

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, SW
WASHINGTON, DC 20554

NOV 30 2012

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: WWW.FCC.GOV/MB/AUDIO

PROCESSING ENGINEER: Tung Bui
TELEPHONE: (202) 418-2778
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: tung.bui@fcc.gov

David Tillotson, Esq.
Law Office of David Tillotson
4606 Charleston Terrace, N.W.
Washington, DC 20007-1911

Peter Tannenwald, Esq.
Fletcher, Heald & Hildreth, P.L.C
1300 North 17th Street, 11th Floor
Arlington, VA 22209-3801

In re: KJAX(FM), Jackson, Wyoming
Facility ID No.: 82088
Chaparral Broadcasting, Inc.
BPH-20080908AAZ

**Request for Deletion of Special Operating
Condition No. 2**

KEZQ(FM), Iona, Idaho
Facility ID No.: 23306
Chaparral Broadcasting, Inc.
BPH-20080908ABA

**Request for Deletion of Special Operating
Condition No. 2**

Dear Counsel:

Before the Audio Division is a request for deletion of Special Operating Condition No. 2 from construction permits BPH-20080908AAZ and BPH-20080908ABA. For the reasons set forth below, we delete Special Operating Condition No. 2 from the above captioned construction permits.

Background: In January 2008, the Audio Division issued a Report and Order modifying the license of Station KZBQ(FM) to specify operation Channel 230C, in lieu of 229C at Pocatello, Idaho.¹ Idaho Wireless Corporation (“Idaho Wireless”) obtained a construction permit for Channel 230C0 on June 30, 2008.² In September 2008, Chaparral Broadcasting Inc. (“Chaparral”), licensee of KJAX(FM), Jackson, Wyoming, and KEZQ(FM), Iona, Idaho, filed the above referenced contingent applications to modify the

¹ *Meeteetse, Wyoming, Fruita, Colorado, etc.*, Report and Order, 23 FCC Rcd 447 (MB 2008) (“*Report and Order*”)

² File No. BPH-20080620BQM

stations' facilities.³ These permits each included Special Operating Condition No. 2 which prohibits Chaparral from implementing operations until Idaho Wireless initiates broadcasts with KZBQ on Channel 230. The staff granted these applications and issued construction permits on March 12, 2009. The Idaho Wireless construction permit expired on June 30, 2011. Idaho Wireless has not filed another application proposing operation on Channel 230.

In January 2012, Chaparral filed a tolling request for both construction permits which contained a request to delete Special Operating Condition No. 2 from each permit and cancel Idaho Wireless' operation on Channel 229. In July 2012, Chaparral submitted a supplement to its tolling request which renewed its request.

Discussion: In 1999, the Commission clarified the protection rights of stations which modify their assignments. It stated that “[a]fter the allotment rule making has become final, the affected station has at best an ‘implied STA’ to remain on its old frequency until it is ready for operation on its new frequency.”⁴ STAs are not within the scope of assignments and allotments which receive protection under the FM non-reserved band technical rules.⁵ That is, stations operating with STAs – express or implied – are entitled to no protection from operating stations, construction permits, pending applications or subsequently filed applications. Thus, the Audio Division has noted that a station operating with an implied STA “would be subject to established cut-off and application conflicts processing policies with regard to any facility application or rulemaking proposal filed on or after the effective date of the order.”⁶

Idaho Wireless' permit was issued over four years ago. Thus, Idaho Wireless has had sufficient time to implement the channel change. Idaho Wireless was fully aware that the station's continued operations on Channel 229C received no protection under the Commission's technical rules. In this situation, we conclude that the deletion of Special Operating Condition No. 2 from each permit is in the public interest. Although initiation of operations authorized by the KJAX and KEZQ construction permits will result in interference to KZBQ, KZBQ lost all protection rights for the formerly licensed Channel 229 facility when the *Report and Order* became a final order. Accordingly, deletion of Special Operating Condition No. 2 from each permit does not constitute a modification of the KZBQ license subject to the protest procedures set forth in Section 316(a) of the Communications Act of 1934, as amended (the “Act”).⁷

We decline Chaparral's request to cancel Idaho Wireless' implied STA at this time, an action that would require KZBQ to cease operation. Nevertheless, we emphasize that we expect Idaho Wireless to expeditiously file another construction permit application proposing operation on Channel 230 and complete construction of this facility and initiate program tests. In the event that Idaho Wireless fails to do so, we will consider cancellation of KZBQ's implied STA.⁸ We remind Idaho Wireless that the Commission has stated

³ File Nos. BPH-20080908AAZ and BPH-20080908ABA

⁴ *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525, 17540 n.55 (1999) (subsequent history omitted) (the “*Streamlining Order*”).

⁵ See 47 C.F.R. §§ 73.207, 73.213 and 73.215.

⁶ *Gunnison, Crawford, and Olathe, Breckenridge, Eagle, Fort Morgan, Greenwood Village, Loveland and Strasburg, CO, and Laramie, WY*, Memorandum Opinion and Order, 20 FCC Rcd 5908, 5913 (MB 2005).

⁷ See 47 U.S.C. § 316(a) (Commission may not modify the license of a station without providing licensee written notice and a reasonable opportunity to protest).

⁸ The Commission delegated authority to the staff to cancel implied STAs for any modifications made in the course of “allotment

that “implicit in the filing of any facility application is that the applicant stands ‘ready, willing, and able’ to construct and operate as proposed.”⁹ Neither a difficult economic environment, nor an inability to reach agreement on funding a portion of the construction of the Channel 230 facilities, nor a change in business plans regarding the build-out of the facilities relieves Idaho Wireless from its obligation to complete construction by the established deadline. Idaho Wireless accepted the construction and licensing obligations arising from the finality of the *Report and Order*. At this point, Idaho Wireless’ continuing construction delays are thwarting Chaparral’s efforts to implement major facility improvements in Jackson, WY and Iona, ID. Thus, continued warehousing of this spectrum by Idaho Wireless in the face of Chaparral’s long-standing competing demand is plainly contrary to the public interest.

Conclusion: Accordingly, the request to delete Special Operating Conditions No. 2 in the KJAX construction permit (BPH-20080908AAZ) and the KEZQ construction permit (BPH-20080908ABA) ARE GRANTED. A reissued KJAX and KEZQ construction permit will be mailed to Chaparral Broadcasting, Inc. under separate cover.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

rule makings.” See *Streamlining Order*, 14 FCC Rcd at 17540 n.55. In any event, as a general matter, the staff, pursuant to Section 73.1635(b) of the Commission’s Rules, may modify or cancel an STA without prior notice or right to hearing. See 47 C.F.R. § 73.1635(b). 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. See *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).

⁹ *Pathfinder Communications Corp.*, 18 FCC Rcd 9272, 9279 (2003).