



Federal Communications Commission  
Washington, D.C. 20554

February 2, 2006

1800E3-JLB

Broadcasting Systems, Inc.  
c/o Ian D. Volner, Esq.  
Venable LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1604

Gerald R. Proctor  
c/o Dan J. Alpert, Esq.  
2120 N. 21<sup>st</sup> Road  
Arlington, Virginia 22201

Re: KCVH-LP, Houston, Texas  
File Nos. BMPTTL-20050817AAF  
And BLTTL-20050818AAN  
Facility ID No. 7079

Gentlemen:

On August 17, 2005, Broadcasting Systems, Inc. (BSI), the licensee of low power television station KCVH-LP, Houston, Texas, filed the above-referenced application for modification of its outstanding construction permit for the station.<sup>1</sup> The underlying construction permit, however, expired on August 20, 2005. BSI filed a license to cover the facility proposed in its August 17<sup>th</sup> application on August 18<sup>th</sup>, prior to the expiration date for the underlying permit, and argues that premature construction of the facilities proposed in a pending modification application is not a bar to a grant of a license for the constructed facilities, citing *Manahawkin Communications Corporation*, 17 FCC Rcd 342, 355-56 (2001). We find *Manahawkin* inapposite here, because BSI's constructed facility is predicted to cause impermissible interference to low power television station K30DN, Freeport, Texas, licensed to Gerald R. Proctor.<sup>2</sup> Accordingly, the license application is defective and must be dismissed.<sup>3</sup>

Applicants typically are permitted to amend to correct a defective application, pursuant to Section 73.3564(a)(3) of the Commission's rules. Because the above-referenced application was for modification of a construction permit which has expired, we cannot afford BSI an opportunity to amend its application here.<sup>4</sup> BSI may, however, file a new application which complies with our interference rules as to previously-proposed facilities. Because K30DN is not yet constructed, at BSI's request we will also grant

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<sup>1</sup> File No. BPTTL-20010116ACJ.

<sup>2</sup> File No. BMPTTL-20050817AAF.

<sup>3</sup> By separate letter, we will issue a Notice of Apparent Liability for BSI's unauthorized construction of the facilities proposed in its August 17<sup>th</sup> modification application.

<sup>4</sup> By letter dated August 24, 2005, counsel for Proctor filed a letter with the Commission asking that BSI's modification application be dismissed. Because we have concluded that the application must be dismissed because the underlying construction permit to be modified was expired, we give no consideration to the arguments made in connection with the August 24<sup>th</sup> letter.

Special Temporary Authorization to cover the presently unauthorized construction. We will not, however, grant an STA to operate as long as Proctor has a valid construction permit which would be subject to interference from the operation. Until such time as these requests are filed, or the broadcast equipment installed as proposed in the modification application is removed, BSI is in continuing violation of the Commission's rules prohibiting unauthorized construction of broadcast facilities.

In view of the foregoing, the above-referenced applications filed by Broadcasting Systems, Inc. ARE DISMISSED.

Sincerely,

Hossein Hashemzadeh  
Associate Chief  
Video Division  
Media Bureau