

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 TWELFTH STREET, SW**  
**WASHINGTON, DC 20554**

**MEDIA BUREAU**  
**AUDIO DIVISION**  
**APPLICATION STATUS:** (202) 418-2730  
**HOME PAGE:** [www.fcc.gov/media/radio/audio-division](http://www.fcc.gov/media/radio/audio-division)

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JAN 27 2017

Lancaster Educational Broadcast Service  
8660 W. Ave E4  
Lancaster, CA 93536

Re: KLQS-LP, Lancaster, CA  
Facility ID No. 195731  
Lancaster Education Broadcast Service  
File No. BMPL-20170123GBW

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.<sup>1</sup> 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 a 20.5 kilometer change in site location violates Section 73.870 of the Commission's Rules.<sup>2</sup> Lancaster Educational Broadcast Service (LEBS) recognizes this violation and submitted a waiver request for the major move change stating that the authorized site has no power available. In support of the waiver request, LEBS states that there is currently no alternative site available within the prescribed range of a minor modification. A showing is provide that indicates national forest land along a line to the proposed site. The record before us does not present unique circumstances sufficient to justify grant of the waiver request. When evaluating a request to relocate beyond that which is allowed as a minor change, we typically look at the availability of possible antenna locations in all directions. The provided analysis only looks in one direction. Therefore, it is our determination that LEBS has not provided sufficient analysis within the allowed minor change distance area and beyond to show the availability of compliant locations. We conclude that waiver of Section 73.870 is not warranted in this case.

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<sup>1</sup> 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).

<sup>2</sup> 47 C.F.R. § 73.870.

The Commission's rules may be waived only for good cause shown.<sup>3</sup> An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.<sup>4</sup> The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”<sup>5</sup> and must support its waiver request with a compelling showing.<sup>6</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>7</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>8</sup> 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.<sup>9</sup> LEBS's request fails to present good cause for waiver of Section 73.870. LEBS 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 BMPL-20170123GBW is unacceptable for filing and IS HEREBY DISMISSED. These actions are taken pursuant to Section 0.283 of the Commission's rules.<sup>10</sup>

Sincerely,



James D. Bradshaw  
Deputy Chief  
Audio Division  
Media Bureau

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<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> 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)).

<sup>5</sup> 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).

<sup>6</sup> *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)).

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

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

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

<sup>10</sup> 47 C.F.R. § 0.283.