

FEDERAL COMMUNICATIONS COMMISSION

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October 10, 2007

Board of Regents, Nevada System of Higher Education
c/o David Reese, General Manager
1515 E. Tropicana Avenue, #240
Las Vegas, NV 89119

In re: KUNV, Las Vegas, NV
Board of Regents, Nevada System of Higher Education
Facility ID No. 68921
Application BPED-20070907ADG

Mr. Reese:

This letter refers to your construction permit application, file number BPED-20070907ADG, to modify the facilities of KUNV (FM), Las Vegas, NV, to a site 44.8 km southwest of the currently licensed site.

Presently, the licensed KUNV 100 dBu interfering contour lies wholly within the 60 dBu protected service contour of construction permit BMPED-20070305ABP, held by second adjacent channel station KVKL, Las Vegas, NV. This prohibited contour overlap was created by the grant of a waiver of Section 73.509 in construction permit BMPED-20070305ABP, subject to the condition that future modifications by KUNV would not be considered a *per se* modification of KVKL's license. As of this time, KVKL has not filed a license application to cover its construction permit.

The changes proposed for KUNV would move that station's transmitter site to a location within KVKL's presently licensed 60 dBu service contour, so that more than half of KUNV's proposed 100 dBu interfering contour would lie within KVKL's licensed 60 dBu protected service contour. Although not expressly stated, KUNV apparently feels that the *per se* condition on KVKL's construction permit entitles KUNV to move to any location within the construction permit's 60 dBu contour. However, we do not agree. Until a license has been granted to cover KVKL's construction permit, KVKL's licensed operation remains entitled to contour protection under Section 73.509 of the Commission's rules.

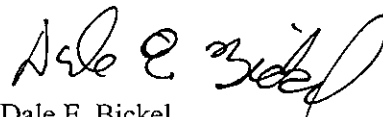
The 60 dBu contour proposed for KUNV would also, for the first time, encompass the licensed 100 dBu interfering contour and transmitter site for KVKL, contrary to Section 73.509.

KUNV has requested waiver of Section 73.509 with respect to the licensed facility of KVKL. *Educational Information Corporation (WCPE)*, 6 FCC Rcd 2207 (1991) permits the staff to consider requests for waiver of Section 73.509 for second-adjacent channel noncommercial educational stations, "where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas." Waiver of the rule is not automatic: the applicant must provide sufficient justification to meet this criterion. Absent such information, "when faced with a choice between increased coverage with increased interference on one hand, and lesser but adequate coverage without prohibited interference on the other, the Commission favors the latter." 6 FCC Rcd at 2208, quoting from *Board of Education of the City of Atlanta (WABE-FM)*, 82 FCC 2d 125 (1980). Evidence supporting a request for waivers of prohibited contour overlap caused and received typically consists of computations of area and population gained within the proposed 60 dBu contour (as compared

to the existing area and population), area and population within each station's 100 dBu interfering contour, and discussion of any other factors that support grant of a waiver. The waiver request should also acknowledge that any future modifications by the opposite station (KVKL) would not be construed as a *per se* modification of KUNV's license. In the present application, the only support for waiver consists of a population analysis for the licensed and proposed 100 dBu interfering contours of each station. This is not sufficient to warrant grants of prohibited contour overlap caused to and received from the licensed operation of KVKL. Consequently, the request for waiver of Section 73.509 IS DENIED.

Accordingly, application BPED-20070907ADG IS DISMISSED. This action is taken pursuant to 0.283 of the Commission's rules. Please note that we have not performed a complete analysis on the application that could uncover additional deficiencies.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale E. Bickel", written in a cursive style.

Dale E. Bickel
Senior Engineer
Audio Division
Media Bureau

cc: Mr. Gary O. Keener