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In Reply Refer to:

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In re: **(NEW), Low Power FM, Charlotte, NC**
File No. BNPL-20010615AFR
Central Piedmont Community College
Facility ID No. 134680

Dear Counsel:

We have before us the above-referenced application of Central Piedmont Community College (“Central”) for a construction permit to build a new Low Power FM (“LPFM”) broadcast station on Channel 266 (101.1 MHz) at Charlotte, North Carolina. Also on file is the April 9, 2004, Petition to Deny¹ the application (“Petition”) filed by Susquehanna Radio Corp. (“Susquehanna”) former licensee of first-adjacent channel FM station WABZ-FM, Channel 265A (100.9 MHz), Albemarle, North Carolina.² The Petition is untimely, which Susquehanna acknowledges, and therefore we will treat it as an informal objection (“Objection”) pursuant to Section 73.3587 of the Commission’s rules.³ For the reasons set forth below, we grant the Objection in part and grant Central’s application with the condition that the maximum effective radiated power (“ERP”) for the facility shall not exceed 0.045 kW and the minimum ERP shall not be less than 0.043 kW.

Background. On July 2, 1999, the Commission issued a *Notice of Proposed Rule Making*⁴ premised on the petition for rule making filed by Susquehanna requesting the reallocation of Channel 265A to Indian Trail, North Carolina, as the community's first local aural service, and the modification of

¹ Central filed an Opposition on June 4, 2004.

² We note that, on November 3, 2004 the Commission granted the application to assign then-station WABZ-FM to Radio One of North Carolina, LLC (File No. BALH-20040810AAD). On November 12, 2004, the parties consummated the transaction, and the call letters were changed to WPZS(FM) on November 16, 2004. For administrative convenience, we will use the call letters WABZ-FM throughout this letter.

³ 47 C.F.R. § 73.3587.

⁴ *Albemarle and Indian Trail, North Carolina*, Notice of Proposed Rule Making, 14 FCC Rcd 10524 (MMB 1999).

Susquehanna's WABZ-FM's license to specify Indian Trail as the station's community of license. Susquehanna stated that it would apply for Channel 265A, if the Channel was reallocated to Indian Trail.⁵ On June 15, 2001, Central timely filed an application to build a new LPFM station at Charlotte, North Carolina, on first-adjacent Channel 266. At the time of filing, the Central transmitter site was fully spaced to the WABZ-FM, Albemarle facilities. In the *Report & Order* released July 13, 2001, the Commission amended the FM Table of Allotments to specify the reallocation of Channel 265A from Albemarle to Indian Trail.⁶ On January 16, 2002, Susquehanna filed the modification application for WABZ-FM to implement the rule making.⁷ Central's proposal is short spaced to WABZ-FM's modified facilities. Nevertheless, on September 3, 2003, Central's application was accepted for filing. Subsequently, on January 6, 2004, the staff granted Susquehanna's modification application,⁸ and on November 2, 2004, Susquehanna filed its license application.⁹

Discussion. In its objection, Susquehanna states that Central's proposal is 35 kilometers short-spaced to WABZ-FM's authorized modified facilities, which will result in interference within WABZ-FM's 70 and 60 dBu contours.

Section 73.870, "Processing of LPFM broadcast station applications," provides, in pertinent part, that LPFM applications must meet the Section 73.807 minimum distance separations with respect to all applications and facilities in existence as the date of the public notice announcing the pertinent filing window.¹⁰ Section 73.809, "Interference protection to full service FM stations," in pertinent part, provides that it is the responsibility of the licensee of an LPFM station to correct, at its expense, any condition of interference to the direct reception of the signal of any subsequently authorized commercial station where such interference occurs within the commercial station's 70 dBu contour.¹¹

In the instant case, Central's transmitter site was fully spaced with WABZ-FM's site at the time Central filed the subject application, and Central's application was properly accepted for filing on September 3, 2003. Susquehanna's modification application was granted on January 6, 2004. Thus, pursuant to the requirements of Sections 73.807 and 73.809 specified above, WABZ-FM's modified facilities were "subsequently authorized" and the grant of the WABZ-FM modification application does

⁵ Petitioner filed its request pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁶ *Albemarle and Indian Trail, North Carolina*, Report and Order, 16 FCC Rcd 13876 (2001).

⁷ File No. BPH-20020116AAG.

⁸ *Letter In re WABZ-FM, Indian Trail, NC* (MB Jan. 6, 2004). On February 5, 2004, William B. Clay, who had previously objected to the modification application, filed an Application for Review of the grant of the application. That appeal remains pending before the Commission.

⁹ File No. BLH-20041102AJC. The application remains pending before the Commission.

¹⁰ 47 C.F.R. § 73.870(c).

¹¹ 47 C.F.R. § 73.809(a)(1).

not result in Central's proposal becoming noncompliant with the Commission's distance separation requirements. The change in WABZ-FM's facility, however, does result in Central's application causing predicted interference within WABZ-FM's principal community contour at its currently permitted site for Indian Trail.¹² Such overlap would not be permitted absent a showing by Central that no actual interference will occur.

In this case, were Central to operate the proposed facility from the specified transmitter site with an ERP of no more than 0.045 kW, it would create no prohibited overlap with WABZ-FM's Indian Trail facility. It has been staff practice since the inception of the LPFM service to issue construction permits to successful LPFM applicants that specify both the maximum and minimum permissible facilities pursuant to Section 73.811(a)(1). Without the interference being caused to WABZ-FM, Central's application would have been granted with a maximum ERP of 0.086 kW. However, to eliminate any such interference, we will grant the application with a maximum ERP of 0.045 kW and a minimum ERP of 0.043 kW.¹³ This action is taken pursuant to Section 1.110 of the Commission's rules.¹⁴

Accordingly, the April 9, 2004 Petition to Deny filed by Susquehanna Radio Corp., when treated as an Informal Objection, IS GRANTED to the extent indicated herein, and the application (File No. BNPL-20010615AFR) of Central Piedmont Community College for a new Low Power FM station at Charlotte, North Carolina, IS GRANTED, subject to the condition that the maximum effective radiated power for the facility shall not exceed 0.045 kW, and the minimum effective radiated power shall not be less than 0.043 kW. The construction permit is enclosed.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

Enclosure

¹² Pursuant to 47 C.F.R. § 73.809(a), the 70 dB μ contour of WABZ-FM shall be protected in accordance with the protection ratios set forth in 47 C.F.R. § 73.215(a)(2). In the instant case, Central's proposed station and WABZ-FM will operate on first-adjacent channels. Thus, the interference is predicted to occur when the signal strength of Central's proposed facility is less than 6 dB below the WABZ-FM's signal strength.

¹³ See, e.g., *Multicultural Radio Broadcasting, Inc.*, 15 FCC Rcd 20630, 20636 (2000) (Commission approves the staff's *sua sponte* reduction of ERP specified in a modification application to bring the application into compliance with current rules).

¹⁴ 47 C.F.R. § 1.110. If Central does not accept the ERP parameters specified by the staff in the enclosed construction permit, it must reject the grant as made in writing to the Commission within 30 days of the date of grant. Upon receipt of the rejection letter, the staff will vacate the grant and replace the application in pending status for further processing as specified in Section 1.110.