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WVRM, Inc.
76 National Road
Edison, NJ 08817

In re: WDDM(FM), Hazlet, NJ
Facility ID No.: 70644
WVRM, Inc.
BPED-20120125ACH

Dear Applicant:

This letter is in reference to the above-captioned application to change channels from Channel 207D to Channel 284D, and modify transmitter site and antenna height.¹ WDDM also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant WDDM's waiver request and the application.

Section 73.509 Waiver Request

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 73.509 with respect to: (1) the second-adjacent channel Class B license (BLH-19960426KA) of WAXQ(FM), New York, NY and (2) the second-adjacent-channel Class B license (BLH-19940204KB) of WWPR-FM, New York, NY. Specifically, WDDM's interfering contour (100 dBu)² is entirely encompassed by the protected contours (60 dBu) of WAXQ and WWPR-FM. WDDM recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, WDDM states that the proposed change in channel is necessary because WDDM was displaced by the operation of FM Station WFJS-FM, Freehold, NJ.³ In addition, WDDM claims that there are no channels from the proposed transmitter location available except for Channel 284. With regard to the technical facilities, WDDM argues that the proposed interfering contour will encompass less than 1 percent of the total land area within WAXQ and

¹ WDDM is licensed on Channel 207D with a maximum ERP of 10 watts and an antenna height above average terrain ("HAAT") of 38 meters.

² 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 WDDM to use the 100 dBu contour.

³ WFJS-FM was granted license BLED-20110504ABT on May 11, 2011. WDDM went silent on May 16, 2011.

WWPR-FM's protected contours. Furthermore, WDDM cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), where the Commission previously approved prohibited contour overlap in cases where the interference area was "less than 1 percent." Accordingly, WDDM concludes that the overlap is *de minimis* and that grant of this waiver request would serve the public interest.

Discussion

WDDM's proposal is both unique and compelling and warrants a waiver of § 73.509(b). First, WDDM was displaced by WFJS-FM and cannot specify fully rule compliant alternative facilities in this very congested radio market. In addition, our studies indicate that the interference area will consist of only 0.15 square kilometers,⁴ much less than 1 percent of the protected contours of WAXQ and WWPR-FM. WDDM has also submitted an extensive analysis of the entire FM band in this market and it is clear that Channel 284 is the best available channel. Furthermore, we note that WAXQ and WWPR-FM have not filed an objection to this application and WDDM has agreed to resolve any instances of actual interference. Finally, the proposal put forth by WDDM is consistent with 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 WDDM 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 WDDM 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 WAXQ and WWPR-FM, we will include conditions on WDDM's authorization requiring it to remedy any complaints of interference to WAXQ and WWPR-FM caused by its operation on Channel 284.

⁴ This value is calculated after determining the radius of a 100 dBu contour using the free space equation.

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 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, WDDM's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, application File No. BPED-20120125ACH IS HEREBY GRANTED subject to the following conditions:

WDDM will not be permitted to continue to operate if it causes any objectionable interference to WAXQ(FM), Facility ID# 23004, New York, NY. If interference cannot be eliminated to the satisfaction of WAXQ by the application of suitable techniques, operation of WDDM shall be suspended and shall not be resumed until the interference has been eliminated.

WDDM will not be permitted to continue to operate if it causes any objectionable interference to WWPR-FM, Facility ID# 6373, New York, NY. If interference cannot be eliminated to the satisfaction of WWPR-FM by the application of suitable techniques, operation of WDDM 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,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Cary S. Tepper, Esq.