

FEDERAL COMMUNICATIONS COMMISSION  
445 TWELFTH STREET, SW  
WASHINGTON, DC 20554

MEDIA BUREAU  
OFFICE OF BROADCAST LICENSE POLICY  
AUDIO DIVISION  
APPLICATION STATUS: (202) 418-2730  
HOME PAGE: [www.fcc.gov/mb/audio/](http://www.fcc.gov/mb/audio/)

PROCESSING ENGINEER: Frank Takacs  
TELEPHONE: (202) 418-1632  
FACSIMILE: (202) 418-1411  
MAIL STOP: 1800B3-FT  
INTERNET ADDRESS: [Frank.Takacs@fcc.gov](mailto:Frank.Takacs@fcc.gov)

April 8, 2010

John M. Pelkey, Esq.  
Garvey Schubert Barer  
1000 Potomac Street, NW  
5<sup>th</sup> Floor, Flour Mill Building  
Washington, D.C. 20007-3501

Re: WWOZ(FM), New Orleans, LA  
Friends of WWOZ, Inc.  
Facility ID No. 22659  
File Number BPED-20091027AEG

Dear Counsel:

This letter is in reference to the above-captioned minor change application (the "Application"), filed by Friends of WWOZ, Inc. ("Friends"), licensee of Station WWOZ(FM), New Orleans, Louisiana. In the Application, as amended January 22, 2010, Friends requests changes in WWOZ's class, effective radiated power and antenna height, and specifies WWOZ use of a directional antenna. Friends also requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons stated below, we grant Friends' waiver request and the Application.

**Waiver Request.** An engineering study of the application reveals that it is in violation of the prohibited overlap standards of 47 C.F.R. § 73.509 with respect to: (1) the licensed (File No. BLED-20070820AGM) and authorized (File No. BPED-20070821AAX) facilities of second-adjacent channel Station WNKV(FM), channel 216, Facility ID No. 89686, Norco, Louisiana; and (2) the facilities proposed in application BNPED-20071018DEU for a new third adjacent channel 217A station, Facility ID No. 123099, Lacombe, Louisiana. Specifically, the proposed WWOZ protected 60 dB $\mu$  contour completely encompasses the interfering 100 dB $\mu$  contours of WNKV, both licensed and authorized, and the Lacombe proposal. Friends recognizes these violations and requests waiver of the contour overlap provisions of § 73.509.

In support of its waiver request, Friends states the following:

1. the proposed WWOZ facilities will not cause prohibited contour overlap to any authorized or proposed facilities;
2. the proposed WWOZ 60 dB $\mu$  contour encompasses 7,898 square kilometers of area containing 1,169,649 persons, which constitutes a 156 percent increase in area and a 12 percent increase in population over the licensed WWOZ dB $\mu$  contour;

3. the area of contour overlap received from the licensed WNKV facilities contains 8.0 square kilometers of area and 371 persons, and comprises 0.1 percent of the area and 0.03 percent of the population within the proposed WWOZ 60 dB $\mu$  contour;
4. the area of contour overlap received from the authorized WNKV facilities contains 17.1 square kilometers of area and 325 persons, and comprises 0.2 percent of the area and 0.03 percent of the population within the proposed WWOZ 60 dB $\mu$  contour; and
5. the area of contour overlap received from the proposed Lacombe, Louisiana, channel 217A facilities contains 5.3 square kilometers of area and 0 persons, and comprises 0.07 percent of the area and 0.00 percent of the population within the proposed WWOZ 60 dB $\mu$  contour.

Additionally, Friends cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991) as evidence of the Commission's willingness to consider waivers of such overlap in certain instances, and argues that the total overlap area is small and well within the scope of the Commission's waiver policy. Accordingly, Friends concludes that waiver of 47 C.F.R. § 73.509 is warranted in this instance.

**Discussion.** Friends' request to receive second- and third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, North Carolina, in the *Educational Information Corporation* case. In that case it was stated that:

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

**Conclusion.** We have afforded the request for waiver of §73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justifications are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, Friends' request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20091027AEG IS HEREBY GRANTED subject to the following conditions:

Future modifications of station WNKV(FM), Norco, LA, Facility ID No. 89686, will not be construed as a *per se* modification of WWOZ(FM) construction permit BPED-20091027AEG. (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Grant of, or future modification of, the facility applied for in application BNPED-20071018DEU to operate on channel 217A at Lacombe, LA, Facility ID No. 123099, will not be construed as a per se modification of WWOZ(FM) construction permit BPED-20091027AEG. (See Educational Information Corporation, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan N. Crawford". The signature is fluid and cursive, with a large loop at the end.

Susan N. Crawford  
Assistant Chief  
Audio Division  
Media Bureau

cc: Friends of WWOZ, Inc.  
Charles F. Ellis