

Request for Limited Waiver of 47 C.F.R. §73.509

RADIO 74 INTERNATIONALE (“RADIO 74”) hereby requests waiver of the above captioned Rule, only as necessary to allow modification of its permit to construct WQMN, Minocqua, Wisconsin (Facility Identifier 175345) (the “Station”), pursuant to the proposal set forth in the engineering portion of RADIO 74’s instant Application for Minor Modification of License and the technical exhibit thereto.

* * *

Since 1981, the Audio Division has enjoyed delegated authority to waive Section 73.509 where doing so:

- advances a public benefit;
- is occasioned only by second or third adjacent facilities;
- involves received interference only; and
- the contour overlap is de minimis relative to the proposed service area.¹

The specific tests currently used to evaluate the acceptability of such proposals was set forth in *Educational Information Corporation*, 6 FCC Rcd 2207, 2208 (1991). We now examine the acceptability of RADIO 74’s proposal within the context of each of these four tests.

Public Benefit. Traditionally a showing of advancement of a significant public benefit may rely solely on a very substantial increase in proposed coverage, and the facts here certainly provide support on that basis alone. The Station, as modified, would cover a 60 dBu population of 56,669, or a 992% percent increase over the “as authorized” coverage of 5,188. Accordingly, the proposed modification indisputably presents the Audio Division with a clear public benefit in favor of granting the requested waiver relief.

Second Adjacent Facility. The Station will operate on Channel 204, which is second adjacent to Channel 206, on which authorized KSPP (Facility ID: 171922), operates. This clearly falls within the realm of acceptable waiver requests.

¹ *Lakeside Telecommunications, Inc.*, FCC 04-298 (2005), citing *Delegation of Authority to the Chief of the Broadcast Bureau to Waive Small Amounts of Interference Received by Non-Commercial Educational FM Proposals*, 49 R.R.2d 1524 (1981). The Commission replaced this signal strength ratio methodology with a contour overlap standard in 1985. *Changes In The Rules Relating To Noncommercial Educational FM Broadcast Stations*, Memorandum Opinion and Order, MM Docket No. 20735, 50 Fed. Reg. 27954 (July 9, 1985), pursuant to which such delegated authority is now limited to 10 percent "overlap" received compared to 5 percent "interference" received under the old policy.

Received Interference. WQMN's 76.11 dBu encompasses KSPP's transmit site. The 40 dBu ratio would mean a KSPP interference contour of 116.11 dBu. The proposed modification therefore falls within the range of acceptable waiver requests.

De Minimis Overlap. The proposed facility does receive a *de minimis* amount of incoming interference from KSPP, a second adjacent permit. A waiver of this incoming interference is sought in the instant application. The population of the proposed application is 56,669. Only 105 persons reside within the 116 dBu F(50,10) contour of KSPP, which is 0.18 % of the proposed total WQMN population count. The attached engineering report includes figures that illustrate the overlap and the *de minimis* nature of any interference.

This is not only well within the 10 percent threshold that is allowed under the "overlap received" formulation, it is well below the 5 percent threshold originally allowed under the "interference received" formulation of the waiver policy.²

Meanwhile, the increased population served by the Station, as modified, is 99.82% of persons living within the WQMN 60 dBu coverage contour area. Accordingly, the requested waiver manifestly produces a public benefit that overwhelmingly outweighs the agency's rightful caution with respect to the overlap received.

On the one hand, the agency is rightfully wary of receiving contour overlap, but in this case the receiving overlap constitutes a *de minimis* share of the Station's coverage area and will affect 0.18% of the residential population.

On the other hand, the agency is presented with overwhelming public benefit inasmuch as the Station, as modified, will provide service to an increased population such that the 992 percent increase in population is entirely to the credit of this waiver request, whereas there is minimal population residing in the area to receive interference as any sort of offset to the population gains.

In view of the foregoing, RADIO 74 respectfully requests a waiver of Section 73.509 of the Rules to allow for the received contour overlap as set forth in RADIO 74's request for modification of its permit to construct the Station.

.....

Note: This text heavily borrows from the text used by KSPP when it requested its Raleigh Waiver a few years ago to overlap WQMN. The logic is identical, yet with even stronger supporting data.