

**Station KDVS(FM), Davis, CA
Minor Change to Licensed Facility**

**ATTACHMENT 15
Waiver Request**

As set forth in the above Exhibit 15, the Regents of the University of California (the “University”), applicant for a minor change to the license of noncommercial educational station KDVS(FM), Davis, California, request a waiver of the contour overlap requirements of Section 73.509(d) of the FCC’s rules. Grant of this waiver request would offer significant public service benefits, most notably in direct furtherance of the interference-reducing goals of Section 73.509.

Background

As explained in this application, both the presently licensed KDVS transmitter site and the site proposed by this application are located within the 60 dBu contour of noncommercial educational Station KXJZ. In addition, the licensed and proposed 100 dBU interfering contours of KDVS are entirely encompassed by the KXJZ protected contour. However, the proposed modifications will greatly decrease, and in fact eliminate, interference to KXJZ.

With this application, KDVS proposes to relocate its facilities to a county landfill site, some 7.5 km from the current station site at the University’s Davis campus. Although this relocation does not comply with all of the requirements of Section 73.509(d) of the FCC’s rules (regarding proposed contour overlap where it does not already exist), the move from a densely populated area to a completely unpopulated area will best serve the public interest by effectively eliminating interference concerns. For that reason, affected Station KXJZ fully supports the proposed modifications (*see* attached letter) and urges its grant.

Section 73.509(d) states that noncommercial educational FM station modification applications will be accepted, despite the presence of otherwise prohibited contour overlap in new areas, if four factors can be demonstrated:

- (1) The total area of overlap with that station would not be increased;
- (2) The area of overlap with any other station would not increase;
- (3) The area of overlap does not move significantly closer to the station receiving the overlap; and,
- (4) No area of overlap would be created with any station with which the overlap does not now exist.

Per the attached engineering exhibits, the instant proposal complies with items (2) and (4) in Section 73.509(d), but does not comply with items (1) and (3) because the contour overlap analysis demonstrates a increase in amount of overlap with Station KXJZ, and because that overlap will be closer to KXJZ.

Justification for Waiver

Despite the fact that the proposed changes would technically increase interference to KXJZ in new areas and move overlap closer to KXJZ, the modifications will actually serve to greatly reduce interference. Although the area within the interfering contour will increase from 11.9 sq. km to 18.8 sq. km., the population within the interfering contour will decrease from 14,862 to 194. Moreover, under a undesired-to-desired signal ratio methodology, the area within the interfering contour will decrease from 8.1 sq. km. to 3.5 sq. km., and the population within the interfering contour will decrease from 11,373 to zero (0). See additional engineering exhibits.

As noted, this significant decrease in predicted interference, and elimination of actual interference, will result from moving the KDVS facility out of its current location – the highly populated Davis area near the University’s campus (where the current interference complaints received by KXJZ originate) – to the unpopulated landfill site. For that reason, Station KXJZ, which the Section 73.509 considerations are intended to protect in these circumstances, has offered its full support for the proposed modifications and this waiver request. Indeed, a waiver of the requirements, and grant of the application, would actually further the public interest goals which the rule is intended to serve.

In *Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, 57 RR 2d 107 (Nov. 7, 1984), the Commission revised Section 73.509 of the Rules, including subsection (d) as excerpted above. In so doing, the Commission considered whether noncommercial educational FM stations should be allowed to modify their licenses if the proposed changes shifted interference to a different geographic location. The Commission decided to allow station upgrades or modifications which did not “increase or shift the area receiving interference,” on the basis of “permit[ing] those changes that would not aggravate the existing interference.”¹ In this instance, the requested changes directly serve the goal of not aggravating existing interference, and in fact alleviate the existing interference, by moving it to an unpopulated geographic location. In addition, the Commission’s rules changes sought to avoid “shifting the interference burden from one group to another.”² As noted above, the proposed KDVS modifications should not result in a shift in the interference burden to another group of people, but rather the elimination of that burden (per the U/D methodology). Again, the support of affected Station KXJZ speaks volumes regarding the public interest in approving the proposed modifications.

Moreover, grant of a waiver in these circumstances would be consistent with the principles set forth in prior Commission precedent. In 1991, the Commission approved a waiver of Section 73.509 upon reexamination of the waiver standard for second and third adjacent channel overlap, stating that “we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances ... where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference for interference in very small areas.”³ Notably, the application in that case increased overlap with an existing station by 57.5 sq. km.

¹ Id. at ¶ 42-45.

² Id.

³ *Educational Information Corporation*, 6 FCC Rcd 2207, 2208 (1991).

As detailed above, the proposed KDVS modifications actually propose a much smaller increase in area of overlap, and provide substantial decreases in population affected by interference. Additionally, the modifications will greatly benefit noncommercial educational service by more than doubling the population served by KDVS, from 198,233 to 408,630.

Station KDVS began operation as a full service NCE station in January, 1968, after originating as an on-campus carrier current operation five years earlier. It continues to operate in furtherance of its original mission, which is “to provide the University with a laboratory for learning broadcast, production and managerial skills, and to provide its listening audience with diverse, challenging, noncommercial, freeform radio.” Throughout the day, in addition to its regular programming format, Station KDVS broadcasts Public Service Announcements as a community service to inform the community of events and services available to them, as well as other facts they may find useful. The modifications proposed by this minor change application will further the station’s public service goals by allowing the University to relocate the KDVS facility in manner that will allow for operation with greatly reduced interference, while providing substantially increased noncommercial educational radio service. For all of the above reasons, the University respectfully requests waiver of Section 73.509(d) with respect to this application.