

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JAN 28 1993 3 01 PM '93

IN REPLY REFER TO:
1800B3-ALM

Mr. W. Theodore Eldredge
Temple University of the Commonwealth
System of Higher Education
WRTI/Annenberg Hall (011-00)
Philadelphia, Pennsylvania 19122

DISPATCHED BY

Mr. Larry H. Will
New Jersey Public Broadcasting Authority
1573 Parkside Avenue, CN 777
Trenton, New Jersey 08625

In re: NEW(FM), Ocean City, New Jersey
Temple University of The Common-
wealth System of Higher Education
File No. BPED-900109MD

NEW(FM), Vineland, New Jersey
New Jersey Public Broadcasting
Authority
File No. BPED-900522MB

Dear Gentlemen:

This is in reference to the Joint Petition for Approval of Settlement with Amendment of BPED-900109MD and Dismissal of BPED-900522MB ("Joint Petition Two") which was filed on June 1, 1992 between Temple University of The Commonwealth System of Higher Education ("Temple") and New Jersey Public Broadcasting Authority ("NJPBA"). Joint Petition Two supersedes the Joint Petition for Approval of Settlement ("Joint Petition One") which was filed with the Commission on January 16, 1991.¹

¹ Pursuant to the terms of Joint Petition One, Temple agreed to amend its application to eliminate the mutual exclusivity with NJPBA's Vineland application. On January 17, 1991, Temple filed a major amendment to its application (BPED-910117MD). (As this amendment would result in Temple becoming mutually exclusive with NJPBA's pending application for Cape May Courthouse, New Jersey (BPED-900308MH), NJPBA agreed to amend the Cape May Courthouse application to eliminate the mutual exclusivity.) This January 17, 1991 amendment, however, also resulted in Temple becoming mutually exclusive with an application subsequently filed by Joy Broadcasting, Inc. for Egg Harbor Township, New Jersey (BPED-910221MH). To remedy this situation, Joint Petition Two was submitted on May 29, 1992. Under the terms of Joint Petition Two, Temple submitted an accompanying minor amendment (BPED-920529ME) to supersede its January 17, 1991 major change amendment.

Under the terms of Joint Petition Two, Temple will withdraw an earlier-filed amendment, BPED-910117MD, to its Ocean City, New Jersey application and file a new amendment to operate on Channel 217B1. Additionally, NJPBA will dismiss its application for Vineland and will not refile that application or file or amend any other application in a manner that would cause predicted interference to any station authorized to Temple, or impede the grant of any pending application of Temple's with facilities specified in the application as of the date of Joint Petition Two. Lastly, Temple agrees to refrain from further amending its application in a manner that would impede a grant of any of NJPBA's applications pending as of the date of Joint Petition Two. No consideration has been paid or promised in reaching the terms of the settlement agreement.

We have examined the agreement, the supplement and the declarations attached thereto. Based on this examination, we find that approval of the agreement would serve the public interest, and that the Temple and NJPBA applications were not filed for the purpose of reaching or carrying out the agreement. Furthermore, we have examined the showing made by Temple with respect to Section 307(b) of The Communications Act of 1934, as amended, 47 U.S.C. Section 307(b), and have determined, pursuant to 47 C.F.R. § 73.3525(b)(1), that local publication is not required. Temple is the preferred applicant since the grant of its application will result in the first noncommercial, educational service for Ocean City. Furthermore, Vineland is located within the 1 m/Vm protected service contour of NJPBA's existing station, WNJB(FM), Brunswick, New Jersey. Finally, Temple's Ocean City proposal, as amended, will provide service to a total population of approximately 294,145 persons in a land area of 2,174 square kilometers. The NJPBA Vineland proposal would have served approximately 124,304 persons in an area of 1,235 square kilometers.

Temple's Ocean City facility proposes to rebroadcast the programming of commonly owned station WRTI(FM), Philadelphia, and has, therefore, requested a waiver of 47 C.F.R. § 73.1125 (the Commission's main studio rule). This proposal is that of a "satellite" broadcast facility. By telephone request to your local counsel, a member of the staff requested that you provide specific information regarding resident participation in advising the proposed station of the problems and needs of their community, and how the proposed station specifically proposes to cover Ocean City in its news and public affairs programming. On November 16, 1992, an amendment was filed in response to the telephone request.

Section 73.1125 of the Commission's Rules, as revised by the Report and Order in MM Docket No. 86-406, 2 FCC Rcd 3215 (1987), reconsideration and clarification granted in part, 3 FCC Rcd 20 (1988), requires a broadcast station to maintain its main studio in its city of license except "when good cause exists for locating the main studio outside the principal community to be served and... [when doing] so would be consistent with operation of the station in the public interest." The purpose of the rule, as explained in EM Studio Moves, 27 FCC 2d 851, 852 (1971), is "to make broadcast stations readily accessible to the people in the communities which they are primarily licensed to serve." A "satellite" station has been defined by the Commission as one "operating on a channel specified in the...table of assignments and meeting all of the technical requirements of our rules, but one which usually originates no local programming...It rebroadcasts the programming of the parent

station." Multiple Ownership Rules, 3 RR 2d 1554, 1562 (1964). While FM satellite stations, such as that proposed here, are not contemplated by the FM rules, the situation can be analogized to situations involving television satellites where the main studio rules have been waived.

Despite waiver of the main studio rules in these instances, the primary obligation of any broadcast licensee, including those of satellite stations, is to serve the problems, needs and interests of the community to which it is licensed. The Commission has never "indicated, directly or indirectly, that licenses were granted to state educational networks for the purpose of providing statewide service and not local service." Georgia State Board of Education, 70 FCC 2d 948, 956 (1978). As such, local needs can and should be met by Temple. It is true that, in the past, the Commission has recognized the economic benefits of centralized operations for noncommercial educational stations like the situation presented here. See Memorandum Opinion and Order in MM Docket 86-406, 3 FCC Rcd 5024, 5027 (1988). Because of the limited funding available to these stations, the Commission has granted waivers to state and regional public television and radio networks to operate "satellite" stations that do not necessarily meet the main studio requirements. See Nebraska Educational Television Commission, 4 RR 2d 771 (1965). As has been stated, however, these stations have not been permitted to ignore local service obligations. Georgia State Board of Education, 70 FCC 2d at 956. Waivers generally have been granted only upon a showing that the local community would be served and "such stations will be subject to the local/toll free telephone number requirement." Memorandum Opinion and Order in MM Docket 86-406, at 5027. See 47 C.F.R. § 73.1125(c).

Temple's original request for waiver of the Commission's main studio rule indicates that it proposes to duplicate the programming of WRTI (FM), Philadelphia "until it becomes financially possible to construct and operate a local studio within the proposed [Ocean City] service area." In its November 16, 1992 amendment, Temple states that it plans to carry the programming of National Public Radio on the proposed Ocean City facility, to bring "a new source of national news and information to the Ocean City area, because this programming is not otherwise available. In addition, one or more staff members will travel to Ocean City "to provide weekly reports on local news stories and information for a monthly public affairs program." Temple will also do periodic live remote programming from Ocean City. Temple will subscribe to a local, Ocean City, newspaper and also "maintain toll free telephone service from Ocean City to its operating headquarters in Philadelphia." Lastly, Temple states that "[w]hen local interest develops sufficiently, [Temple] plans to open a local studio in Ocean City."

The Commission finds that Temple's waiver request, as amended, barely provides sufficient information to satisfy the primary obligation of a "satellite" station, which is to serve the problems, needs and interests of the community to which it is licensed, irrespective of whether or not the station will maintain a main studio in compliance with 47 C.F.R. § 73.1125. However, with: (i) the establishment of a toll-free phone line to the WRTI (FM) studio; (ii) regular meetings with Ocean City community leaders; and (iii) a concerted effort to develop local programming in Ocean City and to open an Ocean City studio, the Commission believes that the needs and interests of Ocean City residents can be met by Temple's proposal.

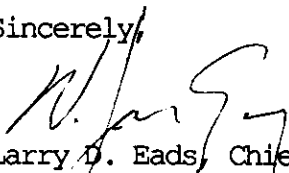
In light of the above, Temple's request for a waiver of 47 C.F.R. § 73.1125 to operate the proposed Ocean City, New Jersey station as a satellite of Station WRTI (FM), Philadelphia, Pennsylvania, IS GRANTED subject to the following conditions:

1. That Temple install a toll-free telephone line from Ocean City to the WRTI (FM) studio in Philadelphia.
2. That Temple conduct regular meetings with Ocean City community leaders.
3. As a result of these meetings, Temple must develop local programming for Ocean City and document the specific nature of this programming in the station's public inspection file. See 47 C.F.R. § 73.3527(a) (7).

Lastly, as originally filed, Temple's application indicated financial dependence on a Federal grant administered by the National Telecommunications and Information Administration ("NTIA"). Temple's November 16, 1992 amendment indicated that it did not receive funding from NTIA but provided a financial statement detailing the costs of construction and operation for the first three months and indicated that sufficient funding would now be available from the University. Based on this showing, we have determined that Temple has sufficient funds from a reputable source to construct its proposed station and to operate it for the first three months.

Accordingly, the Joint Petition for Approval of Settlement with Amendment of BPED-900109MD and Dismissal of BPED-900522MB between Temple University of the Commonwealth System of Higher Education and the New Jersey Public Broadcasting Authority IS HEREBY APPROVED. Pursuant to Temple's request, the January 17, 1991 amendment to application BPED-900109MD IS HEREBY RETURNED. Temple's application BPED-900109MD, as amended on May 29, 1992, being in all respects acceptable, IS HEREBY GRANTED and its authorization will be forwarded under separate cover. Lastly, NJPBA's application BPED-900522MB IS HEREBY RETURNED. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,


to Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: Peter Tannenwald, Esq.
Malcolm Stevenson, Esq.