

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APR 3 2 37 PM '90
MAR 26 1990

IN REPLY REFER TO:

8920-DEB

Pacific and Southern Company, Inc.
5050 Murphy Canyon Road
San Diego, California 92123

KSWV; San Diego, CA
In re: Pacific and Southern Co., Inc.
BMLH-890510KA

Gentlemen:

This letter is in reference to the above-captioned application to license the former main facility as an auxiliary facility.

Your application requests a waiver of 47 CFR § 73.1675(a), which prohibits the 1 mV/m contour of an auxiliary facility from exceeding the 1 mV/m contour of a main facility. Maps provided with your application show that in areas to the east, your auxiliary's 1 mV/m contour exceeds the main facility's 1 mV/m contour by up to 20 km, using the standard contour prediction method. You include the results of an analysis to show the limit of line-of-sight coverage from the auxiliary site, in order to demonstrate that the overlap will not be as great as predicted by the standard method. You indicate that parts of this overlap area lie within the Cleveland National Forest, and that only 8300 people reside within the overlap area. Finally, you indicate that the present main site cannot be used for an auxiliary operation due to local regulations. Consequently, you believe waiver of 47 CFR § 73.1675(a) is warranted.

When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such an action. Rio Grande Family Radio Fellowship, 406 F2d 644 (D.C. Cir. 1968). We have afforded your waiver request the "hard look" called for under the WAIT doctrine, WAIT Radio v. FCC, 418 F2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in your justification are insufficient to establish that grant of the requested waiver would be in the public interest.

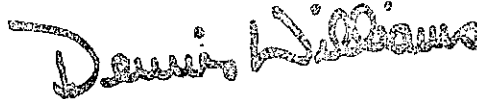
It has long been a Commission policy not to grant waiver of 47 CFR § 73.1675(a) to permit an auxiliary facility's 1 mV/m contour to exceed the main facility's 1 mV/m contour. Such facilities are not permitted in order to limit the interference potential to other stations from auxiliary facilities. This restriction has recently increased in importance due to the Commission's adoption of limited contour overlap provisions for the commercial FM service (47 CFR § 73.215). See the Report and Order in Docket 87-121, 4 FCC Rcd 1681, released February 22, 1989.

Your proposal does not attempt to demonstrate that compliance with this rule is not possible. Rather, it attempts to portray the overlap as being insignificant. Reduced power or a directional antenna could be employed from

this site in order to comply with 47 CFR § 73.1675(a). The fact that no substantial population resides in the overlap area is insufficient to justify grant of the requested waiver. Your line-of-sight coverage showing provides no data to show how the reduced coverage area was determined, nor does it consider that service may still be provided by the diffracted signal. Consequently, waiver of 47 CFR § 73.1675 is not warranted.

Accordingly, your request for waiver of 47 CFR § 73.1675 IS HEREBY DENIED. Program test authority to operate this proposed auxiliary facility IS HEREBY DENIED, and application BMLH-890510KA IS HEREBY DISMISSED pursuant to 47 CFR § 73.3566(a). These actions are taken pursuant to 47 CFR § 0.283.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Williams".

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

cc: Reed, Smith, Shaw & McClay
: Lohnes & Culver