

FEDERAL COMMUNICATIONS COMMISSION
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AUDIO SERVICES DIVISION
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Mexican Fine Arts Center Museum
1852 W. 19th Street
Chicago, IL 60608

In re: WRTE(FM), Chicago, IL
Facility ID# 10794
Mexican Fine Arts Center Museum
BPED-20000609ABC

Dear Applicant:

This letter is in reference to the above-captioned minor change application, as amended November 16, 2000, to change effective radiated power and antenna height. WRTE also requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509 and the power limitations of 47 C.F.R. § 73.506. For the reasons stated below, we grant WRTE's waiver requests and the application.

Section 73.509 Waiver Request

An engineering study of the application reveals that WRTE's proposed facilities would result in prohibited contour overlap with second-adjacent channel Class B license (BLED-19970613KA) for WMBI-FM, Chicago, IL, in violation of § 73.509. Specifically, WRTE's licensed interfering contour (80 dBu) is entirely encompassed by the protected contour (60 dBu) of WMBI's facility. The proposed facility would extend the interference contour, thereby increasing the interference caused to WMBI. WRTE recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WRTE states that the WRTE's 80 dBu contour encompasses 0.11% of the total land area within the WMBI 60 dBu contour. Using the signal strength ratio method utilized by FM translator proposals, WRTE indicates that the proposed interfering signal is 97.6 dBu. WRTE states that the 97.6 dBu contour encompasses 0.01% of the total land area within the WMBI-FM 60 dBu contour. Moreover, WRTE refers to the September 21, 1993 letter from Larry D. Eads, Chief, Audio Services Division, granting WRTE a § 73.509 waiver with respect to WMBI since the overlap was "less than one percent of WMBI-FM's 1mV/m protected contour." Similarly, WRTE cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances. Furthermore, WRTE states that WMBI does not object to the proposal and WRTE will resolve any instances of actual interference. WRTE concludes that waiver of § 73.509 is warranted in this case.

Discussion

In *Educational Information Corporation*, the Commission specifically addressed waivers involving interference caused by second adjacent stations. In that case it was stated that:

Whereas WCPE's proposal discussed above involved overlap received, WCCE's proposal involves overlap caused and therefore requires separate consideration. We note, however, that proposals such as WCCE's are the "other side of the coin." Where waivers are approved to allow stations to receive overlap, there is always a station causing it. Thereafter any increase or displacement in the facilities of the "causing" station will result in new overlap. To avoid perpetually restricting such stations to their current facilities, and in view of the limited nature of the interference potential of second or third adjacent channels discussed above, we are inclined to view waiver requests such as WCCE's favorably where there is clearly a public benefit.

See *Educational* at 2209. The overlap caused by WRTE to WMBI's licensed facilities is consistent with the public interest criteria set forth in *Educational*. Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

Section 73.506 Waiver Request

WRTE is currently licensed to operate with an ERP of 8 watts and an antenna height above average terrain (HAAT) of 22 meters. The application proposes an ERP of 73 watts and 26 meters. In addition, the application proposes to increase the transmitter power output ("TPO") from 10 watts to 90 watts. Pursuant to 47 C.F.R. § 73.506(a), "A Class D educational (secondary) station is one operating with no more than 10 watts transmitter power output." WRTE recognizes this violation and requests waiver of § 73.506(a) in order to maintain Class D (secondary) status.

In support of its request for waiver, WRTE again cites the September 21, 1993 letter, granting a similar waiver to allow WRTE to increase its TPO to 21 watts. In addition, WRTE states that the burden of installing a larger antenna to maintain a TPO of 10 watts to produce an ERP of 73 watts would produce financial hardship. Furthermore, the facilities are less than the minimum Class A facilities which will permit WRTE to remain a Class D station. Finally, WRTE notes that the facilities proposed are less than the maximum permitted for secondary low power FM stations. Therefore, WRTE concludes that a waiver of § 73.506(a) is warranted in this instance.

Discussion

In addition to the above 10 watt restriction, pursuant to 47 C.F.R. § 73.511, noncommercial educational FM stations are classified based on the specifications of 47 C.F.R. § 73.211. As set forth in MM Docket 86-144, the Commission's Rules allow "any Class A station to have an ERP less than 100 watts, provided that the reference distance equals or exceeds 6 kilometers."¹ See *Memorandum Opinion & Order*, 3 FCC Rcd 2477 (1988). Accordingly, any station with a reference distance of less than the minimum Class A reference distance, 6 kilometers (in practice, 5.6 kilometers due to rounding), is considered to be the next lowest class, i.e., Class D. WRTE's facilities of 73 watts ERP at 26 meters HAAT, yield a 1 mV/m contour that extends 5.2 kilometers. Thus, based on its 1mV/m contour, WRTE is a Class D station.

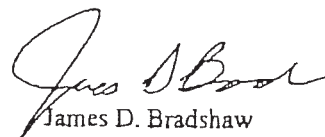
¹ In this case, "reference distance" refers to the distance from the transmitter site to the 1mV/m contour.

The ten watt rule for Class D stations pre-dates the minimum class contour requirements of § 73.211(a). Prior to the minimum Class A standard, the sole basis for classifying a station as "Class D" was having a TPO of 10 watts or less. Subsequent to the adoption of the Second Report & Order in Docket 20735 in September 1978, the Commission began to require that all Class D construction permit applications specify ERP and HAAT parameters. See Public Notice dated March 26, 1979 (45 RR 2d 438). The use of ERP/HAAT data to determine the actual interfering and coverage contours has lessened the importance of the 10 watt TPO restriction. Furthermore, the use of ERP/HAAT data serves the same policy objective of restricting the interference caused to other stations as does the 10 watt restriction. Therefore grant of a waiver of § 73.506(a) would not undermine the policy that the rule was designed to further. See WAIT Radio v FCC, 418 F.2d 1153 (D.C. Cir. 1969). Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.506 will be granted to allow WRTE to operate as a Class D educational (secondary) station with 0.090 kilowatts transmitter power output.²

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 requests for waiver of §73.509 and §73.506 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 applicants' justifications are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WRTE's requests for waiver of § 73.509 and § 73.506 ARE HEREBY GRANTED. Furthermore, application File No. BPED-20000609ABC IS HEREBY GRANTED. The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



James D. Bradshaw
Assistant Chief
Audio Services Division
Mass Media Bureau

cc: Collette M. Capretz

² The following rule sections contain exemptions for stations operating with less than 10 watts transmitter power output: 47 C.F.R. § 73.508 Standards of good engineering practice; § 73.510 Antenna Systems; § 73.558 Indicating Instruments; § 73.1550(2) Extension meters; § 73.1560(b) Operating power and mode tolerances; and § 73.1590(a) Equipment performance measurements. Because the waiver granted herein does not create an increased potential for interference beyond that which would result from the same ERP accomplished by a higher gain antenna (in association with a 10 watt TPO), the exemptions listed above will continue to apply to WRTE.