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Re: KRTU-FM, San Antonio, Texas
Trinity University
Facility ID No. 68128
File No. BPED-20130516AOC

Dear Counsel:

This letter is in reference to minor change application BPED-20130516AOC (the "Application") filed by Trinity University ("Trinity"), licensee of noncommercial educational ("NCE") FM station KRTU-FM, San Antonio, Texas, requesting modification of the KRTU-FM facilities. The Application proposes an upgrade from class C3 to class C2 with a corresponding increase in antenna height and maximum effective radiated power using a directional antenna. In order to permit the proposed changes, Trinity requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons discussed below, we grant Trinity's waiver request and the Application.

Waiver Request. An engineering review of the Application reveals that the proposed KRTU-FM facilities would receive prohibited contour overlap from licensed second-adjacent channel NCE FM station KZLV(FM), Lytle, Texas, File No. BLED-20021002ACB, in violation of 47 C.F.R. § 73.509. Trinity recognizes this prohibited contour overlap in the Application and requests waiver of 47 C.F.R. § 73.509.

In support of its waiver request, Trinity states that the proposed KRTU-FM facilities will increase the population and area within the KRTU-FM 60 dBu contour to 1,895,904 persons in 7,923 square kilometers of area.¹ This represents a 46 percent net gain in population and a 557 percent net gain in area coverage. Trinity asserts that the proposed KRTU-FM facilities will not cause prohibited contour overlap to any authorized FM station, but they will receive second-adjacent channel overlap from KZLV, within a 91 square kilometer area which contains 7,581 persons. This second-adjacent overlap area represents 1.15 percent total land area and 0.4 percent total population within Trinity's proposed 60 dBu contour. Finally, Trinity 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 1,423 square kilometers area and 1,301,102 persons within the licensed KRTU-FM 60 dBu contour.

Discussion. Trinity'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.

Conclusion. 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 Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded Trinity'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, Trinity's request for waiver of 47 C.F.R. § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20130516AOC IS HEREBY GRANTED subject to the following condition:

Future modification of the facilities of station KZLV(FM), Lytle, Texas, Facility ID No. 66441, will not be construed as *per se* modification of KRTU-FM's construction permit BPED-20130516AOC.
(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 Division Chief
Audio Division
Media Bureau

cc: Trinity University
Jeremy D. Ruck