

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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IN REPLY REFER TO:

8920-SBS/HVT

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In re: KYKY-FM, St. Louis, Missouri
EZ Communications, Inc.
BPH-851112IH

Gentlemen:

This refers to the above-captioned construction permit application for an auxiliary facility and to the informal objections filed on behalf of KREI, Inc. ("KREI") and Contemporary Broadway, Inc. ("Contemporary").

The instant application requests permission to construct a new tower and install an auxiliary antenna system at the same site the applicant has proposed for the main antenna site (See application BPH-870227PG, which is a resubmission of BPH-851024ID). According to the exhibits supplied in the application, the proposed auxiliary 1 mV/m contour would not exceed the presently licensed 1 mV/m contour in any direction as required by 47 C.F.R. § 73.1675. (It would also not exceed the proposed main 1 mV/m in any direction). There do not appear to be any problems with the applicant's showings.¹

In opposition to the application, Contemporary asserts that KYKY is attempting to use the proposed auxiliary construction to strengthen its justification for a requested short-spacing waiver in its pending application to relocate its main antenna to that site. (In that application, KYKY claims that the proposed transmitter site is a de facto

¹ Contemporary refers to an attached engineering report describing violations of 47 C.F.R. § 73.1675 in the application. No such report was found with the objection.

antenna farm). Contemporary states that since there is presently no tower on that site, KYKY is actually trying to create an antenna farm where one does not currently exist. KREI asserts that since KYKY appears to be trying to construct an antenna farm, a petition for rulemaking is required pursuant to 47 C.F.R. § 17.8.

While KYKY may attempt to argue that the proposed antenna tower constitutes a de facto antenna farm in support of its requested waiver of 47 C.F.R. § 73.207 in another application, this is not sufficient justification for denying the instant application. Regarding KREI's claim that a petition for rulemaking is required, it appears that KREI has misinterpreted § 17.8. This Section states that an antenna farm must be designated through a rulemaking proceeding. However, it does not require that an area must be designated as an antenna farm by the Commission before a tower such as the one proposed by KYKY may be constructed.

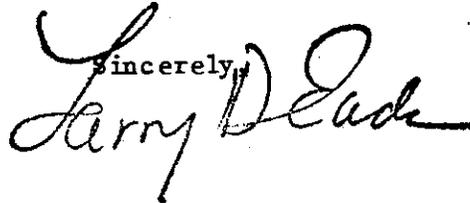
Both KREI and Contemporary also assert that KYKY is actually attempting to secure permission to construct the auxiliary antenna at the proposed site with the intention of later authorizing it as the main antenna. Contemporary states that the cost and complexity of the proposed antenna system (which is designated for multiple high power station use) is evidence of this.

It is clear that KYKY does wish to use the proposed auxiliary site as their main antenna site since they have filed a separate application for that purpose. However, KYKY could not construct the auxiliary antenna system and simply redefine it as their main antenna at some point in the future. An application for construction permit would be required which would be considered under the rules for main antennas as opposed to the rules for auxiliary antennas. We emphasize that our action herein is without prejudice to our final determination with respect to KYKY's pending application to relocate its main antenna to this same site.

Finally, Contemporary notes that KYKY did not indicate in Item 2, Section V-G of the application that it has a pending modification application for the main antenna specifying the same site as the proposed auxiliary antenna. This, it concludes, demonstrates "a lack of candor which should not be tolerated before the Commission".

It is true that KYKY did not note their pending main application in response to that question. However, this is a relatively minor, immaterial omission, since the instant application's grantability would not have been affected even had the pending main application been disclosed. We note that KYKY did disclose the presence of two applications with which KYKY's auxiliary would be colocated. The fact KYKY has a modification application on file is readily apparent during the Commission's study of the auxiliary application. This omission does not clearly indicate a motive to deceive or cast serious doubts on EZ Communications' fitness to be a Commission licensee.

Since the instant application is in full compliance with the Commission's rules and because the informal objections do not present any valid reasons for denying the instant application, the informal objections filed by KREI, Inc. and Contemporary Broadcasting, Inc. ARE HEREBY DENIED, and the above-referenced application IS HEREBY GRANTED.

Sincerely,


Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: Koteen & Naftalin