

# FEDERAL COMMUNICATIONS COMMISSION

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Music That Matters, Inc.  
P.O. Box 272  
Green Bay, WI 54307

In re: WOVM(FM), Appleton, WI  
Facility ID No. 26786  
Music That Matters, Inc.  
BPED-20120320ADW

Dear Applicant:

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

## Waiver Request

An engineering review of the application reveals that WOVM's proposed facilities would result in prohibited contour overlap with the second-adjacent channel Class A license (BLED-19930818KB) and construction permit (BPED-20090804ACN) of WEMY(FM), Green Bay, WI, in violation of § 73.509. Specifically, the proposed protected contour (60 dBu) totally encompasses the interfering contour (100 dBu) of WEMY. WOVM recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WOVM states that it will not cause interference to WEMY. WOVM claims that the grant of this waiver will extend its overall coverage area by 3,758 square kilometers, an increase of 66%. In addition, WOVM believes that it will provide new service to an estimated 576,355 persons, an increase of 91%. WOVM also indicates that this benefit heavily outweighs the potential for interference in a total area that constitutes less than 1% of the station's proposed service area. Furthermore, WOVM 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. Finally, WOVM considers the affected area to be *de minimis*, and when considered along with the increased service area, WOVM concludes that waiver of Section § 73.509(a) is warranted in this case.

## Discussion

WOVM's request to receive second-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, WOVM's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20120320ADW IS HEREBY GRANTED subject to the following condition:

Further modification of WEMY(FM), Green Bay, WI (Facility ID# 69196) will not be construed as a *per se* modification of WOVM's construction permit (BPED-20120320ADW).  
(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: Mark B. Dembo, Esq.