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February 13, 2007

Educational Media Foundation
5700 West Oaks Boulevard
Rocklin, CA 95765

Huron Broadcasting, LLC
715 Broadway, Suite 320
Santa Monica, CA 90401

In re: KDKL (FM), Huron, CA
Educational Media Foundation
Facility ID No. 85850
Application BPED-20070119AHY

KZLA (FM), Riverdale, CA
Huron Broadcasting, LLC
Facility ID No. 86866
Application BPH-20070119AHU

Dear Applicants:

Educational Media Foundation and Huron Broadcasting, LLC (collectively "applicants") submitted contingent minor change construction permit applications on January 19, 2007. The application for KZLA proposes to change the community of license for that station from Huron to Riverdale, CA, and to change class via the "one-step" application process from Class A to B1. So that Huron, CA would not lose the only broadcast service licensed to that community, the applicants concurrently propose to change the community of license for KDKL, Coalinga, CA to Huron, CA, without technical changes to the existing licensed facilities of KDKL. According to the applicants, these changes comply with Section 307(b) of the Communications Act and merit approval.

Section 73.515 requires that a noncommercial educational FM station operating on Channels 201 to 220 provide a minimum field strength of at least 60 dBu over 50% or more of the community of license. Using the standard contour prediction method in Section 73.313(e), KDKL's 60 dBu service contour would not encompass ANY of Huron. The KDKL application acknowledges this situation, and provides a supplemental showing based on Longley-Rice techniques to demonstrate that, in fact, a signal strength of 60 dBu will be provided to all of Huron.

We are not persuaded by this analysis. In *Letter re KDAY (FM), Independence, CA*, DA 94-510, 9 FCC Rcd 2753 (1994), the staff denied a commercial FM construction permit application where the community of license lay outside the 54 dBu protected service contour of the proposed operation for KDAY. Although that applicant used a supplemental analysis to demonstrate that most of Independence would receive a signal strength in excess of 70 dBu, and that all of the community would have line-of-sight to the KDAY antenna, the staff yet denied the proposal. Noting that the KDAY proposal was the first instance known to the staff of a commercial station seeking to provide service to a community outside its protected service contour, the staff reasoned that

> [o]utside of this [protected service] contour, interference from other cochannel and adjacent channel stations can occur under our rules. It simply is not possible, under any rational allocations scheme, to protect FM stations to the point at which the signal is too weak to receive. Thus, the potential exists that another station could be authorized or modified which would not interfere with KDAY's 54 dBu protected service contour, but would interfere with KDAY's service to Independence.... KDAY would have no standing to contest any interference created in this manner, since the Commission's rules do not protect any service outside the ... protected contour.

The KDAY decision continues:

> The association of a broadcast station with a community of license is a basic tenet of the Commission's allocations scheme for broadcast stations. Section 307(b) of the Communications Act of of 1934, 47 U.S.C. § 307(b), mandates that the "Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution to each of the same." Implicit in this statement is a recognition that the Commission must protect such service to the community of license from interference from other stations. Moreover, the community coverage rule is designed to insure that the community of license receives a premium signal. *Lester H. Allen*, 17 FCC 2d 225, 226 (1969). In the present instance, such assurance cannot be given.

The KDAY decision continues that even had that applicant's supplemental analysis shown that the required coverage was provided to all of the community of license, the waiver request would still not have been found to be in the public interest. The staff summed up its position in explicit terms:

> Simply put, the Commission will not authorize a station to serve a community located outside its protected service contour, as predicted by the standard contour prediction method in § 73.313(e), since service to that community cannot be protected from interference under our rules.

Later, in MM Docket 98-93 the Commission acknowledged that the same public interest considerations apply to noncommercial educational FM stations, and adopted the Section 73.515 requirement that a station must provide at least 50% of its community of license with at least a 60 dBu strength signal.[1] And following this line of reasoning, the staff still more recently dismissed a noncommercial educational FM application where the community of license lay outside the station's protected service contour, despite the fact that the proposal would improve coverage toward that community.[2]

In the present instance, our analysis concludes that the 54 dBu interfering contour of first-adjacent channel station KQKL, Selma, CA already covers more than 50% of Huron, CA. Consequently, there is no amendment that Educational Media Foundation could file to increase the KDKL's 60 dBu service contour to encompass 50% or more of Huron as required by Section 73.515, absent a waiver of the contour protection rule, Section 73.509.[3] Compelling circumstances for a contour overlap waiver are not present here.[4] Accordingly, we cannot find that the KDKL application complies with the FCC's rules or serves the public interest, and consequently the application is unacceptable for filing and will be dismissed.

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[1] *See 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking,* MM Docket 98-93, FCC 98-117, 13 FCC Rcd 14849, 14875-76 (1998); *Second Report and Order*, MM Docket 98-93, FCC 00-368, 15 FCC Rcd 21649, 21669-70 (2000).

[2] *See Letter to Cedar Cove Broadcasting, Inc. re KKGN, Eaton, CO, Application BPED-20060414AAQ*, released August 31, 2006.

[3] It is noteworthy that the KDKL application did not attempt to quantify any actual interference that might be caused by KQKL's 54 dBu interfering contour within Huron. However, such an analysis would not have affected our decision in this letter.

[4] *See, e.g., Open Media Corporation*, 8 FCC Rcd 4070, 4071 (1993); *Educational Information Corporation (WCPE)*, 6 FCC Rcd 2207 (1991).

Additionally, we note that the KDKL application is prematurely filed. As stated in Paragraph 38 of the *Report and Order* in Docket 05-120, "[t]he procedural requirements for FM NCE applicants for change of community of license will become effective after approval [of Form 340] by OMB....Upon OMB approval, we will issue a Public Notice announcing the effective date of this rule."[5] As of the file date of this application, the Form 340 had not been approved by OMB nor announced by the staff as effective. Educational Media Foundation, licensee of KDKL, acknowledges this matter and requests waiver of the procedural requirement to permit the acceptance and grant of the KDKL and KZLA applications. However, given that the KDKL application is irreparably unacceptable for filing as covered above, any decision on this request will not affect the final outcome (dismissal) of this application. Consequently, we make no decision now on the merits of this waiver request, but reserve the right to address this waiver request should the applicants file a petition for reconsideration.

Accordingly, application BPED-20070119AHY for KDKL is unacceptable for filing and IS DISMISSED. As the KDKL application was filed as part of a contingent application group with KZLA's application BPH-20070119AHU, the KZLA application IS ALSO DISMISSED, pursuant to 47 CFR Section 73.3517(e). These actions are taken pursuant to 47 CFR Section 0.283. Please note that we have not performed a complete analysis on either application that could reveal additional deficiencies that could preclude acceptance of these applications.

Sincerely,

Dale E. Bickel
Senior Engineer
Audio Division
Media Bureau

cc: Davis Wright Tremaine, LLP
Darryl K. Delawder

[5] *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order*, MB Docket 05-210, FCC 06-163, 21 FCC Rcd 14212, released 11/29/2006 (71 FR 76208, 12/20/2006).