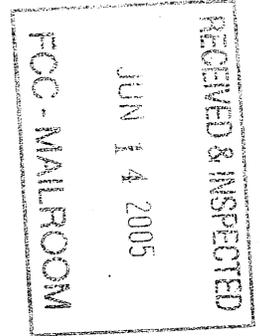


FEDERAL COMMUNICATIONS COMMISSION

445 12th Street, S.W.
Washington, D.C. 20554

JUN 10 2005

In Reply Refer to:
1800B3-DT



Donald E. Martin, Esq.
Donald E. Martin, P.C.
6527 Bay Tree Court
Falls Church, VA 22041

In re: KRHV(FM), Big Pine, CA
Facility ID No. 15553
David A. and Maryann M. Digerness

Request for waiver of 47 C.F.R.
§ 73.1125

Dear Mr. Martin:

This letter refers to the March 17, 2004 request, filed on behalf of David A. and Maryann M. Digerness ("Digerness"), licensee of Station KRHV(FM), Big Pine, California, for the waiver of the Commission's main studio location rule.¹ Digerness seeks authority to collocate the KRHV(FM) studio with that of co-owned station KMMT(FM)² in Mammoth Lakes, California, approximately 56 miles from the center of Big Pine. For the reasons set forth below, we deny the waiver request.

Waiver request. In support of its waiver request, Digerness characterizes the KRHV coverage area as "mountainous rural territory" with declining population.³ There is little retail activity, they contend, and they claim that "the business and economic life of the area is in serious decline."⁴ Digerness also asserts the following:

¹ 47 C.F.R. § 73.1125(a).

² KMMT is licensed to Mammoth Mountain FM Associates, Inc. Digerness asserts that this corporate licensee is fully owned by David A. Digerness.

³ Waiver Request at 2. Digerness states that Big Pine's population of 1,350 in 1990 had declined to 1,158 in 2000, a decrease of 14%. According to the Census Bureau, however, Big Pine's population was 1,158 in 1990 and grew by more than 16% to 1,350 in 2000. U.S. Census Bureau, "Population Finder" for Big Pine CDP, California (accessed through World Wide Web site <<http://factfinder.census.gov>> June 7, 2005).

⁴ Waiver Request at 2.

Advertising sales from Big Pine and the immediate vicinity average less than \$3,000 per month. At the same time, the cost of operating a full-service station with a proper main studio in Big Pine is in the range of \$5,000 to \$6,000 per month.... The licensee cannot sustain such an open-ended continuous deficit.⁵

Digerness proposes a “creative solution” to this financial imbalance – the co-location of the KRHV(FM) main studio with KMMT(FM)’s main studio in Mammoth Lakes, California, approximately 56 miles away from Big Pine, California, KRHV(FM)’s community of license.⁶ Digerness states that, in order to stay “currently involved in the life of the community” of Big Pine, it will: (1) maintain the public inspection file for KRHV in Big Pine; (2) provide a toll-free telephone number to the main studio for Big Pine residents; (3) continue, through various means, to ascertain the “local needs and interests” of the Big Pine community; (4) “collect[] news and information [of local interest] by telephone” for broadcast on KRHV; and (5) establish a community advisory board to advise the station of local needs and interests.⁷

Discussion. Pursuant to Section 73.1125(a), a main studio must be located either (1) within a station’s principal community contour, (2) within the contour of any other broadcast station licensed to its community, or (3) within 25 miles of the center of its community.⁸ In relaxing the studio location requirement, the Commission proposed to strike a balance between reducing the burdens on licensees by expanding the area in which most licensees may locate their main studios while maintaining a “close connection” to their communities.⁹ The rules adopted in the 1998 *Main Studio R&O* were designed to be easy to administer and maintain, and the Commission predicted that the revisions should reduce main studio waiver requests.¹⁰

We find that Digerness’s waiver request is predicated primarily on the benefits of economic efficiencies, *i.e.*, the use of an existing studio and staff in Mammoth Lakes. However, Digerness cites no precedent for the proposition that a waiver is warranted in order simply to benefit a broadcaster through financial and administrative efficiencies, and we are aware of none. In fact, the Commission has specifically rejected an argument based on economic efficiency in the context of a waiver request by a commercial station.¹¹ Digerness also does not reference

⁵ *Id.*

⁶ *Id.* at 1, 2.

⁷ *Id.* at 2, 3.

⁸ See *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, Report and Order*, 13 FCC Rcd 15691 (1998) (“1998 *Main Studio R&O*”), *recon granted in part* 14 FCC Rcd 11113 (1999).

⁹ *Id.*, 13 FCC Rcd at 15694.

¹⁰ *Id.*

¹¹ *Maines Broadcasting, Inc.*, 8 FCC Rcd 5501, 5502 (1993) (“Given the flexibility and efficiency accorded licensees under the studio rules revisions, coupled with the importance of the main studio in our broadcast licensing scheme, we find that Maines’ economic argument is insufficient to justify a waiver.”). See also *PZ Entertainment Partnership, L.P.*, 6 FCC Rcd 120 (1991) (departure from licensing rules on economic grounds would be “inappropriate”).

authority for waiving the rule to permit KRHV(FM) to locate the studio of the small-market Big Pine (2000 Census population 1,350) station in the larger community of Mammoth Lakes (2000 Census population 7,093) at a location which is both outside the principal community contours of any Big Pine station and approximately 56 miles from Big Pine itself. To the contrary, grant of its proposal would contravene Digerness's obligation under Section 307(b) of the Communications Act of 1934, as amended, to maintain the connections between KRHV(FM) and its principal community.¹²

Digerness argues that "conservation of resources that allow for the enhancement of services to the listening public has been deemed adequate 'good cause' to justify waiver of the main studio location requirement."¹³ To support this proposition, Digerness cites a 1988 discussion of main studio waiver grants for "satellite" stations that are part of noncommercial educational networks.¹⁴ The Commission has not accorded similar treatment to commercial stations.¹⁵

Accordingly, we find that insofar as the requested waiver will not enhance the public interest but is intended principally for KRHV(FM)'s private pecuniary benefit, Digerness has not shown good cause for a waiver of Section 73.1125.¹⁶

In light of the above, and pursuant to 47 C.F.R. § 0.283, the request of David A. and Maryann M. Digerness for a waiver of 47 C.F.R. § 73.1125 IS DENIED.

Sincerely,



Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: David A. and Maryann M. Digerness

¹² See, e.g., *Roberts Communications, Inc.*, 11 FCC Rcd 1138 (1996) (presumed that applicant will serve its designated community if, among other things, its main studio location complies with Section 73.1125).

¹³ Waiver Request at 1.

¹⁴ *Id.*, citing *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, Memorandum Opinion and Order*, 3 FCC Rcd 5024, 5027 (1988).

¹⁵ See *1998 Main Studio R&O*, 13 FCC Rcd at 15,695 n. 18 ("noncommercial stations have been given distinct treatment from commercial stations.")

¹⁶ See *Maines Broadcasting Inc.*, 8 FCC Rcd 5501 (1993). See also *Letter to Eclectic Enterprises, Inc. (KAOD-FM, Babbitt, Minnesota)*, reference 1800B3-JR (Chief, Audio Services Division, July 30, 1999) (denial of request for waiver of Section 73.1125 to locate studio of small-market FM station with co-owned station 64 miles away.)