

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
DENVER EDUCATIONAL BROADCASTING,) File Nos. 0003917373, 0003917377
INC.)
Application For New Licenses in the Microwave)
Industrial/Business Radio Pool)
Requests for Waiver of Section 101.603(a)(7) of)
the Commission's Rules)

MEMORANDUM OPINION AND ORDER

Adopted: December 1, 2009

Released: December 2, 2009

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address Denver Educational Broadcasting's (DEB) applications for new Microwave Industrial/Business Pool Stations and accompanying requests for waiver of Section 101.603(a)(7) of the Commission's Rules to permit DEB to use the stations as the final RF link in connection with the delivery of broadcast programming material to the transmitter site of Station KUVU(FM), Denver, Colorado. For the reasons stated below, we grant DEB's Waiver Requests.

II. BACKGROUND

2. DEB is a nonprofit organization that operates KUVU(FM), a noncommercial educational radio station. It states that the station's current Part 74 broadcast auxiliary service spectrum has insufficient capacity for its conventional and HD broadcasts. Furthermore, the existing studio-to-transmitter link (STL) regularly fails for minutes or hours on end. DEB has received emergency federal

1 File Nos. 0003917373, 0003917377 (filed Jul. 30, 2009) (Applications).

2 See Applications, Request for Waiver of Section 101.603(a)(7) (Waiver Requests).

3 47 C.F.R. § 101.603(a)(7).

4 Waiver Requests at 1.

5 Id.

6 Id. DEB's Chief Engineer documents 34 instances in which the existing STL failed for more than three minutes. Waiver Requests, Statement of Mike Pappas, Chief Engineer, KUVU, In Support of Requests for Support of Requests for Waiver and Special Temporary Authority For Operation of Proposed Part 101 Link for Noncommercial Educational Station KUVU(FM) (Pappas Statement) at 1-2.

funding for replacement equipment.⁷ On August 30, 2009, DEB filed the instant Applications and Waiver Requests.⁸ No oppositions or objections were filed.

3. Section 101.603(a)(7) of the Rules⁹ prohibits the use of the 11 GHz band as the final RF link to deliver DEB's broadcast signal to its transmitter site. DEB has concluded, however, that it must rely on spectrum in the Microwave Industrial/Business service to deliver the broadcast signal from the main studio location in Denver, Colorado to the transmitter site.¹⁰ DEB states that it looked into using an additional 950 MHz band frequency but was told by the spectrum coordinator that no additional frequencies were available on the necessary path.¹¹ According to KUVO's Chief Engineer, terrain and mountainous topography at the transmitter site precludes alternatives to RF connectivity.¹² Qwest informed KUVO that it would cost \$72,000 plus \$5,000/month lease charge to bring fiber to the KUVO(FM) transmitter site.¹³ That cost is beyond KUVO(FM)'s financial capability.¹⁴ DEB also states that it sought 23 GHz frequencies, but that their path length would be problematic and that a time-consuming Department of Defense EMC review would be required.¹⁵ In addition to using the proposed facilities to transmit program material to the transmitter site, DEB intends to use the proposed facilities for a variety of other purposes.¹⁶

III. DISCUSSION

4. Section 1.925(b)(3) of the Commission's Rules requires parties seeking a waiver to demonstrate that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁷

The Part 101 rules were simplified and streamlined to "encourage more efficient use of the microwave spectrum by permitting more intensive use of microwave equipment,"¹⁸ and to "lead to economies of

⁷ Waiver Requests at 1. *See also* Pappas Statement at 2.

⁸ Applications. The applications were accepted for filing on August 5, 2009. *See* Wireless Telecommunications Bureau Site-by-Site Accepted for Filing, Report No. 5154, *Public Notice* (rel. Aug. 5, 2009) at 39. In addition, DEB filed applications requesting special temporary authority to operate the facilities proposed in the Applications. *See* File Nos. 0003917986, 0003918309 (filed Jul. 30-31, 2009). The applications for special temporary authority were granted on August 14, 2009. *See* authorizations for Stations WQKQ719 and WQKQ720.

⁹ 47 C.F.R. § 101.603(a)(7).

¹⁰ Waiver Requests at 1.

¹¹ Pappas Statement at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 2-3.

¹⁶ *See* Amendment (filed Oct. 29, 2009).

¹⁷ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

scale in microwave equipment production and lower equipment prices to licensees.”¹⁹ Section 101.603(a)(7) of the Commission’s Rules ensures that private operational fixed stations are used for private, internal purposes and prevents broadcasters from causing congestion when Part 74 Broadcast Auxiliary Service frequencies are available.

5. We conclude that DEB has justified a waiver under the second prong of the waiver standard. DEB has shown that no reasonable alternative exists to its use of Part 101 frequencies in the 11 GHz band. Specifically, DEB has shown that no additional frequencies are available in the 950 MHz band on the necessary path and that fiber would be prohibitively expensive.²⁰ Furthermore, in light of the fact that DEB had plans to use the microwave station for support and ancillary connectivity, we believe that allowing DEB to use the same station to transmit programming to the transmitter site would be spectrally efficient. We conclude, in view of the foregoing, that, pursuant to Section 1.925(b)(3)(ii) of the Commission’s Rules,²¹ that grant of the waiver would be in the public interest. Accordingly, we believe that DEB should be granted a waiver of Section 101.603(a)(7)²² of the Commission’s Rules.²³

IV. ORDERING CLAUSES

6. Accordingly IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, that the waiver requests filed by Denver Educational Broadcasting on July 30, 2009 ARE GRANTED.

7. IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL PROCESS Denver Educational Broadcasting’s pending applications, File Nos. 0003917373 and 0003917377, in accordance with this *Memorandum Opinion and Order* and the applicable Commission Rules.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁸ Common Carrier and Private Operational Fixed Services, *Report and Order*, WT Docket No. 94-148, CC Docket No. 93-2, and RM-7861, 11 FCC Rcd 13449, 13452 (1996).

¹⁹ *Id.* at 13453. The simplified and streamlined rules also reduced regulatory burdens, benefiting both the public and the Commission. *Id.* at 13452.

²⁰ *See* Waiver Requests.

²¹ 47 C.F.R. § 1.925(b)(3)(ii).

²² 47 C.F.R. § 101.603(a)(7).

²³ *See also* Greater Boston Radio, Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 8661 (WTB BD 2009); Baybridge Communications, *Memorandum Opinion and Order*, 24 FCC Rcd 8653 (WTB BD 2009); Maryland Public Broadcasting Commission, *Memorandum Opinion and Order*, 21 FCC Rcd 1647 (WTB BD 2006); Transmissions Holdings, Inc., *Order*, 14 FCC Rcd 3769 (WTB 1999).