

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554
November 19, 1996

IN REPLY REFER TO:
1800B3-BJB

Mr. Gerard Turro, President
Bergen County Community
Broadcast Foundation
75 Second Street
Dumont, NJ 07628

In re: WNJW(FM), Franklin Lakes, NJ
Bergen County Community
Broadcast Foundation
("Bergen County")
BPED-940610MF

Dear Mr. Turro:

The Commission under consideration the above-captioned major change application to change channel, antenna location, antenna height above average terrain (HAAT), and utilize a directional antenna. For the reasons set forth below, we are dismissing the application.

BACKGROUND

WNJW is currently licensed (File No. BLED-388) to operate omnidirectionally on Channel 204D with 10 watts effective radiated power (ERP) at 81 meters HAAT. The instant application requests authority to change channel to Channel 205D, relocate the transmitter site 7.3 kilometers northwest, increase the HAAT to 99 meters, and utilize a directional antenna.¹ WNJW's licensed facility on Channel 204D causes significant co-channel overlap in violation of 47 C.F.R. § 73.509 to licensed station WPSC-FM, Channel 204A, Wayne, New Jersey.² Bergen County seeks to reduce this overlap by changing antenna location and the channel relationship of the two stations.

Since the application would not completely eliminate the overlap between the two stations, Bergen County requests waiver of § 73.509 to allow WNJW to cause first-adjacent overlap to WPSC. In support of the waiver request, Bergen County's consulting engineer states that the area of overlap with WPSC will be decreased from 345 km² to 132 km². This decrease in area, coupled with the relocation of the WNJW transmitter to a desolate unpopulated mountain ridge outside the town of Franklin Lakes, will result in the population within the interference area to being reduced from 324,930 persons to 69,738 persons. Finally the engineer states that "... the WPSC-FM permittee, William Patterson College of New Jersey, fully supports the WNJW attempt to remedy the present interference problem."

¹ The application as submitted on June 10, 1994 was styled as an amendment to an application (BPED-930216MA) to relocate WNJW's main studio outside its 70 dBu contour. Application BPED-930216MA was denied on July 20, 1993. Since there was no pending application to amend, the June 10, 1994 amendment was considered a major change application and given the file number BPED-940610MF.

² Due to this overlap, WNJW has been silent since October 25, 1994.

DISCUSSION

Major change in service area due to site relocation

According to Bergen County's consulting engineer, based on calculations made in accordance with 47 C.F.R. 73.3573(a)(1), the proposal would result in a 184% change in WNJW's licensed 1mV/m coverage contour. Since this change exceeds 50%, it would be categorized as a "major change." Section 73.512(c) prohibits Class D stations from filing applications that would result in a major change in coverage area. This section is intended to preserve existing local service as much as possible by preventing the complete (or substantial) abandonment of the existing service area. An application that specifies a substantially new service area would effectively create a new Class D station by shifting the inefficient, low-powered operation to a community not previously served by that station. Although Class D stations are not held to a specific community contour requirement (e.g. § 73.315), removal of the existing local service would contravene the rationale behind the continued operation of these stations. The application failed to address this issue.

We acknowledge that the small size of the "average" Class D station's 1 mV/m contour causes even the slightest change in site to result in a major change. Thus it is possible for a Class D station to file a major change application that would continue to serve a substantial portion of its existing service area. Our experience with the practical requirements of Class D stations has led us to conclude that there are situations where waiver of § 73.512(c) can be granted without violating the underlying intent of the rule.³ However, in the instant case, virtually no effort has been made to continue covering the existing service area. Accordingly, the application will be dismissed.

Facilities in excess of those allowed by 47 C.F.R. § 73.511

The proposed facility, 10 watts maximum ERP at 99 meters HAAT, would result in a 1 mV/m reference contour that extends 5.8 kilometers. Pursuant to 47 C.F.R. § 73.511(b), the minimum reference contour distance for Class A stations is 6 kilometers. When rounding to the nearest kilometer, this minimum Class A requirement effectively limits the maximum facility allowed for Class D stations to a 5.4 kilometer 1 mV/m contour reference distance. Thus, the proposed facility would be considered a minimum Class A station. As a Class A station the proposed facility would be unacceptable since it would receive severe prohibited overlap from: co-channel station WRPJ(FM), Port Jervis, NY; and first-adjacent channel share-time stations WNYU-FM, New York, NY and WFDU(FM), Teaneck, NJ.

³ For example, if a station has lost its existing licensed site, and the alternative is cancelling its license, we would consider a major change application provided that the applicant has demonstrated relocation is unavoidable and the specified facility provides coverage to as much of the existing service area as is possible. Other instances where waiver requests may favorably be considered include: (1) site changes necessary to eliminate interference caused to an existing full service FM station (See § 73.512(d)); (2) a power increase (to a level less than Class A minimum facilities) at the existing site; and (3) major site changes that would allow for technical improvements to quality of the existing service.

Overlap with WPSC and request for waiver of § 73.509

Having found the application otherwise unacceptable for filing, the request for waiver of § 73.509 is moot. It should be noted, however, due to their secondary status, Class D stations have an obligation to avoid causing interference to any full service station. While the proposal would result in a substantial reduction in interference to WPSC, it would still result in first-adjacent channel overlap to almost 70,000 persons.

CONCLUSION

In light of the above, application BPED-940610MF IS HEREBY DISMISSED. Accordingly, the request for waiver of 47 C.F.R. § 73.509 IS HEREBY DISMISSED AS MOOT. Due to the co-channel interference caused to WPSC-FM, WNJW MAY NOT RESUME OPERATIONS IN ACCORDANCE WITH BLED-388. We note that, because of this interference, WNJW has been silent since October 1994. Pursuant to of the Telecommunications Act of 1996, the station will lose its license if it does not resume operations by February 9, 1997 (See 47 U.S.C. § 312(g)).

Sincerely



Dennis Williams
Assistant Chief
Audio Services Division
Mass Media Bureau

cc: Carl T. Jones Corp.