

Exhibit 34
Request for Waiver of Section 73.211(c)

The request of WSLQ to move its transmitter site a total of 0.4 km, which will result in a *de minimis* extension of its 60 dBu contour along limited portions of the station's northeastern contour arc, necessitates the request of a waiver of Section 73.211(c). The FCC's "case law on waivers provides that deviation from the general rule . . . is justified only where special circumstances exist and the public interest will be served. Additionally, requests for waiver must demonstrate that the underlying purpose of the rule of which waiver is sought would not be served or would be frustrated by application to the particular case and that a grant of the request for waiver would be in the public interest." *Stephen Diaz Gavin, Esq., Janet Fitzpatrick Moran, Esq., Carly T. Didden, Esq.*, Letter Decision, 23 FCC Rcd 12060, 12062 (Audio Div. 2008). For the reasons discussed below, WSLQ's proposal satisfies the Commission's waiver standard.

Special and unique circumstances are present in this instance, and strict adherence to Section 73.211(c)'s general prohibition on extending a superpower station's 60 dBu contour would not serve the rule's underlying purpose and would simultaneously frustrate the public interest. First, the licensee's proposed 0.4 km move of WSLQ's transmitter site is predicated upon its desire to return the transmitter site to its original location where the licensee owns the tract of land and has significantly more robust back-up and double-redundant generator facilities in the event of power failure during emergency conditions. Both the current site and proposed site, which are located on adjoining parcels of land and in very close proximity to each other (as illustrated by the photograph included in the Technical Exhibit), are part of the same antenna farm on Poor Mountain. The current WSLQ transmitter site is owned by an unrelated entity and suffers from limitations in its ability to provide back-up power during emergency conditions: the back-up generator capacity at the current WSLQ site is 100 kW for 3 days. By comparison, the licensee recently, in December 2010, materially upgraded the proposed site (where it has other radio facilities, none of which are superpower) such that its back-up generator capacity would provide WSLQ with full 200 kW power for up to 7 days, including a redundant generator facility to provide "backup to the backup." The critical communication services provided by WSLQ are especially important because WSLQ serves as the EAS LP-1 station for the Roanoke Extended Operational Area. In other words, at the proposed site, emergency operations of WSLQ during crisis conditions would permit WSLQ to provide critical emergency service to the public at *twice the power and for twice as long* as at the current site. And, since WSLQ is co-owned with the market's news station WFIR(AM), the news and information resources of WFIR(AM) are available to WSLQ for broadcast during periods of critical need; in fact, in the immediate aftermath of 9/11, WSLQ simulcast WFIR(AM) to provide important public service in precisely the kind of crisis circumstances envisioned here. Clearly, the move of WSLQ's transmitter site would materially improve emergency services and critical emergency communications to the public, particularly when significant weather and other events make power scarce or

unavailable. The proposed move, then, would undeniably serve the public interest in a unique way.

Second, the measurements and distances implicated by the proposal are of a uniquely small dimension. As noted above, the move represents a change in location of only 0.4 km (which rounds down to 0 km), and the instant proposal would reduce WSLQ's 60 dBu average contour distance to 98.4 km (from 98.9 km). See Technical Exhibit, page 5. The 60 dBu contour extension, which would affect a very limited area on the northeastern arc of the contour, is, at its greatest point, only 0.65 km beyond the current contour. When the site move of 0.4 km is factored in, the maximum "extension" of the 60 dBu contour is only 0.25 km (i.e., 0.65 km - 0.4 km = 0.25 km) or 250 meters. There appears to be no Commission case law opining on what may constitute a *de minimis* contour extension for purposes of Section 73.211(c); nonetheless, we submit that a distance of less than 250 meters is *de minimis* both as a matter of logic and reason and consistent with full-Commission precedent in the similar context of FM short-spacing. See, e.g., *R&L Broadcasters*, Memorandum Opinion and Order, 7 FCC Rcd. 5551 (1992), ¶ 8 ("If the shortspacing is less than 1.6 kilometers, the spacing is generally considered *de minimis* and the applicant is excused from the threshold showing provided that sufficient public interest considerations support the waiver.").

Third, strict adherence to Section 73.211(c) would require WSLQ, in moving to its proposed transmitter site, to reduce power in order to remain within the current 60 dBu contour. The result would be a more significant loss of service within the station's 60 dBu contour. While the goal of Section 73.211(c) is to prevent unwarranted expansion of superpowered stations, i.e., the goal is to maintain the *status quo ante*, that goal becomes frustrated where, as here, a wholly minimal move is proposed—so minimal, in fact, that the distance of 0.4 km would actually round down to a 0 km move—to better serve the public in critical times of emergency and power outage, and unyielding adherence to the rule would effectively *prevent* some of the benefits of the move by reducing, at times of critical emergency communications, the public's access to emergency information and access of other broadcast stations further down the EAS daisy-chain to WSLQ's signal.

Finally, it is important to understand how the instant proposal differs from the licensee's 2001 proposal to move WSLQ. As referenced above, ten years ago—before the proposed site had its current back-up/generator capacity (more properly, its "double" back-up/generator capacity)—the licensee filed an application to move the transmitter site of the station, and that application was dismissed. See FCC File No. BPH-20010831AAJ. The instant proposal materially differs from the 2001 proposal in several respects. First, the licensee's 2011 proposal contemplates a smaller 60 dBu contour extension area than the 2001 proposal. This is accomplished by a decrease in the HAAT (604 m in 2001; 598 m in 2011). (Further suppression of the HAAT would compromise the coverage area and the line of sight to Roanoke.) Second, the 2011 proposal reduces the 60 dBu average contour distance to 98.4 km. The current facility's 60 dBu contour average distance is 98.9 km, and the 2001 proposal would have extended the 60 dBu contour average distance to 100

km. Third, the unprecedented attention afforded EAS and emergency communications in the current environment in the post-9/11 world (the 2001 proposal was filed in August 2001) are of great significance to the public interest calculus for the 2011 proposal, because it (unlike the 2001 proposal) is premised in large part on materially increasing the ability of WSLQ to serve the public interest in the provision of critical emergency information during times of crisis and power outage.

For all these reasons, the licensee believes a waiver of Section 73.211(c) is warranted and respectfully requests grant of the application with the parameters specified herein.

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