

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12<sup>th</sup> STREET SW**  
**WASHINGTON DC 20554**

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**AUDIO DIVISION**  
**APPLICATION STATUS:** (202) 418-2730  
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March 15, 2013

Mr. Franklyn H. Mueller  
Board of Regents, Nevada System of Higher Education  
4505 Maryland Parkway Box 2010  
Las Vegas, NV 89154

In re: KUNV(FM), Las Vegas, NV  
Board of Regents, Nevada System  
of Higher Education  
Facility ID No.: 68921  
BPED-20130208ABR

Dear Mr. Mueller:

This letter is in reference to the above-captioned minor change application, filed by the Board of Regents, Nevada System of Higher Education ("NSHE"), for noncommercial educational FM Station KUNV(FM) to change the transmitter location, effective radiated power and antenna height. In the application, NSHE 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-20101104ACC) of second adjacent channel Class C1 FM Station KVKL(FM), Las Vegas, Nevada (Facility ID No. 88719) on Channel 216C1. Specifically, KUNV's proposed 60 dBu protected contour would completely encompass the 100 dBu interfering contour of Station KVKL.<sup>1</sup> NSHE recognizes this violation and requests a waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, NSHE states that the proposed 60 dBu contour encompasses an area of 14,650 square kilometers with a population of 1,912,344 people and that the presently licensed 60 dBu contour encompasses an area of 9,911 square kilometers with a population of 1,908,484 people. Therefore, the proposal would increase the coverage area by 4,739 square kilometers (47.8%) and increase the population served by 3,860 people. The applicant further states that KVKL's 100 dBu interfering contour covers 51 square kilometers (3.5% of the KUNV's proposed 60 dBu contour) with no population. NSHE states that KVKL's 100 dBu contour is in highly inaccessible mountainous terrain on land owned by the Bureau of Land Management. Therefore, NSHE contends that there is no possibility for KVKL's 100 dBu contour area to have any population in the future. NSHE argues that the overlap will not diminish KVKL's ability to serve the public's needs and it will not damage KVKL's interference free coverage area. Finally, NSHE states that the proposed move would serve the public interest because KUNV would increase its 60 dBu service without causing interference to any of KVKL's listeners.

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<sup>1</sup> By Construction Permit BPED-20100204ACO, granted July 16, 2010, KVKL was granted a waiver of § 73.509 to receive interference from KUNV.

## Discussion

NSHE's request to receive second 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, the Board of Regents, Nevada System of Higher Education's request for waiver of 47 C.F.R. § 73.509 IS HEREBY GRANTED. Furthermore, Application File No. BPED-20130208ABR IS HEREBY GRANTED subject to the following conditions

Further modifications of FM Station KVKL(FM), Las Vegas, Nevada (Facility ID No. 88719) will not be construed as a "*per se*" modification of KUNV's construction permit (BPED-20130208ABR). (*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  
Senior Engineer  
Audio Division  
Media Bureau

cc: Mr. Timothy A. Hunt

enclosure