

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 6.925 kilometers (4.303 miles) to a new transmitter location, which is 1.325 kilometer more than 5.6 kilometers. Converted to English measurements, 1.325 kilometers is approximately 0.8235 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 KCZP-LP construction permit presently located at 2302 – 52nd Street, San Diego, California, FCC Antenna Structure Registration #1052001, which is a developed communications site. In preparing to build the station, it was determined that existing second adjacent channel FM Broadcast Station KHTS-FM, 93.3 MHz, El Cajon, California, would most likely interfere with much of KCZP-LP's service area. After a search, the permittee found a suitable location on top of an existing building west of the currently authorized site in downtown San Diego, which will improve the ability of KCZP-LP to serve the public interest, convenience and necessity, while moving approximately four miles further west from KHTS-FM, thereby reducing the possibility that KCZP-LP might interfere with KHTS-FM.

The Commission has allowed waivers of fixed distance-based rules where the waiver distance is "de minimis". *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 less than a mile and served the public interest by avoiding potentially

serious environmental problems at fully spaced sites). Here, we are dealing with a move beyond the 5.6 km limit by less than one mile.

The requested waiver would serve the public interest by effectuating the most efficient use of the broadcast spectrum possible by enhancing the ability of KCZP-LP to serve the public and to reduce the possibility of KCZP-LP interfering with KHTS-FM.

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 KCZP-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.