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Re: WCZQ(FM), Monticello, Illinois
Joyner Radio, Inc.
Facility ID Number 46942
File No. BPH-20080131AKH

WIXO(FM), Peoria, Illinois
Regent Broadcasting of Peoria, Inc.
Facility ID Number 9894
File No. BPH-20080131ALK

Dear Counsel:

The letter is in reference to the above-captioned minor change applications which propose mutual increases to maximum permissible facilities for both stations that were filed pursuant to the contingent application requirements of Section 73.3517.¹

Background. WCZQ is a Class A FM station licensed (File No. BLH-20000509AAS) to operate on channel 288 at Monticello, Illinois, using 3.00 kilowatts (kW) effective radiated power (ERP) and 89 meters antenna radiation center height above average terrain (HAAT). WIXO is a Class B FM station licensed (File No. BLH-20050407AAA) to operate on channel 289 at Peoria, Illinois, using 32 kW ERP and 169 meters antenna radiation center HAAT. The licensed WCZQ and WIXO facilities do not meet the minimum distance separation requirements of Section 73.207² for first-adjacent channel Class A and Class B stations. This short spacing between WCZQ and WIXO resulted from the October 2, 1989, change in the Commission's rules that increased the maximum permissible ERP and HAAT and minimum distance separation requirements for Class A stations.³ Thus, WCZQ and WIXO are grandfathered short-spaced stations that may be modified or relocated pursuant to Section 73.213(c),⁴ provided certain requirements are met.

¹ See 47 C.F.R. § 73.3517.

² See *id.* at § 73.207.

³ See *Second Report and Order* ("R&O"), MM Docket No. 88-375, 4 FCC Rcd 6375 (1989).

⁴ See 47 C.F.R. § 73.213(c).

The WCZQ application⁵ (the “WCZQ Application”) proposes to increase the WCZQ facilities to maximum permissible Class A facilities, 6 kW ERP and 100 meters HAAT, at the licensed WCZQ transmitter site. The WIXO application⁶ (the “WIXO Application”) proposes to increase the WIXO facilities to the equivalent of maximum permissible Class B facilities, 39 kW ERP and 169 meters HAAT, at the licensed WIXO transmitter site. The applicants submitted a Mutual Increase of Facilities Agreement in each application.

Discussion. The *Memorandum Opinion and Order* (the “MO&O”) in MM Docket No. 88-375,⁷ defined three categories of Class A FM stations and outlined opportunities for facility upgrades for each category. Based on the definitions in the MO&O, WCZQ is a Category 2 Class A station. Category 2 Class A stations have five options for modification and/or relocation of facilities. Mutual increases to maximum permissible facilities for short-spaced Class A and non-Class A stations, even with an executed mutual agreement to do so, is not one of the options available to Category 2 Class A stations. Mutual increases to maximum permissible facilities pursuant to Section 73.213(c)(2)⁸ are permissible only if the short-spaced stations involved are both Class A stations.

Our studies show that neither the licensed nor the proposed WIXO facilities are predicted to cause interference to the licensed or proposed WCZQ facilities, but that both the licensed and proposed WCZQ facilities are predicted to cause interference to the licensed and proposed WIXO facilities. If we were to consider the WCZQ Application and the WIXO Application separately, the WIXO Application would be grantable with respect to the licensed WCZQ facilities, but the WCZQ Application would not be grantable with respect to either the licensed or proposed WIXO facilities because the proposed WCZQ facilities would create a sizable new area of interference within the protected service area of both the licensed and proposed WIXO facilities.

If Joyner Radio, Inc., licensee of WCZQ, wishes to pursue an increase in WCZQ facilities, it must do so unilaterally. A unilateral WCZQ facility increase is possible under Section 73.213(c)(2)⁹ or Section 73.215.¹⁰ A unilateral facility increase up to the class maximum (or its equivalent) pursuant to Section 73.213(c)(2)¹¹ is permitted for WCZQ provided the following requirements are met:

1. The consent of the affected short-spaced station is obtained;
2. The applicant demonstrates that the increase is consistent with the public interest; and
3. The applicant submits a showing that no fully-spaced or less short-spaced transmitter site is available.

A unilateral facility increase up to the class maximum (or its equivalent) pursuant to Section 73.215¹² is permitted for WCZQ provided the minimum distance separation and contour protection requirements with respect to WIXO are satisfied.

⁵ File No. BPH-20080131AKH.

⁶ File No. BPH-20080131ALK.

⁷ See *Memorandum Opinion and Order* (“MO&O”), MM Docket No. 88-375, 6 FCC Rcd 3417.

⁸ See 47 C.F.R. § 73.213(c)(2).

⁹ *Id.*

¹⁰ See *id.* at § 73.215.

¹¹ See *id.* at § 73.213(c)(2).

¹² See *id.* at § 73.215.

Action. Pursuant to Section 73.3522,¹³ "...an applicant whose application is found to meet the minimum filing requirements, but nevertheless is not complete and acceptable, shall have the opportunity in 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, Section 73.3564¹⁴ states that, "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment." See Appendix B in the *Report and Order* in MM Docket No. 91-347. This letter constitutes the one opportunity for corrective amendment pursuant to Section 73.3522.¹⁵

Further action on the subject applications will be withheld for a period of 30 days from the date of this letter to provide the applicants an opportunity to respond. Failure to provide a curative amendment to each application within this time period will result in the dismissal of the applications pursuant to Section 73.3568(a)(1).¹⁶ Please note that any amendment must be signed and filed in the same manner as the original application.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Joyner Radio, Inc.
Regent Broadcasting of Peoria, Inc.

¹³ See *id.* at § 73.3522.

¹⁴ See *id.* at § 73.3564.

¹⁵ See *id.* at § 73.3522.

¹⁶ See *id.* at § 73.3568(a)(1).