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Educational Media Foundation  
5700 West Oaks Boulevard  
Rocklin, California 95765

In re: WIKV(FM), Plymouth, IN  
Facility I.D. No.: 90470  
Educational Media Foundation ("EMF")  
BMPED-20111103AGU

Dear Applicant:

The staff has under consideration the above-captioned minor change application to modify the effective radiated power and the antenna height above average terrain. EMF also requests waiver of the contour overlap provisions of 47 C.F.R. Section 73.509 of the Commission's Rules (the "Rules").<sup>1</sup> For the reasons stated below, we grant EMF's waiver request and the application.

**Waiver Request**

An engineering review of the application reveals that WIKV's proposal would result in prohibited contour overlap of third-adjacent channel contingent application (BPED-20111103AGT) for Station WQKV(FM), Rochester, IN, in violation of Section 73.509 of the Rules. Specifically, WIKV's proposed 60 dBu protected contour would completely encompass WQKV's 100 dBu interfering contour. EMF acknowledges the proposed overlap received from WQKV and requests waiver of Section 73.509 of the Rules.

In support of its waiver request, WIKV states that it will not cause interference to WQKV. WIKV claims that the grant of this waiver as originally requested would increase WIKV's coverage area by 3,033 square kilometers, an increase of 598%. In addition, WIKV believes that it will provide new service to an additional 169,364 persons, which is an increase of 672%. WIKV also indicates that this benefit heavily outweighs the potential for interference in a total area that constitutes 0.2% of WIKV's proposed service area. Moreover, WIKV 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. Finally, WIKV states that it considers the affected area to be *deminimis* and, when considered along with the increased service area, concludes that waiver of Section 73.509 is warranted in this case.

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<sup>1</sup> See 47 CFR § 73.509

## Discussion

EMF's request to receive third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in *Educational Information Corporation, supra*. In that proceeding, the Commission indicated that it was inclined to grant waivers of second- and third-adjacent channel overlap to *existing* stations where the benefit of noncommercial educational service heavily outweighed the potential for interference in very small areas. In the 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 Section 73.509 of the Rules will be granted.

## Conclusion


We have afforded the request for waiver of Section 73.509 of the Rules 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 justification are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WIKV(FM)'s request for waiver of Section 73.509 of the Rules IS HEREBY GRANTED. Furthermore, application File No. BMPED-20111103AGU IS HEREBY GRANTED subject to the following condition:

Further modifications to the facilities of station WKQV(FM), Facility ID No. 89586, Rochester, IN will not be construed as a *per se* modification of WIKV(FM)'s construction permit (BMPED-20111103AGU).

(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to Section 0.283 of the Commission's Rules.<sup>2</sup>

Sincerely,



Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Karen A. Ross, Esq.

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<sup>2</sup> See 47 CFR § 0.283