



**Federal Communications Commission  
Washington, D.C. 20554**

November 10, 2022

**DA 22-1183**

***In Reply Refer to:***

**1800B3-CEG**

**Released: November 10, 2022**

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In re: **NEW, Bradford, Rhode Island**  
Facility ID No. 762615  
Application File No. 161099

**Informal Objection**

Dear Applicant and Objector:

We have before us the above-referenced application (Application) for a new noncommercial educational (NCE) FM station at Bradford, Rhode Island, initially filed by Rhode Island Public Radio d/b/a The Public's Radio (TPR) on September 29, 2021. In the Application, TPR requests a waiver (Waiver Request) of section 73.509(a) of the Commission's rules (Rules)<sup>1</sup> to allow otherwise prohibited contour overlap with second-adjacent channel NCE station WXEV(FM), Bradford, Rhode Island (WXEV).<sup>2</sup> On November 9, 2021, Radio Sharon Foundation (Radio Sharon), the licensee of FM translator station W235CN, Providence, Rhode Island, filed an informal objection (Objection) to the Application.<sup>3</sup> For the reasons set forth below, we grant the Objection, deny the Waiver Request, and dismiss the Application.

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<sup>1</sup> See 47 CFR § 73.509(a).

<sup>2</sup> See Application, Attach. "Comprehensive Technical Exhibit v5" (Application Technical Exhibit) at 5. The WXEV licensee, Horizon Christian Fellowship, did not participate in this proceeding.

<sup>3</sup> Pleading File No. 167610. On December 2, 2021, TPR filed an opposition to the Objection (Opposition) (Pleading File No. 176645). On December 13, 2021, Radio Sharon filed a reply to the Opposition (Reply) (Pleading File No. 177206).

**Background.** On September 29, 2021, TPR filed the Application, initially seeking authorization to serve Bradford, Rhode Island, from a tower located in Exeter, Rhode Island.<sup>4</sup> In the Application, TPR proposes an involuntary time share arrangement with NCE FM station WCVY(FM), Coventry, Rhode Island (WCVY),<sup>5</sup> on the basis that WCVY has not met the minimum operating requirements set out in section 73.561 of the Rules.<sup>6</sup> In the Application, TPR also requests a waiver of section 73.509(a) to receive limited contour overlap from station WXEV.<sup>7</sup> Such a waiver, allowing an NCE station to receive—not cause—a small amount of overlap from second- or third- adjacent channel stations, is commonly known as a *Raleigh* waiver.<sup>8</sup>

On November 9, 2021, Radio Sharon filed the Objection, arguing that: (1) a *Raleigh* waiver is not available for TPR because such waivers are only for existing stations seeking to upgrade, not new stations;<sup>9</sup> (2) TPR has not established its need for an involuntary time-share arrangement or provided factual support regarding WCVY’s hours of operation;<sup>10</sup> and (3) the Application represents an attempt to avoid comparative consideration in the 2021 NCE filing window.<sup>11</sup> Radio Sharon also alleges two technical defects in the Application: (1) the proposed antenna has a 16.5 dB front-to-back ratio in violation of the 15 dB limit set out in sections 73.316(b)(1) and 73.510(b);<sup>12</sup> and (2) the antenna directional slope exceeds 2dB per 10 degrees of azimuth in multiple locations, in violation of section 73.316(b)(2) of the Rules.<sup>13</sup>

On December 2, 2021, TPR filed the Opposition and amended the Application to specify a new community of license (Westerly, Rhode Island) and a new tower site in Charlestown, Rhode Island,<sup>14</sup> resolving the two technical antenna defects identified in the Objection.<sup>15</sup> In the Opposition, TPR claims that it qualifies for a *Raleigh* waiver because “[t]he Application is not an application for new facilities” but a “time-share application filed outside a filing window.”<sup>16</sup> TPR also contends that there are no

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<sup>4</sup> ASR No. 1243518.

<sup>5</sup> WCVY is licensed to Coventry Rhode Island Public Schools, which did not participate in this proceeding.

<sup>6</sup> Application, Attach. “Amended Statement of Program Service December 15, 2021” (citing 47 CFR § 73.561 (“All stations, including those meeting the requirements of paragraph (a) of this section, but which do not operate 12 hours per day each day of the year, will be required to share use of the frequency upon the grant of an appropriate application proposing such share time arrangement.”)).

<sup>7</sup> Application Technical Exhibit at 4.

<sup>8</sup> See *Educational Information Corporation*, Memorandum Opinion and Order, 6 FCC Rcd 2207, 2208 (1991) (*Raleigh*).

<sup>9</sup> Objection at 3-4 (citing *Centenary College*, Letter Decision, 23 FCC Rcd 17317 (MB 2008) (*Centenary College*)).

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 1-2, 4-5.

<sup>12</sup> *Id.* at 2-3 (citing 47 CFR §§ 73.316(b)(1), 73.510(b)).

<sup>13</sup> *Id.* at 3 (citing 47 CFR §§ 73.316(b)(2)).

<sup>14</sup> ASR No. 1234412.

<sup>15</sup> Opposition at 2.

<sup>16</sup> *Id.* at 1-2, 3, note 3 (arguing that the Application proposes a facility improvement—not a new station—because the proposed station would “operate on an existing frequency pursuant to a time-share proposal”). The 2021 NCE filing window was November 2 – November 9, 2021. *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, Public Notice, 36 FCC Rcd 7449 (MB 2021).

alternative transmitter sites and the area that would receive new second-adjacent channel overlap is “exceedingly small.”<sup>17</sup>

On December 13, 2021, Radio Sharon filed the Reply, in which it concedes that the amended Application satisfies the showing for an involuntary time-share arrangement pursuant to section 73.561(b) but reiterates that the Application is an application for a new station and thus not eligible for a *Raleigh* waiver.<sup>18</sup> On December 15, 2021, TPR amended the Application to once again specify Bradford, Rhode Island, as its community of license.

**Discussion.** An informal objection, like a petition to deny, must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.<sup>19</sup> Here, we agree with Radio Sharon that TPR has not met the requirements for a *Raleigh* waiver and the Application therefore violates the contour overlap requirements of section 73.509(a) of the Rules.

The Commission's rules may be waived for good cause shown.<sup>20</sup> When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.<sup>21</sup> The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”<sup>22</sup> and must support its waiver request with a compelling showing.<sup>23</sup> Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.<sup>24</sup> The Commission has held that a *Raleigh* waiver is justified where an NCE station seeks to: (1) receive—not cause—overlap from (2) second- or third- adjacent channel stations, and (3) the public interest benefit of increased NCE service heavily outweighs the potential for interference in a very small area.<sup>25</sup> Granting waivers in these limited circumstances provides flexibility for NCE stations to modify their service areas while protecting existing service from interference.<sup>26</sup>

Regardless of what frequency the proposed station will operate on, and whether or not TPR seeks to share time with another station, the Application, on its face, is an application for a construction permit for a new NCE station, and we reject TPR’s strained argument that it actually proposes a facility improvement. It is well established that *Raleigh* waivers are not available to applicants for new NCE stations.<sup>27</sup> Therefore, because TPR does not meet this threshold requirement, we deny the Waiver

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<sup>17</sup> *Id.* at 3.

<sup>18</sup> Reply at 2.

<sup>19</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990).

<sup>20</sup> 47 CFR § 1.3.

<sup>21</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969).

<sup>22</sup> *Id.*

<sup>23</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>24</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

<sup>25</sup> *Raleigh*, 6 FCC Rcd at 2208. The Commission has delegated authority to the Bureau to waive 47 CFR § 73.509 when overlap received is 10% or less of the proposed service area. *Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, Memorandum Opinion and Order, 50 FR 27954, 27960 (1985).

<sup>26</sup> *Dennis J. Kelly, Esq.*, Letter Decision, 32 FCC Rcd 7441, 7443 (MB 2017) (*Coggon*).

Request and dismiss the Application for failure to satisfy the contour overlap limitations of section 73.509(a) of the Rules. Because we dismiss the Application on this basis, we do not analyze TPR's compliance with the remaining *Raleigh* waiver requirements or its request for an involuntary time-share arrangement with WCVY.

**Conclusion/Actions.** For the reasons stated above, the informal objection filed by Radio Sharon Foundation on November 9, 2021, IS GRANTED. Accordingly, the waiver request submitted by Rhode Island Public Radio on September 29, 2021, IS DENIED and the application for a new NCE FM station filed by Rhode Island Public Radio on September 29, 2021, Application File No. 161099, IS DISMISSED for failure to satisfy the contour overlap requirements set out in 47 CFR § 73.509(a).

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>27</sup> *Coggon*, 32 FCC Rcd at 7443 (distinguishing between *Raleigh* waivers to NCE permittees and NCE applicants whose “proposal has yet to undergo the NCE comparative allocations process”); *Centenary College*, 23 FCC Rcd at 17321 (MB 2008).