

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET SW
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: WWW.FCC.GOV/MB/AUDIO

MAR 15 2010

PROCESSING ENGINEER: Khoa Tran
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: khoa.tran@fcc.gov

Community Broadcasting, Inc.
10550 Barkley
Suite 108
Overland Park, KS 66212

In re: KTAA(FM), Big Sandy, TX
Facility ID# 1247
Community Broadcasting, Inc. ("CBI")
BMPED-20100128AHW

Dear Applicant:

This letter is in reference to the above-captioned minor change application to change effective radiated power and class. CBI also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant CBI's waiver request and the application.

Waiver Request

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 73.509 with respect to the following stations: (1) second adjacent channel Class A license (BLED-19820920AB) for KBWC(FM), Marshall, TX; (2) second adjacent channel Class A license (BMLED-20080604ABH) for KGWP(FM), Pittsburg, TX; and (3) third adjacent channel Class C3 license (BLED-19880711KB) for KGLY(FM), Tyler, TX. In each instance, the proposed protected contour (60 dBu) totally encompasses the interfering contour (100 dBu) from the facilities listed above. CBI recognizes these violations and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, CBI states that it will not cause interference to the above facilities. CBI claims that the grant of this waiver will increase its service area from 3,734 square kilometers to 8,012 square kilometers, an increase of 115%. In addition, CBI believes that it will provide new service to an estimated 13,129 persons, an increase of 320%. CBI also indicates that this benefit heavily outweighs the potential for interference in a total area that constitutes less than 10% of the station's proposed service area. Finally, CBI cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances. CBI considers the affected area to be *de minimis*, and when considered along with the increased service area, CBI concludes that waiver of § 73.509 is warranted in this instance.

Discussion

CBI's request to receive second- and third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that 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 47 C.F.R. § 73.509 will be granted.

Conclusion

We have afforded the request for waiver of §73.509 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 is sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, CBI's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BMPED-20100128AHW IS HEREBY GRANTED subject to the following conditions:

Further modification of KBWC(FM), Marshall, TX (Facility ID# 72449) will not be construed as a *per se* modification of KTAA's construction permit (BMPED-20100128AHW).

(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of KGWP(FM), Pittsburg, TX (Facility ID# 106449) will not be construed as a *per se* modification of KTAA's construction permit (BMPED-20100128AHW).

(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of KGLY(FM), Tyler, TX (Facility ID# 18757) will not be construed as a *per se* modification of KTAA's construction permit (BMPED-20100128AHW).

(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Harry C. Martin, Esq.