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JCE Licenses, LLC
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M&M Broadcasters, Ltd.
P.O. Box 1629
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In re: **KNIT(AM), Dallas, TX**
Facility ID No. 57375
BP-20080626ACC

Application for Minor Modification
of Facilities

KVLH(AM), Paul's Valley, OK
Facility ID No. 71053
BL-20050228ADS (Proposed surrender of
license)

Dear Licensees:

We have before us: (1) the captioned minor change application (the "KNIT Application"), filed by JCE Licenses, LLC ("JCE"), licensee of Station KNIT(AM), Dallas, Texas (the "Station"); and (2) an Informal Objection ("Objection") to the KNIT Application, filed on July 25, 2008, by M&M Broadcasters, Ltd. ("M&M").¹ The KNIT Application is accompanied by an Interference Reduction Agreement ("IRA") and a showing proposing the surrender of the license of Station KVLH(AM), Paul's Valley, Oklahoma.² For the reasons set forth below, we: (1) approve the IRA; (2) deny the Objection; (3) grant the KNIT Application as amended,³ subject to surrender of KVLH(AM)'s license.

Background. The Station is a Class B facility licensed to operate on 1480 kHz with a power of 5.0 kW daytime and 1.9 kW nighttime, employing a two-tower directional antenna daytime and four-tower directional antenna nighttime antenna system. Station KVLH(AM) is licensed on 1470 kHz with a daytime power of 0.89 kW and a nighttime power of 0.035 kW, employing a directional antenna system. In the IRA, the parties propose: (1) a grant of the KNIT Application, which would increase the Station's

¹ M&M is licensee of Station KCLE(AM) (formerly KHFX(AM)), Burleson, Texas. JCE filed an Opposition to the Objection (the "Opposition") on September 2, 2008.

² The principals of Armstrong of Oklahoma, Inc., the licensee of Station KVLH(AM), are identical with those of JCE.

³ The KNIT Application was amended on September 9, 2008.

daytime power to 50 kW; and (2) surrender of the KVLH(AM) license. In the IRA, the parties contend that grant of the proposals will increase service from the Station, eliminate existing prohibited overlap to a substantial area and population, and will leave no area receiving fewer than five aural broadcast services.

On July 25, 2008, M&M filed an Objection to the KNIT Application arguing, among other things, that the proposed modified facilities of the Station will cause impermissible signal contour overlap with M&M's KCLE(AM) signal contour. M&M also argues that the KNIT Application is contrary to the Commission's policy against removing the sole signal service from a community.

Discussion. *Interference Reduction.* In recent years the Commission has acted to revitalize and improve the AM service.⁴ As part of this effort, we permit licensees to reach agreements to reduce power or cancel their licenses in order to permit other licensees to improve service, and to reduce overall interference.⁵ In amending Section 73.3517 of the Rules⁶ to permit contingent applications that would "reduce interference to one or more AM stations or . . . otherwise decrease the area of interference," the Commission removed regulatory barriers that had previously prevented or discouraged individual AM licensees from entering into private agreements to decrease inter-station interference and improve the overall quality of AM service.⁷

When such contingent agreements are proposed that would involve the deletion or modification of existing AM stations, we must engage in a case-by-case public interest determination. In particular, the parties must demonstrate that a "local service floor" would remain in the community losing a local transmission service as a result of the proposed agreement.⁸ The Commission did not choose to "establish a quantifiable service floor that can uniformly be applied with respect to the replacement of deleted facilities," opting instead for the case-by-case approach. However, the Commission did determine that, at a minimum, an agreement that resulted in the deletion of a station could not create a "white" or "gray" area.⁹

When undertaking the case-by-case analysis, we generally consider four factors: the amount of AM interference that would be eliminated in relation to the number of AM and FM services remaining available to the areas that would lose service; the areas and populations that would gain service as a result of the proposed change; whether the proposal would create any white or gray areas; and the availability of

⁴ See, e.g., *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993).

⁵ *Policies to Encourage Interference Reduction between AM Broadcast Stations*, Report and Order, 5 FCC Rcd 4492 (1990) ("*Interference Reduction*").

⁶ 47 C.F.R. § 73.3517.

⁷ *Interference Reduction*, 5 FCC Rcd at 4492.

⁸ *Id.* at 4494.

⁹ *Id.* A "white" area is one that receives no full-time aural service; a "gray" area receives only one full-time aural service. 47 C.F.R. § 73.14; *Interference Reduction*, 5 FCC Rcd at 4494 n.14.

AM and FM service in the area that will experience a reduction in service due to the proposed contingent facilities changes.¹⁰ We will therefore examine the parties' IRA here in light of these four factors.

Reduction in Interference. The IRA states that deletion of station KVLH(AM)'s license would result in the elimination of 16,752 square kilometers of interference area created by KVLH(AM), as defined by Section 73.37 of the Rules.¹¹

Increased Service. The IRA indicates that the Station's daytime power increase would permit the Station to serve 1,974,482 more people than are within the Station's licensed 2 mV/m service contour.

Creation of "White" or "Gray" Areas. Deletion of station KVLH(AM)'s license would not create any white or gray areas.

Local Service Floor. The parties indicate that even after surrender of the KVLH(AM) license, Paul's Valley, Oklahoma, would continue to receive primary service from five full-time commercial FM stations and is within the daytime service contours of four AM stations. Our analysis corroborates these claims. Thus, there is a sufficient local service floor, notwithstanding removal of the KVLH(AM) signal, to warrant grant of the application.

M&M Objection. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended ("Act"),¹² provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the KNIT Application would be *prima facie* inconsistent with Section 309(a) of the Act.¹³ This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.

M&M is the licensee of KCLE(AM), Burleson, Texas. In the Objection, M&M seeks to deny the KNIT Application because: (1) the KNIT Application would cause impermissible signal contour overlap to the KCLE(AM) protected contour; and (2) the KNIT Application is contrary to the Commission's policy against removing the sole local service from a community. Specifically, M&M argues that the Commission's policy against removing the sole local service from a community applies to AM stations.¹⁴ M&M also claims that while the JCE proposal does not involve a change in community of license, the

¹⁰ *Interference Reduction*, 5 FCC Rcd at 4494.

¹¹ 47 C.F.R. § 73.37. The engineering staff notes that the deletion of the KVLH(AM) signal will also reduce daytime interference to station KPLT(AM), Paris, Texas.

¹² 47 U.S.C. § 309(e).

¹³ 47 U.S.C. § 309(a). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁴ Objection at 2.

principles of promoting fair, efficient and equitable distribution of frequencies and licenses as outlined in Section 307(b) of the Act apply.¹⁵ In addition, M&M contends that *Interference Reduction* only addresses proposals to restore already-deleted stations and not new proposals to delete stations.¹⁶

In its Opposition, JCE acknowledges that its initial proposal would cause impermissible interference to station KCLE(AM). JCE argues, however, that an amendment filed simultaneously with the Opposition wholly eliminates the impermissible interference.¹⁷ Furthermore, by virtue of the amendment, JCE contends that it is now able to increase its overall power from 45 kW to 50 kW, thus increasing its service to the public. The engineering staff has determined that the amended KNIT Application would no longer cause impermissible overlap to KCLE(AM). Therefore, we find that M&M's impermissible signal contour overlap argument is moot.

As to M&M's argument that the KNIT Application is contrary to the Commission's policy against removing the sole local service from a community, JCE argues that M&M has utilized the "wrong standard."¹⁸ JCE contends that while the Commission generally forbids the deletion of a sole broadcast service, be it AM or FM, from a community in the context of a "change of city of license" proceeding, this is not the standard to be applied in AM interference reduction proceedings.¹⁹ We agree. The Commission specifically has accounted for the possibility that an applicant implementing the Commission's AM interference reduction procedures may propose the elimination of the sole local radio transmission service. For instance, in *Interference Reduction*, the Commission stated:

We emphasize that a significant factor underlying our decision to grant or deny a contingent application arrangement involving deletion or reduction in AM facilities would be whether it satisfies the public interest requirement of a local service floor -- a level of broadcast service that must be maintained subsequent to any deletion or reduction in AM facilities We believe that the availability of two or more primary services coupled with a reduction in AM interference would justify our not permitting a party to restore a deleted AM station that would not comply with current technical requirements. We would also use this guideline in evaluating a contingent application arrangement proposing deletion of a community's only local aural service.²⁰

M&M is, therefore, clearly incorrect in its contention that *Interference Reduction* does not apply to new proposals to delete a station. Here, the engineering staff has determined that Paul's Valley, Oklahoma, will continue to receive primary service from five full-time commercial FM stations. Thus, we find that JCE's proposal is well within *Interference Reduction* guidelines. Accordingly, upon review of all the

¹⁵ *Id.*; see also 47 U.S.C. § 307(b).

¹⁶ Objection at 2.

¹⁷ Opposition at 2; see also n.3, *supra*.

¹⁸ Opposition at 4.

¹⁹ Opposition at 4-5.

²⁰ *Interference Reduction*, 5 FCC Rcd 4492, ¶¶ 11, 13; see also *Kovas Communications, Inc.*, Letter, 23 FCC Rcd 12706 (MB 2008) (application granted where surrender of license does not impact sufficient local service floor).

pleadings in this case, we find that M&M has failed to raise a substantial and material question of fact requiring further inquiry into this matter.

Conclusions/Actions. For the reasons set forth above, we find that the facts and circumstances presented to us here establish that grant of the KNIT Application and surrender of the KVLH(AM) license will further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, that the July 25, 2008, Informal Objection filed by M&M Broadcasters, Ltd., IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BP-20080626ACC) of JCE Licenses, LLC for modification of the facilities of Station KNIT(AM), Dallas, Texas, IS GRANTED, conditioned as follows:

This action shall be conditioned upon the surrender of the license of KVLH(AM), Paul's Valley, Oklahoma, to the Commission for cancellation prior to the commencement of program test authority by the KNIT(AM) facility authorized by the subject construction permit, pursuant to the discontinuance of operation provisions of 47 C.F.R. Section 73.1750.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Anne Goodwin Crump, Esq.
Dan J. Alpert, Esq.