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February 7, 2012

Julius Genachowski  
Chairman  
Federal Communications Commission  
Room 8-C453  
445 12th St, SW  
Washington, DC 20554

*MB  
License  
261*

Dear Mr. Genachowski:

I recently met with members of Activist San Diego (ASD) and they informed me that their application for an FM radio station (20071022AEZ; Facility ID: 176023) in Ramona, California was awarded a Federal Communications Commission (FCC) license. As you can imagine, they were surprised to learn that their application was suddenly dismissed.

Responding to FCC requests, ASD submitted a technically amended application with a contour design by Brown Broadcast Services that avoids interference with domestic and Mexican radio stations while increasing the coverage for the people in Ramona. After ASD submitted the corrections, they were informed by the FCC that their application was dismissed as it still overreached and the ratio of maximum power to the location exceeded the maximum of 15dB. ASD informed me that the highly experienced and FCC qualified design engineer (Michael Brown of Brown Broadcasting) could not have anticipated such a dismissal since this was a minor technical issue.

ASD immediately filed an appeal for reconsideration and followed all FCC timelines and guidelines. For your convenience, I have enclosed a copy of the appeal that was submitted in April 2011. The FCC assured ASD of a swift and timely reconsideration but as of yet, ASD has not received a response. As you can imagine, there is a dire need for an FM station in this area as it will provide first non-commercial educational and emergency radio service to thousands of people, including the Los Coyotes Tribe, the Santa Rosa, Cahuilla, Mission, Rincon, Pasqual, Inaja, Barona and Capitan Grande Reservations.

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As a member of the San Diego County Congressional Delegation, I am deeply concerned that the dismissal of ASD's application would keep these communities isolated, with limited communications, educational and public information services. As a result, I request that the FCC apply clear, fair and pragmatic standards to see if the application can be approved as is. I am sure that ASD is willing to work with you on the design if needed. If you have any questions, please feel free to contact me or Jessica Gomez of my staff at (619) 422-5963.

Sincerely,  


BOB FILNER  
Member of Congress

CC:

Geoffrey Blackwell, Office of Native Affairs

Mignon Clyburn, Commissioner

Peter H. Doyle, Chief, Audio Division

Greg Guise, Director, Legislative Affairs

Robert M. McDowell, Commissioner

BF/jg

2603524

Enclosure

ADMITTED IN  
CALIFORNIA AND IN THE  
DISTRICT OF COLUMBIA

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April 28, 2011

By e-mail to [james.bradshaw@fcc.gov](mailto:james.bradshaw@fcc.gov) and by First Class Mail

Jim Bradshaw, Deputy Division Chief  
Audio Division, Media Bureau  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554

Ref.: New (FM) Ramona, CA  
Facility ID No. 176023  
Activist San Diego  
BNPED-20071022AEZ

Dear Jim:

This office represents Activist San Diego, applicant here. The referenced application was dismissed, by letter over the signature of Rudolfo F. Bonacci, on March 30, 2011 ("Letter," Attachment A herewith). The reason was that the justification for waiver of Section 73.510(b) of the Commission's Rules was deemed insufficient.

On Tuesday the applicant's consulting engineer, Michael D. Brown, and I had a conference call with Rudy to try to understand the basis for dismissal. From that call, we believe there was no reason to anticipate the adverse result. Indeed we believe the policy as implemented does not further its apparent purpose.

Unfortunately, this constituted the sole opportunity to amend. An application for review would be due tomorrow. We have chosen instead to present you with the facts, and our position, and to ask that Rudy's letter be withdrawn pending further study or (with his advance knowledge) a new amendment. Mr. Brown and I can always stand to improve our practice with sound advice from staff. But in this instance the applicant should not suffer if our approach was deficient. The proposal is a singleton that will serve four Indian Reservations, with the strong support of the tribes involved. The applicant has been adamant that we try everything to satisfy the staff and get this new service underway if we can.

1. The Section 73.510(b) Violation.

Normally antennas will not be permitted with a difference in gain of more than 15

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dB from the maximum direction to the minimum direction, Section 73.510(b) of the Rules. This is a sound rule, because highly directive arrays can be hard to keep in spec at times, and because it preserves the overall integrity of the allotment scheme for the reserved band. (A similar rule obtains in the non-reserved band.) An exception is recognized where more directivity is needed to protect a Mexican allotment (or station) because of intervening terrain, or very broadly in cases where "terrain may present a problem due to signal reflection". The directional antenna ("D/A") proposed here has a 16.9 dB null along the 110 to 120 radials to protect the full-class-equivalent facilities of XHSOL, Mexicali, MX. The Letter notes Mr. Brown's statement that reflection due to terrain is a concern in this case, where there are several ridges and peaks within a few hundred meters of the transmitter having "significant potential to cause reflection and multipath in the community of license and beyond."

Treaties of course are the supreme law of the land, under Article VI, Clause 2, of the U.S. Constitution. Two reasons were cited for rejecting the proposal under the recognized Mexican Treaty exception. First, "Activist has not sufficiently demonstrated that signal reflection due to the terrain would be a problem." If that is the case, the deficiency should have been cured by a request for supplemental information. Particularly where the derogation is tiny, 16.9 dB versus 15.0 dB, the recourse to dismissal without leave to amend appears harsh.

The second reason was that "Our study shows that the directional antenna is required to protect other domestic stations," i.e. not just the affected Mexican allotment. We did not understand this part of the decision until the conference call with Rudy. Apparently, staff's practice in these cases (greater than 15 dB), is to run an interference check in relation to domestic facilities, with all the same parameters, but with an omnidirectional antenna substituted for the D/A. If so, respectfully, we believe it cannot be justified.

In this case, all domestic stations were protected, using nulls not in excess of 13.3 dB. Such ratios are routinely allowed and do not require any waiver or Mexican Treaty exception. The ruling here appear to be, any applicant seeking to protect Mexico with a ratio in excess of 15 dB by that fact alone relinquishes it right under established rules to use any directivity whatsoever to protect neighboring domestic facilities. There is no such express rule and public policy would not favor it. Directional antennas are allowed to maximize spectrum use in the crowded, first-come environment. Suspension of the rule whenever a Mexican protection is involved serves no purpose. Here again, in the absence of stated guidelines, the dismissal without recourse seems drastic.

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To date we have been unable to find any licensed domestic station along the Mexican border that used a D/A to protect both domestic and foreign stations, and has a D/A towards Mexico that exceeds 15 dB. However, the Commission has granted several waivers which protect *domestic* stations, with nulls exceeding 15 dB.[1]

Finally, there are no manufacturing or stability issues. In *Centennial Wireless, Inc.*, 46 RR2d 886 (1979) the Commission concluded that a stability question does not arise for antennas using an 18 dB null. However, out of an abundance of caution, Mr. Brown obtained a signed letter from Shively Labs indicating that they could comply with the proposed pattern using a 6016 panel antenna. Shively has successfully designed many directional antennas with nulls exceeding 20 dB.

## 2. Withdrawal of the Letter and an Opportunity for Corrective Amendment Would Serve the Public Interest.

The applicant and Mr. Brown had the best intention of abiding by all the Rules and Regulations and the terms of the US-Mexican agreement, providing a comprehensive 30-page engineering exhibit in the application. The reasons set forth in the Letter do not appear to be documented sufficiently to establish any bright line test for applicants or for the engineering community. Whatever standard will be finally imposed, we believe they can be accommodated with small changes to achieve full compliance.

The proposed uncontested singleton provides first NCE service to a remote area that is primarily inhabited by people living within Indian Reservations (Attachment B). Applicant has been partnered with the Warner Spring Tribe (Los Coyotes Reservation) with plan to build a studio on the reservation. The proposed 60 dBu contour will provide service to the Los Coyotes, La Jolla, Santa Ysabel, and Meda Grande Reservations.

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[1] --KLAX: 15 dB exceeded by 0.918 db: This facility is short spaced. D/A used to provide protection to KXRV. Without the D/A there would be prohibitive overlap.

--KTXI: 15 dB exceeded by 1.654 db: This facility is an NCE. D/A has a >15 dB null directly employed for the purpose of protecting KSYM-FM. Without the D/A there would be prohibited overlap.

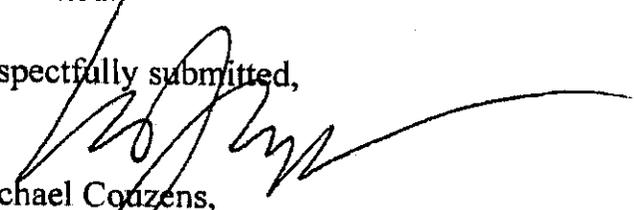
--KPWR: 15 dB exceeded by 2.589 dB: This facility is short spaced. D/A is used to provide protection to short spaced stations KGMX, KRAB, and KRAZ. Without the D/A there would be prohibited overlap.

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The proposed signal will also be receivable in the Santa Rosa, Cahuilla, Mission, Rincon, Pasqual, Inaja, Barona, and Capitan Grande Reservations. An unrecoverable dismissal of this application will be a major loss to all the tribes who currently have no NCE service and limited/poor access to internet.

For these reasons, I request that the Letter letter be withdrawn and the application restored to pending status, so that further discussion may be had and a new, complete and acceptable engineering proposal may be submitted.

Respectfully submitted,



Michael Couzens,  
*Attorney for*  
*Activist San Diego*

cc. Rudolfo F. Bonacci  
cc. Geoffrey Blackwell

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12<sup>th</sup> STREET SW**  
**WASHINGTON DC 20554**

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March 30, 2011

Activist San Diego  
4246 Wightman Street  
San Diego, CA 92105

In re: NEW(FM), Ramona, CA  
Facility ID No.: 176023  
Activist San Diego ("Activist")  
BNPED-20071022AEZ

Dear Applicant:

This letter is in reference to the above-captioned application for a new noncommercial educational FM station to serve Ramona, CA on Channel 210B1. The application was last amended on March 15, 2011. This amendment increased the effective radiated power and changed the directional antenna pattern.

An engineering study of the application, as amended March 15, 2011, reveals that the proposed directional antenna pattern violates 47 C.F.R. § 73.510(b). Furthermore, it violates the *AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES RELATING TO THE FM BROADCASTING SERVICE IN THE BAND 88-108 MHZ (USA-Mexico Agreement)*.

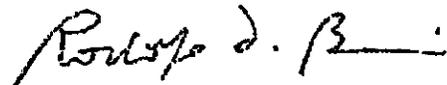
Specifically, the application proposes a directional antenna pattern that has a maximum-to-minimum ratio of 16.9 dB, which is more than the 15 dB maximum-to-minimum ratio limit ("15 dB limit") allowed by § 73.510(b) and the USA-Mexico Agreement. This constitutes an acceptance defect. This violation is noted in the application. Activist states that the proposed 16.9 dB maximum-to-minimum ratio is only needed to protect a Mexican allotment. It is further stated that the proposal complies with Section 1.4 of the USA-Mexican Agreement which allows the maximum-to-minimum ratio to exceed the 15 dB limit in cases where "terrain may present a problem due to signal reflections." Activist contends that signal reflection due to the terrain is a concern in this case. In particular, it states that there are several ridges and peaks within a few hundred meters of the site which has "significant potential to cause reflection and multipath in the community of license and beyond." Activist cites two cases in which the 15 dB limit has been waived.<sup>1</sup> However, in both of these cases the 15 dB limit was waived because the directional antenna itself (not just the 15 dB limit) was not needed to protect other domestic

<sup>1</sup> These cases are KCMT(FM), Oro Valley, Arizona (Facility ID No. 87841) and KCDX(FM), Florence, Arizona (Facility ID No. 16764).

stations. Here, Activist argues that the 16.9 dB maximum null is employed only to protect the Mexican allotment. Our study shows that the directional antenna is required to protect other domestic stations. Therefore, we find that this proposal is not analogous to the cited cases. Furthermore, Activist has not sufficiently demonstrated that signal reflection due to the terrain will be a problem. Pursuant to § 73.510(b), a directional antenna used to protect a domestic station that has a maximum-to-minimum ratio of more than 15 dB will not be authorized.

Accordingly, Application File No. BNPED-20071022AEZ, as amended, is unacceptable for filing and pursuant to 47 C.F.R. § 73.3566(a) and IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283. Please note, pursuant to the August 2, 1984 *Public Notice*, this constitutes Activist's one opportunity to amend the application and request reinstatement *nunc pro tunc*. Activist is not entitled to another attempt to amend the application.

Sincerely,



Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Michael Couzens, Esq.  
Brown Broadcast Services, Inc.

