

FEDERAL COMMUNICATIONS COMMISSION  
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World Radio Network, Inc.  
Box 3765  
McAllen, TX 78502

Re: KBNJ(FM); Corpus Christi, TX  
Facility ID No. 73748  
World Radio Network, Inc.  
BPED-20120911ABQ

Dear Applicant:

The staff has under consideration the above-captioned minor change application for channel upgrade from Class C3 to Class C2, with increased effective radiated power and antenna height above average terrain, at a new transmitter location. The application also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant KBNJ's waiver request and the application.

#### Waiver Request

An engineering review of the application reveals that it is violation of § 73.509 with respect to third-adjacent channel Class A license (BLED-19810922AG) for Station KTAI(FM), Kingsville, TX. Specifically, KBNJ's proposed protected contour (60 dBu) would completely encompass the interfering contour (100 dBu) of KTAI. KBNJ recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of its waiver request, KBNJ states that it will not cause interference to KTAI. KBNJ also believes that the total area of overlap, 1.6 square kilometers, constitutes 0.03% of the total area within KBNJ's 60 dBu service contour. In addition, KBNJ claims that the proposed facilities would increase its overall coverage area by 571 square kilometers (a 15% increase). Furthermore, KBNJ indicates that the proposed facilities will provide new service to an estimated 395,536 people, which is an increase of 7%. Finally, KBNJ 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. KBNJ states that it considers the affected area to be *de minimis*, and when considered along with the increased service area, KBNJ concludes that waiver of § 73.509 would be warranted in this case.

#### Discussion

KBNJ's request to receive 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 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 KBNJ's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20120911ABQ IS HEREBY GRANTED subject to the following condition:

Further modifications of KTAI(FM), Facility ID No. 65304, Kingsville, TX, will not be construed as a *per se* modification of KBNJ's construction permit BPED-20120911ABQ.  
(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,



Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau