

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

In the Matter of
County of Miami-Dade, Florida
Licensee of TIS WQAW405
Request for Waiver of Section 90.242(b)(4)(iii)
and (iv) of the Commission's Rules
File No. 0007127177

ORDER

Adopted: May 25, 2017

Released: May 25, 2017

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

I. INTRODUCTION

1. On February 4, 2016, the County of Miami-Dade, Florida (Miami-Dade or County) filed an application and request for waiver (Waiver Request) to modify its Travelers Information Station (TIS) WQAW405 by expanding its service area. Miami-Dade's TIS is located at Miami International Airport (MIA) and operates on frequency 1610 kilohertz in the AM radio band. Miami-Dade requests a waiver of Section 90.242(b)(4)(iii) and (iv) of the Commission's rules, which limit TIS output power to 10 watts and impose a 2-millivolt per meter (mV/m) field strength limit at 1.5 kilometers from TIS transmitters, respectively, so that it may increase its output power to 30 watts. The City of Fort Lauderdale, Florida (Fort Lauderdale) filed a petition to deny the Waiver Request (Petition). For the reasons discussed herein, we grant the Petition, considered as an informal request for Commission action, deny the Waiver Request, and dismiss the application.

II. BACKGROUND

2. MIA serves 45 million passengers each year and is the country's second-busiest airport for international passengers. The County seeks a power increase to facilitate MIA's efforts "to provide emergency communications to the traveling public in the event of a terrorist attack and to assist with daily emergencies that occur." The County argues that "the limited coverage area of the station today restricts

1 File No. 0007127177 (filed Feb. 4, 2016), attached Letter from Cindy Cast, Radio Systems Manager, Miami-Dade County, to Wireless Telecommunications Bureau, Federal Communications Commission (Waiver Request).

2 Waiver Request at 1.

3 47 CFR § 90.242(b)(4)(iii)-(iv). "Transmitter RF output power shall not exceed 10 watts to enable the user to comply with the specified field strength limit." "The field strength of the emission on the operating frequency shall not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 km (0.93 miles) from the transmitting antenna system." Id.

4 Waiver Request at 1. Miami-Dade did not provide an estimate of the new coverage radius of its 2 mV/m contour.

5 Letter from Gary Gray, Assistant Telecommunications Manager/Radio Systems Manager, City of Fort Lauderdale, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Mar. 21, 2016) (Petition).

6 Waiver Request at 1.

7 Id.

the information to travelers already driving in the vicinity of the airport.”⁸ The County seeks to expand the area where TIS communication is provided, citing the possibility that “[i]f the airport is closed or operations are restricted during an emergency security incident, it may prove imperative to keep people away from the airport or guide them to alternative locations.”⁹ The County states that “[e]mergency communication can best be accomplished by increasing the radio station’s coverage area.”¹⁰ In support of its request for waiver, Miami-Dade states, “[t]here are no broadcast stations operating on 1610 kHz in the local Miami-Dade County area.”¹¹

3. On March 21, 2016, Fort Lauderdale filed a petition to deny the Waiver Request. Fort Lauderdale operates co-channel TIS Station WPZK221 at a distance of 38.8 kilometers (24.1 miles) from the County’s TIS. Fort Lauderdale complains that it “[has] not been contacted by MIA for permission to make such a power increase.”¹² Fort Lauderdale cites Section 90.242(b)(7) of the Commission’s rules,¹³ which states that an applicant desiring to locate a station that does not comply with the minimum separation requirement (in this case, 15 kilometers (9.3 miles))¹⁴ shall coordinate with the affected station. Fort Lauderdale argues that the County’s request for 30 watts “affects what needs to be our separation from MIA’s 1610 TIS.”¹⁵ Fort Lauderdale argues that its “fringe coverage will definitely be degraded by the tripling of MIA’s output power.”¹⁶ Fort Lauderdale also requests that the FCC require MIA to conduct a professional engineering study “to show how much the proposed increase, if granted, would affect our operations, prior to any grant of such a waiver.”¹⁷

III. DISCUSSION

4. As an initial matter, we note that petitions to deny do not lie against TIS applications.¹⁸ However, we will treat Fort Lauderdale’s filing as an informal request for Commission action pursuant to Section 1.41 of the Commission’s rules.¹⁹ As to Fort Lauderdale’s arguments, we note first that Section 90.242(b)(7) only requires coordination with affected stations if the applicant is “desiring to locate a station that does not comply with the separation requirements of this section.”²⁰ Miami-Dade’s TIS is 38.8 kilometers separated from Fort Lauderdale’s TIS, which satisfies the required minimum distance of 15 kilometers. However, the 15 kilometer distance restriction was premised on the TIS operating at 10 watts power and Miami-Dade’s proposal is for 30 watts. At this higher power, the 15 kilometer restriction would not provide adequate interference protection to and from other nearby TIS. Thus,

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Petition at 1.

¹³ *Id.* citing 47 CFR § 90.242(b)(7).

¹⁴ 47 CFR § 90.242(b)(5)(iii).

¹⁵ Petition at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See 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*, Report and Order, 67 FCC 2d 917, 922, para. 17 (1997) (*TIS Report and Order*); 47 U.S.C. §§ 309(b), (d).

¹⁹ 47 CFR § 1.41.

²⁰ 47 CFR § 90.242(b)(7).

because Miami-Dade's proposal does not comply with either the TIS output power limit or the field strength limit, and given the proximity of the stations, Miami-Dade should have coordinated its proposal with Fort Lauderdale.

5. Second, Fort Lauderdale requested that Miami-Dade provide a professional engineering study to show how much the proposed increase, if granted, would affect Fort Lauderdale's operations.²¹ Section 90.242 does not set forth any TIS-to-TIS interference protection standards beyond a minimum distance separation requirement of 15 kilometers between 10-watt co-channel stations using conventional antennas.²² Commission staff conducted its own contour overlap analysis of Miami-Dade's existing and proposed TIS operations compared to Fort Lauderdale's TIS and another co-channel TIS in the vicinity, Station WPDA943, licensed to the City of Sunrise, Florida (Sunrise). We found it appropriate to apply the AM broadcast co-channel protection criteria²³ because the TIS service operates in the AM radio band. According to Section 73.37 of the Commission's rules, no application will be accepted for a change of the facilities of an existing station if the proposed change would involve overlap of contours of other stations where there is not already such overlap.²⁴ If such overlap already exists, the total area of overlap with those stations cannot be increased.²⁵

6. Based on the Section 73.37 criteria, the Commission staff analysis predicts that Miami-Dade's licensed 10-watt 0.025 mV/m contour overlaps the licensed 0.500 mV/m contours of the Fort Lauderdale and Sunrise TIS facilities. Additionally, our study predicts that the licensed 0.025 mV/m contours of the Fort Lauderdale and Sunrise TIS facilities overlap the licensed 0.500 mV/m Miami-Dade TIS contour. Thus, the licensed Miami-Dade TIS facilities – even at 10 watts power – are predicted to both cause overlap to and receive overlap from the licensed Fort Lauderdale and Sunrise TIS facilities.²⁶ If Miami-Dade's TIS output power were increased to 30 watts, our analysis predicts that the areas of contour overlap between the stations, both caused and received, would increase significantly. Thus, even though Miami-Dade's licensed TIS facilities fit the exception for existing contour overlap, the proposed Miami-Dade 30-watt TIS would increase existing overlap, both caused and received, and therefore fails to satisfy the rule's provision that the total area of existing overlap with those stations cannot be increased. For this reason, we conclude that Miami-Dade's proposal could degrade the TIS operations of Fort Lauderdale and Sunrise.

7. Third, in light of the outcome of this contour overlap analysis, we consider Fort Lauderdale's opposition to the Waiver Request. 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."²⁷ An applicant seeking a

²¹ Petition at 1.

²² 47 CFR § 90.242(b)(5)(iii).

²³ 47 CFR § 73.37.

²⁴ 47 CFR § 73.37(a). For co-channel, non-class A stations, the rule provides two sets of signal strengths for analyzing contour overlap between proposed and existing stations. The first set of signal strengths are 0.025 mV/m for the proposed station versus 0.500 mV/m for any other station. The second set of signal strengths are 0.500 mV/m for proposed station versus 0.025 mV/m for any other station. *Id.*

²⁵ 47 CFR § 73.37 Note 1.

²⁶ Thus, a certain amount of interference is anticipated even when TIS operate in conformity to the rules, something consistent with the fact that TIS are intended to serve a relatively small 3 kilometer zone. *TIS Report and Order* at 925, para. 27.

²⁷ 47 CFR § 1.925(b)(3).

waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²⁸ Based on the information before us, we are not persuaded that a waiver of Section 90.242(b)(4)(iii) and (iv) is warranted.

8. The underlying purpose of the rules governing the power level and contour restrictions applicable to TIS stations is to limit the potential to cause interference.²⁹ When the Commission adopted the TIS rules, it stated that TIS “is intended to serve a 3 km zone with generally repetitive information pertinent to travelers.”³⁰ In limiting the TIS coverage zone, the Commission primarily was motivated to minimize the potential for TIS to cause interference.³¹ The Commission therefore adopted rules to limit the measured field strength at 1.5 kilometers from the transmitting site, limit the maximum antenna height, and limit the transmitter output power to ten watts.³² In “cases in which several jurisdictions, each with a specific need for TIS, are confined within a relatively small geographic area,” as is the case in the Miami and Fort Lauderdale metropolitan area, the Commission “strongly urge[d] that the coverage area to be served by each TIS be confined to the licensee’s area of jurisdiction ...”³³

9. Based on our contour overlap analysis, we find that the County’s proposal would not protect co-channel TIS operations of Fort Lauderdale and Sunrise from potential harmful interference. Under the first prong of the waiver standard, we find that a waiver would be inconsistent with the underlying purpose of Section 90.242(b)(4)(iii) and (iv). Therefore, we find that the underlying purpose of the rule is served by application to the present case. Under the second prong of the waiver standard, application of the rules serves the public interest by protecting Fort Lauderdale and Sunrise’s current TIS operations from further degradation. Finally, Miami-Dade has not demonstrated that it has no reasonable alternative. For example, the County may apply for authorization to place one or more 10-watt TIS transmitters in the outlying vicinity of MIA to provide traffic information to travelers en route to MIA. Alternatively, the County may select a different frequency, provided it does not present a risk of interference to TIS or AM broadcast stations.

10. We conclude that Miami-Dade does not satisfy the Commission’s waiver criteria. Accordingly, we grant Fort Lauderdale’s Petition, considered as an informal request for Commission action, and deny the Waiver Request. In light of the contour overlap analysis, we conclude that we should not accept the application, and we therefore dismiss it.

IV. ORDERING CLAUSES

11. 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 County of Miami-Dade, Florida, filed on February 4, 2016, IS DENIED without prejudice.³⁴

12. IT IS FURTHER ORDERED, that application File No. 0007127177, filed by the County of Miami-Dade Island, Florida, IS DISMISSED consistent with this Order and the Commission’s rules.

²⁸ *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).

²⁹ *TIS Report and Order*, 67 FCC 2d at 924, paras 24-25.

³⁰ *Id.* at 925, para. 27.

³¹ *Id.* at 924, para. 25.

³² *Id.* at 926, para. 31.

³³ *Id.* at 928, para. 37.

³⁴ If Miami-Dade were to obtain Fort Lauderdale’s and Sunrise’s consent to increase the power of the MIA TIS facility, it could re-submit its application and waiver request accompanied by evidence of that consent.

13. IT IS FURTHER ORDERED, that the Petition to Deny filed by the City of Fort Lauderdale, Florida on March 21, 2016, treated as an informal request for Commission action, IS GRANTED.

14. 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
Acting Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau