

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

16 MAR 1993

IN REPLY REFER TO:

1800B3-DEB

HIC Broadcasting, Inc.
Radio Station WHIC-FM
Drawer 1450
Corbin, KY 40701

Community Broadcast Services of Loogootee, Inc.
Radio Station WKMD (FM)
P.O. Box 155
Loogootee, IN 47553

In re: WHIC-FM; Hardinsburg, KY
Construction Permit
BPH-920915IA

WKMD; Loogootee, IN

and Docket 88-315

Gentlemen:

This letter is in response to the letter received December 31, 1992 from counsel for HIC Broadcasting, Inc. ("HIC"), licensee of WHIC-FM, Hardinsburg, KY, regarding the above-captioned items. This letter seeks deletion of a condition imposed on WHIC-FM's construction permit BPH-920915IA and a Commission order requiring WKMD to change channel promptly.

By way of background, the Second Report and Order in Docket 88-315, 7 FCC Rcd 2708, released May 1, 1992 upgraded the allotment for station WHIC-FM to Class C2 on Channel 232. To meet the spacing requirements, the allotment for WKMD, Loogootee, IN (licensed on Channel 232A to Community Broadcast Services of Loogootee, Inc. ("Community")) was changed to Channel 231A.¹ Subsequently, HIC filed construction permit application BPH-920915IA, which was granted on December 21, 1992. This permit contained a condition that WHIC-FM could not commence program test operations on Channel 232C2 until WKMD began operating on Channel 231A.

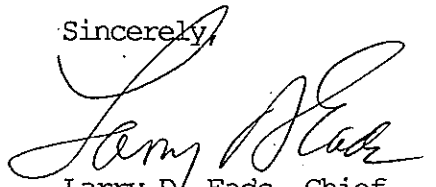
HIC asks for the deletion of this condition from its construction permit, so as to permit WHIC-FM to commence operations with its upgraded facilities immediately upon the completion of construction. HIC notes that the Second Report and Order did not impose such condition restricting its operation. Further, HIC notes that while it has diligently pursued its application to upgrade, WKMD has not filed any such application and continues its operations on the old channel 232A. HIC asserts that such operation is not authorized and requests that the Commission advise Community to immediately vacate Channel 232A and operate on Channel 231A.

¹ HIC is required by the Second Report and Order to reimburse WKMD for the costs of changing frequency.

Because of the short-spacing under 47 CFR § 73.207 to WKMD's previously licensed operation on Channel 232A, severe interference would result to both stations were WHIC-FM to commence operations on Channel 232C2 before WKMD changes frequency to Channel 231A. For this reason, the condition referred to was attached to WHIC-FM's permit. However, we note that Community's frequency change became final on June 15, 1992 and we have not yet received an application to implement the change. Continued operation by WKMD on the old channel (232A) will be permitted only so long as such operation does not impede the initiation to new service to the public. However, Community is on notice that continued failure to submit an application to cover the change in frequency may cause WKMD's operations on Channel 232A to be terminated by the Commission at such time as WHIC-FM files its Form 302 application for license and its request for program test authority, since the old channel has effectively been deleted by the Second Report and Order. We note that WKMD may commence operations on Channel 231A and follow with an application for modification of its license on FCC Form 302 within 10 days, provided that all other station parameters remain the same as licensed (i.e., coordinates, tower and antenna heights, effective radiated power).

With regard to reimbursement for the cost of changing frequency, I encourage the parties to confer on this matter toward a mutually acceptable solution. In the event that Community and HIC cannot agree to a solution in this matter, I suggest that the following approach be considered. In 1990, Congress amended the Administrative Procedures Act through enactment of the Administrative Dispute Resolution Act (ADRA), P.L. 101-552, November 15, 1990 and Negotiated Rulemaking Act, P.L. 101-648 (November 29, 1992). In 1991, the FCC adopted an Initial Policy Statement and Order in which it expressed confidence that Alternative Dispute Resolution Procedures could provide an "effective tool for dealing with conflict, while avoiding the expense and the delay of adversarial proceedings." Therefore, this matter is appropriate for submission to the Alternative Dispute Resolution Program for resolution. Please see the attachment for further information on the Commission's Alternative Dispute Program.

Sincerely,


Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: Reddy, Begley & Martin

Alternative Dispute Resolution Program

II. HOW DID THE FCC'S ADR PROGRAM GET STARTED?

The FCC's Alternative Dispute Resolution (ADR) Program should save you substantial time and money. This brochure provides some general information about the Program. The ADR Staff is available to help you take advantage of this new approach to resolving disputes.

In 1990, Congress amended the Administrative Procedure Act through enactment of the Administrative Dispute Resolution Act (ADRA), P.L. 101-552 (Nov. 15, 1990) and Negotiated Rulemaking Act (NRA), P.L. 101-648 (Nov. 29, 1990). Congress believed that administrative proceedings had become too formal and lengthy, and that alternative procedures may, in some instances, be faster, less contentious and more efficient. In 1991, the FCC adopted its Initial Policy Statement and Order in which it expressed confidence that ADR procedures could provide an "effective too for dealing with conflict, while avoiding the expense and the delay of adversarial proceedings." 6 FCC Rcd 5669, 5670 (Sept. 30, 1991). The basic tenets of the ADRA are:

- All parties must agree voluntarily to use ADR techniques;
- Neutrals are selected by the parties;
- The ADR process is confidential.

I. WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Alternative Dispute Resolution refers to methods for resolving differences by means other than court or FCC adjudication. The two most common ADR techniques are mediation and arbitration.

Mediation is a process in which the parties select a mediator (often referred to as a third-party neutral) to assist them in fashioning their own settlement. The mediator does not function as a judge and, therefore, does not issue a decision.

Arbitration is an adversarial proceeding in which parties present their cases to a third-party decision-maker. The arbitrator does issue a decision. The parties agree beforehand whether the decision of the arbitrator will constitute a binding or non-binding resolution of the case.

III. HOW CAN THE FCC'S ADR PROGRAM BENEFIT YOU?

ADR can:

- save you time and money;
- make the outcome of your case more predictable;
- make it easier to maintain ongoing relationships with the other parties to the case;
- bring about better resolutions through the use of consensual, informal methods;
- give you a better understanding of your case.

IV. WHO IS RESPONSIBLE FOR ADMINISTERING THE FCC'S ADR PROGRAM?

The FCC's ADR Program is administered by ADR Staff in the Commission's Office of the General Counsel, Administrative Law Division, (202) 632-6990. The ADR Staff is available to provide assistance and consultation regarding any questions you might have on ADR, including whether ADR techniques may be helpful to your case. Special forms will also be available to the neutral to assist in your ADR sessions.

V. HOW DO YOU INITIATE ADR?

By indicating an interest to any Commission staff and/or contacting the FCC's Alternative Dispute Resolution Specialist. See Section IX.

VI. HOW CAN YOU FIND A MEDIATOR OR OTHER NEUTRAL?

Mediators and other neutrals are selected solely by the parties. The Administrative Conference of the United States (ACUS), (202) 254-7020, maintains a roster of third-party neutrals. Parties may hire a third-party neutral from the ACUS roster. In some cases, it may be possible for the FCC's ADR Staff, (202) 632-6990, to arrange trained government employees unconnected with the dispute to serve as neutrals at no cost. Parties are also free to find a third-party neutral from any other source.

VII. IS THE ADR PROCESS CONFIDENTIAL?

Generally, yes. The ADR process is intended to be confidential and parties will be asked to sign an agreement to that effect. There are some very narrow exceptions, however, that may apply. See, e.g., 5 U.S.C. § 584.

VIII. WHAT HAPPENS IF THERE IS NO SETTLEMENT RESULTING FROM ADR?

The failure to reach a settlement will not prejudice the rights of any party. The proceeding will continue to follow routine administrative procedures.

IX. WHOM SHOULD YOU CONTACT FOR FURTHER INFORMATION?

Sheldon M. Guttman, Associate General Counsel and Designated ADR Specialist, ADR Program, Law Division, Office of the General Counsel, Federal Communications Commission, N.W., 1919 M Street, Washington, D.C. 20554

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