

**FEDERAL COMMUNICATIONS COMMISSION**  
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July 12, 2007

Educational Media Foundation  
5700 West Oaks Blvd  
Rocklin, CA 95765

Re: KMLV(FM), Ralston, NE  
Educational Media Foundation ("EMF")  
Facility ID Number 85846  
File Number BPED-20061229AAQ

Dear Applicant:

This letter is in reference to the above-captioned minor change application ("Application") to change transmitter location, effective radiated power, antenna height and to install a directional antenna. EMF requests waiver of the prohibited contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant EMF's waiver request and the application.

**Waiver Request.** An engineering study of the Application reveals that it is in violation of 47 C.F.R. § 73.509 with respect to the licensed facilities (BLED-19960719KA) of second adjacent channel Class A FM Station KLCV(FM), Lincoln, NE, Facility ID Number 12837, on Channel 203A. Specifically, the proposed KMLV 60 dBu protected contour would encompass the KLCV 100 dBu interfering contour. EMF recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of its waiver request, EMF states that it will not cause interference to KLCV. In addition, EMF states that the proposed facilities will provide new service to an estimated 101,362 persons, an increase of 14.3 percent over its existing service. EMF contends that this benefit heavily outweighs the potential for interference to KMLV within the KMLV/KLCV contour overlap area which comprises 19.44 square kilometers or 0.15 percent of the total proposed KMLV 60 dBu service area. Furthermore, EMF argues that the overlap area is small and well within the scope of the Commission's waiver policy. Moreover, EMF claims that this waiver request is nearly identical to the requests made by the licensees of WCPE(FM) and WCCE(FM) in *Educational Information Corporation*, 6 FCC Rcd 2207 (1991). Accordingly, EMF concludes that a waiver of Section § 73.509(a) of the Commission's rule is justified in this instance.

**Discussion.** EMF's request to receive second adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC, in the *Educational Information Corporation* case. In that case it was stated that:

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons,

we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

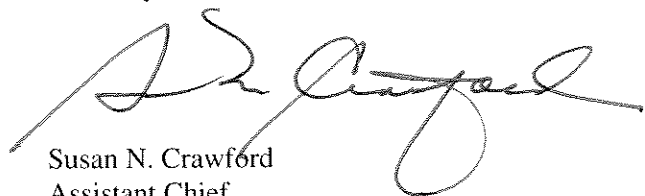
Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

**Actions/Conclusions.** We have afforded the request for waiver of § 73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justification are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, EMF's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application BPED-20061229AAQ IS HEREBY GRANTED subject to the following condition:

Further modification of KLCV(FM), Lincoln, NE (Facility ID No. 12837) will not be construed as a *per se* modification of KMLV's construction permit (BPED-20061229AAQ). (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The KMLV authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan N. Crawford", is written over the typed name and title.

Susan N. Crawford  
Assistant Chief  
Audio Division  
Media Bureau

cc: David D. Oxenford, Esquire  
Cris Baron