

Request for Waiver of Contingent Application Rule

Bustos Media of Colorado License Corp. (“Bustos”), licensee of KGDQ(FM), Colorado Springs, Colorado, hereby requests a waiver of 47 C.F.R. § 73.3517, the Commission’s “contingent application rule.” By the instant application, Bustos seeks authority to upgrade KGDQ(FM) by relocating the station to Centennial, Colorado. However, grant of this application is contingent upon the grant of the pending application for minor change in the facilities of KCUV(FM), Greenwood Village, Colorado (BPH-20061002BTX), licensed to NRC Broadcasting, Inc. (“NRC”). The KCUV(FM) application is itself contingently related to two other NRC applications for minor changes in the facilities of KSMT(FM), Breckenridge, Colorado (BPH-20061002BWT) and KTUN(FM), Eagle, Colorado (BPH-20061002BXC). All three NRC applications were filed on October 2, 2006.

Pursuant to Section 73.3517(e) of the Commission’s rules, up to four contingently related applications for minor modification of FM facilities will be accepted for filing if each application (a) states that it has been filed as part of a related group; (b) cross references each of the other applications; (c) includes a copy of the agreement to undertake the coordinated facility modifications; and (d) is filed on the same date. In this case, NRC’s applications met these requirements.^{1/} However, at the time of NRC’s filings, community of license change proposals could not be filed by application. Accordingly, the KGDQ(FM) upgrade proposal could not be filed as a contingent application. While the FCC’s rules called for the filing of a petition for rule making to amend the FM Table of Allotments in order to implement such changes, there was at that time a freeze on the filing of such petitions. Accordingly, there was no way for Bustos to get its proposal before the Commission for consideration. In these circumstances and for the reasons set forth below, Bustos submits that waiver of the Commission’s contingent application rule is warranted.

Waiver of a requested rule is warranted where doing so will serve the public interest and not undermine the purpose of the rule. *WAIT Radio v. FCC*, 418 F.2d 1153 (DC Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *see also* 47 C.F.R. § 1.3 (waiver may be granted for good cause shown). Good cause exists for grant of the requested waiver. First, as set forth in the engineering exhibit to this application, consideration of the application will speed the initiation of a first local transmission service to a substantial, newly incorporated city, namely Centennial, Colorado, and increase the net number of people served by the station by 737,000 or approximately 58%. Second, Bustos notes that it is willing to accept as a condition on the grant of the instant application the requirement that the KGDQ(FM) upgrade not be implemented until the changes to KCUV(FM) have been implemented. Thus, NRC should have no objection to the acceptance for filing and grant of this application. Third, consideration of the application should pose no undue burden on the Commission’s resources. The NRC applications are already being processed, are certainly close to grant, and the now-related KGDQ(FM) application itself complies with technical and ownership rules, as well as other significant Commission policies, providing the Commission staff with a routine, straightforward rubric for processing. Thus, waiver in this case will not undermine the purpose of the applicable provisions in Section

^{1/} Since NRC is the licensee of each station, there was no written agreement regarding their facilities changes.

73.3517(e).^{2/} Fourth, even if the KGDQ(FM) application were regarded as the “fourth application” along with the three NRC applications, the number of applications would not exceed the four application limit set forth in the contingent application rule. Fifth, public interest and fundamental fairness considerations dictate that Bustos’ waiver request be granted. As noted above, neither this application nor a petition for ruling could have been filed on October 2, 2006 when NRC filed its applications. Moreover, Bustos must file this application by March 5, 2007, or risk a default under the lease option for the transmitter site proposed in this application. Finally, Bustos is controlled by Amador Bustos, a minority, and thus a grant of the waiver, along with a grant of the application, will add to the ownership diversity within the area to be served by upgraded KGDQ(FM) as proposed.

Based on conversations with Commission staff, it appears that action granting the NRC applications is imminent. Such action would render this request for waiver of the contingent application rule moot. However, since these applications remain pending, a waiver is being requested in an abundance of caution. Accordingly, Bustos respectfully requests that the Commission grant the instant waiver request and process and grant the KGDQ(FM) upgrade applications.

^{2/} See *Policies to Encourage Interference Reduction Between AM Broadcast Stations*, 5 FCC Rcd 4492, ¶ 6 (1990) (noting purpose of rule to avoid the imposition of “an unwarranted burden on our administrative resources” by the acceptance of “speculative applications contingent on the grant of another application”).