

FEDERAL COMMUNICATIONS COMMISSION
445 Twelfth Street, S.W.
WASHINGTON DC 20554

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MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio

PROCESSING ENGINEER: Harding.Chism
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: Harding.Chism@fcc.gov

Creative Educational Media Corporation, Inc.
P.O. Box 1924
Tulsa, Oklahoma 74101

In re: Creative Educational Media
Corporation, Inc.
WYCS(FM), Yorktown, VA
Facility Id # 66672
BMPED-20070907ACI

Dear Applicant:

This letter is in reference to the above-captioned minor change application filed to modify WYCS's¹ construction permit BPED-20050208ACF. The application proposes to change the effective radiated power, the antenna height and site location. WYCS also requests waiver of the contour overlap provisions of 47 C.F.R. Section 73.509 of the Commission's Rules.² For the reasons stated below, we deny WYCS's waiver request and dismiss the application.

Waiver Request

An engineering review reveals that WYCS's proposal would result in prohibited contour overlap of second-adjacent-channel Station WNSB(FM), Norfolk, Virginia, in violation of Section 73.509 of the Rules. Specifically, WYCS's proposed 100 dBu interfering contour would overlap WNSB(FM)'s 60 dBu protected contour. WYCS's acknowledges the proposed overlap caused to WNSB(FM) and requests waiver of Section 73.509 of the Commission's Rules.

In support of its waiver request, WYCS states that the 100 dBu interfering contour of its licensed auxiliary overlaps the 60 dBu protected contour of WNSB(FM) and that the overlap area of 6.72 square kilometers has a population of 9,749 people. WYCS's indicates that its proposed 100 dBu interfering contour will also overlap the 60 dBu protected contour of WNSB(FM) and that the overlap area of 6.38 kilometers will contain a population of 8,732 people. Therefore, WYCS states that its proposal will result in a reduction in overlap area of 0.34 square kilometers, along with a reduction in population in that overlap area of 1,017 people. Furthermore, WYCS claims that there have been no complaints of interference to the WNSB signal as a result of the auxiliary operation. Accordingly, WYCS concludes that waiver of § 73.509 is warranted in this instance.

¹ WYCS(FM)'s present authorization, license file No. BMLED-20000407ACK.

² See. 47 C.F.R. § 73.509

Discussion

Auxiliary facilities are defined as emergency backup facilities available for use during specific instances when the main facility is inoperable. Therefore, the temporary overlap from the auxiliary's 100 dBu interfering contour is not existing. Only overlap from the permanent main facility can be considered existing overlap. The licensed auxiliary facility would not have been granted as a main facility and thus, can not be used to establish existing overlap.³

Allowing applicants to create new prohibited contour overlap effectively nullifies the protection mandated by § 73.509 to noncommercial educational FM stations' 60 dBu protected service areas. In particular, the affected station would lose service area and population served without receiving any benefit in return. This interference interrupts the continuity of existing service provided by WYCS throughout its protected service area, and thus diminishes the quality of FM service provided by the afflicted station.⁴ 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. As the Commission stated in *Open Media Corp.*, 8 FCC Rcd at 4070, 4071:

It is the overall scheme of [noncommercial educational FM] allocations which is paramount, and when faced with a choice between a larger service area with overlap received on one hand, and lesser coverage with no prohibited overlap on the other, the Commission favors the latter. *See Educational Information Corporation*, 6 FCC Rcd 2207, 2208 (1991).

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 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, WYCS proposes to cause prohibited overlap and create new interference. Additionally, review of our records reveals that there is no precedent for waiver of § 73.509 based on the circumstances and evidence presented by WYCS, nor has WYCS cited any precedent.

Additionally, the type of interference caused by the proposed facility may not be recognized by listeners as interference. Specifically, if interference were to occur, the results of third-adjacent channel interference is the replacement of one signal by another (not complete loss of service) and greatly depends on the quality of the receivers in use. Further, it is the Commission's charge, not applicants or licensees, to establish definitions of protected service and to ensure that existing protected service does not suffer interference. The goal of § 73.509 is to prevent overcrowding

³ The sole requirement for auxiliary facilities is that the 60 dBu contour must lie within the 60 dBu contour of license. WYCS's auxiliary license (BXLED- 20050303AAQ) complies with this rule.

⁴ 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).

of FM stations and provide a consistent, fair, efficient, and equitable distribution of FM facilities as required by Section 307(b) of the Communications Act.⁵

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 to, Creative Educational Media Corporation, Inc. is in the public interest.

Accordingly, Creative Educational Media Corporation, Inc.'s request for waiver is DENIED and application BMPED-20080907ACI being unacceptable for filing IS DISMISSED. 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".

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Cary S. Tepper, Esq.
Clarence M. Beverage

⁵ See Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas, 6 FCC Rcd 5356, 5358 (1991) (para. 13).