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January 10, 2011

Charles R. Naftalin, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006-6801

In Re: Christyahna Broadcasting Inc. (CBI)
NEW(AM), Lemon Grove, California
Facility Identification Number: 160820
File Number: BNP-20070926AMO

Dear Mr. Naftalin:

This letter refers to the above-captioned application filed by CBI for a new station at Lemon Grove, California,¹ and the November 18, 2009, amendment, which included a request for waiver of 47 C.F.R. Section 73.24(i). We will deny the waiver request and allow CBI to amend.

47 C.F.R. Section 73.24(i) requires AM stations to provide interference free service to 100% of a station's community of license during daytime hours. A preliminary review of the amended application reveals that the proposed 5.0 mV/m daytime contour encompasses 81.3 percent of Lemon Grove, in violation of Section 73.24(i). CBI acknowledges this shortcoming and requests a waiver of Section 73.24(i) in its application. In support of its waiver request, CBI claims that the Commission recognizes the 80% coverage as substantial coverage compliance by citing the John R. Hughes decision and the grant of the KCBQ(AM), San Diego, California application.²

When an applicant seeks a waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action.³ Accordingly, we have afforded the waiver

¹ The application is a "singleton" being studied pursuant to the Commission's August 26, 2004 Public Notice listing non-mutually exclusive applications in AM Auction No. 84.

² In the John R. Hughes decision, 50 Fed. Reg. 5679(1985) (the nighttime coverage of 80 percent of a community constitutes "substantial coverage"). In the KCBQ(AM) case, the staff granted the 73.24(i) waiver for a 96% daytime coverage.

³ See *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1986).

request the "hard look" called for under the WAIT doctrine,⁴ but find that the facts and circumstances set forth in the justification is insufficient to establish that waiver of 73.24(i) is in the public interest. CBI did not cite any cases in which waivers of Section 73.24(i) were granted for a new AM station with less than 100% daytime coverage, nor has the applicant adequately addressed all other reasonable alternatives. The Commission has affirmed that the 80% "substantial coverage" policy does not apply for the daytime AM operations.⁵ Furthermore, the KCBQ(AM) application was granted due to the negligible 4% difference and multiple other factors were considered at that time, such as the loss of the existing transmitter site, and the Interference Reduction Agreement with another station.

Accordingly, CBI's request for a waiver of 47 C.F.R. Section 73.24(i) is **HEREBY DENIED**. Further action on the subject application will be withheld for a period of thirty (30) days from the date of this letter to afford CBI time to amend. Failure to respond or file a curative amendment within this time period will result in the dismissal of the application pursuant to 47 C.F.R. Section 73.3568.

Sincerely,



Son Nguyen
Supervisory Engineer
Audio Division
Media Bureau

cc: Cynthia M. Jacobson, Carl T. Jones Corporation
Gerard A. Turro, President

⁴ See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)

⁵ See *MO&O Review of the Technical Assignment Criteria for the AM Broadcast Service*, MM Docket No. 87-267, released April 29, 1993.