transmission systems) does not require the filing of a Form 301 in these circumstances. Consistent with the Commission's practice in channel-change proceedings, it is suggested that Fort Bend be afforded 90 days from the effective date of the channel change to file the implementing Form 302-FM specifying operations on Channel 235C2.

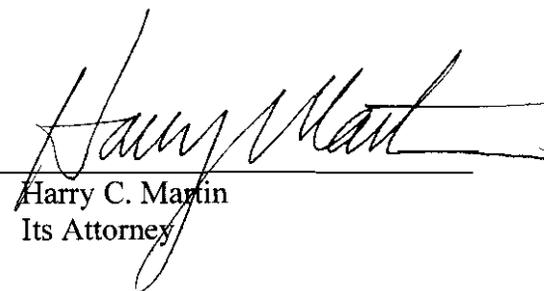
There is an additional and significant public interest benefit to be realized by through an immediate Channel 235C2 license modification for KHTZ. As part of its counterproposal, Fort Bend proposed the allocation of Channel 283A to Markham, Texas, in lieu of the originally-proposed Channel 235A allocation, which would conflict with the KHTZ upgrade on Channel 235C. Modification KHTZ's license as proposed would remove Channel 284C2, KHTZ's currently-licensed frequency, as a bar to speedy

initiation of service of Channel 283A at Markham. The new station would be Markham's second FM service and its first competitive service. However, without the proposed Channel 235C2 license modification for KHTZ, an auction and the development of the Markham station could be delayed three years or more to accommodate completion of KHTZ's upgrade. This serves no one's interest and the delays it would entail are both needless and contrary to the public interest.

WHEREFORE, It is respectfully requested that the Commission (1) allocate Channel 235C to Ganado, Texas, as a substitute for the present Channel 284C2; (2) modify the license of Station KHTZ at Ganado to specify operations on Channel 235C2 pending implementation of operations on Channel 235C; (3) order Fort Bend to file an FCC Form 302-FM reflecting operations on Channel 235C2 within 90 days after the effective date of the Report and Order in this proceeding; (4) allocate Channel 284C3 as a substitute for Channel 236C3 at Victoria, Texas, and modify the license of Station KVIC, Victoria, accordingly; and (5) allocate Channel 283A to Markham, Texas.

Respectfully submitted,

VICTORIA RADIOWORKS, LTD.

By 
Harry C. Martin
Its Attorney

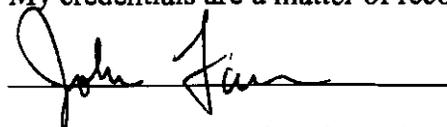
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1300 North 17th Street, 11th Floor
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June 1, 2009

TECHNICAL SHOWING SUPPORTING VICTORIA RADIOWORKS REQUEST

The Allocation Table shown below demonstrates that should the KHTZ operate on Channel 235C2, it could do so at that station's current site, using the same power and HAAT as currently employed by KHTZ (on Channel 284C2). The short spacings shown are addressed in the FCC RM-11416.

My credentials are a matter of record with the Commission.



May 26, 2009

John R. Furr, Technical Consultant

FM Study for:	KHTZ	FCC Database Date:	5/15/2009	28-55-37	
Location:	GANADO, TX	Channel Class:	C2	96-46-54	
Call City, State		Chan Class	Freq kW	Latitude Dist.	Required
Status Proponent		File Number	HAAT	Longitude Azm.	Clear (km)

>>>>>>> Study For Channel 235 94.9 mHz <<<<<<<<					
KHTZ	GANADO, TX	235 C	94.9 100.	28-43-53	70.8 249 73.215
APP	Fac. No. 27619	BPH-20060407AAE	453	96-05-26	107.6 -178.2 SHORT
ALLOCR	VICTORIA, TX	236 C3	95.1	28-46-55	22.4 117
DEL		RM-11416	0	96-56-29	224.2 -94.6 SHORT
KVIC	VICTORIA, TX	236 C3	95.1 13.0+	28-46-55	22.4 117 73.215
CP	Fac. No. 28477	BMPH-20061220AAO	140	96-56-29	224.2 -94.6 SHORT
KVIC	VICTORIA, TX	236 C3	95.1 6.50	28-46-55	22.4 117 73.215
LIC	Fac. No. 28477	BLH-20071107ACN	140	96-56-29	224.2 -94.6 SHORT
ALLOCR	MARKHAM, TX	235 A	94.9	28-51-18	73.3 166
DEL		RM-11416	0	96-02-06	96.1 -92.7 SHORT
NEW	MARKHAM, TX	235 A	94.9 6.00	28-51-18	73.3 166
APP	Fac. No. 171258	BNPH-20070524ABR	100	96-02-06	96.1 -92.7 SHORT
ALLOCR	LULING, TX	234 C0	94.7	30-19-23	183.4 176
RSV		RM-11137	0	97-47-58	327.8 +7.4 CLOSE
KAMX	LULING, TX	234 C0	94.7 99.0	30-19-23	183.5 176 73.215
LIC	Fac. No. 48651	BLH-19980225KD	398	97-47-58	327.8 +7.5 CLOSE
ALLOCR	SHINER, TX	232 A	94.3	29-25-59	70.6 55
ADD		RM-10104	0	97-13-20	322.7 +15.6 CLEAR
NEW	EAGLE LAKE, TX	237 C3	95.3 25.0	29-35-58	79.5 56
CP	Fac. No. 171037	BNPH-20070502ACD	100	96-29-51	20.3 +23.5 CLEAR

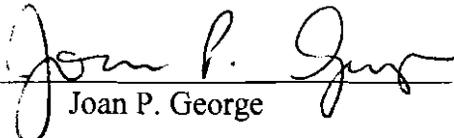
CERTIFICATE OF SERVICE

I, Joan George, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the foregoing *Conditional Consent to License Modification* was sent this 1st day of June , 2009, by hand where indicated and by first-class mail upon the following parties:

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Joan P. George

* By hand