

## Request for Waiver of Section 73.509 of the Rules

As necessary applicant respectfully requests waiver of Section 73.509 of the Rules and Regulations, required channel spacings, as it concerns here the second adjacent channel to proposed facilities of KHOL (FM). The potentially affected application is for Channel 204C at Ririe, Idaho, File No. BNPED 020071022AVX.

As a threshold matter, the Commission has concluded that it is statutorily barred (by P.L. 106-553, Section 632(a)) from waiving the third adjacency in any context involving LPFM, and may be reluctant to do so in the typical NCE case as well, *Creation of Low Power Radio Service*, Third Report and Order and Second NPRM, 22 FCC Rcd 21912, see paras. 63-67. No such restriction applies with respect to the second adjacency, *Id.*, and see fn. 171. Applications seeking such waiver will receive the “hard look” and fair chance to prove their case, as required by law, *WAIT Radio v. FCC*, 418 F. 2d 1153 (D.C. Cir., 1968), and proposals and must “plead with particularity the facts and circumstances which warrant such action,” *Thin Air Community Radio*, DA 06-2106, released on October 25, 2006.

As stated in the attached Engineering Statement, the Ririe application 60dBu contour lies just adjacent to the West side of KHOL’s existing predicted 100 dBu interfering contour. No upgrade is generally possible without waiver. The upgrade will result in substantial new service to the public now, regardless of the later disposition of the Ririe application, or of several others in competition with it.

The Engineering Statement shows that the area predicted to cause interference to the Ririe application is a mountain location, where there cannot be interference to any habitable area of population. Accordingly, neither the STA request nor the underlying minor modification proposal will result in any objectionable interference that might weigh against the public interest benefits. Should interference occur in practice, on an individual basis, KHOL will take immediate steps to identify its source and rectify it. Accordingly, as to the application and as to the STA, it is respectfully requested that the waiver of Section 73.807 be granted and that STA and minor modification receive normal processing.