

FEDERAL COMMUNICATIONS COMMISSION

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Community Broadcasting, Inc.
10550 Barkley
Suite 108
Overland Park, KS 66212

In re: KAYH(FM), Fayetteville, AR
Facility ID# 79130
Community Broadcasting, Inc.
BPED-20120125AEK

Dear Applicant:

This letter is in reference to the above-captioned minor change application to modify effective radiated power, height, and class. KAYH also requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons stated below, we grant KAYH's waiver request and application.

Waiver Request

An engineering review of the application reveals that KAYH's proposed facilities would result in prohibited contour overlap with third-adjacent channel Class C3 license (BLED-20120606AAP) for KGSF(FM), Green Forest, AR, in violation of § 73.509. Specifically, the proposed protected contour (60 dBu) totally encompasses the interfering contour (100 dBu) of KGSF. KAYH recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, KAYH states that the grant of this waiver will increase its service area from 2,910 square kilometers to 5,265 square kilometers, an increase of 81%. Furthermore, KAYH believes that the proposed facilities will provide service to an estimated 413,044 persons, which is an increase of 22%. KAYH indicates that this benefit heavily outweighs the potential for interference to the population in a total area that constitutes less than 0.1% of the population in the station's proposed service area. Finally, KAYH cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances. KAYH considers the affected area to be *de minimis*, and when considered along with the increased service area, KAYH concludes that waiver of § 73.509 is warranted in this instance.

Discussion

KAYH's request to receive third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that case it was stated that:

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

Conclusion

We have afforded the request for waiver of §73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justification is sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, KAYH's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20120125AEK IS HEREBY GRANTED subject to the following condition:

Further modification of KGFS(FM), Green Forest, AR (Facility ID# 92987) will not be construed as a *per se* modification of KAYH's construction permit (BPED-20120125AEK).
(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Harry Martin, Esq.