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Denise B. Moline, Esq.
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Re: WRMO(FM), Milbridge, Maine
Pine Tree Broadcasting, LLC
Facility ID No. 84096
File No. BPH-20121116AMF

Dear Counsel:

This letter is in reference to minor change application BPH-20121116AMF (the "Application") filed by Pine Tree Broadcasting, LLC ("Pine Tree"), licensee of commercial FM Station WRMO(FM) ("WRMO(FM)"), Milbridge, Maine, requesting modification of WRMO(FM)'s licensed facilities.¹ The Application proposes increasing the WRMO(FM) maximum effective radiated power ("ERP") to 27.0 kilowatts ("kW") and modifying the directional antenna pattern. To permit the changes proposed in the Application, Pine Tree requests processing of the Application pursuant to and waiver of Section 73.215 of the Commission's Rules ("Section 73.215").² For the reasons discussed below, we deny Pine Tree's waiver request and dismiss the Application.

Background. WRMO(FM) currently is licensed pursuant to Section 73.215 because the authorized facilities do not meet the minimum distance separation requirements of Section 73.207 of the Commission's Rules ("Section 73.207")³ toward the licensed facilities of Station WCTB(FM), Fairfield, Maine ("WCTB(FM)"),⁴ and Station WARX(FM), Lewiston, Maine ("WARX(FM)").⁵ The Application

¹ File No. BLH-20120321ADE. WRMO(FM), Facility ID No. 84096, is licensed to operate on channel 229B (93.7 megahertz ("MHz")) with 22.5 kW maximum ERP (DA, H&V) and 204 meters antenna height above average terrain ("HAAT") at a transmitter site described by geographic coordinates 44° 38' 33" North Latitude, 68° 10' 18" West Longitude, referenced to 1927 North American Datum ("NAD 27").

² 47 C.F.R. § 73.215.

³ 47 C.F.R. § 73.207.

⁴ File No. BLH-19940104KB. WCTB(FM), Facility ID No. 46353, is licensed to operate on channel 228C3 (93.5 MHz) with 10.5 kW ERP (H&V) and 152 meters antenna HAAT at a transmitter site described by geographic coordinates 44° 44' 42" North Latitude, 69° 41' 32" West Longitude, referenced to NAD 27. WRMO(FM) and WCTB(FM) are separated by 121.1 kilometers, 23.9 kilometers less than the 145 kilometers required by Section 73.207.

does not propose a change in the licensed WRMO(FM) station class or transmitter site location, so the proposed WRMO(FM) facilities remain short-spaced to WCTB(FM) and WARX(FM) pursuant to Section 73.207. Pine Tree acknowledges these short-spacings in the Application and requests processing of the Application pursuant to Section 73.215. Section 73.215 requires applicants to meet both the minimum distance separations and contour protection requirements specified therein. In the Application, Pine Tree states that the proposed WRMO(FM) facilities meet the minimum distance separation requirements of Section 73.215 to both WCTB(FM) and WARX(FM), but, using the standard contour prediction method in Section 73.313 of the Commission's Rules ("FCC prediction method"),⁶ create prohibited contour overlap with WCTB(FM) in violation of Section 73.215. Pine Tree reports that the FCC prediction method results in overlap of the proposed WRMO(FM) 54 dB μ F(50,50) protected contour and the assumed maximum permissible Class C3 WCTB(FM) 48 dB μ F(50,10) interfering contour in a 966.38 square kilometer area containing 74,973 persons.⁷ Pine Tree argues that anomalous and significant terrain between WRMO(FM) and WCTB(FM) warrants use of a supplemental coverage showing pursuant to Section 73.313(e) of the Commission's Rules⁸ to show that prohibited contour overlap between WRMO(FM) and WCTB(FM) would not occur, and requests waiver of Section 73.215, if necessary, to permit grant of the Application. Pine Tree submitted profile graphs of three radials between the WRMO(FM) and WCTB(FM) transmitter sites to show the terrain that it purports would prevent overlap of the WRMO(FM) protected and the WCTB(FM) interfering contours, as well as a map showing the WCTB(FM) interfering contour predicted using the Longley-Rice contour prediction methodology.⁹ Lastly, Pine Tree asserts that the grant of the waiver request and the Application would be in the public interest because additional WRMO(FM) service will be provided to 102,338 persons in 2,567.1 square kilometers of area within the WRMO(FM) 54 dB μ coverage contour by the facilities proposed in the Application.

Discussion. The Commission's Rules may be waived only for good cause shown.¹⁰ An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.¹¹ The Commission must give waiver requests "a hard look," but an applicant for waiver

⁵ File No. BMLED-20080324AHC. WARX(FM), Facility ID No. 26389, is licensed to operate on channel 230B (93.9 MHz) with 27.5 kW ERP (H&V) and 193 meters antenna HAAT at a transmitter site described by geographic coordinates 44° 08' 40" North Latitude, 70° 01' 22" West Longitude, referenced to NAD 27. WRMO(FM) and WARX(FM) are separated by 157.5 kilometers, 11.5 kilometers less than the required 169 kilometers.

⁶ 47 C.F.R. § 73.313.

⁷ 47 C.F.R. § 73.215(b)(2)(ii) requires applicants to predict contours for stations not authorized pursuant to Section 73.215 assuming maximum permissible facilities for the station's class.

⁸ 47 C.F.R. § 73.313(e).

⁹ See Rice, P.L., Longley, A.G., Norton, K.A., Barsis, A.P., "Transmission Loss Predictions for Tropospheric Communications Circuits," National Bureau of Standards Technical Note 101 (Revised). Volumes I and II, U.S. Department of Commerce, 1967.

¹⁰ 47 C.F.R. § 1.3.

¹¹ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir, 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

“faces a high hurdle even at the starting gate”¹² and must support its waiver request with a compelling showing.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹⁶

Pine Tree fails to present good cause for waiver of Section 73.215. Its reliance on the use of a supplemental showing permitted by Section 73.313(e) of the Commission's Rules¹⁷ as the basis for its waiver request is unavailing because that rule section deals with contour prediction in the context of coverage prediction, not interference prediction.

In sum, the Commission has waived Section 73.215(a) to allow otherwise-prohibited contour overlap only in very few and very narrow circumstances, none of which is present here. It has not accepted alternative propagation analyses in support of requests for waiver of the Section 73.215(a) contour overlap provisions. Changes in the Commission's practice in this regard would defeat the principal purpose of Section 73.215(a), i.e., to provide applicants with increased flexibility (relative to the Section 73.207 distance separation criteria) without burdening the Commission with complex, time-consuming and litigable waiver requests.¹⁸

The only public interest benefit cited by Pine Tree in support of its waiver request is expansion of the WRMO(FM) coverage area.¹⁹ Expansion of service alone has long been regarded as an insufficient basis for waiver of interference prohibitions.²⁰

For the reasons discussed above, we are denying Pine Tree's waiver request and dismissing its application for a construction permit.

¹² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (“*WAIT Radio*”). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

¹³ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

¹⁵ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (“*Network IP*”); *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ 47 C.F.R. § 73.313(e).

¹⁸ See *Lauren Colby et al*, Letter, 23 FCC Rcd 9971 (MB 2008) (citations omitted).

¹⁹ Pine Tree failed to specify the service status of the increased WRMO(FM) service area, i.e., if it contains previously unserved or underserved areas.

²⁰ See, e.g., *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974).

Actions. Accordingly, IT IS ORDERED that the request for waiver of Section 73.215 filed by Pine Tree IS DENIED. IT IS FURTHER ORDERED that the Pine Tree application for a construction permit, File No. BPH-20121116AMF, IS DISMISSED.

Sincerely,



Susan N. Crawford
Assistant Chief
Audio Division
Media Bureau

cc: Pine Tree Broadcasting, LLC
Danny Langston