

ATTACHMENT TO EXHIBIT 7

Pursuant to the *Report and Order, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Indian Springs, Nevada, Mountain Pass, California, Kingman, Arizona, and St. George, Utah)*, 14 FCC Rcd 10568 (Chief, Allocations Branch 1999) (the “Report and Order”), the Commission modified the license held by KHWY, Inc. (the “Licensee”) for KHYZ(FM), Mountain Pass, California, to specify operation on Channel 259B (99.7 MHz) in lieu of Channel 258B (99.5 MHz). Specifically, the *Report and Order* stated (at ¶ 24):

IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KHWY, Inc. for Station KHYZ, Mountain Pass, California, IS MODIFIED to specify operation on Channel 259B in lieu of Channel 258B and to use their current, Class B superpower facilities (8.4 kilowatts effective radiated power and antenna height of 551 meters above average terrain)

This application on FCC Form 302-FM implements the *Report and Order’s* ordering clause that the license of KHYZ(FM), Mountain Pass, California, is modified “to specify operation on Channel 259B in lieu of Channel 258B and to use their current, Class B superpower facilities (8.4 kilowatts effective radiated power and antenna height of 551 meters above average terrain).” KHYZ is now operating on Channel 259B.

The *Report and Order* specifically acknowledged that KHYZ had been granted a waiver of Section 73.211 of the Commission’s Rules to exceed the Class B 1.0 mV/m service contour reference distance of 52.2 km, and that such waiver continues in full force with KHYZ’s operation on Channel 259B. Specifically, the *Report and Order* stated :

Station KHYZ is said to operate with superpower status because its 1.0 mV/m service contour extends beyond the Class B reference distance of 52.2 km, which is achieved by using the Class B maximum ERP of 50 kW and the reference HAAT of 150 m. Pursuant to a waiver request, the Commission permitted Station KHYZ to increase its facilities from 2.3 kW at 521 m to 10 kW at 522 m. See File No. BPH-820714AB. This waiver grant allowed Station KHYZ to extend its 1.0 mV/m contour from 49.0 km to 63.6 km, beyond the 52.2 km Class B reference distance. Station KHYZ currently provides service to 63.6 km, but with slightly altered facilities: 8.4 kW at 551 m. See File No. BLH 960313KB.

Report and Order at fn 7.

The *Report and Order* confirmed that KHYZ's superpower service contour would be protected were it to operate on Channel 259B in lieu of Channel 258B:

Station KHYZ(FM) provides service to an additional 14.6 kilometers beyond what a normal Class B station could serve using maximum facilities. In view of KHWY's allegations of interference and the fact that its Station KHYZ(FM) was granted a waiver of Section 73.211 to operate in excess of maximum Class B facilities to serve portions of Interstate 15 in the Mojave Desert, we have undertaken an engineering analysis to determine whether Station KHYZ(FM) could operate with its current superpower facilities on Channel 259B in lieu of Channel 258B without interfering with upgraded Station KPXC(FM) at Indian Springs on Channel 257C. Our analysis shows that no interference would occur. Specifically, we have determined that the interfering contour (94 dBu) from the Indian Springs station (using minimum Class C facilities) does not overlap the protected contour (54 dBu) of Station KHYZ(FM) at Mountain Pass using superpower facilities. Likewise, the interfering contour (100 dBu) from the Mountain Pass station using superpower facilities would not overlap the protected contour (60 dBu) of the Indian Springs station. Moreover, no overlap of the interfering and protected contours would occur even if we assume the use of maximum facilities for Channel 257C at Indian Springs."

Report and Order at ¶ 19.

Thus, the *Report and Order* concluded:

Since no interference would occur, we believe that the optimum result in this case is to upgrade Station KPXC(FM) at Indian Springs on Channel 257C and to modify the license for Station KHYZ(FM) at Mountain Pass to operate on Channel 259B with the same superpower facilities that it currently has on Channel 258B. Such a result permits the Indian Springs station to serve a much greater number of listeners than would be possible on nonadjacent Channel 272C and, at the same time, *preserves the public interest benefits flowing from the prior grant of Station KHYZ(FM)'s waiver of Section 73.211 of the Commission's Rules.*

Report and Order at ¶ 20 (emphasis added).

Consequently, KHYZ's waiver of Section 73.211 of the Commission's Rules, which has been deemed to serve the public interest, continues in full force with KHYZ's operation on Channel 259B.