

FEDERAL COMMUNICATIONS COMMISSION

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Positive Alternative Radio, Inc.
P.O Box 889
Blacksburg, VA 24063

In re: WJYJ(FM), Fredericksburg, VA
Facility ID No. 18852
Positive Alternative Radio, Inc.
BPED-20120424ABP

Dear Applicant:

This letter is in reference to the above-captioned minor change construction permit application proposing to change the effective radiated power ("ERP") and the antenna height above average terrain ("HAAT"). Applicant, Positive Alternative Radio, Inc. ("PAR") also requests waiver of the contour overlap provisions of 47 C.F.R. Section 73.509. For the reasons stated below, we grant PAR's waiver request and the application.

Waiver Request

An engineering review of the application reveals that it is in violation of 47 C.F.R. Section 73.509 with respect to the third-adjacent channel Class A license (BLED-19820607BA) and construction permit (BPED-20091027AAG) for WDCE(FM), Richmond, VA and the third-adjacent channel Class A license (BMLED-20070914AAN) for WHCE(FM), Highland Springs, VA. Specifically, the proposed protected contour (60 dBu) of WYJY will receive prohibited contour overlap from WDCE's and WHCE's interfering contours (100 dBu). PAR acknowledges the proposed contour overlap received from WDCE and WHCE and requests waiver of Section 73.509 of the Rules.

In support of the waiver request, PAR states that its proposal will not cause interference to WDCE and WHCE. PAR also claims that the total area of overlap constitutes less than 0.1% of the area and 1% of the population within WJYJ's 60 dBu contour. In addition, PAR demonstrates that the proposed facilities would increase its overall coverage area from its presently authorized area of 5,839 square kilometers to 7,167 square kilometers (an 23% increase). Furthermore, the proposed WYJY facilities will provide service to an estimated 736,751 people, which is an increase in population of 46 % compared to its presently authorized 60 dBu coverage area. Finally, PAR cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of overlap received. Moreover, PAR believes that the overlap proposed here is *de minimis* and, when considered along with the increased service area, concludes that a waiver of Section 73.509 of the Rules is warranted in this case.

Discussion

PAR'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 received 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 47 C.F.R. 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, PAR's request for waiver of Section 73.509 of the Rules IS HEREBY GRANTED. Furthermore, application File No. BPED-20120424ABP IS HEREBY GRANTED subject to the following condition:

Further modifications to the facilities of station WDCE(FM), Facility ID No. 69312, Richmond, VA will not be construed as a *per se* modification of WJYJ(FM)'s authorization. (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modifications to the facilities of station WHCE(FM), Facility ID No. 26916 Highland Springs, VA will not be construed as a *per se* modification of WJYJ(FM)'s authorization. (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. Section 0.283 of the Commission's Rules.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Cary S. Tepper, Esq.