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February 20, 2013

Educational Media Foundation
5700 West Oaks Boulevard
Rocklin, CA 95765

In re: KXGM-FM, Hiawatha, IA
Educational Media Foundation
Facility ID No.: 85165
BPED-20121012AAS

Dear Applicant:

This letter is in reference to the above-captioned minor change application, filed by Educational Media Foundation ("EMF"), for noncommercial educational FM Station KXGM-FM to change the effective radiated power, transmitter location and antenna height. In the application, EMF requests a waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons stated below, we will grant the waiver request and the application.

Waiver Request

An engineering study of the application reveals that the proposed facility would receive prohibited contour overlap, in violation § 73.509, from the licensed facility (BLED-20020730AAB) of third adjacent channel Class A FM Station KRNL-FM, Mount Vernon, Iowa (Facility ID No. 13908) on Channel 209A. Specifically, KXGM's proposed 60 dBu protected contour would encompass the 100 dBu interfering contour of Station KRNL. EMF recognizes this violation and requests a waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, EMF states that KXGM's proposed facility would not cause interference to KRNL. EMF indicates that KXGM's proposed 60 dBu contour would cover 1,881 square kilometers with a population of 214,196 people. EMF further states that the total area of interference received is only 1 square kilometer with a population of 1,225 people. Finally, EMF states that the interference area is only 0.05% of KXGM's proposed 60 dBu contour and that the population within the interference area is only 0.57% of the population within the proposed 60 dBu contour. EMF argues that significant service will be maintained by KXGM's proposed facility. EMF further argues that the overlap area is very small (less than 1%) and well within the scope of the Commission's waiver policy. Therefore, EMF argues that a waiver of § 73.509 is justified in this case. EMF cites *Educational Information Corporation*, 6 FCC Red 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances.

Discussion

EMF's request to receive the 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 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 the grant of the requested waiver would be in the public interest. Accordingly, Educational Media Foundation's request for waiver of 47 C.F.R. § 73.509 IS HEREBY GRANTED. Furthermore, Application File No. BPED-20121012AAS IS HEREBY GRANTED subject to the following condition:

Further modifications of FM Station KRNL-FM, Mount Vernon, Iowa (Facility ID No. 13908) will not be construed as a "*per se*" modification of KXGM-FM's facility. (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,

Arthur E. Doak

Arthur E. Doak
Senior Engineer
Audio Division
Media Bureau

cc: Wilkinson Barker Knauer, LLP

enclosure