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Vincent J. Curtis, Jr.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209-3801

In re: KCOO(FM), Shafter, CA
American General Media
of Texas, Inc. ("AGMT")
BPH-19991110AAD
Facility ID# 35953

Dear Mr. Curtis:

The staff has under consideration the above-captioned minor change application filed on behalf of AGMT, as supplemented December 3, 1999. For the reason stated below, the application will be dismissed.

An engineering study of the application reveals that the proposed facility is short-spaced by 14.2 kilometers to the facilities authorized in the license (BLH-960917KC) of KBIG(FM), Los Angeles, CA. The actual spacing is 163.8 kilometers while the required spacing pursuant to 47 C.F.R. § 73.207 is 178 kilometers. Our study also reveals that the proposal is short-spaced by 16.0 kilometers to the facilities authorized in the license (BLH-921106KB) of KVLI(FM), Lake Isabella, CA. The actual spacing is 56.0 kilometers while the required spacing pursuant to § 73.207 is 72 kilometers. AGMT recognizes these short-spacings in the application and requests processing pursuant to 47 C.F.R. § 73.215 with respect to the facilities of KBIG and KVLI.

Pursuant to 47 C.F.R. § 73.215(b)(ii), AGMT is required to protect KBIG and KVLI as if they were operating with maximum Class B (equivalent to 50 kW ERP/ 150 meters HAAT) and Class A (equivalent to 6 kW ERP/ 100 meters HAAT) facilities, respectively.¹ The application complies with this requirement regarding KBIG. However, the application fails to meet this requirement with respect to KVLI. A preliminary engineering study of the application reveals that the proposed 60 dBu protected contour would receive prohibited overlap from the 54 dBu interfering contour of KVLI by as much as 53.2 kilometers between the azimuths from 16°T to 232°T. The

¹ KBIG is grandfathered at 105 kW ERP / 882 meters HAAT, but will be afforded contour protection for maximum Class B facilities.

proposed interfering 54 dBu contour would cause prohibited overlap to the 60 dBu protected contour of KVLI by as much as 48.0 kilometers between the azimuths from 203°T to 267°T. Therefore, the proposed facility violates the contour protection requirements of 47 C.F.R. § 73.215(a) with respect to KVLI. AGMT recognizes this violation and requests waiver of 47 C.F.R. § 73.215(a)(iii) to allow an alternate method of contour computation.

In support of the request for waiver, AGMT states that the FCC standard contour prediction methodology does not account for particular terrain obstructions on the signal's path. KCOO's signal is said to experience extraordinary attenuation due to intervening terrain obstructions. Specifically, the 60 dBu protected contour and the 54 dBu interfering contour of KCCO and KVLI would be significantly limited by terrain obstructions, thus preventing any objectionable interference. The engineering narrative includes a study demonstrating the effects and excess path loss of shadowing by intervening terrain obstacles, using the diffraction loss methods described in NBS Technical Note 101 and the Terrain Integrated Rough Earth Model (TIREM). Specifically, the field intensity maps used to support this claim were created using the curves from 47 C.F.R. § 73.333 in addition to the RMD method. According to AGMT, "...[t]his method further increases path loss by an amount equal to the difference between the field strength value read from the FCC propagation curves...and the free space path loss at the equivalent distance." You have concluded that the predicted interference would not exist when propagation conditions and terrain obstacles are considered.

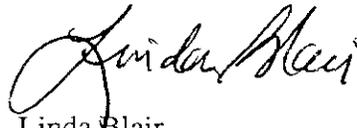
With respect to the supplemental terrain analysis using NBS Technical Note 101, the Commission has amplified its prohibition against the use of alternate "terrain shielding" methods in conjunction with 47 C.F.R. § 73.215. See the Memorandum Opinion and Order in Docket 87-121, 6 FCC Rcd 3417, 56 Fed. Reg. 27427 (1991), released September 17, 1991, paragraphs 9 and 12. Avoidance of objectionable levels of interference is necessary so that stations can provide adequate service to the public. Insuring that the many applications proposals for FM facilities do not exceed those levels depends on the efficient use of the Commission's limited resources. This can only be accomplished through reliance on uniform and objective methods for determining the extent of signal contours. Acceptance of supplemental showings not specifically provided for in the Rules would involve complicated and extensive engineering reviews, because such determinations are necessarily more detailed and require additional analysis by propagation experts. These time-consuming reviews are inimical to the efficient and orderly processing of FM applications and would further delay the provision of new services to the public by unnecessarily burdening the limited resources for processing these applications. As the Commission has emphasized, "[d]eviation for normal processing procedures delays the final disposition of an application. The adverse impact on expeditious processing is magnified when groups of mutually exclusive applications are involved." Commission Policy Regarding Terrain Shielding in the Evaluation of Television Translator, Television Booster, and Low Power Television Applications, 3 FCC Rcd 2664, 2556 (1988).²

² In its 1988 Policy Statement, the Commission, citing the "changed circumstances" of a greatly reduced number of filed applications, announced that it would consider requests for waiver of its LPTV application interference standards on a case-by-case basis. LPTV applicants may thus support their waiver requests with supplemental engineering showings of terrain shielding.

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. Rio Grand Family Radio Fellowship, Inc. v. FCC, 406 F2D 644 (D.C. Cir. 1968). We have afforded your waiver request the "hard look" called for under the WAIT doctrine, WAIT Radio v. FCC, 418 F2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in your justification are insufficient to establish that granting waiver of the prohibited contour overlap provisions of 47 C.F.R. § 73.215 would be in the public interest.

In light of the above, AGMT's request for waiver IS DENIED. In addition, since the proposal requested waiver to the Commission's rules and the waiver was denied, the applicant is not afforded it's one opportunity to file a curative amendment. *See Report and Order*, MM Docket No. 91-347, 7 FCC Rcd 5074 (1992) paragraph 22. Accordingly, the application, BPH-19991110AAD, being unacceptable for filing, IS HEREBY DISMISSED. This action is taken pursuant to § 0.283.

Sincerely,



Linda Blair
Division Chief
Audio Services Division
Mass Media Bureau

cc: Elliott Kurt Klein

However, the Commission has not extended that policy to full service facilities, such as the proposed FM station at issue. In addition, LPTV is a "secondary" service whose stations, regardless of waiver grant, are subject to strict prohibitions against causing interference to regular direct reception of primary, full service television stations. In contrast, the FM service is a primary service, entitled to full interference protection. Therefore, the policy considerations favoring acceptance of supplemental terrain showings in the LPTV service do not apply to the FM service. The fact that the Commission announced a procedural change in the LPTV service but did not do so in other services, including commercial FM, further emphasized the agency's determination not to allow supplemental showings for the purposes of demonstrating the lack of harmful interference.