

FEDERAL COMMUNICATIONS COMMISSION

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

In re: KWCV(FM), Walnut Ridge, AR
Facility Id # 175725
Community Broadcasting, Inc.
BMPED-20110811ABX

Dear Applicant:

This letter is in reference to the above-captioned minor change construction permit application proposing to change the effective radiated power ("ERP") and the antenna height above average terrain ("HAAT"). Community Broadcasting, Inc. ("CBI") also requests waiver of the contour overlap provisions of 47 C.F.R. Section 73.509. For the reasons stated below, we grant CBI's waiver request and the application.

Waiver Request

An engineering review of the application reveals that it is in violation of 47 C.F.R. Section 73.509 with respect to the third-adjacent channel Class A license (BLED-20090803AEH) for KJSB(FM), Jonesboro, AR. Specifically, the proposed protected contour (60 dBu) of KWCV will receive prohibited contour overlap from KJSB's interfering contour (100 dBu). CBI acknowledges the proposed contour overlap received from KJSB and requests waiver of Section 73.509 of the Rules.

In support of the waiver request, CBI states that its proposal will not cause interference to KJSB. CBI also claims that the total overlap constitutes only 0.09 % of the area and 0.16 % of the population within KWCV's proposed 60 dBu contour. In addition, CBI claims that the proposed facilities would increase its overall coverage area from its presently authorized area of 5757 square kilometers to 6393 square kilometers (an 11% increase). Furthermore, the proposed KWCV facilities will provide service to an estimated 86,109 people, which is an increase in population of 15 % compared to its presently authorized 60 dBu coverage area. Finally, CBI cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of overlap received. Moreover, CBI believes that the overlap proposed here is *de minimis* and, when considered along with the increased service area, concludes that a waiver of Section 73.509 of the Rules is warranted in this case.

Discussion

CBI's request to receive third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in *Educational Information Corporation, supra*. In that proceeding, the Commission indicated that it was inclined to grant waivers of second- and third-adjacent channel overlap received to *existing* stations where the benefit of noncommercial educational service heavily outweighed the potential for interference in very small areas. In the 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. Section 73.509 of the Rules will be granted.

Conclusion

We have afforded the request for waiver of Section 73.509 of the Rules 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 are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, CBI's request for waiver of Section 73.509 of the Rules IS HEREBY GRANTED. Furthermore, application File No. BMPED-20110811ABX IS HEREBY GRANTED subject to the following condition:

Further modifications to the facilities of station KJSB(FM), Facility ID No. 106689, Jonesboro, AR will not be construed as a *per se* modification of KWCV(FM)'s authorization. (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. Section 0.283 of the Commission's Rules.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Harry C. Martin, Esq.