

FEDERAL COMMUNICATIONS COMMISSION

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November 22, 2010

WVRM, Inc.
505 Thornall Street, Suite 203
Edison, NJ 00837

In re: WDDM (FM); Hazlet, NJ
WVRM, Inc.
Facility ID No. 70644
CP application BPED-20071109ADP

Dear Applicant:

Radio station WDDM is a Class D station, licensed to operate on Channel 207D with an effective radiated power of 10 watts.¹ Class D stations are “secondary” to Class A or higher class stations, in that they may not cause interference to higher class stations. Class D stations must also accept interference received from higher class stations. As licensed, WDDM will cause severe destructive cochannel interference to a new construction permit for WFJS-FM in Freehold, NJ on Channel 207A, file number (as modified) BMPED-20100318AKW.² Conversely, the 40 dBu interfering contour of the new Freehold station will encompass WDDM’s 60 dBu service contour, resulting in severe interference to WDDM’s operations. If the Freehold station commences operation, Channel 207 will be untenable for a Class D station, and WDDM must cease operation on Channel 207 at that time.³

Because WDDM will soon be displaced, the Commission’s rules permit the station to seek a new channel or site from which it could operate without causing interference (see 47 CFR Section 73.512(d)). In construction permit application BPED-20071109ADP (as amended May 6, 2009), WVRM, Inc. anticipates the grant of the Freehold station and seeks to change to Channel 284D. WVRM, Inc. provides documentation that no channels are available absent waiver of the prohibited contour overlap rules, and it concludes that Channel 284D is the best available channel.

¹ This station is currently operating on Special Temporary Authority from a different site, having lost access to its licensed transmitter site.

² The existing 40 dBu interfering contour of WNMJ will encompass approximately 40% of the service area authorized for the new Bernardsville station.

³ Class D noncommercial educational FM stations have been on notice since 1979 that subsequent proposals for higher class station could require the Class D station to make changes or cease operation. See *Changes in the Rules Relating to Noncommercial Educational FM Stations, Memorandum Opinion and Order, Docket 20735, FCC 78-919, 70 FCC 2d 972* (1979). The Commission then encouraged Class D stations to upgrade to at least minimum Class A.

However, Channel 284D is not usable by WDDM without prohibited contour overlap caused to second-adjacent channel commercial FM stations WAXQ (FM) and WWPR-FM, New York, NY. On Channel 284, the second-adjacent channel interfering contour of WDDM would lie within the 54 dBu protected service contour of these two commercial FM stations.⁴ WVRM, Inc. explains that there is no population within its proposed 100 dBu interfering contour. Consequently, WVRM, Inc. believes that its request for waiver is “exceedingly well justified” and warrants grant. Additionally, WVRM, Inc. believes that the less stringent interference protection rules for FM translators, which are also listed as Class D in the Commission’s database, should likewise be applied to FM Class D noncommercial educational FM stations.⁵ WVRM, Inc. argues that the same (lesser) standard should apply to all stations of the same class no matter what program content is broadcast (or rebroadcast).

In a comparable proceeding, the Audio Division granted waiver of Section 73.509 to permit Class D station WHHS, Havertown, PA, to change to a channel on which it would cause second- and third-adjacent channel interference.⁶ However, the crucial distinction between that proceeding and the instant application, is that WHHS had secured the written consent of the affected commercial FM stations. Here, WVRM, Inc. has not secured the consent of commercial stations WAXQ and WWPR-FM. These commercial stations retain protection from prohibited contour overlap, as defined in Section 73.509 and not U/D ratios. See Section 73.209(a) of the Commission’s rules.⁷ WDDM does not provide any documentation showing that the Commission has previously granted a waiver to a Class D station in the commercial FM band absent the consent of the affected commercial FM station. Nor has WVRM, Inc. cited any precedent for treating a noncommercial educational Class D FM station under the interference rules applicable to translators, and we find no justification for doing so here. To the contrary, we conclude that WVRM, Inc.’s proposal has been properly considered under the rules and procedures previously applied to similarly situated applicants.

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 WVRM, Inc.’s waiver requests the “hard look” called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances presented are not sufficient to warrant waiver of Sections 73.209(a) and 73.509.

⁴ The interfering contour for Class D stations is the 80 dBu interfering contour per Section 73.509, while for all other classes of stations the smaller 100 dBu interfering contour is used. Using the 100 dBu interfering contour would reduce the radius of the interfering contour from 1.5 km to 0.157 km. We have, in similar circumstances, accepted this argument. See *Letter re construction permit application BPED-200614AFZ for School District of Havertown Township (WHHS (FM)) from Peter H. Doyle, Chief, Audio Division*, released August 10, 2005 (hereafter “WHHS letter”). We use the less restrictive 100 dBu in our consideration of WVRM, Inc.’s proposal, as did the applicant.

⁵ The FM translator service rules allow an applicant to use undesired to desired (U/D) signal ratios to predict interference areas, and demonstrate that there is no population with the interference areas that could be affected by any interference. If complaints are received that cannot be resolved, the FM translator must then change frequency or cease operation. This procedure is not available to Class D noncommercial educational stations.

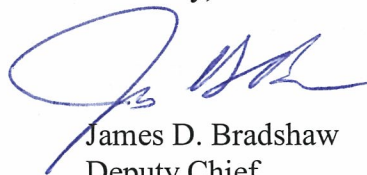
Also, the Commission’s rules applicable to translators, in fact, do not assign a station class to FM translator licenses and applications. A designation of Class D is entered into the Commission’s database for processing convenience only. The two services are not equivalent.

⁶ See the WHHS letter cited in Footnote 2.

⁷ With respect to Class D stations affecting commercial FM stations, Section 73.209(a) specifically refers to Section 73.509, which uses contour overlap to predict interference, not U/D ratios.

Consequently, WVRM, Inc.'s request for waiver of Section 73.509 IS DENIED, and application BPED-20071109ADP, being unacceptable for filing, IS DISMISSED.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Bradshaw', is written over the typed name.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: Radiotechniques Engineering Corp.