

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
RHODE ISLAND PUBLIC RADIO, INC.)
) LMS File No. 0000161099
)
Application for Involuntary Time Share WCVY)
(Facility ID#14229) at Coventry, RI)
)

TO: Office of the Secretary
Attn: Chief, Audio Division, Media Bureau:

INFORMAL OBJECTION

Radio Sharon Foundation, (“RSF”) the licensee of W235CN, Providence, RI (Facility ID#41191) and participant in the pending NCE Application Window closing 11/9/21, by counsel, hereby files pursuant to 47 C.F.R. §73.3587 its Informal Objection¹ to the above captioned application (the “*Application*”) of Rhode Island Public Radio, Inc. to invoke involuntary time-sharing with Coventry Public Schools for WCVY (FM) Facility ID #14229) by way of a separate facility licensed to Bradford, RI pursuant to 47 CFR §73.561(b).

As demonstrated below, the *Application* should be dismissed because the *Application* (a) has multiple defects enumerated below and (b) appears to be an attempted “end-around” the

¹ This informal objection is timely filed as Section 73.3587 sets no time limits on the filing of same other than filing prior to Commission action on the subject application. In the instant matter, the application has not yet received any Commission action.

current NCE filing window to obtain a new NCE facility without being subjected to comparative analysis of all applicants to be undertaken by the Bureau in the NCE filing window.

First, with respect to the proposal for involuntary time-sharing with WCVY, the Applicant makes a bare assertion that WCVY is not meeting the minimum requirements of 12 hours per day without any supporting affidavit or declaration or evidence of any kind substantiating that statement².

Secondly, the purported need for such involuntary time share is specious at best. Applicant asserts in its application that the proposed facility that will time-share with WCVY will serve to “expand RIPR’s established program service throughout the State of Rhode Island”³. However, Applicant previously engaged in a voluntary time-share agreement with WCVY, which ended on April 15, 2021. Indeed, the Applicant itself declared on April 8, 2021 **that it no longer needed to time share with WCVY** because “*ever since our 89.3FM signal started broadcasting from Tiverton in 2018, the 91.5FM signal has become completely redundant*”⁴. Thus, if a time-share with WCVY became “completely redundant” in 2018 with the commencement of its WNPN operations from Tiverton, RI, query why now, on the eve of the NCE filing window, did an involuntary time share with WCVY suddenly become necessary to “expand RIPR...throughout the State of Rhode Island”.

Thirdly, with respect to the technical merits of the *Application*, there are additional multiple defects relative to same;

- (1) The proposed antenna has 16.5dB front to back ratio in violation of

² See, e.g., *WWOR-TV, Inc., Memorandum Opinion and Order*, 6 FCC Rcd 193, 197 n.10 (1990), aff’d sub nom. *Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), rehearing denied (Sept. 10, 1993); *Area Christian Television, Inc., Memorandum Opinion and Order*, 60 RR 2d 862, 864 (1986) (pleadings and petitions must contain adequate and specific factual allegations sufficient to warrant the relief requested).

³ LMS File#0000161099, Program Service Exhibit

§ 73.316(b)(1) and § 73.510(b);

(2) The antenna directional slope exceeds 2dB per 10 degrees in multiple locations, in violation of § 73.316(b)(2); and

(3) The Applicant seeks a waiver of §73.509 in the *Application*. When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.⁵ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”⁶ and must support its waiver request with a compelling showing.⁷ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁸ The Commission has only granted waivers in extreme circumstances that met the test described above.⁹ In the instant case, the waiver requested is not one that new facilities may seek to obtain under prior Commission rulings. This type of waiver of §73.509 is commonly called a Raleigh Waiver, and it may only be granted to existing stations seeking to upgrade. The FCC addressed this situation in 2007 in a letter decision, affirmed on petition for reconsideration, in the *Centenary College* matter¹⁰ As stated in the Audio Division

⁴ <https://thepublicsradio.org/episode/theec-end-of-an-era-on-wcvy> - last accessed November 8, 2021.

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*).

⁶ *WAIT Radio*, 418 F.2d at 1157.

⁷ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

⁸ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

⁹ See, e.g. DA 18-448, May 1, 2018 (granting waivers to Puerto Rico FX applicants in Auction 100 who had MX applications in light of the devastation caused by Hurricanes Irma and Maria as a way to resolve the mutual exclusivity issues of those applications)

¹⁰ Letter to Centenary College (MB rel Nov. 27, 2007) affirmed on Petition for Reconsideration by Letter to Centenary College (MB rel Dec 8, 2008)(23 FCC Rcd 17317).

affirmation on Petition for Reconsideration of the denial of a similar §73.509 waiver request for a new NCE facility:

" In addition, Centenary argues that the staff erred in finding that the waiver policy delineated in EIC is limited to existing NCE-FM stations rather than to new NCE-FM stations. Centenary contends that nowhere in EIC did the Commission expressly state that its decision was limited to existing stations. We disagree. In EIC, the Commission states that "historically, both Congress and the Commission have recognized the special standing of the noncommercial educational service. Most notable is the spectrum reservation policy whereby noncommercial stations are afforded protected frequency allocations for their exclusive use." The allocations system, as the Commission expressly states in EIC, "was designed to anticipate . . . enlargements in coverage of existing stations and to protect . . . [the] needs [of existing stations] against any possible encroachment." We are unaware of a single case in which the Commission has relied on the reasoning in EIC in a new station context."

And further stated:

"We note that the factors presented here in support of the request for waiver of the rule are generally true for applicants which seek waiver of the rule for second-and third-adjacent channel contour overlap caused to another station. In addition, we find unpersuasive Centenary's argument that a waiver is warranted in situations in which spectrum licensing prevents the licensing of rule-compliant new station proposals. Acceptance of this argument would result in increased spectrum congestion and interference levels in areas which are already most impacted by these problems. As a result, we cannot find that grant of Centenary's request for waiver of Section 73.509 would outweigh the benefits conferred by adherence to the rule."

As such, the Applicant's waiver request should be denied in light of the reasoning above since it is requesting to construct a new facility at Bradford, RI as part of this erstwhile "involuntary time-share" application.

Finally, given the timing of this "involuntary time-share" application, it appears the underlying reasoning for same, given the statements attributed to Applicant as noted above regarding the non-necessity of a facility at 91.5 MHz in Rhode Island given its 89.3 MHz signal coverage, is to facilitate the construction of a new NCE facility while avoiding the rigors of a comparative analysis against other new applicants in the current

NCE filing window. As Applicant is the licensee of multiple NCE facilities throughout Rhode Island, it likely would not prevail on a points or tiebreaker analysis in an MX comparison with other applicants. Such manipulation of Commission processes to “gain” the station allocation system should not be countenanced.

Accordingly, the *Application* should be dismissed for the foregoing reasons.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Anthony T. Lepore', with a long horizontal line extending to the right.

By: _____
Anthony T. Lepore, Esq.

RADIOTVLAW ASSOCIATES, LLC
4101 Albemarle St. NW #324
Washington, DC 20016-2151
(202) 681-2201
November 9, 2021

CERTIFICATE OF SERVICE

I, Anthony T. Lepore, principal of the law firm of RADIOTVLAW ASSOCIATES, LLC, hereby certify that a copy of the foregoing "Informal Objections" was served this 9th day of November, 2021 by first class United States Mail, postage prepaid, and electronically as indicated, upon the following:

John Wells King, Esq.
4051 Shoal Creek Lane E
Jacksonville, FL 32225
John@jwkinglaw.com

*Audio Division, Media Bureau
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554



Anthony T. Lepore

*via email only to: audiodivisionpleadings@fcc.gov