

FEDERAL COMMUNICATIONS COMMISSION
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MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
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Sacramento Bicycle Kitchen
P.O. Box 188336
Sacramento, CA 95818

Re: KBQS-LP, Sacramento, CA
Facility ID No. 197555
Sacramento Bicycle Kitchen
File No. BPL-20180117ABJ

Dear Applicant:

This is in reference to the above application proposing a major change of transmitter location. For the reasons set forth herein, we will dismiss the application.

The *Second Report & Order* in MM Docket 99-25 established the definition of a “minor change” as it applies to LPFM applications.¹ The Commission stated that minor change applications would be limited to those specifying changes in site location of 5.6 kilometers or less. Thus, the instant application specifying an 8.9 kilometer change in site location violates Section 73.870 of the Commission’s Rules.² KBQS-LP recognizes this violation and submitted a waiver request for the major move change stating that channel 298 would be fully spaced at this location. In support of the waiver request, WSAX-LP states that the move and a change to a non-adjacent channel would allow it avoid interference from K255CL. The record before us does not present unique circumstances sufficient to justify grant of the waiver request. A move beyond 5.6 kilometers to find a non-adjacent channel does not provide the basis for waiver of the minor distance relocation rule. This can only be accomplished during a major change/new station filing window. Additionally, K255CL has been authorized to change channels and to change directional antenna orientation thereby eliminating any co-channel interference issues. We conclude that waiver of Section 73.870 is not warranted in this case.

The Commission's rules may be waived only for good cause shown.³ An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.⁴ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting

¹ See *In the Matter of Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 05-75, (rel. March 17, 2005).

² 47 C.F.R. § 73.870.

³ 47 C.F.R. § 1.3.

⁴ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir, 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

gate”⁵ and must support its waiver request with a compelling showing.⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸ However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.⁹ KBQS-LP's request fails to present good cause for waiver of Section 73.870. KBQS-LP has not shown sufficiently unique “special” circumstances, *i.e.*, rare and exceptional circumstances beyond its control to justify a waiver of Section 73.870. Finally, we find that the facts and circumstances set forth in the justification are insufficient to establish that granting waiver of Section 73.870 would be in the public interest.

Accordingly, in light of the above, application BPL-20180117ABJ is unacceptable for filing and IS HEREBY DISMISSED. These actions are taken pursuant to Section 0.283 of the Commission's rules.¹⁰

Sincerely,



James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

⁵ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (“*WAIT Radio*”). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

⁶ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

⁸ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁹ *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (“*Network IP*”); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ 47 C.F.R. § 0.283.