

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 )  
)  
et al. )  
)  
For a Construction Permit for a )  
New FM Station on Channel 295A )  
Ocean City, Maryland )

To: Administrative Law Judge  
Edward Luton

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MAY 28 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MASS MEDIA BUREAU'S OPPOSITION TO  
MOTION TO DISMISS

1. On May 15, 1992, P.M. Broadcast Engineering, Inc. (PM), filed a motion to dismiss, inter alia, the applications of Wind 'n Sea FM Limited Partnership (Wind 'n Sea) and J.H. Communications (JH). The Mass Media Bureau hereby opposes PM's motion.

2. PM contends that the Wind n' Sea and JH applications should be dismissed, pursuant to Section 73.3566 of the Commission's Rules, as patently defective because each is short-spaced to WQMR(FM), Federalsburg, Maryland. Rather than dismiss the applications as violative of Section 73.215 of its rules, the Commission instead granted the applicants an opportunity to amend their applications to avoid this short-spacing.

3. PM's motion should be summarily rejected. PM is really

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seeking reconsideration of the Hearing Designation Order, 7 FCC Rcd 2293 (1992) (HDO). The HDO acknowledged that the Commission's policy regarding grandfathered stations or allotments may have been unclear. Thus, the HDO determined that return of the Wind 'n Sea and JH applications with no opportunity to correct the short-spacing would be inappropriate. It is well established, that an Administrative Law Judge does not have authority to dismiss a construction permit application on grounds already considered by an operating bureau pursuant to a delegation of authority. Annax Broadcasting, Inc., 87 FCC 2d 483 (1981). Here, the Chief, Audio Services Division, acting pursuant to delegated authority, made a determination in the HDO on the matter raised by PM. Consequently, the Presiding Judge does not have authority to reconsider that determination.

4. Section 1.115(e)(3) of the Commission's Rules provides parties dissatisfied with Hearing Designation Orders the opportunity to seek certification to the Commission. However, requests to certify must be filed with the presiding judge within five days of designation for hearing. PM has not done so. Accordingly, review of the HDO must be deferred until applications for review of the final Review Board are filed.

5. In sum, PM's motion should be denied.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau



Charles E. Dziejcz  
Chief, Hearing Branch



Robert A. Zauner  
Attorney  
Mass Media Bureau

Federal Communications Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554  
(202) 632-6402

May 28, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 28th day of May 1992, sent by regular United States mail; U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Opposition to Motion to Dismiss**" to:

David M. Silverman, Esq.  
Cole, Raywid & Braverman  
1919 Pennsylvania Ave., N.W.  
Suite 200  
Washington, D.C. 20006

J. Jeffrey Craven, Esq.  
Besozzi & Gavin  
1901 L Street, N.W.  
Suite 200  
Washington, D.C. 20036

Stephen T. Yelverton, Esq.  
Maupin, Taylor, Ellis & Adams  
1130 Connecticut Avenue, N.W., Suite 750  
Washington, D.C. 20036

Alan C. Campbell, Esq.  
Dow, Lohnes & Albertson  
1255 Twenty-Third Street, N.W.  
Washington, D.C. 20036

*Michelle C. Mebane*  
Michelle C. Mebane