



Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED - FCC**
Washington, DC 20554

MAR 24 2005

In the Matter of Application of)

Federal Communication Commission
Bureau / Office

LEHIGH VALLEY COMMUNITY)
BROADCASTERS ASSOCIATION, INC.)

File No. BPED-19990823IA

For a Minor Change to WDIY(FM))
Allentown, Pennsylvania)
Facility ID No. 36992)

To: The Chief, Media Bureau

PETITION FOR RECONSIDERATION

By letter dated February 16, 2005, Media Bureau staff dismissed an application filed by Lehigh Valley Community Broadcasters Association, Inc. ("Lehigh") for a construction permit to make minor changes to noncommercial educational FM station WDIY, Allentown, Pennsylvania. The dismissal is based on grounds that the applicant had not amended its Channel 6 interference showing as requested by staff, and had therefore violated Section 73.3568(a)(1) of the Commission's rules by failing to prosecute the application. Public Notice of the dismissal appeared on February 22, 2005. This Petition for Reconsideration is therefore timely filed.

Discussion

When Lehigh filed the captioned application in 1999, it recognized that the facilities proposed would result in predicted interference to Channel 6 television station WPVI, Philadelphia, Pennsylvania. It also recognized that the television industry was in flux, and that the transition to a digital mode of transmission (DTV) would potentially reconfigure the existing scheme for allotting television channels.

Since 1999, the DTV transition has accelerated, but considerable uncertainty remains over the ultimate scheme of DTV allotments. WPVI-TV was initially assigned DTV Channel 64. On February 1, 2005, WPVI chose not to elect an alternate channel. (See BFRECT-20050210AQO). Thus, while it remains uncertain which DTV channel WPVI will be allotted, is now certain that WPVI will *not* operate on Channel 6. (Applicants with only one in-core NTSC channel, who do not elect to keep their in-core channel, are treated as a two out-of-core licensee. Report and Order, FCC 04-192, para. 50 (September 7, 2004).) In light of these circumstances, Lehigh requests that its application be returned to pending status. No good purpose would be served by dismissing Lehigh's long-pending application in order to protect a Channel 6 allotment that will certainly be eliminated.

Until WPVI begins to operate solely in a digital mode, WPVI will operate on both NTSC Channel 6 and DTV Channel 64. Section 73.525 of the Commission's Rules pre-dates the advent of digital television, and does not deal specifically with the issue of what protection a TV station may claim when operating in both analog and digital transmission modes. Section 73.525 does, however, deal with analogous situations, such as TV translators or satellite stations whose service areas overlap with those of the primary or parent station. The rule also makes provision for interference areas served by another television station that offers the same network programming on the Channel 6 station. In these situations, Section 73.525(e)(3)(i) - (iii) permits an NCE-FM station to subtract the number of persons who receive television service by alternative means from the population within the Channel 6 interference area. By analogy, the population within the interference area created by the WDIY application should be reduced by the number of people within the area served by WPVI operating on a DTV channel. As

demonstrated in Lehigh's original application, "The population contained within the Channel 6 interference area ... lies entirely inside the new WPVI-DT (Channel 64) coverage area."

Conclusion

WDIY has not "failed to prosecute" the captioned application. Instead, until recently, substantial uncertainty concerning television allocations has made it impossible to determine whether WPVI would continue to operate on Channel 6 or not. It is now clear that WPVI will *not* operate on DTV-6. Dismissal of Lehigh's application - which has been pending since 1999 - is therefore unwarranted.

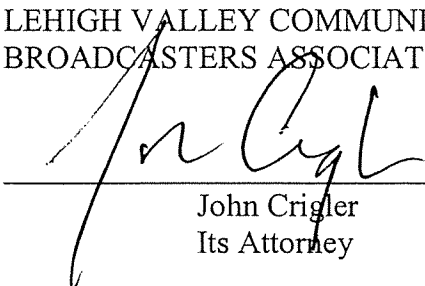
Lehigh requests that its application be reinstated and returned to pending status. If Channel 6 will disappear as a TV allotment in Philadelphia, it would be pointless to require WDIY to protect the channel, and to deny the public a substantial improvement in noncommercial service. Alternatively, the Commission should reinstate and grant the WDIY application on grounds that the facilities proposed satisfy the adjustment criteria set forth in Section 73.525(e)(i-iii). The modified WDIY facilities will provide protection analogous to that provided to channel 6 stations whose service area overlaps that of a television translator, satellite station, or full-service station affiliated with the same network.

Respectfully submitted

LEHIGH VALLEY COMMUNITY
BROADCASTERS ASSOCIATION, INC.

March 24, 2005

By:



John Crigler
Its Attorney

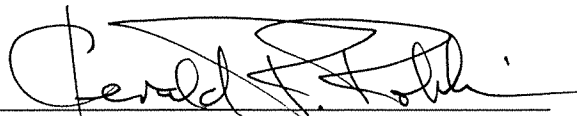
CERTIFICATE OF SERVICE

The undersigned, an employee of Garvey Schubert Barer, hereby certifies that on March 24, 2005, the foregoing document was hand-delivered* and sent, postage prepaid via U.S. mail, to the following:

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