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E-MAIL: BBUTLER@FCC.GOVJohn Crigler, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-0606In re: WDNA(FM), Miami, FL
Bascomb Memorial Broadcasting
Foundation
BPED-960614MA
Petition for Reconsideration

Dear Mr. Crigler:

The staff is currently considering the October 24, 1996 petition for reconsideration submitted on behalf of Bascomb Memorial Broadcasting Foundation ("Bascomb"). The petition, which included a minor amendment to the application, requests the staff to reconsider its September 20, 1996 action returning the above-captioned major change application. For the reasons set forth herein, we grant reconsideration and reinstate the application to pending status.

Background. Bascomb is currently licensed to operate WDNA on Channel 205A with 1.0 kW (vertical polarization only) effective radiated power (ERP) at 92 meters antenna height above average terrain (HAAT). The application as originally submitted June 14, 1996 proposed to relocate WDNA to its previously licensed site, located approximately 22 kilometers southwest of its present facility. Additionally, the application proposed to increase to Class C2 facilities (8.3 kW ERP at 349 meters HAAT) and utilize a circularly polarized directional antenna. By staff letter dated September 20, 1996, the application was returned because it violated 47 C.F.R. § 73.509 by both causing and receiving prohibited contour overlap with respect to South Florida Educational Broadcasters' ("SFEB") construction permit (BPED-940531MB) for a new second-adjacent channel noncommercial educational FM station in Florida City, FL.

Petition for reconsideration. On October 24, 1996 Bascomb timely filed its petition for reconsideration and reinstatement *nunc pro tunc* along with an amendment that reduced the ERP to 7.4 kW and modified the directional antenna pattern.¹ The reduction in ERP eliminated the overlap that the proposal would cause to the SFEB permit. However, the 60 dBu protected contour of the amended WDNA proposal would still encompass the 80 dBu interfering contour of the SFEB permit facility. In this regard, the petition for reconsideration included a request for waiver of § 73.509 to allow WDNA to receive the prohibited overlap.

Request for waiver of § 73.509. In support of its request for waiver, Bascomb states that the Commission has recognized that second- and third- adjacent channel overlaps result in the replacement of signals in small areas around the transmitter of the interfering station and therefore have less adverse effects than co- or first-adjacent channel overlap, which results in loss of service. In this regard, Bascomb cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain instances.

In the instant case, the application would allow WDNA to co-locate with TV Channel Six station WTVJ, Miami, FL and alleviate interference caused by WDNA's licensed operation. Additionally, the proposed facility would allow WDNA to expand its current 1 mV/m service area to encompass 6,850 sq. km and serve a population of 1,551,340 persons. The proposed WDNA service area would receive approximately 45 sq. km (only 9 sq. km of which is inhabited) of overlap from the SFEB permit facility affecting 9,069 persons. Bascomb considers the affected areas to be *de minimis* and, when considered along with the reduction in TV Channel Six interference and the increased service area, concludes that waiver would be warranted in this case.

Discussion. Bascomb's request to receive second-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that case it was stated that:

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 or third adjacent channel 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. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of

¹ Public notice of the September 20, 1996 return of the application was released on September 25, 1996. See *Broadcast Actions*, Report No. 43833.

the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted. Should the Bascomb application eventually be granted, it will include the following condition:

Further modification to construction permit BPED-940531MB, Florida City, FL will not be construed as a *per se* modification of WDNA's license.
(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).²

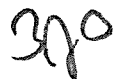
Conclusion. Under the terms of the *Public Notice* entitled "Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications," 56 RR 2d 776, 49 Fed. Reg. 47331, released August 2, 1984, the Commission will reinstate applications *nunc pro tunc* where the original application was dismissed and where a relatively minor curative amendment was filed within 30 days of the date of the dismissal. The petition for reconsideration and amendment comply with the terms of the Public Notice.

Accordingly, Bascomb's petition for reconsideration IS HEREBY GRANTED and the application IS HEREBY REINSTATED *NUNC PRO TUNC* with the original file number BPED-960614MA. Furthermore, Bascomb's request for waiver of § 73.509 IS HEREBY GRANTED. The application as amended is acceptable for filing and will be placed on an upcoming "A" cutoff list. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Dennis Williams
Assistant Chief
Audio Services Division
Mass Media Bureau



cc: Bascomb Memorial Broadcasting Foundation
James P. Riley, Esq

SFEB currently has a pending minor application (File No. BMPED-9607081C) to modify its outstanding construction permit. That application proposes to relocate to a site approximately 7 kilometers further away from the WDNA proposal. In light of the waiver granted herein, as conditioned above, the Bascomb and SFEB applications will not be considered mutually exclusive.