

FEDERAL COMMUNICATIONS COMMISSION
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200 South Church Street
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Re: **KROY(FM), Palacios, Texas**
Facility ID No. 77693
File No. BLH-20140325AAE

Informal Objections

Dear Applicant:

We have before us the above-referenced application (License Application) filed by Roy E. Henderson (Henderson) on March 25, 2014, for a license to cover the construction permit for a minor modification to Station KROY(FM), Palacios, Texas (KROY).¹ We also have informal objections to the License Application filed by New Beginnings Houston (New Beginnings) on July 25, 2014 (New Beginnings Objection), and by New Wavo Communication Group, Inc. (New Wavo) on May 7, 2014 (New Wavo Objection) (collectively, Informal Objections).² Henderson filed an opposition to the New Wavo Objection on May 19, 2014 (Opposition).³ For the reasons stated below, we deny the Informal Objections and grant the License Application.

Informal Objections. New Beginnings urges the Commission to “suspend and/or revoke” Station KROY’s current authorization and deny a pending application to assign the KROY license to KSBJ Educational Foundation, Inc. (Assignment Application).⁴ Because New Beginnings’ arguments are related to matters other than the License Application, we deny it for failure to raise any objections directly relevant to the current proceeding. New Beginning’s concerns will be addressed, as appropriate, in the Assignment Application proceeding and KROY’s pending renewal proceeding (Renewal Application).⁵

New Wavo objects to the License Application on two grounds: (1) that KROY is causing actual co-channel interference to Station KVST(FM), Willis, Texas (KVST), as evidenced by listener complaints; and (2) the KROY facilities are impermissibly directionalized away from Palacios and

¹ File No. BLH-20140325AAE (upgrading KROY from a C2 to a Class C1 facility).

² New Beginnings filed a supplement to its Informal Objection on August 11, 2014. On July 28, 2014, Nova Electronics filed an informal objection to the License Application, which was withdrawn on August 18, 2014. Accordingly, we do not address the Nova Electronics pleading herein.

³ Henderson filed a supplement to its Opposition on May 20, 2014.

⁴ New Beginnings Objection at 1; *see also* File No. BALH-20140623ACE.

⁵ *See* File No. BRH-20130328ABT. On July 25, 2014, New Beginnings filed an objection to the Assignment Application. On August 28, 2014, the Bureau issued a letter of inquiry to Henderson regarding the Renewal Application and related matters.

toward KVST, ostensibly in an attempt to “pressure New Wavo into a sale of KVST to Mr. Henderson or into a purchase of KROY.”⁶

In the Opposition, Henderson denies that the KROY antenna system has been directionalized or optimized in any way, including for the purpose of effectuating a transaction.⁷ In support of this assertion, Henderson provides technical information on the antenna system and a statement by the president of the installing engineering company.⁸ Henderson also repudiates the listener statements provided by New Wavo on the basis that neither listener is shown to be located within KVST’s protected 60 dBu contour.⁹ In short, Henderson states that the KROY facilities were built in full compliance with the rules and the terms and conditions of his construction permit.¹⁰

Discussion. An informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested; in this case, to establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest, convenience and necessity.¹¹ Moreover, in the case of a license application, as here, the applicant is entitled to a presumption that the Section 309 public interest determination made during the construction permit proceeding continues in effect unless circumstances have arisen that would make operation of the Station against the public interest.¹² New Wavo has failed to meet this burden.

First, New Wavo does not provide any evidence for its claim that the KROY is impermissibly operating a directionalized antenna system. Therefore, we properly rely on Henderson’s certifications and engineering data, in both the License Application and in the Opposition, that the KROY facilities are in fact omnidirectional and constructed in accordance with the rules and the terms and conditions of his construction permit.

Second, the listener complaints submitted by New Wavo are insufficient to persuade us to look beyond the well-established contour overlap protections set out in Section 73.215 and examine, on an ad hoc basis, New Wavo’s claim of actual interference. Neither complaint demonstrates that the alleged difficulty receiving KVST is due to interference by KROY. More importantly, neither listener appears to be located within KVST’s protected 60 dBu contour: one reports difficulty receiving KVST in the “Woodlands” and the other in the “Cypress area . . . [or commuting] to the Texas Medical Center.”¹³ The Woodlands is a census-designated place on the outskirts of Houston that falls largely outside the protected 60 dBu contour of KVST. The unincorporated community of

⁶ New Wavo Objection at 1-2 (citing *Criteria for Licensing of FM Broadcast Antenna Systems*, Public Notice, FCC 84-437 (MB Sept. 14, 1984)).

⁷ Opposition at 2.

⁸ *Id.*, Exh. 1.

⁹ *Id.* at 3, Technical Comments of Clifton G. Moor.

¹⁰ *Id.* at 2-3.

¹¹ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

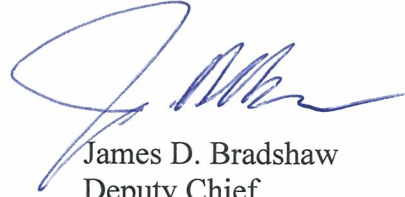
¹² 47 U.S.C. 319(c) (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest . . .”); *Focus Cable of Oakland, Inc.*, [Memorandum Opinion and Order](#), 65 FCC 2d 35, 39-40, para. 11 (1977).

¹³ New Wavo Objection, Exh. B.

Cypress, as well as the Texas Medical Center in Houston, both fall entirely outside KVST's protected contour. For these reasons, New Wavo has failed to contain "adequate and specific factual allegations" sufficient to establish a substantial and material question of fact that grant of the License Application would be inconsistent with the public interest, convenience, or necessity.

Conclusion. In light of the above, the informal objections filed by New Beginnings Houston on July 25, 2014, and New Wavo Communication Group, Inc. on May 7, 2014, ARE DENIED and the License Application, File No. BLH-20140325AAE, IS GRANTED. This action is taken pursuant to Section 0.283 of the Commission's Rules.¹⁴

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Bradshaw', is positioned above the printed name and title.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: Frank Jazzo, Esq.
Joe Donalson

¹⁴ 47 C.F.R. § 0.283.