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DEC 07 1999

Carlos Tortolero, Executive Director
 Mexican Fine Arts Center Museum
 1852 West 19th Street
 Chicago, Illinois 60608

In re: WRTE(FM), Chicago, Illinois
 Mexican Fine Arts Center Museum
 File No. BPED-981027MD

Dear Mr. Tortolero:

1. The staff has before it the above-referenced construction permit application filed by the Mexican Fine Arts Center Museum ("Museum"), seeking authority to modify the licensed facilities of noncommercial educational FM ("NCE FM") Class D station WRTE(FM), Chicago, Illinois and requesting waivers of the Commission's technical rules. The Museum proposes to increase WRTE's effective radiated power ("ERP") from eight to 100 watts so that the station can achieve protected status as a Class A station. The proposal is short-spaced to WKQX(FM), Chicago in violation of Section 73.207 of the Commission's rules. In addition, WRTE's protected 60 dBu service area would lie entirely within the interfering contours of co-channel station WNIU(FM), Rockford, Illinois and two previously-filed, cut-off applications for a new station to serve Crown Point, Indiana, in violation of Section 73.509. The proposal also would cause interference to second-adjacent channel station WMBI(FM), Chicago, in violation of Section 73.509. For the reasons set forth below, the Museum's waiver requests are denied and the application is returned as unacceptable for filing pursuant to 47 C.F.R. § 0.283.

2. *IF Short-Spacing Waiver Request.* WRTE operates on Channel 213, and its licensed site is located 10.2 kilometers from WKQX, which operates on Channel 261. The two stations are, therefore, intermediate frequency ("IF")-related.¹ As an unprotected Class D facility, WRTE is not subject to IF spacing requirements. See *Quinnipiac College*, 8 FCC Rcd 6285, 6286 (1993). However, Section 73.207(a) mandates that a spacing of 15 kilometers be maintained between these stations if WRTE is operated as a Class A station. See 47 C.F.R. §§ 73.207(a), 73.507(c)(1). Thus, the proposal is short-spaced by 4.8 kilometers to WKQX. The Museum requests a short-spacing waiver, arguing that the current WRTE operation has not resulted in IF-related interference complaints and that a 100-watt signal is highly unlikely to generate sufficient field strength to cause IF-related interference. In addition, the Museum relies on the public interest benefits derived from the unique nature of WRTE's service to the Mexican community of Chicago.²

¹ "Two FM stations are considered to be IF-related when their assigned frequencies are separated by 10.6 or 10.7 MHz (53 or 54 channels). IF interference to FM broadcast receivers causes increased background noise which degrades reception of a desired signal. In more severe cases, it is characterized by reception of the audio, often distorted, of one or both of the two stations, regardless of the position of the receiver's tuning dial. Thus, when it occurs, this phenomenon can prevent reception by the affected receiver of most, or all, of the FM stations in the area." *Quinnipiac College*, 8 FCC Rcd 6285 n. 1 (1993) (citations omitted).

² Specifically, the Museum states that WRTE is the only Latino-owned and -managed NCE FM urban radio

3. Spacing rule waiver requests must be supported by a “compelling showing” in order to be granted. *Stoner Broadcasting System, Inc.*, 49 FCC 2d 1011, 1012 (1974). The threshold test for an IF short-spacing waiver is a showing that (1) the existing site is unsuitable, (2) no fully spaced sites are available, and (3) the proposed site is the least short-spaced site available. *Quinnipiac College*, 8 FCC Rcd at 6286-87; *Walter P. Faber, Jr.*, 4 FCC Rcd 5492, 5493 (1989). The Museum has not satisfied these requirements. It admits that the present site is suitable for continued operation with the station’s licensed facilities. See *Quinnipiac College*, 8 FCC Rcd at 6287. In addition, it admits that a fully spaced site is available for the proposed operation, although it asserts without support that the site is unsuitable for reaching WRTE’s intended audience. The Museum’s contention that its proposed site is the least short-spaced site available is conclusory, at best.

4. In addition to failing to meet the threshold test, the Museum has failed to show that grant of the requested waiver would serve the public interest. As the Commission held in *Quinnipiac College*, 8 FCC Rcd at 6287, the “mere desire to increase power and coverage is not a valid public interest factor which would warrant the waiver.” Absent truly compelling circumstances that have not been demonstrated to exist here, WRTE’s ownership and programming do not justify waiver of the Commission’s core technical requirements. See *Open Media Corp.*, 8 FCC Rcd 4070, 4071(1993).³ Furthermore, the Museum has offered no evidence that IF-related interference would not occur if it increased WRTE’s power to 100 watts ERP, other than its own speculation that such interference is highly unlikely. Moreover, “just because no interference complaints have been received while [WRTE] has operated as a Class D station does not mean that no interference would be caused if the power were significantly increased as proposed.” *Quinnipiac College*, 8 FCC Rcd at 6286.⁴ In sum, therefore, we conclude that the Museum has failed to support its waiver request with the compelling showing necessary for grant.

5. *Prohibited Contour Overlap.* The Museum also requests waivers of Section 73.509, which establishes contour protection standards for all NCE FM stations and generally prohibits the overlap of the interfering contour of one NCE FM station with the protected contour of another. WRTE’s protected service area would be entirely overlapped by the interfering contours of co-channel stations WNIU and two previously-filed, cut-off applications for a new station to serve Crown Point, Indiana (File Nos.

station in the country, that it provides unique and valuable educational and informational programming and nonbroadcasting service to the “underserved Latino community” of Chicago, and that this proposal would allow WRTE to significantly expand its service to this community. The Museum also has submitted letters of support from community organizations, public officials and members of the public.

³ Although the Museum seeks to achieve a commendable objective in expanding WRTE’s service, “it is well established that our policy of refusing to base waivers of rules designed to prevent interference upon non-technical considerations such as ownership or programming is a rational implementation of our mandate to ‘[m]ake such regulations not inconsistent with law as [we] may deem necessary to prevent interference between stations. . . .’” *Open Media Corp.*, 8 FCC Rcd at 4071 (quoting 47 U.S.C. § 303(f)). The Museum has not demonstrated a deficiency of NCE FM service to Chicago “such that a waiver of the technical rules . . . [is] necessary to permit a basic level of NCE-FM service[.]” *Id.* (upholding denial of waiver for “first minority/female public radio service”).

⁴ The Museum suggests that the requested waiver is insignificant because WRTE hypothetically could be authorized to operate with ERP up to 99 watts as a Class D facility without being subject to IF spacing requirements. There is a fundamental difference between Class D and Class A NCE FM stations under the Commission’s rules, however: Class D stations do not have protected status, whereas Class A stations do. See *Quinnipiac College*, 8 FCC Rcd at 6286 (a Class D station seeking to upgrade to Class A status must satisfy the applicable Commission rules for Class A stations, including IF spacing requirements.).

BPED-891019MA and BPED-910409). *See* Attachment 1. In addition to its above-stated public service argument, the Museum argues in support of its requests for waiver of co-channel prohibited overlap that the benefit of increased coverage by WRTE outweighs the detriment of the interference received. Specifically, the Museum contends that WNIU now interferes with “27.2 percent of the protected area of WRTE and 20.3 percent of the population in that area[.]” and that the proposal is expected to result in interference to “an additional 3.9 percent of WRTE’s protected area, involving 16.4 percent of the population reached by WRTE’s expanded contour.” On the other hand, depending on which of the two applications for the Crown Point station is granted, it maintains that the proposal would increase WRTE’s overall interference-free service area and population by as much as 48.2 square kilometers and 205,183 persons, or 325 percent and 256 percent, respectively.

6. The Museum’s engineering analysis is deficient in a number of respects. First, it relies on the “undesired-to-desired” signal strength ratio method rather than the applicable contour overlap standard. *See Board of Education of City of Atlanta (WABE-FM)*, 11 FCC Rcd 7763, 7764 n. 1 (1996). Second, it assumes that interference received from WNIU would cover or “mask” interference received from other stations. The Commission has rejected such masking arguments, reasoning that additional interfering signals diminish the probability of satisfactory reception in an area. *Id.* at 7766. Furthermore, because WRTE is not protected from interference as a Class D facility, from the perspective of the rules this proposal would create prohibited contour overlap where none previously existed rather than result in interference to “an additional 3.9 percent of WRTE’s protected area,” as the Museum argues.

7. In any event, the Commission consistently has held that absent additional compelling facts and circumstances, enhanced service cannot overcome the longstanding prohibition against occurrences of harmful signal contour overlap. *See Board of Education of the City of Atlanta*, 82 FCC 2d 125, 127 (1980) (“when faced with a choice between increased coverage on one hand, and lesser but adequate coverage without prohibited interference on the other, the Commission favors the latter.”); *see also Open Media Corp.*, 8 FCC Rcd at 4071. The Museum has not demonstrated the “additional compelling facts and circumstances” required for waiver of the Commission’s core technical requirements. *See supra*, ¶ 4. Its reliance on *Educational Information Corp.*, 6 FCC Rcd 2207 (1991), in support of waiver is misplaced. That case involved the Commission’s waiver policy “in the limited area of proposed second or third adjacent channel overlap” of NCE FM stations, rather than the co-channel overlap involved here. *Id.* at 2208 (“Overlap of co-channel or first adjacent channel signals is a more serious matter since the interference that may occur results in the loss of service over a wide area.”). In addition, *Educational Information Corp.* involved a small amount of prohibited contour overlap. *Id.* at 2207 (waiver granted where aggregate amount of overlap received would total .84 percent of protected service area). We are unaware of the Commission ever having waived its technical rules where, as here, a Class D facility seeks to upgrade to Class A status but would receive co-channel prohibited overlap in 100 percent of its protected service area.⁵ Accordingly, the Museum has failed to demonstrate that waivers of Section 73.509 are justified to allow co-channel prohibited overlap from WNIU and two proposals for a new Crown Point station.

8. Finally, the Museum seeks a Section 73.509 waiver with regard to interference that would be

⁵ The Commission has proposed a standard for allowing unilateral proposals involving received interference where the applicant demonstrates that, among other things, total interference received would be no greater than five percent of the area and population within the station’s protected service contour. *1998 Biennial Review --Streamlining of Radio Technical Rules, Notice of Proposed Rule Making* in MM Docket No. 98-93, 13 FCC Rcd 14849 at ¶ 20 (1998). The WRTE proposal obviously would not satisfy this criterion.

caused to second-adjacent channel station WMBI. In addition to the arguments discussed above, the Museum argues that the predicted interference to WMBI would occur in a *de minimis* amount of less than 1 percent of its protected service area, that the staff granted a similar waiver to allow WRTE (then WCYC) to increase power to 17 watts, *see Letter to Robert P. Bucaro, Ref. No. 1800B3-AJA* (Larry D. Eads, Chief, Audio Services Division, September 21, 1993),⁶ and that WMBI does not object to the proposal.⁷ We shall not address this waiver request, as our discussion establishes that the application is unacceptable for filing for other reasons. *See Colonial Communication, Inc.*, 6 FCC Rcd 2296, 2296 (1991).⁸

9. *Conclusion.* For the foregoing reasons, the Museum's requests for waiver of Sections 73.507 and 73.207 of the Commission's rules with regard to the proposed IF short-spacing to WKQX, and for waiver of Section 73.509 with regard to co-channel prohibited contour overlap from WNIU and application file nos. BPED-891019MA and BPED-910409MF, ARE HEREBY DENIED. Accordingly, the subject application (File No. BPED-981027MD) IS HEREBY RETURNED AS UNACCEPTABLE FOR FILING pursuant to 47 C.F.R. § 0.283.

Sincerely,



Edward P. De La Hunt
Assistant Chief
Audio Services Division
Mass Media Bureau

Attachment

cc: Colette M. Capretz, Esq.

⁶ The WRTE facility was never modified as authorized in the September 21, 1993 staff letter.

⁷ The Museum submits an August 14, 1991 letter signed by WMBI Station Manager Tom Sommerville stating that WMBI would neither endorse nor oppose a power increase by WRTE to 100 watts at its present site and with its present antenna.

⁸ Nevertheless, we note that the staff's 1993 waiver grant does not necessarily mean that grant of the instant waiver request would be warranted. This proposal involves substantially greater power than the earlier one—100 watts ERP as opposed to 17—and the Museum's showing that it would result in a *de minimis* amount of interference to WMBI is inappropriately based on the D/U signal strength ratio method. *See supra*, n. 5. Moreover, this proposal would achieve protected status for WRTE and, therefore, has more serious implications than the earlier one for the Commission's NCE FM allotment scheme. *See, e.g., Letter to Jeffrey L. Timmons, Ref. No. 1800B3-DEB* (Dennis Williams, Asst. Chief, Audio Services Division, November 18, 1996) (Section 73.509 waiver grant to create new third-adjacent channel prohibited overlap would effectively nullify the protection of the affected station's protected service area required by the rule and undermine the NCE FM assignment scheme).