



Federal Communications Commission
Washington, D.C. 20554

July 30, 2018

In Reply Refer to:
1800B3-CEG

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In re: **KCEI(FM), Red River, NM**
Facility ID No. 82299
File No. BPED-20170714AAV

Dear Counsel:

We have before us the above-referenced application for a minor change in the licensed facilities of noncommercial educational (NCE) station KCEI(FM), Red River, New Mexico (Modification Application), filed by Cultural Energy on July 14, 2017. Cultural Energy seeks to reduce the effective radiated power (ERP) of KCEI from 1.3kW to 1.0kW and to reclassify KCEI from Class C1 to Class C2, with no change in antenna location or directional pattern.¹ In addition, Cultural Energy requests a waiver of Section 73.515 of the Commission's Rules (Section 73.515 or NCE community coverage rule), which requires that an NCE station cover at least 50 percent of its community of license or reach 50 percent of the population within the community with a minimum field strength of 60 dB μ .² The Modification Application is unopposed. For the reasons set forth below, we deny the Waiver Request and dismiss the Modification Application for failure to satisfy the NCE community coverage rule with respect to its licensed community of Red River, New Mexico.

In the Waiver Request, Cultural Energy states that “[d]ue to insistence by the U.S. Forest Service, Cultural Energy is forced to reduce the ERP of KCEI to 1.0kW . . . [which] will make it impossible to cover 50% or more of Red River, the community of license, with an FCC 60 dB μ contour.”³ No further explanation or justification of a community coverage waiver is provided. We note that KCEI is the only full power radio station licensed to Red River.

The Commission's rules may be waived for good cause shown.⁴ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.⁵ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”⁶ and must support its waiver request with a compelling showing.⁷ Waiver is

¹ Modification Application, Attach. 15 at 2 (Waiver Request).

² 47 CFR § 73.515 (“The transmitter location shall be chosen so that, on the basis of effective radiated power and antenna height above average terrain employed, a minimum field strength of 1 mV/m (60 dBu) will be provided over at least 50 percent of its community of license or reach 50 percent of the population within the community.”).

³ Waiver Request at 2.

⁴ 47 CFR § 1.3.

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*).

⁶ *WAIT Radio*, 418 F.2d at 1157.

appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁸

When the Commission adopted the NCE community coverage rule, it acknowledged that many NCE stations operate at low power levels and/or with limited financial resources, as a result of which they may not be able to comply with the 70 dB μ commercial FM station principal community coverage requirement.⁹ Accordingly, the Commission imposed a requirement that an NCE FM station operating on a reserved channel must provide a predicted 60 dB μ signal to at least 50 percent of its community of license. In this way, the Commission balanced its “mandate under Section 307(b) of the Act with the service, technical, and financial realities of operating NCE FM stations.”¹⁰ Because the NCE community coverage rule already provides “flexibility in siting facilities and reaching target audiences,”¹¹ the Commission has previously denied requests for waiver of this rule.¹²

In this case, we find that Cultural Energy has failed to plead with particularity facts and circumstances that would warrant departure from the NCE community coverage rule. Cultural Energy’s bare allegation that the Forest Service has insisted that it reduce power does not establish special circumstances, a lack of rule-compliant alternatives, or that the public interest would be served by departure from the rule. As the Commission has stated many times, “[t]he association of a broadcast station with a community of license is a basic tenet of the Commission’s allocation scheme for broadcast stations.”¹³ Therefore, we deny Cultural Energy’s waiver request and dismiss the Modification Application for failure to comply with Section 73.315 of the Rules.

Conclusion/Actions. For the reasons stated above, Cultural Energy’s request for waiver of 47 CFR § 73.515 IS HEREBY DENIED and the Modification Application filed on July 14, 2017 (File No. BPED-20170714AAV), IS DISMISSED.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

⁷ *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)).

⁸ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

⁹ *Technical Streamlining NPRM*, 13 FCC Rcd at 14875; *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 21649, 21670, para. 42 (2000).

¹⁰ *Id.*

¹¹ *Id.*

¹² See, e.g., *Christopher D. Imlay, Esq.*, Letter, 20 FCC Rcd 11977, 11980 (2005).

¹³ *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules In Parts 73 and 74 of the Commission’s Rules*, First Report and Order, 14 FCC Rcd 5272, 5278 n.24 (1999).