

Federal Communications Commission  
Washington, D.C. 20554

In reply refer to:  
1800B3-WJS

September 10, 1998

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In re: Iowa Great Lakes Broadcasting Co., Inc.  
KICD-FM, Spencer, IA  
File No. BPH-970825IC

Dear Counsel:

This letter concerns Iowa Great Lakes Broadcasting Co., Inc.'s ("Iowa") timely-filed application for review of the staff's action dismissing the above-referenced application for correction of site data for KICD-FM, Spencer, Iowa and denying Iowa's related request for waiver of 47 C.F.R. § 73.207. *Letter to Iowa Great Lakes Broadcasting Co., Inc.*, Ref. No. 1800 (Asst. Chief, Audio Services Div., December 10, 1997) ("*12/10/97 letter*").<sup>1</sup> Pursuant to Iowa's written request dated August 13, 1998, we shall treat its pleading as a petition for reconsideration under 47 C.F.R. § 1.106. For the reasons set forth below, we shall grant the petition for reconsideration, reinstate the application and grant the application and related waiver request.

*Background.* KICD-FM has been licensed to operate at the subject transmitter site, which is owned by Iowa, since 1965. While preparing an antenna structure registration application pursuant to the *Report and Order* in WT Docket No. 95-5, 11 FCC Rcd 4272 (1995) ("*Antenna Structure R&O*"), Iowa discovered an error in KICD-FM's authorized geographical coordinates. Iowa filed the instant modification application to correct the coordinates on August 25, 1997. The proposed correction reduced the distance separation between KICD-FM and a proposed new Channel 298C3 FM station at Castana, Iowa (File No. BPH-970612MJ) from 143.54 to 143.45 kilometers ("km"). The required spacing between the two stations is 144 km. 47 C.F.R. § 73.207(b)(1). The spacing between the two stations complied with the Commission's requirements before the correction because 143.54 rounds up to 144. *See* 47 C.F.R. § 73.208(c)(8) (computed distance between two reference points shall be rounded off to the nearest kilometer). The corrected distance of 143.45 km rounds down to 143 km, however, resulting in a 1 km short-spacing under Section 73.207. Iowa therefore requested waiver of Section 73.207 in the application, pointing out that the actual difference between the authorized and the corrected spacing was only 0.09 km.

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<sup>1</sup> Maple River, LLC, the applicant for a new, first-adjacent-channel FM station on Channel 298C3 at Castana, Iowa (File No. BPH-970612MJ), filed an opposition to the application for review on January 27, 1998, and Iowa filed a reply on February 6, 1998.

The staff denied the waiver request, reasoning that the *Antenna Structure R&O* "places the burden on licensees to bring their facilities into compliance with Commission rules 'where a correction of site data for a tenant licensee would be in violation of the Commission's rules[.]'" 12/10/97 letter at 1 (quoting *Antenna Structure R&O*, 11 FCC Rcd at 4287). The staff also noted that the application would be acceptable for filing and grantable if Iowa were to request processing under 47 C.F.R. § 73.215 (Contour protection for short-spaced assignments). Iowa now argues that the staff's action denying its waiver request was contrary to the Commission's purpose in the *Antenna Structure R&O* of facilitating correction of erroneous site data.<sup>2</sup>

*Discussion.* On reconsideration, we conclude that waiver of Section 73.207 is warranted here. We agree that rigid application of the spacing requirements in circumstances like those presented here may have a deterrent effect on the submission of accurate site data by structure owners, contrary to the Commission's purpose. See *Antenna Structure R&O*, 11 FCC Rcd at 4286-87 and Appendix C (Commission did not intend to impose administrative sanctions on licensees correcting inadvertent coordinate errors). The Mass Media Bureau's practice, in processing applications for correction of site data, has been to waive short spacing violations where the difference between the authorized and corrected spacing is *de minimis* and the application raises no environmental, international or other issues. See, e.g., *Letter to Citadel License, Inc. (WMGS(FM), Wilkes-Barre, PA)*, Ref. No. 1800B3 (Asst. Chief, Audio Services Div., April 30, 1998) (granting Section 73.207 waiver for proposed coordinate correction involving 0.1 km increase in existing short-spacing). The actual (not rounded off) difference between the authorized and corrected spacing involved here is less than one tenth of a kilometer.<sup>3</sup> In sum, therefore, based on the facts that (1) this is an application for correction of site data rather than for an actual change in technical facilities, (2) the proposed correction raises no environmental, international or other issues, and (3) the difference between the authorized and corrected spacing involved is *de minimis*, we conclude that waiver of Section 73.207 is warranted.

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<sup>2</sup> Iowa also makes a number of arguments pertaining to the staff's note concerning Section 73.215, and whether Maple River, LLC should have been aware of the proposed coordinate correction prior to filing its application for the new Castana station. The opposition and reply pertain solely to these arguments. In light of our disposition of this matter, we need not address these arguments. See *Colonial Communication, Inc.*, 6 FCC Rcd 2296 (1991) ("An agency, like a court, need not decide questions which are not relevant to its decision.").

<sup>3</sup> We note that there is support in Commission precedent for *not* rounding off to the nearest kilometer in this context. See *Naguabo Broadcasting Co.*, 7 FCC Rcd 1696 (1992) (concluding that whether Section 73.208 rounding-off provision should be used in determining the extent to which an application is short-spaced is unclear); *Sunshine Group Broadcasting*, 2 FCC Rcd 4723 n. 3 (1987) (distances should not be rounded off in determining whether a short-spacing violation is *de minimis*); see also *Notice of Proposed Rule Making* in MM Docket No. 93-226, 8 FCC Rcd 6200 (1993) (proposing to amend Section 73.208 to restrict rounding of distance separation calculations to the nearest one hundredth of a kilometer in instances where an applicant is not in compliance with spacing requirements).

In view of the foregoing, Iowa's petition for reconsideration of the staff's December 10, 1997 letter action IS GRANTED, Iowa's above-referenced application for correction of site data for KICD-FM (File No. BPH-970825IC) IS REINSTATED, and the application and related request for waiver of 47 C.F.R. § 73.207 ARE GRANTED.

Sincerely,

Dennis Williams, Assistant Chief  
Audio Services Division  
Mass Media Bureau