

**FEDERAL COMMUNICATIONS COMMISSION**  
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**WASHINGTON DC 20554**

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**JAN 12 2009**

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Dickstein Shapiro LLP  
1825 Eye Street, NW  
Washington D.C. 20006

In re: BDJ Radio Enterprises, LLC (BDJ)  
KXEN(AM), St. Louis, Missouri  
Facility Identification Number: 54739  
File Number: BP-20080626ABH

Dear Ms. Sadowsky:

This is in reference to the above-captioned minor change modification application filed by BDJ to modify the licensed KXEN facility by removing all licensed towers and constructing a new day and night directional antenna system.

A preliminary review of the application reveals that that the proposed KXEN 0.5 mV/m daytime groundwave contour will overlap the licensed 0.25 mV/m contour of first-adjacent station WCIL, Carbondale, Illinois, in violation of Section 73.37(a) of the Commission's rules.<sup>1</sup>

For the reasons stated above, under Section 0.283 of the Commission's Rules, the application (File No. BP-20080626ABH) is **HEREBY DISMISSED** as unacceptable for filing.

In the Public Notice entitled "Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications", FCC 84-366, released August 2, 1984, the Commission indicated that it would reinstate applications nunc pro tunc where the original application was returned and where a relatively minor curative amendment was filed in conjunction with a petition for reconsideration within 30 days of the date of the

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<sup>1</sup> BDJ did not request a waiver of Section 73.37(a), but stated that the increased overlap area of 533.7 square kilometers would allow for a large gain in the 0.5 mV/m population of 8863 persons served by the proposed KXEN facility as compared to that served by the licensed facility. Had BDN requested for a waiver, it would have been denied because of the Commission "go-no go" concept that has been explicitly upheld in situations where non-technical, service related arguments by the applicant did not justify a waiver of the technical allocation standards, and that the benefit of such service by the applicant was outweighed by the stronger public interest in maintaining the integrity of our allocation scheme as a whole. ICBC Corp. v. FCC, 716 F.2d 926 (D.C.Cir.1983). See also Midwest Television, Inc., 2 FCC Rcd 215 (1987).

dismissal. Any petition for reconsideration or electronic amendment filed later than 30 days will be returned as untimely. See 47 U.S.C. § 405, 47 C.F.R. § 1.106(f). In this regard, it should be emphasized that the above deficiencies were discerned after a preliminary study of the application. A detailed review was not made of the entire application to determine whether other deficiencies exist which would preclude acceptance for filing or result in a subsequent dismissal. Inasmuch as the applicant will not be afforded a second opportunity to correct another deficiency, I would urge that the applicant carefully review the entire application.

Sincerely,

A handwritten signature in black ink, appearing to read "Son Nguyen".

Son Nguyen  
Supervisory Engineer  
Audio Division  
Media Bureau

cc: Clarence M. Beverage, Comm Tech  
Burt W. Kaufman, Manager