



Federal Communications Commission
Washington, D.C. 20554

October 25, 2006

DA 06-2106

In Reply Refer To:
Ref. No. 1800B3-PHD/GL
Released: October 25, 2006

Mr. John Snyder
Thin Air Community Radio
35 W Main, Suite 340
Spokane, WA 99201

Re: Thin Air Community Radio
KYRS-LP, Spokane, WA
Facility ID No. 135324
File No. BMPL-20060809ALB

**Application for Minor Modification
of Construction Permit**

Dear Mr. Snyder:

This letter refers to the above-captioned application (the "Application") of Thin Air Community Radio ("Thin Air") to modify the licensed facilities of KYRS-LP, Spokane, WA. Thin Air proposes to change operations from Channel 237 to Channel 210 at its licensed site.

Background. The proposed facility is short-spaced to second-adjacent channel Station KEWU-FM, Cheney, WA, licensed to Eastern Washington University ("EWU"), in violation of Section 73.807 of the Commission's Rules.¹ Thin Air recognizes this violation and requests waiver of the minimum distance separation provisions of Section 73.807. The waiver is requested so KYRS can modify its facilities prior to commencement of program test operations by co-channel Station KPND(FM), Sandpoint, ID. In support of the waiver request, KYRS submits an engineering study based on the relative signal strengths of KYRS and KPND(FM). This so-called "ratio methodology" is used to predict FM translator station interference.² According to Thin Air, the area of predicted interference would not reach any populated areas. Specifically, the 130.5 dBu interfering contour extends only 22 meters from the KYRS transmission facility.

Thin Air and EWU have entered into an agreement (the "EWU Agreement") under which KEWU has agreed not to object to the grant of the Application provided that Thin Air adheres to certain conditions.

¹ 47 C.F.R. § 73.807.

² See 47 C.F.R. § 74.1204(d). See also *Living Way Ministries*, 17 FCC Rcd 17054 (2002) (*petition for reconsideration pending*).

These include the requirement that Thin Air resolve actual interference complaints within 24 hours. In the event that interference is not resolved, Thin Air is required to suspend operations until the interference problem is resolved. Moreover, Thin Air must notify EWU regarding complaints received and corrective actions taken.

The proposed facility also is short spaced to KHQ-TV, Channel 6, Spokane, WA, licensed to KHQ Incorporated (“KHQ”), in violation of Section 73.825 of the Commission’s Rules.³ Thin Air recognizes this violation and requests waiver of Section 73.825. In support of the waiver request, Thin Air demonstrates that, by using vertical polarization and applying the provisions of Section 73.525 of the Commission’s Rules, there will be no actual interference to any TV Channel 6 viewers.⁴ KHQ and Thin Air also have entered into an agreement, substantially similar to the EWU Agreement, which requires Thin Air to resolve expeditiously all interference complaints.

Discussion. As a threshold matter, we must determine whether Section 632(a) of P. L. 106-553⁵ bars the Commission from waiving its second-adjacent channel spacing requirements. Section 632(a)(1)(A) requires the Commission to prescribe co-, first-, second-, and third-adjacent channel minimum distance separation requirements. Subsection (a)(2)(A) prohibits the Commission from eliminating or reducing the third-adjacent channel protections required by paragraph (a)(1)(A). Congress did not impose a similar prohibition with regard to second-adjacent channel separation requirements. Moreover, Congress is well aware of the Commission’s judicially-endorsed “good cause” waiver standard.⁶ In these circumstances, we conclude that Section 632 bars the Commission from granting third-adjacent channel rule waivers only.

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action.⁷ Based on the record of this application proceeding, we conclude that Thin Air has established that grant of the requested waivers would be in the public interest. Waiving our rules will help ensure continued KYRS-LP operations. More importantly, Thin Air has obtained the consent of the potentially impacted licensees and has reached agreement with those licensees to promptly resolve any listener or viewer complaint to the satisfaction of the complainant, or, alternatively, to suspend operations until the interference complaint is resolved.⁸ In order to fully protect the public, the KYRS construction permit will include a condition requiring that KYRS immediately address and resolve any interference complaints regarding KEWU and KHQ-TV. The condition will require that KYRS cease operation immediately if the interference cannot be eliminated.

Thin Air’s waiver showing also establishes that it is unlikely that interference will occur or that if it does occur, steps can be immediately taken to successfully resolve the problem. While this showing of no predicted interference is helpful, we emphasize that our action is principally based on the licensee consents and the imposition of procedures which will fully protect the listening and viewing public from service disruptions.

³ *Id.* § 73.825.

⁴ *Id.* § 73.525.

⁵ 114 Stat. 2762 at A-11. Formerly H. R. 5548 (106th Cong.).

⁶ *E.g., WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1968) (“*WAIT Radio*”).

⁷ *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, INC. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (*per curiam*)).

⁸ 47 C.F.R. § 73.809.

Conclusion. For the foregoing reasons, Thin Air Community Radio's request for waivers of Section 73.807 and Section 73.825 ARE HEREBY GRANTED and its application, File No. BMPL-20060809ALB IS HEREBY GRANTED WITH CONDITIONS. The authorization is enclosed. These actions are taken pursuant to Section 0.283 of the Commissions Rules.⁹

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Brown Broadcast Services, Inc.

⁹ *Id.* § 0.283.