

DOCKET FILE COPY ORIGINAL

ORIGINAL

ANNE GOODWIN CRUMP\*  
VINCENT J. CURTIS, JR.  
THOMAS J. DOUGHERTY, JR.  
JAMES G. ENNIS  
PAUL J. FELDMAN\*  
RICHARD HILDRETH  
EDWARD W. HUMMERS, JR.  
FRANK R. JAZZO  
BARRY LAMBERGMAN  
PATRICIA A. MAHONEY  
GEORGE PETRUTSAS  
LEONARD R. RAISH  
JAMES P. RILEY  
MARVIN ROSENBERG  
LONNA M. THOMPSON  
KATHLEEN VICTORY\*  
HOWARD M. WEISS

\*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

P. O. BOX 33847

WASHINGTON, D.C. 20033-0847

(703) 812-0400 • (202) 828-5700

TELECOPIER

(703) 812-0486 • (202) 828-5786

June 28, 1993

PAUL D.P. SPEARMAN  
(1938-1982)  
FRANK ROBERSON  
(1938-1981)

RETIRED  
RUSSELL ROWELL  
EDWARD F. KENEHAN  
ROBERT L. HEALD  
FRANK U. FLETCHER

OF COUNSEL  
EDWARD A. CAINE

TELECOMMUNICATIONS CONSULTANT  
HON. ROBERT E. LEE

WRITER'S NUMBER

0473  
109 812

RECEIVED

JUN 28 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary - Stop Code 1170  
Federal Communications Commission  
1919 M Street, Room 222  
Washington, DC 20554

Re: Concord-Carlisle Regional School District  
MM Docket 93-115

Dear Mr. Caton:

Transmitted herewith on behalf of Concord-Carlisle Regional School District, are an original and six copies of its "Supplement to Petition for Leave to Amend" filed in response to the Presiding Judge's Order, released June 23, 1993, in the above-captioned proceeding.

Should any questions arise concerning this matter, kindly communicate directly with the undersigned.

Very truly yours,

*Kathleen Victory*  
Kathleen Victory

Enclosures

cc: Mr. Ned Roos (w/enc.)

No. of Copies rec'd  
List ABCDE

246

DOCKET FILE COPY ORIGINAL

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

RECEIVED

JUN 28 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of  
**CONCORD-CARLISLE REGIONAL**

) MM DOCKET NO. 93-115  
)  
) File No. BPED-860424MC

2. In Open Media, the Commission denied reconsideration of the return of Open Media Corporation's application for a new noncommercial educational station to serve Chicago and its related Section 73.509 waiver request.<sup>1</sup> In so doing, the Commission indicated that the bulk of Open Media's arguments for reconsideration were merely reiterated points considered and rejected by the Mass Media Bureau (the "Bureau") in returning the application in May 1989.<sup>2</sup>

3. In returning the application, the Bureau, and in denying reconsideration, the Commission emphasized several salient factors: namely, that the Open Media application was for a new station, not a modification of an existing noncommercial station; that the requested waiver was necessary as the direct result of Open Media's voluntary noncompliance with §73.509 of the Rules and not because no other suitable sites or frequencies existed; that Open Media's

---

<sup>1</sup> Under the Open Media proposal, the new station would receive interference to 6.9% of its proposed 60 dBu signal contour. In the Order, the Presiding Judge notes that in Open Media, the Commission refers to an earlier-filed application by Northern Illinois University and Rockford Educational Broadcasting Foundation ("NIU/REBF") which was returned because the proposal would have received objectionable interference to 1.3% of its protected 60 dBu contour. In the letter returning the application, the Bureau noted that the only justification provided by the applicant for the waiver was the "inclusion of additional service area and population within the proposed 60 dBu contour" of the station. Letter to Michael Lazar from Dennis Williams, Chief, FM Branch, Audio Services Division (8920-WED), dated January 12, 1988. The Commission has consistently found that expansion of coverage area alone is not sufficient to warrant a waiver of Section 73.509. See, e.g., Board of Education of the City of Atlanta, 48 RR 2d 637, 639 (1980) and Educational Information Corporation, 6 FCC Rcd. 2207, 2208 (1991).

<sup>2</sup> See Letter from Larry D. Eads, Chief, Audio Services Division, dated May 26, 1993 (8920-DT) (the "Eads Letter").

public interest showing (based upon the planning and participation of its members in filing the application) was unavailing and failed to establish a adequate justification for the requested waiver; that the substantial preclusionary effect of Open Media's proposal nullified the impact of the increase in noncommercial service which would result from its proposal; and that Open Media failed to establish a deficiency of noncommercial service to the community of license it sought to serve, i.e., Chicago.

4. In the instant case, the circumstances surrounding Concord's application and request for waiver are distinguishable and the public interest justifications presented clearly warrant the waiver requested. Unlike Open Media, Concord is an existing licensee seeking to modify its facilities. Thus, the waiver decision can be made in light of the impact of the upgrade on

Concord's actual broadcast service. This was important

noncommercial stations was changed from the former desired to undesired ratio basis to the current 1 mV/m contour overlap method.<sup>5</sup> That policy, established in Public Notice, FCC 81-322, Mimeo No. 29648, released July 17, 1981, contemplated that \$73.509 waivers would be granted when warranted by the public interest upon a showing by the applicant of "sufficient justification such as lack of alternative transmitter sites and/or frequencies." Concord established in its Petition for Leave to Amend and the Amendment submitted therewith, filed June 7, 1993, that it had considered and investigated -- to no avail -- alternative sites and frequencies, operation with reduced power, and directionalization in an effort to eliminate or reduce the overlap. Concord also established that as a result of the location of the overlap area, little actual interference would result from its proposed operation and that a grant of the waiver and its application would have no preclusionary effect. Importantly, Concord seeks to upgrade its Class D facility not only to expand its coverage area but in an effort to provide an adequate signal to its community of license,<sup>6</sup> the communities which the licensee school district serves (Concord and Carlisle, Massachusetts), and its existing listeners.<sup>7</sup> Thus, unlike the applicant in Open Media who sought to serve a large,

---

<sup>5</sup> Open Media, at ¶8, citing note 2 of the Eads Letter.

<sup>6</sup> Notably, the overlap area is outside the boundaries of Concord's community of license.

<sup>7</sup> As a result of its current limited signal, Concord is unable to provide service to large parts of Concord, Massachusetts. Moreover, its current secondary Class D status provides no protection against signal degradation caused by other facilities.

well-served city, Concord seeks only to provide minimally adequate service to its small undeserved city of license.

6. In the Eads Letter, the Bureau stated that the change in the method of calculating interference was merely "a new means of describing the same physical phenomenon." Thus, the actual threshold of waivable interference was not altered. As noted in the Bureau's comments supporting Concord's waiver request, Concord's proposal falls within the range of waivable interference (5% or less) under the former desired-to-undesired calculation method. Mass Media Bureau's Comments in Support of Petition for Leave to Amend and Contingent Motion for Summary Decision, p. 3. No such showing was made by Open Media.

In addition to the above stated factors, substantial public

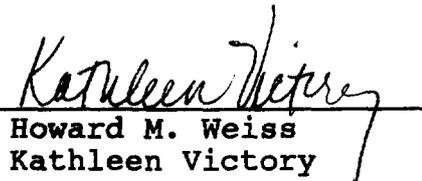
Technology Broadcasting Corporation have agreed to accept any interference which may result from the upgraded facilities.

Thus, none of the infirmities cited by the Commission regarding the Open Media application and request for waiver of Section 73.509 exist with respect to the Concord application and request for Section 73.509 waiver. The Concord waiver, supported by the Mass Media Bureau and by mutually exclusive applicant Technology Broadcasting Corporation, should be approved and both applications granted.

Respectfully submitted,

CONCORD-CARLISLE REGIONAL  
SCHOOL DISTRICT

By

  
Howard M. Weiss  
Kathleen Victory

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

June 28, 1993

c:\...\concord.sup\kv#12

**CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law offices of Fletcher, Heald & Hildreth, hereby certify that I have on this 28th day of June, 1993, had copies of the foregoing "SUPPLEMENT TO PETITION FOR LEAVE TO AMEND" mailed by U.S. Mail first class, postage prepaid, to the following:

\*Honorable Joseph Chachkin  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, NW, Room 226  
Washington DC, 20554

Lawrence M. Miller, Esquire  
Schwartz Woods & Miller  
Suite 300, The Dupont Circle Building  
1350 Connecticut Ave., NW  
Washington, DC 20036-1702

\*Paulette Laden, Esquire  
Hearing Branch, Room 7212  
Enforcement Division, Mass Media Bureau  
Federal Communications Commission  
2025 M. Street, NW  
Washington, DC 20554

  
Barbara Lyle

\* denotes hand delivery