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Flinn Broadcasting Corporation
6080 Mt. Moriah Ext.
Memphis, TN 38115

In Re: NEW(FM), Memphis, TN
Facility ID # 202962
BNPFT-20180502AAQ

Petition to Deny

Dear Applicant:

The staff has under consideration: (1) the above captioned application; (2) the Petition to Deny filed by East Arkansas Broadcasters, Inc. (EAB) on May 23, 2018; (3) amendment filed July 30, 2018; (4) all related pleadings. For the reasons set forth herein, we grant the Petition to Deny, deny the amendment filed on July 30, 2018 and dismiss the application BNPFT-20180502AAQ.

EAB, licensee of KTRQ(FM), Colt, Arkansas, filed a Petition to Deny stating that the proposed translator application (NEW(FM)) will cause interference to listeners of KTRQ(FM). EAB states that this proposed facility is in violation of Section 74.1204(f). In order to provide convincing evidence under Section 74.1204(f) that grant of the translator construction permit "will result in interference to the reception" of an existing full-service station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dB μ contour of the proposed translator station;¹ (3) some evidence, such as a declaration from each of the claimed listeners, that the person listens to the full-service station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the "desired" station at that location. The "undesired-to-desired" ("U/D") signal strength ratio methodology may be used to demonstrate the potential for interference under Section 74.1204(f).² Section 74.1204(f) requires the objector to show that a specific U/D signal strength

¹ The best method is to plot the specific addresses on a map depicting the translator station's 60 dB μ contour.

² See *The Association for Community Education, Inc.*, FCC 04-155, Para. 13, (rel. July 8, 2004).

ratio is exceeded at the location of a *bona fide* listener of the desired station to establish that interference will result. The Petitioner submitted documentation from KTRQ(FM) listeners that certified that they live, work or travel within the 60 dBu contour of proposed translator.

To resolve the interference caused to KTRQ(FM), the applicant filed an amendment on July 30, 2018 requesting a waiver of § 74.1233(a)(1) to move to channel 253.

Section 74.1233(a)(1) states that “a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels”. Changing channels from 272 to 253 is considered a major change.

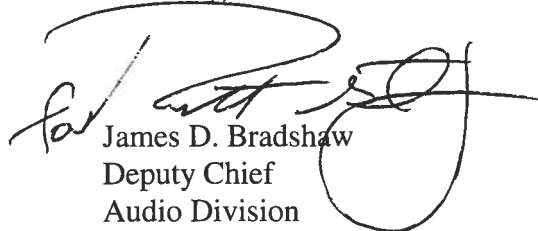
We have allowed FM translators to waive Section 74.1233(a)(1) only when “displacement” occurs. Displacement occurs when a full service commences operation and there is interference predicted or caused by an existing translator. Since the new translator will cause interference to the existing KTRQ(FM) facility, Section 74.1233(a)(1) will not be waived.

Concerning the amendment filed on July 30, 2018, the applicant states that MB Docket 18-119 is proposing more flexibility to translators to move to different channels to resolve interference. Since the proposed interference rules have not been decided or adopted, the proposed translator must adhere to the current rules.

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 139, 192 (D.C. Cir. 1987), quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F. 2d 644, 666 (D.C. Cir 1968 (per curiam)). We have afforded EAB’s waiver request the “hard look” called for under *WAIT Radio v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances presented are not sufficient to warrant waiver of 47 CFR Section 74.1233.

Accordingly, the Petition to Deny filed on May 23, 2018 by EAB IS HEREBY GRANTED, the amendment IS HEREBY DENIED and the application BNPFT-20180502AAQ IS HEREBY DISMISSED. These actions is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

CC: John Garziglia (email)
Stephen C. Simpson (email)