

Request for Waiver of Section 73.510(b) of the Commission's Rules

Santa Cruz Educational Broadcasting Foundation ("SCEBF"), licensee of noncommercial FM broadcast station KFER, Santa Cruz, California (Facility ID No. 59064) ("KFER"), respectfully requests waiver of Section 73.510(b) of the Commission's rules¹ to permit KFER to operate using a directional antenna with a maximum-to-minimum ratio in excess of 15 dB. Grant of this requested waiver will enable KFER to continue providing noncommercial broadcast service to its community of licensee from a new tower site following the loss of its licensed tower site.

KFER went silent on August 25, 2020 due to wildfires in the vicinity of its licensed transmitter site.² KFER's Notice of Suspension of Operations/ Request for Silent Special Temporary Authority ("STA") was granted on November 9, 2020.³ KFER subsequently resumed operations pursuant to an Engineering STA on August 23, 2021 with temporary facilities located on a site adjacent to its licensed transmitter site.⁴

Through the instant minor modification application, SCEBF proposes permanent facilities for KFER from a new transmitter site. Subsequent to the wildfires and KFER's silence, the landlord of the license tower site sold the property, and SCEBF lost its lease.⁵ Nonetheless,

¹ 47 C.F.R. § 73.510(b) ("No application for a construction permit of a new station, or change in channel, or change in an existing facility on the same channel will be accepted for filing if a directional antenna with a maximum-to-minimum ratio of more than 15 dB is proposed.").

² See CDBS File No. BLSTA-20200908AAK.

³ Letter from Victoria McCauley, Attorney, Audio Division, Media Bureau, FCC, to Davina Sashkin, Esq., Counsel for Santa Cruz Educational Broadcasting Foundation, *In re: KFER(FM), Santa Cruz, CA, Facility ID No. 59064* (1800B3-DW) (Nov. 9, 2020).

⁴ KFER – Resumption of Operations Notification (filed Aug. 23, 2021). See also CDBS File No. BSTA-20210730AAM (granted Aug. 2, 2021).

⁵ See CDBS File No. BSTA-20210730AAM.

SCEBF endeavored to return the station to operation, and did so this summer pursuant to the current STA. Even if the owner of the temporary site tower was amenable to KFER operating there long-term (which they are now), such operation would be problematic from technical and public interest standpoints. Namely, the tower is too short to allow service to much of the community of license, and the antenna is too close to trees for fire safety. Therefore, SCEBF has been forced to search for a new permanent site for KFER, which has presented a number of challenges.

As explained in the engineering exhibit, there are few existing tower sites that are feasible. Environmental restrictions and known NIMBY pressures on zoning in the Santa Cruz, California area would almost certainly preclude SCEBF from constructing a new tower for KFER. Nevertheless, SCEBF has identified an existing, non-registered tower that will work for KFER's new transmitter site. To ensure that KFER continues to serve its community of license from this proposed new tower site while complying with contour band overlap restrictions for the reserved band,⁶ however, KFER must operate with a directional antenna in excess of the 15 dB limit imposed by Section 73.510(b) of the Commission's rules.⁷ A rule waiver is therefore requested.

The Commission may grant a waiver for good cause shown.⁸ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁹ In considering a waiver, the Commission may take into account considerations of hardship, equity,

⁶ See 47 C.F.R. §§ 73.509 & 73.515.

⁷ See *id.* at § 73.510(b).

⁸ *Id.* at § 1.3.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

or more effective implementation of overall policy on an individual basis.¹⁰ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹¹

Grant of the instant waiver request is in the public interest as it would permit KFER to continue providing NCE service to its community of license, Santa Cruz, California, with permanent facilities. As discussed above, KFER is unable to operate permanently from either its licensed site or its STA site – forcing the station to relocate to an entirely new site. Moreover, environmental and zoning restrictions in the vicinity of Santa Cruz, California have limited SCEBF's options for KFER's new transmitter site to a tower from which the station must operate in excess of Section 73.510(b)'s 15 dB limit to ensure sufficient coverage of the station's community of license, and compliance with the contour band overlap restrictions for the reserved band. Absent waiver of Section 73.510(b), KFER's limited transmitter site options will force SCEBF to discontinue operations permanently.

Accordingly, due to SCEBF's singular option for KFER's new tower site, grant of the instant waiver request is in the public interest as it will ensure that KFER is able to continue providing NCE service to Santa Cruz, California on a permanent basis.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *Northeast Cellular*, 897 F.2d at 1166.