

ORIGINAL  
FILE

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 92-64
WIND 'N' SEA FM LIMITED	)	File No. BPH-901224ME
PARTNERSHIP	)	
WEBB BROADCASTING, INC.	)	File No. BPH-901224MF
ARIS MARDIROSSIAN	)	File No. BPH-901224MI
EQUAL TIME BROADCASTING CORP.	)	File No. BPH-901224MK
J.H. COMMUNICATIONS	)	File No. BPH-901226MB
For Construction Permit for a	)	
New FM Station on Channel 295A	)	
in Ocean City, Maryland	)	

RECEIVED

MAY 15 1992

TO: Honorable Edward Luton  
Administrative Law Judge

Federal Communications Commission  
Office of the Secretary

MOTION TO DISMISS

On behalf of P.M. Broadcast Engineering, Inc., licensee of WQMR(FM), Federalsburg, Maryland, we hereby move the Presiding Officer to dismiss all of the captioned applications to this proceeding.<sup>1/</sup> The applications of Webb Broadcasting, Inc. and Aris Mardirossian should be dismissed pursuant to the Motions to Dismiss filed by those applicants on May 1, 1992. The application of Equal Time Broadcasting Corp. should be dismissed for failure to prosecute, since that applicant has not filed a Notice of

<sup>1/</sup> P.M. Broadcast Engineering, Inc. is simultaneously filing a Petition to Intervene in this proceeding pursuant to FCC Rule § 1.223.

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076

Appearance as required by the Hearing Designation Order ("HDO") released April 13, 1992.<sup>2/</sup> The applications of Wind 'n' Sea FM Limited Partnership ("Partnership") and J.H. Communications ("Communications") should be dismissed pursuant to FCC Rule § 73.3566 as patently defective applications that were inadvertently accepted for filing, since they propose a new and non-de minimis short-spacing to WQMR.<sup>3/</sup> See Kenter Broadcasting Co., 62 R.R. 2d 1573 (1986), aff'd per curiam Kenter v. F.C.C., 816 F. 2d 8 (D.C. Cir. 1987).

The HDO noted that the instant allotment for Channel 295A in Ocean City, Maryland is short-spaced to WKDN(FM) in Camden, New Jersey; construction permit BPH-880727MC in North Cape May, New Jersey; and WAFX(FM), Suffolk, Virginia. As to these stations, the Report and Order creating this allotment noted that any applicants for this allotment would be able to avail themselves of FCC Rule § 73.213(c)(1), since the Petition for Rulemaking was filed prior to October 2, 1989. Report and Order in MM Docket No. 89-578, 5 F.C.C. Rcd. 5804, n. 1 (1990).

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<sup>2/</sup> Counsel for Equal Time confirmed telephonically to the undersigned counsel that his client was not participating in this hearing.

<sup>3/</sup> See HDO and attached engineering statement of Peter Gureckis, confirming that Partnership and Communications propose short-spacings to WQMR in excess of 6 km.

The Ocean City allotment, however, is not short-spaced to WQMR(FM). Thus, as the Commission noted in paragraph 4 of the HDO, FCC Rule § 73.213(c)(1) "cannot be applied to the required separation distance to WQMR(FM)." Nevertheless, both Partnership and Communications filed applications proposing short-spacings to WQMR in excess of 6 km, and neither applicant proposed contour protection under FCC Rule § 73.215.<sup>4/</sup> Instead of dismissing these applications as violative of FCC Rule § 73.207, the Commission is inexplicably giving Partnership and Communications a chance to amend their applications to avoid this short-spacing, even though there is no FCC rule or policy authorizing the creation of a new non-de minimis short-spacing where none previously existed. Indeed, the Commission's "hard look" processing guidelines for FM applications demand that these applications be dismissed as patently defective. See South Missouri Broadcasting Co., Inc., FCC 92-200 (released May 11, 1992).

Attached to this Motion as Exhibit 1 is a letter dated April 10, 1992 from Dennis Williams, Chief of the FM Branch, to Ocean Pines Broadcasting Co., dismissing a minor change application filed by an existing station, which application proposed a

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<sup>4/</sup> Communications proposed contour protection for North Cape May, New Jersey only. Partnership claimed that it was protecting WQMR (then WDLE) as a 6 kw station, but the accompanying FM channel study in both its original and amended applications uses obsolete data from former FCC Rule § 73.207, showing only 64 km spacing required when 72 km should have been used under the current rule.

new short-spacing of only .8 km where no short-spacing previously existed. Thus, despite the existing station, there was no "grandfathered" short-spacing. Similarly, the Ocean City allotment is not short-spaced to WQMR and thus, there is no arguably "grandfathered" short-spacing here either. In contrast to the HDO in this proceeding, however, the Commission did not give Ocean Pines an opportunity to amend its application. Rather, the application was dismissed with a footnote advising Ocean Pines that it "may be able to refile the application using the provisions of 47 C.F.R. § 73.215." Dismissal is clearly the proper treatment in this situation and precisely the treatment that should have been accorded Partnership and Communications in this proceeding.

While, as the Commission acknowledged in paragraph 6 of the HDO, FCC rules and policy regarding "grandfathered" stations or allotments "may have been somewhat unclear," that statement applies only to the short-spacings created by the allotment itself. It can have no applicability to WQMR(FM), since the Ocean City allotment is not short-spaced to WQMR. Furthermore, the rules permitting Class A stations to upgrade to 6 kw that created the short-spacing to WQMR became effective October 2, 1989, pursuant to MM Docket 88-375. WQMR's upgrade application was filed less than three months later on December 29, 1989, FCC File No. BMLH-891229KA. Accordingly, all of the applicants to this proceeding had ample notice of this short-spacing for more

than a year prior to filing their applications in December 1990. Thus, there was no ambiguity as to the short-spacings created by these applications when they were filed.

Since the applications of Partnership and Communications propose a non-de minimis short-spacing to WQMR in excess of 6 km, where there is no short-spacing created by the allotment to which these applications apply, and since neither applicant proposes contour protection under FCC Rule § 73.215, the applications are in blatant violation of FCC Rule § 73.207 and must be dismissed as inadvertently accepted for filing.<sup>5/</sup>

Respectfully submitted,

**P.M. BROADCAST ENGINEERING, INC.**

By:



David M. Silverman

COLE, RAYWID & BRAVERMAN  
1919 Pennsylvania Ave., N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 659-9750

Its Attorney

May 15, 1992

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<sup>5/</sup> Even if the amendments submitted by Partnership and Communication pursuant to the HDO now propose contour or other protection of WQMR, those amendments cannot rectify defective applications filed under the Commission's "hard look" processing guidelines.

DECLARATION OF MICHAEL J. POWELL

I, Michael J. Powell, hereby declare as follows:

I am President of P.M. Broadcast Engineering, Inc., licensee of WQMR(FM), Federalsburg, Maryland. The statements set forth in the foregoing Motion to Dismiss are true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14 day of May, 1992.

Michael J. Powell  
MICHAEL J. POWELL

## PETER V. GURECKIS & ASSOCIATES

I, PETER V. GURECKIS, do hereby certify and declare under penalty of perjury:

That I am a Consulting Engineer with offices located at 10410 Windsor View Drive, Potomac, Maryland and that my qualifications are a matter of record with the Federal Communications Commission.

That the foregoing statements and computations made in this report were made by myself or under my direct supervision and that all facts and information contained herein are true and correct to the best of my knowledge, except where stated to be on belief, and as to that information, I believe it to be true.

That my firm has been retained by PM Broadcast Engineering, Inc., licensee of Radio Station WQMR, to prepare the following statements.

In the Commission's HDO for Channel 295A at Ocean City, Maryland (MM-Docket No. 92-64), it stated that three applications were short spaced to Station WQMR, Federalsburg, Maryland. These applications are:

1. Wind'n Sea FM Limited Partnership
2. WEBB Broadcasting, Inc.
3. J. H. Communications

Therefore, based upon the Commission's study the applications of Equal Time Broadcasting Corp. and Aris Mardirossian are not short spaced to Station WQMR.

However, based upon this office study,<sup>/1</sup> I find that the application of Mardirossian is short spaced to Station WQMR.

It should be noted that Mardirossian's antenna site is exactly at the same location as for the Partnership application. See Figures 1 and 2 attached herewith, computer studies for Partnership and Mardirossian proposal.

/1 Use of F.C.C. FM Database and Distances per Section 73.207 of the Rules.

PETER V. GURECKIS & ASSOCIATES

Since the antenna sites are the same, it is obvious that the application of Mardirossian should have been included as being short spaced to Station WQMR.

Although the application of Equal Time Broadcasting Corp. is not short spaced to Station WQMR, it is short spaced to Station WKDN, Camden, New Jersey by 3.17 kilometers, by 3.15 kilometers to Station WAFX, Suffolk, Virginia and by 0.57 kilometer to the CP at North Cape May, New Jersey. See Figure 5 attached herewith.

Further, it will be noted from Figure 2 the application of Mardirossian is short spaced to other existing stations.

Figures 1, 3 and 4 show the short spacing to Station WQMR and to other existing stations as stated in the HDO.

The following table is an analysis of the short spacing for Channel 295 at Ocean City, Maryland.

SHORT SPACING IN KILOMETERS TO

	<u>WQMR</u>	<u>CAMDEN</u>	<u>SUFFOLK</u>	<u>NORTH CAPE MAY</u>
Allotment to Ocean City	-----	- 3.05	-1.35	-1.08
Partnership	-6.36	- 8.24	-2.23	-4.20
Mardirossian	-6.36	- 8.24	-2.23	-4.20
Communications	-6.25	-12.74	-----	-9.52
WEBB	-5.78	- 7.56	-2.65	-3.61
Equal Time	-----	- 3.17	-3.15	-0.57

As can be seen from the above table, all applicants increased the short spacing to three or four existing stations from the reference point for the allotment of Channel 295 to Ocean City, Maryland.



FIGURE 1

I.D. # 105		STAFILE V:4.7 (C) 1987-91	03-26-92
			c:\searchfm\MDFM.FM
0.) Call	AP295	11.) Cut off	910412
1.) City	Ocean City	12.) Service	M
2.) State	MD	13.) Country	U
3.) Ch. #	295,106.9 MHz	14.) Border	
4.) Class	A	15.) Beam tilt	N
5.) Lat.	38 22 52	16.) Pattern	
6.) Lng.	75 10 32	17.) Polarization	C
7.) Power	3.000	18.) Action	910723
8.) HAAT m	100	19.) File	BPH901224ME
9.) Type	AP	20.) COR AMSL	103
10.) Licensee Wind 'N Sea FM Limited Partne			
Command...			

Amended 910715

38 22 52 N.		Class A		Search Date			
75 10 32 W.		Current rules spacings		05-05-92			
		Channel 295 -106.9 MHz					
Call	Ch#	City	State	Bear'	Dist'	R'qrd	Margin
>AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00 *
>AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00 *
>AP295	295A	Ocean City	MD	166.0	0.70	115.0	-114.30 *
AP295	295A	Ocean City	MD	166.0	0.70	115.0	-114.30 *
AP295	295A	Ocean City	MD	39.5	5.72	115.0	-109.28 *
AP295	295A	Ocean City	MD	137.4	7.03	115.0	-107.97 *
ALOPEN	295A	Ocean City	MD	124.8	9.29	115.0	-105.71 *
WKDN	295B	Camden	NJ	2.2	169.76	178.0	-8.24 *
WQMR	296A	Federalburg	MD	310.8	65.64	72.0	-6.36 *
CP294	294A	North Cape May	NJ	18.9	67.80	72.0	-4.20 *
WAFX	295C	Suffolk	VA	218.6	223.77	226.0	-2.23 *
WMYJ.C	293A	Pocomoke City	MD	223.3	46.37	31.0	15.37
WKREFM	298B	Exmore	VA	214.4	114.58	69.0	45.58
WCEMFM	292A	Cambridge	MD	285.9	82.25	31.0	51.25
WARX	295B	Hagerstown	MD	300.4	244.77	178.0	66.77
WSLT	292A	Ocean City	NJ	24.5	103.29	31.0	72.29
WJFKFM	294B	Manassas	VA	287.1	186.54	113.0	73.54
WJFKFM	294B	Manassas	VA	287.1	186.54	113.0	73.54

Command \_\_\_\_\_

FIGURE 2

STAFILE V:4.7 (C) 1987-91

03-26-92

I.D. # 104

c:\searchfm\MDFM.FM

0.) Call	AP295	11.) Cut off	910412
1.) City	Ocean City	12.) Service	M
2.) State	MD	13.) Country	U
3.) Ch. #	295,106.9 MHz	14.) Border	
4.) Class	A	15.) Beam tilt	N
5.) Lat.	38 22 52	16.) Pattern	Z
6.) Lng.	75 10 32	17.) Polarization	C
7.) Power	3.000	18.) Action	920128
8.) HAAT m	100	19.) File	BPH901224MI
9.) Type	AP	20.) COR AMSL	105
10.) Licensee Aris Mardirossian			

Command...

Amended 911129

38 22 52 N.	Class A	Search Date
75 10 32 W.	Current rules spacings	05-05-92
	Channel 295 -106.9 MHz	

Call	Ch#	City	State	Bear'	Dist'	R'qrd	Margin
>AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00 *
>AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00 *
>AP295	295A	Ocean City	MD	166.0	0.70	115.0	-114.30 *
AP295	295A	Ocean City	MD	166.0	0.70	115.0	-114.30 *
AP295	295A	Ocean City	MD	39.5	5.72	115.0	-109.28 *
AP295	295A	Ocean City	MD	137.4	7.03	115.0	-107.97 *
ALOPEN	295A	Ocean City	MD	124.8	9.29	115.0	-105.71 *
WKDN	295B	Camden	NJ	2.2	169.76	178.0	-8.24 *
WQMR	296A	Federalburg	MD	310.8	65.64	72.0	-6.36 *
CP294	294A	North Cape May	NJ	18.9	67.80	72.0	-4.20 *
WAFX	295C	Suffolk	VA	218.6	223.77	226.0	-2.23 *
WMYJ.C	293A	Pocomoke City	MD	223.3	46.37	31.0	15.37
WKREFM	298B	Exmore	VA	214.4	114.58	69.0	45.58
WCEMFM	292A	Cambridge	MD	285.9	82.25	31.0	51.25
WARX	295B	Hagerstown	MD	300.4	244.77	178.0	66.77
WSLT	292A	Ocean City	NJ	24.5	103.29	31.0	72.29
WJFKFM	294B	Manassas	VA	287.1	186.54	113.0	73.54
WJFKFM	294B	Manassas	VA	287.1	186.54	113.0	73.54

Command \_\_\_\_\_

FIGURE 3

STAFILE V:4.7 (C) 1987-91 03-26-92

I.D. # 103 c:\searchfm\MDFM.FM

0.) Call	AP295	11.) Cut off	910412
1.) City	Ocean City	12.) Service	M
2.) State	MD	13.) Country	U
3.) Ch. #	295,106.9 MHz	14.) Border	
4.) Class	A	15.) Beam tilt	N
5.) Lat.	38 25 15	16.) Pattern	Z
6.) Lng.	75 8 2	17.) Polarization	C
7.) Power	3.000	18.) Action	910625
8.) HAAT m	100	19.) File	BPH901226MB
9.) Type	AP	20.) COR AMSL	102

10.) Licensee J. H. Communications

Command...

Call	Ch#	City	State	Bear'	Dist'	R'grd	Margin
AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00 *
>AP295	295A	Ocean City	MD	219.5	5.72	115.0	-109.28 *
>AP295	295A	Ocean City	MD	219.5	5.72	115.0	-109.28 *
>AP295	295A	Ocean City	MD	214.3	6.16	115.0	-108.84 *
AP295	295A	Ocean City	MD	214.3	6.16	115.0	-108.84 *
AP295	295A	Ocean City	MD	173.4	9.65	115.0	-105.35 *
ALOPEN	295A	Ocean City	MD	157.7	10.50	115.0	-104.50 *
WKDN	295B	Camden	NJ	1.0	165.26	178.0	-12.74 *
CP294	294A	North Cape May	NJ	17.1	62.48	72.0	-9.52 *
WQMR	296A	Federalburg	MD	305.8	65.75	72.0	-6.25 *
WAFX	295C	Suffolk	VA	218.6	229.49	226.0	3.49 *
WYJ.C	293A	Pocomoke City	MD	222.9	52.08	31.0	21.08
WKREFM	298B	Exmore	VA	214.7	120.27	69.0	51.27
WCEMFM	292A	Cambridge	MD	282.3	84.68	31.0	53.68
WSLT	292A	Ocean City	NJ	23.6	97.78	31.0	66.78
WARX	295B	Hagerstown	MD	299.0	245.67	178.0	67.67

Command \_\_\_\_\_

FIGURE 4

I.D. #	102	STAFILE V:4.7 (C) 1987-91	03-26-92																																																																		
			c:\searchfm\MDFM.FM																																																																		
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;">0.)</td> <td style="width:30%;">Call</td> <td style="width:30%;">AP295</td> <td style="width:10%;">11.)</td> <td style="width:20%;">Cut off</td> <td style="width:10%;">910412</td> </tr> <tr> <td>1.)</td> <td>City</td> <td>Ocean City</td> <td>12.)</td> <td>Service</td> <td>M</td> </tr> <tr> <td>2.)</td> <td>State</td> <td>MD</td> <td>13.)</td> <td>Country</td> <td>U</td> </tr> <tr> <td>3.)</td> <td>Ch. #</td> <td>295,106.9 MHz</td> <td>14.)</td> <td>Border</td> <td></td> </tr> <tr> <td>4.)</td> <td>Class</td> <td>A</td> <td>15.)</td> <td>Beam tilt</td> <td>N</td> </tr> <tr> <td>5.)</td> <td>Lat.</td> <td>38 22 30</td> <td>16.)</td> <td>Pattern</td> <td></td> </tr> <tr> <td>6.)</td> <td>Lng.</td> <td>75 10 25</td> <td>17.)</td> <td>Polarization</td> <td>C</td> </tr> <tr> <td>7.)</td> <td>Power</td> <td>3.000</td> <td>18.)</td> <td>Action</td> <td>910318</td> </tr> <tr> <td>8.)</td> <td>HAAT m</td> <td>100</td> <td>19.)</td> <td>File</td> <td>BPH901224MF</td> </tr> <tr> <td>9.)</td> <td>Type</td> <td>AP</td> <td>20.)</td> <td>COR AMSL</td> <td>105</td> </tr> <tr> <td colspan="6" style="padding-top: 10px;">10.) Licensee Webb Broadcasting, Inc.</td> </tr> </table>				0.)	Call	AP295	11.)	Cut off	910412	1.)	City	Ocean City	12.)	Service	M	2.)	State	MD	13.)	Country	U	3.)	Ch. #	295,106.9 MHz	14.)	Border		4.)	Class	A	15.)	Beam tilt	N	5.)	Lat.	38 22 30	16.)	Pattern		6.)	Lng.	75 10 25	17.)	Polarization	C	7.)	Power	3.000	18.)	Action	910318	8.)	HAAT m	100	19.)	File	BPH901224MF	9.)	Type	AP	20.)	COR AMSL	105	10.) Licensee Webb Broadcasting, Inc.					
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10.) Licensee Webb Broadcasting, Inc.																																																																					
Command...																																																																					

38 22 30	N.	Class A	Search Date
75 10 25	W.	Current rules spacings	05-05-92

Channel 295 -106.9 MHz

Call	Ch#	City	State	Bear'	Dist'	R'qrd	Margin	
AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00	*
>AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00	*
>AP295	295A	Ocean City	MD	346.0	0.70	115.0	-114.30	*
>AP295	295A	Ocean City	MD	346.0	0.70	115.0	-114.30	*
AP295	295A	Ocean City	MD	34.3	6.16	115.0	-108.84	*
AP295	295A	Ocean City	MD	134.4	6.43	115.0	-108.57	*
ALOPEN	295A	Ocean City	MD	121.8	8.77	115.0	-106.23	*
WKDN	295B	Camden	NJ	2.1	170.44	178.0	-7.56	*
WQMR	296A	Federalsburg	MD	311.1	66.22	72.0	-5.78	*
CP294	294A	North Cape May	NJ	18.6	68.39	72.0	-3.61	*
WAFX	295C	Suffolk	VA	218.7	223.35	226.0	-2.65	*
WYJ.C	293A	Pocomoke City	MD	224.0	46.00	31.0	15.00	
WKREFM	298B	Exmore	VA	214.7	114.12	69.0	45.12	
WCEMFM	292A	Cambridge	MD	286.3	82.61	31.0	51.61	
WARX	295B	Hagerstown	MD	300.5	245.27	178.0	67.27	
WSLT	292A	Ocean City	NJ	24.3	103.84	31.0	72.84	
WJFKFM	294B	Manassas	VA	287.3	186.91	113.0	73.91	
WJFKFM	294B	Manassas	VA	287.3	186.91	113.0	73.91	

Command \_\_\_\_\_

FIGURE 5

STAFILE V:4.7 (C) 1987-91

03-26-92

I.D. # 101

c:\searchfm\MDFM.FM

0.) Call	AP295	11.) Cut off	910412
1.) City	Ocean City	12.) Service	M
2.) State	MD	13.) Country	U
3.) Ch. #	295,106.9 MHz	14.) Border	
4.) Class	A	15.) Beam tilt	N
5.) Lat.	38 20 4	16.) Pattern	
6.) Lng.	75 7 16	17.) Polarization	C
7.) Power	3.000	18.) Action	910827
8.) HAAT m	100	19.) File	BPH901224MK
9.) Type	AP	20.) COR AMSL	103
10.) Licensee Equal Time Broadcasting Corp.			

Command...

38 20 4 N.  
75 7 16 W.

Class A  
Current rules spacings  
Channel 295 -106.9 MHz

Search Date  
05-05-92

Call	Ch#	City	State	Bear'	Dist'	R'qrd	Margin
AP295	295A	Ocean City	MD	0.0	0.00	115.0	-115.00 *
ALOPEN	295A	Ocean City	MD	92.5	2.87	115.0	-112.13 *
AP295	295A	Ocean City	MD	314.4	6.43	115.0	-108.57 *
>AP295	295A	Ocean City	MD	314.4	6.43	115.0	-108.57 *
>AP295	295A	Ocean City	MD	317.4	7.03	115.0	-107.97 *
>AP295	295A	Ocean City	MD	317.4	7.03	115.0	-107.97 *
AP295	295A	Ocean City	MD	353.4	9.65	115.0	-105.35 *
WKDN	295B	Camden	NJ	0.6	174.83	178.0	-3.17 *
WAFX	295C	Suffolk	VA	220.4	222.85	226.0	-3.15 *
CP294	294A	North Cape May	NJ	14.0	71.43	72.0	-0.57 *
WQMR	296A	Federalburg	MD	311.4	72.64	72.0	0.64 *
WYJ.C	293A	Pocomoke City	MD	232.0	46.41	31.0	15.41
WKREFM	298B	Exmore	VA	217.9	113.23	69.0	44.23
WCEMFM	292A	Cambridge	MD	288.3	88.34	31.0	57.34
WARX	295B	Hagerstown	MD	300.8	251.53	178.0	73.53

Command \_\_\_\_\_

FIGURE 6

STAFILE V:4.7 (C) 1987-91

03-26-92

I.D. # 99

c:\searchfm\MDFM.FM

0.) Call	ALOPEN	11.) Cut off	901226
1.) City	Ocean City	12.) Service	A
2.) State	MD	13.) Country	U
3.) Ch. #	295,106.9 MHz	14.) Border	
4.) Class	A	15.) Beam tilt	N
5.) Lat.	38 20 0	16.) Pattern	
6.) Lng.	75 5 18	17.) Polarization	
7.) Power	0.000	18.) Action	901016
8.) HAAT m	0	19.) File	
9.) Type	AL	20.) COR AMSL	0
10.) Licensee	89-578	WO=	901126

Command...

38 20 0 N.  
75 5 18 W.

Class A  
Current rules spacings  
Channel 295 -106.9 MHz

Search Date  
05-05-92

Call	Ch#	City	State	Bear'	Dist'	R'qrd	Margin
ALOPEN	295A	Ocean City	MD	0.0	0.00	115.0	-115.00 *
AP295	295A	Ocean City	MD	272.5	2.87	115.0	-112.13 *
>AP295	295A	Ocean City	MD	301.8	8.77	115.0	-106.23 *
AP295	295A	Ocean City	MD	301.8	8.77	115.0	-106.23 *
>AP295	295A	Ocean City	MD	304.8	9.29	115.0	-105.71 *
>AP295	295A	Ocean City	MD	304.8	9.29	115.0	-105.71 *
AP295	295A	Ocean City	MD	337.7	10.50	115.0	-104.50 *
WKDN	295B	Camden	NJ	359.7	174.95	178.0	-3.05 *
WAFX	295C	Suffolk	VA	220.9	224.65	226.0	-1.35 *
CP294	294A	North Cape May	NJ	11.7	70.92	72.0	-1.08 *
WQMR	296A	Federalsburg	MD	310.0	74.89	72.0	2.89 *
WMYJ.C	293A	Pocomoke City	MD	234.2	48.64	31.0	17.64
WKREFM	298B	Exmore	VA	219.1	114.93	69.0	45.93
WCEMFM	292A	Cambridge	MD	287.8	91.10	31.0	60.10
WSLT	292A	Ocean City	NJ	19.6	105.37	31.0	74.37

Command \_\_\_\_\_

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

10 APR 1992

IN REPLY REFER TO:  
8920-GFK

Ocean Pines Broadcasting Co.  
c/o George V. Delson & Associates  
Radio Station WZJO (FM)  
110 East 59th Street  
New York, NY 10022

In re: WZJO (FM), Ocean Pines, MD  
Ocean Pines Broadcasting Co.  
BMPH-911203IC

Dear Applicant:

This letter refers to the above-captioned minor change application to change the transmitter location, effective radiated power (ERP) and antenna height above average terrain (HAAT).

An engineering study has revealed that the proposal is short-spaced by 0.8 kilometers to the granted construction permit, File No. BPH-860123MX, of first adjacent Class A FM Station WLSL (FM), Crisfield, Maryland.<sup>1</sup> The actual spacing is 71.2 kilometers while the required spacing pursuant to 47 C.F.R. § 73.207 is 72 kilometers. You recognized this short-spacing and requested processing under 47 C.F.R. § 73.213. However, because your granted construction permit, File No. BPH-870406KH, is not short-spaced to WLSL under 47 C.F.R. § 73.207, this can not be considered a "grandfathered" short-spacing. Therefore, your application can not be processed under 47 C.F.R. § 73.213 with respect to WLSL. Accordingly, the application, which violates 47 C.F.R. § 73.207, is unacceptable for filing and will be dismissed.<sup>2</sup>

Please note, however, that if your application were otherwise acceptable for filing, a discrepancy exists in the overall tower height above mean sea level (AMSL) and the site elevation. Specifically, in the application you list a tower height AMSL of 125 meters and a site elevation of 3 meters. However, the Commission's files show the tower height to be 128 meters and the site elevation to be 6 meters.

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<sup>1</sup> Presently WLSL has an application for extension of time, File No. BMPH-900517JW, pending.

<sup>2</sup> We note that you may be able to refile the application using the provisions of 47 C.F.R. § 73.215. However, if WLSL's pending application for extension of time (BMPH-900517JW) has been dismissed and the construction permit (BPH-860123MX) has been cancelled, with no appeal of the action pending, filing pursuant to 47 C.F.R. § 73.215 with respect to WLSL would not be necessary.

In addition, pursuant to 47 C.F.R. § 73.3535(a), an application to modify an unbuilt construction permit must be accompanied by a certification that the permittee will commence construction immediately after the modification is granted. You have provided no such certification.

In light of the above, the application, File No. BMPH-911203IC, IS HEREBY DISMISSED pursuant to 47 C.F.R. § 73.3566(a). This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in black ink that reads "Dennis Williams". The signature is written in a cursive, slightly slanted style.

Dennis Williams  
Chief, FM Branch  
Audio Services Division  
Mass Media Bureau

cc: Haley, Bader & Potts  
Peter V. Gureckis & Associates

CERTIFICATE OF SERVICE

I, Nancy Thompson, do hereby certify that copies of the foregoing "Motion to Dismiss" were sent via first-class, postage prepaid, United States mail, this 15th day of May, 1992, to the following:

Honorable Edward Luton \*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Rm. 225  
Washington, D.C. 20554

Gary Schonman, Esquire \*  
Hearing Branch  
Federal Communications Commission  
2025 M Street, N.W., Rm. 7212  
Washington, D.C. 20554

J. Jeffrey Craven, Esquire  
Besozzi & Gavin  
1901 L Street, N.W.  
Suite 200  
Washington, D.C. 20036  
Counsel to Wind 'n' Sea FM  
Limited Partnership

Stephen T. Yelverton, Esquire  
Maupin Taylor Ellis  
& Adams, P.C.  
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Counsel to J.H. Communications

Alan C. Campbell, Esquire  
D'wana R. Speight, Esquire  
Dow, Lohnes & Albertson  
1255 Twenty-Third Street, N.W.  
Washington, D.C. 20037  
Counsel to Family Stations, Inc.

  
\_\_\_\_\_  
Nancy Thompson

\* Via Hand Delivery.