

**FEDERAL COMMUNICATIONS COMMISSION**  
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**WASHINGTON, DC 20554**

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KCBX, Inc.  
4100 Vachell Lane  
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Logos Broadcasting Corporation  
P.O. Box 1561  
San Luis Obispo, CA 93406

Re: KSBX(FM), Santa Barbara, CA  
Facility ID No. 33708  
KCBX, Inc.  
File No. BPED-20060413ABW

KLFH(FM), Ojai, CA  
Facility ID No. 60140  
Logos Broadcasting Corporation  
File No. BPED-20060413ABX

Dear Applicant:

This letter refers to: (1) KSBX's above-captioned contingent application (BPED-20060413ABW) to modify the channel, effective radiated power ("ERP"), antenna height, and directional antenna pattern; and (2) KLFH's above captioned contingent application (BPED-20060413ABX) to modify the ERP and the directional antenna pattern. KSBX's proposal requests waiver of the contour overlap provisions of 47 C.F.R. Section 73.509. For the reasons stated below, we deny KSBX's waiver request and dismiss both applications.

**Waiver Request**

An engineering study of the application reveals that KSBX's proposed facilities would result in prohibited contour overlap with second adjacent channel Station KMRO(FM) Camarillo, CA in violation of Section 73.509. Specifically, KSBX's interfering contour (100 dBu) causes interference to the protected contour (60 dBu) of KMRO. KSBX recognizes this violation and requests waiver of the contour overlap provisions of Section 73.509.

In support of its waiver request, KSBX claims that the waiver is necessary so it can overcome the deleterious effects of interference caused by co-channel station KPBS-FM, San Diego, CA to its currently licensed facilities. KSBX states that its engineering counsel had advised the station that the nature of the phenomenon is atmospheric interference caused by ducting created by a temperature inversion layer between the KPBS transmitter site and the Santa Barbara-Ventura area of the Pacific coast. KSBX has provided a three month signal measurement study of two

Tijuana, Mexico stations in Santa Barbara, CA that indicated high signal variability. KSBX believes that the interference has increased since KPBS began operating with facilities authorized by BMPED-20010321ABF.<sup>1</sup>

KSBX also states that the proposal itself will cause *de minimis* contour overlap with KMRO. Specifically, KSBX claims that the overlap area consists of 4.14 square kilometers or 0.083% of the land area served by KMRO's 60 dBu protected contour. Additionally, KSBX states that the proposed 100 dBu interfering contour overlap area would cover 65 persons, which is only 0.0046% of the population covered by KMRO's service contour. Using the signal strength ratio method, KSBX believes the actual interference is reduced to 0.62 square kilometers with zero population in the interference area. Furthermore, KSBX provides a letter of consent from KMRO. Finally, KSBX 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. Accordingly, KSBX believes that the waiver is warranted in this instance.

### **Discussion**

We disagree. While KSBX may, at times, be experiencing reception difficulties due to propagation anomalies, such disturbances to FM reception caused by changing atmospheric conditions are not uncommon occurrences in West Coast regions, as well as other areas of the country.<sup>2</sup> Numerous FM broadcast stations on the Gulf Coast, in the Great Lakes Region, and other areas face similar reception problems within their respective service areas. Therefore, KSBX's situation is not unique. Furthermore, the Commission has clearly rejected ducting as a basis for granting waivers of the rules.<sup>3</sup> Thus, this propagation phenomenon does not provide sufficient justification to warrant waiver.

KSBX's supplemental showing containing signal reception measurements in Santa Barbara is also not compelling to justify a waiver of the rule. The reception measurements were taken at a single point in Santa Barbara. In order for such a survey to be statistically valid, it must present data acquired at points evenly distributed throughout the service area. The methodology used by KSBX permits applicants to "cherry pick" an observation point to artificially magnify or diminish data measurements as necessary. For this reason, the Commission has traditionally rejected measurements or tape recordings taken at preselected points. While the results are useful in establishing reception difficulties at the point selected, they do not persuasively document the extent of interference claimed in the application.

While requests for waivers of second- and third-adjacent channel overlap for stations are individually appealing due to the relatively large area and population served by the existing station as compared to the small area receiving prohibited overlap (and hence interference), the

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<sup>1</sup> KPBS's license (BLED-20050803ABE) was filed on August 3, 2005 and granted December 19, 2005.

<sup>2</sup> See *First Report and Order*, Docket 14185, 23 RR 1801, 1819 (1962)

<sup>3</sup> *In re Application of ECI License Company, L.P. for minor change in Licensed Facilities, Station WYUU(FM), Safety Harbor, Florida, Memorandum Opinion and Order*, 11 FCC Rcd 3545 (1996); affirmed by *D.C. Cir Court*, Case No. 96-1122, December 26, 1996, 106 F.3d 442.

requests lose their appeal when assessed using the Commission's allocation plan for noncommercial educational FM stations. Allowing applicants to create new prohibited contour overlap effectively nullifies the protection to noncommercial educational FM station's 60 dBu protected service areas as mandated by Section 73.509. In particular, the affected station would lose service area and population served without receiving any benefit in return. This interference interrupts the continuity of existing service provided by KMRO throughout its protected service area, and thus diminishes the quality of FM service provided by that station. Over time, the grant of numerous similar waivers would degrade the quality of existing FM reception from stations throughout the entire noncommercial educational FM band.<sup>4</sup>

Furthermore, KSBX's use of interference showings based on field strength ratios is 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 non-grandfathered 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, Section 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 Section 73.509 which prohibits the overlap of specified interfering and protected contours and avoids the anomalous results predicted by the ratio method.<sup>5</sup>

The fact that KMRO has agreed to receive the prohibited contour overlap does not warrant waiver of the rule. Section 307(b) of the Communications Act of 1934, as amended ("the Act"),<sup>6</sup> mandates that the "Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution to each of the same." Implicit in this statement is the fact that it remains the function of the Commission, not applicants or licensees, to establish definitions of protected service and to ensure that existing protected service is not degraded by interference.

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<sup>4</sup> This has been called the "swiss cheese" effect, where a station's protected service contour is punctured by "holes" of interference from multiple second- and third-adjacent channel FM stations. *Revision of FM Rules (Notice of Proposed Rulemaking)*, 21 RR 1655, 1674 (1961).

<sup>5</sup> "In the case of second and third adjacent channels, where the undesired signal can be stronger than the desired signal, 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).

<sup>6</sup> 47 U.S.C. § 307(b).

The Commission has stated that the public interest is not served by allowing applicants and licensees to negotiate among themselves which areas may receive interference. *See Open Media Corp.*, 8 FCC Rcd 4070 (1993). Therefore, since we cannot find that the public interest is served by this proposal, the consent of KMRO is of limited utility.

In view of the limited interference potential between second- and third-adjacent channel noncommercial educational FM stations, the Commission has granted waivers of Section 73.509 where 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, KSBX proposes to cause prohibited overlap and create new interference. Therefore, the requested waiver of Section 73.509 does not fall within that precedent. Accordingly, the applicant's request for waiver of 47 C.F.R. Section 73.509 will be denied.

### **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 your waiver request the "hard look" called for under the *WAIT* Doctrine, *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 Section 73.509 would be in the public interest.

Thus, KSBX's request for waiver of Section 73.509 IS HEREBY DENIED and its application BPED-20060413ABW IS HEREBY DISMISSED as unacceptable for filing. We note that the application was filed as part of a contingent application group with BPED-20060413ABX. Pursuant to 47 C.F.R. Section 73.3517(e), the dismissal of any one of the related applications as unacceptable will result in the dismissal of all the related applications. Therefore, Application BPED-20060413ABX IS HEREBY DISMISSED. These actions are taken pursuant to Section 0.283 of the Commissions Rules.<sup>7</sup>

Sincerely,



Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Garvey Schubert Barer  
Doug Vernier

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<sup>7</sup> 47 C.F.R. § 0.283.