



Federal Communications Commission
Washington, D.C. 20554

DA 20-484
In Reply Refer to:
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Blackbelt Broadcasting, Inc.
Attn: Damon L. Collins
618 East Gate Circle
Foley, AL 36535

In re: **WLYB(FM), Livingston, Alabama**
Facility ID No. 189541
File No. 0000112643

Dear Applicant:

We have before us the above-referenced application (Application) for a new auxiliary facility for station WLYB(FM), Livingston, Alabama (Station), filed by Blackbelt Broadcasting, Inc. (Blackbelt) on April 24, 2020.¹ Under the proposed auxiliary license, Blackbelt seeks to increase the effective radiated power (ERP) of the Station from the 6 kW authorized for Class A stations² to 8 kW. Because the 60 dBu contour of the proposed auxiliary facility would be greater than the Station's currently authorized 60 dBu contour, Blackbelt requests a waiver of the requirement that the service contour of an auxiliary antenna may not extend beyond the corresponding 60 dBu service contour of the main facility (Waiver Request).³ For the reasons set forth below, we deny the Waiver Request and dismiss the Application for failure to comply with sections 73.1675(a)⁴ and 73.1675(a)(1)(ii) of the Commission's rules.

Background. In the Waiver Request, Blackbelt seeks authorization to operate using an auxiliary license at a higher ERP than currently authorized for a Class A station. Blackbelt claims that such a power increase would not only benefit the Station but also "broadcasters of the lowest effective radiated power classes," who recently have lost a significant number of listeners.⁵ Specifically, Blackbelt argues that increased power would improve reception inside houses, where more listening is now occurring due to people working from home in response to Covid-19.⁶ The result of this listening trend, Blackbelt states, is that "broadcasters have potentially lost access to approximately 28% of their audience in the form of vanished commuting listeners."⁷ This listening pattern shift, according to Blackbelt, constitutes a "special and unique circumstance" warranting waiver of the contour limitations for auxiliary facilities.⁸ Blackbelt urges the Bureau to authorize higher power for the Station on an indefinite or permanent basis,

¹ The Application is unopposed.

² See 47 CFR § 73.211.

³ 47 CFR § 73.1675(a)(1)(ii).

⁴ 47 CFR § 73.1675(a).

⁵ Waiver Request at 1.

⁶ *Id.* at 1.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

unless it causes actual interference with a neighboring station, in which case the Station would “return to its original licensed parameters.”⁹

Blackbelt suggests that the scope of this and other, similar, auxiliary waivers could be limited by imposing certain “special narrow and articulable conditions,” namely: (1) waivers would be available only to LPFM, translator, Class A, and “sub-maximum” Class B1/C3 applicants; (2) auxiliary authorizations would only be available for omni-directional antennas operating at the current licensed antenna location and antenna height above average terrain (HAAT); (3) required community of license coverage must be satisfied by the existing rather than proposed operation; (4) approved ERP must be below certain specified power levels for LPFM, translator, Class A, and “sub-maximum” Class B1/C3 applicants; (5) proposed facilities may receive, but not cause, prohibited interference overlap to adjacent stations; and (6) waivers would be processed on a “first come, first served” basis.¹⁰ Blackbelt proposes that stations operating under such waivers “would ultimately be secondary in status to all other broadcast services.”¹¹ Therefore, Blackbelt suggests, they would be subject to interference claims within the 45 dBU contour of the desired station (resolvable using the translator interference resolution process) and prohibited from inhibiting the upgrade or relocation opportunity of a neighboring licensee.¹²

Discussion. The Application does not specify a valid auxiliary facility and does not include the special circumstances necessary to justify a waiver request. The Commission’s rules may be waived for good cause shown.¹³ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.¹⁴ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”¹⁵ and must support its waiver request with a compelling showing.¹⁶ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.¹⁷

Auxiliary operation. As a threshold matter, we find that the Application does not specify a valid auxiliary facility. Based on the technical data specified in the Application (geographic coordinates, height on the tower, omnidirectional antenna radiation pattern, etc.), which are identical to the Station’s currently licensed parameters but with increased power, we conclude that Blackbelt proposes to continue broadcasting using the same antenna, licensed as a main *and* auxiliary facility simultaneously. Blackbelt cites no precedent for authorizing an auxiliary antenna that is also the main antenna, especially where the rationale for doing so is to avoid regulations applicable to the main antenna. Blackbelt essentially concedes, and we agree, that the proposed higher power operation pursuant to a purportedly “auxiliary”

⁹ *Id.* at 4.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2.

¹² *Id.* at 2-3.

¹³ 47 CFR § 1.3.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969) (*WAIT Radio*).

¹⁵ *WAIT Radio*, 418 F.2d at 1157, para. 2.

¹⁶ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

¹⁷ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

authorization is simply a means of circumventing the power restrictions that all FM stations are subject to under section 73.211. Moreover, Blackbelt's proposal does not satisfy the basic criterion in section 73.1675(a) that an auxiliary antenna is "one that is permanently installed and available for use when the main antenna is out of service for repairs or replacement." Instead, Blackbelt proposes indefinite or permanent auxiliary operation from the same antenna but at an increased power limit. We decline to issue an auxiliary license for this novel and unauthorized purpose.

Waiver request. Regarding Blackbelt's request for waiver of section 73.1675(a)(1)(ii) to allow its proposed auxiliary operation to exceed the 60 dBu contour of its current licensed facility, we conclude that even if we were to accept the Application as a bona fide request for an auxiliary license, we would deny the Waiver Request for failure to demonstrate "special circumstances" as required by *NetworkIP* and related decisions. First, as Blackbelt makes clear as a central point in its argument, many stations would likely share Blackbelt's desire to reach more in-home listeners with higher transmission power. The Bureau has previously observed (in the context of a request for waiver of the section 73.211 power limits) that "[i]t is generally true that stronger signals will better penetrate buildings and overcome reflections and other types of signal degradation, but this result is not unique to [the waiver requestor]: it could equally apply to any station in the country operating in a metropolitan area."¹⁸ This reasoning applies here. Numerous other stations seeking to expand their signal strength contours to reach in-home listeners could seek similar waivers. Therefore, these circumstances are not particular to the Station and cannot justify grant of the waiver.

Moreover, the various limitations Blackbelt proposes for Class A and other classes of stations do not help to establish special circumstances as Blackbelt claims. Rather, they represent an attempt to establish a broadly applicable set of standardized criteria governing the Application as well as future waiver requests for super-powered auxiliary operation. A waiver decision is a fact-specific adjudication and therefore not the proper vehicle to establish what are essentially uncodified rules of general applicability. For all these reasons, we conclude that Blackbelt has not established the special circumstances necessary to justify a waiver of this basic and longstanding limitation on auxiliary station contour coverage.

In a similar vein, although we recognize the grave economic pressure currently facing broadcasters, we are not convinced that issuing potentially widespread permanent waivers of our fundamental allocations framework would be an appropriate or effective solution to these problems. The system of station classes and mileage separations set out in section 73.211 represents a careful, decades-long balancing between ensuring the widest possible signal coverage for each station and maximizing the number of specific assignments.¹⁹ Sweeping alterations of this balance—as we believe would result from authorizing super-power auxiliary operations on a permanent basis as Blackbelt requests—should be taken only after a complete and informed analysis of the technical, financial, and public interest consequences of such action on all affected stakeholders, including the listening public. Such analysis is not possible in the context of an individual waiver request, particularly one with potential far-reaching consequences beyond the specific facts presented.

For these reasons, we find that Blackbelt has not established that special circumstances exist in this case or that the public interest would be served by departure from the rule. Therefore, we deny

¹⁸ See *Margaret Miller, Esq.*, Letter Decision, 19 FCC Rcd 18918, 18921 (MB 2004).

¹⁹ See, e.g., *Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards*, Third Report and Memorandum Opinion and Order, 40 F.C.C. 747, 753, para. 15 (1965).

Blackbelt's Waiver Request and dismiss the Application for failure to comply with sections 73.1675(a) and 73.1675(a)(1)(ii) of the Commission's rules.

Conclusion. For the reasons stated above, we conclude that Blackbelt's request for waiver of 47 CFR § 73.1675(a)(1)(ii) IS HEREBY DENIED and the Application filed on April 24, 2020 (File No. 0000112643) IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau