

**FEDERAL COMMUNICATIONS COMMISSION**  
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February 12, 2009

Christopher D. Imlay, Esq.  
Booth, Freret, Imlay & Tepper, P.C.  
14356 Cape May Road  
Silver Spring, Maryland 20904

Re: Gerald Benavides  
KBRN (AM), Boerne, Texas  
Facility Identification Number: 51961  
Special Temporary Authority

Dear Counsel:

This is in reference to the request filed December 1, 2008<sup>1</sup>, on behalf of Gerald Benavides ("GB"). GB requests special temporary authority ("STA") to operate Station KBRN pursuant to Section 73.1615.<sup>2</sup> In support of the request, GB states that STA is necessary to allow time for filing exhibits requested by the staff in support of its license application, BL-20080729AHP.

Section 73.1615, which governs operation during modification of facilities, provides that AM licensees holding construction permits which involve directional facilities may discontinue operation, may operate with reduced power or with parameters at variance from licensed tolerances while maintaining monitor points within licensed limits, may operate in nondirectional mode during presently licensed hours of directional operation with power reduced to 25% of licensed directional power, may operate during daytime hours only in nondirectional mode with power reduced to 25% of construction permit directional power only as necessary to conduct nondirectional proof measurements, may operate during daytime hours with the substantially adjusted daytime or nighttime directional facilities authorized by the permit and with the power authorized by the permit only as necessary to take proof of performance measurements. Operating power shall be reduced to currently licensed levels when proof measurements are not being taken.

Our review indicates that GB obtained Construction Permit BP-20041220AAR, which

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<sup>1</sup> Processing of the request was delayed due to the use of an incorrect form in filing, and due to failure to supply necessary technical parameters for the proposed STA operation.

<sup>2</sup> KBRN is licensed for operation on 1500 kHz with 0.25 kilowatt, daytime hours only, employing a nondirectional antenna (ND-D-D). Construction permit BP-20041220AAR authorizes an increase in daytime operating power to 1.9 kilowatts, employing an directional antenna, and nighttime operation with 0.015 kilowatt, nondirectional (DA-D-U). The permit expired on November 14, 2008; Application BL-20080729AHP, for license to cover the permit, is pending.

authorized the construction of modified KBRN facilities and that it filed Application BL-20080729AHP, to cover the permit; however, by letter dated November 7, 2008, the staff denied Program Test Authority and directed GB to submit an amendment to its license application to demonstrate compliance with Special Operating Condition #1 of the permit. Our review further indicates that, except for a reference to the technical parameters specified in the permit, the request fails to "fully describe the proposed operation", as required by Section 73.1635(a)(2). The request is modified herein to comply with Section 73.1615.

Accordingly, the request for STA IS HEREBY GRANTED, with modification as discussed above. Station KBRN may operate pursuant to Section 73.1615 and the terms and conditions of Construction Permit BP-20041220AAR. In particular, the following modes of operation are authorized:

- 1) During daytime hours, with a nondirectional antenna and reduced power not to exceed 0.475 kilowatt, for nondirectional proof of performance measurements and as necessary to facilitate the construction work. Operating power must be reduced to 0.25 kilowatt or less during any significant period of time when proof of performance measurements are not being taken.
- 2) During daytime hours, with the substantially adjusted daytime directional pattern and power authorized by the permit, for final adjustment and proof of performance measurements. Operating power shall be reduced to 0.25 kilowatt or less during any significant period of time when field strength measurements are not being taken.

Nighttime operation **is not authorized**.<sup>3</sup>

It will be necessary to further reduce power or cease operation if complaints of interference are received. GB must use whatever means are necessary to protect workers and the public from exposure to radio frequency radiation in excess of the Commission's exposure guidelines. *See* 47 CFR § 1.1310.

This authority expires on **August 12, 2009**.

**STA Advisory:** Section 309(f) of the Communications Act of 1934, as amended, authorizes the Commission to grant STA in cases of "extraordinary circumstances requiring temporary authorizations in the public interest and when delay in the institution of the temporary operations would seriously prejudice the public interest." However, Section 309(f) is not a means by which a licensee/permittee may circumvent established processing procedures which require the filing of an application, nor is it a means by which a broadcaster may enhance his facility or make operation more convenient for the broadcaster. Stations operating with less than licensed facilities under temporary authorities can be viewed as receiving the benefit of a larger protection area than that in which they are currently providing service.

Accordingly, Special Temporary Authorities by nature are to be temporary and are not intended for extended use. Licensees of stations operating under temporary authorities are reminded that

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<sup>3</sup> See Section 73.1635(c).

timely restoration of permanent facilities is the responsibility of the licensee and should be undertaken expeditiously. Any request for extension of special temporary authorities carries an increased burden with each subsequent request.

Therefore, requests for extension of STA will be granted only where the licensee can show that one or more of the following criteria have been met:

- Restoration of licensed facilities is complete and testing is underway;
- Substantial progress has been made during the most recent STA period toward restoration of licensed operation; or
- No progress has been made during the most recent STA period for reasons clearly beyond the licensee's control, and the licensee has taken all possible steps to expeditiously resolve the problem.

Sincerely,



Charles N. Miller, Engineer  
Audio Division  
Media Bureau

cc: Gerald Benavides