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445 12th STREET SW
WASHINGTON DC 20554

MEDIA BUREAU
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PROCESSING ENGINEER: Edna Prado
TELEPHONE: (202) 418-2609
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: Edna.Prado@fcc.gov

The Trustees of Columbia University
in the City of New York
2920 Broadway
Mail Code 2612
New York, NY 10027

In re: WKCR-FM, New York, NY
Facility ID# 68270
The Trustees of Columbia University
in the City of New York ("Columbia")
BPED-20080122ADE

Dear Applicant:

This letter is in reference to the above-captioned minor change application to relocate WKCR from the World Trade Center ("WTC") to 4 Times Square ("4 Times").¹ WKCR requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons stated below, we grant WKCR'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 (1) second adjacent channel Class A station (BMLED-20050909ABX) for WSOU(FM), South Orange, New Jersey, and (2) second adjacent channel Class A station (BMLED-19981109KA) for WHPC(FM), Garden City, New York. Specifically, with respect to WSOU, the licensed interfering contour is entirely encompassed by the proposed protected contour (60 dBu) of WKCR. In addition, the proposed facility shifts the interfering contour and increases the overlap (area and population) caused to WSOU. With respect to WHPC, the proposed protected contour (60 dBu) receives overlap from the interfering contour (100 dBu) of WHPC. WKCR recognizes these violations and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request involving overlap caused to WSOU, Columbia states that overlap caused to WSOU would be 292,213 persons (or 5.4%) and 16.2 square kilometers (or 1%) of WSOU's service contour. Columbia claims that it has taken steps to minimize the impact on WSOU. In addition, Columbia contends that in order to reduce the amount of population within the proposed overlap area to the amount within the licensed overlap area, WKCR would be required to reduce its ERP to 0.28 kilowatts, which would reduce the population within its 60 dBu contour population by 1,809,507. Furthermore, Columbia maintains

¹ WKCR is currently operating under special temporary authority ("STA") at 4 Times with an effective radiated power of 0.65 kilowatt and a height above average terrain of 284 meters.

that such a reduction would be contrary to the public interest and would have the effect of permanently preventing Columbia from restoring service to its former levels.

In support of the waiver request involving overlap received from WHPC, Columbia states that the predicted overlap at Columbia's proposed facility is only 158 persons, or less than 0.01 percent of the 12,183,974 persons within Columbia's proposed 60 dBu contour. Columbia claims that to eliminate the overlap, it would have to reduce its proposed power from 1.35 to 0.88 kilowatt. Operation at this power, would decrease the station's 60 dBu coverage by 160,587 persons. Therefore, the public interest would not be served by reducing WKCR's power in order to eliminate overlap affecting only 158 persons at the expense of service to more than 150,000 persons. Thus, Columbia concludes that the overlap is *de minimis* and that grant of this waiver request would serve the public interest.

Discussion – Overlap Caused

Columbia contends that the loss of WKCR's WTC transmitter site constitutes an exceptional circumstance. We agree. The destruction of the WTC was clearly an unprecedented occurrence. In addition, we acknowledge that Columbia's licensed operation from the WTC resulted in overlap caused to WSOU, and recognize the difficulty Columbia has faced in finding a site that replicates its licensed site, formerly the tallest building in New York City. Our review indicates that all of the potential sites will have some degree of increased overlap caused to WSOU relative to WKCR's licensed operations on the WTC. The 4 Times site clearly balances Columbia's legitimate desire to restore service to former levels with WSOU's interest in preserving service to its listeners. Furthermore, WSOU has no objection to the grant of this proposed change. Finally, the overlap caused to WSOU by WKCR's proposed facility is similar with the public interest criteria set forth in *Educational Information Corporation*.² Therefore, we find that, based on the special circumstances involved in the loss of the WKCR transmitter site and the Commission's policy on the matter, waiver of Section 73.509 is warranted in this instance.

Discussion – Overlap Received

Columbia's request to receive second-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in *Educational Information Corporation*. 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.

² See *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), at 2209.

Conclusion

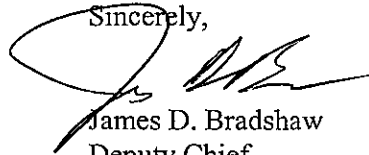
When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, INC. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). 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 applicants' justifications are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WKCR's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20080122ADE IS HEREBY GRANTED subject to the following conditions:

Further modification of WSOU(FM), South Orange, New Jersey will not be construed as a *per se* modification of WKCR-FM's construction permit (BPED-20080122ADE).
(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of WHPC(FM), Garden City, New York will not be construed as a *per se* modification of WKCR-FM's construction permit (BPED-20080122ADE).
(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

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

Sincerely,



James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: Joseph A. Godles, Esq.