

a suitable site from which to operate a Channel 12 facility with effective radiated power, antenna height and antenna pattern similar to those of KTWU-DT and WIBW-DT.

Shortly after filing its Petition, KSQA filed an application to modify its construction permit to specify a new transmitter site. File No BMPCDT-20110103AAE. The Commission granted this modification application on January 18, 2011. On January 26, 2011, Washburn University of Topeka, licensee of noncommercial television station KTWU, Channel *11, Topeka, Kansas (“Washburn”), filed a Petition for Reconsideration of the January 18, 2011 grant of the modification application, and also filed a Motion to Stay the effectiveness of the grant. On February 10, 2011, KSQA filed Oppositions to both the Petition for Reconsideration and the Motion for Stay.

While these pleadings were being filed, KSQA was attempting to complete construction prior to the expiration of its construction permit. On February 7, 2011, KSQA filed a Request for Tolling of its construction deadline due to the filing of the Washburn Petition for Reconsideration, and also due to the severe and unusual weather that was affecting Topeka. The Bureau granted the Request for Tolling, citing the filing of the Washburn Petition for Reconsideration as the basis for granting the relief.² On February 17, 2011, one day after the Bureau granted KSQA’s Request for Tolling, Washburn filed an Opposition to KSQA’s Request for Tolling.

KSQA filed a Reply to Washburn’s post-grant Opposition on February 23, 2011. In its Reply, KSQA provided an extensive declaration describing the many efforts taken by Washburn and others to have the landlord reverse its earlier consent and refuse to enter into a lease with

² February 16, 2011 letter to James L. Winston from Barbara A. Kreisman, Chief, Video Division, Media Bureau.

KSQA for the proposed tower site specified in KSQA's modification application. Given the short period of time left before KSQA's construction permit was due to expire, it is clear that those efforts were intended to result in KSQA not being able to construct its station.

Nevertheless, KSQA was able to find a new transmitter site, signed a site lease and ordered and obtained delivery of the equipment necessary to construct its Channel 12 station. On February 23, 2011, KSQA filed a new application to modify its facilities to operate from its new site. BMPCDT-20110223ABN. Importantly, the modification application demonstrates that the station can be constructed and operated at the proposed new site in accordance with the Commission's rules and without causing objectionable interference to any other station. In the Engineering Statement provided by Kevin T. Fisher of Smith and Fisher, Mr. Fisher states, "the facility proposed herein causes no significant new interference to any of the potentially affected stations."³

After filing its February 23, 2011 modification application, KSQA began searching for a site for the proposed Channel 22 allotment requested in this proceeding. After extensive efforts, KSQA has determined that Washburn and others are working to prevent KSQA from being able to find a suitable site for the Channel 22 allotment. KSQA has a site from which its Channel 12 station can operate, and KSQA does not believe it will be allowed to obtain a site from which it will be able to construct a Channel 22 station. Moreover, were KSQA able to find a new site, extensive zoning litigation from Washburn and/or others could delay construction for an extensive period.

³ Form 301, Exhibit C-1, Longley-Rice Interference Study

Given the great difficulty KSQA encountered in obtaining its current Channel 12 site, and the difficulties it has experienced seeking to find a new site for the Channel 22 allotment, KSQA, believes it must withdraw its request to have Channel 22 allotted to Topeka. Therefore, KSQA hereby advises the Commission that it is withdrawing its request to allot Channel 22 to Topeka, Kansas, and seeks grant of the modification of its construction permit for Channel 12, which facilities can be licensed at its proposed site in accordance with the Commission's rules.

Respectfully Submitted,

KSQA, LLC

By its Attorneys,

A handwritten signature in blue ink, appearing to read "James L. Winston", is written over the typed name.

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