

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

OCT 25 1988

MAIL BRANCH

IN REPLY REFER TO:

OCT 27 1988

8920-DEB

Quinnipiac College
555 New Road
Hamden, Connecticut 06514

signed by
mailed by

In re: WQAQ; Hamden, CT
Quinnipiac College
BPED-841031IG

Dear Sirs:

This letter is in reference to the above-captioned application to improve the present Class D facilities of WQAQ to Class A facilities, specifying 0.100kw effective radiated power at an antenna height above average terrain of -25 meters. The application was originally filed in March 1980 to move WQAQ's Class D operation to Channel 251D and was assigned file number BPED-800304AK. WQAQ later submitted a major amendment to specify the existing channel with Class A facilities. This major amendment was assigned file number BPED-841031IG; the original file number BPED-800304AK was deleted. This application was cut-off on August 20, 1987.

The presently licensed Class D facility (File No. BLED-1733) exists at an IF spacing of 4.8 km from station WPLR(FM), New Haven, Connecticut. This situation violates no rule section since Class D stations outside of the Mexican Border zone do not have IF spacing requirements.¹ However, WQAQ's proposal to increase effective radiated power to 0.100 kw (without changing site or antenna height from the existing operation), does violate the IF spacing provisions of 47 C.F.R. § 73.207(a). This sections mandates that a spacing of 16.0 km be maintained between WPLR and any Class A facility. The applicant has recognized this situation, and has requested a waiver of 47 C.F.R. § 73.207(a) to permit 11.2 km of new short-spacing.

In support of the requested waiver, WQAQ cites the grant of a similar situation in Chicago. In that case, WCRX was granted construction permit BPED-791228AM to operate with 0.100 kw ERP despite being only 3.6 km from the IF station. The waiver request states that the 20 mV/m contour overlap between WQAQ and WPLR will only amount to 71% of that granted to WCRX.

¹ The IF spacing rules of 47 C.F.R. § 73.207(a) were adopted in the Report and Order in Docket 15934, 5 RR 2d 1679, released July 2, 1965. With respect to Class D noncommercial educational stations, however, the Commission stated: "[w]e do not expect ...that there will be the same [IF interference] problem with the 10 watt educational stations, and are not proposing any mileage separation rules for these stations." Class D IF situations are handled on a case-by-case basis.

Further, the applicant notes that no actual interference has been created by the present WQAQ operation. The applicant has pledged to take all reasonable steps to resolve any interference that may occur, or to reduce power if necessary to eliminate the problems. WQAQ believes that such steps will not be necessary, however, in part due to the rural nature of the area surrounding the WQAQ transmitter site.

When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action. Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F.2d 644 (D.C. Cir. 1969). We have afforded your waiver request the "hard look" called for under the WAIT Doctrine, WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in your justification are insufficient to establish that grant of the requested waiver would be in the public interest.

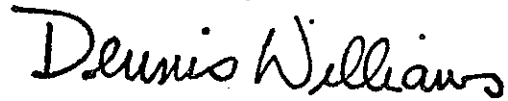
A licensee proposing to create a short-spacing by upgrading his facility at his present transmitter site must make the following showing to justify waiver of the spacing rules: (i) that the present site is no longer suitable, John Lamar Hill, 70 FCC 2d 153 (Rev. Bd. 1978); (ii) that alternative, non-short-spaced sites are unavailable, Carroll-Harrison Broadcasting, Inc., 62 FCC 2d 45, 46 (1976) and Townsend Broadcasting Corp., 62 FCC 2d 511, 512 (1976); and (iii) that the proposed site is the least short-spaced of all suitable sites, Musicast of the South, 45 RR 2d 1213 (1979). See also Megamedia, 67 FCC 2d 1527, 1528 (1978). After meeting those threshold tests, the applicant must still show that waiver of the spacing requirements would serve the public interest.

Your waiver request, although it does not involve a physical change in transmitter site, is required to provide supporting evidence to meet each of these criteria. Your waiver request fails to provide any data regarding the proposed 11.2 km short-spacing. Instead, overlap between the 20mV/m contour is considered and compared to the WCRX situation. However, showings based on contour overlap are irrelevant since the applicable standards (47 C.F.R. § 73.207) involve spacing criteria. Musicast of the South, Inc., 45 RR 2d 1213 (1979).

With respect to the WCRX "precedent", our review indicates that WCRX's application was granted by the staff without proper consideration of the IF spacing situation. WCRX's construction permit BPED-791228AM was clearly issued in violation of the IF rules in 47 C.F.R. § 73.207. The staff does not have the authority to approve any spacing waiver requests of this nature and extent under delegated authority. In light of this, the grant of WCRX's Class A facilities was a deviant staff action against established Commission precedent and is not controlling in this case. See, e.g., North Texas Media, Inc., 778 F.2d 28, 32-33 (D.C. Cir. 1985). Therefore, this case cannot be cited as a precedent for your waiver request.

Accordingly, your request for waiver of 47 C.F.R. § 73.207(a) for 11.2 km of new short-spacing IS HEREBY DENIED. Pursuant to 47 C.F.R. § 73.3566(a), your application BPED-841031AG is found to have been inadvertently accepted for filing and IS HEREBY DISMISSED. This action has no effect on the presently licensed Class D operation.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Williams". The signature is written in dark ink and is positioned above the typed name and title.

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau