

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Application of:	)	WWLC(FM)
	)	
Spirit Radio of North Florida, Inc.	)	File No. BMPED-20080130ANS
	)	
	)	Facility ID No. 121772
	)	
	)	Cross City, Florida
	)	

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To: The Media Bureau

MAY 14 2008

Federal Communications Commission  
Bureau / Office

**PETITION FOR RECONSIDERATION**

Spirit Radio of North Florida, Inc., ("Spirit") requests reconsideration of the denial of its waiver request and the dismissal of its above-referenced application to change its antenna height and location. In support, the following is respectfully submitted:

**BACKGROUND**

On January 13, 2008 Spirit filed a minor modification application to change the antenna height and location of WWLC(FM), Cross City, Florida. *See* BMPED-20080130ANS. As part of that application, Spirit requested a waiver of the contour overlap provisions of 47 C.F.R. § 73.509. The waiver was predicated on the fact that the amount of overlap land area was 58 square kilometers. Moreover, the population inside the interference area was merely 602 people. In addition, Spirit demonstrated that the percentage of overlap caused by the application was 0.10 percent of the entire population inside WUFT's protected coverage area. Spirit relied on Educational Information

Corporation, 6 FCC Rcd. 2207 (1991) in support of the Commission's willingness to consider waivers of such overlap in certain instances.

The Commission, by the Media Bureau, in an April 9, 2008 letter denied Spirit's waiver request and dismissed the application.<sup>1</sup> The Bureau states in the letter, *inter alia*, the following:

"In particular, the affected station would lose service area and population served without receiving any benefit in return. This interference interrupts the continuity of existing service provided by WUFT throughout its protected service area, and thus diminishes the quality of FM service provided by the afflicted station. Over time, the grant of numerous similar waivers would degrade the quality of existing FM reception from stations through the entire non-commercial educational FM band."

The Bureau in the letter, further states that when faced with a choice between a larger service area with overlap received on one hand and lesser coverage with no prohibitive overlap on the other, the Commission favors the latter, relying on Educational Information Corporation, 6 FCC Rcd. 2207, 2008 (1991). The Bureau further states that the Commission has granted waivers of Section 73.509 where existing non-commercial educational stations sought to increase the 60 DBU service contour so as to overlap the interfering contour of another non-commercial educational station and thereby receive overlap. The Commission distinguishes the instant case since WWLC proposes to cause prohibitive overlap and create new interference. The Commission further speculates that the type of interference caused by WWLC may not be recognized by listeners as interference.

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<sup>1</sup> A copy of the April 9, 2008 letter is attached.

It is respectfully submitted that the Media Bureau has selectively attempted to improperly distinguish Educational Information Corp. The Commission has conveniently not focused on the fact that in Educational Information Corp. the Commission granted WCPE's waiver request because the WCPE proposal would result in WCPE receiving only minimal interference from WXYC and WCCE. Specifically, in that case the area of overlap with WXYC would be 0.45 percent and the area of overlap with WCCE would be 0.39 percent – an aggregate amount totaling 0.84 percent of WCPE service area. The Commission found this amount of interference to be minimal compared to the amount of new service provided.

The Commission also granted the waiver request because it found that significant additional service would be provided by the expansion of WCCE's signal because the increase in area of overlap with Station WCPE was very small. It is submitted that interference is interference plain and simple. Whether it is an "expansion of interference" or the "creation of new interference" it is still interference. The important point is that in the instant situation, the interference is de minimis. Moreover, the Commission's claim that "the affected station would lose service area and population served without receiving any benefit in return" is hardly a reason to deny Spirit's waiver request.<sup>2</sup> Furthermore, it is also difficult to understand the Commission's argument that listeners may not recognize the type of interference created by WWLC as interference. Is the Commission somehow stating that if it was "recognized by listeners as interference" that it would be acceptable?

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<sup>2</sup> The standard has never been quid pro quo but has always been the public interest benefits.

The more important consideration is the public interest. Is not the public interest better served by allowing Spirit to expand its coverage area thus bringing its service to more people than the minor harm to another station, where only 602 people would be affected.

For the reasons hereby stated it is respectfully requested that the Bureau's April 9, 2008 ruling be reconsidered.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Aaron P. Shainis". The signature is written in a cursive, flowing style.

Aaron P. Shainis  
Shainis & Peltzman, Chartered  
Counsel for Spirit Radio of  
North Florida, Inc.

May 14, 2008

**FEDERAL COMMUNICATIONS COMMISSION**  
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APR 09 2008

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Spirit Radio of North Florida, Inc.  
412 N.E. 16<sup>th</sup> Avenue  
Gainesville, FL 32601

Re: WWLC(FM), Cross City, FL  
Facility ID No. 121772  
Spirit Radio of North Florida, Inc.  
File No. BMPED-20080130ANS

Dear Applicant:

This letter is in reference to the above-captioned minor change application to change antenna height and location. WWLC also requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons stated below, we deny WWLC's waiver request and dismiss the application.

**Waiver Request**

An engineering review of the application reveals that WWLC's proposed facilities would result in prohibited contour overlap with third-adjacent channel Class C1 license (BLED-19811007AJ) for WUFT-FM, Gainesville, FL, in violation of § 73.509. Specifically, the proposed interfering contour (100 dBu) would cause overlap to the protected contour (60 dBu) of WUFT's facility. WWLC recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WWLC states that the amount of overlap land area is 58 square kilometers. WWLC also claims that the population inside the interference area is 602 people. In addition, WWLC indicates that the percentage of overlap caused by this application is 0.10% of the entire population inside WUFT's protected coverage area. Finally, WWLC cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances. Accordingly, WWLC concludes that waiver of § 73.509 is warranted in this instance.

## Discussion

Allowing applicants to create new prohibited contour overlap effectively nullifies the protection mandated by § 73.509 to noncommercial educational FM stations' 60 dBu protected service areas. In particular, the affected station would lose service area and population served without receiving any benefit in return. This interference interrupts the continuity of existing service provided by WUFT throughout its protected service area, and thus diminishes the quality of FM service provided by the afflicted station.<sup>1</sup> Over time, the grant of numerous similar waivers would degrade the quality of existing FM reception from stations throughout the entire noncommercial educational FM band. As the Commission stated in *Open Media Corp.*, 8 FCC Rcd at 4070, 4071:

It is the overall scheme of [noncommercial educational FM] allocations which is paramount, and when faced with a choice between a larger service area with overlap received on one hand, and lesser coverage with no prohibited overlap on the other, the Commission favors the latter. *See Educational Information Corporation*, 6 FCC Rcd 2207, 2208 (1991).

In view of the limited interference potential between second- and third-adjacent channel noncommercial educational FM stations, the Commission has granted waivers of § 73.509 where existing noncommercial educational stations sought to increase the 60 dBu service contour so as to overlap the interfering contour of another noncommercial educational station and thereby receive overlap. *See Educational Information Corp.*, 6 FCC Rcd 2207 (1991). Here, WWLC proposes to cause prohibited overlap and create new interference. Moreover, review of our records reveals that there is no precedent for waiver of § 73.509 based on the circumstances and evidence presented by WWLC.

Additionally, the type of interference caused by the proposed facility may not be recognized by listeners as interference. Specifically, if interference were to occur, the results of third-adjacent channel interference is the replacement of one signal by another (not complete loss of service) and greatly depends on the quality of the receivers in use. Further, it is the Commission's charge, not applicants or licensees, to establish definitions of protected service and to ensure that existing protected service does not suffer interference. The goal of § 73.509 is to prevent overcrowding of FM stations and provide a consistent, fair, efficient, and equitable distribution of FM facilities as required by Section 307(b) of the Communications Act.<sup>2</sup>

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<sup>1</sup> This has been called the "swiss cheese" effect, where a station's protected service contour is punctured by "holes" of interference from multiple second- and third-adjacent channel FM stations. *Revision of FM Rules (Notice of Proposed Rulemaking)*, 21 RR 1655, 1674 (1961).

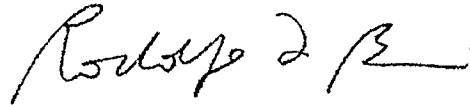
<sup>2</sup> *See Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 6 FCC Rcd 5356, 5358 (1991) (para. 13).

## 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 your waiver request the "hard look" called for under the *WAIT* Doctrine, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in the justification are insufficient to establish that granting waiver of 47 C.F.R. § 73.509 would be in the public interest.

Thus the request for waiver of 47 C.F.R. § 73.509 IS HEREBY DENIED and application BMPED-20080130ANS IS HEREBY DISMISSED as unacceptable for filing. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Shainis & Peltzman, Chartered  
Kessler & Gehman Associates, Inc.