

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET SW
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
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PROCESSING ENGINEER: Edna Prado
TELEPHONE: (202) 418-2609
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: Edna.Prado@fcc.gov

Washington State University
Educational and Public Media
P.O. Box 642530
Pullman, WA 99164-2530

In re: KRFA-FM, Moscow, ID
Washington State University ("WSU")
Facility ID # 71016
BPED-20070905ADC

Dear Applicant:

This refers to the above-captioned minor change application to modify the antenna height and effective radiated power.

An engineering study reveals that the application fails to comply with Section 73.525¹ of the Commission's Rules (the "Rules") with respect to Channel 6 TV Station, KHQ-TV, Spokane, WA. To address this issue, WSU submits a copy of a letter from President and General Manager of KHQ-TV. The letter states that KHQ-TV consents to the KRFA-FM application provided WSU agrees to not operate the facilities specified in its application until WSU is advised by KHQ-TV that KHQ-TV has discontinued Channel 6 transmissions. We nevertheless conclude that neither Section 73.525 nor established precedent provides a basis for the acceptance of such a contingent arrangement as sufficient to satisfy Channel 6 protection requirements. Accordingly, we will dismiss the referenced application.

A waiver of the Commission's contingent application rule would also be necessary to grant WSU's application. The proposed facility cannot become operational unless KHQ-TV implements certain changes in its technical operations based on certain future events. With the exception of certain narrowly defined filings, the Commission's rules prohibit generally the filing of contingent applications.² Such proposals can frustrate the introduction of new and improved services. Processing such applications also can result in the expenditure of limited staff resources on proposals that may never be implemented. WSU has not demonstrated that it has

¹ 47 C.F.R. § 73.525.

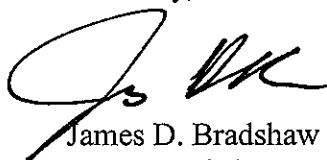
² See *id.* at § 73.3517.

cleared the high hurdle for the required waiver.³ We conclude that a waiver in the instant circumstances would be contrary to the public interest.

In this case, WSU has sought, albeit prematurely, to take advantage of the expected termination of KHQ-TV analog Channel 6 operations in order to improve its facilities and to gain cut-off protection from all applications filed several weeks later in the October 2007 NCE FM window. Accepting this application – or any application that relies on a similar contingent consent agreement from a potentially impacted Channel 6 station – could foreclose filing opportunities of other potential applicants and licensees that desire to file new station and modification applications based on the forthcoming vacation of analog Channel 6 allotments but have deferred such filings based on the recognition that it is not presently possible to file rule-compliant proposals. Accordingly, we find that acceptance of the WSU application in these circumstances would be fundamentally unfair to those applicants that have filed applications that complied with Section 73.525⁴ and to those potential applicants that deferred their filings as a result of Channel 6 protection requirement issues. The public interest is better served by dismissing the WSU application.

In light of the above, Application BPED-20070905ADC 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,

A handwritten signature in black ink, appearing to read 'J. Bradshaw', is written over the typed name.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: Todd D. Gray

³ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *aff'd* 459 F.2d 1103 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

⁴ For example, acceptance of an NCE new station application filed in the October 2007 window that includes a contingent agreement with a Channel 6 station could unfairly skew the “fair distribution” analysis to the detriment of mutually exclusive applications that filed rule-compliant proposals.