

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of
THE STATE OF OREGON, Acting By and
Through the State Board of Higher Education
for the Benefit of Southern Oregon State
College
To Change the Frequency of FM
Translator Station K202AP
McCloud, California
File No. BPFT-930920TC
Facility ID No. 62999

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 2000

Released: July 3, 2000

By the Commission:

1. The State of Oregon, Acting By and Through the State Board of Higher Education for the Benefit of Southern Oregon State College ("Oregon"), seeks review of the staff's denial of its Petition for Reconsideration ("Petition").

2. Background: Station K202AP was licensed to Oregon on August 7, 1985. It rebroadcasts the off-air signal of station KSOR, Ashland, Oregon, via translator station K208AH, Weed, California.

1 Letter to Southern Oregon State College (Audio Services Division, Mass Media Bureau, April 3, 1997).

2 File No. BPFT-930920TC.

3 Letter Request for Special Temporary Authority (filed September 8, 1993). While operating under the STA, Station K202AP was assigned the temporary call sign K217BV.

4 KWXP(FM) is now KLVC(FM).

K202AP. Additionally, in the Major Change Application Oregon sought a waiver of the 47 C.F.R. §74.1235(b)(2) MERP limit, allowing it to operate Station K202AP at greater than 10 watts ERP.<sup>5</sup>

3. On September 23, 1993, the staff granted Oregon's request for Special Temporary Authority to operate Station K202AP on Channel 217 with an ERP in excess of the §74.1235(b) MERP limit.<sup>6</sup> However, the staff specifically noted that its grant of the STA was without prejudice to final Commission action on the Major Change Application. The STA was extended by staff letters dated April 6, 1994, May 18, 1994, February 21, 1995, and April 12, 1995. While the staff initially granted the STA because of the interference problems alleged by Oregon, the STA was extended based on Oregon's assertion that Station K202AP was needed for service to McCloud and surrounding areas pending construction and operation of its station KNYR(FM) in Yreka, California. Oregon asserted that, once built, KNYR would obviate the need for Station K202AP.<sup>7</sup> However, in November of 1994 Oregon stated that, contrary to expectations, KNYR's signal did not extend into Station K202AP's coverage area.<sup>8</sup> The staff extended the STA on April 12, 1995, based in part on Oregon's pending application for a full-service FM station at McCloud, California.<sup>9</sup> The STA expired on October 13, 1995. Oregon's June 6, 1996 request for reinstatement of the STA is still pending.

4. The staff denied the Major Change Application by letter dated May 7, 1996,<sup>10</sup> finding that the 40 dBμ interfering contour of Station K202AP's proposed facility overlapped with KNYR's 60 dBμ protected service contour, in violation 47 C.F.R. §74.1204(a). The staff also found that Station K202AP's power exceeded the MERP limits allowed in 47 C.F.R. §74.1235(b).<sup>11</sup> Since McCloud received other noncommercial educational ("NCE") radio service, the staff held that a waiver of that section was not warranted. Oregon filed its Petition on June 6, 1996. The staff denied reconsideration on April 3, 1997,<sup>12</sup> finding that Oregon had failed to demonstrate a lack of population in the predicted interference area,

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<sup>5</sup> Station K202AP is a "grandfathered" translator station that currently operates in excess of the 10-watt ERP maximum. See 47 C.F.R. §74.1235(j). However, major change proposals for such grandfathered stations must comply with the 10-watt ERP limit. See 47 C.F.R. §74.1235(b)(2).

<sup>6</sup> Letter to Ms. Virginia L. Thompson, Southern Oregon State College (Audio Services Division, Mass Media Bureau, September 23, 1993).

<sup>7</sup> Letter Request for an Extension of Special Temporary Authority FM Translator K217BV (formerly K202AP), McCloud, California (filed March 11, 1994).

<sup>8</sup> Letter Request for an Extension of Special Temporary Authority FM Translator K217BV (formerly K202AP), McCloud, California (filed November 14, 1994).

<sup>9</sup> Letter to Ms. Virginia L. Thompson, Southern Oregon State College (Audio Services Division, Mass Media Bureau, April 12, 1995). Oregon's application for a new FM station at McCloud is File No. BPED-950210MA. The application was frozen pursuant to the Notice of Proposed Rule Making in Reexamination of the Comparative Standards for New Noncommercial Educational Applications, 10 FCC Rcd 2877, 2879 (1995), and remains pending.

<sup>10</sup> Letter to Southern Oregon State College (Audio Services Division, Mass Media Bureau, May 7, 1996).

<sup>11</sup> The May 7, 1996 letter erroneously used the MERP applicable to translators east of the Mississippi River and in Zone I-A (47 C.F.R. §74.1235(b)(1)), neither of which applies to Station K202AP. However, since Station K202AP has a height above average terrain of 783 meters, application of the correct standard (§74.1235(b)(2)) yields the same MERP of 10 watts as set forth in the staff's letter.

<sup>12</sup> Footnote 1, *supra*.

pursuant to 47 C.F.R. §74.1204(d), that would justify an exception to the contour overlap prohibition of §74.1204(a). The Petition was also denied because Oregon did not state with particularity the claimed errors in the staff's earlier decision, the form of relief sought, or changed circumstances or facts that could not have been presented earlier. 47 C.F.R. §1.106(c)-(d).

5. **Discussion:** As noted, the staff denied the Petition because of prohibited overlap between Station K202AP's and KNYR's signal contours. Oregon concedes that there is overlap, but contends that "only a small portion of the overlap [area is] populated," that there is no evidence of actual interference to reception of KNYR in the overlap area, and that Oregon is the licensee of both KNYR and Station K202AP.<sup>13</sup> In support of its contentions, Oregon submits a Declaration of its Director of Broadcasting, Mr. Ronald Kramer, who states that when Station K202AP was operating on Channel 217 under the STA, he never received a listener complaint of interference due to Station K202AP, and never experienced interference to either KNYR or Station K202AP during his field inspections. Oregon also attaches an Engineering Statement of Robert E. McClanathan, P.E., who admits that "[t]he only populated area is the Interstate Highway I-5 corridor and the town of Mount Shasta," asserting that the overlap area otherwise consists mostly of unpopulated forest.<sup>15</sup> The maps Mr. McClanathan attaches to his statement corroborate his admission that the town of Mount Shasta lies within the overlap area.

6. It is well established that we will not accept an FM translator application if the proposed translator's operation would involve the overlap of predicted field strength contours with any other authorized station. 47 C.F.R. §74.1204(a). The only exceptions to this rule occur when any overlap area lies entirely over water, or "if it can be demonstrated that no actual interference will occur due to intervening terrain, lack of population or such other factors as may be applicable." 47 C.F.R. §74.1204(d). Oregon has failed to show that any of these exceptions apply to Station K202AP. The staff has consistently held that "lack of population" means *no* population, not merely low or negligible population. See, e.g., *Letter to Pensacola Christian College* (Audio Services Division, Mass Media Bureau, June 10, 1999) (overlap area that encompasses industrial building precludes application of 47 C.F.R. §74.1204(d)). We agree with this interpretation, as the overlap prohibitions of §74.1204 are designed to protect potential radio listeners from interference. Oregon concedes, in both the Application for Review and the Petition, as well as Mr. McClanathan's engineering study attached to both pleadings, that the proposed area of overlap between KNYR and Station K202AP includes the town of Mount Shasta, California, a community with a population of 3,460 according to the 1990 Census. This does not qualify as a "lack of population" justifying an exception to the provisions of §74.1204(a).

7. Moreover, §74.1204(d) requires an applicant to demonstrate that no actual interference *will occur* due to the factors outlined in that section.<sup>16</sup> Oregon does not maintain that there is intervening terrain that would prevent actual interference in the overlap area, nor does Oregon show any other factors that would warrant an exception under §74.1204(d). The declaration of Mr. Kramer, an interested party, that while Station K202AP operated on Channel 217 under the STA, he neither personally experienced any interference during field inspections nor received any listener complaints of interference, fails to satisfy §74.1204(d). Mr. Kramer does not detail how he conducted the "field inspections" referenced in his declaration, and we are unable to make a determination as to lack of actual interference based on a

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<sup>13</sup> Application for Review, p. 2.

<sup>15</sup> Engineering Statement (attachment to Application for Review), fourth paragraph.

<sup>16</sup> "[A]n application otherwise precluded by this section will be accepted if it can be demonstrated that no actual interference will occur due to intervening terrain, lack of population or such other factors as may be applicable."

conclusory statement such as this. The contour overlap provisions set forth in §74.1204 guide our determination of the potential for harmful interference between FM translators and other authorized stations, and Oregon has not met its pleading burden under that rule. Further, the fact that Oregon is the licensee of both KNYR and Station K202AP is not a recognized exception under §74.1204(d), and does not weigh in favor of granting the Major Change Application. Full-service FM stations are protected from interference, and there is no exception for commonly owned broadcast station-translator combinations such as KNYR and K202AP.<sup>17</sup>

8. Because we find that the prohibited contour overlap between Station K202AP and KNYR precludes grant of the Application for Review, we need not decide the issue of Oregon's request for a waiver of the MERP limit of 47 C.F.R. §74.1235(b)(2) for Station K202AP. Accordingly, we conclude that the staff properly denied Oregon's Major Change Application.

9. **Conclusion / Action:** For the reasons discussed above, we find that Oregon has not demonstrated that an exception to Section 74.1204(a) is warranted, and therefore that the staff properly denied the Major Change Application. Accordingly, Oregon's Application for Review IS DENIED, and its Request for Reinstatement of Special Temporary Authority to Operate Translator Station K202AP on Channel 217 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Román Salas  
Secretary

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<sup>17</sup> While 47 C.F.R. §74.1204(e) provides an exception for overlaps between a proposed fill-in FM translator station and its primary station operating on a first, second, or third adjacent channel, Oregon does not contend that Station K202AP is a fill-in translator. Contour plots prepared by the engineering staff confirm that Station K202AP's coverage contour extends well beyond the protected contour of KNYR(FM), and thus that Station K202AP does not qualify as a fill-in translator under §74.1201(g).