

FEDERAL COMMUNICATIONS COMMISSION

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Board of Education of the City of Atlanta
740 Bismark Road, N.E.
Atlanta, Georgia 30324

In re: Board of Education of the City of
Atlanta ("BECA")
WABE(FM) Atlanta, Georgia
Facility Id # 3538
File No. BPED-20070820ABQ

Dear Applicant:

The staff has under consideration the above-captioned minor change application to increase the effective radiated power and antenna height above average terrain at a new transmitter site. In addition, BECA requests waiver of the contour overlap provisions of Section 73.509 of the Commission's Rules (the "Rules").¹ For the reasons stated below, we grant BECA's waiver request and the application.

Waiver Request

An engineering review reveals that WABE(FM)'s proposal would result in prohibited contour overlap of second-adjacent channel Station WWBM(FM), Yates, GA and third-adjacent channel Station WUWG(FM), Carrollton, GA, in violation of Section 73.509. Specifically, WABE's proposed 60 dBu protected contour will completely overlap WWBM's and WUWG's 100 dBu interfering contour. BECA acknowledges the proposed overlap received from WWBM and WUWG and requests waiver of Section 73.509 of the Rules.

In support of the waiver request, BECA states that it will not cause interference to WWBM and WUWG. BECA claims that grant of this waiver will extend its overall coverage area by 2,390 square kilometers ("sq km"), an increase of 15%. In addition, BECA states that this waiver will enable it to provide service to a total population of 4,051,178 people, within a 60 dBu protected contour of 1,564,061 sq km. Moreover, BECA indicates that the population within the interfering contour of WMVV is 2,163 people in an area of 46 sq km while the population within the interfering contour of WUWG is 449 people in an area of 8 sq km. Therefore, the total population within the interfering contours of each of the broadcast facilities stated is less than 0.1% of the population WABE's 60 dBu contour. Therefore, BECA believes that the benefits heavily outweigh the potential for interference in a total area that constitutes much less than 1% of the station's proposed service area. Finally, BECA 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. Thus, BECA considers the affected areas to be *de minimis* and, when considered along with the increased service area proposed, concludes that a waiver of Section 73.509 of the Rules is warranted in this case.

¹ See 47 CFR § 73.509

Discussion

BETCA's request to receive second and third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in *Educational Information Corporation, supra*. In that proceeding, the Commission indicated that it was inclined to grant waivers of second- and third-adjacent channel overlap to *existing* stations where the benefit of noncommercial educational service heavily outweighed the potential for interference in very small areas. In the 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 Section 73.509 of the Rules will be granted.

Conclusion

We have afforded the request for waiver of Section 73.509 of the Rules 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 applicant's justification are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WABE's request for waiver of Section 73.509 of the Rules IS HEREBY GRANTED. Furthermore, application File No. BPED-20070820ABQ IS HEREBY GRANTED subject to the following condition:

Further modifications to the facilities of stations WWBM(FM), Yates, GA, WUWG(FM), Carrollton, GA and WMVV(FM), Griffin, GA² will not be construed as a *per se* modification of WABE(FM)'s authorization. (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to Section 0.283 of the Commission's Rules.³

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Lawrence M. Miller, Esq.

² WABE was previously granted a waiver of Section 73.509 with respect to WMVV.

³ See 47 CFR § 0.283