Federal Communications Commission
Washington, D.C. 20554

In reply refer to:
1800B3-DEB

June 29, 1994

Sister Atikah H. Bey
WPEB Radio
West Philadelphia Educational Broadcasting Foundation
Suite 7B
3901 Market Street
Philadelphia, PA 19104

The Trustees of the University of Pennsylvania
Radio Station WXPN
3905 Spruce Street
Philadelphia, PA 19104

In re: WPEB, Philadelphia, PA
West Philadelphia Educational Broadcasting Foundation
BPED-920128MK

Ladies and Gentlemen:

This letter is in reference to major change application BPED-920128MK, filed by the West Philadelphia Educational Broadcasting Foundation ("Foundation"), licensee of Class D secondary station WPEB, Philadelphia, PA. This application seeks authority to relocate the Class D transmitter to the Market Square Complex at 3901 Market Street, Philadelphia, PA, as WPEB had lost its lease for the site presently licensed in license BLED-880726KC. The application proposes operation with 0.001 kW (1 watt) effective radiated power at an antenna height above average terrain (HAAT) of 60 meters on Channel 201 (88.1 MHz). The application is opposed by the Trustees of the University of Pennsylvania ("Trustees"), licensee of second-adjacent channel Class B1 station WXPN, Philadelphia, PA, which filed a petition to deny against the Foundation application on February 21, 1992.

Review of Foundation's application reveals that the application does not include a full scale (unreduced) topographical site map or map portion meeting the requirements of the Commission's April 5, 1985 Public Notice, 51 Fed. Reg. 45945 (December 23, 1986) (copy enclosed). As the Commission stated in that Public Notice, "[i]f the [Public Notice] requirements are not met, the application will be returned without further review." Accordingly, application BPED-920128MK will be returned as unacceptable for filing.

Because of the likelihood that this application will be immediately refiled with a new transmitter site map, we take this opportunity to address some issues that have arisen or are likely to arise in conjunction with Foundation's application. First of all, Foundation's engineering statement concluded that the application is a minor change application since the size of the 60 dBu service area remained unchanged. The application acknowledged that if gain and loss areas are considered, the change in area would have exceeded 50%. In response to this conclusion, the Trustees' petition to deny stated that, because the change in area within WPEB's 60 dBu (1 mV/m) contour exceeds 50% (66%), Foundation's application must be classified as a major change application pursuant to 47 CFR § 73.3573(a)(1). However, major change applications are prohibited except for Class D stations seeking to change frequency. See 47 CFR § 73.3573, Note 1. Consequently, the Trustees concluded that Foundation's application was in violation of the rule and should have been denied.

47 CFR § 73.3573 defines whether a noncommercial educational application is a major or minor change by examining the sum of the gain and loss areas, divided by the original area. If this figure is more than 50%, as was the case here, the proposal is defined by § 73.3573 as a major change and it processed accordingly. The fact that the size of the coverage area is not increased as compared to the currently authorized coverage does not render the application a minor change under the rule, which already takes into account the location of the existing and proposed coverage areas. Therefore, the Trustees are correct that the application as filed should have been classified as a major change application. However, we note that a precedent exists where a Class D station was permitted to change site and be treated as a minor change applicant despite a change coverage area of more than 50%. See San Joaquin Delta Junior College District (KSJC-FM), 57 FCC 2d 763 (1975). Consequently, in its resubmitted application, Foundation may ask to be treated as a minor change applicant, provided that it requests waiver of § 73.3573 and references this precedent in support of this waiver request.

Next, we note that 47 CFR § 73.512 of the Commission's rules requires that Class D stations seek to upgrade their facilities to Class A status or move their operations to a commercial channel (92.1 MHz to 107.9 MHz) or Channel 200 (87.9 MHz), if possible. It appears unlikely that a Class A station could be established on any noncommercial educational channel, including Channel 201, due to the need to protect other cochannel and adjacent channel stations on various azimuths. Further, the staff has examined the possibilities for operation in the commercial band and found that no commercial channels are available. In such cases, § 73.512(a)(3) requires that the least preclusive noncommercial channel be selected for operation. The staff's study shows that only on Channel 207 (89.3 MHz) would WPEB meet the requirements of § 73.512, in that there would be not prohibited overlap between the interfering contours of WPEB with the protected service contours of other stations. However, on this channel WPEB would receive significant interference within its 60 dBu service contour from two cochannel stations (WNJB-FM, Bridgeton, NJ and WRDV, Warminster, PA) (see the attached contour plot). Thus the quality of service provided by WPEB on Channel 207 would certainly suffer as a result of such a move.

The only alternative to requiring WPEB to move to Channel 207D or cease operation would be to permit WPEB to remain on Channel 201. A Class D station on Channel 201 does not preclude increases by other stations, since Class D stations are not protected from such interference.[1] In addition, on Channel 201, WPEB's 80 dBu interfering contour is encompassed by the 60 dBu service contour of WXPN's licensed operation, as indicated by the Trustees. Thus predicted interference would be caused to WXPN. However, because of WPEB's extremely low power (1 watt), this area would be very small (1.5 sq. km, by staff calculation), in which 6,756 persons reside (assuming uniform population distribution and the 4,504 persons per sq. km figure from Foundation's engineering statement).[2] Foundation notes in its engineering statement that this overlap area is less than that caused by the presently licensed WPEB facility. (3.1 sq. km).

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[1] For example, WPEB's 60 dBu service contour is encompassed by the 80 dBu contour of WXPN, resulting in interference caused to WPEB. However, Class D stations are not protected against such interference. See the Second Report and Order in Docket 20735, 44 RR 2d 235, 43 Fed. Reg. 39704 (1978).

[2] This predicted interference can be contrasted with the 89,369 persons said to reside within the 19.8 sq. km area encompassed by WPEB's proposed 60 dBu service contour.

We note that 47 CFR § 73.509 permits an FM station with existing contour overlap to modify its operation if the area of overlap will not be increased. Moreover, under Educational Information Corp., 6 FCC Rcd 2207 (1991), the Commission stated that it was inclined to act favorably on requests for waiver of the prohibited contour overlap rule (§ 73.509) for second adjacent-channel stations "where the benefit for increased noncommercial service so heavily outweighs the potential for interference in very small areas." Consequently, we would be willing to entertain a request for waiver of § 73.512 from Foundation to remain on Channel 201 in lieu of moving to Channel to 207D. We stress, however, that all pertinent factors will be carefully considered. Therefore, any application by Foundation for Channel 201D must provide adequate justification and supporting evidence to justify waiver of this rule.

Accordingly, application BPED-920128MK is unacceptable for filing due to the deficient transmitter site map (as noted above) and IS HEREBY RETURNED. In light of this action, the petition to deny filed by the Trustees of the University of Pennsylvania IS HEREBY DISMISSED AS MOOT. These actions are taken pursuant to 47 CFR § 0.283.

Prior to the filing of any new application by Foundation for WPEB, we would encourage Foundation and the Trustees to meet and attempt to resolve their differences in this matter. This would facilitate processing of any such application for Channel 201D.

Sincerely,

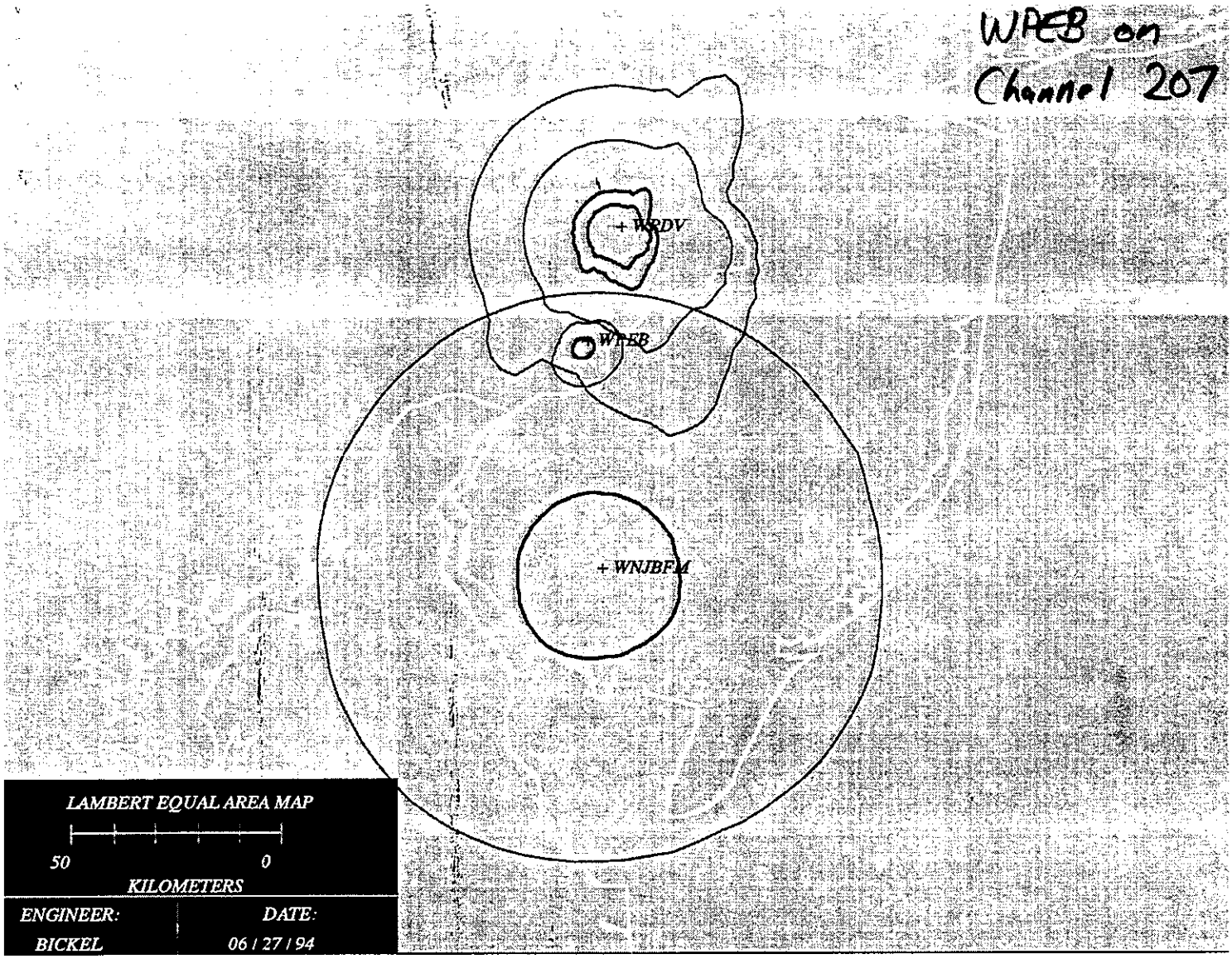
Dennis Williams

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

Enclosures

cc: Cohn and Marks
: Advanced Broadcast Consultants, Inc.

WPEB on Channel 207



FOLLOWING IS A LIST OF THE DATA WHICH APPEARS ON THE ABOVE MAP
'OM LATITUDE: 38.63 TOP LATITUDE: 40.75 LEFT LONGITUDE: -76.55 RIGHT LONGITUDE: -73.76
· ENLARGED CONUS MAP PROJECTION: Lambert Equal-area CENTER LAT: 39.69 LONG: -75.15 GRID SPACING: 0.00
)METERS / INCH = 38.58
T MADE ON : 27 June, 1994 8:07 HOURS

	serv	city,state	application no.	contour		chan	erp	haat	rcamsl	coverage area	A1	A1
B	FM	Philadelphia,PA	BPED920128MK	60.0 dBu	(50,50)	201D	0.001	60.0	94.0	20.9 sq km	0	17
B	FM	Philadelphia,PA	BPED920128MK	40.0 dBu	(50,10)	201D	0.001	60.0	94.0	215.7 sq km	0	17
V	FM	Warminster,PA	BLED801215AB	60.0 dBu	(50,50)	207A	0.200	27.0	109.0	168.3 sq km	0	39
V	FM	Warminster,PA	BLED801215AB	40.0 dBu	(50,10)	207A	0.200	27.0	109.0	1872.9 sq km	0	39
V	FM	Warminster,PA	BPED880422MA	60.0 dBu	(50,50)	207A	1.000	36.0	116.0	372.4 sq km	0	32
V	FM	Warminster,PA	BPED880422MA	40.0 dBu	(50,10)	207A	1.000	36.0	116.0	4605.6 sq km	0	32
BFM	FM	Bridgeton,NJ	BPED900618ME	60.0 dBu	(50,50)	207A	3.000	62.0	85.0	1272.1 sq km	0	0
BFM	FM	Bridgeton,NJ	BPED900618ME	40.0 dBu	(50,10)	207A	3.000	62.0	85.0	15026.5 sq km	0	0

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

3693

News media information 202/254-7674. Recorded listing of releases and texts 202/632-0002.

April 5, 1985

FCC CLARIFIES TRANSMITTER SITE MAP REQUIREMENTS

This notice is part of the Commission's continuing effort to expedite the processing of FM applications in order to bring new broadcast service to the public as rapidly as possible.

When applying for an FM station construction permit, one of the submissions required by FCC forms 301 and 340 is a 7.5 minute series U.S. Geological Survey topographic quadrangle map upon which is marked the transmitter site.

In order to allow the Commission's processing staff to verify the correctness of the geographic coordinates provided in an application, it is necessary for this site map to show along the printed margin of both axes at least two coordinate markings, specifically labeled by the USGS, one on either side of the marked site. Additionally, a scale of kilometers or miles (kilometers, if available) and all of the identifying map information must be included. The site should be plotted on a full scale map, and all of the contour lines must be clearly visible. Faded, smudged or otherwise illegible maps are unacceptable. Photocopies are acceptable in lieu of actual USGS Maps, provided they are clear, dark and legible. It is not necessary to submit an entire map, (although this is perfectly acceptable) but only as much as is necessary to fully comply with the requirements described above.

In certain cases it may be inconvienient to provide a full scale photocopy which includes both the site and the margins. This can occur when the site lies towards the center of the map. In this case the following alternative is acceptable. Provide a full scale copy of the section of the map containing the site. This copy must include either four of the standard printed cross-marks or one margin and two cross-marks. Fine lines should be drawn between the marks in such a fashion as to enclose the site. Each of these lines should be labeled with the appropriate latitude or longitude. This full scale map section must include all the information specified in the previous paragraph. In addition, a reduced copy of the entire map must be included to allow the Commission's staff to verify that the lines have been correctly labeled.

If the above requirements are not met, the application will be returned without further review. Prospective applicants should understand that the Commission cannot process an application to grant without being able to verify the correctness of the site elevation and site coordinates. These coordinates serve as the reference point for all calculations of spacing, coverage and interference.

For further information, contact Robert Greenberg at (202) 632-6908.

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Published in 51 Fed. Reg. 45945 released December 23, 1986.
Effective date: December 30, 1986.