



Federal Communications Commission  
Washington, D.C. 20554  
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In re: KWIF(AM), Culver City, CA  
Facility ID No. 161348  
File No. BMP-20190522AAJ  
**Informal Objection**

Dear Counsel:

This letter concerns the above-referenced application filed on May 23, 2019 (Application) by Levine/Schwab Partnership dba Schwab Multimedia LLC (Schwab) for a minor modification to the construction permit of new AM station KWIF(AM), Culver City, CA (KWIF or Station). The Application contains a request for waiver of Section 73.37(a) of the Commission's Rules. LBI Radio License LLC (LBI), licensee of second-adjacent channel station KVNR(AM), Santa Ana, CA, Facility ID No. 37233 (KVNR), filed an informal objection to the Application (Objection) on July 9, 2019.<sup>1</sup> For the reasons set forth below, we deny LBI's Objection and grant the Application.

**Background.** On November 2, 2016, the staff granted Schwab's application for a construction permit for a new AM station on 1500 kHz at Culver City, California. The Construction Permit BNP-20140715ABO authorized a four-tower directional antenna array – two towers for daytime service and four for nighttime service – with a nominal power of 0.12 kW daytime and 0.15 kW nighttime. In its Application, Schwab proposed to modify the Permit to change sites and modify the daytime and nighttime directional antenna systems specifying one existing tower and two additional towers employed in a three-tower system with different antenna patterns day and night. Schwab also requests a waiver of Section 73.37(c) of the Commission's Rules<sup>2</sup> (Rules) because of a 5 mV/m nighttime groundwave overlap with KVNR(AM).<sup>3</sup>

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<sup>1</sup> Schwab filed an Opposition to the Objection on July 16, 2019.

<sup>2</sup> 47 CFR § 73.37(c).

<sup>3</sup> Application, Exhibit 17, "KVNR Second Adjacent Waiver Request" (Waiver Request).

In its waiver request, Schwab notes the antenna site originally proposed in 2004 is no longer usable, and it is “virtually impossible” to build new towers in the Los Angeles area due to local opposition and real estate costs. However, “luckily” for Schwab, it found an existing site that is available, is zoned for broadcast towers, and will work for the Station.<sup>4</sup> Schwab states that the prohibited overlap will occur only at night, and argues that in the *AM Revitalization* proceeding, the Commission has proposed to change Section 73.37(a) of the Rules to eliminate the third adjacent protection entirely and to change the second adjacent to 25 mV/m.<sup>5</sup> Schwab notes that if those rules were in effect, the second-channel adjacent overlap would not be an issue, as the 25 mV/m contours of stations KWIF(AM) and KVNR(AM) do not overlap. It states that a reduction in power sufficient to eliminate the overlap would not allow KWIF(AM) properly to serve its community of license at night, and there is no other pattern configuration which will produce the required signal levels and not involve KVNR(AM) under the current Rules.<sup>6</sup>

In its Objection, LBI notes that “by (Schwab’s) own admission, the Schwab Application would cause impermissible nighttime groundwave overlap with KVNR.” LBI further states that, under Section 73.37(a) of the Commission’s current Rules, “no application will be accepted for a change of the facilities of an existing station if the proposed change would involve” a new overlap between the 5 mV/m contour of the applicant’s station and the 5 mV/m contour of a station operating on a second adjacent channel and the Application should be denied.<sup>7</sup> Finally, LBI argues that Schwab has not satisfied the “high standard”<sup>8</sup> for waiver or merit creating impermissible interference to KVNR(AM) because: (1) the Commission must evaluate applications under its existing Rules, and Schwab has offered no basis to believe that the FCC will adopt the proposed modification of the second-adjacent channel, given that the proposed rules were published over four years ago;<sup>9</sup> (2) the fact that the impermissible overlap occurs only at night is irrelevant under Section 73.37 of the Rules;<sup>10</sup> and (3) that “there is no other pattern configuration which will produce the required signal levels and not involve KVNR” is irrelevant, because Los Angeles is served by 93 radio stations and the Commission’s licensing scheme is designed to balance the public interest objective of facilitating diverse entrants in the market while ensuring that radio station operators receive the technical protections to which they are entitled under the Commission’s rules.<sup>11</sup>

In an Opposition to Informal Objection, Schwab notes that, although the rules have not been adopted yet, the lack of alternative tower sites, as well as the requirement to cover its city of license, put special importance on the grant of the waiver request to provide the city of Culver City its first audio service.<sup>12</sup> Schwab notes that it discussed the matter with FCC Staff and presents an email in which, “Schwab was encouraged by (Audio Bureau) senior Staff to submit this ... waiver request.”<sup>13</sup>

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<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.*, citing *Revitalization of the AM Radio Service, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry*, MB Docket 13-249, FCC 15-142, released October 23, 2015.

<sup>6</sup> Waiver Request at 1.

<sup>7</sup> Informal Objection at 2-3.

<sup>8</sup> *Id.* at 3, referencing 47 CFR § 1.925(b)(3), which is contained in the Part 1 Rules applicable to “Wireless Radio Services Applications and Proceedings.”

<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> Opposition at 3-4.

<sup>13</sup> *Id.* at 2 and Exhibit 1 (Email exchange between John C. Trent, Esq. and Son Nguyen, Supervisory Engineer, May 16, 2019, advising Schwab’s counsel to “file a waiver request and we [will] consider it.”).

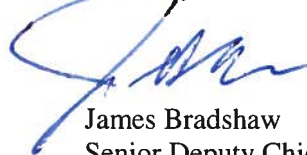
**Discussion.** Audio Division staff analyzed the 5 mV/m contours for nighttime operation of stations KVNR(AM) and KWIF(AM), applying the measured conductivity data submitted in KVNR(AM)'s license application BL-840917AL. Using this conductivity data,<sup>14</sup> the staff found that the proposed 5 mV/m nighttime contour does not overlap with KVNR(AM)'s 5 mV/m nighttime contour. Thus, the request for waiver of 73.37 is not needed and moot, and LBI's Objection will be denied.

**Further waivers.** Schwab asked for two further waivers, if appropriate. One is a waiver of Section 73.37 of the Rules concerning the overlap of station KWIF(AM) and KSPE(AM) falling over Catalina Island and other unpopulated islands near the Pacific coast of California. This matter was resolved by Commission issue of the original Construction Permit<sup>15</sup> and we find similar circumstances such that the waiver should continue in effect here.

Schwab further requests a waiver regarding Mexican station XEEBC, Ensenada, BN, Mexico and KWIF(AM), where the Mexican station overlaps KWIF(AM)'s 0.5 mV/m contour with its 0.025 mV/m contour in violation of Section 73.37(a) of the Rules.<sup>16</sup> We agree that such overlap is the consequence of a long salt-water propagation path, which the Commission has granted for similar requests in the past.<sup>17</sup> Accordingly, the request for waiver of Section 73.37 of the Rules concerning the overlap with Mexican station XEEBC is granted.

**Conclusion.** Accordingly, for the reasons stated above, the July 9, 2019 Informal Objection filed by LBI Radio License LLC IS DENIED and the application for minor modification of construction permit for Station KWIF(AM), Culver City, California (File number BMP-20190522AAJ), IS GRANTED.

Sincerely,



James Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

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<sup>14</sup> The ground conductivity data filed with BL-840917AL are: 10° radial: 5.0mS/m to 3.22km, 10.0mS/m to 6.44km, 5.0mS/m to 32.19km; 44.1° radial: 10.0mS/m to 24.14km, 5.0mS/m to 43.45km; 69.5° radial: 10mS/m to 6.76km, 8.0mS/m to 16.09mS/m, 1.5mS/m to 32.19km; 93.0° radial: 5.0mS/m to 19.31km; 144.9° radial: 10.0mS/m to 22.53km; on 180.0°: 15.0mS/m to 9.17km, 10.0mS/m to 19.31km; 232.5° radial: 15.0mS/m to 16.09km; 249.9° radial: 15.0mS/m to 24.14km; 280.0°: 8.0mS/m to 32.19km; 305.7° radial: 8.0mS/m to 32.19km, and 329.2° radial: 10.0mS/m to 32.19km.

<sup>15</sup> The FCC has determined that circumstances exist, causing overlays to occur at the islands despite the distances involved. *See New(AM), Culver City, California*, Letter Order Ref. 1800B3-JBS/TSN (MB Nov. 2, 2016) at 3 (waiver of overlap with KSPE(AM) granted because of *de minimis* population affected on Catalina and other unpopulated islands and where overlap is due to long salt-water paths) citing *John Hutton Corp.*, Memorandum Opinion and Order, 7 FCC 2d 168, 168, para. 2 (1967).

<sup>16</sup> 47 CFR § 73.37(a).

<sup>17</sup> *See, e.g., Larson-Irwin Enterprises (KOAR)*, Memorandum Opinion and Order, 6 FCC 2d 213 (1967) (waiver of Section 73.37 granted when the overlap involved occurred at great distances from the location of the station (approximately 87 to 127 miles) and was due to the high conductivity of long salt water paths).