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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL SECTION
FCC 93M-439

JUL 6 2 52 PM '93

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

MEMORANDUM OPINION AND ORDER

Issued: July 1, 1993

Released: July 2, 1993

1. Under consideration are "Petition For Leave To Amend" filed June 7, 1993 by Concord-Carlisle Regional School District (Concord), "Contingent Motion For Summary Decision" filed June 7, 1993 by Concord, Mass Media Bureau's Comments In Support Of Petition For Leave To Amend And Contingent Motion For Summary Decision filed June 16, 1993, Memorandum filed June 28, 1993 by Technology Broadcasting Corporation (Technology), Supplement To Petition For Leave To Amend filed June 28, 1993 by Concord, and Mass Media Bureau's Further Comments In Support Of Petition For Leave To Amend And Contingent Motion For Summary Decision filed June 28, 1993.

2. Concord and Technology, the applicants in this proceeding, are non-commercial licensees. Concord's licensed facility is a Class D FM station operated by a high school in Concord, Massachusetts. Technology's licensed facility is a Class A FM station operated by the Massachusetts Institute of Technology. Both applicants seek to upgrade their facilities. Concord proposes to upgrade its Class D facility to a Class A facility while Technology seeks to increase its effective radiated power and its antenna height above average terrain. The applicants are mutually exclusive because the 54 dBu contour proposed by Technology would overlap the calculated 60 dBu contour of Concord's proposed facility in contravention of Section 73.509 of the Rules.¹ Concord seeks a waiver of Section 73.509 which, if granted, would eliminate the mutual exclusivity between the applicants and permit the grant of both of them.

3. Good cause has been shown for grant of the requested waiver. Grant of the waiver would enable both of the applicants to upgrade their facilities to Class A status, a goal which the Commission has determined to be in the public interest. See, i.e., Changes in the Rules Relating to

¹ The calculated 54 dBu contour of Concord's proposed facilities will not in turn, overlap the calculated 60 dBu contour of Technology's proposed facility.

Noncommercial Educational FM Broadcast Stations, 44 RR 2d 235 (1978). In addition, the area of overlap is outside the boundaries of Concord in an area which Concord, a high school station, does not propose to address in its programming. Indeed, the area has its own high school radio station. Moreover, 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. Finally, Concord, has shown that there are no reasonable alternative transmitting sites.²

Accordingly, IT IS ORDERED, That the "Petition For Leave To Amend" filed June 7, 1993 by Concord-Carlisle Regional School District IS GRANTED; the amendment IS ACCEPTED; and Section 73.509 of the rules IS WAIVED.

IT IS FURTHER ORDERED, That the "Contingent Motion For Summary Decision" filed June 7, 1993 by Concord-Carlisle Regional School District IS DISMISSED as moot.

IT IS FURTHER ORDERED, That the applications of Concord-Carlisle Regional School District and Technology Broadcasting Corporation ARE GRANTED, and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Joseph Chachkin
Administrative Law Judge

² The facts in this case are clearly distinguishable from the Commission's recent decision in Open Media Corporation, FCC 93-301, released June 15, 1993 wherein a request for waiver of Section 73.509 was denied. Open Media involved applications for new facilities unlike this case involving an existing licensee seeking to upgrade its facilities to Class A status in order to increase service and provide a more efficient use of the FM spectrum. Further, Concord has demonstrated that no reasonable alternative sites are available. By contrast, the overlap which necessitated a waiver in Open Media was purely voluntary. Also, a grant of the waiver here would eliminate the mutual exclusivity between the applicants and permit both applications to be granted.