

2-BY Section

FEDERAL COMMUNICATIONS COMMISSION

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MAILED
JUL 24 2007
FCC MEDIA SERVICES

In re: KFDN(FM), Lakewood, CO
Facility ID# 83535
Educational Media Foundation ("EMF")
BPED-20070507AFA

Dear Applicant:

This letter is in reference to the above-captioned minor change application to modify effective radiated power and class. KFDN also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant KFDN's waiver request and application.

Waiver Request

An engineering study 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-1807) for KGNU-FM, Boulder, CO. Specifically, the proposed protected contour (60 dBu) would receive prohibited overlap from the interfering contour (100 dBu) of KGNU-FM. KFDN recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, KFDN states that it will not cause interference to KGNU-FM. KFDN also believes that the total area of overlap constitutes only 0.28% of the area within KGNU-FM's 60 dBu contour. In addition, KFDN claims that the proposed facilities would increase its overall coverage area by 1,353 square kilometers (a 59% increase). Furthermore, KFDN indicates that the proposed facilities will provide new service to an estimated 267,314 persons, which is an increase of 14%. Finally, KFDN 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. KFDN considers the affected area to be *de minimis*, and when considered along with the increased service area, KFDN concludes that waiver of § 73.509 is warranted in this case.

Discussion

KFDN's request to receive third-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 justifications are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, KFDN's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20070507AFA IS HEREBY GRANTED subject to the following condition:

Further modifications of KGNU-FM (Facility Id# 6512), Boulder, CO, will not be construed as a *per se* modification of KFDN's construction permit (BPED-20070507AFA). (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 Chief
Audio Division
Media Bureau

cc: David D. Oxenford, Esq.