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Appaloosa Broadcasting Company, Inc.
288 South River Road
Bedford, NH 03110

In re: KIMX(FM), Nunn, CO
Facility ID #82007
Appaloosa Broadcasting Company, Inc.
("Appaloosa")
BMPH-20091230ABT

Dear Applicant:

This letter is in reference to: (1) the above-captioned minor change application BMPH-20091230ABT, to modify effective radiated power and transmitter site; (2) the February 19, 2010 Informal Objection filed by Christian Media, Inc.; and (3) all other related pleadings.

An engineering study of the application reveals that the proposed facility fails to provide adequate community coverage as required by Section 73.315 of the Commission's Rules.[1] Specifically, the proposed 70 dBu contour, using the standard contour prediction method in Section 73.313 of the Commission's Rules,[2] fails to cover at least 80 percent of the community of license of Nunn. CO. Appaloosa's application acknowledges this situation, and provides a supplemental showing based on Longley-Rice propagation methodology to demonstrate that, in fact, a signal strength of 70 dBu will be provided to all of Nunn, CO.

However, pursuant to *Letter re KDAY (FM), Independence, CA*, DA 94-510, 9 FCC Rcd 2753 (1994), Appaloosa's proposed 60 dBu protected contour must encompass the entire community of Nunn, CO. In *Letter*, 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:

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[1] 47 C.F.R. § 73.315
[2] 47 C.F.R. § 73.313

> [o]utside of this [protected service] contour, interference from other co-channel 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 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.

The engineering review reveals that Appaloosa's proposed 60 dBu contour fails to encompass the community of Nunn, CO. Thus, in order to use a supplemental Longley Rice showing to demonstrate adequate community coverage, Appaloosa must amend the application to show that its proposed facility would cover the entire community of license with its protected 60 dBu service contour. The staff will not review a supplemental Longley Rice coverage showing until this requirement is met.

Pursuant to Section 73.3522(c)(2) of the Commission's Rules, [3] "... an applicant whose application is found to meet minimum filing requirements, but nevertheless is not complete and acceptable, shall have the opportunity during the period specified in the FCC staff's deficiency

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[3] 47 C.F.R. § 73.3522(c)(2).

letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff." Additionally, Section 73.3564(a)(3) of the Commission's Rules[4] states, "Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment." See Appendix B of the Report and Order in MM Docket 91-347, 7 FCC Rcd 5074, 57 Fed. Reg. 34872 (published August 7, 1992). This letter constitutes the opportunity for corrective amendment pursuant to Section 73.3522(c)(2).

Further action on the subject application will be withheld for 30 days from the date of this letter to provide an opportunity to reply. Failure to correct all tender and acceptance defects within 30 days from the date of this letter will result in dismissal of the application with no further opportunity for corrective amendment pursuant to Section 73.3564(a). Furthermore, failure to respond within 30 days will result in the dismissal of the application pursuant to Section 73.3568 of the Commission's Rules.[5] This letter does not imply any judgment on the February 19, 2010 Informal Objection filed by Christian Services, Inc.

Sincerely,

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Barry A. Friedman, Esq.
Aaron Ishmael, Engr.
Lee G. Petro, Esq.

[4] 47 C.F.R. § 73.3564(a)(3).
[5] 47 C.F.R. § 73.3568.