

## **REQUEST FOR WAIVER OF SECTION 73.870(a)**

Section 73.870(a) of the FCC's Rules defines a minor change as a move of 5.6 kilometers or less.

The instant application proposes a move of 6.312 kilometers to a new tower location, which is 0.712 kilometer more than 5.6 kilometers. Converted to English measurements, 0.712 kilometer is approximately 2336 feet, or 0.4424 mile. For the following reasons, the applicant respectfully requests a waiver of Section 73.870(a) to be able to make this transmitter site move.

The KCRD-LP construction permit specifies a site which is a building which had been used as a convent. In preparing to build the station, it was determined that the installation of the station's equipment at the authorized location would present safety concerns. Therefore, it was determined that a new site was required. Permission was secured to install KCRD-LP's transmitter and antenna at an existing registered tower (ASR #1038235) at 1840 Radford Road, Dubuque, Iowa. This site is 6.312 kilometers away from the existing authorized KCRD-LP site.

The Commission has allowed waivers of fixed distance-based rules where the waiver distance is "de minimis", which has been defined to mean less than one mile. *Mary V. Harris Foundation*, 22 FCC Rcd 18935-36, n. 40 (Audio Division, October 26, 2007), citing *Baltimore Radio Show, Inc.*, 5 FCC Rcd 3712 (1990) (waiver of minimum spacing rules for applicant to construct a new commercial FM station, where short-spacing was under a mile and served the public interest by avoiding potentially serious environmental problems at fully spaced sites).

The public interest would be served by avoiding the creation of a safety hazard and by bringing the deserving residents of Dubuque, Iowa and vicinity a new low power FM service at the earliest possible time.

We would also point out that in addition to the public interest factors stated above, Commission policy in the related field of FM Translator Stations is to permit an FM translator station to be granted a waiver from the “major change” restrictions. *The Cromwell Group, Inc. of Illinois*, 26 FCC Rcd 12685 (the “*Mattoon Waiver*”) (2011). The four-pronged Mattoon Waiver criteria are: (1) the applicant station does not have a history of filing “serial” minor modification applications; (2) the proposed facility is mutually exclusive to its licensed facility; (3) the proposed move does not implicate the concerns raised by the Commission in the recent orders in the low power FM (“LPFM”) docket, and, (4) while not alone dispositive, the translator will rebroadcast an AM station. Criteria 3 and 4 would be irrelevant, because this is an LPFM station, and by FCC rule LPFM stations are prohibited from rebroadcasting an AM radio station. As to the two criteria which are relevant here, the applicant has not attempted to make the move to its proposed tower by two or more hops, and the use by KCRD-LP of the proposed transmitter site is mutually-exclusive with the currently authorized site.

Therefore, the public interest, convenience and necessity would be well served by a grant of the requested waiver of 47 CFR §73.870(a) and by a grant of this application.