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October 8, 2009

Chehalis Valley Educational Foundation
2401 NE Kresky Avenue
Unit A
Chehalis, WA 98532

In re: KACS(FM), Rainier, WA
Chehalis Valley Educational
Foundation ("CVEF")
Facility ID No.: 10685
BPED-20070813AAF

Dear Applicant:

This letter is in reference to the above-captioned minor change application to change the community of license, antenna site, effective radiated power, antenna height and class. The application was last amended on September 24, 2009. In the application, CVEF requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant the waiver request and application.

Waiver Request

An engineering study of the application reveals that the proposed facilities, as amended, would result in prohibited contour overlap with the licensed facilities (BLED-19910510KA) of second-adjacent channel Station KVTI(FM), Tacoma, Washington on Channel 215C1, in violation of § 73.509. Specifically, the proposed 60 dBu protected contour would be overlapped by the 100 dBu interfering contour of KVTI. CVEF recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, CVEF states that it will not cause interference to KVTI. CVEF also states that the proposed facility would encompass an area of 3,189 km^2 and a population of 421,996 people. This constitutes an increase in area of 119 % and an increase in population of 544 %. Furthermore, CVEF states that the interference area is only 1.5 % (47 km^2) of the station's proposed 60 dBu service area and only 5.5 % (23,290 people) of the total population. CVEF also states that no interference will occur within the proposed community of license (Rainier). CVEF cites *Educational Information Corporation,* 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances. CVEF argues that the overlap area is small and well within the scope of the Commission's waiver policy. Finally, CVEF believes that the significant increase in noncommercial service to the area justifies granting a waiver of § 73.509.

Discussion

CVEF's request to receive second-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that case it was stated that:

> The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

Conclusion

We have afforded the request for waiver of §73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justification is sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, CVEF's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20070813AAF, as amended September 24, 2009, IS HEREBY GRANTED subject to the following condition:

> Further modification of Station KVTI(FM), Tacoma, Washington (Facility ID No. 12068) will not be construed as a *per se* modification of KACS's construction permit (BPED-20070813AAF). (See Educational Information Corporation, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

Arthur E. Doak

Arthur E. Doak
Senior Engineer
Audio Division
Media Bureau

cc: Donald E. Martin, Esq.
Hatfield and Dawson

enclosure