

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Hull Broadcasting, Inc.
Licensee of Stations KBGL(FM), Larned, Kansas
and KFIX(FM), Plainville, Kansas
Request for Waiver of Section 11.51(j) of the
Commission's Rules
File No.: EB-04-OHS-055

ORDER

Adopted: August 26, 2004

Released: August 27, 2004

By the Director, Office of Homeland Security, Enforcement Bureau

1. In this Order, we deny Hull Broadcasting, Inc.'s (Hull) request for a waiver of section 11.51(j) of the Commission's Rules (Rules). Section 11.51(j) of the Rules allows stations that are co-owned and co-located to share one set of Emergency Alert System (EAS) equipment, rather than requiring each station to purchase and install the equipment. The Rules do not contemplate stations that are co-located, but not co-owned, sharing EAS equipment.

2. On May 4, 2004, Hull filed a request for a waiver of section 11.51(j) of the Rules for stations KBGL(FM), Larned, Kansas and KFIX(FM), Plainville, Kansas. Hull seeks a waiver to share the use of the EAS equipment with co-located stations owned by a separate entity, Eagle Communications, Inc. (Eagle). Hull states that the studios of KBGL(FM) are located in Great Bend, Kansas, in the same building as the studios for three stations licensed to Eagle. Similarly, the studios of KFIX(FM) are located in Hays, Kansas, in the same location as other stations owned by Eagle. Therefore, Hull seeks a waiver of section 11.51(j) of the Rules so that stations, KBGL(FM) and KFIX(FM), may share use of the Eagle stations' EAS equipment. Hull argues that the joint use of a single EAS unit at each location will promote efficient performance of the EAS monitoring, testing and alert functions at each location. On August 3, 2004, Hull stated that both stations have their own EAS equipment installed at each location.

3. In its request for a waiver, Hull acknowledges that under section 11.51(j) of the Rules, if stations are co-located but not co-owned, then each station must have its own EAS unit. In order

1 47 C.F.R. § 11.51(j).

2 See id.

3 Letter from Matthew H. McCormick, Counsel for Hull Broadcasting, Inc. (filed May 4, 2004).

4 Email from Matthew H. McCormick, Counsel for Hull Broadcasting, Inc. (Aug. 3, 2004) (providing supplemental information in response to Commission staff inquiry).

for a waiver of our Rules to be granted, good cause must be shown.⁵ We are not persuaded by Hull's argument that sharing one EAS unit is more efficient. On the contrary, the efficient deployment of an EAS message depends to a certain degree on system redundancies. Moreover, Hull's waiver request does not identify any unique circumstances that exist or provide other information sufficient to justify such a request. In fact, Hull's argument regarding efficiency might be invoked by many other stations that are co-located but not co-owned.⁶ Therefore, we find that Hull is in fact seeking a permanent rule change, which is inappropriate in the form of a waiver request.⁷ Accordingly, we find that Hull's request should be denied. Finally, because Hull has already installed EAS equipment, there is no need for a temporary waiver.

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b), 0.311 of the Rules,⁸ Hull Broadcasting, Inc.'s request for waiver of Section 11.51(j) of the Rules, **IS DENIED**.

5. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Hull Broadcasting, Inc., Matthew H. McCormick, Reddy, Begley & McCormick, LLP, Suite 610, 1156 15th Street, N.W., Washington, D.C. 20005-1770.

FEDERAL COMMUNICATIONS COMMISSION

James A. Dailey
Director, Office of Homeland Security
Enforcement Bureau

⁵ See 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or by petition if good cause therefore is shown."). See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (finding that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest).

⁶ See *Applications of Empire State Broadcasting Corporation (WWKB) Buffalo, New York For Renewal of License Bursam Communications Corporation (WTHE) For Construction Permit*, MM Docket No. 87-110, 4 FCC Rcd 7008, 7017, para. 63 (1989) (*Empire*).

⁷ See *Empire*, 4 FCC Rcd at 7017, para. 63 ("[R]esolution of this broad policy dispute properly belongs in a rule making proceeding, not a waiver request."). See also *Request of W.A.T.C.H. TV and Benton Ridge Telephone Co. for a Waiver of Section 11.11(a) of the Commission's Rules*, EB-02-TS-510, Order, 17 FCC Rcd 18329, 18331, para. 4 (Enforcement Bur. 2003); *Request of Craig Wireless Honolulu Inc for a Waiver of Section 11.11(a) of the Commission's Rules*, EB-03-TS-101, Order, 18 FCC Rcd 20099, 20100-01, paras. 4-5 (Enforcement Bur. 2003).

⁸ 47 C.F.R. §§ 0.111, 0.204(b), 0.311.