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Central Florida Educational Foundation, Inc.
1065 Rainer Drive
Altamonte Springs, FL 32714

In re: WPOZ(FM), Union Park, FL
Facility ID# 9876
Central Florida Educational Foundation, Inc.
BMPED-20070828ACD

Dear Applicant:

This letter is in reference to the above-captioned minor change application to modify effective radiated power and height. WPOZ also requests waiver of the contour overlap provisions of 47 C.F.R § 73.509. For the reasons stated below, we grant WPOZ's waiver request and application.

Waiver Request

An engineering study of the application revealed that it is in violation of 47 C.F.R. § 73.509 with respect to third adjacent channel Class C2 license (BLED-20070213ABH) and construction permit (BMPED-20061102ACB) for WKTO(FM), Edgewater, FL. Specifically, the proposed protected contour (60 dBu) would receive prohibited overlap from the interfering contours (100 dBu) of WKTO. WPOZ recognizes these violations and requests waiver of the contour overlap provisions of § 73.509

In support of the waiver request, WPOZ states that it will not cause interference to WKTO. WPOZ also believes that the total area of overlap constitutes less than 1% of the area and less than 0.3% of the population within WKTO's 60 dBu contour. In addition, WPOZ claims that the proposed facilities would increase its overall coverage area by 3,499 square kilometers (a 42% increase). Furthermore, WPOZ indicates that the proposed facilities will provide new service to an estimated 240,498 persons, which is an increase of 14%. Finally, WPOZ cites *Educational Information Corporation,* 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances. WPOZ considers the affected area to be *de minimis*, and when considered along with the increased service area, WPOZ concludes that waiver of § 73.509 is warranted in this case.

Discussion

WPOZ's request to receive third adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that case it was stated that:

> The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

Conclusion

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 is sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, WPOZ's request for waiver of § 73.509 IS HEREBY GRANTED. Furthermore, Application File No. BMPED-20070828ACD IS HEREBY GRANTED subject to the following conditions:

> Further modification of WKTO(FM), (Facility ID No. 42684), Edgewater, FL will not be construed as a *per se* modification of WPOZ's construction permit (BMPED-20070828ACD). (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

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: Harry C. Martin, Esq.