

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

MEDIA BUREAU  
AUDIO DIVISION  
APPLICATION STATUS: (202) 418-2730  
HOME PAGE: [www.fcc.gov/media/radio/audio-division](http://www.fcc.gov/media/radio/audio-division)

JUN 01 2018

ENGINEER: GARY A. LOEHRS  
TELEPHONE: (202) 418-2700  
FACSIMILE: (202) 418-1410/1411  
MAIL STOP: 1800B3  
INTERNET ADDRESS: [Gary.Loehrs@fcc.gov](mailto:Gary.Loehrs@fcc.gov)

Centro De Fe Y Avivamineto del Santo Espiritu Inc.  
8230 Antoine Dr.  
Houston, TX 77088

Re: KCDE-LP, Houston, TX  
Facility ID No. 193958  
Centro De Fe Y Avivamineto del Santo  
Espiritu Inc.  
File No. BMPL-20180503ABG

Dear Applicant:

This is in reference to the above application proposing a major change of transmitter location. For the reasons set forth herein, we will dismiss the application.

The *Second Report & Order* in MM Docket 99-25 established the definition of a "minor change" as it applies to LPFM applications.<sup>1</sup> The Commission stated that minor change applications would be limited to those specifying changes in site location of 5.6 kilometers or less. Thus, the instant application specifying a 8.1 kilometer change from the current construction permit site, BMPL-20180307AAV, and a 9.4 kilometer change from the original construction permit site, BNPL-20131114BXE, violates Section 73.870 of the Commission's Rules.<sup>2</sup> KCDE-LP recognizes this violation and submits a waiver request with no justification. The record before us does not present unique circumstances sufficient to justify grant of the waiver request. A move beyond 5.6 kilometers can only be accomplished during a major change/new station filing window. We conclude that waiver of Section 73.870 is not warranted in this case.

The Commission's rules may be waived only for good cause shown.<sup>3</sup> An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.<sup>4</sup> The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"<sup>5</sup> and must support its waiver request with a compelling showing.<sup>6</sup> The Commission may exercise its

---

<sup>1</sup> See *In the Matter of Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 05-75, (rel. March 17, 2005).

<sup>2</sup> 47 C.F.R. § 73.870.

<sup>3</sup> 47 C.F.R. § 1.3.

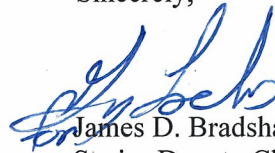
<sup>4</sup> See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

<sup>5</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct.

discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>7</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>8</sup> However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>9</sup> KCDE-LP's request fails to present good cause for waiver of Section 73.870. KCDE-LP has not shown sufficiently unique "special" circumstances, *i.e.*, rare and exceptional circumstances beyond its control to justify a waiver of Section 73.870.

Accordingly, in light of the above, application BMPL-20180503ABG is unacceptable for filing and IS HEREBY DISMISSED. These actions are taken pursuant to Section 0.283 of the Commission's rules.<sup>10</sup>

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

---

461 (1972) ("WAIT Radio"). *See also Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

<sup>6</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>7</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Northeast Cellular").

<sup>8</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>9</sup> *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) ("Network IP"); *Northeast Cellular*, 897 F.2d at 1166.

<sup>10</sup> 47 C.F.R. § 0.283.