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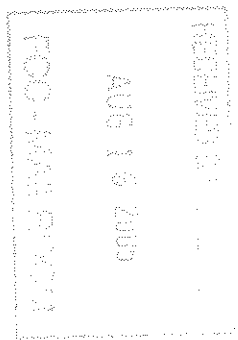
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**MEDIA BUREAU  
AUDIO DIVISION  
APPLICATION STATUS: (202 418-27382  
HOME PAGE: WWW.FCC.GOV/MB/AUDIO**

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In re: WHHS(FM), Havertown, PA  
Facility ID# 59344  
School District of Haverford  
Township  
BPED-20040614AFZ



Mr. Bodorf:

This letter is in reference to the above-captioned application, as amended December 15, 2004, to change from Channel 300D to Channel 260D while reducing effective radiated power ("ERP") at its currently licensed site.<sup>1</sup> WHHS also requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons stated below, we grant WHHS's waiver request and the application.

**Section 73.509 Waiver Request**

An engineering study of the application reveals that WHHS's proposed facilities would cause prohibited contour overlap with the following facilities: (1) second-adjacent channel Class B license (BLH-19910528KG) for WJBR(FM), Wilmington, DE; and (2) second-adjacent channel Class B license (BMLH-19840207AM) and construction permit (BPH-20001018ABT) for WPHI(FM), Media, PA, in violation of § 73.509. Specifically, WHHS's interfering contour (100 dBu)<sup>2</sup> is entirely encompassed by the protected contours (60 dBu) of WJBR and WPHI, respectively. WHHS recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WHHS states that the proposed change in channel is necessary because WHHS was displaced by the operation of FM station WRNB(FM), Pennsauken, NJ.<sup>3</sup> In

<sup>1</sup> WHHS is licensed on Channel 300D with a maximum ERP of 14 watts and an antenna height above average terrain ("HAAT") of 113 meters.

<sup>2</sup> 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. The waiver we grant herein allows WHHS to use the 100 dbu contour.

<sup>3</sup> WHHS went silent on December 18, 2004 when WRNB commenced operation (See BLH-20041201BND). WHHS's broadcast license will expire as a matter of law if broadcast operations do not commence by December 18, 2005.

addition, WHHS believes that the proposal 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. Thus, WHHS claims that there are no channels from the currently licensed transmitter location available except for Channel 260. With regard to the technical facilities, WHHS states that the proposed interfering contour will encompass less than 1 percent of the total land area within WJBR’s and WPHI’s protected contours. Furthermore, WHHS 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.” Using the signal strength ratio method and the elevation pattern for the proposed antenna, WHHS indicates that the proposal will not cause any interference at ground level to either station. Finally, WHHS submits signed affidavits from both NM Licensing, LLC, licensee of WJBR-FM, and Radio One Licenses, LLC, licensee of WPHI, that supports grant of the application. Accordingly, WHHS concludes that the overlap is *de minimis* and that grant of this waiver request would serve the public interest.

## Discussion

WHHS’s proposal is both unique and compelling and warrants a waiver of § 73.509(b). First, WHHS was displaced by WRNB and cannot specify fully rule compliant alternative facilities in the very congested Philadelphia radio market. In addition, our studies indicate that the interference area will consist of only 0.15 square kilometers,<sup>4</sup> much less than 1 percent of the protected contour of either WJBR or WPHI. WHHS has also submitted an extensive analysis of the entire FM band in this market and it is clear that Channel 260 is the best available channel. Furthermore, WHHS has received the consent of both affected stations and has agreed to resolve any instances of actual interference. Finally, the proposal put forth by WHHS satisfies the criteria presented in the Class D NPRM.

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 WHHS to continue its local service. Furthermore, while the Commission has not yet

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<sup>4</sup> This value is calculated after determining the radius of a 100 dBu contour using the free space equation.

adopted the new rules in the Class D NPRM, the proposal set forth by WHHS 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 affect on the operation of WJBR or WPHI, we will include a condition on WHHS's authorization requiring it to remedy any complaints of interference to WJBR or WPHI caused by its operation on Channel 260.

### 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, WHHS's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20040614AFZ IS HEREBY GRANTED subject to the following conditions:

WHHS will not be permitted to continue to operate if it causes any objectionable interference to WJBR(FM), Wilmington, DE or WPHI(FM), Media, PA. If interference cannot be eliminated to the satisfaction of WJBR or WPHI by the application of suitable techniques, operation of WHHS 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,



Peter H. Doyle, Chief  
Audio Division  
Media Bureau

cc: School District of Haverford District  
NM Licensing, LLC (WJBR)  
Radio One Licenses, LLC (WPHI)