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July 15, 2008

Central Florida Educational Foundation, Inc.
1065 Ranier Drive
Altamonta Springs, FL 32714

Ms. Carol Henry
Mims Community Radio, Inc.
900 Old Mission Road
New Smyrna Beach, FL 32168

In re: WKTO (FM), Mims, FL
Mims Community Radio, Inc.
Facility ID No. 42684
Application BPED-20080424ACF

Dear applicants:

This letter refers to construction permit application BPED-20080424ACF, which was filed by Mims Community Radio, Inc. ("MCR") to modify its noncommercial station WKTO (FM), Mims, FL. By letter dated May 15, 2008, Central Florida Educational Foundation, Inc. ("CFEF") filed an informal objection against this construction permit application.

The informal objection. CFEF acknowledges that its construction permit BMPED-20070828ACD for WPOZ, Union Park, FL was granted a request for waiver of Section 73.509, to permit WPOZ's 60 dBu contour to encompass the 100 dBu interfering contour of WKTO. The grant for waiver of Section 73.509 in that application resulted in the following condition being imposed on the construction permit:

Further modification of WKTO(FM), (Facility ID No. 42684), Edgewater, FL will not be construed as a *per se* modification of WPOZ's construction permit (BMPED-20070828ACD). (See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

CFEF's modification of construction permit application BMPED-20070907AEU asked for a "continuing waiver" of Section 73.509 for this construction permit, based on the fact that the existing prohibited contour overlap would be maintained. Accordingly, the modification permit BMPED-20070907AEU was granted with a nearly identical condition.

CFEF here argues that MCR has no right to change its transmitter site and increase facilities, as the waiver conditions only applied to prohibited contour overlap received by WPOZ from the licensed WKTO facility under WPOZ's former construction permit BMPED-20070828ACD, and not to its modified permit BMPED-20070907AEU. Such additional interference, CFEF claims, "directly contravenes Section 73.509 of the rules."

CFEF also complains that MCR's current filing is simply a refilling of its recently expired construction permit, and believes that MCR should not be afforded another tree year period to construct the requested facilities.

MCR's response. MCR, on the other hand, believes it is entitled to move its facilities and expand the station's coverage by virtue of the Section 73.509 waiver in application BMPED-20070828ACD. It contends that the condition on the WPOZ construction permits entitles it to make the proposed changes, and that CFEF request for continuation of the waiver make it applicable to the current modification permit, BMPED-20070907AEU. Consequently, MCR believes there is no basis for CFEF's objection.

Regarding the filing of MCR's application so soon after the previous permit had expired, MCR notes that CFEF had not cited any precedent that would prevent it from doing so.

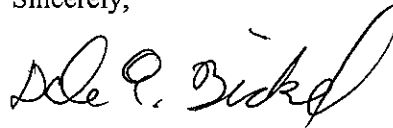
Analysis. It is clear from CFEF's comments that it has a fundamental misunderstanding as to how the waiver process under Section 73.509 works. Those applications found acceptable for waiver under *Educational Information Corporation (WCPE)*, 6 FCC Rcd 2207 (1991) are granted with a condition similar to the one above on WPOZ's construction permit BMPED-20070828ACD. CFEF correctly recognized that the same condition needed to be carried over to WPOZ's construction permit BMPED-20070907AEU.

However, CFEF's interpretation that the conditions preclude WKTO from making changes is simply wrong. It was never the Commission's intent to lock the encompassed station into the facilities it already had, nor to forbade it from ever changing transmitter site. Indeed, such considerations were paramount when the Commission decided *Educational Information Corporation*. The Commission's solution was to allow such waivers with the requesting station's understanding that the encompassed station would be permitted to make changes, even if the changes caused additional interference to the requesting station. Such authority to make changes is permanent, while the prohibited contour overlap is maintained. Consequently, we conclude that CFEF has no basis to complain about any modification made by WKTO, including the proposed transmitter site move, by virtue of the waiver request that CFEF itself made that was granted. CFEF's complaints against MCR's proposal will be denied.

Finally, MCR is correct that there is no rule or policy that precludes it from filing a new construction permit application for the facilities that were specified in its now expired construction permit.

Conclusion. Accordingly, the informal objection of Central Florida Community Foundation, Inc. IS DENIED. Application BPED-20080424ACF, being found acceptable for filing, IS GRANTED.

Sincerely,



Dale E. Bickel
Senior Engineer
Audio Division
Media Bureau

cc: Fletcher, Heald and Hildreth
Taylor and Powell, LLC