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WVRM, Inc.
76 National Road
Edison, NJ 08817

In re: WPDI(FM), Hazlet, NJ
Facility ID No. 70644
WVRM, Inc.
BPED-20130318AAD

Dear Applicant:

This letter is in reference to the above-captioned application to change from Channel 284D to Channel 280D at its currently licensed site.¹ WPDI also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant WPDI's waiver request and the application.

Section 73.509 Waiver Request

An engineering study of the application reveals that the proposed facilities violate 47 C.F.R. § 73.509 with respect to the following facilities: (1) the second adjacent channel Class B license (BLH-20030604ACH) of WKTU(FM), Lake Success, NY; (2) the second adjacent channel Class B license (BLH-19960426KA) of WAXQ(FM), New York, NY; and (3) the third adjacent-channel Class B license (BLH-20070221AAV) of WPRB(FM), Princeton, NJ. Specifically, WPDI's interfering contour (100 dBu)² is entirely encompassed by the protected contours (60 dBu) of the three licensed facilities listed above. WPDI recognizes these violations and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WPDI states that the proposed change in channel is necessary because WPDI is being displaced by the operation of translator station W284BW, Franklin Township, NJ.³ WPDI claims this channel move would allow it to continue service to its community and improve its signal considerably and also allow W284BW to remain on the air with further signal

¹ WPDI is licensed on Channel 284D with a maximum ERP of 10 watts and an antenna height above average terrain ("HAAT") of 87 meters.

² Section 73.509 requires second adjacent Class D stations to use the 80 dBu interfering contour. However, our experience with low power interfering stations protecting full-power stations shows that the 100 dBu contour is more appropriate, as also required for third adjacent Class D stations. The waiver we grant herein allows WPDI to use the 100 dbu contour for both second and third adjacent channel assignments.

³ W284BW was granted license BLFT-20110923AAX on September 30, 2011.

conflict. In addition, WPDI claims that there are no channels from the proposed transmitter location available except for Channel 280. With regard to the technical facilities, WPDI argues that the proposed interfering contour will encompass less than 1 percent of the total land area within WAXQ, WKTU, and WPRB's protected contours. Furthermore, WPDI cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), where the Commission previously approved prohibited contour overlap in cases where the interference area was "less than 1 percent." Accordingly, WPDI concludes that the overlap is *de minimis* and that grant of this waiver request would serve the public interest.

Discussion

WPDI's proposal is both unique and compelling and warrants a waiver of § 73.509(b). First, WPDI was displaced by W284BW and cannot specify fully rule compliant alternative facilities in this very congested radio market. In addition, our studies indicate that the interference areas will consist of only 0.15 square kilometers,⁴ much less than 1 percent of the protected contours of WAXQ, WKTU, and WPRB. WPDI has also submitted an extensive analysis of the entire FM band in this market and it appears that Channel 280 is the best available channel. Furthermore, we note that WAXQ, WKTU, and WPRB have not filed an objection to this application and WPDI has agreed to resolve any instances of actual interference. Finally, the proposal put forth by WPDI is consistent with the *Notice of Proposed Rule Making and Order*, 13 FCC Rcd 14849 (1998), ("Class D NPRM"), which proposed allowing displaced Class D stations to move to interference-free channels or, in the absence of an interference-free channel, to a channel that would result in only second or third adjacent channel overlap.

In *Educational Information Corporation*, the Commission observed that co- or first adjacent channel overlap is a more serious matter than second or third adjacent channel overlap because "the interference that may occur results in the loss of service over a wide area." "Second or third adjacent channel overlap may result in the replacement of one signal by another (not the complete loss of service) and is confined to a very small area around the transmitter of the interfering station. In the case of low power Class D stations, the potential interference area would be exceedingly small. Accordingly, we believe that a waiver of § 73.509 is warranted to permit second- and third-adjacent overlap where there is no available interference-free channel for a displaced Class D station.

The Commission has long recognized that Class D stations provide a valuable service to local listeners and the changes proposed in the instant application would serve the public interest allowing WPDI to continue its local service. Furthermore, while the Commission has not yet adopted the new rules in the Class D NPRM, the proposal set forth by WPDI to change channels is the best possible outcome for preserving a unique service while minimizing the potential for interference. Accordingly, in light of the unique circumstances involved here, we will grant the requested waiver of 47 C.F.R. § 73.509. We note, however, Class D stations have an obligation not to cause any interference to full service facilities. Therefore, to prevent any unforeseen adverse effects on the operations of WAXQ, WKTU, and WPRB, we will include a condition on WPDI's authorization requiring it to remedy any complaints of interference to WAXQ, WKTU, and WPRB caused by its operation on Channel 280.

⁴ This value is based on the applicant's calculated radius of the 100 dBu interference contour using the free space equation.

Conclusion

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 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 are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WPDI's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20130318AAD IS HEREBY GRANTED subject to the following conditions:

WPDI will not be permitted to continue to operate if it causes any objectionable interference to WAXQ(FM), Facility ID No. 23004, New York, NY. If interference cannot be eliminated to the satisfaction of WAXQ by the application of suitable techniques, operation of WPDI shall be suspended and shall not be resumed until the interference has been eliminated.

WPDI will not be permitted to continue to operate if it causes any objectionable interference to WKTU(FM), Facility ID No. 6595, Lake Success, NY. If interference cannot be eliminated to the satisfaction of WKTU by the application of suitable techniques, operation of WPDI shall be suspended and shall not be resumed until the interference has been eliminated.

WPDI will not be permitted to continue to operate if it causes any objectionable interference to WPRB(FM), Facility ID No. 53567, Princeton, NJ. If interference cannot be eliminated to the satisfaction of WPRB by the application of suitable techniques, operation of WPDI shall be suspended and shall not be resumed until the interference has been eliminated.

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: Weston McCarron, Engr.
Troy G. Langham, Engr.
Alex Wood