

FEDERAL COMMUNICATIONS COMMISSION
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APPLICATION STATUS: (202) 418-2730
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Domestic Church Media Foundation
P.O. Box 192
Fairless Hills, PA 19030

In re: WSFS(FM), Freehold, NJ
Facility ID# 174562
Domestic Church Media Foundation
("DCMF")
BMPED-20100318AKW

Dear Applicant:

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

Waiver Request

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 73.509 with respect to the following stations: (1) second adjacent channel Class A license (BLED-19881227KB) for WMCX(FM), West Long Branch, NJ; and (2) second adjacent channel Class A license (BMLD-20041222DTP) for WRDR(FM), Freehold Township, NJ. In each instance, the proposed protected contour (60 dBu) totally encompasses the interfering contour (100 dBu) from the facilities listed above. DCMF recognizes these violations and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, DCMF states that it will not cause interference to the above facilities. DCMF claims that the grant of this waiver will increase its service area from 546 square kilometers to 911 square kilometers, an increase of 69%. In addition, DCMF believes that it will provide new service to an estimated 439,351 persons, an increase of 74%. DCMF also indicates that this benefit heavily outweighs the potential for interference in a total area that constitutes less than 1% of WSFS's proposed service area. Finally, DCMF 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. DCMF considers the affected area to be *de minimis*, and when considered along with the increased service area, DCMF concludes that waiver of § 73.509 is warranted in this instance.

Discussion

DCMF's request to receive second- and third-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that 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 47 C.F.R. § 73.509 will be granted.

Conclusion

We have afforded the request for waiver of § 73.509 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 is sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, DCMF's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BMPED-20100318AKW IS HEREBY GRANTED subject to the following conditions:

Further modification of WMCX(FM), West Long Branch, NJ (Facility ID# 43482) will not be construed as a *per se* modification of WSFS's construction permit (BMPED-20100318AKW).
(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of WRDR(FM), Freehold Township, NJ (Facility ID# 20485) will not be construed as a *per se* modification of WSFS's construction permit (BMPED-20100318AKW).
(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Dennis J. Kelly