

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-121

In the Matter of

Amendment of Part 73
of the Commission's Rules
to Permit Short-Spaced FM
Station Assignments by
using Directional Antennas

ORDER

Adopted: September 22, 1992; Released: October 5, 1992

By the Chief, Mass Media Bureau:

1. The Commission, on its own motion, has reviewed its FM policy regarding the 8 kilometer temporary short-spacing limit imposed by the Note in 47 CFR § 73.215(e) and will remove this limitation by this Order.¹

2. Previously, on December 12, 1988, the Commission adopted a *Report and Order* in MM Docket No. 87-121, 4 FCC Rcd 1681 (1989), *recon. granted in part and denied in part*, 6 FCC Rcd 5356 (1991), that created rules which permit an applicant for commercial FM facilities to request an authorization of a transmitter site that would be nominally short-spaced to the facilities of other co-channel or adjacent channel stations, provided the service of those other licensees is protected from interference based on contour protection as outlined in new rule Section 73.215. The necessary protection may be afforded by taking advantage of terrain elevation in the direction of the short-spaced station(s), by an appropriate reduction in operating facilities (power and/or height), by use of a directional antenna, or by any combination of these means. The maximum amount of short-spacing is limited by the amount of separation specified for the next lower station class.

3. Applications involving use of directional antennas require considerably more resources to process than others, both from a personnel and computer processing standpoint. The Commission stated in the *Report and Order* that budgetary constraints severely limited the ability to process any significant number of applications involving directional antennas. Therefore, the 8 kilometer limit was imposed as a temporary measure to restrict the number of Section 73.215 applications which the FM processing staff would initially receive. The *Report and Order* delegated to the Chief of the Mass Media Bureau the authority to remove this temporary restriction upon determining that available resources would be sufficient to allow the timely

processing of additional applications proposing short-spaced locations using contour protection. 4 FCC Rcd at 1688. Therefore, further notice of proposed rule making appears unnecessary to lift the restriction and, because it would cause unjustifiable delay, would disserve the public interest. See 5 U.S.C. § 553(b)(3)(B).

4. The Commission's staff has now had three years experience in processing applications pursuant to Section 73.215. Through this experience, the staff has incorporated and refined numerous computer programs to help in processing these applications in a timely fashion. Additionally, the Commission has not received a large volume of applications requesting Section 73.215 processing. Also, the Commission has previously exempted Class A stations from the 8 kilometer short-spacing limit in order to permit as many Class A FM stations as possible to increase effective radiated power to the new 6 kilowatt limit and achieve the benefits of increased coverage. *Second Report and Order* in MM Docket No. 88-375, 4 FCC Rcd 6375, 6382 (1989), *recon. denied in pertinent part*, 6 FCC Rcd 3417, 3420 (1991). Finally, several applicants have requested waiver of the 8 kilometer short-spacing limitation, and, in some instances, these requests for waiver have been granted.

5. In light of the above, it appears that our currently available resources are sufficient to justify removal of the temporary 8 kilometer short-spacing limitation at this time. It is not anticipated that the FM Branch will receive any appreciable increase in the number of applications. Removal of this limitation will assist licensees in obtaining the most desirable antenna sites, thus benefiting the public.

6. ACCORDINGLY, pursuant to the authority delegated to the Chief, Mass Media Bureau in the *Report and Order* in MM Docket No. 87-121, 4 FCC Rcd 1681, 1688 (1989), IT IS ORDERED that the Note to 47 CFR § 73.215(e) IS HEREBY REMOVED EFFECTIVE [30 days after this Order is published in the Federal Register].

7. IT IS FURTHER ORDERED. That the "Petition for Removal of Temporary Restriction, Rules Section 73.215(e)" submitted August 4, 1992 by the law firm of Booth, Freret and Imlay and the "Informal Request" submitted August 21, 1992 by Pacific Northwest Broadcasting Corp. ARE DISMISSED.

8. For further information, contact Robert D. Greenberg at (202) 632-7166.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ On August 4, 1992, the law firm of Booth, Freret and Imlay submitted a "Petition for Removal of Temporary Restriction, Rules Section 73.215(e)" to the Mass Media Bureau. On August 21, 1992, an "Informal Request" was submitted by Pacific North-

west Broadcasting Corp., Licensee of Station KMUZ-FM, Camas, Washington. In light of our action herein, which is fully supported by these pleadings, they will be dismissed as moot.

FINAL RULE

Part 73 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154.303.

2. Section 73.215 is amended by removing the Note to paragraph (e).