

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

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

MEMORANDUM OPINION AND ORDER

Adopted: February 8, 2001

Released: February 14, 2001

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 reconsideration of our denial of its Application for Review (“Reconsideration Petition”).¹ For the reasons set forth below, we deny the Reconsideration Petition.

2. **Background:** This case involves the request of Oregon for a waiver of 47 C.F.R. §74.1204(a), which prohibits the operation of an FM translator station that causes actual interference to, *inter alia*, the transmission of any authorized broadcast station. In the Oregon Decision, we found that Oregon’s translator station K202AP (“Station K202AP”) interfered with KNYR(FM), Yreka, California, also owned by Oregon, and thus denied the requested waiver.

3. Oregon provides no new facts in its Reconsideration Petition, as required by 47 C.F.R. §1.106(b). Instead, it argues that we have “arbitrarily and capriciously created a gauntlet” through which no translator owner seeking a waiver of 47 C.F.R. §74.1204(a) could successfully navigate. Specifically, Oregon levels the following charges against our prior decision: (1) that we arbitrarily created the “impossible” requirement that a waiver applicant prove lack of population under §74.1204(d), and that because of this “impossible” standard we have violated the requirement to give each waiver request a “hard look,” contrary to *WAIT Radio v. F.C.C.*, 418 F.2d 1153 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); and (2) that we arbitrarily refused to credit the “declaration of non-interference provided by Mr. Ronald Kramer,” allegedly because we found him to be an interested party, and because our discussion “clearly implies” that we found his statement “inadequate as that of a layman rather than that of an engineer.”

4. **Discussion:** We dismiss Oregon’s Reconsideration Petition as repetitious. *See* 47 C.F.R. §1.106(b)(3). Moreover, Oregon has not met the narrow standards for reconsideration set forth in 47 C.F.R. §1.106(b), and is thus not entitled to reconsideration of our earlier action. However, while these

¹ *State of Oregon*, 15 FCC Rcd 11842 (2000) (“Oregon Decision”).

procedural defects are fatal to the Reconsideration Petition, we briefly respond to Oregon's mischaracterization of the reasoning underlying our earlier decision.

5. *Lack of Population:* We pointed out in our earlier decision that the staff has consistently held that the term "lack of population," as used in §74.1204(d), means no population in the overlapping coverage area between a full-service station and the translator station seeking a waiver of §74.1204(a). It does not follow, however, that demonstrating this "negative" is impossible, as Oregon asserts. Indeed, the staff routinely grants waivers of §74.1204(a) to applicants who show that an overlap area is unpopulated. *See, e.g., Letter to Calvary Chapel of Twin Falls, Inc. and Donald E. Martin, P.C.* (Audio Services Division, Mass Media Bureau, October 29, 1998) (USGS topographical map submitted with waiver application showed interference area does not contain population); *Letter to Calvary Chapel of Twin Falls, Inc. and Pacifica Foundation* (Audio Services Division, Mass Media Bureau, December 31, 1996) (topographical transmitter site map submitted by applicant supported conclusion of no population in interference contour). Section 74.1204(d) sets forth the circumstances, including lack of population, under which we will waive the provisions of §74.1204(a) – provisions that, as we stated in the Oregon Decision, are necessary to protect full-service FM stations and their listeners from interference from secondary services, such as FM translators. As noted above, it is possible to demonstrate lack of population. However, since Oregon's own engineer determined that the overlap area included the town of Mt. Shasta, California, with a population of over 3,000, Oregon itself conclusively proved that there was a substantial population in the area likely to receive interference to the signal of broadcast station KNYR(FM), thus precluding grant of a waiver.²

6. *Kramer Declaration:* While we noted in the Oregon Decision that Mr. Kramer was, in fact, an interested party, insofar as he is the Director of Broadcasting of Oregon's network of stations that sought the waiver, this was not the reason we rejected his declaration. Rather, as we stated, Mr. Kramer's declaration lacked the necessary specificity to allow us to determine that there was no danger of harmful interference to KNYR's signal. Mr. Kramer stated in conclusory fashion that he had not experienced such interference during his own "field inspections," but did not provide any details as to the methodology, frequency, or time period of those inspections. It is not laying an impossible pleading burden on a waiver applicant to require that it provide the factual premises underlying the conclusion that a station will cause no interference. Moreover, there is absolutely no basis for Oregon's charge that we rejected Kramer's declaration because we believed him to be a layman. In any event, given the failure of the facts pled, we need not reach the issue of Mr. Kramer's qualifications to plead them.

7. **Conclusion / Action:** Oregon, as noted above, presents no new facts that justify reconsideration of this matter. Moreover, Oregon's contentions regarding the reasons underlying our prior decision lack any basis in fact. For the reasons set forth in the Oregon Decision, we found that Oregon failed to meet its burden of convincing us that a waiver is appropriate here, and its mischaracterization of our decision does not change that result. Accordingly, the Petition for Reconsideration IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Román Salas
Secretary

² Oregon's engineering study also contradicted its assertion on reconsideration that "the record reflects that the translator and KNYR are separated by Mount Shasta, the second highest mountain in the continental United States." While Station K202AP is in fact situated south of Mount Shasta, Oregon's engineering study showed that the intervening terrain did not eliminate the impermissible overlap between the contours of KNYR and Station K202AP.