



Federal Communications Commission
Washington, D.C. 20554

September 20, 2006

In Reply Refer To:
1800B3-RDH

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Howard J. Barr, Esq.
Womble Carlyle Sandridge & Rice, PLLC
Seventh Floor
1401 Eye Street, NW
Washington, DC 20005

Aaron A. Hurowitz, Esq.
Wilmer, Cutler, Pickering, Hale and Door, LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006

Todd D. Gray, Esq.
Dow, Lohnes and Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, DC 20036-6802

Re: KMIH(FM), Mercer Island, Washington
Facility ID: 41205
BPED-20060327AIM

KPLU(FM), Tacoma, Washington
Facility ID: 51199

KNHC(FM), Seattle, Washington
Facility ID: 59526

Dear Counsel:

In 2004, the Media Bureau released a *Report and Order* which involved 24 FM channel allotments for radio stations in Oregon and Washington.¹ One of the actions in that case was to modify the license of Station KMCQ(FM) from Channel 283C3 at The Dalles, Oregon, to Channel 283C3 at Covington, Washington. Implementation of that reallocation would require Class D FM Station KMIH(FM), Mercer Island, Washington, which is licensed to operate on Channel 283D, to cease operations. Mercer Island School District #400 (“Mercer Island S.D.”), the licensee of KMIH(FM), has sought reconsideration of the *Covington Report and Order*.

¹ *Arlington, The Dalles, Moro, Fossil, Astoria, Gladstone, Portland, Tillamook, Springfield-Eugene, Coos Bay, Manzanita and Hermiston, Oregon, and Covington, Trout Lake, Shoreline, Bellingham, Forks, Hoquiam, Aberdeen, Walla Walla, Kent, College Place, Long Beach and Ilwaco, Washington*, Report and Order, 19 FCC Rcd 12803 (2004)(the “*Covington Report and Order*”).

On March 27, 2006, several parties to the FM allotment proceeding filed a “Joint Request for Approval of Settlement Agreement” (“Joint Request”). The Joint Request proposed, among other things, the dismissal of the Mercer Island S.D. Petition for Reconsideration and the grant of a Mercer Island S.D. minor change application to specify operations on Channel 205D in lieu of Channel 283D. Pursuant to that Joint Request, Mercer Island S.D. filed the Channel 205D application (the “Application”) simultaneously with the Joint Request.²

Grant of the Application would result in KMIH(FM) causing second adjacent channel interference to KPLU-FM, Tacoma, Washington, and causing third adjacent channel interference to KNHC(FM), Seattle, Washington. Accordingly, grant of the Application would constitute a modification of the KPLU(FM) and KNHC(FM) licenses.³ The staff determined, however, that interference is predicted to occur only in the immediate vicinity to the KMIH(FM) transmitter site. Accordingly, on May 23, 2006, Media Bureau staff issued Orders to Show Cause to the licensees of KPLU(FM) and KNHC(FM) requiring them to show cause why the Commission should not grant the Application.

Both Pacific Lutheran University, licensee of KPLU(FM), and Seattle Public Schools, licensee of KNHC(FM) responded to the Orders to Show Cause. Neither licensee objected to the modification of their respective stations’ licenses by grant of the Mercer Island S.D. application. They both, however, asked that the Commission include a condition in the Mercer Island S.D. construction permit requiring Mercer Island, S.D. to resolve any complaints of actual interference from KMIH(FM) to the reception of their stations by listeners. Pacific Lutheran University also objected to any modification of the KPLU-FM license “that would infringe on PLU’s right to implement the construction permit it currently holds for KPLU-FM (File No. BPED-20060109ABR) which might be anticipated to cause greater interference to KMIH, or that would prevent PLU from making future changes in KPLU-FM’s facilities otherwise permitted by FCC rules because of any possible adverse impact on KMIH.”⁴ Similarly, Seattle Public Schools, while not opposing the Mercer Island S.D. modification application, “reserves the right” to oppose any future proposed changes to the facilities of KMIH(FM) that would increase the area of interference to KNHC(FM).⁵ By Response to Reply to Order to Show Cause dated September 15, 2006, Mercer Island S.D. has consented to the conditions requested by Pacific Lutheran University and Seattle Public Schools.

We will grant the Mercer Island S.D. minor modification application to specify operations on Channel 205D in lieu of Channel 283D. This will promote the public interest by allowing KMIH(FM) to continue operations that otherwise would have to be terminated. The construction permit also will include a condition which requires KMIH(FM) to eliminate promptly any interference it causes to stations KPLU-FM or KNHC(FM). In the event that such interference cannot be resolved promptly by the use of suitable techniques, KMIH(FM) will be required to cease operations.

² BPED-20060327AIM.

³ 47 U.S.C. §316. See *R&S Media*, 19 FCC Rcd 6300, 6306 (2004).

⁴ Pacific Lutheran University’s “Statement in Response to Order to Show Cause” at 1-2.

⁵ Seattle Public Schools’ “Reply to Order to Show Cause” at 1-2.

By this action we do not change the secondary status of Class D FM station KMIH(FM). Specifically, neither Pacific Lutheran nor Seattle Public Schools shall be required to protect KMIH(FM) in future facility applications. Furthermore, our action herein will not limit in any way Pacific Lutheran University's right to implement the construction permit it currently holds for KPLU-FM (BPED-20060109ABR).

Conclusion/Actions: Accordingly, IT IS ORDERED that Mercer Island School District #400's application for a minor change of facilities to specify operation on Channel 205D at Mercer Island, Washington (BPED-20060327AIM), IS GRANTED.

IT IS FURTHER ORDERED, that pursuant to the "Joint Request for Approval of Settlement Agreement," Mercer Island School District #400's "Petition for Reconsideration" filed with regard to the Report and Order in MB Docket No. 02-136, IS DISMISSED.

IT IS FURTHER ORDERED, that the license for FM radio Station KPLU-FM, Tacoma, Washington, IS MODIFIED as specified herein.

IT IS FURTHER ORDERED, that the license for FM radio Station KNHC(FM), Seattle, Washington, IS MODIFIED as specified herein.

IT IS FURTHER ORDERED that a copy of this *Letter* shall be sent by Certified Mail – Return Receipt Requested to:

Pacific Lutheran University, Inc.
121st and Park Avenue
Tacoma, Washington 98447

Todd D. Gray, Esq.
Dow, Lohnes and Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, DC 20036-6802
Counsel for Pacific Lutheran University

Seattle Public Schools
10750 30th Avenue, N.E.
Seattle, Washington 98125

Aaron A. Hurowitz, Esq.
Wilmer, Cutler, Pickering, Hale and Door, LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
Counsel for Seattle Public Schools

Mercer Island School District #400
9100 SE 42nd Street
Mercer Island, Washington 98040-4107

Howard J. Barr, Esq.
Womble Carlyle Sandridge & Rice, PLLC
Seventh Floor
1401 Eye Street, NW
Washington, D.C. 20005
Counsel for Mercer Island School District #400

J. Dominic Monahan, Esq.
Luvaas Cobb Richards & Fraser, PC
777 High Street
Suite 300
Eugene, Oregon 97401
Counsel for Mid-Columbia Broadcasting, Inc.

and

Mark N. Lipp, Esq.
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, NW
Suite 600
Washington, D.C. 20004
Counsel for First Broadcasting Company, L.P.

For additional information, please contact Roger Holberg or Peter H. Doyle of the Audio Division, Media Bureau.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle", written in a cursive style.

Peter H. Doyle
Chief, Audio Division
Media Bureau