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**COPY**

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

In re: Application of:

COMMUNITY BROADCASTING, INC. )  
Station KCVW(FM), Kingman, Kansas ) File No. BPED-20111214ABT  
Facility ID No. 6506

For Minor Changes

**FILED/ACCEPTED**

To: The Office of the Secretary  
Forward to: Chief, Audio Division, Media Bureau

**JUN 27 2013**

Federal Communications Commission  
Office of the Secretary

**MOTION FOR STAY**

Carrie A. Ward

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Dated: June 27, 2013

## SUMMARY

Entercom Wichita License, LLC ("Entercom"), licensee of station KDGS(FM), Andover, Kansas (Facility ID No. 70266) ("KDGS"), pursuant to the Commission's rules, requests that the Commission stay the effectiveness of the Media Bureau's May 28, 2013 decision (the "Letter Decision") that contained an order directing Entercom to file a construction permit application to change the operating channel of KDGS from Channel 230C3 to Channel 228C3 (the "Order"). Entercom has filed contemporaneously a petition for seeking reconsideration of the Letter Decision (the "Petition"). The Commission should stay the Order pending a decision on the Petition and no application conforming to the Order, including both the channel change ordered for KDGS and that ordered for station KOTE(FM), Eureka, KS (Facility ID No. 48789) ("KOTE") to operate on Channel 230A, should be accepted for filing or acted upon until there is a final decision with respect to the Petition.

This case satisfies the requirements for a stay. Entercom is likely to succeed on the merits because the Media Bureau's decision was in error, was arbitrary and capricious and inconsistent with the findings made by the Office of Engineering and Technology ("OET") with respect to the initial application filed by Community Broadcasting, Inc. ("Community") to upgrade the operation of station KCVW(FM), Kingman, Kansas (Facility ID No. 6506), and undertaken in violation of the APA and due process. Entercom will suffer irreparable harm absent a stay because compliance with the Order would change the Table of Allotments and would preclude KDGS from recovering its channel position. If the Commission ultimately determines that implementation of the Order was a mistake, intervening changes in the Table of Allotments could not be undone and the harm to KDGS would be irreparable. A stay would leave the current Table of Allotments intact and no party would be injured by the stay. The

public interest would be served because any disruption in the Table of Allotments would not only affect KDGS, but would also adversely affect other stations relying on the modified Table if Entercom's Petition is granted and the channel change for KDGS is set aside. Accordingly, a stay of the Order is the only equitable result when balancing all of the factors required to demonstrate the justification of a stay.

## BACKGROUND

On December 14, 2011, Community filed an application to propose an upgrade to KCVW to operate on Channel 232C1 from a new transmitter site 31 kilometers from Wichita (the "Application"). The proposal would create a 50 kilometer short-spacing to KDGS, operating on a second-adjacent channel. The Application requested that the Commission issue Entercom an Order to Show Cause that would force KDGS to move to Channel 228C3<sup>1</sup>.

On February 3, 2012, Entercom filed an Informal Objection to the Application on the basis that the Application violated Section 73.315(a) of the Commission's rules, which requires applicants to specify an antenna location that provides a minimum field strength of 70 dBu over the entire principal community to be served.<sup>2</sup> It is longstanding Commission policy that coverage of at least 80% of the area or population is the minimum level necessary for "substantial compliance" with Section 73.315(a) of the Commission's rules.<sup>3</sup> The Application relied on two alternate contour methodologies, the Longley-Rice media occurrence and on the

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<sup>1</sup> The Application also requested an additional Order to Show Cause to Niemeyer Communications, LLC for station KOTE. Entercom requests that no application conforming to the Order be accepted for filing or acted upon until there is a final decision on the Petition.

<sup>2</sup> 47 C.F.R. §73.315(a).

<sup>3</sup> *In the Matter of Amendments of Parts 73 and 74 of the Commission's rules to Permit Certain Minor Changes in Broadcast Facilities without a Construction Permit*, 12 FCC Rcd 12371, 12739 [¶11] (1997); see *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations*, 15 FCC Rcd 3322, 3327 [¶13] (2000); see also *Amendment of the Commission's Rules to Permit FM Channel and Class Modification by Application*, 8 FCC Rcd 4735 (1993).

point-to-point methodology ("PTP"), to predict 70 dBu service from the KCVW facilities because the standard methodology prescribed in Section 73.313 of the Commission's rules would have shown that the predicted 70 dBu contour would not encompass any portion of the station's community of license. Entercom based its Informal Objection on an engineering assessment conducted by Hatfield & Dawson ("H&D"), which determined that Community's proposal did not provide sufficient coverage to Kingman due to local terrain obstructions outside of Kingman.<sup>4</sup> H&D used the Longley-Rice point-to-point methodology because the methodologies used by Community did not take into account local terrain obstructions.<sup>5</sup> The H&D study showed that the proposed coverage was well below the required 80% coverage deemed appropriate for "substantial compliance" of §73.315(a) of the Commission's Rules.<sup>6</sup>

On July 26, 2012, the Commission issued a "Deficiency Letter" to Community indicating that the supplemental engineering showing was forwarded to the Media Bureau's propagation expert at OET to perform an independent study and OET concluded that the Application would cover less than 80% of Kingman, KS.<sup>7</sup> Based on this determination, it appears that OET agreed with Entercom's analysis of the Community proposal.

On September 11, 2013, the Application was amended to include changes to KCVW's proposed transmitter site location, antenna height, tower height and ERP. The amended Application completely abandoned a Longley-Rice supplemental showing and relied *exclusively*

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<sup>4</sup> See Informal Objection filed by Licensee on February 3, 2012 that includes an Engineering Statement from Hatfield and Dawson Consulting Engineers (dated January 31, 2012).

<sup>5</sup> *Id.* at pages 3-9 in Engineering Statement.

<sup>6</sup> *Id.*

<sup>7</sup> See Deficiency Letter, dated July 26, 2012, issued by Edna V. Prado, Supervisory Engineer, Audio Division, Media Bureau.

on the PTP methodology in a renewed attempt to show compliance with the community of license coverage requirement in Section 73.315 of the Commission's Rules.

On September 17, 2012, Entercom submitted a supplement to its initial Informal Objection, including a second Engineering Statement from H&D that analyzed the amended Application using the Longley-Rice methodology to account for the effects of terrain in the Kingman area.<sup>8</sup> That second study concluded that the proposed KCVW facility would provide a 75 dBu signal (effectively a 70 dBu signal with when a 5 dB clutter loss is applied) to only 6.6% of the population of Kingman (207 of 3,177 persons); a 73 dBu signal (effectively a 70 dBu signal with when 3 dB clutter loss is applied (the clutter loss used by Community) would provide coverage to only 12.4% of the population Kingman (393 of 3,177); and a 70 dBu signal (assuming no clutter loss) would only provide coverage to only 36.6% of the population of Kingman (1,162 of 3,177 persons).<sup>9</sup> With respect to coverage of area, Hatfield found that the proposed KCVW facility will provide an effective 70 dBu signal to only: (i) 30.8% of the area of Kingman (2.8 of 9.1 sq km) (using a clutter loss of 5%); (ii) 36.3% of the area Kingman (3.3 of 9.1 sq km) (using a clutter loss of 3%); and (iii) 65.9% of the area of Kingman (using no clutter loss).<sup>10</sup> By this assessment, the proposed facility in the amended Application still fell extremely short of the 80% coverage level required for substantial compliance with Section 73.315 of the Commission's rules.

On February 19, 2013, the Media Bureau issued to Entercom an Order to Show Cause to Entercom to show why the license for KDGS should not be modified to specify Channel 228C3

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<sup>8</sup> See Supplement to Informal Objection filed by Licensee on September 17, 2012 that includes an Engineering Statement from H&D (dated September 14, 2012) ("Entercom's Second Engineering Statement").

<sup>9</sup> See Entercom's Second Engineering Statement at pages 5-10.

<sup>10</sup> *Id.* at pages 6-10.

in lieu of Channel 230C3 in response to the filing of the Application, as amended.<sup>11</sup> On March 20, 2013, Entercom filed its Response, reiterating that the Application does not comply with Section 73.315 of the Commission's rules, and that the PTP methodology employed by Community is not appropriate. Entercom also argued that changing the channel of KDGS will not serve the public interest because KDGS is the only radio station in Wichita, Kansas, focused on serving an African-American audience and the channel change will inevitably cause disruptive confusion among the station's audience since the station's local identity as "Power 93.9" is directly tied to the operating frequency.

On May 28, 2013, the Media Bureau issued the Letter Decision denying Entercom's objections, dismissing Entercom's response to the Order to Show Cause, granting the Application and ordering KDGS to specify operation on Channel 228C3 in lieu of Channel 230C3 and ordering Entercom to file a minor change application for construction permit to implement the channel change.<sup>12</sup>

#### STANDARD OF REVIEW

The Commission will stay the effectiveness of an order pending a decision on a petition for reconsideration when the petitioner demonstrates: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm in the absence of a stay; (3) a stay will not injure other parties; and (4) a stay is in the public interest.<sup>13</sup>

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<sup>11</sup> See Order to Show Cause letter dated February 19, 2013 issued by Edna V. Prado, Supervisory Engineer, Audio Division, Media Bureau.

<sup>12</sup> See Letter Decision at page 2.

<sup>13</sup> *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958), *Washington Metropolitan Transit Commission v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977).

## ARGUMENT

### I. Entercom is Likely to Prevail on the Merits.

#### A. The Media Bureau's Decision to Accept and Grant an Application that submitted a PTP Methodology as its Only Supplemental Showing of Community of License Coverage was in Error.

It is apparent from the Letter Decision that the Media Bureau accepted Community's PTP supplemental showing and did not address the issues raised by Entercom in its objections. The Media Bureau's decision in this matter was in error because the amended Application was unacceptable for filing as a threshold matter since it presented a supplemental showing solely based on PTP methodology – a methodology that has not been adopted by the Commission for any purpose and is therefore inappropriate to use in a situation like in this instant manner.<sup>14</sup>

The Media Bureau accepts a variety of supplemental methods, "such as NBS Technical Note 101, terrain roughness, or Longley-Rice analyses, in circumstances where applicants who are faced with unusual terrain considerations, to demonstrate that the principal community contour will encompass the community of license or main studio location, where they were not able to establish compliance through the standard predicted contour prediction methodology prescribed under Section 73.313 of the Commission's rules."<sup>15</sup> The Commission has declined to set forth a standard or preferred method for supplemental coverage analysis "[b]ecause the exhibits provided with supplemental showings may vary from method to method..."<sup>16</sup> However, the Commission should not accept for filing an application that attempts to establish compliance

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<sup>14</sup> *In the Matter of 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21649, 21652 ("1998 Biennial Regulatory Review").

<sup>15</sup> *Amendments of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order*, 12 FCC Rcd 12371, 12401-03 (1997) (citing, for FM stations, 47 C.F.R. §§ 73.333 and 73.313(e)) (TV citations omitted) (subsequent history omitted).

<sup>16</sup> *Id.*

with crucial threshold criteria by the use of a supplemental methodology that has specifically not been adopted by the Commission because it required additional modification.<sup>17</sup> As explained in Entercom's Second Engineering Statement, the PTP methodology was first proposed in MM Docket 98-93 as a means to calculate contours in certain limited circumstances.<sup>18</sup> A number of commenters in that proceeding raised concerns regarding the accuracy and reliability of the PTP methodology.<sup>19</sup> The full Commission concluded that adoption of the proposed PTP methodology was to be deferred "on the basis of comments raising issues regarding the accuracy and reliability of the proposed signal propagation prediction model."<sup>20</sup> In 2000, the Commission stated its intention to revise the PTP methodology and to seek further comment on its use.<sup>21</sup> Until that further rulemaking is completed, the use of the PTP methodology has been deferred.<sup>22</sup> In 2004, the full Commission again noted that it deferred the adoption of PTP methodology "on the basis of comments raising issues regarding the accuracy and reliability of the proposed signal propagation prediction model."<sup>23</sup> The Media Bureau itself has acknowledged Commission's position regarding the deferred adoption of the PTP methodology as "the Commission ... was considering extensive revisions to the [PTP] model" and observed that "[t]he [PTP] model has not been approved by the Commission as a means of estimating FM station interference contours."<sup>24</sup> In another instance, the Media Bureau correctly declined to apply PTP methodology to determine compliance with the minimum coverage requirements of Section

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<sup>17</sup> Biennial Regulatory Review at 21652-21653.

<sup>18</sup> *Id.*; see also Entercom's Second Engineering Statement at page 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Michael Radio Group*, 19 FCC Rcd 23817, 23820, n. 16 (Commission 2004).

<sup>24</sup> *Calvary Chapel of Costa Mesa, Inc.*, 23 FCC Rcd. 9971, 9975, n. 30 (Media Bureau 2008).



73.315 in an FM allotment case, holding it "inappropriate for the staff to ... implement[] a supplemental point-to-point propagation methodology while the issue is being considered by the Commission."<sup>25</sup>

The Media Bureau should have acted in accordance with these prior cases and refused to review, much less approve, the PTP showing submitted with the amended Application. The Application has always depended on a supplemental propagation showing because the standard prediction method prescribed by Section 73.313 clearly fails to show sufficient service. Without a valid supplemental showing, Community cannot establish compliance with the requirements of Section 73.315. It has been more than twelve years since the Commission set aside its consideration of the PTP methodology and there has been no further Commission action addressing the use of this methodology.<sup>26</sup> The Letter Decision states that OET's evaluation "confirmed that ... the application, as amended, demonstrates compliance with 47 C.F.R. Section 73.315."<sup>27</sup> The only supplemental showing supporting Community's amended proposal was a study employing the PTP methodology, which cannot be relied on at this point without Commission approval. If the PTP study cannot be utilized, then there is no basis for the ultimate conclusion that the Application is grantable.

Even if PTP was an appropriate methodology to use to predict community of license coverage, PTP does not take into account the local terrain obstructions and characteristics outside of Kingman, Kansas. This flaw in the methodology was one of the concerns raised in MM

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<sup>25</sup> *In re Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Taccoa, Sugar Hill, and Lawrenceville Georgia)*, 16 FCC Rcd 21191, 21192 (Mass Media Bureau, 2001) ("Taccoa, Georgia").

<sup>26</sup> See Entercorn's Second Engineering Statement at page 3.

<sup>27</sup> Letter Decision page 2.

Docket 98-93, leading to the deferral of the adoption of this methodology.<sup>28</sup> Operation from the facilities described in the amended Application would provide substandard service to the community of license as a result of the terrain characteristics immediately adjacent to Kingman, causing shadowing and attenuation of the received signal within the community.<sup>29</sup> This failure is evident from the Longley-Rice analysis employed by Entercom,<sup>30</sup> but the Letter Decision never even addresses this matter. Attached as Exhibit A is an engineering statement from registered professional engineer, Benajmin F. Dawson III P.E. of H&D (the "Dawson Statement"). Mr. Dawson states that the Longley-Rice study conducted by his colleague, Erik Swanson P.E., with respect to the amended proposal for KCVW showed substandard coverage and that there are "indeed significant obstructions near the city of Kingman which would result in reduced signal intensity by diffraction or attenuation of line-of-sight free-space circumstances."<sup>31</sup> The Letter Decision fails to address the specific results of the Longley-Rice study submitted in Entercom's Second Engineering Statement, which noted significant deficiencies from diffraction losses. The Media Bureau's statement that OET found "no major terrain obstruction" is a mere conclusion, not a justification for grant, especially when there is no valid supplemental showing submitted by Community. Whether the Letter Decision was in error for failing to reject the amendment as a threshold matter for offering a showing premised upon a supplemental methodology that has not been approved for use for this purpose, or because the showing fails to adequately measure the effect of the terrain obstructions within the community of license, as predicted by the Longley-

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<sup>28</sup> See Entercom's Second Engineering Statement at page 4.

<sup>29</sup> *Id.* at page 6.

<sup>30</sup> *Id.* at pages 5-6.

<sup>31</sup> See Dawson Statement.

Rice study submitted by H&D, the Media Bureau acted in error and its decision must be reversed.

**B. The Media Bureau's Decision is Arbitrary and Capricious and Inconsistent with the Bureau's Previous Determination.**

The Media Bureau and the Commission are bound by the provisions of the Administrative Procedure Act (the "APA"). In particular, Section 706(a)(2) of the APA advises reviewing courts to "hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The conclusion in the Media Bureau's Letter Decision is inconsistent with the conclusion of the Deficiency Letter. In the Deficiency Letter, the Commission rejected Community's proposal because the OET found that it would cover less than 80 percent of Kingman.<sup>32</sup> In its September 11, 2012 amendment, Community nominally improved its 70 dBu service to Kingman over what was originally proposed, but as addressed in Entercom's Second Engineering Statement, the new proposal, "still falls short of the required service level owing to local terrain obstruction which exist just outside the city boundaries."<sup>33</sup> As Mr. Dawson concluded in his statement, the second Longley-Rice study submitted in Entercom's Second Engineering Statement found deficiencies from diffraction losses.<sup>34</sup> The Media Bureau had available to it in Entercom's Second Engineering Statement the results of this Longley-Rice study conducted by H&D, which clearly shows that predicted coverage within Kingman is far less than required by Section 73.315. Instead, the Media Bureau apparently accepted and reviewed Community's supplemental PTP showing, which was in itself error (as discussed above), and concluded, without explanation, that the Application now complied with Section

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<sup>32</sup> See Deficiency Letter.

<sup>33</sup> Entercom's Second Engineering Statement at page 3.

<sup>34</sup> See Dawson Statement.

73.315. For the Media Bureau to determine that there is no major terrain obstruction in the amended KCVW proposal, without explanation other than the cursory statement that the OET determined there was none, is in error and inconsistent with its prior determination in the Deficiency Letter. The Media Bureau's decision to grant the Application by stating a mere conclusion that does not provided an explanation is arbitrary and capricious and must be reconsidered and reversed.

**C. The Media Bureau's Application of Section 73.313(e) of the Commission's Rules is Vague and Violates Due Process.**

Regulated parties should not be left to guess how a regulation will be applied to them. It is essential to due process of the law that regulatory bodies provide fair notice of what conduct is forbidden or required.<sup>35</sup> The void for vagueness doctrine addresses two fundamental principles: (1) regulated parties should know what is required of them so they know how to act; and (2) laws must have precise standards so those who are charged with enforcing them will be prevented from acting arbitrarily.<sup>36</sup> As stated in *FCC v. Fox Television Stations*, "an agency, in the ordinary course, should acknowledge that it is in fact changing its position and 'show that there are good reasons for the new policy.'"<sup>37</sup>

In MM Docket 96-58, the Commission attempted to clarify its policy on supplemental showings.<sup>38</sup> However, it only provided guidance on when a supplemental showing is appropriate

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<sup>35</sup> *FCC v. Fox Television Stations*, 132 S. Ct. 2307 at 2317 (2012) (citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)) ("Fox").

<sup>36</sup> *Id.* (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972)).

<sup>37</sup> *Id.* at 2315-2316 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 529, 129 S.Ct. 1800, 1811 (2009)).

<sup>38</sup> *Amendments of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order*, 12 FCC Rcd 12371, 12401-03 (1997) (citing, for FM stations, 47 C.F.R. §§ 73.333 and 73.313(e)) (TV citations omitted) (subsequent history omitted).

and what an applicant needs to include in a supplemental showing to establish that its use is justified.<sup>39</sup> The Commission acknowledged that supplemental showings are open to varying interpretations and are controversial, but the Commission left applicants at a disadvantage by intentionally declining to provide any other standards or guidance because “the exhibits provided with supplemental showings may vary from method to method...”.<sup>40</sup> The Commission used to have a longstanding policy to provide the parties in a proceeding a detailed explanation of OET’s independent analysis with OET’s Report, Memo and OET Map.<sup>41</sup> In *CMP Houston*, a matter in which Entercom’s parent company, Entercom Communications Corp., objected to the Commission’s acceptance of a supplemental showing, the Commission at least provided a copy of the report of the OET engineer and the map showing the calculated 70 dBu contour.<sup>42</sup> In fact, the Commission found that the Media Bureau provided a basis for its decision by providing this information.<sup>43</sup> This policy gave guidance to parties on the basis for the OET determination. This policy has clearly been abandoned by the Media Bureau to the detriment of parties both offering and challenging applications before the Commission. By changing its policy in this regard, the Commission’s processes lack transparency and supplemental showings have become a “guessing game” for applicants. This is not how regulated parties should have to operate. There should be a clear “bright line” test. The Commission has the duty to provide clear standards and provide notice when it changes its policies – a duty in which the Commission has been deficient. To remedy this, the Media Bureau’s decision must be reconsidered and reversed.

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *In the Matter of CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 F.C.C.R. 10656, 10660 (July 02, 2008) (“*CMP Houston*”).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

## **II. Entercom Will Suffer Irreparable Harm Absent a Stay.**

Absent a stay, Entercom would be required to submit an application to change channels for use by KDGS, which would affect the Table of Allotments and when, "daisy chain" applications are later filed, would preclude KDGS from recovering its channel position in the future. Irreparable harm is established when there is no "possibility that adequate compensatory or other corrective relief will be available at a later date."<sup>44</sup> The effectiveness of the Order would cause irreparable harm to Entercom because forcing Entercom to file a minor change application for a construction permit to change channels is an action that cannot be taken back after it is done, and other applications are filed in reliance of the channel change. Only a stay of the Order can prevent the permanent loss of the channel now assigned to KDGS. As such, the harm is irreparable unless a stay is entered pending a decision on Entercom's Petition.

## **III. A Stay Would Not Injure Other Interested Parties.**

In this matter, a stay of the Order would not injure third parties because it would merely maintain the status quo pending the disposition of the Petition. In the *Washington Metropolitan Area Transit Commission, supra* at page 44, the court determined, "An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will be befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant." This matter has been pending since December 2011 and involved a number of pleadings, a deficiency letter, technical amendments and two Orders to Show Cause (one for KDGS and one for KOTE). At this point, no party in this matter can possibly claim that a stay of the Order would cause injury to them because no party has yet

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<sup>44</sup> *In re: Application to Convert WFUN-LP to Class A Television Status*, DA 05-2255 (August 4, 2005); *Station KDEW(AM)*, 11 FCC Rcd 13683, 13685 (1996), citing *Virginia Petroleum Jobbers and Wisconsin Gas Co. v. FREC*, 758 F. 2d 669 (D.C. Cir. 1985).

modified its existing facilities in reliance on the Order that was released less than 30 days ago. A stay of the Order would leave the current Table of Allotments intact and would maintain the status quo of all parties to this matter until the Petition has been considered. As a result, a stay of the Order is an equitable result and would not injure any interested party.

**IV. A Stay of the Order is in the Public Interest.**

The public interest would be served by staying the effect of the Order because if the Commission determines that the implementation of the Order was erroneous it may not be able to be reversed. This not only affects KDGS and the other interested parties to this matter, but it could affect all other parties acting in reliance on this change to the Table of Allotments. KDGS can continue to serve the public on Channel 230C3. As argued in Entercom's Response to Order to Show Cause, the channel change for KDGS would actually harm the public by causing confusion that will disrupt the station's audience since its frequency is tied so closely to its identity. Accordingly, the public interest would best be served by maintaining the status quo until the Commission disposes of the Petition.

**CONCLUSION**

For all of the foregoing reasons, the Commission should stay the effective date of the Order pending a determination of the Petition.

Respectfully submitted,

By: 

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June 27, 2013

# "Exhibit A"

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## ENGINEERING STATEMENT

I have reviewed the letter dated May 28, 2013 from the FCC staff concerning the application BPED-20111214ABT relative to KCVW, Kingman, KS and the Engineering Statement of Erik Swanson, P.E., of Hatfield & Dawson, dated 14 September 2012 relative to that application, prepared for Entercom Wichita License.

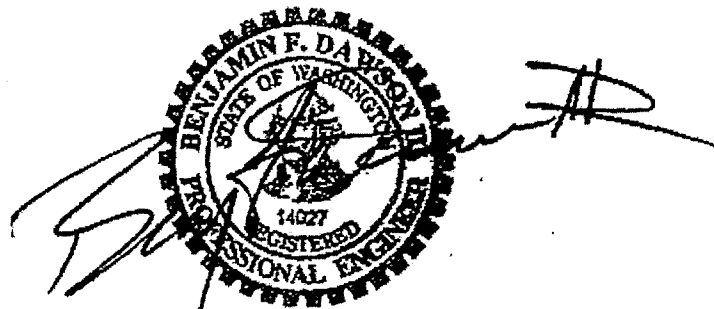
The Commission's letter states: *"We referred the application to our propagation expert at the Office of Engineering and Technology ("OET") to perform an independent study. The evaluation confirmed that there is no major terrain obstruction and the application, as amended, demonstrates compliance with 47CFR73.315."*

The specific results of this study are not included with the staff letter, and are not contained in the FCC engineering file for the station. Review of the Swanson statement makes clear that there are indeed significant obstructions near the city of Kingman which would result in reduced signal intensity by diffraction or attenuation of line-of-sight free-space circumstances.

Without access to the OET study, there is no method by which Entercom can determine the methods or conclusions of the OET study. Indeed, the circumstances of the most recent KCVW application do not appear to differ from those of the original one, which the staff found to be not compliant with 47CFR73.315.

June 26, 2013

Benj. F. Dawson III, P.E.





**CERTIFICATE OF SERVICE**

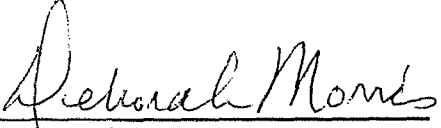
I, Deborah Morris, an assistant at Entercom Communications Corp., do hereby certify that on June 27, 2013 that a true copy of Entercom Wichita License, LLC's Motion for Stay was sent via United States First Class Mail, postage prepaid, to the following:

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