



**Federal Communications Commission
Washington, D.C. 20554**

March 21, 2008

DA 08-626

In Reply Refer To:

1800B3-HC/PHD

Released: March 21, 2008

Mr. A. T. Moore, President
Family Life Educational Foundation
6652 N. Club Drive
Shreveport, LA 71107

Re: KFLO-FM, Blanchard, LA
Facility ID No. 84100
Family Life Educational Foundation
File No. BPED-20070907ACH

Dear Mr. Moore,

This letter is in reference to the above captioned minor change application of Family Life Educational Foundation ("FLEF"), licensee of noncommercial educational ("NCE") station KFLO-FM, Blanchard, LA, to change effective radiated power, antenna height, and directional antenna pattern.

An engineering review of the application reveals that the application fails to comply with Section 73.525¹ of the Commission's Rules (the "Rules") with respect to Channel 6 TV station, KTAL(TV), Texarkana, TX. To address this issue, FLEF submits a copy of a letter sent to the Chief Engineer at KTAL(TV). The letter states that KFLO-FM will not begin operations with the proposed facilities until KTAL(TV) ceases Channel 6 transmissions. The letter also requests KTAL(TV)'s consent to the KFLO-FM application. FLEF asserts that it has obtained KTAL(TV)'s consent but does not provide written documentation. Assuming *arguendo* that such consent has been received, we nevertheless conclude that neither Section 73.525 nor established precedent provides a basis for the acceptance of such a contingent arrangement as sufficient to satisfy Channel 6 protection requirements. Accordingly, we will dismiss the referenced application.

A waiver of the Commission's contingent application rule also would be necessary to grant the FLEF application. The proposed facility cannot become operational unless KTAL(TV) implements certain changes in its technical operations based on certain future events. With the exception of certain narrowly defined filings, the Commission's rules prohibit generally the filing of contingent applications.² Such proposals can frustrate the introduction of new and improved services. Processing such applications also can result in the expenditure of limited staff resources on proposals that may never be implemented.

¹ 47 C.F.R. § 73.525.

² See *id.* at § 73.3517.

FLEF has neither sought nor demonstrated that it has cleared the high hurdle for the required waiver.³ We conclude that a waiver in the instant circumstances would be contrary to the public interest.

In this case, FLEF has sought, albeit prematurely, to take advantage of the expected termination of KTAL(TV) analog Channel 6 operations in order to improve its facilities and to gain cut-off protection from all applications filed several weeks later in the October 2007 NCE FM window. Accepting this application – or any application that relies on a similar contingent consent agreement from a potentially impacted Channel 6 station – could foreclose filing opportunities of other potential applicants and licensees that desire to file new station and modification applications based on the forthcoming vacation of analog Channel 6 allotments but have deferred such filings based on the recognition that it is not presently possible to file rule-compliant proposals. Accordingly, we find that acceptance of the FLEF application in these circumstances would be fundamentally unfair to those applicants that have filed applications that complied with Section 73.525⁴ and to those potential applicants that deferred their filings as a result of Channel 6 protection requirement issues. The public interest is better served by dismissing the FLEF application.

In light of the foregoing, Application BPED-20070907ACH is unacceptable for filing and is HEREBY DISMISSED pursuant to Section 73.3566(a)⁵ of the Rules. This action is taken pursuant to Section 0.283⁶ of the Rules.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Jefferson G. Brock

³ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *aff'd* 459 F.2d 1103 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

⁴ For example, acceptance of an NCE new station application filed in the October 2007 window that includes a contingent agreement with a Channel 6 station could unfairly skew the “fair distribution” analysis to the detriment of mutually exclusive applications that filed rule-compliant proposals.

⁵ 47 C.F.R. § 73.3566(a).

⁶ *Id.* at § 0.283.