

# FEDERAL COMMUNICATIONS COMMISSION

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The Love Station, Inc.  
P.O. Box 14  
Ponca City, OK 74602

In re: The Love Station, Inc. ("TLS")  
KZTH(FM), Piedmont, OK  
Facility I.D. No.: 83880  
BPED-20090508ABO

Dear Applicant:

This letter is in reference to the above-captioned minor change application that proposes to increase the effective radiated power at the licensed site. TLS requests a waiver of the contour overlap provisions of 47 C.F.R Section 73.509 of the Commissions Rules. For the reasons stated below, we grant TLS's waiver request and the application.

## Waiver Request

An engineering review of the application reveals that TLS's proposed facilities would result in prohibited contour overlap with second-adjacent channel Class C1 license (BLED-20070604AAC) for KYLV(FM), Oklahoma City, OK, in violation of Section 73.509 of the Commission's Rules. Specifically, TLS's proposed protected (60 dBu) contour would receive contour overlap from the interfering (100 dBu) contour of KYLV's facility between the azimuths of 81°T to 86°T. TLS recognizes this violation and requests waiver of the contour overlap provisions of Section 73.509.

In support of its waiver request, TLS states that it will not cause interference to KYLV. TLS claims that the grant of this waiver will extend its overall coverage area by 1,081 square kilometers, an increase of 13%. In addition, TLS believes that the total amount of overlap received is 4 square kilometers. TLS indicates that this overlap area is 0.3% of the increased 60 dBu service contour area and 0.04% of the total new proposed 60 dBu service contour area of 9,730 square kilometers. Accordingly, TLS claims that the proposed increase in coverage area heavily outweighs the potential for interference in a total area that constitutes less than 1% of the proposed service area. Finally, TLS believes that the overlap area is very small and well within the scope of the Commission's waiver policy. Thus, TLS concludes that a waiver of Section 73.509 of the Commission's rules is warranted in this instance.

## Discussion

TLS's request to receive second-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in *Educational Information Corporation*. In that proceeding, the

Commission indicated that it was inclined to grant waivers of second- and third-adjacent channel overlap to *existing* stations where the benefit of noncommercial educational service heavily outweighed the potential for interference in very small areas. In the 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 Section 73.509 of the Rules will be granted.

#### **Conclusion**

We have afforded the request for waiver of Section 73.509 of the Rules 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, KZTH(FM)'s request for waiver of Section 73.509 of the Rules IS HEREBY GRANTED. Furthermore, application File No. BPED-20090508ABO IS HEREBY GRANTED subject to the following condition:

Further modifications to the facilities of station KYLV(FM), Oklahoma City, Oklahoma will not be construed as a *per se* modification of KZTH(FM)'s authorization. (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to Section 0.283 of the Commission's Rules.<sup>1</sup>

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo F. Bonacci".

Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Larry P. Waggoner

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<sup>1</sup> See 47 CFR § 0.283