



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

DA 23-112

In Reply Refer to:

1800B3-CEG

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In re: **WMFL(FM), Florida City, Florida**
Facility ID No. 61088
Application File No. 186693 (modification)

WDNA(FM), Miami, Florida
Facility ID No. 4030

Informal Objection

Dear Applicant and Counsel:

We have before us the above-referenced application (Application) for a minor modification of the facilities of noncommercial educational (NCE) station WMFL(FM), Florida City, Florida (WMFL or Station), filed by Call Communications Group, Inc. (Call) on March 15, 2022. In the Application, Call seeks to increase the Station's operating power, relocate its transmitter site, and change its community of license (from Florida City, Florida, to Palmetto Bay, Florida).¹ To accommodate this move, Call requests waiver of section 73.509(a) of the Commission's rules (Rules)² to change the existing prohibited contour overlap between WMFL and second-adjacent channel NCE station WDNA(FM), Miami, Florida (WDNA) (Waiver Request).³ On June 3, 2022, Bascomb Memorial Broadcasting Foundation (Bascomb),

¹ As an intra-urban move within the Miami, Florida, Urbanized Area, that will result in a net gain of 374,131 persons, we find that Call's community of license change is a preferential arrangement of allotments under Priority 4. See 47 U.S.C. §307(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12841, para. 19 (2012).

² See 47 CFR § 73.509(a).

³ Prohibited overlap occurs when a station's interference contour overlaps another station's service contour. The terms "overlap caused" and "overlap received" are used in reference to a specific station proposing a facility change. If Station A is proposing to expand its service contour and the new service contour will be overlapped by Station B's interference contour, Station A is said to receive overlap from B. If station B is proposing to increase its facilities so that its proposed interference contour would overlap Station A's service contour, Station B is said to cause overlap.

licensee of WDNA, filed an informal objection to the Application (Objection).⁴ For the reasons stated below, we deny the Objection and grant the Application.

In 1996, Bascomb applied for a construction permit to upgrade WDNA from a 1 kW Class A to a 7.4 kW Class C2 station.⁵ The proposed upgrade required a waiver to allow WDNA to receive prohibited overlap from WMFL. Such a waiver, allowing an NCE station to receive—not cause—overlap from second- or third- adjacent channel stations, is commonly known as a *Raleigh* waiver.⁶ In 1997, the Bureau granted the waiver request and issued a construction permit to Bascomb.⁷ When it granted WDNA’s license to cover in 2006, the Bureau imposed the standard condition for *Raleigh* waivers—Special Operating Condition #2, which states, “Further modifications of [WMFL] will not be construed as a per se modification of WDNA’s license.”⁸ Therefore, an area of waived overlap “caused” by WMFL and “received” by WDNA has existed since at least 2006 (WDNA Waiver).

On March 15, 2022, Call filed the Application to relocate the WMFL transmitter. This proposal would also change the location of the existing caused overlap area, reduce the land area of the overlap, and increase the population within the overlap area.⁹ Bascomb objects to the Application on the basis that the proposed facility would cause, not receive, prohibited contour overlap with WDNA and therefore does not qualify for a *Raleigh* waiver.¹⁰ In the Opposition, Call contends that Special Operating Condition #2 on the WDNA license allows WMFL to relocate despite continuing to cause prohibited overlap.¹¹ In the Reply, Bascomb contends that Special Operating Condition #2 is not “complete carte blanche to make any change it wants no matter how extreme” and that the waiver must still be judged to be in the public interest.¹²

An informal objection must provide properly supported allegations of fact which, if true, would establish a substantial and material question of fact regarding whether grant of the application in question would be consistent with the public interest, convenience and necessity.¹³ Bascomb has failed to meet this burden. In the Application, Call seeks to exercise the flexibility to modify the WMFL facilities that

⁴ Pleading File No. 192930. On June 8, 2022, Call filed an opposition to the Objection (Opposition) (Pleading File No. 193096). On June 22, 2022, Bascomb filed a reply to the Opposition (Reply) (Pleading File No. 193733).

⁵ See Application File No. BPED-19960614MA (granted July 14, 1997).

⁶ See *Educational Information Corporation*, Memorandum Opinion and Order, 6 FCC Rcd 2207, 2208 (1991) (*Raleigh*).

⁷ *John Crigler, Esq.*, Letter Decision, Application File No. BPED-960614MA (MB 1997).

⁸ See Application File No. BLED-19990308KG (granted Aug. 23, 2006).

⁹ See Opposition at 1; Reply at 2. Bascomb claims that the population within the overlap area would increase from zero to 12,373 people. Reply at 2.

¹⁰ Opposition at 1-3; Reply at 2-3. Bascomb also argues that the proposed facilities would create new prohibited overlap with co-channel station WKPX(FM), Sunrise, Florida, and first-adjacent channel station WGNK(FM), Pennsuco, Florida and violate section 73.316(b)(1) of the Rules, which prohibits proposals for directional antennas that specify a ratio of maximum to minimum radiation in the horizontal plane of more than 15 dB. Objection at 2-3 (citing 47 CFR § 73.316(b)(1)). On November 14, 2022, Call amended the Application to correct these issues. See Opposition at 1. Therefore, we do not consider these objections further here.

¹¹ Opposition at 1 (“WMFL is the ‘other side of the coin’ station of the 73.509 waiver that Bascomb’s WDNA has enjoyed for nearly 25 years”).

¹² Reply at 2.

¹³ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

was built into the 2006 WDNA Waiver.¹⁴ It does not require an additional waiver to do so. Any *Raleigh* waiver—including the WDNA Waiver—is “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.”¹⁵ As the Commission stated in *Raleigh* and in the letter granting the WDNA Waiver, the rationale for this special operating condition is “the concern for the ability of the stations causing interference to make any future changes in their own facilities.”¹⁶ Neither *Raleigh* nor Special Operating Condition #2 limits the size, location, or population covered of such future modified caused overlap areas. Because the express terms of the WDNA Waiver allow future modifications to the existing overlap area caused by WMFL and received by WDNA, we deny the Objection and grant the Application.

For the reasons stated above, IT IS ORDERED that the informal objection filed by Bascomb Memorial Broadcasting Foundation (Bascomb) on June 3, 2022, IS DENIED and the application for a minor modification of station WMFL(FM), Florida City, Florida, filed by Call Communications Group, Inc. on March 15, 2022, IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁴ See also *Raleigh*, 6 FCC Rcd at 2208.

¹⁵ *Id.*

¹⁶ *Id.*