

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
City of North Miami Beach, Florida)	File No. 0007943788
)	
Request for Waiver of Section 90.242(a)(2)(i) of the Commission's Rules)	

ORDER

Adopted: May 3, 2018

Released: May 3, 2018

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On September 29, 2017, the City of North Miami Beach, Florida (North Miami Beach, or the City), filed an application and waiver request for a new Travelers Information Station (TIS).¹ North Miami Beach requests TIS operation on frequency 1610 kHz in the AM radio band. The City requests a waiver of Section 90.242(a)(2)(i) of the Commission's rules, which requires a separation of 15 kilometers between a TIS transmitter and the 0.5 mV/m daytime contour of an adjacent channel AM broadcast station.² For the reasons we discuss herein, we grant the request for waiver.

II. BACKGROUND

2. North Miami Beach has special temporary authority to operate the proposed system until March 26, 2018.³ It seeks a waiver of the provision, in Section 90.242(a)(2)(i), that the measurement of distance from the proposed TIS to the 0.5 mV/m daytime contour of a first-adjacent broadcast station must be orthogonal (*i.e.*, perpendicular) to the contour.⁴ The City asserts that it satisfies the distance requirement with respect to the closest point at which the contour falls over land. Station WPOM operates on frequency 1600 kHz in Riviera Beach, Florida, to the north of the City. Station WPOM's coverage contour extends east over the Atlantic Ocean while limiting coverage to the north, west, and south.⁵ To the south of the station, the 0.5 mV/m contour follows a nearly vertical path over the Atlantic Ocean and intersects the shoreline near Fort Lauderdale, Florida, to the north-northeast of the City.⁶ The contour-shoreline intersection point is the WPOM contour's closest point on land to the City's proposed TIS site at 19 kilometers distant, but this distance is not measured orthogonal to the WPOM contour.⁷

¹ File No. 0007943788 (filed Sept. 29, 2017, amended Oct. 13, 2017 and Oct. 24, 2017), attached Waiver Request.

² 47 CFR § 90.242(a)(2)(i) ("the transmitting site of the Travelers' Information Station will be located at least 15 km (9.3 miles) measured orthogonally outside the measured 0.5 mV/m daytime contour (0.1 mV/m for Class A stations) of any AM broadcast station operating on a first adjacent channel"). *Id.*

³ See call sign WRAA925.

⁴ Waiver Request, 9/29/2017 Supplement at 1.

⁵ See <https://www.fcc.gov/media/radio/map-display#appid=529579%26antsysid=70999%26call=WPOM%26freq=1600%26contour=0.5%26city=RIVIERA+B EACH%26state=FL%26fileno=BL-20001003AFD%26.map> (last visited Feb. 2, 2018).

⁶ See *id.*

⁷ Waiver Request at 1. See also Attachment A of this Order, Figure 1 showing a zoomed-in map from <https://www.fcc.gov/media/radio/map->

An orthogonal measurement to the WPOM contour's closest point measures approximately 7 kilometers and thus does not satisfy the separation requirement, but the contour is over sea water at that point.⁸

3. While the issue described above might be avoided by employing other AM band frequencies, the City argues that frequency 1610 kHz is the only frequency that will provide satisfactory TIS operation. It states that “the only location the City has for the TIS antenna is on a (flat) roof of a City building,”⁹ and that “TIS antennas require ground planes installed beneath the vertical portion of the antennas due to AM’s long wavelengths.”¹⁰ The City also argues that “the frequency must be toward the top of the band so that the ground plane is small enough in size so that it can be accommodated in the limited area available on a building roof.”¹¹ Additionally, it contends that “high-band AM frequencies are more suitable ... because the signals of cochannel broadcast stations fade more quickly on high frequencies, making the channel quieter for TIS operations.”¹² The City asserts that “1610 is the only useable AM frequency at the upper end of the band on which the city can demonstrate sufficient distance (9.3 miles) from other cochannel TIS stations in the vicinity, and 9.3 miles from the 0.5 mV/m contours of [adjacent channel] broadcast stations as measured over land.”¹³ It contends that low band AM frequencies are not suitable due to “limited roof area available.”¹⁴

III. DISCUSSION

4. Section 1.925(b)(3) of the Commission’s rules provides that: “the Commission may grant a request for waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”¹⁵ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁶ Based on the information before us, we are persuaded that North Miami Beach has demonstrated that a waiver of Section 90.242(a)(2)(i) is warranted.

5. Under the first prong of the waiver standard, the City argues that “the application of the rule regarding orthogonal measurement would frustrate the underlying purpose for these rules which is

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[display#appid=529579%26antsysid=70999%26call=WPOM%26freq=1600%26contour=0.5%26city=RIVIERA+B EACH%26state=FL%26fileno=BL-20001003AFD%26.map](#) with overlaid illustrations and labels.

⁸ Attachment A, Figure 1. In further support of its waiver request, the City filed an undated statement from Information Station Specialists, Inc. indicating that “an acute angle was required for the measurement to be to the nearest point over land.” See File No. 0007943788, attachment filed Oct. 24, 2017; Waiver Request at 1.

⁹ File No. 0007943788, attached Support Statement (filed Oct. 24, 2017) (Support Statement) at 1.

¹⁰ *Id.* A ground plane is “a ground plate or an underground mesh of radial wires connected to a vertical antenna (ground plane antenna) that is grounded in order to provide suitable radiation characteristics.” See <http://www.dictionary.com/browse/ground-plane> (last visited Feb. 2, 2018).

¹¹ Support Statement at 1.

¹² *Id.*

¹³ *Id.* See 47 CFR § 90.242(a)(2)(i), (b)(5)(iii).

¹⁴ Support Statement at 2.

¹⁵ 47 CFR § 1.925(b)(3).

¹⁶ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

non-interference.”¹⁷ It states, “[i]t is clear that interference will not result due to the sufficient first-adjacent separation distance, which is 11.7 mi/19 km.”¹⁸ The purpose of the rule is to prevent interference from TIS to broadcast stations.¹⁹ Strict application of the rule would protect the Station WPOM 0.5 mV/m daytime contour over the Atlantic Ocean, where the potential listening audience is negligible compared to land. We note that the Commission’s interference protection rules for AM broadcast stations do not apply to areas of interference entirely over sea water.²⁰ The separation of 19 kilometers to the contour’s closest point on land gives us confidence that the TIS station will not result in actual harmful interference to Station WPOM’s listening audience, consistent with the underlying purpose of Section 90.242(a)(2)(i). We also note that the TIS has been operating pursuant to Special Temporary Authority since October 19, 2017, and we are unaware of any interference complaints filed by the listening public or WPOM. Therefore, we find that the underlying purpose of the rule would not be served or would be frustrated by application to the present case.

6. Next, the City states that “the purpose of the proposed service is clearly in the public interest and for public safety.”²¹ It observes that, “[f]ollowing Hurricane Irma, the city attests that this service will be utilized to ‘provide emergency and life-saving communications during and after this and other extreme weather events where large portions of the city are without power or have a weak cellular service.’”²² In addition, it states that “[t]he intended purpose of the proposed Traveler’s Information Station(s) is to broadcast traffic and road conditions; traffic hazard and travel advisories; directions; availability of lodging, rest stops and service stations; descriptions of local points of interest.”²³ “In emergencies, it may broadcast in accordance with FCC [Sections] 90.405 and 90.407 per FCC Rules [Section] 90.242(a)(7).”²⁴ Based on the record before us, we find that a grant of the City’s request for waiver would serve the public interest. Therefore, we conclude that North Miami Beach satisfies the Commission’s waiver criteria.

¹⁷ Waiver Request at 1.

¹⁸ *Id.*

¹⁹ Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, *Report and Order*, 67 FCC 2d 917, 924 para. 24 (1977) (*TIS Report and Order*).

²⁰ See 47 CFR § 73.37 Note 2. “The provisions of this section concerning prohibited overlap of field strength contours will not apply where: (1) the area of overlap lies entirely over sea water.” *Id.*

²¹ Waiver Request at 1.

²² *Id.*

²³ *Id.*

²⁴ *Id.* See 47 CFR §§ 90.242(a)(7), 90.405, 90.407. 47 CFR § 90.242(a)(7) provides “Travelers’ Information Stations shall transmit only noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest. It is not permissible to identify the commercial name of any business establishment whose service may be available within or outside the coverage area of a Travelers’ Information Station. However, to facilitate announcements concerning departures/arrivals and parking areas at air, train, and bus terminals, the trade name identification of carriers is permitted. Travelers’ Information Stations may also transmit information in accordance with the provisions of §§90.405 and 90.407.” 47 CFR § 90.405(a)(1) provides that stations licensed under this part may transmit “any communication related directly to the imminent safety-of-life or property.” 47 CFR § 90.407 provides that “[t]he licensee of any station authorized under this part may, during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster, utilize such station for emergency communications in a manner other than that specified in the station authorization or in the rules and regulations governing the operation of such stations.”

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver of the City of North Miami Beach, Florida, filed on September 29, 2017, IS GRANTED.

8. IT IS FURTHER ORDERED, that application File No. 0007943788, filed by the City of North Miami Beach, Florida, SHALL BE PROCESSED in accordance with this *Order* and the Commission's rules.

9. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

ATTACHMENT A

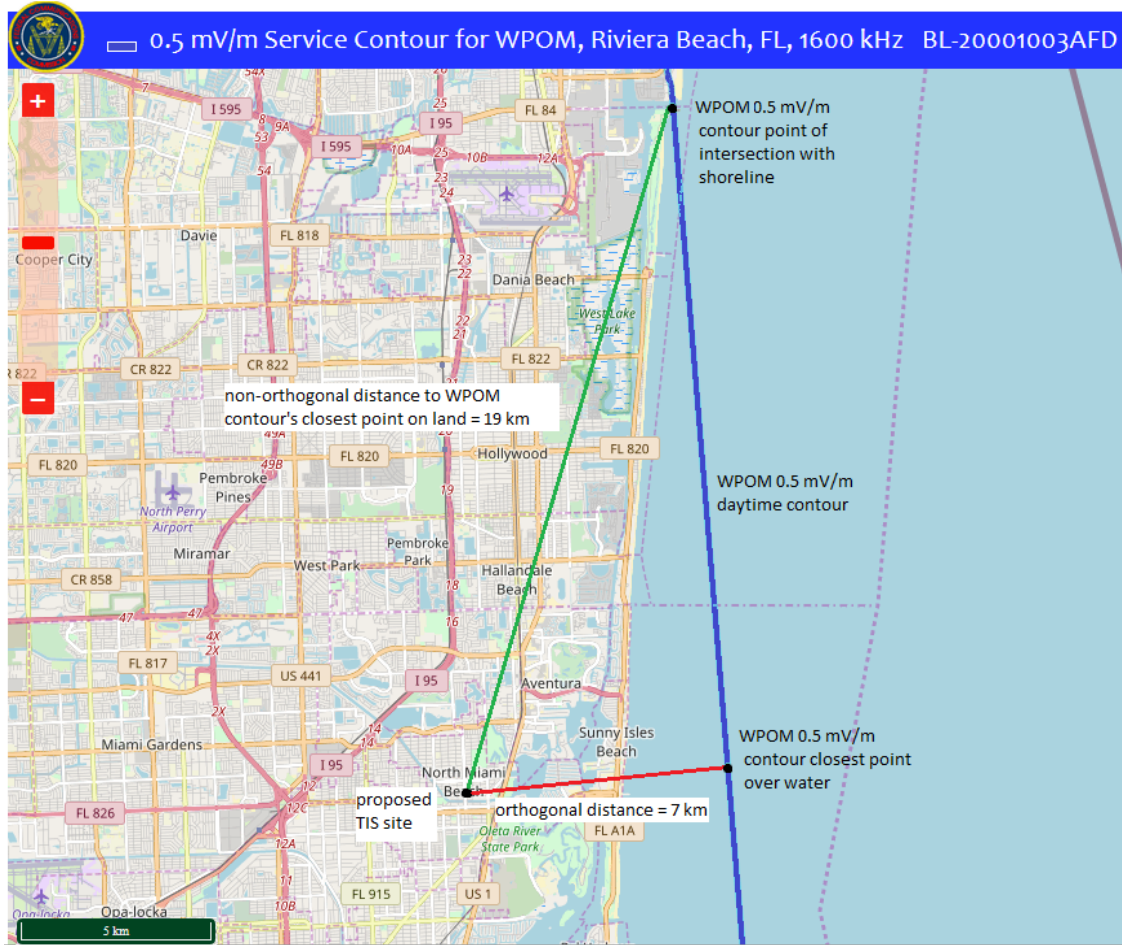


Figure 1