

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	)	
	)	
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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY TO  
OPPOSITION TO MOTION TO DISMISS

P.M. Broadcast Engineering, Inc. ("P.M."), licensee of WQMR(FM), Federalsburg, Maryland, and pursuant to FCC Rule § 1.294(c)(3), hereby replies to the "Opposition to Motion to Dismiss" filed by J.H. Communications ("J.H.") on May 26, 1992.

J.H. argues that it requested a short-spacing waiver under FCC Rule § 73.207 and requested processing under FCC Rule § 73.213(c)(1). However, neither of these requests is apropos to WQMR. When the Commission amended FCC Rule § 73.215 to permit contour protection of short-spaced stations, the Commission concomitantly discontinued granting waivers of FCC Rule § 73.207 for co-channel and adjacent channel short-spacings. Report and Order in MM Docket No. 87-121, 4 F.C.C. Rcd. 1681, 1685 (1989), aff'd, 6 F.C.C. Rcd. 5356, 5360 (1991). This rule change became effective June 26, 1989, approximately 1-1/2 years prior to the filing

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of the captioned applications. Thus, when J.H. filed its application, it was not permitted to request a waiver of FCC Rule § 73.207.

J.H.'s appeal to FCC Rule § 73.213(c)(1) is similarly unavailing. FCC Rule § 73.213 concerns "grandfathered short-spaced stations." Since the Ocean City allotment is not short-spaced to WQMR, any reference to that rule is inapposite. The Chief of the Audio Services Division recognized as much in the Hearing Designation Order ("HDO") for this proceeding, stating, "the Ocean City allotment is not short-spaced to WQMR(FM). Therefore, 47 C.F.R. § 73.213(c)(1) cannot be applied to the required separation distance to WQMR(FM)." HDO ¶4. Accordingly, J.H.'s request for processing under that rule with respect to WQMR is misplaced.

Additionally, even if a waiver of § 73.207 or processing under § 73.213 were permitted, J.H.'s application did not request such processing with respect to WQMR. The Engineering Narrative and Request for Waiver submitted with its application (and attached hereto as Exhibits I and II) clearly request waiver only with regard to two then-pending Class A applications for North Cape May, New Jersey. This is explained by J.H.'s Spacing Study (Exhibit III hereto) which uses the minimum separation requirements specified in former FCC Rule § 73.207 and which, accordingly (and erroneously), shows J.H.'s application to be

fully-spaced to all other stations. Thus, J.H. never requested a waiver with respect to WQMR and, for the same reason that J.H. argues that Wind 'N Sea's application should be dismissed, J.H.'s application should be similarly dismissed.

Regardless of how one reads J.H.'s application, however, a waiver under Section 73.207 was not permissible when J.H. filed its application or now and Section 73.213(c)(1) is similarly inapplicable to WQMR, since there is no arguable "grandfathered" short-spacing involved.

For the foregoing reasons and those specified in P.M.'s Motion to Dismiss filed May 15, 1992, the applications of both J.H. and Wind 'N Sea should be dismissed as inadvertently accepted for filing.<sup>1/</sup>

Respectfully submitted,

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

By:



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

Its Attorneys

June 2, 1992

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<sup>1/</sup> Wind 'N Sea did not oppose P.M.'s Motion to Dismiss its application.

J. H. COMMUNICATIONS  
OCEAN CITY, MARYLAND

NARRATIVE

This Exhibit supports the attached Application of J. H. COMMUNICATIONS for a new FM Broadcast Station at Ocean City, Maryland.

The proposed site does not meet the requirements of §73.207 and a waiver is hereby requested for processing under §73.215. Justification for a waiver is contained elsewhere in this application.

The petition which resulted in this allotment was filed prior to October 2, 1989, and the applicant elects to avail itself of the provisions of Section 73.213(c)(1). The site proposed is short-spaced to two pending class A applications at North Cape May, New Jersey, and this application protects those applications to their maximum facilities (six kilowatts and 100 meters HAAT). Figure 4 shows the interfering and protected contours of the applications. This exhibit also contains tabulations of the radial elevations, power and distances to contours of this proposal and the two short-spaced applications.

The directional antenna proposed in this application is a Shively Labs model 6810-2R-DA with two elements. It will be mounted on the side of a tower as specified by the manufacturer. The supporting structure will not have a platform installed on it, and the manufacturer's recommendation regarding minimum distance to other antennas will be observed.

The response to question 14 of V-B is "No" to all parts except that the blanketing contour will encompass a populated area. If any blanketing interference is reported, applicant agrees to abide by §73.318 in correcting the problem. Possible solutions to blanketing interference might include, but not be limited to, the installation of a filter in the antenna input

to the offending receiver and installation of RF chokes in the speaker and power cables of the receiver.

The proposed site is not in an area described in §1.1307(a)(1) through §1.1307(a)(4); the facility will not involve a significant change in the surface features of the land, the tower will not use high-intensity white lights at night, and there is no RFR hazard to humans at ground level when evaluated in accordance with OST-65. Therefore, the proposal is excluded from environmental processing under §1.1306.

REQUEST FOR WAIVER

APPLICANT HAS MADE A THROUGH SEARCH OF THE ALLOWABLE AREA AND WAS UNABLE TO LOCATE PROPERTY THAT WAS FOR SALE OR LEASE. MOREOVER, A LARGE PORTION OF THE ALLOWABLE AREA IS EITHER RESTRICTED BY THE FAA, IS A BODY OF WATER OR IS ENVIRONMENTALLY PROTECTED MARSHLAND. IN ADDITION, IT WILL BE DIFFICULT TO OBTAIN LOCAL ZONING APPROVAL IN THE REMAINING ALLOWABLE AREA. HOWEVER THE SPECIFIED SITE HAS LOCAL ZONING APPROVAL AND WILL NOT CAUSE AN ADVERSE ENVIRONMENTAL IMPACT. THIS SITE IS LOCATED IN AN INDUSTRIAL PARK.

EVEN THOUGH THE SPECIFIED SITE IS SHORT SPACED TO 2 NORTH CAPE MAY, NJ APPLICATIONS IT IS NOT SHORT SPACED TO THE REFERENCE COORDINATES.

FROM THE SPECIFIED TOWER SITE A CITY GRADE SIGNAL WILL BE PROVIDED TO ALL OF OCEAN CITY, MD. HOWEVER FROM TOWER LOCATIONS IN MUCH OF THE ALLOWABLE AREA (NON SHORT SPACED) A CITY GRADE SIGNAL COULD NOT BE PROVIDED TO 80% OR MORE OF THE LAND AREA AND POPULATION OF OCEAN CITY, MD.

ACCORDINGLY A WAIVER OF THE SPACING RULE (73.207) IS RESPECTFULLY REQUESTED.

*Joseph A. Good*  
*General Partner*  
*J.H. Communications*  
*24 Dec 90*

EXHIBIT III

WILLIAM CULPEPPER & ASSOCIATES. INC.  
 227 FARR'S BRIDGE ROAD GREENVILLE SC 29611

OCEAN CITY, MARYLAND

REFERENCE							DISPLAY DATES
38 25 15 N			CLASS A				DATA 11-29-90
75 08 02 W			Previous rule spacings				SEARCH 12-19-90
----- CHANNEL 295 -106.9 MHz -----							

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD295	295A	Ocean City	MD	157.7	10.50	104.5	-94.00 *
AL295	295A	Ocean City	MD	157.7	10.50	104.5	-94.00 *
AP294	294A	North Cape May	NJ	17.1	62.48	63.5	-1.02 *
AL294	294A	North Cape May	NJ	14.3	62.87	63.5	-0.63 *
AP294	294A	North Cape May	NJ	16.6	64.06	63.5	0.56 <
WDLEFM	296A	Federalsburg	MD	305.8	65.75	63.5	2.25 <
WDLEFM	296A	Federalsburg	MD	305.8	65.75	63.5	2.25 <
WDLEFM	296A	Federalsburg	MD	305.8	65.75	63.5	2.25 <
WKDN	295B	Camden	NJ	1.0	165.26	162.5	2.76 <
WAFX	295C	Suffolk	VA	218.6	229.49	221.5	7.99
AL293	293A	Pocomoke City	MD	224.8	54.14	26.5	27.64
CP293	293A	Pocomoke City	MD	216.1	60.92	26.5	34.42

CERTIFICATE OF SERVICE

I, Sharon K. Mathis, do hereby certify that copies of the foregoing were sent via first-class, postage prepaid, United States mail, this 2nd day of June, 1992, to the following:

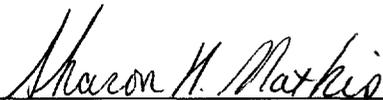
Honorable Edward Luton \*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Rm. 225  
Washington, D.C. 20554

Robert A. Zauner, 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.  
1130 Connecticut Ave., N.W.  
Suite 750  
Washington, D.C. 20036-3904  
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.

  
\_\_\_\_\_  
Sharon K. Mathis

\* Via Hand Delivery.