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Owens One Company, Inc.
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Re: Owens One Company, Inc.
KUZZ-FM, Bakersfield, California
Facility ID No. 7697
File No. BMLH-20110201ACF
File No. BXMLH-20110201ACJ

**Application for Modification to FM
Broadcast Station/Auxiliary Licenses**

Dear Counsel:

We have before us an Informal Objection (“Objection”), filed by Calvary Chapel of Costa Mesa, Inc. (“Calvary”),¹ objecting to the modification applications (“Applications”) of Owens One Company, Inc. (“Owens”) for the licenses of FM broadcast station KUZZ-FM, Bakersfield, California, and its auxiliary facilities.² For the reasons set forth below, we deny the Objection and grant the Applications.

Background. According to Owens, it filed the Applications after a “recent internal review of KUZZ-FM’s technical operation indicated that the actual site coordinates of the station’s main and auxiliary antennas differ slightly from the coordinates set forth on the station licenses.”³ Because the change in coordinates is 3 seconds of latitude and 1 second of longitude, Owens has filed the Applications

¹ Calvary filed the Objection February 8, 2011. Owens filed an Opposition to Informal Objection (“Opposition”) on February 10, 2011, and Calvary filed its Reply to “Opposition to Informal Objection” (“Reply”) on February 18, 2011.

² File Nos. BMLH-20110201ACF (station application) and BXMLH-20110201ACJ (auxiliary application).

³ Opposition at 1.

on FCC Form 302, pursuant to Section 73.1690(c)(11) of the Rules, which permits a licensee to correct its coordinates by no more than three seconds of latitude and/or longitude without prior authorization from the Commission.⁴

Calvary's co-channel station KWVE-FM, San Clemente, California, is short-spaced to KUZZ-FM, 221 kilometers from KUZZ-FM instead of 241 kilometers as required by Section 73.207(b)(1) of the Rules.⁵ As a result, Calvary has operated KWVE-FM with a directional antenna under Section 73.215 of the Rules, in order to avoid overlap with KUZZ-FM's signal. Calvary has attempted, unsuccessfully, to modify its facilities to specify non-directional operation.⁶

The corrected coordinates reduce the spacing between KUZZ-FM and KWVE-FM from 221.410 kilometers to 221.317 kilometers. Calvary argues that Section 73.1690(c)(11) only allows a coordinate correction on Form 302 when the correction does "not result in any new short spacings or increases in existing short spacings."⁷ Calvary thus urges a strict reading of Section 73.1690(c)(11), precluding grant of the Applications because they increase the short spacing between KUZZ-FM and KWVE-FM. Instead, Calvary states that KUZZ-FM must invoke Section 73.215 in increasing the short spacing, which according to Calvary would place the two stations in "parity," thus allowing Calvary to go forward with its plans to implement a non-directional antenna for KWVE-FM, enabling it to serve an additional 2.5 million people.⁸

Owens responds that, under Section 73.208(c)(8) of the Rules,⁹ computations of the distance between two reference points under 475 kilometers, such as the distance between transmitters, are to be rounded to the nearest kilometer. Thus, Owens argues, a move from 221.410 kilometers to 221.317 kilometers retains the short spacing of 221 kilometers between the two stations, when rounded to the nearest kilometer.¹⁰ Calvary counters by accusing Owens of confusing two different rules, stating that rounding the distance to the nearest kilometer under Section 73.208(c)(8) is "irrelevant," and that the facts and plain language of Section 73.1690(c)(11) dictate that a coordinate correction filed under that rule section may not increase existing short spacing to any degree.¹¹

Discussion. It is an undisputed fact that the coordinate changes proposed in the Applications increase the existing short spacing between KUZZ-FM and KWVE-FM by 304 feet, or .093 kilometers. The issue is whether a licensee filing a corrective modification of license application under Section

⁴ 47 C.F.R. § 73.1690(c)(11).

⁵ 47 C.F.R. § 73.207(b)(1).

⁶ See *Lauren Colby, Esq., Gregory Masters, Esq., and Daniel Huber, Esq.* Letter, 23 FCC Rcd 9971(MB 2008), *recon. pending*.

⁷ 47 C.F.R. § 73.207(b)(1). See *Objection* at 2.

⁸ *Id.* at 2-3.

⁹ 47 C.F.R. § 73.208(c)(8).

¹⁰ *Opposition* at 3.

¹¹ *Reply* at 2-3.

73.1690 may use the rounding methodology of Section 73.208 in determining whether it is exacerbating existing short spacing and, thus, whether it is eligible to file under Section 73.1690.

We find Calvary's reading of Section 73.1690(c)(11) to be overly restrictive. The issue, ultimately, is one of measuring the distances between two transmitter sites under both the authorized and corrected coordinates. The Commission's methodology for measuring the distance between two reference points is set forth in Section 73.208(c), and includes rounding distances to the nearest kilometer.¹² Calvary's argument, if carried to its logical conclusion, would mean that every rule implicating the distances between reference points would have to state explicitly whether the Section 73.208 measurement methodology, including rounding, is applicable. This is an overly strained reading of the Rules, especially given that Calvary does not take issue with any aspect of the Section 73.208(c) methodology except for the rounding provision.¹³

In *Leonard S. Joyce, Esq.*,¹⁴ the staff allowed a coordinate correction under factual circumstances similar to those presented here. In *Joyce*, a station discovered an error in its transmitter coordinates while preparing an antenna structure registration. Prior to discovery of the error, the station was 143.54 kilometers from an allotment, which rounded up to the required 144-kilometer spacing between the station and allotment. The corrected coordinates reduced the actual spacing to 143.45 kilometers, which when rounded to the nearest kilometer created a one-kilometer short spacing under Section 73.207 of the Rules.¹⁵ While the staff initially denied the applicant's request for waiver of the Section 73.207 spacing standards,¹⁶ on reconsideration the waiver was granted. The staff found that rigid application of the spacing requirements in such circumstances might have a deterrent effect on the submission of accurate site data by structure owners.¹⁷ It concluded that where (1) the application was for correction of site data rather than an actual change in technical facilities; (2) the proposed correction raised no environmental, international, or other issues; and (3) the difference between the authorized and corrected spacing involved is *de minimis* (in *Joyce*, 0.09 kilometers, or less than one-tenth of a kilometer), waiver of the Section 73.207 spacing standards was warranted.

Although *Joyce* antedates the introduction of Section 73.1690(c)(11) of the Rules, we find the facts to be sufficiently analogous to the instant case to support processing of the Applications under that rule. As in *Joyce*, the issue here concerns whether a coordinate change, unaccompanied by an actual facility change, is of such a magnitude that it should be considered to create or exacerbate a short spacing. As in *Joyce*, the coordinate change is less than a tenth of a kilometer (here, 0.093 kilometers), and thus

¹² 47 C.F.R. § 73.208(c)(8).

¹³ Similarly, we disregard the additional arguments set forth in the Engineering Exhibit of Mullaney Engineering, Inc. ("MEI"), attached to Calvary's Reply. Calvary neither cites to nor adopts MEI's arguments, which are unsupported save for citation to one case that is inapposite to the issue of whether Section 73.208(c) distance calculation methodology applies to Section 73.1690(c)(11). In any event, we note that were we to consider these arguments, they would not alter our conclusion in this case.

¹⁴ Letter, 13 FCC Rcd 19605 (MMB 1998) ("*Joyce*").

¹⁵ 47 C.F.R. § 73.207. See *Joyce*, 13 FCC Rcd at 19605.

¹⁶ *Id.* at 19606.

¹⁷ *Id.*

may be considered *de minimis*. Moreover, as in *Joyce* the proposed correction raises no environmental or international issues, and the only other issue raised is Calvary's complaint that Owens should be forced to apply for Section 73.215 processing. This issue, however, is at best a corollary to Calvary's argument regarding exacerbating an existing short spacing, rather than an additional issue to be considered separately. Finally, we note that nothing in the facts of this case suggests that Owens has availed itself of Section 73.1690(c)(11) filing procedures to evade compliance with distance separation requirements. We thus find that the coordinate correction in the Applications does not trigger an obligation either to seek prior Commission authorization, or to apply for processing under Section 73.215 of the Rules.

Conclusion. In this case involving a coordinate correction that would change the distance between two facilities, Calvary urges a selective reading of the distance-measuring methodology set forth in Section 73.208(c) of the Rules. It does not dispute the methodology, but would have us disregard that part which mandates rounding of distances to the nearest kilometer, negating Owens's claim that its Applications do not exacerbate the existing short spacing between the two facilities and are thus qualified for Section 73.1690(c) processing. We find that, in measuring distances to determine whether short spacing is exacerbated under Section 73.1690(c)(11), the measurement methodology set forth in Section 73.208(c) is appropriate, including the rounding provisions. Moreover, under the *Joyce* precedent, we find the proposed coordinate correction in the Applications to be *de minimis*, and thus that the existing short spacing is not exacerbated to the extent that the Applications are ineligible for Section 73.1690(c) processing.

Accordingly, we conclude that the Applications were correctly filed pursuant to Section 73.1690(c) of the Rules. It is therefore ORDERED that the Informal Objection filed by Calvary Chapel of Costa Mesa, Inc. IS DENIED, and that the Applications filed by Owens One Company, Inc. for modification of the licensed main and auxiliary facilities of station KUZZ-FM, Bakersfield, California, File Nos. BMLH-20110201ACF and BXMLH-20110201ACJ, ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau