

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Application of)
)
Progressive Broadcasting System, Inc.) LMS File No. 0000114501
)
for Translator Renewals of Licenses)
Lead Call Sign WFRN-FM, Elkhart, Indiana)
WFRN-FM, Elkhart, IN, Facility ID No. 53639)

To: Office of the Secretary, Federal Communications Commission

Attn: Chief, Audio Division, Media Bureau

OPPOSITION TO INFORMAL OBJECTION

Progressive Broadcasting System, Inc. (“Progressive”), by counsel, files this Opposition to the Informal Objection (the “Objection”) of Triangle Access Broadcasting, Inc. (“Triangle”) filed July 11, 2020, against the above-captioned license renewal application (LMS File No. 0000114501) (“License Renewal Application”).¹ For the reasons stated herein, the Bureau should dismiss or deny Triangle’s Objection and grant the License Renewal Application.

I. BACKGROUND

A. License Renewal Application

The License Renewal Application was filed on May 27, 2020, for FM broadcast station, WFRN-FM, Elkhart, Indiana (Facility ID 53639) (“WFRN-FM”), and the following FM translators: W243AJ, Mishawaka, Indiana (Facility ID No. 78392); W266BF, South Bend, Indiana (Facility ID No. 147678) (“W266BF”); W258BD, Ligonier, Indiana (Facility ID No.

¹ As neither Section 1.45 nor Section 73.3587 of the Commission’s rules establish a deadline for responding to an informal objection, this Opposition is timely. *See* 47 C.F.R. § 73.3587 (“The limitation on pleadings and time for filing pleadings provided for in § 1.45 of the rules shall not be applicable to any objections duly filed under this section.”). *See also* 47 C.F.R. § 1.45.

147695) (“W258BD”); and W262AU, Granger, Indiana (Facility ID No. 152865) (“W262AU”). The License Renewal Application originally specified that WFRN-FM was the primary station for each FM translator. On November 24, 2020, however, Progressive notified the Commission of the change in W243AJ’s primary station to Progressive’s AM broadcast station, WCMR, Elkhart, Indiana (Facility ID No. 53650) (“WCMR”).² On November 30, 2020, Progressive also amended the License Renewal Application to reflect this change in W243AJ’s primary station.

B. Triangle’s Objection

Triangle did not object to the renewal of WFRN-FM or W258BD, but only the renewals of FM translators W243AJ, W266BF, and W262AU.³ Triangle alleges that W243AJ, W266BF, and W262AU “are same-area translators and are thus not licensable because the FM translators “are same area to one another with overlaps greater than 50 percent being fed with the same programming”⁴ Specifically, Triangle claims that “97% of W262AU’s service area is overlapped by W243AJ,” and that “79% of W243AJ is overlapped by the combination of W262AU and W266BF.”⁵ For this reason, Triangle alleges that the Bureau should find W243AJ, W266BF, and W262AU “unlicensable” because the FM translators “cannot serve the public interest, convenience, and necessity.”⁶ Due to the alleged overlap, Triangle contends that the Bureau must either deny W243AJ, W266BF, and W262AU’s renewals, or alternatively,

² See generally Letter from Matthew H. McCormick, Esq., Counsel for Progressive Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, *Re: Notification of Change in Primary Station Rebroadcast on FM Translator W243AJ, Mishawaka, Indiana (Facility ID No. 78392)* (filed Nov. 24, 2020). See also 47 C.F.R. § 74.1251(c) (“Changes in the primary FM station being retransmitted must be submitted to the FCC in writing.”).

³ Objection at 1.

⁴ *Id.*

⁵ *Id.* at 1-2.

⁶ *Id.* at 2 (citing 47 U.S.C. § 309(k)).

require Progressive “to amend the [License Renewal Application] to include a demonstration supporting its translators . . . to establish a technical need.”⁷

II. DISCUSSION

A. There is No Substantial Overlap between the Disputed Translators

There is currently no substantial overlap between W243AJ, W266BF, and W262AU. Section 74.1232(b) of the Commission’s rules provides that “[m]ore than one FM translator may be licensed to the same applicant, *whether or not such translators serve substantially the same area*, upon an appropriate showing of technical need for such additional stations.”⁸ “Substantially the same area” has been interpreted by Commission staff to mean “a 50 percent or more contour overlap between the relevant translators’ 60 dBu signal contours.”⁹ A showing of need is required where: “the same programming would be provided to substantially the same area”¹⁰ A showing of need, however, is *not* required: (1) “when the translators will rebroadcast *different primary stations*,’ even if they serve substantially the same area;”¹¹ or (2) after the applicant had “eliminate[d] the vast majority of the contour overlap.”¹²

⁷ *Id.* at 2.

⁸ 47 C.F.R. § 74.1232(d) (emphasis added).

⁹ *Eastern Airwaves, LLC*, Memorandum Opinion and Order, 33 FCC Rcd. 6651, 6652, ¶ 2 (2018) (denying Triangle’s Application for Review) (citing *Coe W. Ramsey, Esq.*, Letter, 32 FCC Rcd. 10105, 10111-12 (2017) (denying Triangle’s Petition for Reconsideration)).

¹⁰ *Id.* (quoting *FM Translator and Booster Stations*, Report and Order, 20 R.R.2d 1538, ¶ 5 (1970) (“*1970 Translator Order*”). A showing of need is also required where the issue “is raised by a party in interest who objects to grant of the application and makes a prima facie showing of the lack of need for the proposed new FM translator.” *Id.* (quoting *1970 Translator Order*, 20 R.R.2d at ¶ 5). Triangle has not established that it is a party in interest with respect to the License Renewal Application. See 47 U.S.C. § 309(d)(1).

¹¹ *Eastern Airwaves*, 33 FCC Rcd. at 6653, ¶ 4 (emphasis added) (quoting *1970 Translator Order*, 20 R.R.2d at ¶ 5).

¹² *John Jason Bennett*, Letter, 20 FCC Rcd. 17193, 17194 (MB 2004) (“*Bennett Letter*”), accord *Eastern Airwaves*, 33 FCC Rcd. at 6653, ¶ 5 (rejecting Triangle’s contention that

Triangle alleges that “97% of W262AU’s service area is overlapped by W243AJ,” and that “79% of W243AJ is overlapped by the combination of W262AU and W266BF.”¹³

Progressive does not confirm whether the percentages of service area overlap alleged by Triangle are accurate. Nevertheless, to remedy any problematic overlap, Progressive has changed W243AJ’s primary station from WFRN-FM to WCMR.¹⁴ In doing so, Progressive has eliminated the vast majority of contour overlap between W243AJ, W266BF, and W262AU.

W266BF and W262AU – the remaining disputed translators rebroadcasting WFRN-FM – do *not* substantially overlap one another. Only 13.2% of W266BF’s service contour and only 19.1% of W262AU’s service contour lie within the overlap area of the two translators¹⁵ – far less than the 50% substantial overlap threshold. Accordingly, since W243AJ now rebroadcasts a separate full power station, and W266BF and W292AU’s service contours do *not* substantially overlap, a showing of technical need is *not* required to demonstrate the translators’ compliance with Section 74.1232(b).

B. There is a Technical Need for each of the Translators

Nevertheless, there is a technical need for W243AJ, W266BF, and W262AU to continue serving their current coverage areas. For purposes of Section 74.1232(b), “technical need” refers to the “quality of the signal received and not to the programming content, format, or

“substantially the same area” required “almost no overlap” between translators and finding that “the *Bennett Letter* . . . is consistent with Section 74.1232(b)”.

¹³ Objection at 1-2.

¹⁴ The substantial overlap caused by W243AJ, W266BF, and W262AU all rebroadcasting WFRN-FM in substantially the same service area was a result of an inadvertent oversight on the part of Progressive. Progressive regrets its oversight in this matter, and it did not intend to deceive the Commission.

¹⁵ Technical Report of Robert Moore at 1 (“Moore Technical Report”). A copy of the report has been attached hereto.

transmission needs of an area.”¹⁶ As demonstrated by Mr. Moore’s Technical Report, attached hereto, W266BF and W262AU rebroadcast WFRN-FM to different communities: W266BF primarily serves South Bend and Mishawaka, Indiana, while W262AU primarily serves Osceola and Granger, Indiana.¹⁷ Furthermore, W243AJ now rebroadcasts a *different* station than W262AU and W266BF – even though these translators serve the same area.¹⁸ Since Progressive has a technical need for W243AJ, W266BF, and W262AU to continue providing service to their current coverage areas, the licenses for each of these translators should be renewed so that Progressive may continue to provide service to these Indiana communities.

CONCLUSION

For the reasons stated above, Progressive respectfully requests that the Commission dismiss the Objection and grant the License Renewal Application.

¹⁶ *Bennett Letter*, 20 FCC Rcd. at 10112 (quoting note to 47 C.F.R. § 74.1232(b)).

¹⁷ Moore Technical Report at 1.

¹⁸ *See Bennett Letter*, 20 FCC Rcd. at 10111 (“[N]eed will be presumed where the translators will rebroadcast different primary stations; a showing of need will be required only where the *same programming* would be provided to substantially the *same area*” (emphasis in original) (quoting *1970 Translator Order*, 20 R.R.2d at ¶ 5)).

Respectfully Submitted

/s/ Elizabeth E. Craig

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Dated: December 16, 2020

ATTACHMENT

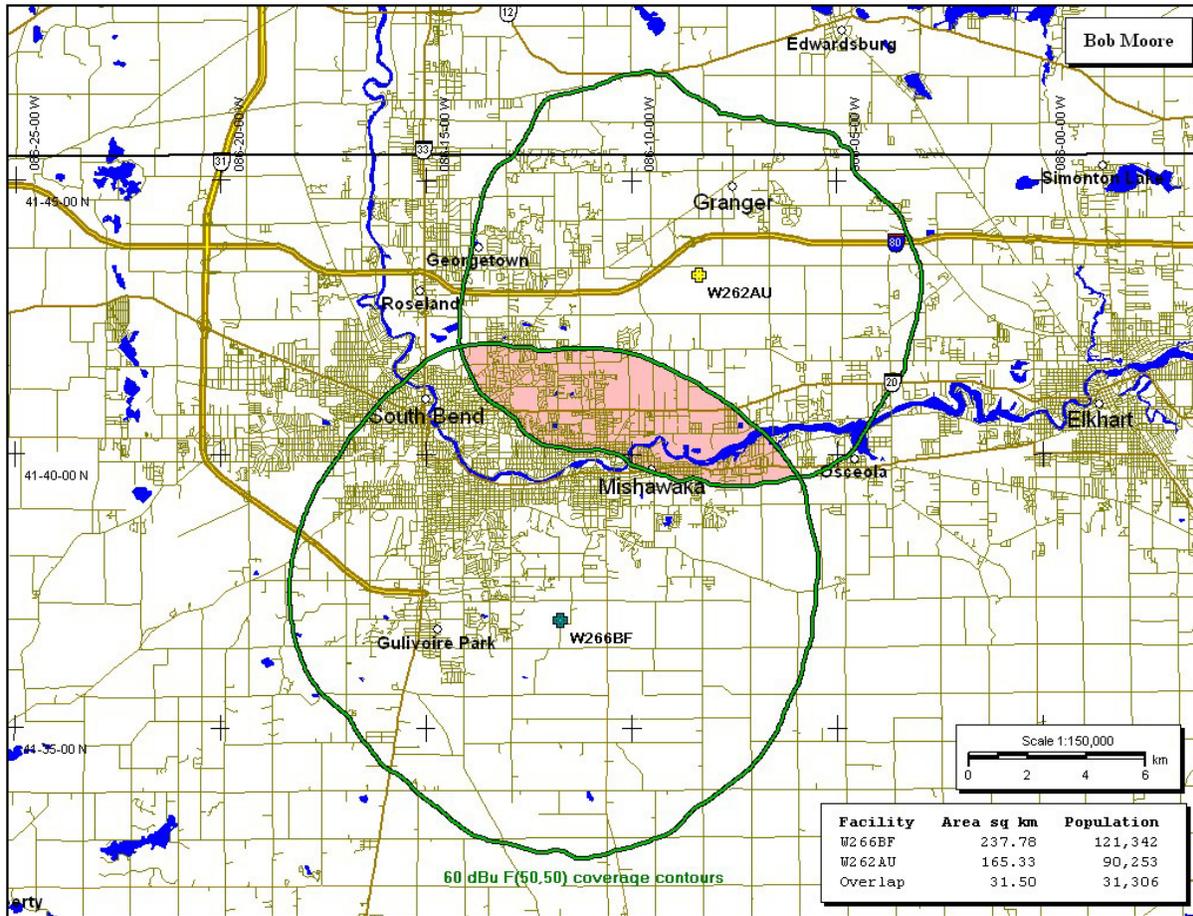
Technical Report of Robert Moore

Technical Report

Overlap of co-owned translators W266BF and W262AU

Robert Moore
8/2/2020

The following map shows the 60 dBu F(50,50) coverage, area and population of each of these two translators and of the (red) area they have in common.



Need

Clearly, W266BF primarily serves the cities of South Bend and Mishawaka. W262AU primarily serves the towns of Osceola and Granger. Thus these translators primarily serve different communities.

By Area:

Thus, 13.2% of the area of W266BF's coverage is in the common area ($=31.5/237.78$), and 19.1% of the area of W262AU's coverage is in the common area ($=31.5/165.33$).

By Population:

By population, 25.8% of the population of W266BF is in the common area ($=31,306/121,342$) and 34.7% of the population of W262AU is in the common area ($=31,306/90,253$).

Operant rule:

The relevant statute is CFR §47.1232(b) which states:
More than one [FM translator](#) may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such additional stations. [FM translators](#) are not counted as FM [stations](#) for the purpose of [§ 73.3555](#) of this chapter concerning multiple ownership.

and the prohibited overlap is traditionally required to be 50% or more (see FCC 18-89).

Summary and conclusion:

By both area and population, these numbers are less than the 50% criterion. Hence the translators are compliant to the rule.

Robert Moore
Technical consultant

V-Soft Communications Population Report

Contour Parameters:

Type: FCC Contour

F(50-50) FS: 60.00 dBu [360 Radials]

Population Database: 2010 US Census (PL)

Primary Terrain: FCC 30 Second US Database

Secondary Terrain: NED 30 Meter Terrain

Transmitter Information:

Call Letters: W266BF

File Number: BLFT20120409ABR

Latitude: 41-36-59.03 N

Longitude: 086-11-43.98 W

ERP: 0.067 kW

EIRP: 0.1099 kW

Channel: 266

Frequency: 101.1 MHz

AMSL Height: 326.0 m

Elevation: 265.0 m

HAAT: 87.0 m

Horiz. Antenna Pattern: Omni

Vert. Elevation Pattern: No

Total Population Within Contour: 121,342

Total Housing Units Within Contour: 56,202

Total Area Within Contour: 237.78 sq. km

Total Breakdown:

White:	89,898	[74.1%]
Black:	16,327	[13.5%]
Hispanic:	9,595	[7.9%]
Native American:	386	[0.3%]
Asian:	1,579	[1.3%]
Pacific Islander:	97	[0.1%]
Mixed Race:	3,205	[2.6%]
Other:	255	[0.2%]

	Housing Units	Population
Indiana		
St. Joseph County		
W266BF	56,202	121,342
White:		89,898
Black:		16,327
Hispanic:		9,595
Native American:		386
Asian:		1,579
Pacific Islander:		97
Mixed Race:		3,205
Other:		255

V-Soft Communications Population Report

Contour Parameters:

Type: FCC Contour
F(50-50) FS: 60.00 dBu [360 Radials]

Population Database: 2010 US Census (PL)

Primary Terrain: FCC 30 Second US Database
Secondary Terrain: NED 30 Meter Terrain

Transmitter Information:

Call Letters: W262AU
File Number: BLFT20080130AJW
Latitude: 41-43-17.03 N
Longitude: 086-08-21.98 W
ERP: 0.09 kW
EIRP: 0.1476 kW
Channel: 262
Frequency: 100.3 MHz
AMSL Height: 288.0 m
Elevation: 232.0 m
HAAT: 51.8 m
Horiz. Antenna Pattern: Omni
Vert. Elevation Pattern: No

Total Population Within Contour: 90,253
Total Housing Units Within Contour: 39,326
Total Area Within Contour: 165.33 sq. km

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Total Breakdown:

White:	75,323	[83.5%]
Black:	6,053	[6.7%]
Hispanic:	3,678	[4.1%]
Native American:	235	[0.3%]
Asian:	3,010	[3.3%]
Pacific Islander:	100	[0.1%]
Mixed Race:	1,700	[1.9%]
Other:	154	[0.2%]

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Housing Units Population
Indiana
 Elkhart County
 W262AU 676 1,827

White:	1,630
Black:	37
Hispanic:	91
Native American:	7
Asian:	13
Pacific Islander:	3
Mixed Race:	43
Other:	3

St. Joseph County		
W262AU	38,178	87,202

White:	72,542
Black:	6,005
Hispanic:	3,569
Native American:	225
Asian:	2,982
Pacific Islander:	97
Mixed Race:	1,631
Other:	151

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	Housing Units	Population
Michigan		
Cass County		
W262AU	472	1,224

White:	1,151
Black:	11
Hispanic:	18
Native American:	3
Asian:	15
Pacific Islander:	0
Mixed Race:	26
Other:	0

V-Soft Communications Population Report

W262AU / W266BF

This overlap region consists of the intersection of the following contours:

W262AU: FCC F(50-50) 60.00 dBu

W266BF: FCC F(50-50) 60.00 dBu

Population Database: 2010 US Census (PL)

Total Population Within Overlap Region: 31,306

Total Housing Units Within Overlap Region: 14,963

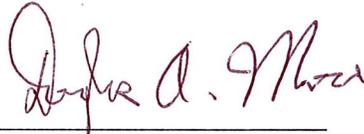
Total Area Within Overlap Region: 31.51 sq. km

DECLARATION

I, **Douglas Moore**, hereby attest to the following:

1. I am the President of Progressive Broadcasting System, Inc.
2. I have personal knowledge of the facts set forth in the foregoing Opposition to Informal Objection (“Opposition”).
3. I have read the Opposition, and the statements therein are truthful and correct to the best of my knowledge, information, and belief.

I hereby certify that to the best of my knowledge, information, and belief, under penalty of perjury, the foregoing statements are true and correct.



Douglas Moore

Dated: 12/16/2020

CERTIFICATE OF SERVICE

I, Elizabeth E. Craig, of Fletcher, Heald & Hildreth, PLC, hereby certify that I caused a true copy of the foregoing Opposition to Informal Objection to be sent this 16th day of December, 2020, via email, to the following individuals:

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/s/ Elizabeth E. Craig
Elizabeth E. Craig