

CHARACTER ISSUES AND DISMISSED APPLICATIONS

EMF has pending the following applications against which Petitions to Deny have been filed raising issues that may be characterized as character issues. It is EMF's belief that none of these allegations has merit and that each will ultimately be decided in EMF's favor.

1. Application for Noncommercial Educational FM Station at Kuna, Idaho (BPED-971027MC): On October 6, 1998, Southern Idaho Corporation of Seventh-day Adventists, licensee of KTSY(FM), Caldwell, Idaho and an applicant for a new noncommercial educational FM station at Buhl, Idaho, filed a Petition to Dismiss or Deny EMF's Kuna application in which it challenged EMF's financial qualifications based on the number of applications that EMF had pending. In its Opposition, filed October 21, 1998, EMF indicated that it had a binding financial commitment from a lending source to fund the cost of construction and initial operation of every station for which it has applied.

2. Application for FM Translator Station at St. Joseph, Missouri (BPFT-970911TH): On February 20, 1998, Pensacola Christian College, a competing applicant for a new FM translator at St. Joseph, Missouri, filed a Petition to Deny EMF's St. Joseph application in which it alleged that EMF had falsely certified that it had obtained reasonable assurance of the availability of its proposed transmitter site. In its Opposition, filed March 5, 1998, EMF submitted documentation demonstrating that it had obtained reasonable site assurance from Motorola, a tower lessee who had represented to EMF that it had authority to negotiate with other potential lessees regarding the lease of space on the tower.

In addition to these pending applications, EMF withdrew the following applications, which had been opposed by competing applicants, in part, based upon certain character allegations:

1. Application for FM Translator Station at Anchorage, Alaska (BPFT-971003TF): Petition to Deny filed on February 20, 1998 by the University of Alaska Board of Regents, licensee of KRUA(FM), Anchorage, Alaska. Petition alleged that EMF failed to obtain reasonable assurance of the availability of its proposed transmitter site. Though EMF withdrew the application due to potential interference by its proposed translator to KRUA(FM), it responded to the reasonable site assurance claim on March 13, 1998 by submitting a letter from the tower owner dated prior to the filing of its application granting reasonable site assurance.

2. Application for FM Translator Station at The Dalles, Oregon (BPFT-970206TB): Petition to Deny filed on July 16, 1997 by Metro Catholic Broadcasting, Inc., licensee of K256AC, The Dalles, Oregon. Petition challenged EMF's financial qualifications. Though EMF withdrew the application due to potential interference by its proposed translator to K256AC, on July 29, 1997, EMF filed a response indicating that it had a binding financial commitment from a lending source to fund and operate each of the stations for which it had applied.

Dismissed Applications

The Commission has dismissed in the past several of EMF's other applications for new FM translators on technical grounds. EMF has also requested that applications be dismissed with prejudice as part of the universal settlements of mutually exclusive applications. The dismissal, or request for dismissal, of these applications did not involve any character issues or other similar matters relating to EMF's legal qualifications. In addition, the Commission dismissed the following application regarding which character issues had been raised:

1. Application for FM Translator Station at Golf Manor, Ohio (BPFT-19990125TB): On March 4, 1999, the Board of Trustees of the University of Cincinnati (the "University"), licensee of WGUC(FM), Cincinnati, Ohio, filed a Petition to Dismiss or Deny EMF's Golf Manor application in which it alleged that EMF falsely certified that it had reasonable assurance of the availability of its proposed transmitter site. In its Opposition, filed March 24, 1999, EMF submitted documentation demonstrating that it had obtained reasonable site assurance from Motorola Network Services ("Motorola"), a tenant at the site who had indicated to EMF that its lease with the site owner permitted it to sublease space on the tower. When the tower owner later contradicted Motorola's assertion, EMF amended its application to relocate the station. On February 9, 2000, the University challenged EMF's reasonable site assurance at the new site. In its Opposition filed on March 2, 2000, EMF submitted the Declaration of Jeff Wall, EMF's system designer, who indicated that he had obtained reasonable site assurance from the operations manager of the station whose licensee owned the tower. By letter dated November 27, 2000, the Commission dismissed the application based on its finding that, despite its representations to EMF, Motorola had no actual authority to lease space at the original site. Specifically, the Commission concluded, "[W]hile we find no evidence that EMF misrepresented the availability of its original site, we believe that EMF has not met its burden of demonstrating that it had a reasonable assurance that the specified site was in fact available to it." Letter to Veronica D. McLaughlin, Esq. from Linda Blair, Chief, Audio Services Division, Mass Media Bureau, dated November 27, 2000. Because EMF, through no fault of its own, could not have obtained reasonable site assurance from Motorola, the Commission held that EMF could not amend its application to propose a new transmitter site. Thus, the Commission did not address the allegations concerning the site specified in the amended application.