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Siembra Fertile P.R., Inc.
Apartado 846
Aguada, PR 00602

In re: WPLI(FM), Levittown, PR
Facility ID# 11620
Seimbra Fertile P.R., Inc. ("Seimbra")
BMJPED-20071019ATL

Dear Applicant:

This letter refers to the above-captioned major change application to change the channel from 203 to 219 and modify the effective radiated power (ERP) from 0.1 kilowatt to 2.0 kilowatts. WPLI also requests waiver of the contour overlap provisions of 47 C.F.R. § 73.509. For the reasons stated below, we deny WPLI's waiver request and dismiss the application.

Waiver Request

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 73.509 with respect to the second-adjacent Class B license (BLED-19910107KA) for WIPR-FM, San Juan, PR. Specifically, the proposed interfering contour (100 dBu) causes overlap to the protected contour (60 dBu) of WIPR. WPLI recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WPLI states that the grant of this waiver will reduce the interference, using undesired-to-desired signal strength ratio methodology, that WPLI causes from 6,821 people to 779 people.¹ Furthermore, WPLI claims that the largest area of interference will be reduced from 0.95 square kilometers to 0.044 square kilometers. Moreover, WPLI believes that the proposal will increase the population served from 141,670 people to 667,572 people. In addition, WPLI asserts that the land area within its proposed protected contour (60 dBu) will increase from 79 square kilometers to 297 kilometers. Accordingly, WPLI concludes that a waiver of § 73.509 is justified in this instance.

Discussion

While requests for waivers of second- and third-adjacent channel overlap for new stations or major change applications are individually appealing due to the relatively large area and

¹ WPLI is licensed on Channel 203 and causes overlap to second-adjacent channel Class B license (BLED-19980411KD) for WCRP, Guayama, PR and second-adjacent channel Class B license (BLED-19840522BZ) for WPUC-FM, Ponce, PR.

population served as compared to the small area receiving prohibited overlap (and hence interference), the requests lose their appeal when assessed using the Commission's allocation plan for noncommercial educational FM stations. Allowing new applicants to create new prohibited contour overlap effectively nullifies the protection to noncommercial educational FM stations' 60 dBu protected service areas as mandated by § 73.509. In particular, the affected station would lose service area and population served without receiving any benefit in return. Over time, the grant of numerous similar waivers would degrade the quality of existing FM reception from stations throughout the entire noncommercial educational FM band.²

In addition, WPLI's use of the undesired-to-desired signal strength ratio is inappropriate, as § 73.509 requires compliance with a contour established perimeter defining an area protected from overlap, not an area based on interference ratio calculations. The Commission currently has two rules intended to protect FM stations from interference (Section 73.509 for reserved band stations and 47 CFR § 73.215 for non-reserved band stations). Both sections require determinations be made based upon prohibited contour overlap not the desired-to-undesired signal ratio. Previously, § 73.509 provided for determination of interference based upon the ratio method. However, the ratio method's usefulness for predicting interference in all cases has long been disputed. Recognizing this, the Commission amended its rules in Docket 20735 to adopt the current prohibited overlap version of § 73.509 which prohibits the overlap of specified interfering and protected contours and avoids the anomalous results predicted by the ratio method.³

In view of the limited interference potential between second- and third-adjacent channel noncommercial educational FM stations, the Commission has granted waivers of § 73.509 where existing noncommercial educational stations not proposing a major modification,⁴ sought to increase the 60 dBu service contour so as to overlap the interfering contour of another noncommercial educational station and thereby receive overlap. *See Educational Information Corp.*, 6 FCC Rcd 2207 (1991). Here, WPLI proposes to cause prohibited overlap and create new interference. Therefore, waiver of § 73.509 can not be granted based on the policy established in *Education Information Corp.* Additionally, WPLI has failed to cite any precedent for waiver of § 73.509 based on the circumstances and evidence presented.

² This has been called the "swiss cheese" effect, where a station's protected service contour is punctured by "holes" of interference from multiple second- and third-adjacent channel FM stations. *Revision of FM Rules (Notice of Proposed Rulemaking)*, 21 RR 1655, 1674 (1961).

³ "In the case of second and third adjacent channels, where the desired signal can be stronger than the desired signal, an adjacent channel station located within the desired station's 1 mV/m contour can appear to comply with the U/D [undesired-to-desired] ratios at the 1 mV/m contour. However, it may actually cause excessive interference inside the 1 mV/m contour. Further, the U/D ratio appears to improve as the undesired station moves closer to the desired station's transmitter and away from the 1 mV/m contour. The *Second Notice* proposed to resolve the anomaly by simply specifying prohibited contour overlaps. Comments were supportive. Therefore, we shall adopt that option." *Third Report and Order*, para. 46, Docket 20735, 49 Fed. Reg. 45146 (November 15, 1984). *Affirmed Memorandum Opinion and Order*, Para. 56, 50 Fed. Reg. 27,954 (July 9, 1995).

⁴ Although WPLI is an existing station, Seimbria is proposing a major change which in this context is equivalent to a new station.

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 your waiver request the "hard look" called for under the *WAIT* Doctrine, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in the justification are insufficient to establish that granting a waiver of 47 C.F.R. § 73.509 would be in the public interest.

Thus, WPLI's request for waiver of 47 C.F.R. § 73.509 IS HEREBY DENIED and application BMJPED-20071019ATL IS HEREBY DISMISSED as unacceptable for filing. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodolfo F. Bonacci". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Francisco R. Montero, Esq.