

FEDERAL COMMUNICATIONS COMMISSION
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March 28, 2013

Mr. Ryan Broom
Yakima School District
104 N 4th Ave
Yakima, WA 98902

Re: KYVT(FM), Yakima, Washington
Yakima School District No. 7
Facility ID No. 74320
File No. BPED-20130228ALY

Dear Mr. Broom:

This letter is in reference to minor change application BPED-20130228ALY (the "Application") filed by Yakima School District No. 7 ("Yakima"), licensee of noncommercial educational ("NCE") FM station KYVT(FM), Yakima, Washington, requesting modification of the KYVT(FM) facilities. The Application proposes a new tower site, an increase in antenna height, and a decrease in effective radiated power. In order to permit the proposed changes, Yakima requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons discussed below, we grant Yakima's waiver request and the Application.

Waiver Request. An engineering review of the Application reveals that the proposed KYVT(FM) facilities would receive prohibited contour overlap from second-adjacent channel NCE FM station KYTR(FM), Union Gap, Washington, File No. BLED-20110602ACW, in violation of 47 C.F.R. § 73.509. Yakima recognizes this prohibited contour overlap in the Application and requests waiver of 47 C.F.R. § 73.509.

In support of its waiver request, Yakima states that the proposed KYVT(FM) facilities will increase the population and area within the KYVT(FM) 60 dB μ contour to 186,215 persons in 1,911.26 square kilometers of area.¹ This represents a net gain in population of 43,950 persons and a net gain in area of 1,352.50 square kilometers. Yakima asserts that the proposed KYVT(FM) facilities will not cause prohibited contour overlap to any authorized FM station, but they will receive second-adjacent channel overlap from KYTR(FM), Union Gap, Washington, within a 0.17 square kilometer area which contains no population according to the 2010 United States Census. This overlap constitutes only 0.1 percent of the area and none of the population within the proposed KYVT(FM) 60 dB μ contour. Finally, Yakima 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, argues that the overlap area is small and the increased service is substantial, and concludes that waiver of 47 C.F.R. § 73.509 is warranted in this case.

¹ According to the Application, there are 558.76 square kilometers area and 142,265 persons (2010 United States Census) within the licensed KYVT(FM) 60 dB μ contour.

Discussion. Yakima'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.

In light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

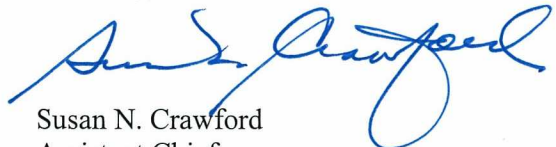
Conclusions/Actions. When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded Yakima's request for waiver of 47 C.F.R. § 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 are sufficient to establish that grant of the requested waiver would be in the public interest.

Accordingly, Yakima's request for waiver of 47 C.F.R. § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20130228ALY IS HEREBY GRANTED subject to the following condition:

Future modifications of the facilities of station KYTR, Union Gap, Washington, Facility ID No. 175692, will not be construed as *per se* modifications of KYVT(FM) construction permit BPED-20130228ALY.
(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,



Susan N. Crawford
Assistant Chief
Audio Division
Media Bureau

cc: Yakima School District No. 7
Martin Gibbs