

FEDERAL COMMUNICATIONS COMMISSION
445 Twelfth Street, S.W.
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
WWW.FCC.GOV/media/radio/audio-division

PROCESSING ENGINEER: Harding.Chism
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: Harding.Chism@fcc.gov

June 16, 2017

Scribe Video Center, Inc.
4212 Chestnut Street, Third Floor
Philadelphia, PA 19104

In re: WPEB(FM), Philadelphia, PA
Scribe Video Center, Inc.
Facility ID No.: 71637
BPED-20160726AAV

Dear Applicant:

This letter is in reference to the above-captioned educational non-commercial minor change application, as amended, to increase the effective radiated power (“ERP”) at the licensed transmitter site.¹ WPEB also requests waiver of the contour overlap provisions of Section 73.509. For the reasons stated below, we grant WPEB's waiver request and the application.

Section 73.509 Waiver Request

An engineering study of the application reveals that WPEB’s proposed facilities would increase prohibited contour overlap caused to the second-adjacent channel Class B license (BLED-20140401AGY) for WXPN(FM), Philadelphia, PA, in violation of Section 73.509. Specifically, WPEB’s interfering contour (100 dBu)² is entirely encompassed by the protected contour (60 dBu) of WXPN. WPEB recognizes this violation and requests waiver of the contour overlap provisions of Section 73.509.

¹ WPEB is licensed on Channel 201D with a maximum ERP of 1 watt and an antenna height above average terrain (“HAAT”) of 21 meters. WPEB proposes an increase in ERP to 10 watts, along with a correction in the transmitter site coordinates, no site change is proposed.

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. The waiver we grant herein allows WPEB(FM) to use the 100 dBu contour.

In support of the waiver request, WPEB states that it is receiving massive co-channel interference from WNJS-FM, Berlin, NJ and WZZD(FM), Warwick, PA, that greatly reduces WPEB's service area. In addition, WPEB claims that there are no rule-compliant channels available and furthermore, the proposed and existing facilities of WPEB are located entirely within the protected 60 dBu contour of WXPN. WPEB states that the prohibited contour overlap between the stations has existed for several years without causing any objectionable interference to WXPN. Using the signal strength ratio method, WPEB believes that the proposal will not cause any interference at ground level to WXPN. Finally, WPEB submits a signed affidavit from the Trustees of the University of Pennsylvania, licensee of WXPN, which supports grant of the application. Accordingly, WPEB concludes that waiver of Section 73.509 is warranted in this case.

Discussion

WPEB's proposal is both unique and compelling and warrants a waiver of Section 73.509(b). First, WPEB 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,³ much less than 1 percent of the protected contour of WXPN. WPEB has also submitted an extensive interference analysis of its proposed power increase within the protected contour of WXPN. Furthermore, WPEB has received the consent of the affected station WXPN and has agreed to resolve any instances of actual interference. Finally, the proposal put forth by WPEB 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 WPEB 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 WPEB 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. Section 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 WXPN, we will include a condition on WPEB's authorization requiring it to remedy any complaints of interference to WXPN caused by its operation on Channel 201.

³ This value is calculated after determining the radius of a 100 dBu 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 Section 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, WPEB's request for waiver of Section 73.509 IS HEREBY GRANTED. Furthermore, application BPED-20160726AAV IS HEREBY GRANTED subject to the following conditions:

WPEB(FM) will not be permitted to continue to operate if it causes any objectionable interference to WXPB(FM), Philadelphia, PA (Facility ID No. 68229). If interference cannot be eliminated to the satisfaction of WXPB(FM) by the application of suitable techniques, operation of WPEB(FM) 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: Michael Couzens