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MAR 12 2013

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Chehalis Valley Educational Foundation
2401 NE Kresky
Unit A
Chehalis WA 98532

Re: KACS(FM); Rainier, WA
Facility ID No. 10685
Chehalis Valley Educational Foundation
BPED-20121009ABE

Dear Applicant:

The staff has under consideration the above-captioned minor change application filed on behalf of Chehalis Valley Educational Foundation ("CVEF") to change the community of license, antenna location, effective radiated power, antenna height, and station class of KACS(FM). In the application, CVEF requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant CVEF's waiver request and the application.

Waiver Request

An engineering review of the application reveals that it is in violation of 47 C.F.R § 73.509 with respect to second-adjacent channel Class C1 license (BLED-19910510KA) for KVTI(FM), Tacoma, WA. Specifically, the proposed protected contour (60 dBu) would receive prohibited overlap from KVTI's interfering contour (100 dBu). CVEF recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, CVEF states that it will not cause interference to KVTI. CVEF also states that the proposed facility would encompass an area of 3,189 square kilometers and a population of 511,808 people. This constitutes an increase in area of 119% and an increase in population of 590%. Furthermore, CVEF states that the interference area is only 1.5% (or 47 square kilometers) of the station's proposed 60 dBu service area and only 4.7% (or 24,192 people) of the total population. CVEF cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances. CVEF states that it considers the affected area as very small when considered along with the increased service area, and concludes that continued waiver of § 73.509 is warranted in this case.

Discussion

CVEF's request to receive second-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that case it was stated that:

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

Conclusion

We have afforded the request for waiver of § 73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justification are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, CVEF's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20121009ABE IS HEREBY GRANTED subject to the following condition:

Further modification of KVTI(FM), (facility ID No. 12068), Tacoma, WA will not be construed as a *per se* modification of KACS(FM)'s authorization. (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283

Sincerely,



Edna V. Prado
Supervisory Engineer
Audio Division
Media Bureau

cc: Donald Martin