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Cox Radio, Inc.
1010 Tower Place
Bogart, GA 30622

In re: WNGC(FM), Arcade, GA
Facility ID# 60810
Cox Radio, Inc. ("Cox")
BPH-20080118AAC

Dear Applicant:

The instant application proposes to correct the coordinates of the transmitter site to be consistent with the tower registration record. Additionally, the application includes a request for waiver of Section 73.207 of the Commission's Rules.¹

Waiver request. The coordinates submitted in this application show the site to be 33.4 kilometers² from fifty-third adjacent channel Class C1 license BLH-20070926AKM for WBTS(FM), Doraville, GA. Pursuant to the minimum distance separation requirements of Section 73.207 of the Commission's Rules,³ WNGC must be located at least 34 kilometers from WBTS. Accordingly, Cox requests waiver of Section 73.207, stating that the authorized facility (BLH-20000911ACX)⁴ met the spacing requirement and the actual decrease of 0.2 kilometer due to the correction of coordinates is *de minimis*. Furthermore, Cox cites a waiver granted to Iowa Great Lakes Broadcasting Co., Inc. ("Iowa")⁵ that allowed the correction of coordinates, creating a violation of the distance spacing rules where none had existed previously.

Discussion. We conclude that WNGC's request for waiver of Section 73.207 is consistent with Commission precedent. In the instant case, WNGC is proposing no new construction, and thus the proposal would not have any significant environmental impact. Additionally, the proposal would have no adverse effect with regard to interference to WBTS. We agree that strict application of the spacing requirements in circumstances like those presented here may have a deterrent effect on the submission of accurate site data by structure owners, contrary to the Commission's purpose. See *Antenna Structure R&O*, 11 FCC Rcd at 4286-87 and Appendix C (Commission did not intend to impose administrative sanctions on licensees correcting

¹ See 47 C.F.R. § 73.207.

² This distance rounds to 33 kilometers

³ See 47 C.F.R. § 73.207.

⁴ The licensed facility is 36.6 kilometers from WBTS which rounds to 34 kilometers.

⁵ See *Letter to Leonard S. Joyce, Esq.*, DA 98-1853, 13 FCC Rcd 19,605 (1998).

inadvertent coordinate errors). The Media Bureau's practice in processing applications for correction of site data has been to waive short spacing violations where the difference between the authorized and corrected spacing is *de minimis* and the application raises no environmental, international or other issue. See, e.g., *Letter to Citadel License, Inc. (WMGS(FM), Wilks-Barre, PA)*, Ref. No. 1800B3 (Asst. Chief, Audio Services Div., April 30, 1998) (granting Section 73.207 waiver for proposed coordinate correction involving 0.4 km increase in existing short-spacing).⁶ The actual (not rounded off) difference between the authorized and corrected spacing involved here is less than two tenths of a kilometer. In sum, therefore, based on the facts that (1) this is an application for correction of site data rather than for an actual change in technical facilities; (2) the proposed correction raises no environmental, international or other issue; and (3) the difference between the authorized and corrected spacing involved is *de minimis*; we conclude that waiver of Section 73.207 is warranted.

Conclusion. When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *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)). We have afforded the Cen-Tex/CCR waiver request the "hard look" called for under the *WAIT* Doctrine, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances set forth in the justification are sufficient to establish that granting the requested waiver of Section 73.207 would be in the public interest.

Accordingly, waiver of Section 73.207 IS HEREBY GRANTED to the extent indicated above and Application File No. BPH-20080118AAC IS HEREBY GRANTED. The authorization is enclosed. These actions are taken pursuant to Section 0.283 of the Commission's Rules.⁷

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Kevin F. Reed, Esq.

⁶ We note that there is support in Commission precedent for *not* rounding off to the nearest kilometer in this context. See *Naguabo Broadcasting Co.*, 7 FCC Rcd 1696 (1992) (concluding that whether Section 73.208 rounding-off provision should be used in determining the extent to which an application is short-spaced is unclear); *Sunshine Group Broadcasting*, 2 FCC Rcd 4723 n. 3 (1987) (distances should not be rounded-off in determining whether a short-spacing violation is *de minimis*); see also *Notice of Proposed Rule Making* in MM Docket No. 93-226, 8 FCC Rcd 6200 (1993) (proposing to amend Section 73.208 to restrict rounding of distance separation calculations to the nearest one hundredth of a kilometer in instances where an applicant is not in compliance with spacing requirements).

⁷ See 47 C.F.R. § 0.283.