

FEDERAL COMMUNICATIONS COMMISSION
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Re: WJFP(FM), Fort Pierce, Florida
Facility ID No. 5488
Black Media Works, Inc. ("Black")
File No. BPED-20140311ACF

Dear Council:

This letter is in reference to the above-captioned minor change application to modify antenna location, antenna height, class, effective radiated power, and the use of a directional antenna. Black also requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons discussed below, we grant Black's waiver request and the application.

Waiver Request. An engineering review of the application reveals that it is in violation of § 73.509 with respect to the third-adjacent channel Class A license (BMLED-20131118ALW) of WWFR(FM), Stuart, FL. Specifically, the proposed protected contour (60 dBu) totally encompasses the interfering contour (100 dBu) of WWFR. Black recognizes this violation and requests waiver of § 73.509.

In support of its waiver request, Black states that it will not cause interference to WWFR. Black also believes that the total area of overlap constitutes only 0.5% of the area within WJFP's 60 dBu contour. In addition, Black claims that the proposed facilities would increase its overall coverage area to 3,845 square kilometers (a 322% increase). Furthermore, Black indicates that the proposed facilities will provide service to an estimated 548,631 people, which is an increase in population of 119%. Finally, Black cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of overlap received in certain instances. Moreover, Black believes that the overlap proposed here is *de minimis* and, when considered along with the increased service area, concludes that a waiver of § 73.509 is warranted in this case.

Discussion. Black's request to receive third-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 Black's request for waiver of 47 C.F.R. § 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, Black's request for waiver of 47 C.F.R. § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20140311ACF IS HEREBY GRANTED subject to the following condition:

Future modification of the facility of station WWFR(FM), Facility ID No. 20785, Stuart, FL, will not be construed as *per se* modifications of WJFP(FM) construction permit BPED-20140311ACF. (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: Black Media Works, Inc.
Justin W. Asher