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ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

2011 JUL 26 A 5:32

In re Application of)
)
GLOBAL NEWS CONSULTANTS, LLC)
)
for License to Cover Construction Permit)
for New Station and Program Test Authority)

RECEIVED
File No. BLH-20110225ACI
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Facility ID No. 165979

FILED/ACCEPTED

To: Office of the Secretary
Attention: Chief, Audio Division, Media Bureau

JUL 22 2011

Federal Communications Commission
Office of the Secretary

REQUEST FOR PROGRAM TEST AUTHORITY

Global News Consultants, LLC ("Global"), permittee of Station KYTS, Manderson, Wyoming, by its counsel, hereby requests program test authority ("PTA") on an expedited basis in order to commence operations for a new station to serve Manderson, Wyoming. Global completed construction, filed the above referenced license application on February 25, 2011 and requested PTA.¹ However, Cochise Broadcasting, LLC ("Cochise"), licensee of Station KWWY(FM), Shoshoni, Wyoming, has delayed changing its channel.² Global urges the Commission to avoid further unwarranted delay by cancelling the implied STA for Station KWWY and to allow Station KYTS to commence operations. In support, the following is shown:

1. On August 28, 2009, Global purchased the permit for a new station to serve Manderson, Wyoming. The permit was set to expire on April 28, 2011. Global recognized that the permit was conditioned on a channel change for Station KWWY and

¹ Due to a special operating condition on the KYTS permit, program test authority will not be granted until Station KWWY changes channels.

² On March 9, 2011, Cochise filed an *Informal Objection* to the instant license application. As a result, the license application and the request for PTA remains pending.

D. Buechel

entered into a reimbursement agreement with Cochise for that purpose. The agreement provided that KWWY would complete its channel change within two months after final grant of the permit (BPH-20101202ABL). Thus, under the agreement, the channel change should have occurred by May 7, 2011. Station KWWY was a new station when it filed its license application on June 26, 2009. The station operated for almost two weeks and has been off the air the entire period since then except for one day in July 2010 and a few days in July, 2011.³

2. Global has spent a considerable amount of money purchasing and constructing Station KYTS. Global has already made several reimbursement payments to Cochise for legal and engineering fees, application fees and future engineering work. Global is prepared to reimburse Cochise for its equipment costs once Cochise places the order. While Global is aware that the Commission does not arbitrate these types of agreements, this information is relevant to Global's request that the Commission grant PTA for KYTS immediately. Cochise has offered no indication that it is willing to change channels anytime in the near future. Station KWWY was facing its second one year deadline earlier this month but instead of resuming operation on the authorized channel pursuant to its permit, it reverted to its old channel based on an implied STA and is currently off the air again.

3. Global is aware of two recent cases where the Commission allowed a station to commence program tests despite the failure of another station to change

³ Global does not know exactly how long KWWY operated starting on July 7, 2011 when Cochise filed for Resumption of Service. Cochise has not filed a notification reporting suspension of operations. Based on the attached Declaration of Wes Baumstarck, the station went off the air on or before July 12, 2011 and has not returned to the air since that date.

channels. In *Letter to Susquehanna Radio Corporation*, the Audio Division waived the same type of special operating condition where the other station's permit had expired. The *Letter* stated "continued warehousing of the spectrum by Word Power in the face of Susquehanna's long standing competing demand is plainly contrary to the public interest....In reaching this conclusion we uphold our prior determination that an implied STA is subject to summary cancellation if such action is necessary to accommodate the operation of any FM station pursuant to its authorization."⁴

4. Cochise has warehoused spectrum since the station filed its license application in June 2009. Here is the chronology:

License application filed	June 26, 2009
Silent notification filed	July 10, 2009
STA filed for silent authority	July 14, 2009
STA extension filed	April 15, 2010
Resumption of service filed	July 9, 2010
Silent notification filed	July 10, 2010
STA filed for silent authority	August 9, 2010
STA extension	April 15, 2011
Resumption of service filed	July 7, 2011
Silent (no filing yet)	on or about July 12, 2011

Thus, Station KWWY discontinued operations on July 10, 2009 and has been silent for over two years since then except for one day in July 2010 and a few days earlier

⁴ Citing *Corona de Tucson, Sierra Vista, Tanque Verde and Vail, AZ and Animas, Lordsburg and Virden, NM, Memorandum Opinion and Order*, 23 FCC Rcd 4792, 4796 (MB 2008). See also *Letter to Brian M. Madden* (Station KNOR, Krum, TX), DA 10-787, May 7, 2010.

this month (in order to avoid automatic cancellation of the license). Based on this past record, there is no basis to expect the station will operate again until July 2012, regardless of what Cochise may promise. In this portion of Wyoming, there are 7-8 months of winter weather conditions where construction of the channel change will be difficult. Unless the channel change is completed by October of this year, it is unlikely the change will occur until Spring, 2012 at the earliest.

5. The Audio Division has said that “an implied STA is subject to summary cancellation if such action is necessary to accommodate the operation of any FM station pursuant to its authorization.” In this case, Station KYTS is a new station that was constructed but cannot operate at all until program test authority is issued. It is unreasonable and contrary to the public interest to require KYTS to wait until January, 2014 (the three year expiration date for the KWWY permit to expire). In addition, the pending KYTS license application demonstrates that there is no overlap of protected and interfering contours between KYTS and KWWY. Thus no interference to KWWY will occur from the operation of KYTS. See Exhibit 1.⁵

6. Global is in a more egregious situation than the stations involved in the *Letter to Susquehanna Radio Corporation* and the *Letter to Brian M. Madden*. In those cases, the aggrieved station could operate with its previously authorized facilities while awaiting authority to operate with modified facilities. Here, the Commission should consider the public interest in allowing KYTS, a constructed new station, to provide a first local service to Manderson. Global believes that KWWY is warehousing spectrum

⁵ Station KWWY was ordered to change channels to comply with the spacing requirements despite the absence of contour overlap.

and relying on an implied STA to keep KYTS off the air. KWWY will not receive any interference if it must resume operation on its former channel sometime in the future. The Commission should also consider the fact that Station KYTS was constructed at significant expense, and if its operations are delayed any longer it will be clear that the Commission is allowing abuse of its processes by giving Cochise the power to keep KYTS off the air.


7. In its *Informal Objection*, Cochise states that the Commission imposed the condition “to prevent the prohibited overlap and potential interference that would occur if KYTS and KWWY operated simultaneously before KWWY completed its change of channel.... While KWWY is not operating as of this date (March 9, 2011), it intends to resume broadcasts soon. If the two stations could simply operate together with no problems, then there would have been no reason for KWWY to be forced to change channels in the first instance.”⁶ These statements are manifestly incorrect. First, as shown in the license application, there is no overlap and thus, no interference between the two stations. Second, as noted above, the operating condition was triggered by the Commission’s spacing rules but for purposes of protecting a station that is not operating and has only an implied STA, it is appropriate to consider the absence of overlap for issuance of PTA. Third, Station KWWY may have intended to operate “soon” earlier this year but that intent is not reliable based on the operating chronology of the station since it first filed its license application.

⁶ *Informal Objection* at p. 2.

8. Accordingly, Global urges the Commission to grant program test authority immediately.

Respectfully submitted,

GLOBAL NEWS CONSULTANTS, LLP

By: 
Mark Lipp
Wiley Rein LLP
1776 K Street
Washington, DC 20006
202-719-7503
(Its Counsel)

July 22, 2011

DECLARATION OF WES BAUMSTARCK

I, Wes Baumstarck, am Station Manager of Stations KWOR(AM) and KKLX(FM), Worland, Wyoming. On July 10, 2011, I was asked to listen to 106.3 MHz to determine if the Station KWWY(FM) is on the air. I was able to listen to the KWWY signal on that frequency on the morning of July 11, 2011. However, from the same location and using the same radio receiver, I was not able to hear the signal on July 12, 2011. I have listened for the signal on each day since July 12, 2011, but I have not been able to hear anything. As best I can determine, the station has remained off the air since July 12, 2011.

I hereby state that these statements are true, correct and complete to the best of my knowledge and made in good faith.



Wes Baumstarck
Station Manager
Stations KWOR(AM) and KKLX(FM)

July 19, 2011

EXHIBIT 1

APPLICATION FOR STATION LICENSE
GLOBAL NEWS CONSULTANTS, LLC
KYTS RADIO STATION
CH 289C1 - 105.7 MHZ - 75.0 KW
MANDERSON, WYOMING
February 2011

TECHNICAL STATEMENT

This Technical Statement was prepared on behalf of Global News Consultants, LLC ("GNC"), permittee of radio station KYTS, Channel 289C1, Manderson, Wyoming. GNC has an outstanding permit to build a new FM facility (KYTS) (BMPH-20100729AAR). GNC herein submits a license application to cover the outstanding permit. A calculation of the transmitter power output of the KYTS transmitter is attached as Exhibit A. KYTS has been constructed and is ready to commence operation.

There are four operating conditions/restrictions on the KYTS permit. Condition #1 requires GNC to reduce the power of KYTS, or cease operation as needed, to insure that persons with access to the tower will not be exposed to radio frequency radiation levels in excess of the Commission's guidelines. GNC will comply with this requirement. Condition #2 states that, as a result of the permit, Channel 289C3 be deleted and that Channel 289C1 be added to Manderson, Wyoming. GNC acknowledges this change.

Condition #3 states that program tests for KYTS may not commence on Channel 289C1 until program tests for KWWY at Shoshoni, Wyoming commence on Channel 293C1 and, further, that a license will not be granted for KYTS until a license for KWWY is granted. As

noted above, KYTS is ready to commence operation, but to date KWWY has not moved to Channel 293C1 from Channel 292C1.¹ The licensee of KWWY has consented to the channel change and has entered into an agreement with GNC to implement the change. At the present time, KWWY has authority to remain silent and is not operational.² In order to implement the KWWY permit, changes to a multi-station combiner must be made at the site. Due to the rugged nature of the terrain at the KWWY site and the winter conditions in Wyoming, it is unlikely that the channel change for KWWY is imminent. KYTS is ready and capable of operation; therefore, it is respectfully requested that the Commission waive Condition #3 and allow KYTS to commence program tests.

Exhibit B indicates that Channel 289C1 from the KYTS site does not meet the spacing requirements to KWWY's licensed facility; however, the operation of KYTS will not cause interference to nor receive interference from the licensed KWWY facility on Channel 292C1. As indicated on Exhibit C, there is no overlap of the protected and interfering contours of KYTS and KWWY. In the event that KWWY needs to return to the air on Channel 292C1 before moving to Channel 293C1, the operation of KYTS would not be an impediment as there is no potential for interference between the stations.³ Therefore, GNC requests a waiver of the condition and permission to commence operation.

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- 1) There is an outstanding permit for KWWY specifying Channel 293C1 (BPH-20101202ABL).
 - 2) The station went silent July 10, 2010. The STA to remain silent runs through April 18, 2011.
 - 3) As a reference, the Commission is allowing station KBAE (formerly KZCC) Channel 238C3, Trinidad, California to continue operating on its authorized channel, based on its outstanding permit, despite the commencement of operation of second adjacent station KMDR, Channel 236C3, McKinleyville, California. KMDR is to move to Channel 299 once other stations change channels. On its present channel, KMDR does not meet the required spacing distance to KBAE, but the areas of interference between the stations are unpopulated.

Condition #4 states that KYTS specified the use of an ERI/Jampro rototiller style antenna (EPA Type #3), eight section system in its application to demonstrate compliance with the Commission's RF exposure guidelines. If any other antenna system is used, automatic program test authority would not apply. As indicated in this instant application, GNC is using an ERI SHPX-8AC antenna. Therefore, this condition is satisfied.

Based on the foregoing, it is believed that KYTS may commence operating in compliance with the Commission's rules and that all conditions have been met, with the exception of the relocation of KWWY to Channel 293C1, for which a waiver has been requested.

APPLICATION FOR STATION LICENSE
GLOBAL NEWS CONSULTANTS, LLC
KYTS RADIO STATION
CH 289C1 - 105.7 MHZ - 75.0 KW
MANDERSON, WYOMING
February 2011

EXHIBIT B

Clearance study for KYTS Manderson, Wyoming
Using CP site as reference

REFERENCE		DISPLAY DATES
44 03 34.0 N.	CLASS = C1	DATA 02-17-11
107 51 13.0 W.	Current Spacings to 3rd Adj.	SEARCH 02-17-11
----- Channel 289 - 105.7 MHz -----		

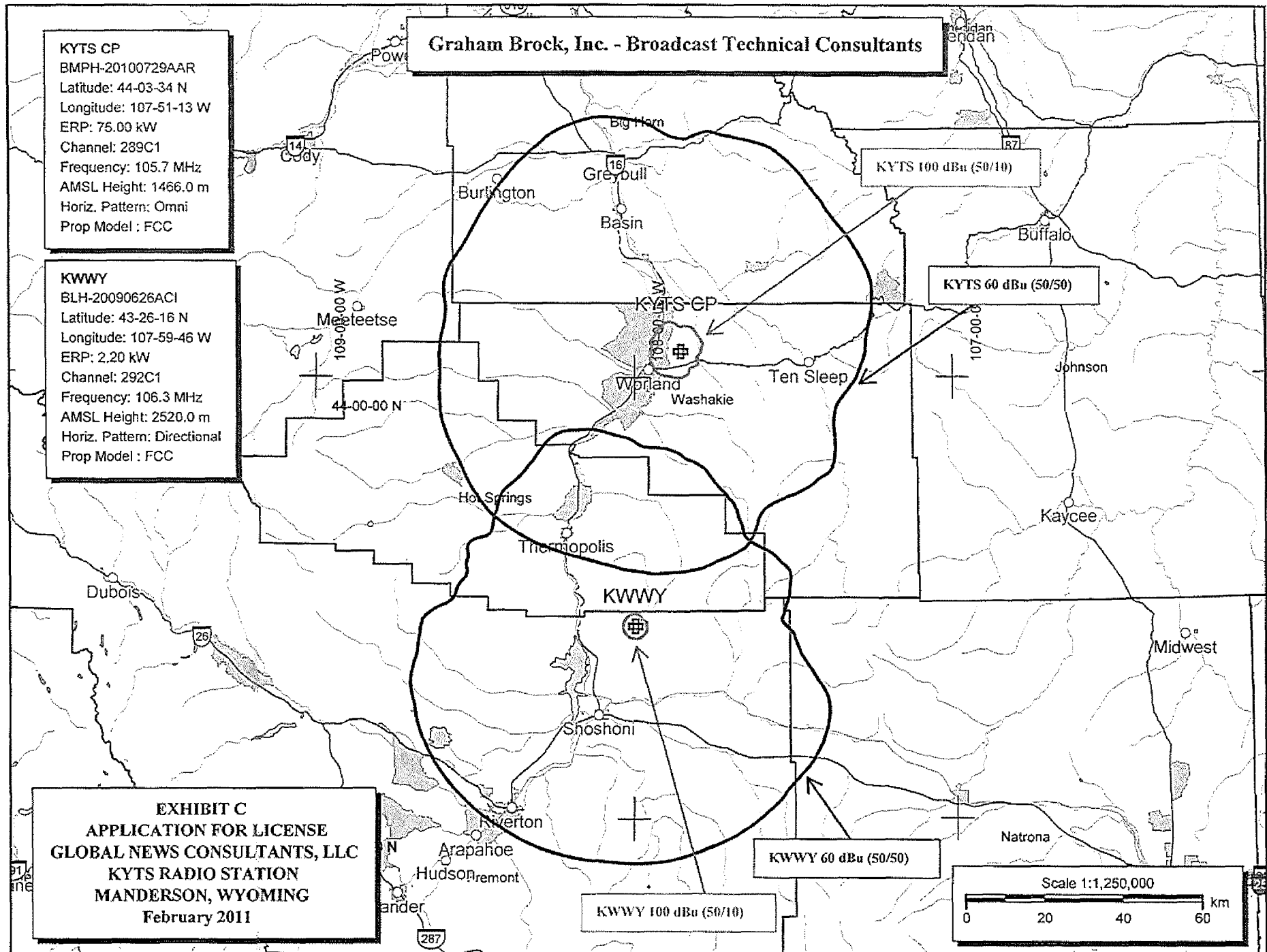
Call Lat.	Channel Lng.	Location Ant	Power	Azi HAAT	Dist	FCC	Margin
KYTS	CP 289C1	Manderson	WY	0.0	0.0	245.0	-245.0
	44 03 34.0	107 51 13.0	CX	75.000 kW	150 M		
	Global News Consultants, LLC BMPH-20100729AAR						
KWWY	LIC-D 292C1	Shoshoni	WY	189.5	70.0	82.0	-12.0
	43 26 16.0	107 59 46.0	DCX	100.000 kW	299 M		
	Cochise Broadcasting LLC BLH-20090626ACT						
	> to Channel 293C1 per one-step application BPH-20101202ABL						
KWMY	LIC 290C1	Joliet	MT	342.6	186.5	177.0	9.5
	45 39 31.0	108 34 14.0	CX	100.000 kW	134 M		
	Connoisseur Media, LLC BLH-20060712AEX						
KZQL	CP 288C1	Mills	WY	139.0	192.7	177.0	15.7
	42 44 30.0	106 18 23.0	CX	5.000 kW	518 M		
	The Casper Radio Group, Inc. BMPH-20090821ACK						
KLWR-LP	LIC 287L1	Powell	WY	317.7	104.8	73.0	31.8
	44 45 09.0	108 44 46.0		0.100 kW	22 M		
	Living Word Ministries BLL-20030806ACA						
KZQL	LIC 288C2	Mills	WY	139.7	192.0	158.0	34.0
	42 44 03.0	106 20 00.0	CX	2.750 kW	543 M		
	The Casper Radio Group, Inc. BLH-20080304AAP						
KZKY	LIC 235C	Sheridan	WY	42.9	85.9	41.0	44.9
	44 37 20.0	107 06 57.0	C	75.000 kW	368 M		
	Lovcom, Inc. BLH-19990914AAM						
KTUG	LIC 286C3	Hudson	WY	202.9	122.6	76.0	46.6
	43 02 32.0	108 26 28.0	HX	12.500 kW	80 M		
	Higher Calling Communications BLH-20091116AAD						
AL4780	VAC 289C1	Edgemont	SD	99.4	309.9	245.0	64.9
	43 32 32.0	104 04 12.0		100.000 kW	299 M		
	Keyhole Broadcasting LLC RM-11253						

Graham Brock, Inc. - Broadcast Technical Consultants

KYTS CP
BMPH-20100729AAR
Latitude: 44-03-34 N
Longitude: 107-51-13 W
ERP: 75.00 kW
Channel: 289C1
Frequency: 105.7 MHz
AMSL Height: 1466.0 m
Horiz. Pattern: Omni
Prop Model : FCC

KWWY
BLH-20090626ACI
Latitude: 43-26-16 N
Longitude: 107-59-46 W
ERP: 2.20 kW
Channel: 292C1
Frequency: 106.3 MHz
AMSL Height: 2520.0 m
Horiz. Pattern: Directional
Prop Model : FCC


EXHIBIT C
APPLICATION FOR LICENSE
GLOBAL NEWS CONSULTANTS, LLC
KYTS RADIO STATION
MANDERSON, WYOMING
February 2011



CERTIFICATE OF SERVICE

I, Randy Pannell, hereby state that on July 22, 2011, a copy of the "REQUEST FOR PROGRAM TEST AUTHORITY" was sent by first class mail, to the following:

Susan A, Marshall
Anne Goodwin Crump
Fletcher Heald & Hildreth, P.L.C.
1300 N. 17th Street –Eleventh Floor
Arlington, VA 22209
(Counsel to Cochise Broadcasting, LLC)



Randy Pannell