

FEDERAL COMMUNICATIONS COMMISSION

445 12th Street SW
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: <http://www.fcc.gov/mb/audio/>

PROCESSING ENGINEER: Dale Bickel
TELEPHONE: (202) 418-2700
FAX: (202)-418-1411 MAIL STOP: 2-B450
INTERNET ADDRESS: dale.bickel@fcc.gov

January 26, 2011

Jennifer Cox-Hensley, President
Indiana Community Radio Corporation
P.O. Box 846
Greenfield, IN 46140

In re: WJCF-FM; Morristown, IN
Indiana Community Radio Corporation
Facility ID No. 91193
CP application BMPED-20090825BES and
1/25/2011 Special Temporary Authority request

Dear Ms. Cox-Hensley:

The above-captioned minor change application requests use of Channel 200 (87.9 MHz) for WJCF-FM. Waiver of Section 73.512 of the Commission's Rules is requested to permit operation on this channel with 25 kW ERP at 32 meters antenna height above average terrain from a new transmitter site. In support of the application and request for waiver, you state that WJCF-FM is restricted in its ability to locate alternate transmitter sites, that this minority-owned station currently faces financial hardship, and that no interference would be caused to FM broadcast stations. The waiver request suggests that since there are no rules relating to interference between (digital?) television stations and FM stations, grant of the application is warranted. It also points out that Class D noncommercial educational FM stations may apply for use of Channel 200 under Section 73.512's provisions. The January 25, 2011 request for Special Temporary Authority (STA) to operate with the proposed facilities at 6 kW ERP adds that the station is currently silent and that the proposed operation would allow WJCF-FM to serve an additional 100,000 people. The STA request refers to (but does not provide) supporting "comments" from two congressmen.

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 Grande Family Radio Fellowship v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded WJCF-FM's waiver request 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 set forth in its justification are insufficient to establish that granting a waiver to operate on Channel 200 of Section 73.512 is in the public interest.

87.9 MHz lies outside the FM broadcast band (88.0 to 108.0 MHz), and is in fact lies inside the TV Channel 6 bandwidth. Consequently, this spectrum has always been unavailable to FM broadcast stations (with the exception of certain Class D noncommercial educational stations, which will be discussed below). There is no precedent for allowing primary service FM broadcast stations to utilize this spectrum, even on a temporary basis. Nor could we do so absent the grant of a petition for rulemaking by the Commission to reallocate the spectrum for FM broadcast station use. And should such a petition for rulemaking ultimately be approved, procedures would have to be implemented to insure that ALL noncommercial educational broadcasters would have a fair chance to apply for the new spectrum and so

serve more people. The success of such a petition for rulemaking appears dim at the present time, inasmuch as there are rulemaking and policy considerations underway that might require television broadcasting to surrender additional spectrum to other uses and further consolidate on the remaining channels. This may well require that Channel 6 again be used for television broadcasting in the Morrisville region. Authorizing FM stations on Channel 200 now may foreclose such television service in the future. Until such issues are finally resolved, we cannot permit FM stations in the TV Channel 6 band.

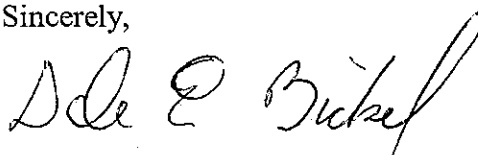
Under Section 73.512, certain very low powered "ten watt" Class D noncommercial educational FM stations may be authorized on Channel 200. However, since 1980, all Class D stations have been authorized or renewed on a "secondary" basis. This means that the Class D station may continue to operate provided that it does not cause interference, and a Class D operation must change frequency or cease operation if it does. Before a Class D station can apply for Channel 200, it must demonstrate that there are no alternative channels available. And once on Channel 200, the Class D station remains a secondary service, subject to termination should it cause interference to FM or television service.

WJCF-FM is not a Class D secondary station so Section 73.512 cannot be employed in support of this waiver request. Nor has the station lost its position in the FM broadcast band due to interference. Although it may be experiencing interference on the perimeter of its secondary service area (outside the protected 60 dBu service contour), the core 60 dBu service area remains protected and intact under license BLED-20000728AEF. This may mean that WJCF-FM is not serving all the people it would like to, but this is in fact a common issue among nearly all broadcast stations. That WJCF-FM has difficulties in finding alternate sites for improving its operation is also not unique. Therefore, these considerations provide little support for the waiver request.

Lastly, minority ownership and financial matters are non-technical issues that are not considered as a basis for evaluating technical waivers of the rules. This policy has been approved by the courts.¹ We find no compelling reason to depart from these longstanding practices in the present instance.

Therefore, we find that WJCF-FM's requested waiver for operation on Channel 200 is not warranted, and the waiver request IS DENIED. Application BMPED-20090825BES, being unacceptable for filing, IS DISMISSED. Finally, the January 25, 2011 request for Special Temporary Authority IS DENIED.

Sincerely,



Dale E. Bickel
Senior Electronics Engineer
Audio Division
Media Bureau

¹ See *North Texas Media Inc. v. FCC*, FCC 840456, released October 5, 1984, *a'ff'd*, Case No. 84-1511, slip op. (D.C. Cir. December 6, 1985); *Pyramid Radio and Television Co., Inc.*, 20 RR 2d 341 (1970); *Broadcasters, Inc.*, 23 FCC 2d 15 (1970). See also *Open Media Corporation*, 8 FCC Rcd 4070, 4071 (1993) and Commission and court cases cited therein.