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445 TWELFTH STREET, SW  
WASHINGTON, DC 20554

MEDIA BUREAU  
AUDIO DIVISION  
APPLICATION STATUS: (202) 418-2730  
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ENGINEER: GARY A. LOEHRS  
TELEPHONE: (202) 418-2700  
FACSIMILE: (202) 418-1410/1411  
MAIL STOP: 1800B3  
INTERNET ADDRESS: Gary.Loehrs@fcc.gov

California Black Chamber of Commerce  
2951 Sunrise Blvd #175  
Rancho Cordova, CA 95742

Re: KDEE-LP, Sacramento, CA  
Facility ID No. 123915  
California Black Chamber of Commerce  
File No. BMPL-20111220AGC

Dear Applicant:

This letter refers to the above-captioned application for a minor modification to a construction permit. KDEE-LP also requests waiver of the minor change relocation distance provisions of 47 C.F.R. § 73.870. For the reasons stated below, we deny KDEE-LP's waiver request and dismiss the application.

#### Waiver Request

An engineering study of the application reveals that the modification proposes to relocate the transmitter 23 kilometers away from that currently authorized. The *Second Report & Order* in MM Docket 99-25 established the definition of a "minor change" as it applies to LPFM applications.<sup>1</sup> The Commission stated that minor change applications would be limited to those specifying changes in site location of 5.6 kilometers or less. Thus, the application specifying a 23 kilometer change in site location violates 47 C.F.R. § 73.870. KDEE-LP recognizes this violation and requests waiver of the minor change distance provisions of § 73.870.

In support of the waiver request, the applicant states that they are required to vacate the current site as a result of foreclosure of the property. KDEE-LP considered four possible locations, all beyond the 5.6 kilometers limit. KDEE-LP claims that three of the possible sites are not financially feasible.

#### Discussion

The record before us does not present unique circumstances sufficient to justify grant of the waiver request. KDEE-LP has not cited any cases where the Commission has waived § 73.870 for similar reasons. The financial argument presented by KDEE-LP is not compelling. Furthermore, the Commission generally does not waive its rules for financial reasons. Accordingly, we conclude that waiver of § 73.870 is not warranted in this case.

When evaluating a request to relocate beyond that which is allowed as a minor change, we typically look at the availability of registered antenna structures within the allowed 5.6 kilometer radius. In this instance, a study using a 6 kilometer radius distance produced nineteen possible antenna locations. The registered structure search does not indicate the only possible locations, but only serves as a guide for the staff to determine the validity of a waiver request. LPFM stations have much more flexible siting

<sup>1</sup> See *In the Matter of Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 05-75, (rel. March 17, 2005).

alternatives available when compared to full service stations. LPFM station antennas are not required to locate on a registered structure and quite often are located on buildings, poles, and other non-registered structures. Therefore, it is our determination that KDEE-LP has not provided sufficient analysis within the allowed minor change distance area to show the unavailability of compliant locations.

## Conclusion

The Commission's rules may be waived only for good cause shown.<sup>2</sup> An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.<sup>3</sup> The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"<sup>4</sup> and must support its waiver request with a compelling showing.<sup>5</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>6</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>7</sup> However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>8</sup> KDEE-LP's request fails to present good cause for waiver of § 73.870. KDEE-LP has not shown sufficiently unique "special" circumstances, *i.e.*, rare and exceptional circumstances beyond its control to justify a waiver of § 73.870. Finally, we find that the facts and circumstances set forth in the justification are insufficient to establish that granting waiver of § 73.870 would be in the public interest.

Thus the request for waiver of 47 C.F.R. § 73.870 IS HEREBY DENIED and application BMPL-20111220AGC IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Edna V. Prado  
Supervisory Engineer  
Audio Division  
Media Bureau

cc: Frontis Abney

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<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

<sup>4</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) ("*WAIT Radio*"). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

<sup>5</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>6</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup> *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) ("*Network IP*"); *Northeast Cellular*, 897 F.2d at 1166.