



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
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Park Public Radio, Inc.
c/o Jeff Sibert
3340 Utah Ave S
St. Louis Park, MN 55426

In re: **New NCE FM, St. Louis Park, Minnesota**
Facility ID No. 768436
Application File No. 167193

New NCE FM, St. Louis Park, Minnesota
Facility ID No. 768433
Application File No. 167194

Dear Applicant:

We have before us the above-referenced applications (Applications) for two new noncommercial educational (NCE) FM stations at St. Louis Park, Minnesota, filed by Park Public Radio, Inc. (Park) on November 9, 2021.¹ Neither Application satisfies the minimum distance separation (spacing) requirements set out in section 73.207 or the alternative contour overlap requirements of section 73.215 of the Commission's rules (Rules).² In addition, the Channel 214 Application does not satisfy the contour overlap requirements for NCE stations set out in section 73.509(a).³ Therefore, Park seeks waivers of these rules (Waiver Requests).⁴ For the reasons set forth below, we deny the Waiver Requests and dismiss the Applications for failure to satisfy the Commission's spacing and contour overlap requirements.⁵

Background. The Applications represent an alternative, according to Park, to its ongoing difficulties finding a "viable" transmitter site for its low power FM station KPPS-LP, St. Louis Park, Minnesota (KPPS-LP).⁶ On July 5, 2022, the Bureau dismissed Park's most recent modification application (KPPS-LP Modification Application) as untimely and, as a separate and independent ground for disposal, denied Park's request for a waiver to allow short spacing between KPPS-LP and two first-adjacent translator stations.⁷ The KPPS-LP Modification Application was contested by Central Baptist

¹ Application File Nos. 167193 (Channel 214 Application) (amended December 23, 2021) and 167194 (Channel 220 Application).

² See 47 CFR §§ 73.207 (establishing minimum distance separation requirements), 73.507 (applying the section 73.207 spacing requirements to NCE channels that are adjacent to Channels 221, 222, and 223), and 73.215 (providing a contour-overlap-based alternative for stations that do not meet the section 73.207 spacing requirements).

³ 47 CFR § 73.509(a).

⁴ Alternatively, Park requests waiver of the contour overlap provisions of 47 CFR § 73.215. Channel 220 Waiver Request.

⁵ This Letter Decision does not assess the acceptability of the Applications other than to the extent specifically discussed herein.

⁶ Channel 220 Waiver Request at 4-5, Channel 214 Waiver Request at 7-9.

Theological Seminary (Central Baptist), who filed a competing modification application for FM translator station K250BY, Minneapolis, Minnesota. Park's appeal of this dismissal is pending.⁸ If the Applications are granted, Park states, it will dismiss the KPPS-LP modification application.⁹

On November 9, 2021, during the NCE FM new station filing window, Park filed construction permit applications for nine new full-service NCE FM stations, including the two subject Applications.¹⁰ Five of these NCE applications were granted and two dismissed at Park's request.¹¹ Park states that the remaining two Applications represent a "possible solution" to its "long-standing need to relocate KPPS-LP while simultaneously allowing it to better serve the public through a much more reliable and steady signal with less interference and less chance of displacement in a busy market."¹²

Sections 73.207 and 73.215 waiver requests. Neither Application satisfies the minimum distance separations set out in section 73.207 of the Rules. The proposed new station on Channel 220 is short-spaced to third-adjacent commercial Class C station KQRS-FM, Golden Valley, Minnesota (KQRS).¹³ It does not satisfy the alternative contour overlap requirements of section 73.215 with respect to KQRS because the proposed facilities: (1) create prohibited contour overlap with KQRS's hypothetical class maximum facilities;¹⁴ and (2) do not meet the alternative minimum distance separations of section 73.215(e).¹⁵ Therefore, in lieu of demonstrating compliance with section 73.207 and 73.215, Park

⁷ *Greg P. Skall, Esq.*, Letter Decision, Application File Nos. 142489 and 142335 (MB July 5, 2022) (*Dismissal Letter*) (dismissing Application File No. 142335 (filed on March 31, 2021)).

⁸ On February 6, 2023, the Bureau dismissed in part and denied in part Park's petition for reconsideration of the dismissal of the KPPS-LP Modification Application. *Greg P. Skall, Esq.*, Decision on Reconsideration, Application File Nos. 142489 and 142335 (MB Feb. 6, 2023) (*Reconsideration Letter*). On March 10, 2023, Park filed an application for review of the dismissal of the KPPS-LP Modification Application. Pleading File No. 212376 (filed Mar. 10, 2023).

⁹ Channel 220 Waiver Request at 2; Channel 214 Waiver Request at 2.

¹⁰ *See generally, Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, Public Notice, 36 FCC Rcd 11458 (MB 2021).

¹¹ Application File Nos. 167195 (granted Jan. 12, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220114-01 (Jan. 14, 2022)); 167196 (granted May 7, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220601-01 (June 1, 2022)); 167197 (granted Nov. 30, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-3-220303-01 (Dec. 2, 2022)); 167200 (granted Feb. 15, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220217-01 (Feb. 17, 2022)); 197203 (granted Jan. 12, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220114-01 (Jan. 14, 2022)); 167199 (dismissed Mar. 8, 2022, per settlement agreement. *See Broadcast Actions*, Public Notice, Report No. PN-2-220310-01 (Mar. 10, 2022)); 167202 (dismissed Jan. 21, 2022, at applicant's request. *See Broadcast Actions*, Public Notice, Report No. PN-2-220125-01 (Jan. 25, 2022)).

¹² Channel 214 Waiver Request at 1-2; Channel 214 Waiver Request at 7-9.

¹³ Park states that its proposed facilities are 14.8 km from KQRS. Channel 220 Waiver Request at 2. The minimum distance separation requirement under section 73.207 between a Class A and a Class C station is 95 km.

¹⁴ For section 73.215 purposes, the relevant contours are the hypothetical class maximum of the other station. 47 CFR § 73.215(a). While the proposed Channel 220 facility does not overlap with KQRS's actual contours, it does create prohibited contour overlap with KQRS's class maximum facilities. Park claims that KQRS is unlikely to upgrade at its current allotment, and that even if it did, the resulting increase in signal strength would actually reduce the undesired to desired ratio overlap area. Channel 220 Waiver Request at 3.

¹⁵ The minimum distance separation requirement under section 73.215(e) between a Class A and a Class C station is 89 km. 47 CFR § 73.215(e). Park states that its proposed facilities are 14.8 km from KQRS. Channel 220 Waiver Request at 2.

requests to be allowed to show that it is unlikely to cause actual interference to KQRS listeners because there is no population within the very small area where the KQRS signal would be at least 40 dB less than the relative signal strength of the proposed Channel 220 station.¹⁶ This method of comparing the relative signal strengths of two stations is referred to as undesired-to-desired (U/D) or signal ratio methodology. Currently, the U/D methodology may be used only by FM translator applicants to satisfy the section 74.1204(d) “lack of population” exception to the contour overlap requirements of section 74.1204(a)¹⁷ and LPFM applicants seeking second- and third-adjacent channel contour overlap waivers.¹⁸

Park contends that grant of the Channel 220 Waiver Request would “enable [it] to resolve its long-standing need to relocate KPPS-LP while simultaneously allowing it to increase its coverage and obtain primary status, which would serve the public interest as it would provide a much more reliable and steady signal with less interference and less chance of displacement in a busy market.”¹⁹ Park argues that the U/D methodology is appropriate here because its station’s proposed power level is similar to that of a translator or LPFM station and therefore should be allowed similar flexibility regarding adjacent channel interference.²⁰ Park cites to second- and third-adjacent received overlap waivers in the NCE service (known as *Raleigh* waivers) for the proposition that “some de minimis interference is acceptable.”²¹ It also cites to two historical spacing waivers between second-adjacent NCE and commercial band stations.²² Finally, it notes that its proposal would displace FM translator station K220JP and Class D station WMCN, but claims that there are other channels available for these secondary service stations.²³

Park’s proposed new NCE station on Channel 214 likewise does not meet the minimum distance separations set out in section 73.207 with respect to intermediate frequency (IF) commercial station KDWB-FM, Richfield, Minnesota (KDWB).²⁴ Park argues that, since the proposed facility would operate at less than 100 watts effective radiated power (ERP), it should be exempt from IF protection

¹⁶ See Channel 220 Waiver Request at 1.

¹⁷ See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 17054 (2002) (“[I]nterference is predicted to occur where the translator’s undesired signal exceeds the protected station’s desired signal by more than 40 dB”). In the case of second adjacent stations, interference is predicted to occur where the translator’s undesired signal exceeds the protected station’s desired signal by more than 40 dB. Park states that its proposed signal would only exceed a -40 undesired-to-desired (U/D) ratio within 14 meters from its antenna, and that there is no population within that area. Channel 220 Waiver Request at 2.

¹⁸ *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15429, para. 78 (2012); 47 CFR § 73.807(e)(1). Third-adjacent channel spacing waivers for LPFM stations are statutorily prohibited. See *Mr. John Snyder*, Letter Decision, 21 FCC Rcd 11945, 11946 (MB 2006) (citing 47 CFR § 73.807 and 114 Stat. 2762 at A-11. Formerly H. R. 5548 (106th Cong.)).

¹⁹ Channel 220 Waiver Request at 2, 8.

²⁰ *Id.* at 3.

²¹ Specifically, (1) second-adjacent NCE stations KFAI and KMOJ(FM), Minneapolis, Minnesota (KMOJ); (2) third-adjacent NCE stations KCMP(FM), Northfield, Minnesota (KCMP) and WRFW(FM), River Falls, Wisconsin (WRFW); and (3) KMOJ and third-adjacent channel KCMP. Channel 220 Waiver Request at 6 (also citing *Educational Information Corporation*, Memorandum Opinion and Order, 6 FCC Rcd 2207 (1991) (*Raleigh*)).

²² Specifically, (1) NCE station KALW, San Francisco, California, and commercial band station KKDV(FM), Walnut Creek, California, and (2) NCE station WUMB, Boston, Massachusetts, commercial band station WXRV(FM), Andover, Massachusetts, and commercial band station WPRO-FM, Providence, Rhode Island. Channel 220 Waiver Request at 6.

²³ Channel 220 Waiver Request at 7.

²⁴ The proposed facility is about 10 km from KDWB. The required minimum distance separation is 25 km.

requirements for the same reasons that LPFM stations, Class D stations, and FM translators operating below 100 watts are exempt.²⁵ According to Park, there are “essentially no documented cases of actual interference between an FM translator operating below 100 Watts on an IF frequency in decades despite thousands of FM Translator stations having routinely been granted such waivers.”²⁶

Section 73.509 waiver requests. The Channel 214 proposal causes and receives prohibited overlap with respect to second-adjacent NCE stations KNOW-FM, Minneapolis, Minnesota (KNOW), and KFAI(FM), Minneapolis, Minnesota (KFAI).²⁷ Park justifies waiver of section 73.509 with respect to these stations on the basis that the new NCE station would provide a stronger and more reliable signal than KPPS-LP²⁸ and would resolve the “unique and messy legal situation” with Central Baptist.²⁹

Typically, the Commission only considers waivers of section 73.509 where an existing NCE station seeks to modify its facilities and, as a result, would consequently: (1) receive—not cause—overlap³⁰ from (2) second- or third- adjacent channel stations, and (3) the public interest benefit of increased NCE service heavily outweighs the potential for interference in a very small area (*Raleigh* waivers).³¹ The Bureau has found that granting waivers in these limited circumstances provides flexibility for NCE stations to modify their service areas while protecting existing service from interference.³² Park urges us to expand *Raleigh*—at least in this case—to cover: (1) new as well as existing stations; (2) caused as well as received overlap; and (3) greater than 10% received overlap. Park contends that its proposed NCE station is functionally equivalent to an existing station because it would “essentially supplant its LPFM station and because both are NCE stations” and therefore is “in essence . . . an upgrade application for that LPFM license.”³³ Regarding its proposed caused overlap, Park states that it is unlikely to cause actual interference because there is no population within the U/D area of predicted interference with KNOW and KFAI.³⁴ Park commits to resolving any instances of actual interference

²⁵ Channel 214 Waiver Request at 6; *see generally, e.g., Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15480-81, paras. 207-210 (2012).

²⁶ Channel 214 Waiver Request at 6.

²⁷ The proposed facility would also displace translator station K214DF, which, according to Park, should be able to find a comparable facility, especially if Park voluntarily surrenders its license for KPPS-LP. Channel 214 Waiver Request at 10-11. Park also argues that K214DF’s operation at “nearly the exact same parameters as proposed by this application” demonstrate that interference should not be a problem. *Id.* at 13.

²⁸ Channel 214 Waiver Request at 10, 12. Park also notes that as a full power broadcaster, it would be subject to increased public service commitments, such as maintaining a public inspection file and EAS service requirements. *Id.* at 13.

²⁹ Channel 214 Waiver Request at 4.

³⁰ Prohibited overlap occurs when a station's interference contour overlaps another station's service contour. The terms “overlap caused” and “overlap received” are used in reference to a specific station proposing a facility change. If Station A is proposing to expand its service contour and the new service contour will be overlapped by Station B's interference contour, Station A is said to receive overlap from B. If station B is proposing to increase its facilities so that its proposed interference contour would overlap Station A's service contour, Station B is said to cause overlap. Under some circumstances, as here, a proposal may both cause and receive overlap.

³¹ *Raleigh*, 6 FCC Rcd at 2208. The Commission has delegated authority to the Bureau to waive 47 CFR § 73.509 when overlap received is 10% or less of the proposed service area. *Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, Memorandum Opinion and Order, 50 FR 27954, 27960 (1985).

³² *See Dennis J. Kelly, Esq.*, Letter Decision, 32 FCC Rcd 7441, 7443 (MB 2017) (*Coggon*).

³³ Channel 214 Waiver Request at 7.

should they occur.³⁵ Park reiterates its argument that the proposed NCE station would be “indistinguishable from a technical perspective” from translator and LPFM stations operating at similar power levels.³⁶ Park claims that there have been no interference claims against translator or LPFM stations operating on second-adjacent channels and that stations in the same market have operated for decades with waivers for “interference received and caused.”³⁷ Finally, although Park does not calculate the area of received overlap using the Commission standard contour prediction methodology, it states that, using the more generous U/D methodology, the area of potential interference would be around 12% of the proposed station’s 60 dBu contour and would cover a population of about 8.6% of the total population within the station’s service area.³⁸

Discussion. We conclude that the Waiver Requests do not demonstrate the special circumstances necessary to justify waiver and, therefore, deny them. The Commission’s rules may be waived for good cause shown.³⁹ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.⁴⁰ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”⁴¹ and must support its waiver request with a compelling showing.⁴² Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁴³ The Commission has long held that it will grant waivers to depart from its core allocation rules, such as minimum distance separations and contour overlap limitations, “only in the most compelling circumstances.”⁴⁴

Sections 73.207 and 72.215 waiver requests. We deny Park’s request for waiver of the spacing requirements of section 73.207 and/or the alternative contour overlap provisions of section 73.215.

³⁴ *Id.* at 2.

³⁵ *Id.* at 3, 6.

³⁶ *Id.* at 3.

³⁷ Specifically, Park cites to section 73.509 waivers granted to: (1) KFAI and second-adjacent channel KMOJ; (2) KCMP and third-adjacent channel WRFW; (3) KMOJ and third-adjacent channel KCMP; and (4) second-adjacent NCE stations KMLV(FM), Ralston, Nebraska, and KLCV(FM), Lincoln, Nebraska. Channel 214 Waiver Request at 9.

³⁸ Channel 214 Waiver Request at 5. Our engineering analysis indicates that the proposed overlap area would be approximately 25% of the station’s total 60 dBu coverage area.

³⁹ 47 CFR § 1.3.

⁴⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969) (*WAIT Radio*).

⁴¹ *Id.*

⁴² *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999) (*Greater Media*) (citing *Stoner Broadcasting System, Inc.*, 49 FCC 2d 1011, 1012, para. 6 (1974)).

⁴³ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

⁴⁴ *Carroll-Harrison B’casting, Inc.*, Memorandum Opinion and Order, 67 FCC 2d 254, 256, para. 8 (1977); *see also*, e.g., *Greater Media Radio Company, Inc.*, Memorandum Opinion and Order, 59 FCC 2d 796, 797, para. 5 (1979) (rejecting waiver request of section 73.215(e) because “minimum mileage separation standards offer the best means for achieving an orderly, efficient, and effective development of the commercial FM broadcast service”); *Boone Biblical College*, Memorandum Opinion and Order, 19 FCC 2d 155, 155-156, para. 4 (1969) (rejecting waiver request of section 73.207 on the basis that “strict enforcement of the mileage separation rules is of paramount importance to the integrity of the entire FM assignment plan.”).

Neither the Channel 220 or 214 Waiver Requests establishes special circumstances or meets the established criteria for waiver of these provisions. Because section 73.215 already provides a significant relief mechanism that was designed to avoid “complex, time-consuming and litigable” section 73.207 waiver requests,⁴⁵ the standard for waiver of either provision is high.⁴⁶ An applicant seeking a section 73.215(e) spacing waiver must establish the same criteria formerly used for section 73.207 waivers: specifically, that the proposed waiver would serve the public interest, and (1) the present transmitter site is no longer suitable, (2) non-short-spaced sites are unavailable, and (3) the proposed new site is the least short-spaced site available.⁴⁷ A section 73.215(a) waiver is warranted only in very limited circumstances, for example, to allow retention of existing service to an underserved area where the antenna cannot be directionalized to avoid the creation of contour overlap.⁴⁸

In the Channel 220 and 214 Waiver Requests, Park fails to demonstrate that no fully-spaced sites are available, that the proposed site is the least short-spaced available, or that waiver is necessary to provide service to an underserved community where the antenna cannot be directionalized to avoid contour overlap. Instead, it simply argues that the public interest would be served by authorizing new NCE stations to serve as a functional replacement for its LPFM station, adding that the proposal would be unlikely to cause interference as predicted using the U/D methodology.⁴⁹ This argument does not meet the specific criteria for section 73.207 and 73.215 waivers. Furthermore, the two examples Park cites of historical spacing waivers between second-adjacent NCE and commercial band stations are pre-1964 short-spaced station groups that were grandfathered when the current spacing rules were adopted.⁵⁰ This precedent does not support Park’s request for waiver of the current rules under the current waiver policy. Finally, Park’s situation is not unique or compelling. Many licensees can have difficulty finding suitable sites for another station or be required to defend against challenges to their modification applications. This is not a “special circumstance” warranting waiver of the Commission’s core FM allocations rules.

We reject Park’s argument in the Channel 220 and 214 Waiver Requests that NCE stations should be afforded the same flexibility with respect to second- and third-adjacent frequency protection as LPFM

⁴⁵ See *Mark N. Lipp, Esq.*, Letter Decision, 28 FCC Rcd 1331, 1333 (MB 2013) (citing *Greater Media*, 15 FCC Rcd at 7094-95).

⁴⁶ When it adopted section 73.215, the Commission stated that the new rule would “enable us to discontinue granting waivers of section 73.207 for co-channel and adjacent channel short-spacing.” *Amendment of Part 73 of the Commission’s Rules to Permit Short-Spaced FM Assignments by Using Directional Antennas*, Report and Order, 4 FCC Rcd 1681, 1685 (1989) (*Directional Antennas Order*); see also *Greater Media*, 15 FCC Rcd at 7094-95, para. 12 (“[T]he bar for obtaining short-spacing waivers is higher under section 73.215(e) than it was under section 73.207: the interest in adhering to our technical rules is all the more compelling now that the Commission has provided for site selection flexibility in those exceptional circumstances where no fully spaced sites are available by adopting Section 73.215.”).

⁴⁷ See *R&S Media*, Memorandum Opinion and Order, 19 FCC Rcd 6300, 6303, para. 8 (MB 2004) (*R&S Media*); *Townsend Broadcasting Corp.*, Memorandum Opinion and Order, 62 FCC.2d 511 (1976). We will not entertain a section 73.215 waiver request based on the theory that the short-spaced station cannot construct, or is unlikely to construct, maximum class facilities. *Tower Investment Trust, Inc.*, Letter Decision, 28 FCC Rcd 1331, 1331-32 (MB 2013).

⁴⁸ *R&S Media*, 19 FCC Rcd at 2306, para. 18; *Greater Media*, 15 FCC Rcd at 7098 (citing *Amendment to Part 73 of the Commission’s Rules to Permit Short-Spaced Station Assignments by Using Directional Antennas*, Memorandum Opinion and Order, 6 FCC Rcd 5356, 5360 n.27 (1991)).

⁴⁹ Channel 220 Waiver Request at 1-2, 4-7; Channel 214 Waiver Request at 1-2, 7-10.

⁵⁰ See Application File No. BPH-19990618IK, Exh. 1, Attach. 30, “KFJO Allocation Study and Waiver Request” at 1; Application File No. BPH-20060720ACZ, Exh. 31, Attach. 31 and 33. KFJO is the previous callsign of KKDV.

and translator stations operating at a similar power level because, from a technical standpoint, “interference does not discriminate between classes of service.”⁵¹ The Bureau has already considered and rejected this argument.⁵² Such a waiver policy would systemically undermine the second- and third-adjacent protections governing NCE stations, which—unlike secondary services such as LPFM and translator stations—are not required to resolve actual interference should it occur.⁵³ Such a fundamental change of general applicability should be considered in a notice-and-comment rulemaking, not an individual adjudication.⁵⁴

Section 73.509 waiver requests. As a separate and independent basis for dismissal of the Channel 214 Application, we find that Park has not justified a waiver of the NCE contour protection requirements set out in section 73.509. The Channel 214 proposal does not meet the basic criteria for a *Raleigh* waiver, nor does it demonstrate special circumstances that would justify a departure from the *Raleigh* policy in this case.

First, it is well established that *Raleigh* waivers are not available to applicants for new NCE stations.⁵⁵ Regardless of the underlying purpose of the Channel 214 Application, it is on its face an application for a construction permit for a new NCE station, and we reject Park’s strained argument that, because it functionally replaces KPPS-LP, the proposed station is not a new station but is “in essence . . . an upgrade application for that LPFM license.”⁵⁶ Second, the proposed facility would cause prohibited overlap with KNOW and KFAI and thus does not satisfy the *Raleigh* criterion that the proposed facility receive, but not cause, overlap.⁵⁷ The Commission has consistently rejected similar waiver requests to

⁵¹ Channel 214 Waiver Request at 6, Channel 220 Waiver Request at 6.

⁵² *Centenary College*, Letter Decision, 23 FCC Rcd 17317, 17321-22 (MB 2008) (*Centenary College*).

⁵³ See 47 CFR § 74.1203(a); *Centenary College*, 23 FCC Rcd at 17322 (“All FM translator licensing is backstopped by an absolute prohibition on causing interference to any full-service station. There is no comparable NCE-FM licensing requirement that would protect listeners against service losses.”).

⁵⁴ See generally, 47 U.S.C. § 553; *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888, para. 87 (1996) (“We do not believe . . . that it is appropriate to amend waiver policies of broad applicability in a restricted adjudicatory proceeding in which third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record.”).

⁵⁵ *Coggon*, 32 FCC Rcd at 7443 (distinguishing between *Raleigh* waivers to NCE permittees and NCE applicants whose “proposal has yet to undergo the NCE comparative allocations process”); *Centenary College*, 23 FCC Rcd at 17321 (“While requests for waivers of second-and third-adjacent channel overlap for new stations may have individual appeal, routine waivers of Section 73.509 . . . would undermine the Commission’s well-settled NCE-FM licensing scheme. It would result in vast increases in interference levels in the congested reserved band while causing disruption to existing listening patterns. This interference interrupts the continuity of existing service provided by the Station throughout its protected service area, and thus diminishes the quality of FM service provided by the Station. Over time, the grant of numerous similar waivers would degrade the quality of existing FM reception within stations’ theoretically protected 60 dBu service contours throughout the entire NCE-FM band.”).

⁵⁶ Channel 214 Waiver Request at 7.

⁵⁷ See, e.g., *Spirit Radio of North Florida, Inc. c/o Aaron P. Shainis, Esq.*, Letter Decision, 24 FCC Rcd 2958, 2960 (MB 2009); *Educational Information Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 6917, 6918-19, paras. 4-5 (1997) (emphasizing the “critical distinction” between received and caused prohibited overlap). *Raleigh* authorized modifications to a station that was already causing overlap due to another station’s voluntary acceptance of received overlap. *Raleigh*, 6 FCC Rcd at 2209, para. 14. All of the precedent cited by Park to support its section 73.509 waiver request involve received, not caused, interference. The Commission permits changes to caused overlap area that already exist pursuant to an earlier *Raleigh* waiver by the other station, to avoid locking the causing

create new caused interference to other stations.⁵⁸ Finally, the Channel 214 Application does not satisfy the “very small area” *Raleigh* criterion. Rather, the proposed station would receive a significant amount of overlap from KNOW: approximately 25% of its total 60 dBu coverage using the Commission’s standard contour prediction methodology and 12% of its total 60 dBu coverage using the more lenient U/D methodology. This cannot be considered a “very small area” under *Raleigh*—in fact, the Commission has not delegated authority to the Bureau to waive received overlap greater than 10% of the total service area.⁵⁹ We decline to significantly expand the scope of *Raleigh* to include new stations, caused overlap, and large overlap areas, especially without any justification for doing so other than to resolve a siting issue experienced by a co-owned LPFM station.

For the above reasons, we find that the public interest would not be served by waiving the Commission’s core allocations rules in this case. Park has not satisfied existing waiver criteria nor shown any additional special circumstances justifying waiver of sections 73.207 and/or 73.215, and 73.509.

Conclusion. Accordingly, IT IS ORDERED that Park’s requests for waiver ARE DENIED and its two construction permit applications for new NCE FM stations at St. Louis Park, Minnesota, filed on November 9, 2021, (Application File Nos. 167193 and 167194) ARE DISMISSED for failure to comply with sections 73.207 and 73.509 of the Rules.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

station into its existing facilities. *See, e.g., Call Communications Group, Inc.*, Letter Decision, 2023 WL 1926869 at 2 (Feb. 8, 2023). That is not the case here.

⁵⁸ *See, e.g., Raleigh*, 12 FCC Rcd at 6918, paras. 4-5; *Centenary College*, 23 FCC Rcd at 17320.

⁵⁹ *See Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, Memorandum Opinion and Order, 50 FR 27954, 27960 (1985).