

FEDERAL COMMUNICATIONS COMMISSION
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In re: KWWS(FM), Walla Walla, WA
Facility ID No.: 71044
Washington State Univeristy ("WSU")
BPED-20121102ADR

Dear Applicant:

This letter is in reference to the above-captioned minor change application to change effective radiated power, class and antenna height. WSU also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant WSU's waiver request and the application.

Waiver Request

An engineering study of the application reveals that it is in violation of 47 C.F.R § 73.509 with respect to the following stations: (1) second-adjacent channel Class C2 license (BLED-19951204KE) and Class C1 construction permit (BPED-20111129CLD) for KOLU(FM), Pasco, WA; and (2) third-adjacent channel Class C license (BLED-20010726AAH) for KFAE-FM, Richland, WA. In each instance, the proposed protected contour (60 dBu) would receive prohibited overlap from the interfering contour (100 dBu) from the facilities listed above. WSU recognizes these violations and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WSU states that it will not cause interference to the above facilities. WSU also believes that the total area of overlap constitutes only 1% of the area within KWWS's 60 dBu contour. In addition, WSU claims that the proposed facilities would increase its overall coverage area to 2,097 square kilometers, an increase of 30%. Furthermore, WSU indicates that the proposed facilities will provide new service to an estimated 36,324 persons, an increase of 50%. Finally, WSU 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. WSU considers the affected area to be *de minimis* and, when considered along with the increased service area and population, concludes that waiver of § 73.509 is warranted in this case.

Discussion

WSU's request to receive second and third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC 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 applicants' justifications are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WSU's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20121102ADR IS HEREBY GRANTED subject to the following conditions:

Further modification of KFAE-FM, Richland, WA (Facility ID# 71022) will not be construed as a *per se* modification of KWWS's construction permit (BPED-20121102ADR). (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of KOLU(FM), Pasco, WA (Facility ID# 56615) will not be construed as a *per se* modification of KWWS's construction permit (BPED-20121102ADR). (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,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Barry S. Persh, Esq.