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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)	
TO: Honorable Edward Luton		
Administrative Law Judge		

RECEIVED

MAY 15 1992

Federal Communications Commission
Office of the Secretary

PETITION TO INTERVENE

On behalf of P.M. Broadcast Engineering, Inc. ("Petitioner"), licensee of WQMR(FM), Federalsburg, Maryland, and pursuant to FCC Rule § 1.223(a), we hereby petition to intervene in the captioned proceeding for a construction permit for a new FM station on Channel 295A in Ocean City, Maryland.

Petitioner's interest is based upon the fact that several of the captioned applications would cause objectionable interference to WQMR(FM) in violation of FCC Rule § 73.207, including both of the applicants who have indicated their intent

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to participate in this proceeding.^{1/} Indeed, in the Hearing Designation Order for this proceeding, released April 13, 1992 ("HDO"), the Chief of the Audio Services Division explicitly recognized the short-spacing to WQMR proposed by the applications of Wind 'n' Sea FM Limited Partnership, Webb Broadcasting, Inc. and J.H. Communications.^{2/} The short-spacings proposed by these applications in excess of 6 km are not de minimis under the Commission's processing criteria. 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 Commission is unclear about the type of protection for WQMR that it is going to require of the captioned applicants. Footnote 3 of the HDO suggests that contour protection pursuant to FCC Rule § 73.215 "with respect to WQMR may be a viable option for these applicants." Such contour protection is the very least that should be required since, as noted in paragraph 3 of the HDO, the Ocean City allotment is not short-spaced to WQMR(FM) and

^{1/} Only Wind 'N' Sea FM Limited Partnership and J.H. Communications filed notices of appearance in this proceeding. The other three applicants have either filed motions to dismiss (Webb Broadcasting, Inc. and Aris Mardirossian) or failed to file a notice of appearance (Equal Time Broadcasting, Inc.).

^{2/} These short-spacings are confirmed in the attached engineering exhibit prepared by consulting engineer, Peter V. Gureckis.

therefore, FCC Rule § 73.213(c)(1) "cannot be applied to the required separation distance to WQMR(FM)." Indeed, the applications proposing a short-spacing to WQMR should be dismissed for proposing a short-spacing that is clearly prohibited by Commission rules.^{3/} All of the applications were filed after October 2, 1989, and proposed short-spacings to WQMR that are not required or "grandfathered" by the Ocean City allotment.

Accordingly, Petitioner's participation in this proceeding is critical to protect the signal of WQMR and hereby requests the Presiding Officer to grant this Petition.

Respectfully submitted,

P.M. BROADCAST ENGINEERING, INC.

By: 
David M. Silverman

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

Its Attorney

May 15, 1992

^{3/} Accordingly, Petitioner is simultaneously filing a Motion to Dismiss with this Petition to Intervene.

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 Petition to Intervene 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,^{/1} 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.

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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.

	<u>SHORT SPACING IN KILOMETERS TO</u>			
	<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.

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Therefore, all five applications must be dismissed pursuant to Section 73.3566(a) of the Rules since they are defective applications and should not have been accepted for filing. (See attached Commission letter of April 10, 1992).



DATE: MAY 12, 1992

PETER V. GURECKIS & ASSOCIATES

FIGURE 1

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

I.D. # 105 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. 75 10 32 W.			Class A				Search Date
			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

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STAFILE V:4.7 (C) 1987-91                                03-26-92
I.D. # 103                                                c:\searchfm\MDFM.FM
  
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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	Channel	Class A rules spacings	Bear'	Dist'	R'grd	Margin	Search Date
			295	-106.9 MHz					05-05-92
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	*	
WMYJ.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

STAFILE V:4.7 (C) 1987-91

03-26-92

I.D. # 102

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 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.			

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'grd	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

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I.D. # 101
STAFILE V:4.7 (C) 1987-91
03-26-92
c:\searchfm\MDFM.FM

0.) Call AP295
1.) City Ocean City
2.) State MD
3.) Ch. # 295,106.9 MHz
4.) Class A
5.) Lat. 38 20 4
6.) Lng. 75 7 16
7.) Power 3.000
8.) HAAT m 100
9.) Type AP

11.) Cut off 910412
12.) Service M
13.) Country U
14.) Border
15.) Beam tilt N
16.) Pattern
17.) Polarization C
18.) Action 910827
19.) File BPH901224MK
20.) COR AMSL 103

10.) Licensee Equal Time Broadcasting Corp.

Command...
    
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Call	Ch#	City	State	Bear'	Dist'	R'grd	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 *
WMYJ.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 *
WYJ.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 _____

CERTIFICATE OF SERVICE

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

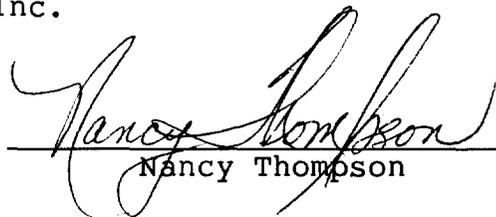
Honorable Edward Luton *
Administrative Law Judge
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Hearing Branch
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Nancy Thompson

* Via Hand Delivery.