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ORIGINAL

FCC MAIL SECTION

HEARING DESIGNATION ORDER

Adopted: April 8, 1992;

Released: April 21, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for modification of facilities filed by non-commercial, educational FM stations.<sup>1</sup>

2. *Concord-Carlisle*. On March 26, 1992, Emerson filed comments with respect to Concord-Carlisle's application. On April 9, 1992, Concord-Carlisle filed a response to Emerson's comments. Emerson filed a Reply on April 22, 1992. Emerson recognizes that Concord-Carlisle is obligated by Section 73.318(b) of the Commission's rules to resolve complaints of interference within one year from the commencement of program test authority within the blanketing area. However, above and beyond the requirements of 47 C.F.R. § 73.318(b), Emerson seeks Concord-Carlisle's active involvement in resolving complaints of interference within the "interference radius" of the increased facilities of station WIQH. Specifically, Emerson desires that Concord-Carlisle, during the first year following the commencement of Program Test Authority, resolve, at its own expense, complaints of interference to WERS(FM) caused by WIQH. The types of remedies envisioned by Emerson that should be employed by Concord-Carlisle would include, but not be limited to, installation of tuneable filters or traps on receivers and antenna reorientation. Emerson also desires that Concord-Carlisle subsidize receiver or antenna upgrades if they are necessary to resolve complaints of interference. Additionally, contemporaneously with the commencement of Program Test Authority, Emerson desires that Concord-Carlisle notify, via mail, all residents and businesses within 700 meters of WIQH's transmitter site, that it will provide free remedial assistance to anyone unable to receive the signal of WERS(FM) because of interference caused by WIQH. Furthermore, beyond the first year after the commencement of Program Test Authority, Emerson desires that Concord-Carlisle continue to participate in resolving isolated complaints of interference to WERS(FM) by WIQH.

3. Emerson has not objected to the waiver of 47 C.F.R. § 73.509 granted by the Commission on February 11, 1992. Furthermore, pursuant to 47 C.F.R. § 73.318(b), Concord-Carlisle is required to resolve complaints of interference within its blanketing area for a period of one year from commencement of program test authority. In addition, the Commission will address any actual interference complaints when the license application for WIQH is filed.

note, however, that even had the substance of Technology's petition been considered by the Chief, Audio Services Division, it would not have altered the reconsideration decision. The potential precursory impact by applications for noncommercial educational FM stations on future expansion by existing stations is considered in the context of our processing procedures. These procedures permit other stations to file mutually exclusive competing applications to upgrade their own facilities in response to Commission cut-off notices issued pursuant to 47 C.F.R. § 73.3573(e). Technology appears to have recognized this when it elected to file its application in response to Concord-Carlisle's established cut-off date and thus seek comparative consideration for its proposed expansion of the facilities of WMBR(FM).

Before the  
Federal Communications Commission  
Washington, D.C. 20554

APR 21 2 20 PM '93

DISPATCHED BY MM Docket No. 93-115 ✓

In re Applications of

CONCORD-CARLISLE File No. BPED-860424MC  
REGIONAL  
SCHOOL DISTRICT (WIQH)  
Concord, Massachusetts  
(Hereafter "Concord-Carlisle")

Has: 88.3 MHz; Channel 202D  
0.001 kW; 7 Meters (H&V)

Req: 88.3 MHz; Channel 202A  
0.100 kW; 7 Meters (H&V)

TECHNOLOGY File No. BPED-920326IA  
BROADCASTING  
CORPORATION  
(WMBR)  
Cambridge, Massachusetts  
(Hereafter "Technology")

Has: 88.1 MHz; Channel 201A  
0.360 kW; 87 Meters (H&V)

Req: 88.1 MHz; Channel 201A  
0.720 kW; 90 Meters (H&V)

For Construction Permits

<sup>1</sup> Concord-Carlisle's application, as originally filed on November 11, 1985, was returned by the Chief, FM Branch on March 24, 1986 because it would have resulted in prohibitive overlap in violation of 47 C.F.R. § 73.509 to station WERS(FM), licensed to Emerson College ("Emerson"). On April 24, 1986, Concord-Carlisle, requested reconsideration of the return of its application and requested a waiver of Section 73.509, which was granted by the staff on February 11, 1992. On March 7, 1990, Technology filed a petition to deny Concord-Carlisle's application. Technology alleged that if Concord-Carlisle's proposal was granted, WMBR(FM) would be precluded from expanding its existing facilities. On February 11, 1992, the Chief, Audio Services Division waived the provisions of 47 C.F.R. § 73.509 and granted Concord-Carlisle's request for reconsideration without considering the allegation raised in Technology's petition. We

Thus, we find that the interference concerns of Emerson are adequately protected and its request for additional relief will be denied. However, this action notwithstanding, Emerson may wish to effectuate a private contractual agreement with Concord-Carlisle with respect to the instant proposition.

4. Neither applicant has indicated an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed Reg 49560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement.

5. The respective proposals are for different communities. Consequently, it will be necessary to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

6. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED. That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

9. IT IS FURTHER ORDERED, That the request for relief filed by Emerson College IS DENIED.

10. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau