

Dodge City Community College
Station KONQ(NCE-FM), Facility ID 17053
Dodge City, Kansas
June 2018
Exhibit No. 1

Statement of Circumstances and Request for Waiver

Nature of the Application

This application for minor changes in the facilities of Noncommercial Educational FM Broadcast Station KONQ, Dodge City, Kansas, requests that the Commission authorize facilities that were originally approved for construction nearly 25 years ago, in 1994. Dodge City Community College (DCCC) filed an application for construction permit to relocate KONQ from the college campus to the existing site of DCCC's AM Broadcast Station KDCC (Facility ID 17052), FCC File No. BPED-19920504MI. The CP was granted February 10, 1994; it expired August 10, 1995. DCCC applied to replace the expired CP, FCC File No. BPED-19960830JC, but construction was not completed by the expiration date of April 28, 1997, so an extension of CP was filed and granted, FCC File No. BMPED-19970428JC, to expire December 4, 1997. DCCC sought a brief further extension but the application was filed after the expiration date; the Commission treated the filing as a request to replace the expired permit, which it granted, FCC File No. BPED-19971230JA, to expire August 17, 1998.

After an extended period of years and multiple FCC filings to make the KONQ relocation a reality, DCCC believed it had satisfied all requirements necessary to authorize the construction and operation of the station at the KDCC site. No application for license was filed. DCCC erroneously believed that the granting of the construction permit (and the filing of an antenna structure registration, see below) concluded the approval process for the site move. From the time the construction permit was granted DCCC has gone through two license renewal cycles in a routine and timely manner, in 2005 and 2013. On this basis, DCCC believed that everything was in order with respect to the KONQ license.

The need for a covering license application has now been brought to DCCC's attention. On May 25, 2018, DCCC filed a request for Special Temporary Authority, requesting authority to

operate with the subject facilities pending the filing of this application and an appropriate covering license application, FCC File No. BSTA-20180525AAI.

The current facilities were timely constructed prior to August 17, 1998, the expiration date of the CP. Attached is a copy of Form 307, Application for Extension of Construction Permit, filed December 30, 1997. Exhibit No. 1 to the application, dated December 18, 1997, by John L. Ewy, then-General Manager and Professor of Mass Communications, states:

Our station construction is complete. We have installed a new main power tube and a new FM exciter. All equipment is in working order and is being tested to make sure there is no interference.

Professor Ewy's statement was made in support of a brief extension of the CP beyond its December 4, 1997, expiration date. Because it was stamped in to the Commission after that date, it was processed as an application for reinstatement, FCC File No. BPED-19971230JA.

As further evidence of DCCC's good faith efforts to comply with Commission filing requirements respecting the construction and operation of broadcast facilities, attached is a copy of Antenna Structure Registration #1035713, issued December 12, 1997. DCCC believed the mounting of the KONQ antenna on of the KDCC towers (it is a two-tower directional array) required the filing of the registration, even though the towers previously existed at the site, are under two hundred feet in height, are not required to be registered, and were not registered as KDCC antenna support structures.

Finally, attached is a contemporary statement from Professor Ewy, dated June 3, 2018, certifying to the timely completion of construction.

Request for Waiver

In the intervening period since the August 17, 1998, the expiration date of the construction permit for the facilities which KONQ has operated and for which it now seeks a reinstated construction permit, changes in FM spectrum usage have taken place. DCCC's

Technical Consultant Larry P. Waggoner observes in Section VII that two co-channel stations have since been authorized, one of which will require a waiver of Section 73.509:

1. KWBI, Facility ID93610, Great Bend, Kansas, 127 km distant, presents a minimum 22 km separation between interfering contours.

2. KZGC-FM, Facility ID, Garden City, Kansas, is 79.5 km distant. The KONQ 40 dBu F(50-10) interfering contour clears the KZBC-FM protected 60 dBu F(50-50) contour by 5 km. There is a minor overlap of the KZGC-FM 40 dBu F(50-10) interfering contour and the KONQ protected 60 dBu F(50-50) contour.

Mr. Waggoner reports:

The overlap area is approximately 9 kilometers long and 1.4 kilometers wide, at its broadest location. The interference land was calculated to have an area of 18.2 square kilometers The area is all farm and pasture land. There are no cities near the interference area. The population living in the area was found to be only three persons. The 2010 us census was used in the calculation. The land inside the interference area is only 1.6% of the land area inside the KONQ 60 dbu contour.

See Attachment 17 for a detailed analysis and depiction of the area of KONQ received interference.

The Commission's policy regarding prohibited NCE received overlap is well settled. Section 73.509 may be waived to permit small amounts of interference received by an NCE-FM station proposing a facility improvement, provided such interference would not exceed roughly five percent of the proposed service area. The Commission indicated that “these waivers will only be granted when the applicant provides sufficient justification such as a lack of alternative transmitter sites and/or frequencies.”¹ The Commission subsequently replaced the signal

¹ See *Delegation of Authority to the Chief of the Broadcast Bureau to Waive Small Amounts of Interference Received by Non-Commercial Educational FM Proposals*, Public Notice, FCC 81-332, 49 RR2d 1524 (Jul. 17, 1981).

strength ratio methodology with a contour overlap standard.² The *1985 Order* also modified the Bureau's delegated authority to grant waivers to conform to the new methodology, namely, 10 percent "overlap" received versus five percent "interference" received under the old policy.³

Here, waiver is justified and warranted for the small amount of interference received by KONQ from KZGC-FM. The area, 18.2 sq.km., represents only 1.6 percent of the KONQ protected service area. The area is entirely agricultural in character, with only three persons found to be living in the area. Waiver is justified by the unique circumstances presented here. KONQ was originally authorized to serve the area nearly 25 years ago, and in fact has actually served the area for more than 20 years. In the seven years since KZGC-FM began operating (FCC File No. BLED-20110516AEO), no complaint of interference has been received from any member of the public or from KZGC-FM.

Accordingly, waiver of Section 73.509 of the Commission's rules is respectfully requested.

² See *Changes In The Rules Relating To Noncommercial Educational FM Broadcast Stations*, Memorandum Opinion and Order, MM Docket No. 20735, 50 Fed. Reg. 27954 (July 9, 1985) ("*1985 Order*").

³ See *1985 Order*, 50 Fed. Reg. at 27959-27960.

FOR
FCC
USE
ONLY

FCC 307

APPLICATION FOR EXTENSION OF BROADCAST
CONSTRUCTION PERMIT OR TO REPLACE EXPIRED
CONSTRUCTION PERMIT

(CAREFULLY READ INSTRUCTIONS BEFORE FILLING OUT THIS FORM)

FOR COMMISSION USE ONLY

FILE NO.

1. APPLICANT NAME (Last, First, Middle Initial)

Dodge City Community College

MAILING ADDRESS (Line 1) (Maximum 35 characters)

2501 North 14th Ave.

MAILING ADDRESS (Line 2) (Maximum 35 characters)

CITY

Dodge City

STATE OR COUNTRY (if foreign address)

Kansas

ZIP CODE

67801

TELEPHONE NUMBER (include area code)

316-227-9306

CALL LETTERS OR OTHER FCC IDENTIFIER (IF APPLICABLE)

KONQ-FM BNPED-970428JC

2. A. Is a fee submitted with this application?

☐

Yes

☒

No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112).

☐

Governmental Entity

☒

Noncommercial educational
licensee/permittee

☐

Other (Please explain):

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

(A)

(B)

(C)

FEE TYPE CODE		

FEE MULTIPLE (if required)			
0	0	0	1

FEE DUE FOR FEE TYPE CODE IN COLUMN (A)
\$

FOR FCC USE ONLY

3. PURPOSE OF APPLICATION: ☒

a. Additional time to construct
broadcast station

☒

b. Construction permit to replace
expired permit

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT

Legal name of Applicant

Dodge City Community College

File Number

BNPED 970428JC

Call Letters

KONQ

☒

Main Transmitter

☐

Auxiliary Transmitter

Frequency

91.9 MHZ.

Channel No.

City

Dodge City

State

Ks.

5. Submit as an Exhibit a list of the file numbers of pending applications concerning the station, e.g., major or minor modifications, assignments, etc.

Exhibit No.

6. EXTENT OF CONSTRUCTION

a. Has equipment been delivered?

☒ Yes ☐ No

If No, submit as an Exhibit a description of what equipment has been ordered, from whom and when it was ordered, and the promised delivery date (if any). If no order has been placed, so indicate and explain.

Exhibit No.

b. Has installation commenced?

☒ Yes ☐ No

If Yes, submit as an Exhibit a description of the extent of installation, the date on which installation commenced, and the estimated date by which construction can be completed.

Exhibit No.

7.(a) If application is for extension of construction permit, submit as an Exhibit any additional construction progress not specified above and reason(s) why construction has not been completed.

Exhibit No.
1

(b) If application is to replace an expired construction permit, submit as an Exhibit the reason for not submitting a timely extension application, together with any additional construction progress not specified above and the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

Exhibit No.

8. Are the representations, including environmental, contained in the application for construction permit still true and correct?

☒ Yes ☐ No

If No, give particulars in an Exhibit.

Exhibit No.

9. Since the filing of the applicant's last application, has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the applicant in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

If the answer is Yes, submit as an Exhibit a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of the filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

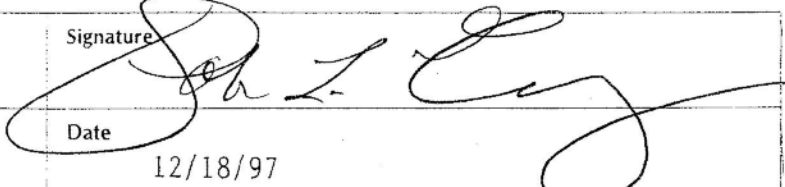
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503))

CERTIFICATION

1. By checking Yes, the applicant certifies, that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☒ Yes ☐ No

2. I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name	John L. Ewy	Signature	
Title	Gen. Mgr. Prof., Mass Communications	Date	12/18/97



DODGE CITY COMMUNITY COLLEGE

2501 North 14th Avenue • Dodge City, Kansas 67801-2399 • 316-225-1321
1-800-FOR-DCCC (1-800-367-3222) FAX: 316-225-0918

12/18/97 Exhibit No. 1

Re: Dodge City Community College
KONQ-FM
BMPED 970428JC

Our station construction is complete. We have installed a new main power tube and a new FM exciter. All equipment is in working order and is being tested to make sure there is no interference.

We are requesting an additional 60 days so that our engineer and our consulting engineer can get together and double check our required forms.

John L. Ewy
Gen. Mgr./Prof., Mass Comm.
Dodge City Community College
Dodge City, Ks. 67801



UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION



ANTENNA STRUCTURE REGISTRATION

Part 17 of the FCC rules requires you to: (1) immediately provide a copy of this registration to each FCC licensed tenant of your structure (although not required, you may want to use Certified Mail to obtain proof of receipt); and, (2) display the Registration Number in a conspicuous place visible near the base of the structure (unless a government entity objects, in writing, to the display near a historic landmark).

Owner: DODGE CITY COMMUNITY COLLEGE JOHN L EWY 2501 N 14TH ST DODGE CITY KS 67801	Registration Number: 1035713
	Issue Date: 12/12/97
Location of Antenna Structure: TWR 2 3004 N 14TH AVE DODGE CITY KS	Ground Elevation: 796.3 meters
	Overall Height Above Ground (AGL): 49.7 meters
Latitude N37-47-14	Longitude W100-01-55 NAD 27
Overall Height Above Mean Sea Level (AMSL): 846.0 meters	
Painting and Lighting Requirements: NONE	
Special Conditions:	

12/12/97 R 23 B

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FCC 854R
March 1997