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

In re Applications of)	MM DOCKET NO. 93-37
)	
LEHIGH VALLEY COMMUNITY)	File No. BPED-891019MF
BROADCASTERS BOARD OF DIRECTORS)	
Channel 207A)	
Allentown, Pennsylvania)	
)	
)	
For Construction Permit for a)	
New Noncommercial Educational)	
FM Station)	

To: The Chief, Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Lehigh Valley Community Broadcasters Association, Inc. (Lehigh), through its attorneys and pursuant to Section 1.106 of the rules hereby files its opposition to the Petition for Reconsideration (Petition) filed by Capital Cities/ABC, Inc., licensee of Station WPVI-TV, Channel 6, Philadelphia, Pennsylvania (WPVI) in connection with the action of the Commission granting the above-referenced application by Lehigh for a new public FM station at Allentown, Pennsylvania. In support thereof, the following is shown:

Background

1. WPVI argues preliminarily that it had no "reasonable" opportunity to protest the grant of Lehigh's application. On the merits, WPVI alleges that Lehigh's proposal, as amended to specify Channel 201, will cause objectionable interference to some 200,000 persons within WPVI's protected service area. Based upon this contention, WPVI asserts that the Commission's action granting Lehigh's application constitutes a modification of

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WPVI's license which is prohibited by Section 316 of the Communications Act absent a hearing on the merits of WPVI's claim.

WPVI's arguments are wholly without merit and must be rejected.

WPVI's Attack on Lehigh's Application Is Untimely

2. WPVI's initial contention that it had no reasonable opportunity to timely contest Lehigh's application as amended must be rejected. Indeed, WPVI was well aware of Lehigh's application from the beginning of this proceeding and was an active participant in it long before the hearing phase of the proceeding commenced. WPVI had ample notice of the filing of Lehigh's application and of the subsequent order designating the application for hearing. Public Notice of the acceptance for filing of Lehigh's application was announced on August 3, 1990 (Report No. A-200). This Notice established a deadline of September 5, 1990 for the filing of competing applications. On September 5, 1990, Beacon Broadcasting Corporation (Beacon) filed a mutually exclusive application for a new public FM station on Channel 207A at Allentown, Pennsylvania. That WPVI was monitoring this proceeding is evidenced by its filing on May 27, 1992 of an informal objection to the Beacon application alleging objectionable Channel 6 interference.

3. On February 5, 1993, the applications of Lehigh and Beacon were designated for hearing; public notice of the hearing was announced on March 9, 1993 (HDO, DA 93-154). On April 14, 1993, Lehigh and Beacon filed a Joint Motion for Approval of Settlement wherein, inter alia, Lehigh proposed

amendment of its application to specify Channel 201. Lehigh's amendment specifying Channel 201 was filed with the Commission on April 15, 1993. The amendment included an extensive technical study demonstrating that the application, as amended, fully complied with all rules regarding EFM/TV-6 interference and did not cause any prohibited interference to WPVI. The Mass Media Bureau specifically concluded that Lehigh's application, as amended, "complies with all relevant Commission rules" (Bureau Consolidated Comments filed April 28, 1993, p. 3). On May 26, 1993, Administrative Law Judge Joseph Chachkin approved the settlement and granted Lehigh's application, as amended (FCC 93M-312, released May 28, 1993). On June 3, 1993, the Commission provided public notice of this determination (Report No. DC-2426), summarizing the Judge's action and including reference to the grant of Lehigh's application, as amended. Under the rules, the Judge's action became final on July 8, 1993.

4. In spite of this history, WPVI did not protest at all until August 24, 1993 (see WPVI Petition, Exhibit A), almost three months after the Judge had approved the settlement and notice of the settlement had been provided to the public. WPVI clearly had actual notice of the fact that the proceeding involving the Lehigh and Beacon proposals implicated its interests. It could and should have exercised due diligence in monitoring this matter as it had done in the earlier stages.¹

¹Moreover, while WPVI complains that the waiving of the rules by the Judge to permit acceptance of Lehigh's amendment and grant of the Lehigh application, as amended, deprived WPVI of its

Under all of the circumstances, WPVI's thirteenth hour protest of Lehigh's application is grossly untimely and should be rejected.

WPVI's Section 316 Claim is Wholly Without Merit

5. WPVI alleges that the grant of Lehigh's application constitutes a modification of its license without a hearing as required by Section 316 of the Communications Act. WPVI's claim of entitlement to a Section 316 hearing is predicated on its erroneous assertion that Lehigh's proposal, as amended, does not comply with the rules and will cause cognizable interference to WPVI. This assertion is wholly without merit.

6. Lehigh's application, as amended was thoroughly reviewed by the Bureau and found to comply with all applicable rules respecting EFM interference to television Channel 6. In this connection, attached is an Engineering Statement prepared by Lehigh's consulting engineer. That Statement demonstrates conclusively that: 1) WPVI's technical showing in support of its claims is fatally flawed; and 2) Lehigh's application, as amended, was prepared in accordance with all applicable Commission rules and regulations and will not cause any objectionable interference to WPVI.

7. In particular, WPVI grossly overstates the predicted interference to WPVI by using ground elevations which exceed actual ground elevations utilized in accordance with the

opportunity to be heard, WPVI itself has specific experience with this procedure; it was directly involved in an earlier settlement of this nature. See Cabrini College, FCC 89M-2039, released August 8, 1989.

rules by Lehigh and by ignoring the depression angles in calculating the distance to FM interference contours. The overstatement of actual ground elevations for the 340-degree radial range from 20 to 80 feet and the omission to consider depression angles result in an overstatement of the distance from the transmitter of Lehigh's interfering signal and a prediction of an interference area substantially larger than that actually proposed by Lehigh's application, as amended. In addition, it should also be noted that WPVI nowhere considers ground elevations for radials other than the 340-degree radial; consequently, it is impossible to evaluate the accuracy of ground elevations used by WPVI on any other radial. In any event, the overstatement of ground elevations along the 340-degree radial and the omission of depression angles results in the erroneous conclusion that Lehigh's proposal, as amended, will result in predicted interference which covers a portion of Allentown.

8. As shown in Lehigh's Engineering Statement, Lehigh's amended proposal was prepared in accordance with all applicable Commission rules regarding interference to television Channel 6 and included an exhaustive study demonstrating compliance with those rules and non-interference to WPVI. Specifically, Lehigh utilized the manual method prescribed by Sections 73.313 and 73.525 of the rules. This is the only method specified by the rules and in fact results in a greater level of accuracy than other methods, including the computer calculation-based method of WPVI. The foregoing facts compel the conclusion

that Lehigh's proposal will not cause any objectionable interference to WPVI. Accordingly, WPVI's belated claim that Lehigh's proposal constitutes a modification of WPVI's license requiring a Section 316 hearing must be rejected.

9. Lehigh's proposal, when implemented, will provide a cardinal noncommercial educational FM service to hundreds of thousands of people in the Lehigh Valley region without adversely affecting WPVI's ability to serve its own constituents. The fact that Lehigh has secured federal funds through the National Telecommunications and Information Administration's Public Telecommunications Facilities Program attests to the public benefits of Lehigh's proposal. Moreover's Lehigh has committed substantial time and resources in its endeavor to effectuate its proposal, which would be jeopardized in the event that the Commission accords any credence to the unsupported contentions of WPVI. Lehigh's proposal was pending for well over three years prior to its approval by the Commission. Lehigh has incurred substantial expense in prosecuting that proposal, including extensive negotiations with a competing applicant and an extensive technical study necessary to arrive at a mutually acceptable arrangement which would permit inauguration of two public FM services to the Lehigh Valley region. Over \$200,000 in federal and local funds have been committed since the grant of Lehigh's application, as amended. Lehigh is already committed to substantial operational costs, including payroll and a timeline of affiliation with National Public Radio by its targeted on-air date of mid-1994.

Money has been committed to the coordination of a satellite earth terminal. Preliminary results from the frequency coordination study indicate that only one of the five sites examined is viable. Architectural studies for this one facility are under way and the conclusion of a long-term studio lease is imminent. The timely inauguration of public radio service to an area currently underserved by public radio service would be unnecessarily and unfairly forestalled by a consideration of WPVI's palpably erroneous interference claims.

WHEREFORE, for the foregoing reasons, Lehigh respectfully urges the Commission to dismiss or deny WPVI's Petition forthwith.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY
BROADCASTERS ASSOCIATION, INC.

By: Robert A. Woods
Robert A. Woods

By: Malcolm G. Stevenson
Malcolm G. Stevenson

SCHWARTZ, WOODS & MILLER
Suite 300, The Dupont Circle Building
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202)833-1700

Its Attorneys

LEHIGH VALLEY COMMUNITY BROADCASTERS ASSOCIATION, INC
PERMITTEE OF RADIO STATION
WDIY ALLENTOWN, PA

ENGINEERING STATEMENT IN SUPPORT OF
OPPOSITION TO PETITION FOR RECONSIDERATION
FILED BY CAPITAL CITIES/ABC, INC
AGAINST
LEHIGH VALLEY COMMUNITY BROADCASTERS ASSOCIATION, INC
PERMITTEE OF RADIO STATION
WDIY ALLENTOWN, PA

CHARLES W. LOUGHERY
741 CYBUS WAY
SOUTHAMPTON, PA 18966

ENGINEERING STATEMENT

Lehigh Valley Community Broadcasters Association, Inc, Permittee of Radio station WDIY Allentown (WDIY) rejects the findings of the Engineering Statement of Capital Cities/ABC, Inc, Licensee of Television station WPVI Philadelphia (WPVI).

WPVI's Engineering Statement contains several flaws which result in a larger area of alleged interference. These flaws lead to the erroneous conclusion that part of the interference area encompasses a portion of Allentown. Based on this erroneous assumption WPVI re-calculates the interference area by dividing the ERP by 10 rather than 40. The end result is alleged interference to 201,667 persons. The flaws in the WPVI study however render this conclusion invalid.

Exhibit 4 of the WPVI Engineering Statement includes a column showing ground elevations along the 340 degree radial. The elevations shown do not agree with the elevations as shown on the USGS Quadrangle Map for corresponding distances. In particular, WPVI overstates the ground elevations in almost every case resulting in a larger predicted interference area. This occurs because the terrain is being shown higher above sea level than it actually is resulting in more ground area "pushed up into" the interference area created by the main lobe of radiated power from the six bay antenna.

Further, Exhibit 4 provides data for only the 340 degree radial. WPVI has not included such data for any other radial nor

have they provided any profile graphs. For these reasons it is impossible to evaluate the accuracy of ground elevations used by WPVI on any other radial.

WPVI has also erred in it's calculations of the distance to FM interference contours. While the vertical pattern of the antenna appears to have been taken into consideration in making their calculations, the distance to contours appear to have been calculated without regard to the fact that these distances must be calculated along the depression angles and not merely outward from the antenna. It is not sufficient in this case to merely consider that a given point on the ground occurs at a location along a given depression angle from the antenna , take the actual power radiated in that direction and then apply the standard distance to contour calculations. The signal is traveling the length of the depression angle before it reaches the ground. This distance longer because the angle is the hypotenuse of an imaginary right triangle. The result here is that the signal at the ground is less than that stated by WPVI. Therefore the interference area is smaller than that claimed by WPVI.

The two errors discussed above make the interference area, as determined by WPVI, appear far larger than it actually is. Calculated properly, the interference area does not encompass any part of Allentown.

In preparing it's Channel six interference study as contained in the application for WDIY's construction Permit the applicant used the following method.

At the outset, the applicant proposed a six bay vertically polarized antenna so as to reduce Channel six interference sig-

nificantly. This reduction occurs because of the vertical plane radiation pattern (elevation pattern) of the antenna. Specifically, the power from such an antenna is concentrated in the main lobe of radiation toward the horizon. Nulls and minor lobes which occur on depression angles below the horizon have substantially less power. It is for this reason that Channel six interference is reduced well below that which would occur without considering the vertical pattern.

In determining HAAT and distance to contours for WPVI the applicant used the Data World FMTV6 interference computer program.

HAAT for the FM station was determined by using the NGDC 30 second method also from Data World. Distance to FM interference contours was determined manually by using the F(50/50) Chart from 73.333 (figure 1), this chart was used instead of the F(50/10) chart because the distance to the FM interference contours were less than 15 kilometers and therefore not covered by the F(50/10) chart. The distance to contours was calculated along the depression angles.

Ground elevations throughout the interference area were taken directly from the Allentown East USGS Quadrangle Map every 1/10 to 1/20 of a mile and were plotted for 18 evenly spaced radials on profile graphs (pages 26 thru 44 of the application). The interference area is shown on the profile graphs. It can be seen from the graphs that most of the interference area occurs in the sky. The distances to areas on the ground where the interference occurs were transferred from the profile graphs to the maps

shown in the application (pages 24 and 25). Interpolation was used to determine the distance to the interference area at azimuths other than the 18 evenly spaced radials. While interpolating, ground elevations were also checked at every 5 degrees to ensure greater accuracy.

It can be seen from the maps that the interference area tends to follow terrain contours. This is because the terrain rises up into the interference area created by the higher power levels in the main lobe of radiation of the six bay antenna. An example of this is clearly visible on the 20 degree profile graph (page 27) of WDIY's application. Further, the interference area does not encompass any portion of Allentown.

It should be stressed that the calculations performed in connection with the amendment to the WDIY application were based upon the manual method prescribed in 73.313 and 73.525 of the rules and that, in determining the interference area, the applicant relied almost entirely on these manual methods. The Channel six study took many hours over many weeks to prepare as a result of use of the manual method, which is the only method specifically prescribed by the rules. It may be noted that many of the computer programs available to make these calculations often yield different results when calculating distance to contours over shorter distances than that which is calculated using the F(50/50) Chart. Additionally, by conducting its study using the manual method, the applicant was able to more easily determine distance to contours over the depression angles and, more important, to achieve a higher level of accuracy. The applicant's engineering proposal, as reviewed and approved by the Commission,

fully complies with all Commission rules and policies respecting interference to television Channel 6.

DECLARATION

I declare , under penalty of perjury, that I have prepared the attached Engineering Statement on behalf of Lehigh Valley Community Broadcasters Association, Inc., Permittee of FM radio station WDIY Allentown, Pa. and that all the facts therein, except for facts of which the Federal Communications Commission may take official notice, are true to the best of my knowledge and belief.

I further declare that I have prepared and filed Engineering Exhibits with the Commission since 1979 and that I hold an FCC General Class Radio Telephone Operators License (since 1977).

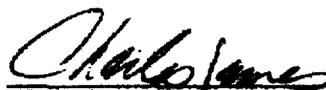
executed on: 30 September 1993



Charles W. Loughery
741 Cybus Way
Southampton, Pa. 18966
215 357-5105

DECLARATION

I hereby declare, under penalty of perjury, that, except for the facts of which the Federal Communications Commission may take official notice, the facts stated in the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** are true and correct. Dated this 4th day of October, 1993.



Charles James
LEHIGH VALLEY COMMUNITY
BROADCASTERS ASSOCIATION, INC.

CERTIFICATE OF SERVICE

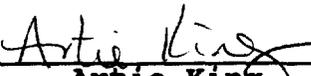
I, Artie King, Secretary in the law office of Schwartz, Woods & Miller, do hereby certify that I have on this 4th day of October 1993 sent by First Class United States mail, postage prepaid, copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** to the following:

The Honorable Joseph Chachkin *
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., #226
Washington, D.C. 20554

Gary Schonman, Esquire *
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., #7212
Washington, D.C. 20554

Chief, Data Management Staff *
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., #350
Washington, D.C. 20554

Jeffrey D. Southmayd, Esquire
Michael R. Miller, Esquire
Southmayd & Miller
1233 - 20th Street, N.W., #205
Washington, D.C. 20036



Artie King

* Hand Delivered