

FEDERAL COMMUNICATIONS COMMISSION
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AUDIO DIVISION
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July 22, 2003

John Crigler, Esq.
Garvey, Schubert & Barer
5th Floor, Flour Mill Building
1000 Potomac Street, NW
Washington, DC 20007-3501

Re: WDIY(FM); Allentown, PA
Facility ID No.: 36992
Lehigh Valley Community Broadcasters
Association, Inc. ("**Lehigh**")
BPED-19990823IA

Dear Mr. Crigler:

The staff has under consideration the above-captioned minor change application filed by **Lehigh** on August 23, 1999, as amended October 23, 2000. In its application **Lehigh** proposes to increase the effective radiated power ("ERP") from 100 watts to 400 watts at the WDIY(FM) licensed site. For the reasons stated below, the **Lehigh** application must be amended.

Violation of TV Channel 6 Protection Requirement

The rules set forth in 47 CFR Section 73.525 describe the procedures to determine the area of predicted interference to reception of [analog] TV Channel 6; methods to measure the estimated population therein; opportunities to adjust the estimate of affected population; and caps to limit the number of persons affected. The WDIY facility, initially granted by construction permit BPED-19891019MF, is governed by Section 73.525(c) "*New NCE-FM stations*" which applies to stations authorized after December 31, 1984 and not collocated with the TV 6 station. These stations are restricted to limit the area of predicted interference to include no more than 3,000 persons.¹

¹ The limit may be increased to 4,000 if **Lehigh** agrees in its application to install one filter for each person over the 3,000 limit.

In its application **Lehigh** does not address the number of persons affected. The application does, however, contain a showing that the area of predicted interference with analog station WPVI-TV, Philadelphia, PA, TV Channel 6, is completely contained within the 41 dBu (50,90) service area contour of digital television ("DTV") station WPVI-DT operating on Channel 64. WPVI-TV and WPVI-DT are said to be broadcasting identical programming. **Lehigh** states that DTV converters are available for those persons who receive interference because they do not subscribe to either cable or satellite TV. **Lehigh** proposes to require purchase of DTV converters to eliminate interference to TV Channel 6 reception. On this basis, **Lehigh** believes its proposal complies with Section 73.525.

We do not agree. There is no provision in Section 73.525 that permits an FM noncommercial educational applicant to deduct persons covered by digital television operations of an affected Channel 6 analog television station, nor has Lehigh referenced any prior case in which an applicant was permitted to do so. There are sound reasons for not permitting such an analysis:

First, at the end of the digital television transition period, WPVI-TV will be required to give up one of the two television channels on which it operates. At its option, it may eventually choose to move its digital television operations to Channel 6. It should be permitted to do so without undue interference from FM noncommercial educational stations.

Second, the argument made here could apply to nearly every noncommercial educational FM station in the country. Digital television allotments were chosen to permit the digital TV signal to duplicate, as nearly possible, existing analog television coverage. Were we to consider the digital television operation under the "same network affiliation" provisions in Section 73.525, which allows deductions in population covered by the duplicate network signal, very few FM noncommercial educational stations would show any persons affected at all. This would make the rule section virtually useless as a means of controlling interference to TV Channel 6 reception.

Third, digital television operations are not required to carry the same programming as their analog counterparts. While WPVI-TV has evidently chosen to do so, it is not bound to do so, and may make the change at will.

Fourth, after December 31, 2004, the service area of WPVI's digital television operation will be determined by the location of the 48 dBu F(50,90) service contour, not the larger 41 dBu F(50,90) contour used at present. At that time, the predicted interference area created by WDIY will no longer be within the digital television service area of WPVI-TV.

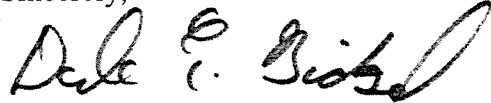
Given these considerations, we cannot accept Lehigh's analysis. Lehigh must amend its application to show compliance with the provisions of Section 73.525, ignoring any digital television operations of WPVI-TV.²

² Alternatively, Lehigh may secure a written agreement with WPVI-TV accepting WDIY's operations as proposed. The agreement must be signed by an officer of the television station.

Action by Staff

Further action on application BPED-19990823IA will be withheld for a period of thirty days from the date of this letter to provide an opportunity for **Lehigh** to file a curative amendment that clears all defects. Failure to respond within this time period will result in the dismissal of the application pursuant to 47 CFR Section 73.3568(a)(1). Any amendment to the application file number referenced above may be filed electronically.³ This action is taken pursuant to 47 CFR Section 0.283.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale E. Bickel". The signature is fluid and cursive, with the first name "Dale" being the most prominent.

Dale E. Bickel, Senior Engineer
Audio Division
Office of Broadcast License Policy
Media Bureau

cc: Lehigh Valley Community Broadcasters Association, Inc.
Charles W. Loughery

³ E-filed applications require e-filed amendments. To speed processing, we encourage e-filing of amendments to applications filed on paper.