

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12<sup>th</sup> STREET NW**  
**WASHINGTON DC 20554**

**FEB 15 2011**

MEDIA BUREAU  
AUDIO DIVISION  
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PRC Tacom -- I LLC  
834 Marshall Road  
Boulder, CO 80305

In re: KXOT(FM), Tacoma, WA  
Facility ID# 62470  
PRC Tacoma -- I LLC  
BPED-20100618AAX

Dear Applicant:

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

**Waiver Request**

An engineering review of the application reveals that KXOT's proposed facilities would result in prohibited contour overlap with second-adjacent channel Class C3 license (BLED-20031224AAH) and Class C2 application (BPED-20100618AGR) for KBCS(FM), Bellevue, WA, in violation of § 73.509. Specifically, the proposed protected contour (60 dBu) totally encompasses the interfering contour (100 dBu) of KBCS. KXOT recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, KXOT states that it will not cause interference to KBCS. KXOT also believes that the total area of overlap constitutes only 0.24% of the area within KXOT's 60 dBu contour. In addition, KXOT claims that the proposed facilities would increase its overall coverage area to 7,912 square kilometers. Furthermore, KXOT indicates that the proposed facilities will provide new service to an estimated 262,822 persons, which is an increase of 12.5%. Finally, KXOT 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. KXOT considers the affected area to be *de minimis* and, when considered along with the increased service area population, concludes that waiver of § 73.509 is warranted in this case.

**Discussion**

KXOT's request to receive second-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, KXOT's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20100618AAX IS HEREBY GRANTED subject to the following condition:

Further modification of KBCS(FM), Bellevue, WA (Facility ID# 4627) will not be construed as a *per se* modification of KXOT's construction permit (BPED-20100618AAX).  
(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,

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

Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: John Crigler, Esq.