



Federal Communications Commission
Washington, D.C. 20554

MAR 16 2010

Young Broadcasting, Inc., Debtor-in-Possession
c/o Mark J. Prak, Esq.
Brooks, Pierce, Et al.
P.O. Box 1800
Raleigh, NC 27602

Re: KPLO-TV, Reliance, South Dakota
Facility ID No. 41964
Application for Engineering STA
File No. BDSTA - 20100212AAH

Dear Counsel:

This is in reference to the request of Young Broadcasting, Inc., Debtor-in-Possession ("Young Broadcasting"), for Special Temporary Authority to operate KPLO-TV, Reliance, South Dakota, with an emergency antenna upon a temporary tower, as the tower structure supporting the KPLO-TV antenna ("KPLO-TV Tower") fell down during a winter storm in January 2010. Mr. Michael B. Jandrea, Chairman of the Lower Brule Sioux Tribe, submitted a letter, dated February 18, 2010 ("Letter"), to the Commission commenting on the fallen KPLO-TV Tower. For the reasons stated below, we grant Young Broadcasting's request for Special Temporary Authority to operate KPLO-TV in accordance with the specifications set forth in BDSTA - 20100212AAH.

Background: The KPLO-TV Tower is located on Medicine Butte, which the Lower Brule Sioux Tribe stated was sacred land in the Letter. Medicine Butte is located outside the exterior boundary of the Lower Brule Sioux Indian Reservation. The KPLO-TV Tower was originally constructed approximately 53 years ago, prior to the passage of the National Historic Preservation Act of 1966 ("NHPA").

Section 106 of the NHPA requires that the Commission, "prior to the approval of the expenditure of any Federal funds on an undertaking or prior to the issuance of any license, as the case may be, take into the account the effect of the undertaking on any district, site, building, structure, or object that is included or is eligible for inclusion in the National Register" and to "afford the [Advisory Council on Historic Preservation] ... a reasonable opportunity to comment with regard to such undertaking."¹ However, towers constructed prior to the issuance of the NHPA are precluded from review under the NHPA.

¹ 16 U.S.C. § 470f. "Undertaking" is defined as "a project activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal Agency, including ... those requiring a Federal permit [,] license, or approval." 16 U.S.C. §470w(7).

In order to streamline the review and procedures required by the NHPA, the FCC adopted the Nationwide Programmatic Agreement ("Nationwide Agreement").² Pursuant to the Nationwide Agreement, temporary towers are excluded from review. The temporary tower exclusion excludes from NHPA review the "construction of any temporary communication Tower ... including but not limited to the following, a Tower or Antenna authorized by the Commission for a temporary period, such as any facility authorized by a Commission grant of Special Temporary Authority or emergency authorization."³ In the *Nationwide Agreement Report and Order*, the Commission defines "temporary," as not to exceed 24 months, and enunciates that this exclusion is limited to temporary towers that are erected without excavation to previously undisturbed land.⁴ In its request for special temporary authority, Young Broadcasting seeks to erect a temporary tower "placed on the same concrete pier foundation and employ the same guy wire anchor points employed by the tower which collapsed."⁵

Discussion: Young Broadcasting is permitted to erect a temporary tower in accordance with the specifications set forth in BDSTA - 20100212AAH absent NHPA review, pursuant to section §III(C) of the Nationwide Agreement. Furthermore, without going through NHPA review, the KPLO-TV temporary tower may not be erected for a period of more than 24 months, nor may Young Broadcasting excavate beyond the excavated boundaries of the original KPLO-TV Tower.

The Commission understands that the KLPO-TV Tower is located upon Medicine Butte, a site claimed as sacred to the Lower Brule Sioux Tribe. Although we have the greatest respect for the Lower Brule Sioux culture and traditions, the Commission is constrained in its actions by the requirements of the NHPA. The Commission will monitor the erection of the KPLO-TV temporary tower to ensure compliance with the NHPA. Should Young Broadcasting deviate from the temporary tower exclusion, the Commission will take such action as the NHPA permits.

ACCORDINGLY, IT IS ORDERED that, the request of Young Broadcasting, Inc., Debtor-in-Possession, for Special Temporary Authority to operate KPLO-TV, Reliance, South Dakota in accordance with the technical parameters and conditions specified below, IS GRANTED.

Technical Parameters:

Channel: 13

² *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, Report and Order, 20 FCC Rcd 1073 (2004) ("*Nationwide Agreement Report and Order*").

³ *Nationwide Agreement Report and Order*, Appendix B ("*Nationwide Agreement*") at §III(C).

⁴ *Nationwide Agreement Report and Order* at ¶49.

⁵ File No. BDSTA-20100212AAH, Engineering Exhibit at 1.

Antenna Coordinates: N. Latitude: 43-57-57
W. Longitude: 99-36-11

Antenna Type: Dielectric Directional
Model No. THB-C2-2H/4UD-1-S

Maximum Effective Radiated Power: 40 kW

Radiation Center Above Mean Sea Level: 758 meters

Radiation Center Above Ground Level: 96 meters

HAAT: 230.8 meters

Tower Registration Number: 1035406

Special Conditions:

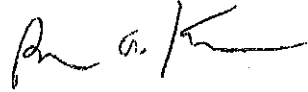
1. The grant of this construction permit is subject to the condition that, with ample time before commencing operation, you make a good faith effort to identify and notify health care facilities (e.g., hospitals, nursing homes, see 47 CFR 15.242(a)(1)) within your service area potentially affected by your DTV operations. Contact with state and/or local hospital associations and local governmental health care licensing authorities may prove helpful in this process. During this pre-broadcast period, you must provide all notified entities with relevant technical details of your operation, such as DTV channel, targeted on-air date, effective radiated power, antenna location, and antenna height. You are required to place in the station's public inspection file documentation of the notifications and contacts made and you may not commence operations until good faith efforts have been made to notify affected health care facilities. During this pre-broadcast period and for up to twenty (20) days after commencing operations, should you become aware of any instances of medical devices malfunctioning or that such devices are likely to malfunction due to your DTV operations, you must cooperate with the health care facility so that it is afforded a reasonable opportunity to resolve the interference problem. At such time as all provisions of this condition have been fulfilled, and either upon the expiration of twenty (20) days following commencement of operations or when all known interference problems have been resolved, whichever is later, this condition lapses.

2. The facility authorized herein must comply with the FCC's increased DTV coverage requirements by the date specified in Section 73.625(a).

3. This authority expires six months from the date of this letter. If appropriate, a timely renewal request must be filed before the end of this period.

4. Hours of operation of this facility will be in accordance with Section 73.624(b) of the Commission's Rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', written in a cursive style.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Mr. Michael B. Jandrea
Lower Brule Sioux Tribe
187 Oyate Circle
Lower Brule, SD 57548