

Request for Limited Waiver of 47 C.F.R. §73.509

Northwoods Catholic Radio (“Northwoods”) hereby requests waiver of the above-captioned Rule, only as necessary to allow modification of its permit to construct KSPP, Rhinelander, Wisconsin (Facility Identifier 171922) (the “Station”), pursuant to the proposal set forth in the engineering portion of Northwoods’ most recently submitted Form 340 and the technical exhibit thereto (the “*Tech Exhibit*”).

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Since 1981, the Audio Division has enjoyed delegated authority to waive Section 73.509 where doing so:

- advances a public benefit;
- is occasioned only by second or third adjacent facilities;
- involves received interference only; and
- the contour overlap is de minimis relative to the proposed service area.¹

The specific tests currently used to evaluate the acceptability of such proposals was set forth in *Educational Information Corporation*, 6 FCC Rcd 2207, 2208 (1991). We now examine the acceptability of Northwoods’ proposal within the context of each of these four tests.

Public Benefit. Traditionally a showing of advancement of a significant public benefit may rely solely on a very substantial increase in proposed coverage, and the facts here certainly provide support on that basis alone. The Station, as modified, would cover a 60 dBu population of 45,761, or a 35 percent increase over the “as authorized” coverage of 33,909.² Accordingly, the proposed modification indisputably presents the Audio Division with a clear public benefit in favor of granting the requested waiver relief.

¹ *Lakeside Telecommunications, Inc.*, FCC 04-298 (2005), citing *Delegation of Authority to the Chief of the Broadcast Bureau to Waive Small Amounts of Interference Received by Non-Commercial Educational FM Proposals*, 49 R.R.2d 1524 (1981). The Commission replaced this signal strength ratio methodology with a contour overlap standard in 1985. *Changes In The Rules Relating To Noncommercial Educational FM Broadcast Stations*, Memorandum Opinion and Order, MM Docket No. 20735, 50 Fed. Reg. 27954 (July 9, 1985), pursuant to which such delegated authority is now limited to 10 percent "overlap" received compared to 5 percent "interference" received under the old policy.

² Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, *Divine Mercy Broadcasting*, BNPED-20071022AAE

Second Adjacent Facility. The Station will operate on Channel 206, which is second adjacent to Channel 204, on which authorized permit WQMN (Facility ID: 175345), will operate. This clearly falls within the realm of acceptable waiver requests.

Received Interference. The interfering contour of WQMN overlaps the proposed receiving contour of the Station, as modified, but the interfering contour of the Station, as modified, does not overlap the protected contour of WQMN (or any other existing facility).³ The proposed modification therefore falls within the range of acceptable waiver requests.

De Minimis Overlap. The proposed facility does receive a *de minimis* amount of incoming interference from WQMN, a second adjacent permit. A waiver of this incoming interference is sought in the instant application. The population and area of the proposed application are 45,761 and 3,682 sq. km, respectively. The population and area of potential interference with KMLW are zero persons and 8.7 sq. km, respectively. This interference area is thus less than one percent of the proposed coverage area, and absolutely no one resides in the area of potential interference. The attached engineering report includes figures that illustrate the overlap and the *de minimis* nature of any interference.

This is not only well within the 10 percent threshold that is allowed under the “overlap received” formulation, it is even below the 5 percent threshold originally allowed under the “interference received” formulation of the waiver policy.⁴

Meanwhile, the increased population served by the Station, as modified, exceeds the population of the “received overlap” contour by a factor of 100 percent. Accordingly, the requested waiver manifestly produces a public benefit that overwhelmingly outweighs the agency’s rightful caution with respect to the overlap received.

On the one hand, the agency is rightfully wary of receiving contour overlap, but in this case the receiving overlap constitutes less than one percent of the Station’s coverage area and will affect and none of the residential population.

On the other hand, the agency is presented with overwhelming public benefit inasmuch as the Station, as modified, will provide service to an increased population such that the 35 percent increase in population is entirely to the credit of this waiver request, whereas there is literally no population residing in the area to receive interference as any sort of offset to the population gains.

³ *Id.*

⁴ *See supra*, Note 1.

In view of the foregoing, Northwoods respectfully requests a waiver of Section 73.509 of the Rules to allow for the received contour overlap as set forth in Northwoods' Form 340 request for modification of its permit to construct the Station.