

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

In re Application of)	
)	
WAMC)	
)	File No. BNPED-20071019ATD
For New Noncommercial Educational)	Facility ID 176621
FM Broadcast Station at Mt. Kisco, NY)	
)	

To: Secretary, FCC
Attn: Chief, Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

WAMC, by its counsel, petitions for reconsideration of the Commission's dismissal of the above-captioned application for a new noncommercial educational ("NCE") FM station at Mt. Kisco, New York (the "Application"). As explained below, reinstatement of the Application – which WAMC believes to be a "singleton," in conflict with no other filings – will greatly facilitate the provision of new NCE radio service to underserved areas.

WAMC filed the application on October 19, 2007 during the FCC's filing window for new NCE FM stations.¹ The FCC dismissed the application by letter dated November 8, 2007² (copy attached), which stated:

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 73.509 with respect to the co-channel Class A license (BLED-199900521KA) for WFRS(FM), Smithtown, NY. Specifically, the proposed protected contour (60 dBu) would receive overlap from the interfering contour (40 dBu) of WFRS.

¹ *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12-October 19, 2007 Window*, Public Notice, DA 07-3521 (Rel. Aug. 9, 2007).

² Public Notice of the dismissal was given on November 15, 2007.

WAMC respectfully submits that the finding of contour overlap which resulted in the dismissal was based upon the Commission's use of 30-arc-second terrain data, whereas the Application was prepared using USGS 3-arc-second terrain data, as stated in the Application. WAMC further submits that an analysis of the Application using the more accurate 3-arc-second data demonstrates that there is no prohibited overlap. See attached Engineering Statement of Joseph DiPietro, P.E. As the Engineering Statement also explains, the source of the FCC's 30-second data is the USGS 3-arc-second data, such that the data supporting the showing of no prohibited overlap is not different than the 30-arc-second data, but simply a more accurate version of the same.

In addition, WAMC submits that the historical practice and precedent of the Commission's Audio Division allow for the Application's use of the more accurate 3-arc-second data. See attached Engineering Statement. Accordingly, it is in the public interest to reconsider the dismissal of the new station Application (both in terms of protecting existing contours and providing the best possible new service to the public) because it was based on the most accurate data available and also because it is a "singleton" application which would provide new NCE radio service.³ Moreover, the Application as filed provided the required protection to existing stations in accordance with applicable FCC Rules, and demonstrated its technical compliance consistent with Commission policy and practice.

Notwithstanding the above, and on the advice of FCC audio division staff, WAMC is filing (concurrent with the submission of this Petition for Reconsideration) an electronic amendment to the Application which was prepared using FCC 30-arc-second terrain data. See

³ As detailed in the Application, the proposed new station will eliminate NCE radio gray area by providing a substantial amount of second NCE aural service.

attached Engineering Statement. The amended proposal, including the changes in terrain data and other related technical changes, demonstrates compliance with Section 73.509 of the FCC's Rules. Moreover, as explained in the attached technical statement, the amended Application is not mutually exclusive with any existing allotment or authorization, or other applications filed during the October 2007 NCE filing window. As a result, the Commission can accept the amended Application for filing and proceed with its processing.⁴

For the reasons stated above, WAMC respectfully requests that the Commission reconsider its dismissal of the Application, reinstate the Application as amended, and accept it for filing in connection with its processing of submissions from the FCC's October 2007 NCE FM station filing window.

Respectfully submitted,

WAMC

By: Barry Persh
Margaret L. Miller
Barry S. Persh
Its Counsel

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December 10, 2007

⁴ See *Window Opened to Expedite Grant of New NCE FM Station Construction Permits*, Public Notice, DA 07-4571 (Rel. Nov. 8, 2007).

EXHIBIT A

FCC Letter of November 8, 2007

FEDERAL COMMUNICATIONS COMMISSION

**445 12th Street SW
WASHINGTON DC 20554**

**MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: WWW.FCC.GOV/MB/AUDIO/**

NOV 08 2007

**PROCESSING ENGINEER: Khoa Tran
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**WAMC
318 Central Avenue
Albany, NY 12206**

**In Re: NEW(FM), Mt. Kisco, NY
Facility ID # 176621
WAMC
BNPED-20071019ATD**

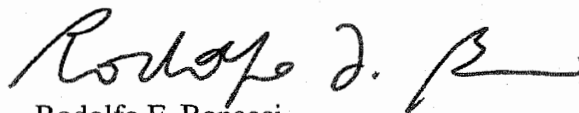
Dear Applicant:

This letter refers to the above-captioned application for a new non-commercial educational FM facility to serve Mt. Kisco, NY.

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 73.509 with respect to the co-channel Class A license (BLED-19900521KA) for WFRS(FM), Smithtown, NY. Specifically, the proposed protected contour (60 dBu) would receive overlap from the interfering contour (40 dBu) of WFRS. This constitutes an acceptance defect.

In light of the above, Application BNPED-20071019ATD is unacceptable for filing pursuant to 47 C.F.R. § 73.3566(a) and is HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



**Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau**

cc: Margaret L. Miller, Esq.

EXHIBIT B

Engineering Statement

Engineer's Statement in support of a
Petition for Reconsideration of
BNPED-20071019ATD

I prepared the engineering for application BNPED-20071019ATD. This application was dismissed due to violations of rule 73.509 (prohibited overlap of protected and interfering contours).

The contour overlap responsible for the dismissal is present only when analyzed using FCC 30-arc-second terrain data, the application was prepared using USGS 3-arc-second terrain data. When analyzed using the more accurate 3-second data there is no prohibited overlap. The application included exhibits that explicitly stated that the more accurate USGS data was used. It is a long-standing policy of the FCC to accept applications using terrain data that is more accurate and/or precise than the FCC 30-arc-second information. It should be noted that the source of the FCC 30-second data is the USGS 3-second data. That is to say, the terrain data used was not different from the FCC 30-second data but simply a more precise version of the same data.

While conferring with FCC Staff on this matter I was told that reconsideration of the application could best be obtained by resubmitting with 30-second data. They indicated that, while reconsideration could be obtained using the original 3-second data, it would be simpler for the Staff to process the application using 30-second data.

Therefore, in the interest of expedience, I have recalculated and adjusted the original proposal using 30-second FCC terrain data. The changes do not result in significant changes in population served and, in fact, result in an increase in the amount of coverage of the Community-of-License.

The modified proposal is a singleton and does not exhibit overlap with any existing allotment or authorization including applications filed in the recent NCE filing window.

Joseph DiPietro, P.E.
December 4th 2007

CERTIFICATE OF SERVICE

I, Sue Fischer, certify that a copy of the foregoing "Petition for Reconsideration" was served this 10th day of December, 2007, by hand delivery or First Class United States mail, postage prepaid, upon the following:

James Bradshaw*
Deputy Division Chief, Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Sue Fischer

*By Hand Delivery