

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, SW
WASHINGTON, DC 20554

DEC 15 2008

MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio/

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Fitzgerald and Hawras, Partnership
P.O. Box 20155
Scranton, PA 18502

Re: WPHD(FM), South Waverly, PA
Facility ID No. 77925
Fitzgerald and Hawras, Partnership
File No. BPH-20081006ABF

Dear Applicant :

This letter refers to the above-captioned application for a minor change to a licensed facility. For the reason stated below, the application must be amended before it can be processed further.

An engineering study of the application reveals that the facility specified in the application fails to meet the minimum spacing requirement of Section 73.207.¹ Specifically, the proposed facility is short-spaced by 1 kilometer to the second-adjacent channel Class B license (BLH-4542) of WPEL-FM, Montrose, PA. WPHD recognizes this short-spacing and requests processing pursuant to Section 73.215.² However, the proposed interfering contour (94 dBu) would cause prohibited overlap to the protected contour (60 dBu) of WPEL by as much as 1 kilometer between the azimuths from 280°T to 282°T. The prohibited overlap occurs when WPEL is considered as a maximum Class B facility operating with 50 kilowatts ERP at 150 meters HAAT, as required by Section 73.215(b)(2)(ii). This overlap constitutes an acceptance defect. Therefore, the application must be amended to demonstrate compliance with Section 73.215 with respect to WPEL.

Pursuant to Section 73.3522(c)(2) of the Commissions' Rules,³ "... an applicant whose application is found to meet minimum filing requirements, but nevertheless is not complete and acceptable, shall have the opportunity during the period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff." Additionally,

¹ 47 C.F.R. § 73.207.

² 47 C.F.R. § 73.215.

³ 47 C.F.R. § 73.3522(c)(2).

Section 73.3564(a)(3) of the Commissions' Rules⁴ states, "Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment." See Appendix B of the *Report and Order* in MM Docket 91-347, 7 FCC Rcd 5074, 57 Fed. Reg. 34872 (published August 7, 1992). **This letter constitutes the opportunity for corrective amendment pursuant to Section 73.3522(c)(2).**

Further action on the subject application will be withheld for 30 days from the date of this letter to provide an opportunity to reply. Failure to correct all tender and acceptance defects within 30 days from the date of this letter will result in dismissal of the application with no further opportunity for corrective amendment pursuant to Section 73.3564(a). Furthermore, failure to respond within 30 days will result in the dismissal of the application pursuant to Section 73.3568 of the Commission's Rules.⁵

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo F. Bonacci".

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

⁴ 47 C.F.R. § 73.3564(a)(3).

⁵ 47 C.F.R. § 73.3568.