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August 26, 2009

West Irondequoit Central School District  
260 Cooper Road  
Rochester, NY 14617

In re: WIRQ(FM), Rochester, NY  
West Irondequoit Central School District  
Facility ID No.: 71611  
BMJPED-20071022AEF

Dear Applicant:

This letter is in reference to the above-captioned application to change from Channel 284D to Channel 215D. WIRQ also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant WIRQ's waiver request and the application.

**Section 73.509 Waiver Request**

An engineering study of the application reveals that WIRQ's proposed facilities would cause prohibited contour overlap with the following facilities: (1) second-adjacent channel Class B1 station (File No. BLED-19930722KB) for WBER(FM), Rochester, New York; and (2) third-adjacent channel Class B station (File No. BMLED-20051207ABF) for WXXI-FM, Rochester, New York, in violation of § 73.509. Specifically, WIRQ's proposed 100 dBu interfering contour<sup>1</sup> is entirely encompassed by the 60 dBu protected contours of WBER and WXXI, respectively. The applicant recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, the applicant states that the proposed channel change is necessary because WIRQ is causing interference to first-adjacent channel Class A station WKDL-FM, Brockport, New York on Channel 285.<sup>2</sup> Specifically, the 54 dBu interfering contour of WIRQ's licensed facility is completely encompassed by the 60 dBu protected contour of WKDL-FM. The applicant also states that an extensive channel search shows that no other commercial channels are available. Finally, the applicant indicates that Channel 215 is the best channel available.

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<sup>1</sup> Section 73.509 requires second adjacent Class D stations to use the 80 dBu interfering contour. However, our experience with low power interfering stations protecting full-power stations shows that the 100 dBu contour is more appropriate. The waiver we grant herein allows WIRQ(FM) to use the 100 dbu contour.

<sup>2</sup> The two stations are only 16.2 kilometers apart.

With regard to the technical facilities, the applicant states that the proposed 100 dBu interfering contour will be only 0.294 square kilometers and will encompass less than 1 percent of the population within WBER's and WXXI's 60 dBu protected contours. Therefore, the applicant concludes that the overlap is *de minimis*. In addition, the applicant has submitted signed affidavits from the Monroe B.O.C.E.S. #1, licensee of WBER(FM), and WXXI Public Broadcasting Council, licensee of WXXI-FM, supporting grant of the application.

## Discussion

WIRQ's proposal is both unique and compelling and warrants a waiver of § 73.509(b). First, WIRQ was displaced by WKDL and cannot specify fully rule compliant alternative facilities in this very congested radio market. In addition, the interference area will consist of only 0.294 square kilometers,<sup>3</sup> much less than 1 percent of the of the protected contour area of either WBER and WXXI. WIRQ has also submitted an extensive analysis and it is clear that Channel 215 is the best available channel. Furthermore, WIRQ has received the consent of WBER and WXXI. Finally, the proposal put forth by WIRQ satisfies the criteria presented in the *Notice of Proposed Rule Making and Order*, 13 FCC Rcd 14849 (1998), ("Class D NPRM"), which proposed allowing displaced Class D stations to move to interference-free channels or, in the absence of an interference-free channel, to a channel that would result in only second or third adjacent channel overlap.

In *Educational Information Corporation*, the Commission observed that co- or first adjacent channel overlap is a more serious matter than second or third adjacent channel overlap because "the interference that may occur results in the loss of service over a wide area." "Second or third adjacent channel overlap may result in the replacement of one signal by another (not the complete loss of service) and is confined to a very small area around the transmitter of the interfering station. In the case of low power Class D stations, the potential interference area would be exceedingly small. Accordingly, we believe that a waiver of § 73.509 is warranted to permit second- and third-adjacent overlap where there is no available interference-free channel for a displaced Class D station.

The Commission has long recognized that Class D stations provide a valuable service to local listeners and the changes proposed in the instant application would serve the public interest allowing WIRQ to continue its local service. Furthermore, while the Commission has not yet adopted the new rules in the Class D NPRM, the proposal set forth by WIRQ to change channels is the best possible outcome for preserving a unique service while minimizing the potential for interference. Accordingly, in light of the unique circumstances involved here, we will grant the requested waiver of 47 C.F.R. § 73.509. We note, however, Class D stations have an obligation not to cause any interference to full service facilities. Therefore, to prevent any unforeseen adverse affect on the operation of WBER or WXXI, we will include a condition on WIRQ's authorization requiring it to remedy any complaints of interference to WBER or WXXI caused by its operation on Channel 215.

## 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 request for waiver of §73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that

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<sup>3</sup> This value is calculated after determining the radius of a 100 dBu contour using the free space equation.

the facts and circumstances presented in the applicant's justification are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WIRQ(FM)'s request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BMJPED-20071022AEF IS HEREBY GRANTED subject to the following condition:

WIRQ(FM) will not be permitted to continue to operate if it causes any objectionable interference to WBER(FM), Rochester, New York (Facility ID No. 43523) or WXXI-FM, Rochester, New York (Facility ID No. 74218). If interference cannot be eliminated to the satisfaction of WBER(FM) or WXXI-FM by the application of suitable techniques, operation of WIRQ(FM) shall be suspended and shall not be resumed until the interference has been eliminated.

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

*Arthur E. Doak*

Arthur E. Doak  
Senior Engineer  
Audio Division  
Media Bureau

cc: WilmerHale  
Mr. Mark D. Humphrey