

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of)	
)	
Levine/Schwab Partnership dba)	
Schwab Multimedia LLC)	KWIF(AM)
For Minor Modification of)	File No. BMP – 20190522AAJ
Construction Permit)	
)	
Facility ID No. 161348,)	
Culver City, CA)	

To: Secretary, Federal Communications Commission
Attn: Chief, Audio Division, Media Bureau

INFORMAL OBJECTION

LBI Radio License LLC (“LBI”), licensee of Station KVNR(AM), Santa Ana, CA (Facility ID No. 37233) (“KVNR”), by its attorneys, hereby files this Informal Objection¹ against the above-referenced application of Levine/Schwab Partnership dba Schwab Multimedia LLC (“Applicant”) for a minor modification of its construction permit (the “Schwab Application”) for Station KWIF(AM), Culver City, CA (Facility ID No. 161348) (“KWIF”).² By the Applicant’s own admission, the Schwab Application would cause impermissible nighttime groundwave overlap with KVNR. Because the proposed modification is in direct violation of a Commission

¹ Because neither the Communications Act nor the Commission’s Rules provides for the filing of a petition to deny a license application, the Commission considers pleadings filed against a license application as informal objections. *See Clear Channel Broadcasting Licenses, Inc.*, 21 FCC Rcd. 8677 n.1 (MB 2006).

² File No. BMP-20190522AAJ. The Commission placed the Schwab Application on public notice on May 28, 2019.

rule and would adversely affect KNVR, the Schwab Application is not in the public interest and should be denied.

I. FACTUAL BACKGROUND

1. On May 22, 2019, the Applicant filed the Schwab Application, which the FCC accepted for filing on May 23, 2019 and placed on Public Notice on May 28, 2019.

2. The Schwab Application concedes in Exhibit 17 that “the nighttime 5 mV/m contour overlaps the KVNR 5 mV/m contour and a waiver of that overlap in light of the proposed second adjacent channel protection level is also requested.”

3. Attachment 17 to the Schwab Application includes a document labeled “KVNR Second Adjacent Waiver Request” in which Applicant requests a waiver of Section 73.37 of the Commission’s Rules as it pertains to the acknowledged contour overlap between KWIF and KVNR.

II. ARGUMENT

The Schwab Application would cause impermissible interference to KNVR and therefore should be denied. Under Section 73.37(a) of the Commission’s Rules, “no application will be accepted for a change of the facilities of an existing station if the proposed change would involve” a new overlap between 5 mV/m contour of the applicant’s station and the 5 mV/m contour of a station operating on a second adjacent channel.³ The Commission adopted the current version of this rule “[a]fter careful analysis” to “insure that . . . full protection from second adjacent channel interference would be obtained.”⁴ In the Schwab Application, the

³ 47 C.F.R. § 73.37(a).

⁴ *In the Matter of Review of the Technical Criteria for the AM Broadcast Service*, 6 FCC Rcd. 6273 ¶ 59 (1991).

Applicant admits that its proposal will cause “5 mV/m nighttime groundwave overlap with second adjacent station KVNR (AM), Santa Anna[sic], California (KVNR)” and requests a waiver of Section 73.37(a).⁵ However, Applicant fails to demonstrate the high standard for a waiver of the Commission’s interference rules.

Section 1.925(b)(3) of the Commission's rules provides that: “the Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”⁶ “An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.”⁷

Although Applicant offers three purported justifications for granting a waiver of Section 73.37(a), none satisfy the high standard for waiver or merit creating impermissible interference to KVNR.

As an initial matter, the Commission should reject Applicant’s request that the FCC evaluate the Schwab Application under rules that the agency first proposed in 2015 and has not adopted almost four years later. It is well-established that the Commission must evaluate

⁵ See Schwab Application, Attachment 17 (KVNR Second Adjacent Waiver Request).

⁶ 47 C.F.R. § 1.925(b)(3).

⁷ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd, 1414, 1415 (2003).

applications under its existing rules.⁸ It is true that the Commission, in the 2015 Further Notice of Proposed Rulemaking, proposed to eliminate third adjacent channel groundwave protection and change second adjacent channel groundwave protection to match the current levels for third adjacent channel protection.⁹ The FCC asked a number of questions about the proposal, including whether it would result in greater flexibility for AM stations or merely increase inter-station interference and whether the net benefit would be beneficial or harmful to broadcasters and listeners. That the Commission still has not adopted the proposed rules more than four years later is particularly telling. Applicant has offered no basis to believe that the FCC will adopt the proposed rules anytime soon (if ever), and the mere fact that it proposed the change does not justify the grant of a waiver.

Second, the fact that the overlap occurs only at night is irrelevant. The contour overlap restrictions in Section 73.37 apply at all hours. Moreover, to the extent the overlap occurs only at night, the remedy is for KWIF to reduce power at night, not to interfere with KVNR. The problem, as KWIF admits, is that the station would no longer be able to properly serve its community of license at night. But an established station like KVNR and its listeners should not be subject to interference because a new station is unable to cover its community of license—grant of a waiver under this rationale would open a Pandora’s box.

⁸ See, e.g., *In Re 2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules & Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, 13692 ¶ 186 (2003) (recognizing that Commission determines compliance with top-four ownership rule “at the time an application for transfer or assignment of license is filed”); *In the Matter of Telstra, Inc.*, 13 FCC Rcd. 205 ¶ 6 (IB 1998) (finding that “because no new rules are in effect, we will analyze this application under our current regulatory framework”).

⁹ See *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd. 12145 ¶ 64 (2015).

Finally, the fact that “there is no other pattern configuration which will produce the required signal levels and not involve KVNR” is irrelevant. Applicant suggests that KVNR should be required to accept impermissible interference in the interest of adding a new station to the market. LBI supports the Commission’s policy of facilitating a diversity of voices in local radio markets (KVNR itself airs programming targeted to the Vietnamese community). But Applicant’s suggestion is nonsensical. Los Angeles is well served by 93 radio stations. Regardless, the Commission’s licensing scheme is designed to balance the public interest objective of facilitating diverse entrants in the market while ensuring that radio station operators receive the technical protections to which they are entitled under the Commission’s rules. To chip away at those protections for the reasons advocated by Applicant would not only harm LBI and KVNR’s listeners, but would undermine Commission’s licensing scheme.

III. CONCLUSION

For the foregoing reasons, the Commission should deny Applicant's request for a waiver of Section 73.37 and deny the Schwab Application.

Respectfully submitted,

LBI Radio License LLC

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July 3, 2019

CERTIFICATE OF SERVICE

I, Ari Meltzer, an attorney at Wiley Rein LLP, certify that on this 3rd day of July, 2019, I caused a copy of the foregoing Informal Objection to be served by U.S. Mail, First Class, to:

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