

Section 74.787 Rule Waiver Request

WOBZ-LD Richmond, KY
FACID 2231

Section 74.787 of the Commission's rules defines a digital LPTV "minor change" construction permit application to include, among other things, any change in transmitting antenna location not to exceed 30 miles from the reference coordinates of the existing station's antenna location.

This application proposes a 31.1 mile change in antenna location reference coordinates and, accordingly, requests a waiver of Section 74.787 of the Commission's rules in order to accept and process this application as a minor change of station facilities.

It is respectfully submitted that the requested waiver serves the public interest as it satisfies the intent of the 30-mile minor change limit, may be deemed to be in substantial compliance with the rule, and serves additional public interest factors described below. The following is shown in support thereof.

WOBZ-LD's licensed antenna reference coordinates are:

Latitude:	N	37°	12'	32"
Longitude:	W	84°	9'	0"

The proposed ASRN 1041544 antenna reference coordinates are:

Latitude:	N	37°	39'	35.9"
Longitude:	W	84°	8'	59.7"

The licensed WOBZ-LD tower site is co-located with the residence of the current licensee, Andrea Joy Kesler, at 1337 Old Hare Road, East Bernstadt, Kentucky. The WOBZ-LD broadcast license and related broadcast assets are proposed to be assigned and conveyed to Wallingford Broadcasting Company, Inc., ("Wallingford") in FCC File No BALDVL-20181130ABD. However, the WOBZ-LD authorized tower site real property will not convey to Wallingford which is informally advised that Mrs. Kesler and her family propose to continue to reside at the tower site property and anticipate putting the real property to other use. Accordingly, Wallingford must find a replacement antenna location.

Wallingford is commonly owned with Kentucky River Broadcasting Company, Inc., which is the licensee of station WCYO(FM) Irvine, KY, and Wallingford Communications, LLC which is the licensee of station WLFX(FM) Berea, KY. Kentucky River Broadcasting Company, Inc., owns the antenna structure (ASRN 1041544) currently authorized for use by station WCYO and by station WLFX. Wallingford proposes to co-locate the WOBZ-LD antenna location (ASRN 1041544) with that of WCYO and WLFX¹. The proposed commonly-owned, co-located and registered tower site will avoid erecting a new tower structure, will preserve the expense related

¹ and licensed W223CU Richmond, KY; File No. BLFT-20170119ABJ

to erecting a new tower for station programming and operating expenses, and avoid the Commission expending administrative time and other resources associated with new antenna structure registration clearances and approvals.

In adopting the 30-mile rule LPTV minor change limit, the Commission found that requiring both contour overlap and limiting moves to no more than 30 miles from the station's reference coordinates for minor modifications would "enforce the original intent of the minor change rule" and prevent LPTV stations from "frustrat[ing] the intent of the minor change rule by proposing a modified facility that is a *substantial distance* from the station's existing location while showing only a very slight amount of contour overlap."²

As shown by Exhibit 1.0 attached hereto, the proposed move results in a 31.1 mile/50.1 kilometer change in antenna location or a de minimus rounded 1 mile greater than set forth in Section 74.787 of the rules. The Commission has shown its willingness to entertain de minimus distance waivers of its mileage rules.³ Accordingly, the applicant does not frustrate the intent of the rule by proposing a modified facility that is a substantial distance from the station's existing location.

Exhibit 1.0, attached hereto, further demonstrates that the proposed LPTV service contours will overlap a significant 36.6% of the station's licensed service contour area. As such, greater than one-third of the licensed service area will continue to receive the station's broadcast service. Therefore, the waiver does not frustrate the intent of the rule by proposing a modified facility proposing a "very slight" amount of contour overlap.

Finally, as shown by Exhibit 1.0, the requested waiver will result in a significant net gain of 6,387 square kilometers in service area.

Operating as proposed, Exhibit 1.0 shows there would be a population gain within the proposed coverage area of 455,881 people and a population loss of 41,298 people. The net population gain of 414,583 people or 844% is a significant benefit serving the public interest. The population loss area is well served by greater than nine other television stations as shown in Exhibit 2.0, attached hereto.

Based on the totality of the foregoing compelling factors, it is respectfully submitted that waiver of Section 74.787 will serve the public interest.

² See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10759, ¶ 58 (2011).

³ See, e.g., *Baltimore Radio Show* 5 FCC Rcd. 3712, ¶ 2 (1990)(short spacings of 1 mile/1.6 kilometer or less are de minimus).