

WAIVER REQUEST

James D. McDaniel requests a waiver of Section 73.3517(e) of the Commission's rules dealing with contingent applications. McDaniel is an auction application for a new FM Station on Channel 225C3 at Butte Falls, Oregon. At the time he filed his application in March 2006, the Commission had not yet adopted guidelines permitting stations to change their community of license by minor change application. As such, this is the first opportunity that he has had to take advantage of the new FCC procedures.

McDaniel seeks to amend his application so that his amendment will be treated as one of the contingent applications filed today for minor modification of facilities. Section 73.3517(e) states that the Commission will accept up to "four contingently related applications. . .filed on the same date." In this case, the McDaniel application was filed several months ago, however, McDaniel does not have the available option of dismissing his application and refileing it today since he is an auction applicant. If he were to dismiss his application, he would not be permitted to refile. As such, he has amended his application to include a new technical showing, including a community change.

The Commission has every right to require that contingent applications be filed on the same day. However, in this case, as noted above, McDaniel does not have the ability to file a new application and, thus, he has done the next best thing in amending his existing application. It has long been held that "a general rule, deemed valid because its overall objectives are in the public interest, may not be in the public interest if extended to an applicant who proposes a new service that will not undermine the policies served by the rule. *"WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (DC Cir 1969). *See also Alexander*

Broadcasting, Inc., 21 FCC Rcd 9968 (2006). Moreover, “a rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation of overall policy, considerations that an agency cannot realistically ignore” *Id.*

In this case, waiving Section 73.3517(e) as to McDaniel will not undermine the policies served by the contingent application rule. Moreover, a waiver would recognize McDaniel’s equitable rights since he has filed his application in good faith and could not change communities at the time he filed because the new Commission procedures were not in place at that time. Also, waiving the rule in this case will not lead to any evisceration of the rule since there are relatively few auction applications pending at the Commission, and the new FCC community change procedures will now be available to future auction applicants.

In sum, the public interest would be served by waiving Section 73.3517(e) of the Commission’s rules with respect to this Amendment.