

**Request for Waiver of 47 C.F.R. § 73.24(i)**

By this application, Cox Radio, Inc., licensee of station WOKV(AM), Jacksonville, Florida (“WOKV”) proposes to increase its nighttime power level from 10 kW to 25 kW. WOKV respectfully requests a waiver of the 80% nighttime principal community coverage requirement set forth in Section 73.24(i) of the FCC’s Rules.<sup>1</sup> Although WOKV will increase its nighttime power, after the increase the station’s nighttime interference-free contour will encompass 92% of the population and 66% of the area of Jacksonville.<sup>2</sup> WOKV cannot increase its power sufficiently to meet the 80% coverage requirement because of interference issues with Canada and Cuba.<sup>3</sup> Grant of this waiver request and construction permit application would serve the public interest by permitting Cox Radio to significantly improve the station’s existing nighttime coverage over the Jacksonville community.

WOKV currently is authorized to operate at a nighttime power of 10kW. WOKV’s current nighttime operations were authorized by the FCC in 1963, and at that time the station’s nighttime interference-free contour encompassed the entire City of Jacksonville, which then spanned a land area of less than 40 miles. On October 1, 1968, the city of Jacksonville and surrounding Duval County were consolidated to create the current city limits of Jacksonville.<sup>4</sup> This consolidation resulted in a twenty-one-fold increase in the area of Jacksonville: the city’s land area increased from less than 40 square miles to its current size of approximately 841 square miles, making it the largest city in the contiguous United States in terms of land area.<sup>5</sup> Due to this enormous geographic expansion of Jacksonville, WOKV’s nighttime coverage contour currently covers only 79% of the population and 45% of the area of Jacksonville.<sup>6</sup>

The FCC’s general rules provide for grant of waivers when: (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest; or (2) the unique facts and circumstances of a particular case render application of the rule inequitable, burdensome or otherwise contrary

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<sup>1</sup> 47 C.F.R. § 73.24(i) (2002).

<sup>2</sup> Statement of du Treil, Lundin & Rackley, Inc. in support of an Application for Construction Permit WOKV(AM) – Jacksonville, Florida, dated December 15, 2003 at p.2 (“Technical Exhibit”).

<sup>3</sup> *Id.*

<sup>4</sup> See Jacksonville Historical Society, Jacksonville’s Consolidated Government: A Look Back on the 35th Anniversary of Consolidation, at <http://jaxhistory.com/consolidation.html>.

<sup>5</sup> *Id.*, see also About Jacksonville, at <http://www.ci.jax.fl.us/About+Jacksonville/default.htm>.

<sup>6</sup> Technical Exhibit at p.2

to the public interest. Generally, to obtain a waiver, a party must demonstrate that the application of a particular rule would not be in the public interest in the specific circumstances under consideration.<sup>7</sup> In this case, grant of the waiver clearly would serve the public interest and be consistent with Commission precedent. The waiver would allow WOKV to increase its nighttime coverage population from 578,000 to 681,000 persons (an increase of 103,000 persons) and nighttime coverage area of Jacksonville from 1030 square kilometers to 1500 square kilometers. This constitutes an increase in coverage from 79% to 92% of the population and from 45% to 66% of the area of Jacksonville.<sup>8</sup> Cox is precluded from increasing the station's nighttime power level even further to meet the 80% coverage requirement due to the allocation protection requirements toward stations in Canada and Cuba.<sup>9</sup> Thus, WOKV is unable to meet the 80% coverage requirement due to circumstances beyond its control, specifically, the massive expansion of the Jacksonville city limits and international allocation protection requirements. Moreover, grant of the waiver is warranted because strict enforcement of the nighttime community coverage rule would have the unintended result of preventing the initiation of expanded radio service to the community, which would frustrate the underlying purpose of the rule and contravene the public interest. Grant of the waiver also would be consistent with precedent, given that the FCC has granted such waivers in similar circumstances.<sup>10</sup>

For the foregoing reasons, Cox Radio respectfully requests that the Bureau grant this waiver request and construction permit application.

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<sup>7</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir.), *cert. denied*, 409 U.S. 1027 (1972).

<sup>8</sup> Technical Exhibit at p.2.

<sup>9</sup> *Id.* at p.2, n.2.

<sup>10</sup> *Leroy Garrett, Trading as Garrett Broadcasting Service (WEUP), Huntsville, Alabama*, 56 F.C.C.2d 372 (1975) (granting waiver and allowing WEUP(AM) to inaugurate nighttime service to only 49% of its community of license in light of the rapid expansion of Huntsville, Alabama and the applicant's ability to improve coverage); *see also* Construction Permit Application of Solar Broadcasting Co. for WDAK(AM), Columbus, Georgia (FCC File No. BP-20000328AHX)(granted 11/05/2003).