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ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
THOMAS J. DOUGHERTY, JR.
JAMES C. ...

FLETCHER, HEALD & HILDRETH

PAUL D.P. SPEARMAN
(1936-1982)
FRANK ROBERSON
(1936-1981)

JUN - 7 1993

BEFORE THE

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In re Applications of)	MM DOCKET NO. <u>93-115</u>
CONCORD-CARLISLE REGIONAL)	File No. BPED-860424MC
SCHOOL DISTRICT (WIQH))	
Concord, Massachusetts)	
TECHNOLOGY BROADCASTING)	File No. BPED-920326IA
CORPORATION (WMBR))	
Cambridge, Massachusetts)	
For Construction Permits for)	
Modification of Facilities)	

To: The Honorable Joseph Chachkin
Administrative Law Judge

PETITION FOR LEAVE TO AMEND

Concord-Carlisle Regional School District ("Concord"), an applicant in the above-captioned proceeding and licensee of noncommercial educational FM Station WIQH, Concord, Massachusetts, by its counsel, hereby requests the Presiding Judge to accept the attached amendment to its application and grant a waiver of Section 73.509 of the Rules.¹ In support, the following is respectfully stated:

BACKGROUND

1. Concord is a non-commercial licensee. Its currently

¹ Concord respectfully requests the Presiding Judge to suspend all procedural dates in this proceeding pending his consideration of this Petition and the waiver request contained in the Amendment attached hereto. Such a suspension is consistent with the Concord's efforts to eliminate the mutual exclusivity and to conserve the limited resources of the Commission and these noncommercial applicants alike.

licensed facility is a Class D FM station operated by a high school in Concord, Massachusetts. Technology Broadcasting Corporation ("Technology"), the other applicant in this proceeding, is also a non-commercial licensee, whose currently licensed facility is a Class A FM station operated by the Massachusetts Institute of Technology ("MIT"). Concord and Technology operate on first-adjacent channels. Both applicants seek to upgrade their facilities. Concord proposes to upgrade its Class D facility to a Class A facility in the context of a renewal application, while Technology seeks to increase its effective radiated power (ERP) and

amendment and grant of the requested waiver would allow the grant of both proposals, no prejudice or advantage would result to any party. Finally, Concord, together with Technology and the Mass Media Bureau, has diligently worked to investigate possible options for the removal of the mutual exclusivity of these proposals. No workable solutions other than this waiver request have been discovered. Concord submits this amendment promptly after reaching an oral understanding with the Mass Media Bureau that the Bureau would support the requested amendment and waiver. As a result, acceptance of the amendment would not cause a disruption to the proceeding. Instead, it would resolve the proceeding. For all of the above-stated reasons, Concord submits that good cause exists for the Presiding Judge to accept the attached amendment.

GRANT OF \$73.509 WAIVER IS IN PUBLIC INTEREST

3. It is established Commission policy to encourage Class D

Concord's proposal would not cause interference to Technology's licensed or proposed facilities, or to any other existing noncommercial educational facility, the proposed Concord station theoretically would receive interference due to a 2.5 km overlap of the 60 dBu contour of Concord's proposed facility by the 54 dBu contour of Technology's proposed facility. The area of contour overlap would be approximately 18.4 km or 18% of Concord's proposed 60 dBu contour.

5. The Commission routinely grants waivers of Section 73.509 for overlap of up to 10% of the receiving station's 1 mV/m contour. Memorandum Opinion and Order, MM Docket 20735, 58 R.R. 2d 629 (1985). In at least one instance, however, the Commission granted a waiver of Section 73.509 where the 40 dBu contour of one station would completely encompass the 60 dBu contour of the upgrading applicant. Northern Sound Public Radio, 4 FCC Rcd. 5495 (1989).

6. In the instant case, while the area of overlap exceeds 10% of the 60 dBu contour of the proposed Concord station, a waiver of 73.509 would be in the public interest.² Examination of the Concord proposal indicates that any actual interference, in fact, would be de minimis. Grant of the waiver and Concord's application would increase the service area of its noncommercial service by nearly 160%. Moreover, since the interference would occur in the

² Discussions with the Bureau indicated that calculated under the former undesired signal to desired signal ratio standard, the actual interference received will be substantially less than appears under the current interference standard. The Bureau has orally indicated that it will discuss this factor further in its comments in support of Concord's requested waiver.

expanded Concord coverage area there would be no loss of service to Concord's existing listeners in Concord and Carlisle. Finally, Concord is willing to accept any interference that actually occurs.

7. As indicated in the attached Amendment, the calculated Concord 60 dBu contour is exaggerated as a result of assumptions required in the use of the Commission's method of calculating the F(50/50) curves. Thus, the actual area of contour overlap is overstated. Terrain obstructions further reduce the amount of interference to be received by Concord.

8. Concord investigated various engineering alternatives (including alternative frequencies, alternative sites, reduced power and directionalization) in order to avoid or eliminate the overlap resulting from its proposed upgrade. As discussed in the Amendment, none of these options proved to be viable. Given the heavily congested nature of the spectrum in the Boston metropolitan area, which has the largest number of educational institutions of any market in the country, the noncommercial spectrum is very crowded. The non-reserved band is similarly crowded. No other available frequency was found that would not result in worse caused or received interference. Moreover, since Concord already proposes a minimum Class A facility, a power reduction is not an option. As shown in the amendment, a directional antenna not only would be prohibitively costly to Concord, but would eliminate a significant portion of the coverage gained by the upgrade.

9. Alternative transmitter locations were studied but found to be unacceptable. From most sites Concord would receive

interference from at least one existing facility. In addition, most would result in a substantial (25% - 55%) loss of service to Concord's existing listeners. The only interference-free area found is located in a highly populated commercial/residential area where no sites are available.

10. Waivers of Section 73.509 are warranted in order to advance the goals of noncommercial educational broadcasting where, as here, it can be shown that the amount of actual interference which will result is de minimis. Under circumstances such as those presented here, the public interest in the advancement of noncommercial broadcasting clearly outweighs the relatively minor impact of any interference to actually be received from the overlap with the proposed Technology station. Concord is willing to accept such interference, if any, in order to improve its noncommercial service. Further, the waiver would have no preclusionary effect.

11. Acceptance of the amendment and a grant of Concord's waiver request would eliminate the mutual exclusivity between the Concord and Technology applications, would allow both applications to be granted and would allow both parties to increase their noncommercial educational service. Removal of the mutual exclusivity would obviate the need for a comparative hearing in this proceeding, thus saving both the Commission's and these noncommercial licensees' valuable but scarce resources. As a further result, both Concord and Technology could sooner commence providing expanded non-commercial educational service to the public.

WHEREFORE, in light of the foregoing, Concord Regional School District respectfully submits that good cause exists for acceptance of the attached amendment and a grant of the section 73.509 waiver requested therein.

Respectfully submitted,

CONCORD-CARLISLE REGIONAL
SCHOOL DISTRICT

By *Kathleen Victory*
Howard M. Weiss
Kathleen Victory

FLETCHER, HEALD & HILDRETH
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

June 7, 1993

CERTIFICATE OF SERVICE

I, Diane Roper, a secretary in the law offices of Fletcher, Heald & Hildreth, hereby certify that I have on this 7th day of June, 1993, had copies of the foregoing "PETITION FOR LEAVE TO

RECEIVED

JUN - 7 1993

AMENDMENT

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Application of Concord-Carlisle Regional School District for a construction permit to modify its licensed facilities from a Class D to a Class A facility at Concord, Massachusetts (File No. BPED-860424MC) is amended to include the attached material.

Respectfully submitted,

CONCORD-CARLISLE REGIONAL
SCHOOL DISTRICT

REQUEST FOR WAIVER OF SECTION 73.509

Concord-Carlisle Regional School District, the licensee of noncommercial educational FM broadcast station WIQH, Concord, Massachusetts ("WIQH") hereby respectfully requests a waiver of Section 73.509(a) of the Commission's Rules regarding prohibited contour overlap between noncommercial educational stations.

Engineering studies conducted by WIQH and presented by

will be smaller than predicted. The overstatement arises from the assumption required when using the Commission's F(50,50) curve that the transmitting antenna radiation center is at a height above average terrain of at least 30 meters. On a bearing from the WIQH antenna directly toward the WMBR antenna (103.5 degrees), the HAAT of the WIQH antenna Center of Radiation is -4.7 meters.

Furthermore, ridges and hills between the WIQH antenna site and the overlap area, along with hills in the overlap area, obstruct significant portions of the area. Figure 1 shows the calculated overlap area and highlights significant terrain features that will obstruct the proposed WIQH signal.

- II. A grant of both the WIQH and WMBR applications would cause no real loss of service in the overlap area since virtually none (approximately 0.08 km², or 0.43%) of that area is presently served by WIQH (as a 10 watt station, WIQH's present 60 dBu, F(50,50) contour extends only 3.2 kilometers, just "grazing" the calculated proposed WMBR 54 dBu, F(50,10) contour). If the waiver requested herein were to be denied--and WMBR's application granted -- the aforementioned 0.08 km² would lose service from WIQH and no new area would receive WIQH service. On the other hand, a grant of the requested waiver would result in an increase in WIQH's interference-free service area from 32.2 km² to approximately 83.7 km² (an increase of

nearly 160 %). Thus, granting both WIQH's application (with the waiver requested herein) and WMBR's application would result in significant improvement in both stations' coverage area with virtually no loss of service area.

III. The area of prohibited contour overlap lies entirely outside the boundaries of Concord, Massachusetts, WIQH's city of license. The station's programming is directed almost exclusively at the towns of Concord and Carlisle, Massachusetts, the two communities comprising the regional school district to which WIQH is licensed. The predicted overlap area falls primarily over Lincoln, Massachusetts, a separate town that shares little community of interest with Concord and Carlisle. Lincoln, in fact, has its own high school radio station (WYAJ, operating from the Lincoln Sudbury Regional High School) serving its residents.

IV. Engineering options (e.g., changing the frequency of the facility, decreasing transmitter output power or using a directional antenna) to the waiver request are not available. As indicated in the Engineering Statement contained in WIQH's application (File No. BPED-860424), WIQH studied the reserved FM broadcast band in search of a frequency to which it might move to reduce interference to other stations. As noted in the application, ". . . Boston and the surrounding cities and towns are home to more colleges and universities than is any other

metropolitan area in the country. Because of this proximity to a concentration of colleges and universities, the FM channels reserved for Non-Commercial Educational stations are extremely crowded . . . The channel requested in this application as a result of this allocation study is the only reserved channel available that does not cause nor receive prohibitive actual interference. . . ." Though not stated in the application, the commercial band in the Boston area is every bit as congested as the noncommercial band and cannot support another Class A facility operating at a site that would serve Concord.

Decreasing power is not an option. WIQH's application already requests minimum Class A facilities.

Use of a directional antenna does not provide a satisfactory solution to the problem at hand. Although a directional antenna that complies with Section 73.316(b)(1)--with an 11 dB minimum/maximum ratio -- can be utilized to eliminate the interference, any practical design of such an antenna would fail to provide 60 dBu service to some calculated interference-free areas that would otherwise receive 60 dBu service from the facilities proposed in the WIQH application on file. Furthermore, the cost involved in employing a directional antenna to eliminate interference that is, to WIQH, not objectionable is prohibitive. WIQH is a small, non-

commercial station operated by high school students in a town that is, like so many throughout the country, struggling to finance its most basic needs. The cost of a straightforward power increase will be difficult to bear; the additional burden of a directional antenna would be unbearable.

- V. No reasonable alternative transmitting sites are available. WIQH investigated the possibility of moving its transmitting location in an effort to eliminate the predicted overlap. More than half a dozen locations where the station could reasonably expect to place an antenna were studied. At each potential alternative site, WIQH was predicted to receive interference from other stations--if not WMBR, then first adjacent WFCR (Amherst, MA, 88.5 MHz) or co-channel WBMT (Boxford, MA). The only area which would accommodate an interference-free transmitter site was in the middle of a densely populated commercial/residential neighborhood where no land on which to construct a transmitting facility is available.

All but one of the alternative transmitting sites investigated would have resulted in some area currently receiving 60 dBu service falling outside of the proposed calculated WIQH 60 dBu service area. The loss area was calculated to be at least 25% in all but one case (where it was approximately 10%). At one alternative site, in

fact, the loss area was predicted to be greater than 55%. WIQH believes that it is in the public interest to continue 60 dBu service to all areas that currently receive it.

One of the alternative sites would also have received interference from WHAB(FM), 88.7 MHz, a Class D station licensed to the Acton-Boxborough Regional School District and operated by the students of the Acton Boxborough High School. Under the Commission's rules regarding interference to a non-Class D station from a Class D station, were WIQH to relocate to a transmitting site that received interference from WHAB, the burden would be on Acton-Boxborough to eliminate the interference. WIQH is deeply concerned that this burden could force WHAB to cease operation. The station and its licensee, the Concord Carlisle Regional School District, do not wish to deprive the Acton-Boxborough community of its radio station and seek to coexist peacefully not only with WHAB but with other noncommercial stations in the area.

- VI. A grant of this waiver is consistent with Commission policy. The Commission has in the past granted waivers of predicted significant contour overlap in the case of Class D stations attempting to increase facilities In

Rules to allow St. Michaels College, licensee of WWPV-FM, Colchester, VT, and Board of Education, Greece Central School District, licensee of WGMC(FM), Greece, NY, to increase facilities, in part, to upgrade the stations from their Class D status.

WIQH is operated by students living in Concord and Carlisle, Massachusetts and directs programming toward those communities. More than 110 of the school's 850 students participate in the station's activities. The station serves as an important educational tool, introducing young people not only to radio broadcasting but also to community service and small business operation. WIQH provides regular local news coverage, live broadcasts of school activities, live coverage of town government meetings and other community oriented programming. Students operate all phases of the station and keep it on the air seven days a week, even during school vacations. Reception complaints, however, present an increasingly frustrating obstacle to the station's staff and its efforts to provide quality community service programming. The limited signal coverage provided by the current 10 watt WIQH facilities prohibits reception of the station over large portions of Concord and nearly all of Carlisle. Thus, the station is unable to reach even the small communities from which it draws its staff. Furthermore, its Class D status offers no protection against signal degradation caused by future facilities modifications by other stations in the area. WIQH believes its proposed facilities to be the only solution to the

station's current lack of coverage and the sole method by which the station may protect its coverage area from future degradation. WIQH is willing to accept any minor interference that may occur from WMBR if its proposal is granted.

WIQH believes that a waiver of Section 73.509(a) of its Rules would be in the public interest. Grant of a waiver will permit both WIQH and WMBR to construct new facilities as requested and will allow both stations to significantly improve service to their respective communities. It will obviate the need for a comparative hearing, thereby conserving the limited financial resources of both applicants and the Commission. WIQH also respectfully requests that the Commission not delay any further processing of the WMBR application due to the calculated overlap area. WIQH does not believe that the proposed WMBR facilities will cause any real interference to present or proposed WIQH facilities and, for this reason, does not object to WMBR's proposed facilities. Since WIQH lacks the financial resources to proceed with the comparative hearing process, it believes a grant of the WMBR application to be inevitable and urges the Commission to proceed with its processing. WIQH respectfully suggests that the waiver requested herein be considered apart from WMBR's application.

In summary, WIQH believes that a grant of a waiver of Section 73.509(a) as requested herein clearly serves the public interest by allowing both WIQH and WMBR to improve their respective facilities and significantly increase their service areas with no detrimental effects. WIQH urges the Commission to grant the waiver.



