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Jackson Hole Community Radio, Inc.
P.O. Box 8639
Jackson, WY 83002

In re: KHOL(FM), Jackson, WY
Facility ID No. 92620
Jackson Hole Community Radio, Inc.
BPED-20080807ABU

Dear Applicant:

This letter is in reference to the above-captioned minor change application to modify the transmitter site, effective radiated power, and radiation center above ground level. In addition, Jackson Hole Community Radio, Inc. ("Jackson") requests waiver of § 73.509. For the reasons set forth below, we deny the waiver request and dismiss the application.

Waiver Request: An engineering review of the application reveals that Jackson's proposed interfering contour (100 dBu) is located entirely within the protected contour (60 dBu) of second-adjacent Class C2 construction permit (BNPED-20071022AVX) for KYSK(FM), Ririe, ID. Jackson recognizes this violation and requests waiver of § 73.509.

In support of its waiver request, Jackson claims that based on the undesired-to-desired signal strength ratio, the resulting 40 dBu undesired-to-desired interference level extends 1.4 kilometers. Jackson states that the interference area is not over habitable area or population. Jackson alleges that due to terrain, KYSK's protected contour (60 dBu) is unlikely to receive any interference caused by KHOL's interfering contour (100 dBu). Furthermore, Jackson asserts that grant of the waiver will result in substantial new service to the public. Accordingly, Jackson concludes that waiver of § 73.509 is warranted in this instance.

Discussion: Interference showings based on field strength ratios are not acceptable and the Commission has consistently denied waiver requests which are based on this argument. Section 73.509 requires compliance with a contour established perimeter defining an area protected from overlap, not an area based on interference ratio calculations. The Commission currently has two rules intended to protect FM stations from interference (Section 73.509 for reserved band stations, and Section 73.215 for non-reserved band stations). Both sections require determinations be made based upon prohibited contour overlap not the desired-to-undesired signal ratio. Previously, § 73.509 provided for determination of interference based on the ratio method. However, the ratio method's usefulness for predicting interference in all cases has long been disputed. Recognizing this, the Commission amended its rules in Docket 20735 to adopt the current prohibited overlap version of § 73.509 which prohibits the overlap of specified interfering and protected contours and avoids the anomalous results predicted by the ratio method.¹

¹ "In the case of second and third adjacent channels, where the undesired signal can be stronger than the desired signal,

In view of the limited interference potential between second-adjacent and third-adjacent channel noncommercial educational FM stations, the Commission has granted waivers of § 73.509 where existing noncommercial educational stations sought to increase the 60 dBu service contour so as to overlap the interfering contour of another noncommercial educational station and thereby receive overlap. *See Educational Information Corp.*, 6 FCC Rcd 2207 (1991). Here, KHOL proposes to cause prohibited overlap and create new interference. Additionally, review of our records reveals that there is no precedent for waiver of § 73.509 based on the circumstances and evidence presented by KHOL, nor has KHOL cited any precedent.

Additionally, the type of interference caused by the proposed facility may not be recognized by listeners as interference. Specifically, if interference were to occur, the results of third-adjacent channel interference is the replacement of one signal by another (not complete loss of service) and greatly depends on the quality of the receivers in use. Further, it is the Commission's charge, not applicants or licensees, to establish definitions of protected service and to ensure that existing protected service does not suffer interference. The goal of § 73.509 is to prevent overcrowding of FM stations and provide a consistent, fair, efficient, and equitable distribution of FM facilities as required by Section 307(b) of the Communications Act.²

Conclusion: When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, INC. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded Jackson's waiver requests the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in the justification are insufficient to establish that granting waiver of 47 C.F.R. § 73.509 would be in the public interest.

Accordingly, Jackson's request for waiver of § 73.509 IS HEREBY DENIED, and Application BPED-20080807ABU IS HEREBY DISMISSED as unacceptable for filing. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Edna V. Prado
Supervisory Engineer
Audio Division
Media Bureau

cc: Michael Couzens
Robert Culver, P.E.

an adjacent channel station located within the desired station's 1 mV/m contour can appear to comply with the U/D [undesired-to-desired] ratios at the 1 mV/m contour. However, it may actually cause excessive interference inside the 1 mV/m contour. Further, the U/D ratio appears to improve as the undesired station moves closer to the desired station's transmitter and away from the 1 mV/m contour. The *Second Notice* proposed to resolve the anomaly by simply specifying prohibited contour overlaps. Comments were supportive. Therefore, we shall adopt that option." *Third Report and Order*, para. 46, Docket 20735, 49 Fed. Reg. 45146 (November 15, 1984). Affirmed *Memorandum Opinion and Order*, Para. 56, 50 Fed. Reg. 27,954 (July 9, 1995).

² See *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 6 FCC Rcd 5356, 5358 (1991) (para. 13).