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In Reply Refer to:
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In re: **Montclair State University**
Application to Renew the License of
WMSC(FM), Upper Montclair, NJ
Facility ID No: 43579
File No. BRED-20140128ADT
Petition to Deny

Dear Counsel:

We have before us a January 28, 2014, license renewal application (the "Application") for WMSC, Upper Montclair, New Jersey (the "University Station"), a Class D FM station licensed to Montclair State University (the "University"). Also before us is an April 30, 2014, Petition to Deny ("Petition") from Redeemer Broadcasting, Inc. ("Redeemer"), licensee of WNEQ, a co-channel, Class A, noncommercial educational ("NCE") FM station at Taylortown, New Jersey (the "Redeemer Station").¹ Redeemer asks the Commission to terminate the University's Class D operations based on allegations of interference caused to and received from the Redeemer Station. For the reasons explained below, we deny Redeemer's Petition, admonish the University for violations of the Commission's Rules, and renew the University's license.

BACKGROUND. Class D FM stations are licensed NCE broadcast stations within the FM broadcast band. They are considered "secondary" services, *i.e.*, they must accept but may not cause certain interference. Class D facilities are limited to a transmitter power output of no more than ten watts.² The Commission historically authorized Class D stations to colleges, high schools, and other entities that desired a very small service area. Before 1978, such stations were confined to the reserved portion of the FM band with other NCE stations. In 1978, the Commission stopped licensing new Class D FM stations although it did permit existing Class D stations (currently 115 in number nationwide) to continue operating provided that they would not cause interference, as defined under Section 73.509 of

¹ We also have the University's May 30, 2014 Opposition ("Opposition"); Redeemer's June 19, 2014 Reply ("Reply"); and the University's Motion to Strike or, Alternatively, Response ("Response"), submitted July 17, 2014.

² See 47 C.F.R. § 73.506(a)(2). WMSC's effective radiated power ("ERP") is limited to 1 watt ERP (0.001 kW) because of the significant height of the station's antenna (205 meters HAAT).

the Commission's rules, to full service stations.³ The Commission implemented special procedures for Class D license renewal applications, to encourage Class D stations that were able to do so to upgrade to Class A or higher, or to change to suitable frequencies in the non-reserved band.⁴

The University Station has been operating as a Class D facility since 1966. In September 2013, Redeemer commenced operations of a new Class A station on the same reserved band channel (212) as the University. Our authorization of the new station did not trigger any need for the University to alter its operations because the University's licensed operations would not cause predicted interference to Redeemer, *i.e.*, the licensed 40 dBu interfering contour of the University Station did not overlap the 60 dBu service contour of the new Redeemer Station. Nevertheless, shortly after initiating operations, Redeemer contacted the University, alleging that the University Station was causing impermissible interference. The University retained an engineering consultant to investigate, but the hiring process took several weeks under required public procurement procedures.⁵ Engineering work began on November 25, 2013. About that time, several listeners complained to Redeemer of interference to its signal.⁶ In January 2014, Redeemer documented more locations of alleged interference and met with the University to express concerns. A February 18, 2014, report from the University's consultant stated that the University Station had been operating with excess power.⁷ The University was unable to determine the cause, but ruled out any intentional increase by station staff.⁸ The University hired a new firm which it believed would act more expeditiously than the first and directed it to adjust power to slightly below that authorized. On February 28, 2014, the new firm set the University's transmitter to produce 0.85 watts (0.00085 kW) ERP, *i.e.*, slightly below its licensed one-watt ERP.⁹

On March 7, 2014, Redeemer asked the University Station to stop operating, based on interference prior to the February 28th power correction.¹⁰ The University responded that it had already resolved those matters.¹¹ The University's consulting engineer revisited the transmitter in May 2014 to

³ See 47 C.F.R. § 73.512(d). "Full service" FM stations are those licensed as Class A, B, B1, C0, C1, C2, or C3. The Commission found that it would be more spectrum-efficient to license full service stations than additional Class D stations. See *Changes in Rules Relating to Noncommercial Educational FM Broadcast Stations*, Second Report and Order, 69 FCC 2d 240, 244-51 (1978), *clarified*, Memorandum Opinion and Order, 70 FCC 2d 972 (1979).

⁴ *Id.*; 47 C.F.R. § 73.512.

⁵ See Opposition at 3 (citing State Colleges, N.J. Stat. Ann. § 18A:64-1).

⁶ See Petition at 2, and Exhibit 1.

⁷ Specifically, the University concedes that it operated with 1.87 watts (0.00187 kW) ERP rather than 1 watt (0.001 kW) ERP as licensed. See Opposition at 4. See also *supra* n.2.

⁸ Opposition, Exhibit 1 at 4. It suggests, without evidence, possible inadvertence during routine maintenance by a third party. *Id.*

⁹ See *supra* n.2. See also 47 C.F.R. § 73.1560(b).

¹⁰ See Letter from Jerrold Miller, Esq. to John Garziglia, Esq. (Mar. 7, 2014) (Opposition, Exhibit 4).

¹¹ See E-mail from Maria C. Anderson, Assistant University Counsel to Dan Elmendorf, President, Redeemer (March 10, 2014, 11:40 EST) (Opposition, Exhibit 3); Letter from Maria C. Anderson, Assistant University Counsel to Jerrold Miller, Esq. (March 13, 2014) (Opposition, Exhibit 5).

confirm continued operation at or below the authorized maximum power, and conducted additional analyses to assess the cause of Redeemer's pre-power-reduction interference claims.¹² The engineer determined that the alleged interference was from an unrelated co-channel station in Ossining, New York and/or at locations outside Redeemer's protected service area.¹³ In its Reply, Redeemer makes a new claim of interference at two points along highway I-287 as of June 11, 2014. The University challenges that claim procedurally and also contends that the locations are outside of Redeemer's service area.¹⁴

DISCUSSION. Petitions to deny license renewal applications must provide properly supported allegations of fact that, if true, would establish a substantial and material question whether grant would be *prima facie* inconsistent with Section 309(k) of the Communications Act of 1934, as amended (the "Act").¹⁵ Under that provision, we must grant license renewal if: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or of Commission rules (the "Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁶

Redeemer raises four challenges to the University's Application: (1) the Application is incomplete because it does not include information that Section 73.512 requires of Class D applicants; (2) the University violated the Rules by operating with unauthorized power, resulting in interference; (3) the University Station, even after reducing power in response to Redeemer's initial interference allegations, is causing interference to Redeemer at new locations; and (4) the University Station also receives so much interference from Redeemer as to make continued University operations untenable.

Completeness of Application. As Redeemer observes, Section 73.512 calls for Class D stations seeking license renewal after June 1, 1980 simultaneously to file applications to change channels.¹⁷ Redeemer argues that the University has not complied and the Application is thus incomplete. The University responds that Section 73.512 did not preclude favorable action on its last license renewal application in 2006, and provides a new showing that it cannot move due to lack of alternative channels.¹⁸

We have long recognized that the constant authorization of new and expanded FM service has eroded the possibilities for existing Class D stations to upgrade or change channel. In the license renewal cycle immediately prior to this one, we initiated staff engineering studies to determine the extent to which

¹² See Opposition, Exhibit 2 at 2.

¹³ *Id.* at 3-4.

¹⁴ Separately, on August 22, 2014, we received a complaint of interference to the Redeemer Station's signal in Wayne, New Jersey directly from a resident, but determined that Wayne is outside of either station's protected contour. See *Letter from Dale Bickel, Senior Engineer, FCC to Ms. Virginia Toms* (MB Aug. 28, 2014). Redeemer -- which was not a party to the filing of the complaint -- sought reconsideration, but we dismissed that request because we had taken no action that could be reconsidered; we had merely explained the existing situation. See *Letter from Dale Bickel, Senior Engineer, FCC to Dan Elmendorf, President, Redeemer* (MB Sept. 23, 2014).

¹⁵ 47 U.S.C. §§ 309(e) and (k).

¹⁶ 47 U.S.C. § 309(k)(1).

¹⁷ See Petition at 4; 47 C.F.R. § 73.512.

¹⁸ Opposition at 13 and Exhibit G.

it was still possible for each remaining Class D station to comply with Section 73.512. We then renewed the license of any Class D station for which our analysis confirmed that the station was technically unable to take any of the actions contemplated by Section 73.512. Renewal of the University's license in 2006 was the result of such an analysis. The University's most recent study confirms that it has no alternative to its current channel because it needs to protect stations in the adjacent, spectrum-limited New York market, and we find no evidence to rebut that conclusion. Thus, we reject Redeemer's assertion that the University's lack of an application to change channels precludes grant of its license renewal application.

Interference from the University to Redeemer Prior to Power Adjustment. Accepting *arguendo* Redeemer's allegation that it received prohibited interference from the University prior to the University's February 2014 power adjustment, that allegation does not necessarily evidence a conflict between the facilities, as authorized. Indeed, we have evaluated anew the licensed contours of the two stations, and once more find that the University's 40 dBu interfering contour does not overlap Redeemer's 60 dBu protected service contour.¹⁹ Consequently, the University's licensed operation still complies with Section 73.512(d) of the Rules, which bases continued Class D operations on lack of interference to others. It is undisputed, however, that the University exceeded authorized power from about the time when Redeemer went on the air in September 2013 (if not before) until February 28, 2014, when the University reduced power to within licensed levels. That violation could well have caused interference.²⁰ Redeemer does not allege that the University's excess power was intentional, but rather that it showed "complete indifference" and a "lackadaisical attitude" to resulting interference by taking too long to act.²¹ It further argues that the University's reduction of power violates the Rules because the University did not obtain special temporary authority ("STA") to operate at variance.²²

We find that the University, though arguably dilatory, attempted to be fully responsive.²³ Nevertheless, a five-month period to locate and correct a simple out-of-tolerance operating condition is excessive and unacceptable. The University delegated responsibility to a contractor in November 2013 but apparently did little to nothing thereafter to learn of its over-powered operations until receiving the contractor's final report on February 18, 2014, after which it did take prompt corrective action.²⁴ The

¹⁹ At WMSC's licensed ERP of one watt, a distance of 2.5 km (1.55 miles) would separate the two contours at the closest point.

²⁰ At 1.87 watts (0.00187 kW), the inflated ERP at which the University was operating, the WMSC 40 dBu interfering contour would have overlapped the southeastern corner of WNEQ's 60 dBu service contour by as much as 0.83 km (0.51 miles).

²¹ See Petition at 4; Reply at 2.

²² See Petition at 2-3 (citing 47 C.F.R. § 73.1745).

²³ The University quickly initiated the process to hire a consulting engineer (which unfortunately took several weeks under applicable procurement rules); corresponded and met with Redeemer; hired a new consultant to speed the process; adjusted power to somewhat less than authorized in order to reduce the potential for future problems; and followed up after the initial adjustment to verify that its output remained less than authorized. We reject Redeemer's comparison of the University to an applicant that was denied license renewal 40 years ago following an unwillingness to correct violations. See Reply at 2 (citing *Heart of Black Hills Stations*, Decision, 32 FCC 2d 196 (1971) (ten-year history of repeated serious violations many of which remained uncorrected)).

²⁴ The most basic licensee response to an interference complaint is to confirm that the station is operating within its licensed parameters. There is no evidence that the University directed its first contractor to make such an immediate

University should be employing equipment to monitor for proper station operation on a day-to-day basis, or have staff at a fixed location to monitor equipment readings, and be logging those findings in the station log.²⁵ Redeemer is correct that the University should have made prompt adjustments either to reduce power or voluntarily cease operation until repairs or adjustments could be completed.²⁶ We expect licensees to take quick action to keep stations within licensed operating parameters. The Rules permit Class D stations to adjust power level to below that on the station license (as the University ultimately chose to do and which incidentally favored better reception of the Redeemer Station).²⁷ Taking all circumstances into account, we find that the University's operation with excess power for an extended time and its lack of actions to detect the problem warrants an admonishment, but is not so serious a violation as to jeopardize license renewal under the standards in Section 309(k) of the Act.²⁸

Interference from the University to Redeemer After Power Adjustment. Redeemer does not argue that any location alleged to have experienced interference prior to the University's power adjustment continued to receive interference after the adjustment. It does in its Reply, however, allege two new locations of interference, each along the I-287 corridor. As the University observes, it is impermissible to raise such new matters for the first time in a Reply. Additionally, the University is correct that these locations lie outside WNEQ's 60 dBu protected service contour. Redeemer's filing shows them as within that contour, but it relies on a map generated through the FM Query function on the Commission's web site, that itself was based on faulty information. Specifically, the map failed to take into account a service area reduction from WNEQ's directional antenna operation. When properly incorporated, the directional antenna pulls the WNEQ 60 dBu service contour westward, away from WMSC (and I-287), thus lessening the opportunity for interference within the WNEQ licensed 60 dBu service area. The FM Query feature that Redeemer used is unofficial and not intended to be authoritative for interference protection.²⁹ Locations outside Redeemer's officially-computed 60 dBu service contour do not receive protection from interference caused by other stations, including Class D stations, and Redeemer has no basis within the Commission's FM broadcasting regulatory framework to seek redress for such complaints. Moreover, regardless of whether Redeemer's 60 dBu contour is plotted with the directional antenna or without, there is no overlap with the University's 40 dBu contour, and the University's licensed operations thus comply with Sections 73.509 and 73.512(d).

determination when work started. Nor does the record reflect any interim steps by the University regularly to keep in touch with its contractor to ascertain the station's compliance.

²⁵ See 47 C.F.R. §§ 73.1350, 73.1400, and 73.1820.

²⁶ Redeemer is wrong, however, to suggest that it could demand that the University cease operating. That power resides not in broadcast licensees but in the Commission.

²⁷ See 47 CFR § 73.1560 ("FM stations operating with authorized transmitter power of 10 watts or less, may operate at less than authorized power. . ."). Making this adjustment does not require Special Temporary Authority.

²⁸ See *Paxson Communications License Co., LLC*, Memorandum Opinion and Order, 22 FCC Rcd 4248, 4249 (2007) (technical violations generally not grounds for non-renewal, absent misrepresentation).

²⁹ Official Commission tools take the directional antenna into account and produce a WNEQ service contour that is noticeably different in shape from that Redeemer presents in this interference context. Redeemer has previously submitted accurately-shaped representations of its contours for other purposes. See BNPED-20071022AYI (correct contours provided when Redeemer sought its construction permit).

Interference from Redeemer to the University. Redeemer states, correctly, that its own 40 dBu interfering contour overlaps most of the 60 dBu service contour of the University's Class D station. However, Redeemer draws an incorrect conclusion from this situation when it argues that the Class D operations must therefore cease.³⁰ Unlike full service FM stations, Class D stations are permitted to receive contour overlap, even if that overlap covers the entire 60 dBu service contour of the Class D station. Where that happens, the size of the interference-free area in which the Class D station can be received may be diminished.³¹ The Commission defers to the licensee of the Class D station, not to other broadcasters, to decide whether this situation is tenable.³² The University has clearly decided that operation despite substantial overlap from Redeemer nevertheless benefits its students and should continue.

ORDERING CLAUSES. Accordingly, Montclair State University IS HEREBY ADMONISHED for extended operation with excess power and for not sufficiently monitoring the station operation to timely detect such violation. Based on the record before us, this negligence was not sufficiently serious to impact license renewal, although we do expect the University to take immediate steps to prevent future occurrences. The Petition to Deny by Redeemer Broadcasting, Inc. is DENIED in all other respects. IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application for WMSC(FM), Upper Montclair, New Jersey, File No. BRED-20140128ADT IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

³⁰ Redeemer refers to an unpublished staff letter to support its contention. Petition at 3-4 (citing *WVRM, Inc.*, Letter, (MB Nov 22, 2010) (attached as Petition, Exhibit 5) ("*WVRM*")). Unpublished cases have no precedential value, and this particular case is factually distinguishable. In *WVRM*, the overarching issue was that the Class D station would cause prohibited contour overlap within the service contour of a full service station – a situation not present here – while the contour overlap received by the Class D station was, at best, an issue of minor consequence.

³¹ Redeemer and the University dispute the significance of an e-mail suggesting that the Redeemer signal might degrade the University's signal on campus. See Opposition at 10; Reply at 3-5. We accept the University's explanation that the e-mail concerned a school vacation period when the University Station could not be heard because it was not on air. See Response at 5. See also 47 C.F.R. § 73.561(a). Contrary to Redeemer's position, nothing about this matter amounts to misrepresentation or calls into question the University's character. Similarly, we reject University's contention that Redeemer's filing amounts to a "strike petition." See Opposition at 14.

³² Thus, it is not necessary to delve further into the quality of the University's signal in any particular location. However, for the record, we note that the University's use of a Longley-Rice analysis to show that "real-world" interference received from Redeemer is minimal would not be considered. See Response at 6 and Attachment 1. Such showings have never been accepted to address interference between FM stations. See *Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12402 (1997).