

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In reply refer to:  
1800B3-DEB/IB

October 25, 1996

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In re: KSDS, San Diego, CA  
San Diego Community College District  
BPH-940802MA

Gentlemen:

This letter is in reference to the above-captioned application filed by San Diego Community College District ("SDCCD") for its noncommercial educational station KSDS, San Diego, CA. The application proposes to increase KSDS' facilities from Class A to Class B. A petition to deny has been filed on behalf of Bay City Television, Inc. ("Bay City"), which has a contract with the licensee of Mexican Channel 6 television station XETV, Tijuana, Mexico.

For the reasons set forth below, we deny the petition to deny. We also require the submission of a technical amendment to provide protection to a Mexican FM allotment, as explained below.

**Interference to Reception of Channel 6 TV Station XETV, Tijuana, Mexico**

**The Petition to Deny.** Bay City's petition to deny alleges that the proposal for KSDS fails to provide the protection to Channel 6 television station XETV required by 47 CFR § 73.525. Bay City believes that, if KSDS commences with the facilities proposed, "massive interference" affecting "three quarters of a million U.S. residents" will be caused to reception of XETV in San Diego, CA. This interference will fall wholly within the United States. XETV is said to be one of six commercial television stations in the San Diego Area of Dominant Influence, and provides Fox TV network English-language programming to the market. Bay City contends that this loss of service "would *not* satisfy the public interest, convenience, and necessity . . . prescribed by

Section 309 of the Communications Act". Bay City states that a "curtailment of service is not in the public interest, citing *Hall v. U.S.*, 237 F.2d 567, 577 (D.C. Cir. 1956). Bay City also notes that the Commission has already granted authority for cross-border transmissions of programming to three Mexican TV stations, including XETV, and therein acknowledged the service these stations provide to U.S. residents in the border zone (*see Fox Television Stations, Inc.*, FCC 94-277, 10 FCC Rcd 4055 (1994)), and has elsewhere counted foreign stations in the definition of a market (citing *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387, 6395 (1992)). Lastly on this subject, Bay City claims that a grant of this application would violate Article 1202 of the *North American Free Trade Agreement* (NAFTA); Dec. 17, 1992, U.S.-Can.-Mex, H.R. Treaty Doc No. 159, 103rd Cong., 1st Sess. (1993).

**Opposition to Petition to Deny.** SDCCD's opposition to the petition to deny states that Bay City lacks standing to file a petition to deny. SDCCD points out that Bay City is not the licensee of XETV, but rather a "marketing representative." SDCCD further points out that XETV is neither licensed to serve San Diego or the U.S., but rather the Mexican community of Tijuana. SCCD notes that Bay City has cited no case involving radio and television licensees of different countries. SDCCD contends that Bay City or the Mexican licensee of XETV would only have standing to file a petition to deny based on a treaty provision. SDCCD holds that the only "treaty" applicable to FM broadcast stations in the border zone is the *1992 Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Service in the Band 88 - 108 MHz*, Dept. of State No. 95-147, 1995 WL 450465 (Treaty) (hereafter "*U.S.-Mexican Agreement*"). SDCCD emphasizes that NAFTA does not apply to broadcast stations.

**Discussion.** We agree with SDCCD that Bay City does not have standing to file a petition to deny on the ground of electrical interference. 47 CFR § 73.525, which is a U.S. rule designed to prevent interference from U.S. FM stations to reception of U.S. Channel 6 television stations, does not apply to foreign Channel 6 or FM stations. Situations involving conflicts between a U.S. broadcast station and a foreign broadcast station are handled consistent with the treaties governing such operation. Interference standards for FM broadcast stations, including noncommercial educational U.S. stations, are governed by the *U.S.-Mexican Agreement*, which contains no provisions for an FM station in one country to protect the coverage of a television station on the opposite side of the border from where the TV station is licensed. Consequently, we find that the proposal does not violate either § 73.525 or the *U.S.-Mexican Agreement* insofar as XETV is concerned. Nor does NAFTA confer any standing on Bay City, since Section 1202 of NAFTA does not apply to broadcasters.

Bay City's public interest argument relies heavily on the FCC's decision in *Fox Television Stations*, 10 FCC Rcd 4055 (1995). However, that case was reversed and remanded on appeal. *Channel 51 of San Diego, Inc. v. FCC*, 79 F.3d 1187 (D.C.Cir. 1996).

Finally, we note that more U.S. radio listeners will receive service from a U.S. station if KSDS increases its service area. Such an increase serves the public interest. Accordingly, for all of the foregoing reasons, this portion of Bay City's petition to deny will be denied.

## **Protection of the Tecate, Mexico Channel 201A FM Allotment**

**Comments from the Parties.** Bay City's petition to deny also alleges that the facilities proposed by KSDS will not provide the protection required by the *U.S.-Mexican Agreement* with respect to the first-adjacent channel allotment on Channel 201A at Tecate, Mexico. However, SDCCD believes that the facilities specified in its application comply with the terms of the agreement.

**Discussion.** The Commission's International Bureau has reviewed the submissions of the parties, and has consulted with Mexico to secure approval for an upgraded KSDS operation. While Mexico did not concur with the KSDS proposal before us, it did agree to permit KSDS to operate with an ERP no greater than 4.37 kW at 100 meters HAAT (or the equivalent) in the direction of the Tecate allotment (at 120.1° for KSDS' proposed transmitter site). Because the facilities proposed by SDCCD exceed this limitation, an amendment to reduce ERP toward Tecate must be filed.

### **Conclusion**

Accordingly, Bay City's petition to deny IS DENIED insofar as it pertains to interference to reception of XETV in the U.S., and IS GRANTED with respect to the Tecate, Mexico allocation to the extent that an amendment is required to meet the Mexican-approved power limit. SDCCD must submit an amendment to application BPED-940802MA within 30 days of the date of this letter to modify its technical proposal. Further action on this application will be withheld for a period of 30 days from the date of this letter to afford SDCCD an opportunity to provide the required information. Failure to respond in this time period will result in the application being dismissed for failure to prosecute pursuant to 47 CFR § 73.3566(b). SDCCD should be aware that any amendment or other filing must be submitted in triplicate, must be signed in the same manner as the original application, and should contain a copy of this letter to facilitate processing.

These actions are taken pursuant to delegated authority under 47 CFR § 0.283.

Sincerely,

Dennis Williams  
Assistant Chief  
Audio Services Division  
Mass Media Bureau

cc: Radio Station KSDS  
: Hammett & Edison  
: Kessler & Gehman Associates, Inc.