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12 August 2007

Section VII, Question 15a

Exhibit 16

Prepared for Hudson Valley Community Radio

CONTOUR OVERLAP

The applicant, Hudson Valley Community Radio ("Hudson"), seeks to modify the facilities permitted in BPED-20050207AER.

On 11 August 2007, this office performed a computerized allocation analysis for the proposed facilities using data from the Commission CDBS, current as of 10 August 2007. The software to perform this analysis is provided by V-Soft Communications. A copy of this study is attached.

This study revealed four assignments which require further examination. These are the licensed co-channel facilities of WRPR, Mahwah, NJ, WWPT, Westport, CT, and WHPC, Garden City, NY; and the licensed second-channel adjacent facilities of WFUV, New York City, NY.

Attached is a map exhibit showing the location and extent of the protected and interfering contours of WRPR, WWPT and WHPC and of the proposed facilities. This exhibit shows conclusively that no prohibited overlap exists between the proposed facilities and these stations.

The proposed 100 dB μ interfering contour is encompassed in its entirety by the protected contour of the WFUV.

The currently licensed facilities WFUV, which are a modification of those originally permitted in BPED-19831118AL, were the subject of a lengthy dispute, which, in part, concerned prohibited overlap between the proposed WFUV protected contour and the and the interfering contour of the facilities applied for by Hudson at its original transmitter site. The Commission resolved this dispute in a ruling, the terms of which were spelled out in a letter dated 30 September 1992, from Larry Eads, Chief, Audio Services Division, Mass Media Bureau and addressed to Fordham University, Westchester Council for Public Broadcasting and eight other addressees. See Sections F & G of this letter, attached as an exhibit. (The WDFH license was subsequently assigned to Hudson from Westchester Council for Public Broadcasting.)

In this letter the Commission recognizes that, "Although overlap still exists, the encompassment of Westchester's 80 dBμ contour by WFUV(FM)'s 60 dBμ is consistent with the public interest calculus set forth in WCPE. Accordingly, waiver of 47CFR§73.509 with appropriate condition is warranted."

In Educational Information Corporation (WCPE(FM)), 6 FCC Rcd 2207 (1991) ("WCPE") the Commission states:

"The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second and third channel adjacent overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas.

In WCPE, the Commission also specifically addressed waivers involving interference caused by second and third adjacent stations:

Whereas WCPE's proposal discussed above involved overlap received, WCCE's proposal involves overlap caused and therefore requires separate consideration. We note, however, the proposals such as WCCE's are "the other side of the coin." Where waivers are approved to allow stations to receive overlap, there is always a station causing it. Thereafter any increase or displacement in the facilities of the "causing" station will result in new overlap. To avoid perpetually restricting such stations to their current facilities, and in view of the limited nature of the interference potential of second or third adjacent channels discussed above, we are inclined to view waiver requests such as WCCE's favorably where there is clear public benefit."

The Commission granted a construction permit to build the applicant's licensed facilities on 14 October 1997 and those in BPED-20050207AER on 24 January 2006. In both instances, the proposed 100 dB μ contour was encompassed by the WFUV protected contour. The applicant believes that its situation is analogous to that of WCCE, above.

Attached is a map exhibit showing the location and extent of the WDFH licensed 60 dB μ contour and the locations and extents of the proposed 60 dB μ and 100 dB μ contours, in relation to the WFUV 60 dB μ contour.

The area and population with the WDFH licensed 60 dB μ contour are 114 square kilometers and 51,921 people. The area and population within the WDFH proposed 60 dB μ contour are 284 square kilometers and 123,991 people.

This represents an increase in service area of 170 square kilometers or 249% and an increase in service population of 72,070 or 239%. The applicant believes that this represents a significant increase in noncommercial educational service.

The area and population within the WFUV 60 dB μ protected contour is 6,475 square kilometers and 13,549,544 people. The area and population within the WDFH proposed 100 dB μ interfering contour is 0.64 square kilometers and 355 people. This represents

0.0099% of the area under the WFUV 60 dB μ contour and 0.0026% of the people encompassed thereby. The applicant believes this to be *de minimis*.

In its 30 September 1992 ruling, the Commission recognized an interference area that represented 0.1784% of the area under the WFUV protected contour and which encompassed a population representing 0.047% of the population within the WFUV protected contour as being “consistent with the public interest calculus set forth in WCPE.” The *instant* application proposes an interference area and population that are more than an order of magnitude smaller than this.

Therefore, the applicant believes that the benefit of the significant increase in the noncommercial educational service that the proposed facilities affords greatly outweighs the potential for interference in a very small area, and that the proposed prohibited overlap continues to be “consistent with the public interest calculus set forth in WCPE.” The applicant respectfully requests that the waiver of 47CFR§73.509, as it pertains to prohibited overlap between the facilities proposed herein and the permitted and proposed second channel adjacent facilities of WFUV, which it currently enjoys be extended to the proposed facilities.

A courtesy copy of this application has been provided to the licensee of WFUV.

Gray Frierson Haertig & Assoc.
Portland, Oregon

Hudson Valley Community Radio Dobbs Ferry, New York												
REFERENCE 41 09 07 N. 73 47 10 W.		CH# 212A - 90.3 MHz, Pwr= 0.053 kW, HAAT=145.3 M, COR= 244 M Average Protected F(50-50)= 10.6 km Ave. F(50-10) 40 dBu= 35.6 54 dBu= 15.0 80 dBu= 3.1 100 dBu= .5									DISPLAY DATES DATA 08-10-07 SEARCH 08-11-07	
CH CITY	CALL	TYPE STATE		AZI. <--	DIST FILE #	LAT. LNG.		Pwr(kW) HAAT(M)	COR(M) INT(km)	PRO(km) LICENSEE	*IN* (Overlap in km)	*OUT*
212A Ossining	WDFH.C	CP	DCX NY	312.7 132.6	5.06 BPED20050207AER	41 10 58 73 49 50	0.116 83	218 32.8	9.8	-38.24*< Hudson Valley Community Ra	-40.01*<	
212A Ossining	WDFH	LIC	C NY	312.7 132.6	5.06 BLED19971110KF	41 10 58 73 49 50	0.012 58	193 14.6	4.7	-20.07*< Hudson Valley Community Ra	-34.88<	
214B New York	WFUV	LIC	DC NY	194.3 14.2	31.17 BLED20060316AJI	40 52 48 73 52 40	47.000 111	179 5.1	46.1	18.02 Fordham University	-15.26*	
212A Mahwah Horizontally Polarized	WRPR	LIC	HN NJ	256.5 76.3	33.69 BLED19800613AA	41 04 51 74 10 34	0.100 -16	122 18.6	5.6	6.95 Ramapo College Of New Jers	0.65	
212A Garden City	WHPC	LIC	CN NY	160.8 341.0	49.64 BMLED19981109KA	40 43 47 73 35 33	0.500 51	91 38.4	11.1	2.55 Nassau Community College	9.46	
212A Westport	WWPT	LIC	CN CT	86.5 266.8	38.46 BLED19860224KF	41 10 19 73 19 43	0.330 18	96 25.5	7.6	4.54 Westport Ct. Board Of Educ	2.87	
210B1 New York	WKCR-F	CP	CX NY	200.6 20.5	47.88 BPED20040809ABO	40 44 54 73 59 10	0.745 394	422 1.8	33.4	37.67 Trustees Of Columbia Uni ve	14.13	
212B Albany GRANDFATHERED AT 10KW @ 600M HAAT.	WAMC-F	LIC	CN NY	17.0 197.4	172.75 BMLED19910528KA	42 38 14 73 10 07	10.000 544	1073 148.8	65.0	14.28 Wamc	75.14	
211A Mount Hope	WXHD	LIC	CN NY	294.9 114.4	73.29 BLED19950306KD	41 25 36 74 34 54	1.100 183	430 44.0	29.1	17.03 Auricle Communications	26.10	
210B1 New York	WKCR-F	LIC	CN NY	201.4 21.3	52.48 BLED19850304KY	40 42 43 74 00 49	0.630 433	443 1.6	33.6	42.42 Trustees Of Columbia Uni ve	18.60	
213B Meriden	WPKT	LIC	DEN CT	59.6 240.2	90.98 BLED19910222KC	41 33 42 72 50 41	5.046 211	351 56.7	38.3	25.23 Connecticut Public Broadca	40.11	
212A Sparata	AP2418	APP	VX NJ	257.3 76.8	69.50 BNPED20000218AAU	41 00 43 74 35 32	0.027 196	466 34.9	10.5	26.43 Pensacola Christi an Colleg	31.55	
211B1 Stony Brook	WUSB	LIC	DCN NY	118.6 299.0	71.60 BLED19950824KA	40 50 32 73 02 23	0.904 154	184 33.2	22.3	28.93 State University Of New Yo	36.07	
266B New York	WCBS-F	LIC	CX NY	200.6 20.5	47.88 BLH20060301ABK	40 44 54 73 59 10	6.700 408	422 126.9	49.9	15.0R Cbs Radio East Inc.	32.9M	
211A Shelton	WRXC	LIC	CN CT	67.2 247.7	61.02 BLED19940815KA	41 21 43 73 06 48	0.045 115	262 12.7	9.1	39.66 Monroe Board Of Education	39.80	
212A Piscataway	WVPH.C	CP	CX NJ	218.0 37.6	88.58 BPED20050613ACN	40 31 21 74 25 53	0.100 85	112 31.8	9.5	45.32 Piscataway High School	40.98	
212A Piscataway	WVPH	LIC	HN NJ	220.9 40.4	88.83 BLED19801114AE	40 32 45 74 28 25	0.200 7	43 22.4	6.7	54.66 Piscataway High School	43.08	
06 1E New Haven	WEDY-D	CPM	HN CT	74.8 255.4	76.26 BMPEDT20020305AA	41 19 42 72 54 25	0.400 88	131 5.1	27.0	32.1R Connecticut Public Broadca	44.1M	
213B1 Jeffersonville	WJFF	LIC	CN NY	311.9 131.2	111.52 BLED19940318KC	41 48 58 74 47 15	3.700 192	690 56.7	38.2	44.17 Radio Catskill, Inc.	58.36	
211A South Kent	WGSK	LIC	CX CT	22.9 203.1	63.93 BLED20030310AAB	41 40 54 73 29 13	0.077 13	274 7.5	5.3	46.47 Monroe Board Of Education	44.65	
213A Morristown	WJSV	LIC	CN NJ	239.4 59.0	68.67 BLED19851121KG	40 50 10 74 29 16	0.125 72	154 13.0	9.3	46.41 Morris School District	46.40	
209B Kingston	WFGB	LIC	DCN NY	345.5 165.3	106.10 BLED19911121KB	42 04 35 74 06 26	3.100 453	814 3.2	55.4	93.39 Sound Of Life, Inc.	50.15	
215B1 Kingston	WAMK	LIC	DCN NY	345.5 165.3	106.10 BLED19910829KA	42 04 35 74 06 26	0.940 453	814 1.8	43.8	94.74 Wamc	61.75	
06Z1C Schenectady	WRGB	LI	HN NY	354.1 173.9	165.82 BLCT2492	42 38 12 73 59 45	93.300 311	555 5.5	96.1	101.6R Freedom Broadcasting Of Ne	64.2M	
06-1C	WPVI TV	LI	HN	225.4	174.04	40 02 39	74.100	404	100.5	107.3R	66.7M	

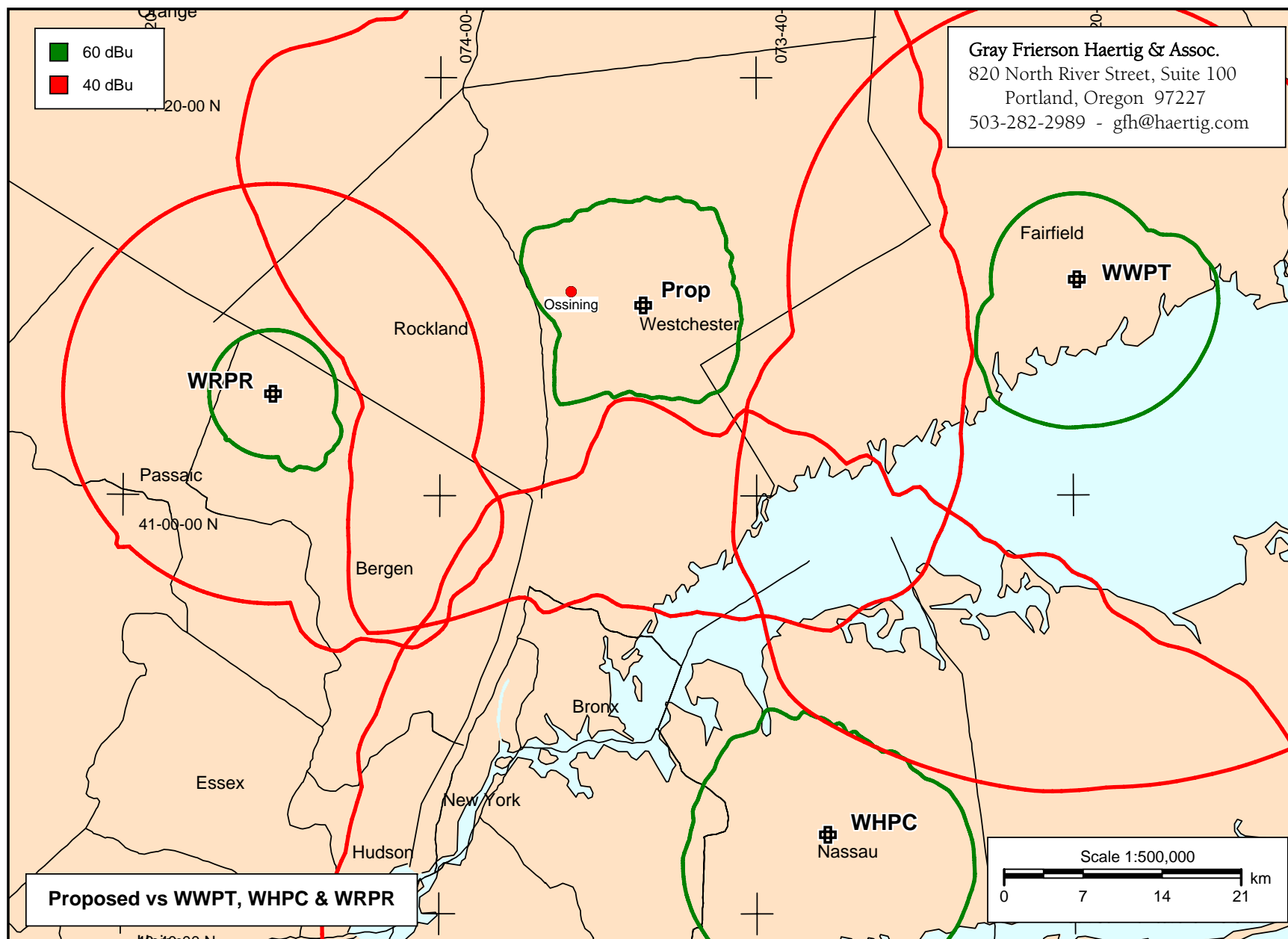
CH CI TY	CALL	TYPE STATE		AZI . <--	DI ST FI LE #	LAT. LNG.	Pwr (kW) HAAT (M)	COR (M) INT (km)	PRO (km) LI CENSEE	*IN* (Overl ap i n km)	*OUT*
212A Toms Ri ver	NEW. C	CP	EX	190. 4 10. 2	139. 70 BNPED20000303ABK	39 54 52 74 04 58	4. 000 37	39 63. 5	15. 8 New Jersey Public Broadcas	68. 32	97. 56
213A Lincroft From channel 213 B1	WBJB-F	LIC	DCN	197. 7 17. 4	96. 70 BLED19981123KD	40 19 19 74 07 57	0. 900 113	140 19. 2	12. 8 Brookdale Communi ty Colleg	68. 81	71. 68
212A East Stroudsburg	WESS	LIC	CN	262. 0 81. 1	117. 80 BMLED19950919KA	40 59 50 75 10 22	1. 000 -37	195 35. 6	10. 2 East Stroudsburg Uni versi t	73. 73	79. 47
210A Torrington	WAPJ	LIC	CN	35. 4 215. 8	88. 98 BLED20000825AGK	41 48 08 73 09 50	0. 040 84	395 0. 4	8. 1 The I. b. And Zena H. Temki	77. 99	80. 32
210B1 Noyack	WSUF	LIC	DE	91. 8 272. 7	119. 17 BLED19961202KC	41 06 35 72 22 05	12. 000 109	111 3. 0	31. 1 Sacred Heart Uni versi ty, I	107. 65	87. 57
213A Flemington	WCVH	LIC	CN	235. 3 54. 5	115. 18 BLED19900808KA	40 33 25 74 54 18	0. 078 137	244 17. 2	11. 7 Hunterdon Central H. S. Bd	88. 27	89. 88
211B Phi l adel phi a	WRTI	LIC	DEY	225. 2 44. 2	174. 22 BLED19881223KC	40 02 21 75 14 13	12. 500 308	374 74. 3	50. 5 Templ e Uni versi ty Of The C	88. 36	106. 93
209B1 Del aware Townshi p	WDVR. C	CP	DEX	234. 5 53. 7	121. 97 BPED20070328ACP	40 30 36 74 57 34	3. 800 221	221 2. 4	24. 9 Penn-j ersey Educational Ra	109. 77	96. 77
209A Del aware Townshi p	WDVR	LIC	DEN	234. 5 53. 7	121. 86 BLED19990603KA	40 30 37 74 57 29	4. 800 92	202 2. 3	23. 8 Penn-j ersey Educational Ra	109. 69	97. 75

Terrain database is USGS 03 SEC

ERP and HAAT are on direct line to and from reference station.

• affixed to TV6 Margin= no direct-line contour overlap.

***"affixed to 'IN' or 'Out' values = site inside protected contour. "<" = contour overlap



are inclined to view waiver requests such as WCCE's favorably where there is clearly a public benefit.

6 FCC Rod at 14. The overlap caused by WFMU(FM) to WFUV(FM)'s licensed facilities and vice versa is consistent with the public interest calculus set forth in WCPE. Accordingly, waiver of 47 C.F.R. § 73.509 to allow WFMU(FM) to cause and receive overlap with respect to WFUV(FM) is warranted. Likewise, in order to resolve the mutual exclusivity linkages which exist in this complex case involving seven applications, we will, on our own motion, waive 47 C.F.R. § 73.509 to permit WFUV(FM) to cause and receive overlap with respect to the licensed and proposed facilities of WFMU(FM). Appropriate conditions will be attached.⁸ In light of the above, the informal objection filed by Upsala against Fordham's June 11, 1991, amendment regarding violation of 47 C.F.R. § 73.509 will be denied. Also, Fordham's informal objection against Upsala's application will be denied in part to the extent that it pertains to prohibited overlap between Stations WFUV(FM) and WFMU(FM). This will remove the mutual exclusivity between the proposals of Fordham and Upsala.

Our Antenna Survey Branch has advised us that they are not in receipt of the Federal Aviation Administration's (FAA) final airspace determination for the tower structure proposed in Fordham's application. Accordingly, Fordham must submit a copy of this determination (if available) to the FM Branch in order to facilitate processing of its application. If a determination has not been released, Fordham must notify the Commission in writing of this fact and provide the status of any negotiations with the FAA.

F. Mutual Exclusivity Between WFUV(FM) and Westchester

On March 20, 1984, Fordham's application was placed on an "A" list specifying a cut-off date of April 23, 1984. On April 23, 1984, during the cut-off period for Fordham's application, Westchester Council for Public Broadcasting filed its application for a new second adjacent channel noncommercial educational FM station on Channel 212A in Ossining, NY. An engineering study reveals that WFUV(FM)'s proposed 60 dBu coverage contour would encompass the 80 dBu interfering contour proposed by Westchester's application. See Appendix B, Exhibit B-8.

G. Agreement Between WFUV(FM) and Westchester

Westchester's application was placed on a "B" list on December 12, 1991 specifying a cut-off date of January 15, 1992. On January 15, 1992, Fordham and Westchester submitted an agreement to resolve the mutual exclusivity of the their applications. As set forth in the agreement, on February 27, 1992, Westchester filed a minor amendment to its application specifying nondirectional operation from a site further removed from WFUV(FM) at reduced power. Although overlap still exists, the encompassment of Westchester's 80 dBu contour by WFUV(FM)'s 60 dBu contour is consistent with the public interest calculus set forth in WCPE. Accordingly, waiver of 47 C.F.R. § 73.509 with an

⁸ See Footnote 1.

appropriate condition is warranted.⁹ This action would remove the mutual exclusivity between Westchester's application and Fordham's application and permit the grant of both. See, e.g., Letter from Chief, Audio Services Division to Memphis Community Television Foundation and Memphis State University (8920-EPD), dated March 11, 1992.

II. The WSHU Group:

A. Interference Between WEMU(FM) and WSHU(FM)

Sacred Heart University, Inc., is licensed to operate Station WSHU(FM), Fairfield, CT, on Channel 216B with an ERP of 12.5 kilowatts (H&V) and an antenna HAAT of 181 meters. On January 26, 1990, SHU filed a major change application (File No. BPED-900126IB) to increase the ERP of WSHU(FM) to 20.0 kilowatts and the HAAT to 189 meters. SHU also proposed to modify the existing directional antenna pattern. Staff studies indicate that WSHU(FM)'s licensed facilities neither cause nor receive any prohibited overlap with respect to WEMU(FM)'s co-channel licensed facilities but would receive prohibited overlap from WEMU(FM)'s proposed facilities.¹⁰ See Appendix B, Exhibit B-9. Additionally, although SHU's proposal would not cause prohibited overlap to WEMU(FM)'s licensed facilities, it would cause prohibited overlap to WEMU(FM)'s proposed facilities. Also, SHU's proposal would receive prohibited overlap from both WEMU(FM)'s licensed facilities and proposed facilities. Upsala has requested a general waiver of 47 C.F.R. § 73.509. SHU has not specifically requested waiver of 47 C.F.R. § 73.509 with respect to WEMU(FM).

Minor change applications for noncommercial educational FM stations operating in the reserved band are not processed under the "first-come first-served" rule applicable to commercial stations. Therefore, they are subject to mutually exclusive applications until the time of grant. Accordingly, although Upsala's application was filed prior to SHU's application, SHU's application is considered to be timely and mutually exclusive with Upsala's application.¹¹ Options as to resolving this mutual exclusivity are addressed in Section VI of this document.

⁹ Ibid.

¹⁰ SHU's application was originally filed as a minor change application. However, staff studies indicated that the application constituted a major change pursuant to 47 C.F.R. § 73.3573. On June 13, 1991, application BPED-900126IB was placed on an "A" list which specified a cut-off date of July 15, 1991.

¹¹ Because of its mutual exclusivity with SHU's major change application, Upsala's minor change application takes on the cut-off date of SHU's application, ie., July 15, 1991. This also corresponds with the cut-off date of Application BPED-900202IA of Mercer County Community College.

