

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, SW
WASHINGTON, DC 20554

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio/

MAY 03 2013

ENGINEER: Darrell E. Bauguess
TELEPHONE: (202) 418-2182
FACSIMILE: (202) 418-1410/1411
MAIL STOP: 1800B3
INTERNET ADDRESS: Darrell.Bauguess@fcc.gov

Divine Mercy Broadcasting
9526 Albert Way S.E.
Moses Lake, WA 98837

Re: KDMB(FM), Moses Lake, WA
Facility ID No. 174689
Divine Mercy Broadcasting
File No. BMPED-20121024ACW

Dear Applicant:

The staff has under consideration the above-captioned minor change application to modify the effective radiated power, height, and location. KDMB also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant KDMB's waiver request and the application.

Waiver Request

An engineering review of the application reveals that it is in violation of 47 C.F.R § 73.509 with respect to second-adjacent channel Class A license (BLED-19970512KC) for KMLW(FM), Moses Lake, WA. Specifically, the proposed protected contour (60 dBu) would receive prohibited overlap from KMLW's interfering contour (100 dBu). KDBM recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of its waiver request, KDBM states that it will not cause interference to KMLW. KDMB also claims that the interference area is only 24.3 square kilometers of the station's proposed 60 dBu service area and contains a population of only 66 people. In addition, KDMB states that the proposed facilities service area would increase by 1,326 square kilometers (a 37.3% increase) and population by 4,032 persons (a 6.1% increase). Finally, KDMB 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. KDMB states that it considers the affected area as very small when considered along with the increased service area, and concludes waiver of § 73.509 was warranted in this case.

Discussion

KDMB'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 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 are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, KDMB's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BMPED-20121024ACW IS HEREBY GRANTED subject to the following condition:

Further modification of KMLW, (facility ID No. 43702), Moses Lake, WA will not be construed as a *per se* modification of KDMB's authorization. (*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,



Edna V. Prado
Supervisory Engineer
Audio Division
Media Bureau

cc: Stuart W. Nolan, Esq.
Stephen Gajdosik