

[T]he application for modification demonstrates that, for each person predicted to receive new interference as a result of the change, existing predicted interference to two persons will be eliminated. Persons predicted to receive new interference are those located outside the area predicted to receive interference from the station's currently authorized facilities ("existing predicted interference area") but within the area predicted to receive interference from the proposed facilities ("proposed predicted interference area"). Persons for whom predicted interference will be eliminated are those located within the existing predicted interference area and outside the proposed predicted interference area.

3. GSCC states that its engineering consultant conducted a study to determine the Channel 6 predicted interference areas under GSCC's existing and proposed operations. A determination was also made of the population predicted to receive new interference, and the population for which predicted existing interference would be eliminated. GSCC contends that this study shows that the proposed Channel 6 predicted interference area is less densely populated than the existing predicted interference area. In consequence, GSCC alleges that its proposed operation is predicted to cause interference to the Channel 6 reception of 7,760 persons and predicted to eliminate interference to the Channel 6 reception of an estimated 23,967 persons. GSCC's consultant concludes: "Therefore, for every person predicted to receive new interference, it is predicted that existing interference will be eliminated to slightly over 3 persons. Thus, the proposal complies with the requirement of 47 CFR 73.525(b)(2)." On this basis, GSCC argues that summary decision is warranted.

4. In its comments, the Bureau supports GSCC's motion. Based upon an analysis of GSCC's showing by its engineering staff, the Bureau has concluded that GSCC's proposal would reduce interference to Channel 6 to an extent sufficient to constitute compliance with Section 73.525 of the Rules.

5. GSCC's motion for summary decision will be granted and Issue 2 will be resolved in its favor. In order to sustain a motion for summary decision, the burden is on the moving party to establish that the truth is clear, that the basic facts are undisputed, and that the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts. Big Country Radio, Inc., 50 FCC 2d 967 (1975). GSCC has met this stringent test, and it is clear that no genuine issues of material fact remain for determination at the hearing. See Section 1.251(d) of the Rules. Specifically, GSCC has shown that operating as proposed, it will eliminate predicted interference to Channel 6 reception to a net population of 16,207 persons. GSCC has also shown that for every person predicted to receive new interference, it is predicted that existing interference will be eliminated to more than three persons, in satisfaction of Section 73.525(b)(2) of the Rules. Under these circumstances, summary decision of Issue 2 is both warranted and

appropriate. Moreover, upon favorable resolution of Issue 2, there remains no impediment to a grant of GSCC's application,² and its application will be severed from this proceeding and granted.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by GSCC on June 8, 1992, IS GRANTED and Issue 2 IS RESOLVED in favor of GSCC.

IT IS FURTHER ORDERED that the above-captioned application of Gadsden State Community College IS SEVERED from this proceeding and IS GRANTED.

IT IS FURTHER ORDERED that the pertinent portion of the caption in this proceeding IS CHANGED to read as follows:

For Construction Permit for a New
Noncommercial FM Station on Channel 217

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

² On May 21, 1992, GSCC amended its application to make technical modifications to its proposal which would eliminate the mutual exclusivity between it and the remaining applicants. The amendment was accepted by Order, FCC 92M-646, released June 5, 1992.