

FEDERAL COMMUNICATIONS COMMISSION

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

Dear Ms. Sadowsky:

This is in reference to the February 17, 2009, Petition for Reconsideration,¹ and the February 13, 2009, amendment to the above-captioned application. In the February 13, 2009, amended application, BDJ requests a waiver of Section 73.37 concerning prohibited overlap with WCIL(AM), Carbondale, Illinois. We will grant the waiver request, the Petition for Reconsideration, and the application for the reasons shown below.

BDJ requests waiver of Section 73.37 because the KXEN(AM) proposal would increase the existing overlap between the proposed 0.5 mV/m contour and the 0.25 mV/m contour of first-adjacent channel station WCIL(AM). In support of the waiver, BDJ contends that while the proposal would increase the area of overlap received by 533.7 sq. km and 8,863 persons, the proposal would reduce the area of caused overlap to stations WCIL(AM), WMVP(AM), Chicago, Illinois, and KIND(AM), Independence, Kansas, by a total of 5,309.7 sq. km and 219,185 persons. In addition, BDJ states that the public interest is served by an increase of 50,255 people in the KXEN daytime 0.5 mV/m. population.

Based on the interference and service showings made by BDJ, we find that grant of the requested waiver would serve the public interest. The Commission has held that waiver of Section 73.37 is in the public interest where the increased area of overlap that would be received by the applicant's station was slight in relation to the significant reduction in overlap caused See WVCH Communications, Inc. 66 RR 2d 255 (1989). Accordingly, the waiver request is granted.

¹ The Petition for Reconsideration was filed in response to our January 12, 2009, action dismissing the above-captioned application due to prohibited overlap with WCIL(AM).

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 dismissed and where a relatively minor curative amendment was filed within 30 days of the date of the dismissal. The February 13, 2009, petition for reconsideration was filed within 30 days of the dismissal of the application, and contained an acceptable amendment. As a result, we find that the resubmitted application is in compliance with the August 2, 1984, Public Notice.

Accordingly, pursuant to Section 0.283 of the Commission's rules, the Section 73.37 waiver request, the February 17, 2009, Petition for Reconsideration and the application, File Number BP-20080626ABH, are hereby GRANTED.

Sincerely,



Susan N. Crawford
Assistant Chief
Audio Division
Media Bureau

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