



than 10 percent and "the necessary factual predicate" has been demonstrated. Petition at 9. WCPE also contends that the staff's refusal to waive Section 73.509 in the instant case cannot be reconciled with either Commission policy or actions taken in previous cases.

6. WCPE contends throughout the petition that its application fully satisfies the Commission's established criteria for waiver of the rule prohibiting interference received. As authority for its contention, WCPE cites *Public Notice*, FCC 81-322, *supra*. WCPE states that, "[i]t is well-settled that waivers of Section 73.509 of the Rules will be granted when merited. Indeed, ... the Commission has given the staff delegated authority to grant waivers of received [overlap] of up to 10 percent where the applicant provides sufficient justification such as a lack of alternative transmitter sites and/or frequencies." Petition at 8. WCPE asserts that the staff assumed a "crabbed view" of its delegated authority in this case in order to pursue its goal of spectrum efficiency. WCPE has asserted that a waiver of 47 C.F.R. § 73.509 is in the public interest because the amount of interference to be received from WXYC and WCCE is minimal compared to the amount of new service WCPE would provide. WCPE also believes that the staff's decision fails to consider the public interest benefits which would be realized from the grant of its application, and fails to acknowledge the significant public demand for expansion, as evidenced by the large volume of correspondence received by the station.

7. As WCPE points out, the Commission has given the staff delegated authority to act on waivers of received overlap of up to 10 percent *where sufficient justification is provided*. We did not by the *Public Notice* nullify the longstanding prohibition against occurrences of harmful overlap, including overlap received. As we stated in *Board of Education of the City of Atlanta (WABE-FM)*, ("WABE") 82 FCC 2d 125 (1980), "[i]ncreased coverage alone is insufficient to warrant a waiver of the rule. Power increase proposals which increase overlap received are with rare exceptions, accompanied by increased coverage. However, when faced with a choice between increased coverage with increased interference received on one hand, and lesser but adequate coverage without prohibited interference on the other, the Commission favors the latter." *Id.* at 127. The mere granting of delegated authority did not overturn that position.

8. Although WCPE argues that it did provide additional support for the waiver, the documentation submitted by WCPE supporting its contention that no alternative frequency or transmitter site was available was conclusory, at best. WCPE merely presented a list of NCE-FM allocations in the Raleigh area and from that list deduced that no other possible frequency was available to the applicant. No analysis of preclusion was proffered. Furthermore, as to the availability of alternative sites, WCPE simply stated that the selection of a different site to avoid interference was impossible because the applicant desired to serve those markets in which the interfering stations are located. WCPE has, in effect, deliberately chosen to extend its signal into an area where prohibited overlap is inescapable. Therefore, the staff found that the waiver request was primarily grounded on the benefits of expanded service and properly found WCPE's justification insufficient for grant of the requested waiver. The staff did not err in dismissing WCPE's application.

9. However, we wish to take this opportunity to re-examine our waiver policy in the limited area of proposed second or third adjacent channel overlap of noncommercial educational stations. Overlap of co-channel or first adjacent channel signals is a more serious matter since the interference that may occur results in the loss of service over a wide area. Second or third adjacent channel overlap may result in the replacement of one signal by another (not the complete loss of service) and is confined to a very small area around the transmitter of the interfering station. In addition, the potential for such interference to occur depends to a great extent on the quality of the receivers used within the affected area.

10. 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.<sup>3</sup> 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.

11. Accordingly, we find that, for the reasons set out above, the public interest would be served by waiver of 47 C.F.R. § 73.509 and grant of WCPE's proposal.

12. *WCCE(FM)*. WCCE, Buies Creek, North Carolina, is currently licensed to operate with an ERP of 3 kilowatts and an HAAT of 32 meters. On August 10, 1988, WCCE filed a major-change application to increase its ERP to 22.5 kilowatts utilizing a directional antenna, increase HAAT to 140 meters, and relocate its transmitter 9.4 kilometers southeast. WCCE's proposal would increase the prohibited overlap area caused to WCPE's proposed 1 mV/m coverage contour by WCCE's 10 mV/m interfering contour from 58.9 sq. km (0.45 percent of WCPE's 1 mV/m contour) to 106.9 sq. km (0.8 percent of WCPE's 1 mV/m contour).<sup>4</sup> This contour overlap contravenes 47 C.F.R. § 73.509. WCCE is not mutually exclusive with WCPE's proposal as it was filed untimely with respect to WCPE's cut-off date of September 26, 1986. Accordingly, WCCE requests waiver of 47 C.F.R. § 73.509.

13. In its waiver request WCCE states that WCPE has agreed to receive the proposed increase in overlap and asserts several reasons why implementation of its proposal would be in the public interest. First, WCCE contends that the prohibited overlap will affect less than one percent of the population and area within WCPE's proposed 1 mV/m coverage contour. WCCE also asserts that its proposal will improve, rather than worsen, the WCCE/WCPE overlap problem because its proposal would relocate its transmitting location from within WCPE's proposed 1 mV/m coverage contour to outside it. Further, WCCE states that the area of proposed overlap, although larger, lies no closer to WCPE's transmitter site than the current area of overlap. Finally, the service area of WCCE will be increased by 2,308 square km, a 351 percent increase.

14. Whereas WCPE's proposal discussed above involved overlap received, WCCE's proposal involves overlap caused and therefore requires separate consideration. We note, however, that proposals such as WCCE's are the "other side of the coin." Where waivers are approved to allow stations to receive overlap, there is always a station causing it. Thereafter any increase or displacement in the facilities of the "causing" station will result in new overlap. To avoid perpetually restricting such stations to their current facilities, and in view of the limited nature of the interference potential of second or third adjacent channels discussed above, we are inclined to view waiver requests such as WCCE's favorably where there is clearly a public benefit.

15. In this case, significant additional service will be provided by expansion of WCCE, and the increase in area of overlap is very small. For these reasons, we find that the public interest will be served by waiver of 47 C.F.R. § 73.509 and grant of the WCCE proposal.

16. Accordingly, the Educational Information Corporation's "Petition for Reconsideration," filed March 3, 1989 IS HEREBY GRANTED to the extent indicated above; its application IS HEREBY REINSTATED *NUNC PRO TUNC*; the provisions of 47 C.F.R. § 73.509 ARE HEREBY WAIVED to the extent necessary to permit the second-adjacent channel overlap received; and application BPED-840328CA for WCPE(FM), Raleigh, North Carolina IS HEREBY GRANTED. Acceptance of the grant of this waiver will constitute an acknowledgement by WCPE that future modifications to the facilities of WCCE and WXYC will not constitute a *per se* modification of WCPE's license.

17. Further, Campbell University, Inc.'s request for waiver of 47 C.F.R. § 73.509 IS HEREBY GRANTED, and its application for upgrade in facilities for WCCE(FM), Buies Creek, North Carolina BPED-880810MA, IS HEREBY GRANTED.

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### FOOTNOTES

<sup>1</sup> Prohibited overlap occurs when a station's interference contour overlaps another station's service contour. The terms "overlap caused" and "overlap received" are used in reference to a specific station proposing a facility change. If Station A is proposing to expand its service contour and the new service contour will be overlapped by Station B's interference contour, Station A is said to receive overlap from B. If station B is proposing to increase its facilities so that its proposed interference contour would overlap Station A's service contour, Station B is said to cause overlap. Under some circumstances a proposal may both cause and receive overlap. These terms will be used throughout this document.

<sup>2</sup> In Paragraph 56 of the *Memorandum Opinion and Order* in BC Docket No. 20735, 50 Fed. Reg. 27954 (July 9, 1985), the Commission modified the Bureau's delegated authority to grant waivers to conform to a new method of calculating interference. The old method was based on the use of "undesired-to-desired"

field strength ratios. The new rule (47 C.F.R. § 73.509) prohibits the 1 mV/m coverage contour of a station to be overlapped by another station's interference contour. Specifically, such authority is now limited to 10 percent "overlap" received versus 5 percent "interference" received under the old policy. In its pleading, WCPE often incorrectly uses the term "interference" when referring to "overlap."

<sup>3</sup> Historically, both Congress and the Commission have recognized the special standing of the noncommercial educational service. Most notable is the spectrum reservation policy whereby noncommercial stations are afforded protected frequency allocations for their exclusive use. Twenty FM channels, 201 through 220 (88.1 through 91.9 MHz), are currently reserved for educational use. Separate technical standards have been applied to the noncommercial educational service as well. For example, the Commission's FM allocations scheme for the non-reserved band is predicated on a Table of Allotments which allots particular channels to particular communities and provides protection primarily in terms of mileage separation criteria between stations. This system was designed to anticipate future needs of new stations or enlargements in coverage of existing stations and to protect those needs against any possible encroachment. The Table provided the Commission with an overall nation-wide allocation plan. The reserved band, on the other hand, operates on a demand basis principle - a process where the applicant proposes a particular technical facility which must not involve interference with co-channel or adjacent channel stations based on protected and interfering contour criteria rather than a distance separation standard. Noncommercial educational stations are also subject to inherent limitations, such as the prohibition on their use of advertising, and the definitional requirement that they be non-profit, educational entities.

<sup>4</sup> 44.4 sq. km of the current overlap area would be eliminated, while 14.5 sq. km would remain. 92.4 sq. km of new overlap would be created.