

FEDERAL COMMUNICATIONS COMMISSION

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DEC 10 2008

**MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
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Regents of the University of New Mexico
Room 328 Onate Hall
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Albuquerque, NM 87131

In Re: KRRT(FM), Arroyo Seco, NM
Facility ID #94047
Regents of the University of New Mexico
BPED-20081023AAU

Dear Applicant:

This letter refers to the above-captioned minor change application to modify the effective radiated power.

An engineering study of the application reveals that the proposed facility fails to provide adequate community coverage as required by 47 C.F.R. § 73.515. Specifically, the proposed 60 dBu contour, using the standard contour prediction method in Section 73.313(e), fails to cover at least 50 percent of the community of license of Arroyo Seco, NM. KRRT's application acknowledges this situation, and provides a supplemental showing based on Longley-Rice propagation methodology to demonstrate that, in fact, a signal strength of 60 dBu will be provided to 84% of Arroyo, NM.

We are not persuaded by this analysis. In *Letter re KDAY (FM), Independence, CA*, DA 94-510, 9 FCC Rcd 2753 (1994), the staff denied a commercial FM construction permit application where the community of license lay outside the 54 dBu protected service contour of the proposed operation for KDAY. Although that applicant used a supplemental analysis to demonstrate that most of Independence would receive a signal strength in excess of 70 dBu, and that all of the community would have line-of-sight to the KDAY antenna, the staff yet denied the proposal. Noting that the KDAY proposal was the first instance known to the staff of a commercial station seeking to provide service to a community outside its protected service contour, the staff reasoned that

[o]utside of this [protected service] contour, interference from other cochannel and adjacent channel stations can occur under our rules. It simply is not possible, under any rational allocations scheme, to protect FM stations to the point at which the signal is too weak to receive. Thus, the potential exists that another station could be authorized or modified which would not interfere with KDAY's 54 dBu protected service contour, but would interfere with KDAY's service to Independence.... KDAY would have no standing to contest any interference created in this manner, since the Commission's rules do not protect any service outside the ... protected contour.

The KDAY decision continues:

The association of a broadcast station with a community of license is a basic tenet of the Commission's allocations scheme for broadcast stations. Section 307(b) of the Communications Act of 1934, 47 U.S.C. § 307(b), mandates that the "Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution to each of the same." Implicit in this statement is a recognition that the Commission must protect such service to the community of license from interference from other stations. Moreover, the community coverage rule is designed to insure that the community of license receives a premium signal. *Lester H. Allen*, 17 FCC 2d 225, 226 (1969). In the present instance, such assurance cannot be given.

The KDAY decision continues that even had that applicant's supplemental analysis shown that the required coverage was provided to all of the community of license, the waiver request would still not have been found to be in the public interest. The staff summed up its position in explicit terms:

Simply put, the Commission will not authorize a station to serve a community located outside its protected service contour, as predicted by the standard contour prediction method in § 73.313(e), since service to that community cannot be protected from interference under our rules.

Later, in MM Docket 98-93 the Commission acknowledged that the same public interest considerations apply to noncommercial educational FM stations, and adopted the Section 73.515 requirement that a station must provide at least 50% of its community of license with at least a 60 dBu strength signal.¹ And following this line of reasoning, the staff still more recently dismissed a noncommercial educational FM application where the community of license lay outside the station's protected service contour, despite the fact that the proposal would improve coverage toward that community.²

In light of the above, Application BPED-20081023AAU is unacceptable for filing pursuant to 47 C.F.R. § 73.3566(a) and is **HEREBY DISMISSED**. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Margaret L. Miller

¹ See 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking, MM Docket 98-93, FCC 98-117, 13 FCC Rcd 14849, 14875-76 (1998); *Second Report and Order*, MM Docket 98-93, FCC 00-368, 15 FCC Rcd 21649, 21669-70 (2000).

² See Letter to Cedar Cove Broadcasting, Inc. re KKGN, Eaton, CO, Application BPED-20060414AAQ, released August 31, 2006.