



Federal Communications Commission
Washington, D.C. 20554

December 10, 2010

In Reply Refer to:
1800B3-HOD

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In re: NCE October 2007 Window

New NCE(FM), Welcome, North Carolina
Facility ID No. 172306
The Board of Trustees of the University of
North Carolina at Chapel Hill
File No. BNPED-20071019APA

Petition to Deny

Dear Counsel:

We have before us the above-captioned application filed by the Board of Trustees of the University of North Carolina at Chapel Hill ("UNC") for a new noncommercial educational ("NCE") FM station on Channel 216 at Welcome, North Carolina ("Application"). We also have before us a Petition to Deny the Application ("Petition") filed by Positive Alternative Radio, Inc. ("PAR") on December 12, 2007.¹ For the reasons set forth below, we deny the Petition and grant the Application.

Background. UNC submitted the Application during a filing window for NCE FM applications in October 2007. After determining that the Application did not conflict with any other application submitted during the window, the Media Bureau accepted it for filing, triggering a 30-day period for filing of petitions to deny the Application.²

In its Petition, PAR alleges that the Application involves a prohibited contour overlap with the signals of two NCE FM stations licensed to PAR, WOKD-FM, Danville, Virginia, and WXRI(FM), Winston-Salem, North Carolina.³ PAR submits an engineering exhibit containing contours prepared

¹ UNC filed an Opposition to the Petition on December 26, 2007 ("Opposition") and PAR filed a Reply on January 3, 2008 ("Reply"). Subsequently, UNC filed a pleading entitled "Motion to Strike or, Alternatively, Surreply to Positive Alternative Radio, Inc.'s Reply" on January 14, 2008 ("Motion").

² *Broadcast Applications*, Public Notice, Report No. 26612 (Nov. 14, 2007).

³ Petition at 3. WOKD-FM operates on Channel 216; WXRI operates on Channel 217.

using 30-second terrain data to support its allegations. PAR argues that, as a result of these contour overlaps, the Application violates Section 73.509 of the Commission's Rules (the "Rules"),⁴ is "fatally defective" and must be dismissed.⁵

In opposition, UNC asserts that the Application does not violate Section 73.509.⁶ UNC explains that the contours submitted with the Application were prepared using 3-second terrain data and points out that "[a] 3 second terrain database has 100 times the point density of a 30 second terrain database and is, therefore, considerably more accurate than a 30 second terrain database."⁷ UNC also notes that Section 73.312(d) of the Rules permits the use of data from a "30 second, point or better topographic data file."⁸

In reply, PAR submits contours prepared using terrain profiles manually extracted from topographical maps and asserts that these too demonstrate that there is a prohibited contour overlap between the proposed station and WXRI(FM).⁹

Discussion. Under Section 73.509 of the Rules, an Application is defective and must be dismissed if the 60 dBu contour of the proposed station overlaps the 40 dBu contour of a station operating on the same frequency or the 54 dBu contour of a station operating on a first adjacent channel.¹⁰ PAR argues that the Application involves prohibited contour overlaps with both WOKD-FM and WXRI and submits engineering exhibits that use 30-second terrain data to support its argument. In contrast, UNC asserts that the Application fully complies with the requirements of Section 73.509 and submits engineering exhibits that use 3-second terrain data to support its assertion. We have conducted our own independent review of the Application using 3-second terrain data, which is more accurate than 30-second terrain data,¹¹ and find that the Application complies with Section 73.509(a).¹²

⁴ 47 C.F.R. § 73.509(a).

⁵ Petition at 1, 4. PAR also asserts that, if the Application "was to properly protect WXRI-FM then it would not be possible to provide 60 dBu service to at least 50% of either the area or population of Welcome, North Carolina" as required by Section 73.515 of the Rules. *Id.* at 2.

⁶ Opposition at 1-2. UNC also responds to PAR's argument that the Application violates Section 73.515. UNC notes that this argument "hinges directly on [its] erroneous argument relating to prohibited contour overlap." *Id.* at 4. UNC argues that, because the Application adequately protects WOKD-FM and WXRI and provides the required coverage of the proposed community of license, the Commission need not consider the hypothetical scenario presented by PAR. *Id.*

⁷ *Id.* at 2. UNC notes that the Audio Division itself has acknowledged that 3-second terrain data is more accurate than 30-second terrain data. *Id.* at 2-3 quoting *Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Coal Run, Kentucky and Clinchco, Virginia)*, Report and Order, 22 FCC Rcd 5347 (MB 2007) ("*Coal Run*").

⁸ *Id.* at 2, quoting 47 C.F.R. § 73.312(d). UNC notes that PAR itself has used 3-second terrain data. *Id.* at 3.

⁹ Reply at 2. PAR also appears to argue that Section 73.312(d) of the Rules, 47 C.F.R. § 73.312(d), requires the Commission to rely on these contours in determining whether the Application complies with Section 73.509 because there is a "dispute." *Id.* In response, UNC claims that PAR raised this argument for the first time in the Reply and asserts the argument is not responsive to any matters set forth in the Opposition. UNC urges the Commission to strike the argument. Motion at 2. Section 1.45 of the Rules requires that replies be limited to matters raised in oppositions. 47 C.F.R. § 1.45. We find that PAR failed to comply with this requirement. Accordingly, we strike that portion of the Reply that sets forth the argument that there is a "dispute" within the meaning of Section 73.312(d) and therefore that the manual method of extracting terrain data from topographic maps must be used in preparing the contours used to evaluate the Application.

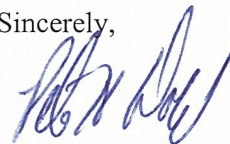
¹⁰ 47 C.F.R. § 73.509(a).

¹¹ See *Coal Run*, 22 FCC Rcd at 5348.

¹² Because we find the Application complies with Section 73.509(a), we need not reach PAR's argument that, if the Application were amended to ensure compliance with that section, it would fail to provide the coverage required by

Conclusion/Actions. We have evaluated the Application and find it fully compliant with all pertinent statutory and regulatory requirements. We find that grant of the Application will further the public interest, convenience, and necessity. ACCORDINGLY, IT IS ORDERED that the Petition to Deny filed by Positive Alternative Radio, Inc. on December 12, 2007, IS DENIED. IT IS FURTHER ORDERED that the application for a new noncommercial educational FM station on Channel 216 at Welcome, North Carolina (File No. BNPED-20071019APA) filed by the Board of Trustees of the University of North Carolina at Chapel Hill IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: The Board of Trustees of the University of North Carolina at Chapel Hill
Positive Alternative Radio, Inc.