

**Before the
Federal Communications Commission
Washington, DC 20554**

In re Applications of)	
)	
Brigham Young University)	File Nos. BNPFT-20030829ARF, BNPFT-
For Construction Permits for)	20030829AOB, and BNPFT-20030828AOC
New FM Translator Stations)	
in Utah)	
)	
Facility ID Nos. 141827, 141754, and)	
141760)	

To: Chief, Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

Brigham Young University ("BYU"), the applicant for the above captioned three new noncommercial educational ("NCE") FM translator stations, by its counsel, and pursuant to Section 1.106 of the Commission's rules, hereby submits this Petition for Reconsideration of the Commission's dismissal of the above-referenced applications.¹ As discussed below, BYU has amended each of the applications to address the concern raised by the Commission's dismissal letters. Accordingly, BYU respectfully requests that the applications be reinstated *nunc pro tunc* and granted by the Commission.²

¹ See Letters to Brigham Young University from George H. Gwinn, Supervisory Engineer, Audio Division, Media Bureau (dated April 30, 2004, May 11, 2004, and May 12, 2004). The dismissal of the BYU translator applications were publicly noticed on May 5, 2004, May 14, 2004, and May 17, 2004. *Broadcast Actions, Public Notice*, Report Nos. 45729, 45736 and 45737.

² See Public Notice, Statement of Future Policy on Incomplete and Patently Defective Construction Permit Applications, 49 Fed. Reg. 47,331 (1984).

By way of background, on August 29, 2003, BYU filed three applications on FCC Forms 349 requesting authority to construct new NCE FM translators on channels in Cedar City, Ivins, and St. George, Utah.³ These three NCE FM translators are part of a proposed four-hop network of translators that will re-broadcast full power NCE FM station KBYU-FM, Channel 206 (89.1 MHz), Provo, Utah, also licensed to BYU.⁴ Each of the three applications reflects “Off-Air” as the proposed method of delivery of the primary signal to be retransmitted.

The Commission issued letters dismissing each of the three BYU NCE FM translator applications stating that the applications violate Section 74.1231(b) of the Commission’s rules. Section 74.1231(b) states that translators may be used for the purpose of retransmitting the signals of primary FM radio broadcast stations or other translator stations, the signals of which are received “directly through space.”⁵ In each of the three dismissal letters the Commission notes that the subject application proposes to operate an FM translator at such a distance from the station to be rebroadcast, that “direct -- off air” delivery of the KBYU-FM primary signal to the translators would be impossible. The Commission thus dismissed the three NCE FM translator applications because it concluded that none of the proposed FM translator stations could receive

³ These applications were filed responsive to *FCC Public Notice, FM Translator Auction 83 Non-Mutually Exclusive Applications*, DA 03-2095 (rel. June 30, 2003). In that Notice the Commission instructed applicants that filed in the Commission’s FM translator filing window, whose proposals were identified as non mutually exclusive, to file the long form 349 to submit a full engineering analysis of their proposals.

⁴ The proposed four-hop translator network includes a proposed translator station in Milford, Utah. A short form application to construct a new translator station in Milford was filed on March 14, 2003 in the Commission’s FM translator auction filing window (FCC File No. BNPFT-20030314CFH). See *FCC Public Notice, FM Translator Filing Window and Application Freeze*, DA-03-359 (rel. Feb. 6, 2003). This application is mutually exclusive with four other applications. Each of these four additional applications was filed on behalf of BYU. BYU will dismiss the four additional applications that create this mutual exclusivity at the Milford site so that further processing of the Milford translator application can commence.

⁵ 47 C.F.R. 1231(b).

the primary signal from KBYU-FM “directly through space,” in accordance with Section 74.1231(b) of its rules. No additional deficiencies were raised with respect to the above referenced applications in the Commission’s dismissal letters.

BYU has amended the three applications to clarify that the proposed translators at the Cedar City, Ivins, and St. George sites will receive the KBYU-FM signal via other translator stations. As demonstrated in the subject amendments, incorporated herewith by reference, BYU’s proposed four-hop translator network contemplates that the broadcast signal of KBYU-FM will be received directly over-the-air by a proposed FM translator station facility in Milford, Utah.⁶ The KBYU-FM signal that is transmitted by the Milford translator station will be received over-the-air by the FM translator in Cedar City, Utah, which in turn will transmit the KBYU-FM signal over-the-air to the FM translator at Ivins, Utah, that will rebroadcast the KBYU-FM signal to FM translator facilities in St. George, Utah. Accordingly, on June 4, 2004, BYU filed curative amendments for each of the above referenced applications to clarify that the primary KBYU-FM signal for the proposed translator facilities in Cedar City, Ivins, and St. George, Utah will be delivered over the air via translator.

Reinstatement of the BYU applications for new noncommercial FM translator stations *nunc pro tunc* and grant of authority to construct the facilities requested therein is in the public interest because it will allow BYU to provide a KBYU-FM signal to communities in Utah that would not otherwise receive this valuable noncommercial service. As such, BYU respectfully submits that the concerns raised by the Commission should not result in the dismissal of the applications. As demonstrated above, the applications have been amended to

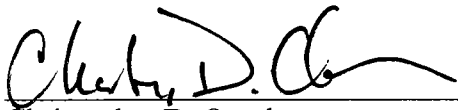
⁶ See *supra* note 4.

clarify the method of the delivery of the primary signal to these proposed stations, thus curing the concerns raised by the Commission.

Accordingly, for the reasons stated herein, BYU respectfully requests that the above-captioned applications for authority to construct three new NCE FM translator stations be reinstated *nunc pro tunc* and granted by the Commission.

Respectfully submitted,

Brigham Young University

By: 
Christopher D. Ornelas

WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
(202) 783-4141

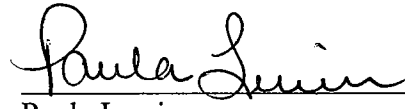
Its Attorneys

Dated: June 4, 2004

CERTIFICATE OF SERVICE

I, Paula Lewis, do hereby certify that on this 4th day of June 2004, a copy of the foregoing Petition for Reconsideration was served by first class mail, postage pre-paid to the following:

George H. Gwinn, Supervisory Engineer
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554



Paula Lewis