

Request for Waiver of Section 73.215(e)

I. Background and Introduction

By this application, Tri-State Public Communications, Inc. (“Tri-State”) seeks a minor modification of authorized facilities to change the transmitter site of noncommercial educational FM station WHDD-FM, Sharon, Connecticut. Tri-State recently obtained the construction permit for WHDD-FM pursuant to the Commission’s October 2007 filing window for new noncommercial FM stations. Following the grant of the construction permit, Tri-State expeditiously built and placed the station into operation, obtaining an initial license on May 7, 2008. Upon commencement of operation, however, it became obvious that the station’s coverage was less than desired. Prompted by the small coverage area and the fact that the station has a short-term lease as its present transmitter site – which can be terminated with as little as four months notice – Tri-State promptly began investigating alternative transmitter sites to ensure continued operation beyond the term of its present lease term and to improve the station’s coverage of its community of license.

Given the rural nature of the service area and the small area-to-locate in full compliance with the Commission’s spacing rules, Tri-State had difficulty identifying an existing tower or a suitable tower site that would fully comply with the spacing rules and also allow the noncommercial station to effectively provide service to its community. After a lengthy investigation with the assistance of its consulting engineers, Tri-State has identified a suitable transmitter site. Operation from this site would: 1.) Improve the current, deficient community of license coverage and result in a significant increase in the coverage of WHDD-FM’s community of license to almost 100% of the population and 89% of the geographic area; 2.) Provide first and second noncommercial service to a large number of listeners; and 3.) Allow the station to secure a long-term stable lease – essential to a listener-supported station. This transmitter site, however, is slightly short-spaced to third adjacent station WWYZ(FM), Waterbury, Connecticut by 4.6 kilometers.¹ Accordingly, Tri-State hereby respectfully requests a waiver of Section 73.215(e) of the Commission’s Rules. 47 C.F.R. § 73.215(e) (2007). As detailed below, this situation

¹ When the total short-spacing under the 73.207 spacing requirement is considered, the transmitter site would be short-spaced by 10.6 kilometers.

complies with the Commission's established standards for a waiver of Section 73.215(e), and grant of a waiver in this case would serve the public interest.

II. Discussion

Pursuant to Section 73.507(a), when seeking to locate its transmitter site, an NCE station must comply with the minimum distance separations set forth in 73.207(a) for the relevant class of station. Here, WHDD-FM seeks to avail itself of 73.215(a), which allows stations to locate closer than would be permitted under the minimum distance separations in Section 73.207, so long as the relevant contours of adjacent stations are properly protected. Under Section 73.215(e), however, stations are still required to comply with certain minimum distance separations between the transmitter sites of first, second, and third-adjacent stations, in addition to complying with the relevant contour protections. In this case, the transmitter site proposed for WHDD-FM complies with the contour protection requirements of Section 73.215(a), but would be short-spaced to one station under 73.215(e). Accordingly, a waiver of Section 73.215(e) is respectfully requested.

Pursuant to Section 1.3 of the Commission's Rules, the Commission may waive any provision of its rules if it determines that good cause has been shown to justify such a waiver. 47 C.F.R. § 1.3 (2007). Furthermore, with respect to the FM spacing rules, the Commission's cases contain an established standard for determining whether a waiver of Section 73.215(e) is justified. In this case, given the fact that the present site is unsuitable and soon to be unavailable; non-short spaced sites are unavailable; and the proposed new site is the least short-spaced site available, the threshold standard for seeking a waiver of the spacing rules has been met. More importantly, however, a waiver of the rule would be in the public interest as there will be no prohibited overlap between the relevant protected and interfering contours; it would enable the station to significantly improve coverage to its community of license; and it would bring first noncommercial service to 579 persons and second noncommercial service to 678 persons. Therefore, a waiver of Section 73.215(e) to allow WHDD-FM to utilize the transmitter site specified herein is in the public interest and should be granted

A. Threshold Showing

Pursuant to *Greater Media Radio Company, Inc.*, 15 FCC Rcd 7090 (1999) ("*Greater Media*"), the Commission clarified that "the threshold and public interest criteria formerly used

to analyze Section 73.207 waiver requests are applicable to requests for waiver of Section 73.215(e).”² Accordingly, requests seeking a waiver of the spacing rules contained in Section 73.215(e) must demonstrate that: 1.) the present transmitter site is unsuitable or unavailable; 2.) non-short spaced sites were unavailable; and 3.) the proposed new site is the least short-spaced site available.³

First, WHDD-FM’s current transmitter is unsuitable as it is patently inadequate. The current transmitter site allows WHDD-FM to provide coverage of only 67% of the population of the station’s community of license, Sharon, Connecticut, and just 35% of the geographic area of the community of license. While operation from the proposed transmitter site will improve the station’s coverage in general, it will improve the currently deficient service to the community of license in particular. And it will do so without causing harmful interference as the relevant contour protections will be met. As the Commission has stated previously:

Consideration of a spacing-waiver request requires us initially to evaluate coverage and the risk of objectionable interference which, together, determine overall service. We have previously concluded that improved coverage may warrant an increased risk of interference only when existing coverage of the community of license is patently inadequate. Grant of a waiver in such cases should result in a significant net gain in overall service.⁴

Thus, as operation from the proposed site would rectify the current deficient service to the station’s community of license, grant of the requested waiver is in the public interest. Furthermore, from the current transmitter, the station is unable to reach a significant underserved population that receives no reception service from any noncommercial station, or service from only one other noncommercial station. As detailed below, operation from the requested transmitter site will allow the station to provide first or second NCE service to these areas.

In addition, the present transmitter site is unsuitable as Tri-State’s lease for the site will expire in just eighteen months and is unlikely to be renewed. With limited transmitter site

² *Greater Media* at ¶ 12.

³ *Id.* at ¶ 10.

⁴ *Universal Broadcasting of Indiana, Inc.*, 102 FCC 2d 1457 (1986) at ¶ 5 (citing *Greater Media*, 61 FCC 2d 692 (1976)); *see also*, *Edens Broadcasting, Inc.*, 2 FCC Rcd 689 (Rev. Bd. 1987) (noting, “Where coverage is patently inadequate, the balance will tilt in favor of the short-spacing.”)

options in the area, Tri-State was only able to secure a short-term lease at the present site as a temporary measure when it constructed the station earlier this year. While a two-year lease at the present transmitter site was the best option available to the station at the time, such a short lease is simply not viable for the security and stability of the station's continued operations. In addition, the present lease agreement allows the landlord to terminate the lease for any reason with just four months notice. Since commencing operations in April of this year, Tri-State has been searching for a suitable transmitter site that would ensure its continued operation beyond the expiration of the current lease term, and where it could obtain long-term security. Additional circumstances, including the age of the landlord and the potential for the property to transfer to his estate, which would likely terminate the station's lease on short notice, have necessitated the search for a replacement transmitter site.

While all stations need to ensure their ability to continue broadcast operations and thus need a secure transmitter site, this issue is even more critical for a new, noncommercial community radio station, which is almost entirely listener-supported. The short duration of the current lease, and the potential displacement from the site with only a few months notice renders the current site unsuitable – and unavailable – for WHDD-FM's continued use beyond 2009. With just a over a year and a half remaining on the current lease, the present transmitter site is no longer suitable. In contrast, Tri-State has negotiated a five-year lease, with an option for a five-year extension, for the transmitter site proposed herein. This ten-year lease would allow the station to ensure its continued operations and service to the community. Moreover, the lease agreement for the proposed transmitter site would afford the station as much time as necessary to find a new transmitter site in the event that the lease is terminated or WHDD-FM needs to relocate.

Second, Tri-State conducted an extensive search with the assistance of its consulting engineers and was unable to locate a suitable, non short-spaced transmitter site available in the area. Located in the northwest corner of Connecticut, the area has a small number of existing towers or suitable tower sites, and none of which were suitable for WHDD-FM's operations. Of the existing tower sites several were unavailable, or had worse short-spacing problems than the site selected. Furthermore, while areas existed that were theoretically fully spaced, the sites proved infeasible as they would have required substantial improvements including building

roads, running electrical and phone service, if the parcel of land was even available in the first place. Tri-State seriously considered and eliminated at least four other sites, each of which ultimately proved unsuitable as described below:

1. Original Site Specified in BNPED-20071017AFP- Initially, Tri-State had specified a fully spaced tower site that would have allowed for suitable coverage of the community of license. After expending a significant amount of time and money, the site was deemed to be unsuitable, as it would have required that over 3,000 feet of primary power lines and two transformers be installed, as well as improved road access to the site. In addition to the fact that the work would have initially cost an estimated \$45,000 to improve the road and run the necessary electricity, the road and work would have required obtaining right-of-way releases from three different property owners, which proved impossible. Accordingly, Tri-State subsequently modified the initial construction permit to specify the site from which the station is operating today.
2. Wake Robin Inn, Lakeville, CT- This site (41 57 28.0 North, 73 26 08.0 West) in Lakeville, Connecticut was potentially available, but was rejected by Tri-State's consulting engineer. According to the engineer, this site is less than 100-meters from the interfering contour of application BNPED-20071022BMQ, therefore avoidance of prohibited overlap is impossible. Furthermore, contour protection of WBSL-FM makes it impossible to meet the coverage requirements of 73.510. Specifically, the antenna directivity limitations required by 73.515 prevent the direction of sufficient power towards the Community-of-License while preventing prohibited contour overlap with WBSL-FM.
3. Property of Jay Colpits on Belgo Road in Salisbury, CT- This undeveloped site (41 58 12.0 North, 73 28 34.0 West) in Lakeville, Connecticut was potentially available, but was rejected by Tri-State's consulting engineer. According to the engineer, contour protection of WBSL-FM and BNPED-20071022BMQ make it impossible to meet the coverage requirements of 73.510. Specifically, the antenna directivity limitations required by 73.515 prevent the direction of sufficient power towards the

community of license while preventing prohibited contour overlap with WBSL-FM and BNPED-20071022BMQ.

4. Litchfield County Dispatch Tower on Surdam Mt Road in Sharon, CT- This existing tower is short-spaced to WWYZ under 73.215 by 6.17 km. In addition, it is filled to capacity and WHDD-FM was unable to locate there.

Third, Tri-State did not locate any other available towers that complied with the spacing requirements. Accordingly, it was forced to consider alternative, short-spaced sites, and the transmitter site proposed in this application is the least short-spaced site available.

B. Grant of the Requested Waiver is in the Public Interest.

Ultimately, good cause exists in this case for a waiver of the Commission's Rules, as the waiver would serve the public interest.

First and foremost, operation from the proposed site will allow the station to significantly improve service to its community of license, Sharon, Connecticut. As demonstrated in the engineering exhibit attached hereto, operation from the proposed site would increase the coverage of WHDD-FM's 60 dBu contour from 67% of the population of Sharon to 97%, and improve the coverage of the geographic area of the city of license from 35% to 89%. In addition, the proposed operation will increase the total population reached by the station from 5,196 to 6,462, a 24% increase in the population served. This is a significant improvement for a small station.

Second, nearly all of the persons covered by the proposed expansion currently have access to no other, or only one other, noncommercial radio service. Thus, operation from the proposed site will enable WHDD-FM to provide first NCE service to 579 additional persons and second NCE service to 678 additional persons. The ability to provide first and second NCE service to these additional 1,257 persons is in the public interest and further justifies a waiver of Section 73.215(e).

Third, despite being short spaced to WWYZ(FM) by 4.6 kilometers, operation from the proposed transmitter site will not cause prohibited overlap of the stations' protected and interfering contours. Rather, WHDD-FM will continue to fully protect WWYZ(FM)'s 54 dBu

protected contour as there is approximately 5 kilometers of clearance between WWYZ(FM)'s protected contour and WHDD-FM's interfering contour.

In addition, the short-spacing sought in this case – 4.6 km under Section 73.215(e) or 10.6 km under Section 73.207 – compares favorably to waivers granted by the Commission in the past. *See, e.g., R&S Media, Permittee of Station KBNH(FM), Homedale, Idaho (FIN 87812) FCC File No. BMPH-20000229ABO (MB 2005) (granting waiver of Section 73.215(e) involving a total short-spacing of 14.1 km); Beasley Broadcasting of Philadelphia (WXTU), 100 F.C.C. 2d 106 (1985) (granting a 12.2 km spacing waiver under 73.207 partially to overcome defective coverage of the station's community of license).*

Fourth, as mentioned above, operation from the proposed site will allow the station to secure a long-term lease with significant protections. This security and stability is essential to a small, community supported noncommercial station such as WHDD-FM.

III. Conclusion

For the reasons set forth above, Tri-State respectfully requests a waiver of Section 73.215(e) in order to permit operation from the proposed transmitter site. Given the lack of suitable fully spaced transmitter sites in the area, the fact that no contour overlap will occur, and the overwhelming public interest factors involved, Tri-State submits that grant of the waiver is in the public interest and would allow this small noncommercial station to improve its service to Sharon, Connecticut, as well as provide new noncommercial service, all without causing harmful interference to any adjacent station.