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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCHED BY

FCC 90M-477

In re Applications of)	MM Docket No. 89-111	1900
YOLO COUNTY PUBLIC RADIO)	File No. BPED-851217MG	
West Sacramento, California)		
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT)	File No. BPED-860226MC	
Sacramento, California)		
CALIFORNIA STATE UNIVERSITY, SACRAMENTO)	File No. BPED-860613MA	
Sacramento, California)		
FAMILY STATIONS, INC.)	File No. BPED-861023MB	
Ione, California)		
FAMILY STATIONS, INC.)	File No. BPED-861023MF	
North Highlands, California)		
For Construction Permit for a New)		
Non-Commercial Education FM Station)		

MEMORANDUM OPINION AND ORDER

Issued: March 7, 1990; Released: March 9, 1990

1. Under consideration are the following:

Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed December 22, 1989, by Family Stations, Inc. ("Family") and California State University, Sacramento ("University");

Petition for Leave to Amend, filed December 22, 1989 on behalf of Family Stations, Inc.;

Amendment by Family Stations, Inc. to Application BPED-861023MB, Ione, California, filed December 22, 1989;

Amendment by Family Stations, Inc. to Application BPED-861023MF, North Highlands, California, filed December 22, 1989;

NOTICE OF PUBLIC HEARING

Joint Request for Approval of Settlement Agreement, filed December 22, 1989, by the University, Sacramento City Unified School District ("School District"), Family, and Yolo County Public Radio ("Yolo");

Mass Media Bureau's ("Bureau") Opposition to Petition for Leave to Amend and Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed January 26, 1990;

Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement, filed January 3, 1990; and

Joint Reply to Opposition of Mass Media Bureau, filed February 14, 1990, by California State University, Sacramento ("University") and Family Stations, Inc. ("Family").

2. The settlement agreement provides for the dismissal with prejudice of Yolo's application for a stated monetary consideration to be paid by the University and Family. Family has concurrently filed a petition for leave to amend both its North Highlands application (to eliminate the mutual exclusivity between that application and the School District) and its Ione application (to eliminate the mutual exclusivity between that application and the University). Family and the University have concurrently petitioned for a waiver of the adjacent channel signal strength overlap requirements of Section 73.509 of the Commission's rules. It is alleged that a grant of the waiver would resolve the mutual exclusivity between Family's amended North Highlands application and the University, thereby permitting a grant of both applications. Approval of the settlement agreement and grant of the filed Joint Petition for Waiver and Petition for Leave to Amend, will obviate the need for a protracted administrative proceeding and will result in the expeditious implementation of local non-commercial radio service to the residents of Sacramento, North Highlands and Ione, California. Service to North Highlands and Ione, California would be the first local FM radio service to each area.

3. The settlement agreement comports with the requirements of Section 73.3525 of the Commission's Rules. Specifically, the parties have all completed the declarations required by Section 73.3525 of the Commission's Rules. The settlement and declarations enumerate the public interest reasons for settlement and establish that Yolo, the sole dismissing applicant, did not file its application for the purpose of reaching or carrying out a settlement agreement.

4. Family proposes to amend its Ione application by specifying operation on Channel 201A in lieu of Channel 202A. Family also proposes to amend its North Highlands application by specifying a new transmitter site, reducing effective radiated power, and utilizing a directional antenna. The amendment to Family's North Highland's application will create a situation involving so-called "donut interference," in which the transmitter site for the undesired station is encompassed within the 60 dBu contour of the desired station. Specifically, the 80 dBu contour of Family's amended proposal for

Channel 207 at North Highlands will lie almost entirely within the 60 dBu contour of University's proposal on Channel 205B at Sacramento. According to Family and the University, the overlap area would encompass 96 square kilometers or approximately 2.4 percent of the total area within the University's 60 dBu contour. The population within the overlap area would be approximately 8,791 persons or 1.0 percent of the total population within the University's 60 dBu contour. There will be no overlap of the University's 80 dBu contour by Family's North Highlands amended 60 dBu contour. Existing FM stations will receive no interference. Family and the University further maintain that approval of the settlement agreement would allow the inauguration of four new non-commercial FM services in the Sacramento area serving in the aggregate more than 1.3 million persons. Additionally, these service gains will be effected, according to Family, without any loss of existing service.

5. The Bureau opposes the joint waiver request on the grounds that the movants present no extraordinary reasons to justify a waiver of the Commission policy of avoiding the creation of "donut interference." The Bureau distinguishes the authority cited by the movants, Applications of Cabrini College, MM Docket 89-309, (ALJ, August 7, 1989), stating that the Cabrini case involved the provision of new services to more than 2.2 million persons in the highly congested northeast corridor (about twice the amount herein). Further, the Bureau states that there has been no demonstration that the parties are so deadlocked in their proposals that a resolution consistent with the Commission's rules and policies cannot be worked out. It is for these reasons the Bureau believes that the settlement agreement is inconsistent with the public interest.

6. As noted in the joint petition, in Cabrini, the Bureau supported a waiver of Section 73.509 of the Rules because the resulting "donut" interference would not cause loss of any present service and would enhance TV Channel 6 protection through co-location of the antennas of WXPN(FM) and WPVI(TV). Similarly, in the instant case, there would also be no loss of any present service (only new service is involved) and co-location of the antennas of the University and KVIE-TV will enhance TV Channel 6 protection for the public. Moreover, as is set forth in the supporting Engineering Statement (Attachment C) of John Kean, the non-commercial FM frequency spectrum in the Sacramento area will be fully saturated with the grant of the applications of the University, Family and Sacramento City Unified School District; because of TV Channel 6 protection requirements (Section 73.525) and the prohibited overlap requirements of Section 73.509 of the Rules, future new service is unlikely in the event a waiver of Section 73.509 is denied.

7. The joint petitioners point out that the dissimilarities between Cabrini and the instant situation also support a waiver of Section 73.509 of the Commission's Rules. In Cabrini, Station WXPN proposed an upgrade of facilities, i.e., change in frequency from Channel 205A to Channel 203B and a modification in facilities from 1.90 kW effective radiated power (ERP) at 85 meters height above average terrain (HAAT) to 3.1 kW at 332 meters HAAT. Also, the transmitter site of both a proposed Sellersville, Pennsylvania station (Channel 205A) and a proposed Radnor Township/Villanova, Pennsylvania station (206A) were wholly encompassed by the 60 dBu contour of WXPN's proposed facilities. Joint petitioners then maintain that there were two instances of "donut" interference

to WXPB whereas in the instant case there is only one instance of "donut" interference to the University. Moreover, it is claimed that WXPB proposed an upgrade in facilities and could have avoided "donut" interference by using a directional antenna or a reduction in power, options which are not really available to the University.

8. Joint petitioners also state that Cabrini also required an additional waiver of Section 73.509 of the Rules to permit co-channel interference between Station WWFM (Channel 206A), Trenton, New Jersey and the proposed operation of the Radnor Township/Villanova station on Channel 206A. The instant case does not appear to involve any adjacent or co-channel interference which, can result in an interference area where service is lost to both stations rather than merely to one station as is the case here.

9. The joint petitioners also argue that in order to avoid "donut" interference, there are arguably two possible options, First, the University could reduce its 60 dBu contour through use of a directional antenna or a reduction in effective radiated power so that Family's North Highlands transmitter would be located beyond the University's 60 dBu contour. Secondly, Family could locate its proposed North Highlands transmitter so that it is outside of the University's protected 60 dBu contour. The Engineering Statement notes that either option would result in an overall reduction in service to the public vis a vis granting a waiver of the "donut" interference policy. As a hypothetical, if the University were to avoid "donut" interference by contracting its service area to conform with the contour overlap requirements of Section 73.509 of the Rules, this would result in a reduction of the currently proposed interference free contours of the University from 3,823 square kilometers and 841,198 people to 2,280 square kilometers and 546,624 people -- a difference of 1,543 square kilometers and 294,574 people or a 42 percent reduction in area and a 35 percent reduction in people. This contrasts unfavorably with the currently proposed "donut" interference area of the University, comprising only 96 square kilometers and 8,791 people or 2.4 percent of its proposed service area and 1.0 percent of the proposed population, which would not receive new service due to interference received from Family's proposed North Highlands station.

10. On the other hand, the hypothetical relocation of Family's North Highlands transmitter site beyond the University's 60 dBu contour and in conformance with the contour overlap requirements of Section 73.509 of the Rules would result in a reduction in population served from the current 325,377 persons to 103,958 persons -- a reduction of 221,419 persons or 25 times the number of people within the current overlap area for which a waiver is requested.

11. Lastly, the joint petitioners note that the applicants in this proceeding have been attempting to resolve this mutually exclusive situation since April 14, 1988 when they were directed by the FM Branch to explore options which would avoid a comparative proceeding. For the better part of two years, the applicants have acted diligently and in good faith to resolve application conflicts, avoid a protracted and expensive comparative proceeding and initiate new service to the public. It is maintained that the proposed settlement,

related amendments and waiver request represent the best efforts of the applicants and comport with the public interest and are deserving of the Bureau's support.

12. In light of the foregoing, it is concluded that good cause exists for and that public interest would best be served by the grant of the submitted petitions.

Accordingly, IT IS ORDERED that the Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed December 22, 1989, by Family Stations, Inc. and California State University, Sacramento; IS GRANTED; the Petition for Leave to Amend, filed December 22, 1989 on behalf of Family Stations, Inc.; the Amendment by Family Stations, Inc., Ione, California, filed December 22, 1989; and the Amendment by Family Stations, Inc., North Highlands, California, filed December 22, 1989 ARE GRANTED and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the application of Yolo County Public Radio (File No. BPED-851217MG) IS DISMISSED with prejudice; the Joint Request for Approval of Settlement Agreement, filed December 22, 1989 IS GRANTED; the Agreement IS APPROVED; the applications of Sacramento City Unified School District (File No. BPED-860226MC), California State University, Sacramento (File No. BPED-860613MA), Family Stations, Inc., Ione, California, (File No. BPED-861023MB), as amended, Family Stations, Inc., North Highlands, California (BPED-861023MF) as amended, ARE GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
John M. Frysiak
Administrative Law Judge

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