

FCC MAIL SECTION  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

30 APR 1992 11 06 AM '92

IN REPLY REFER TO:  
8920-DEB

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Daniel D. Hoolihan, Associate/COO  
Amador Corporation  
Wild River Lab  
Wild Mountain Road  
Taylors Falls, MN 55084-0270

In re: KQLW-FM, Lake City, Minnesota  
Radio Ingstad Minnesota, Inc.  
File No. BPH-910819IE

Dear Mr. Hoolihan:

This letter is in reference to the October 15, 1991 petition to dismiss or deny filed by you on behalf of Amador Corporation ("Amador") against the subject minor change application of Radio Ingstad Minnesota, Inc. ("Ingstad"), and related pleadings.<sup>1</sup> Ingstad's application seeks to implement the Channel 273 Class C3 allocation established for it by rulemaking proceeding to replace its Channel 273A allotment. See the Report and Order in MM Docket 90-408, 6 FCC Rcd 4122, released July 1, 1991. The application seeks to use the existing Class A transmitter site while increasing the effective radiated power (ERP) to 9.4 kW and the antenna height above average terrain (HAAT) to 161 meters. Amador's pleadings state that, if these proposed facilities are implemented, its operations as an independent electromagnetic compatibility (EMC) testing laboratory will be severely compromised due to the increased signal strength of KQLW. Consequently, Amador seeks the denial of the instant application.

Pursuant to 47 U.S.C. 309(d), a petition to deny does not lie against a minor change application. Accordingly, Amador's objection is dismissed as a petition to deny but nevertheless will be considered on its merits as an informal objection pursuant to 47 CFR § 73.3587. Amador states that its Oakwood facility performs electromagnetic testing on Part 15 devices and as such is governed by 47 CFR §§ 2.947 and 2.948 of the Commission's rules. Further, Amador states that it is a charter member of the United States Department of Commerce's National Voluntary Laboratory Accreditation Program for electromagnetic compatibility and telecommunications. Consequently, Amador believes it meets the requirements of 47 U.S.C. § 309(d) of the Communications Act and 47 CFR § 73.3584 as a Commission licensee and is protected under the Administrative Procedures Act (5 U.S.C. § 551 (8), 558 (c)). Amador believes its "licensee" status results from Amador's presence on the list of testing facilities which have filed the information required pursuant to 47 CFR § 2.948(c). However, Amador is not a Commission licensee. Although the testing at its Oakwood facility is subject to 47 CFR §§ 2.947 and 2.948 of the

<sup>1</sup> These include Ingstad's opposition to the petition, a reply by Amador, a supplement to Amador's reply, a motion to strike filed by Ingstad against Amador's supplement, Amador's opposition to the motion to strike and Ingstad's reply to the opposition.

Commission's rules, and while Amador may be on a list of Commission-approved testing facilities, Amador does not hold a license issued by the Commission. See 47 U.S.C. § 153(c) and (cc). Its presence on the list authorized by 47 CFR § 2.948 simply serves to provide notice to the public that Amador has the necessary facilities to ensure that the test information provided to the Commission is accurate. However, any party may be added to the list upon providing the necessary information. Consequently, the list serves as recognition, not permission.

Amador alleges that severe interference will be caused to its testing operations should KQLW implement its Class C3 operation as proposed in this application. Amador believes it is entitled, under the Commission's rules, to be protected from "unwanted electromagnetic interference" and that to permit such interference amounts to a taking of Amador's property without due process of law. Amador performs a significant portion of its operations on an open field test site at its Oakwood Laboratories, which was opened in February 1989 after an extensive review to confirm the site's "superior ambient emission characteristics". Aside from the effects of the increased signal strength on 102.5 MHz (Channel 273) itself, Amador claims that excessive spurious emissions on other frequencies will be created. Thus Amador fears its listing under 47 CFR § 2.948 could be jeopardized. In order to partially compensate for such interference, Amador asserts that it would be forced to buy new equipment at a cost in excess of \$100,000, and even then the types and numbers of tests which could be run would be curtailed. Amador also believes that the alleged interference may also cause the largest user of the Oakwood site (IBM) to terminate its business relationship with Amador since the ambient emission level will exceed IBM's criteria for testing its equipment. Amador cites the following cases as examples wherein the Commission has required a broadcast facility to protect manufacturers from radiofrequency interference: WTCN Television, Inc., 17 FCC 2d 909 (Rev. Bd. 1969); WGUN, Inc., 27 FCC 2d 748 (1971); Long Island Educational Television Council, Inc., 40 RR 2d 1611 (1977); Telegraphic Message from H. John Morgan, Chief, AM Branch to Voyageur Broadcasting Company (WMIN (AM)), November 28, 1984; and Letter from Larry Eads, Chief, Audio Services Division to Illinois Lotus Corp. (WTAO (AM)), November 21, 1988. Amador also provides copies of correspondence to Ingstad which show that Ingstad was aware of Amador's interference concerns as far back as July 1989; however, Amador states that Ingstad has not been willing to address its concerns. In support of its contentions, Amador has included in its pleadings a report from its consulting engineer which indicates that the ambient level at the Oakwood site would increase by 16 to 19.3 dB<sup>2</sup>. Finally, Amador suggests that Ingstad should seek a different transmitter site or reduce its emissions in the direction of the Oakwood site, seeking waiver of the Commission's rules, if necessary.

In response, Ingstad states that Amador's actions seek to prevent thousands of listeners from receiving the expanded service of KQLW solely on the basis of Amador's economic convenience. Ingstad contends that Amador has failed to demonstrate that "harmful interference" will actually occur at its Oakwood facility. Ingstad demonstrates that three FM stations--KNXR, Channel 248C, Rochester, MN; KSLE-FM, Channel 219C1, Rochester, MN; and KWNG, Channel 290C2--

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<sup>2</sup> These results are said to have been determined using the Longley-Rice Irregular Terrain Model, Version 1.2.1.

already provide signal strengths in excess of 70 dBu (3.16 mV/m) over the Oakwood facility without apparent harm to Amador's operations. Further, Ingstad's consulting engineer has calculated the increase in the ambient signal strength at the Oakwood site on 102.5 MHz as compared to KQLW's authorized Class A facility to be only 3.1 dB, not 16 to 19.3 dB as computed by Amador's consulting engineer. With respect to the cases cited by Amador, Ingstad believes that none of these cases support Amador's objection. With respect to WGUN, Inc., supra., Ingstad cites a sentence therein which states that the relief from harmful interference sought by the petitioner should only be granted upon a showing of substantial injury to the public. Ingstad also cites Pier San of Nebraska, Inc., 62 FCC 2d 981 (1977) wherein the Commission denied a radiofrequency interference complaint from a local hospital because that hospital had failed to demonstrate that the interference resulted from the FM station's operations. Ingstad alleges that, in effect, Amador is attempting to establish a de facto quiet zone (see 47 CFR § 73.1030) and that no precedent exists for such protection. Consequently, Ingstad believes Amador's objection of Amador should be denied and its application granted.

We agree with Ingstad. Amador's Oakwood testing facility, since it lies well outside the 115 dBu blanketing contour of KQLW, is not entitled to protection from Ingstad's Class C3 operation beyond that afforded by 47 CFR § 73.317. Moreover, the cases cited by Amador do not counter this reality. In WGUN, Inc., 27 FCC 2d 748 (1971), the Commission stated:

We have, over the years, been called upon to deal with a variety of problems associated with high radio frequency (RF) fields generated by AM broadcast stations. Normally, these consist of reradiation, cross-modulation, and other harmful interactions. When these problems occur among transmission services subject to our licensing jurisdiction, we follow well-defined procedures which, in most cases, lead to correction of the difficulty. When, however, (as here) the party aggrieved is not an applicant, permittee, or licensee, our policy insofar as AM broadcasting is concerned, is to grant relief only upon a showing that there is an RF shock or burn hazard to persons working in the vicinity of the site, or, in the case of reception complaints, upon a showing that the complainant is within the station's "blanketing" (1 v/m) contour. Thus, any relief granted in this case would represent an enlargement of existing protection concepts. Because of the growing number of environmental problems plaguing AM stations throughout the country, we do not feel that the process of transmitter site selection should be further complicated by requiring AM applicants to consider the effects of high RF fields on unregulated businesses.

...In taking this position we do not, of course, intend to foreclose whatever remedies may be available through local courts arising from RF related damages sustained by such businesses, nor to express indifference to the destruction of private business interests.

... [W]e are of the opinion that the relief requested by [the petitioner] should be granted only on a showing of substantial injury to the public.

WGUN, Inc., 27 FCC 2d 748, 750 (1971). This policy applies to FM stations as well. Pier San of Nebraska, Inc., 62 FCC 2d 981, 985 at n. 7. The requirement that a showing of substantial injury be made was relaxed only in the context of a threat to human life in Pier San. In the present case, Amador has met neither of these criteria, nor is Amador's facility within KQLW's blanketing contour as in WTAO, supra. The references to economic harm, testing difficulties, and loss of its FCC and Department of Commerce certifications are simply conjecture on the part of Amador since no definitive analysis has been presented with its pleadings to show the actual effects of KQLW's increased signal strength. Amador's arguments are further weakened by the fact that three other FM stations already provide signal strengths of comparable intensity over the Oakwood site without apparent harm. Its pursuit to maintain the "ambient emission characteristics" of the Oakwood site is tantamount to establishing a de facto quiet zone in order to keep a competitive advantage presently enjoyed at the Oakwood site. Finally, the increased emissions from KQLW do not represent a taking of Amador's property without due process of law since Amador is neither a Commission licensee nor authorized to use a particular spectrum. 47 U.S.C. § 304.

Consequently, Amador Corporation's objection when considered as a petition to deny IS DISMISSED, and when considered as an informal objection IS DENIED. Application BPH-910819IE, having been found otherwise grantable, IS HEREBY GRANTED. These actions are taken pursuant to 47 CFR § 0.283.

Sincerely,



Larry D. Eads, Chief  
Audio Services Division  
Mass Media Bureau

cc: Radio Ingstad Minnesota, Inc.  
: Fish & Richardson  
: Fisher, Wayland, Cooper & Leader