

REQUEST FOR A WAIVER OF SECTION 73.509(b)

Bellevue School District #405 (“Bellevue”), licensee of non-commercial educational (NCE) Station KASB(FM) (Bellevue, Washington) is filing this application in order to accommodate the operation of Station KMIH(FM) on Channel 205D. Station KASB(FM) currently operates on Channel 207D. However, as a result of the Commission’s decision in MB Docket No. 02-136, Station KMIH(FM) is being displaced by the proposed operation of Station KMCQ(FM) at Covington, Washington on Channel 283C3. Therefore, KMIH(FM) is proposing operation on Channel 205 in order to preserve KMIH(FM)’s existing NCE service.

In order grant this application, Bellevue hereby requests a waiver of Section 73.509(b) of the Commission’s Rules. A waiver is warranted because interference caused by Station KASB(FM) to Stations KNHC(FM) (Seattle, Washington) and KEXP-FM (Seattle, Washington) is *de minimis*. As discussed in more detail in the Technical Exhibit, the KASB(FM) interfering contour only encompasses 0.15 percent of the KNHC(FM) protected contour, 0.31 percent of the KEXP-FM protected contour (as currently licensed), and 0.28 percent of the KEXP-FM protected contour as proposed in KEXP-FM’s pending license application (BLED-20060217AAW).¹ This amount of interference is considered *de minimis* and thus because grant of this application will permit NCE Station KMIH(FM) to continue operating the FCC should waive Section 73.509(b). Since 1981, the FCC has consistently granted waivers of Section 73.509 where (i) interference does not exceed 5 percent of the service area, (ii) the applicant cannot specify fully compliant facilities, and (iii) the resulting inference involves second or third-adjacent overlap. *See Educational Information Corporation for Modification of Noncommercial Educational Station WCPE(FM)*, 6 FCC Rcd 2207 (1991); *Letter to Richard J. Bodorff, Counsel to Station WHHS(FM) from Peter Doyle, Chief, Audio Division* (August 10, 2005) (BFED-20040614AFZ).

There criteria are met here. First, the interference area will consist of substantially less than 1 percent of the KNHC(FM) and KEXP-FM protected contours. Second, as demonstrated in Figure 4 of the Technical Exhibit, there are no other fully compliant channels available at KASB(FM)’s current site. Finally, the resulting interference involves second-adjacent overlap because Station KNHC(FM) operates on Channel 208, Station KEXP-FM operates on Channel 212, and KASB(FM) is proposing Channel 210 as its new channel. Therefore, because of the valuable local NCE service provided by Station KMIH(FM), the Commission should waive Section 73.509(b) and grant this application.

¹ Bellevue is proposing to operate Station KASB(FM) on Channel 210. Station KNHC(FM) operates on Channel 208 and Station KEXP-FM operates on Channel 212. Thus, the interfering contour for Station KASB(FM) is its 80 dBu contour (because it is second-adjacent to both stations). *See* 47 C.F.R. § 73.509(b). Finally, utilizing the desired-to-undesired signal (-40 dB) strength ratio method (which is used to predict interference for all other secondary stations) the interference caused to KNHC(FM) and KEXP-FM occurs above ground level.