

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
JUL 30 1999

IN REPLY REFER TO: 1800B3-JR

Eclectic Enterprises, Inc.
111 Marquette Ave. #100
Minneapolis, MN 55401

In re: Station KAOD-FM, Babbitt, MN
Facility ID No. 18530
Application for License
Requests for Waivers
File No. BLH-990402KF

Dear Applicant:

This letter concerns the captioned application of Eclectic Enterprises, Inc. ("EEI") for a license for Station KAOD-FM, Babbitt, Minnesota, (File No. BLH-990402KF) and the associated requests for waivers of the main studio and public file rules, 47 C.F.R. §§ 73.1125 and 73.3526, respectively.¹ For the reasons set forth below, the waiver requests are denied, and the application will be held in abeyance.

EEI seeks to co-locate the KAOD-FM main studio and public file at the main studio of co-owned KZIO-FM, Two Harbors, Minnesota, approximately 64 miles from the center of Babbitt. EEI references "severe financial and competitive pressures," specifically, that it had to spend about \$100,000 to correct a KZIO-FM coverage problem which, until corrected, resulted in reduced advertising revenue. EEI says that this placed it under a "severe financial strain" for the 3 1/2 years since KZIO-FM initiated operations in September 1995. According to EEI, consolidation of the facilities and co-location of the public files of KZIO-FM and KAOD-FM will save "substantial" costs while permitting Babbitt residents to enjoy a new service. EEI asserts that co-location will result in "access to news and other resources which cannot be afforded in the Babbitt area standing alone" and allow that community to receive information concerning northeast Minnesota. EEI argues that inasmuch as KAOD-FM cannot operate absent the requested waivers, grants would serve the purposes underlying the rules.

¹ Section 73.1125(a) of the Commission's rules provides in pertinent part that the main studio of a commercial broadcast station be maintained either: (1) in its community of license; (2) within the principal community contour of any other station licensed to its community; or (3) within 25 miles of the center of its community of license. Pursuant to § 73.3526(b), the station's public file is to be maintained at the station's main studio.

The Commission recently relaxed its main studio location requirements. See *Review of the Commission's Rules regarding the main studio and local public inspection files of broadcast television and radio stations*, 13 FCC Rcd 15,691 (1998); *recon. granted in part*, FCC 99-118, released May 28, 1999. In this regard it amended § 73.1125 to strike a balance between lessening the burdens on licensees by providing greater flexibility in locating main studios while ensuring reasonable public access to studios and public files. The Commission also adopted clear rules that are easy to administer and maintain. *Id.* at 15,693. As noted by the Commission, it expanded the area in which most licensees may locate their main studios while maintaining a "close connection" to their communities. *Id.* at 15,694. Significantly, the Commission indicated that the revisions should reduce main studio waiver requests. *Id.*

EEI cites no precedent for locating the KAOD-FM main studio outside the principal contours of any other Babbitt station or as far as 64 miles distant from the center of that community, and we are aware of none. Neither does it reference authority for waiving the rule in order to achieve economies associated with co-location.² To the contrary, its proposal appears to contravene its obligation under § 307(b) of the Communications Act of 1934, as amended, to maintain the connection between the KAOD-FM main studio and its principal community. See 13 FCC Rcd at 15,695. *Cf. Roberts Communications, Inc.*, 11 FCC Rcd 1138 (1996) (presumed that applicant will serve its designated community if, among other things, its main studio will be located within community contour). It appears that a main studio waiver would not enhance the public interest but is intended to benefit EEI financially. Thus, there is no good cause showing for granting the requested waiver. See *Maines Broadcasting, Inc.*, 8 FCC Rcd 5501 (1993) (given the increased flexibility in main studio location, requiring waiver applicant to initially demonstrate unavailability of studio sites within principal contour is a reasonable threshold requirement).

EEI has not specified an alternate main studio location meeting the requirements of § 73.1125. Thus, we cannot at this time grant its license application. EEI is advised to amend its application to specify a main studio location which conforms to the rule. The amendment should be filed within twenty (20) days from the date of this letter. EEI's application will be held in abeyance during that period. Failure to timely submit such an amendment will subject the application to dismissal for failure to prosecute pursuant to 47 C.F.R. § 73.3568(b). An examination of the application reveals that EEI is otherwise qualified to be a Commission licensee and that a grant of the application, as appropriately amended, would benefit the public interest, convenience, and necessity.

In light of the above, and pursuant to 47 C.F.R. § 0.283: the requests of Eclectic Enterprises, Inc. for waivers of 47 C.F.R. §§ 73.1125 and 73.3526 ARE DENIED; and its application for a license for Station KAOD-FM, Babbitt, Minnesota (File No. BLH-990402KF) IS HELD IN ABEYANCE FOR A PERIOD OF TWENTY (20) DAYS FROM THE DATE OF THIS

² Although EEI suggests that consolidation of the KAOD-FM and KZIO-FM facilities and co-location of public files will permit it to save "substantial sums," it also notes a pending application to assign KZIO-FM to KQDS Acquisition Corporation (File No. BALH-990316GG).

LETTER.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Blair".

Linda Blair, Chief
Audio Services Division
Mass Media Bureau

cc: Timothy E. Welch, Esquire