

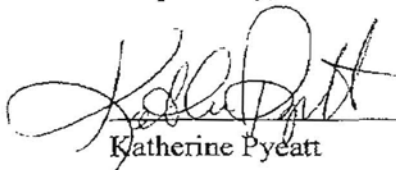
Declaration of Katherine Pyeatt

To whom it may concern:

My name is Katherine Pyeatt and I am the licensee of station K287AY, Austin, Texas. I reviewed and authorized the amendment filed June 15, 2010 and I have reviewed and authorized the filing of the most recent amendment which drops the ERP to 100 watts. Lamar Smith is my contract engineer specifically for station K287AY. My current and legal address is 2215 Cedar Springs Rd., #1605, Dallas, Texas 75201.

These facts are true and correct to the best of my knowledge and belief.

Respectfully,


Katherine Pyeatt

9/16/10

Date

**Attention:
FCC Mass Media Bureau
Audio Services Division**

**4th Reply to Informal Objection by
K287AY - Austin, TX
BPFT-20100510ABW**

MULLANEY ENGINEERING, INC.
9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

ENGINEERING EXHIBIT EE-REPLY-4:

**REPLY & OPPOSITION
TO INFORMAL OBJECTION OF BRYAN KING**

**FM TRANSLATOR APPLICATION OF
KATHERINE PYEATT - K287AY
REQUEST TO MOVE FROM CH. 287 TO CH. 242**

BPFT-20100510ABW - AUSTIN, TEXAS

SEPTEMBER 16, 2010



ENGINEERING EXHIBIT EE-REPLY-4:

**REPLY & OPPOSITION
TO INFORMAL OBJECTION OF BRYAN KING**

**FM TRANSLATOR APPLICATION OF
KATHERINE PYEATT - K287AY
REQUEST TO MOVE FROM CH. 287 TO CH. 242**

BPFT-20100510ABW - AUSTIN, TEXAS

NARRATIVE STATEMENT:

This engineering statement has been prepared on behalf of Katherine Pyeatt, licensee of FM translator K287AY at Austin, Texas (Facility ID 156299). The purpose of this statement is to support a **FOURTH** & hopefully final reply - opposition to an informal objection against the pending application for modification of K287AY (BPFT-20100510ABW) by Bryan King. Mr. King is the new licensee of FM Station KAJZ at Llano, Texas (Facility ID: 87996) which operates on Ch. 242A (96.3 MHz) and this is the **same channel** to which K287AY proposes to move and operate with an Omni ERP of 100 watts (as amended).

It should be noted that KAJZ is licensed to operate with an ERP of 2.9 kW-DA at an HAAT of 140 meters. However, Since May of 2004 (**six years ago**), KAJZ has operated under various **STAs** authorizing a maximum ERP of 190 watts from nearby sites. In fact, since October 1, 2009 (**eight months ago**), KAJZ has been totally silent and has only recently returned to the air (late May 2010) under another STA (BSTA-10100521ACF) with a maximum ERP of 110 watts at an HAAT of 145 meters.

King does not dispute the fact that on paper the pending application of K287AY **fully complies** with the paper interference showing required by the rules, that **no prohibited contour overlap is caused** to the licensed 2.9 kW-DA facility of KAJZ, much less its STA operation at 110 watts (which has a much smaller 60 dBu footprint).

In his 8/27/2010 reply, King has presented several new points which he believes support his position that the translator application for a change in channel should be denied as “patently flawed”. This reply opposition will address those newly presented & unsubstantiated arguments of King, **but more importantly, Katherine Pyeatt wishes to call the FCC staff’s attention to the following:**

King has elected to **totally ignore** the four videos which Pyeatt made available on the web (<http://public.me.com/lamarasmith>). She hopes that the FCC staff has taken or will take the time to review those videos **before arriving at its decision** about the grantability of the application of K287AY. Again, Katherine Pyeatt points out that her local Austin engineer (Lamar Smith) has **under penalty of perjury**, declared that these videos accurately describe the quality of reception that is available on 96.3 MHz. She believes that no objective person would conclude that the quality of reception demonstrated in these videos would be relied upon for any real objective purposes. Any party that goes out of their way to provide statement after statement certifying under penalty of perjury, the listenability of such a signal,

with this poor of quality, **clearly pushes the envelope of believability** that they truly **“listen on a regular basis to such a signal”**. In any event & for **argument sake purposes only**, even if the **two parties** (Mr. Jack & Mr. Reese) have been able to listen to the station along “Bold Ruler Way” as they have declared, they have not established that their listening to KAJZ at this one street address in the city of Austin **is truly a “regular” activity** as required by 74.1204(f). King’s most recent reply states that Mr. Jack is an architect. King states “He (mr. jack) designed a house in that same development”. While not trying to harp on the many continuing flaws in King’s opposition filings, it appears that King is trying to get the FCC staff to believe his unbiased **third party story tale account that:**

Once upon a time, an architect named Mr. Jack designed a house in the same development, but not necessarily along the 5900 block of Bold Ruler Way and it was at that unspecified time, in the not too distant past, in Mr. Jack’s professional architectural life, and only because of his vastly developed experience at tuning his car radio, did Mr. Jack notice his super ability to listen to the his favorite music, courtesy of Radio Station KAJZ on 96.3 MHz, out of Llano, TX, some 55 miles away, despite having operated with less than 200 watts for more than 6 years. KAJZ is of course a direct & fierce competitor to Radio Station KITY on 102.5 MHz, which is as all you good girls & boys know, has been owned since 2004 by Mr. Jack’s good & long term acquaintance Mr. Bryan King.

Similarly:

A broadcast engineer, named Mr. Jim Reese, who maintains communication facilities throughout all of the Great State of Texas, including at least one such facility in Llano, TX - home of the powerful 200 watt flame thrower - KAJZ 96.3. As part of his professional duties, Mr. Reese drives along the 5900 block of Bold Ruler Way in Austin, so as to enter the gate to the Westlake Antenna Farm which is also the antenna site of KHFI-FM which operates with 100,000 watts on 96.7 MHz. Mr. Reese uses his faithful & well tuned radio receiver to listen to the extremely weak signal of KAJZ despite the fact that KHFI-FM has a signal which can be over 60 to 100 dBu stronger (that is 1 million times stronger in terms of power). Which is as all you good girls & boys know, without extraordinary or might I say super technical ability, it is unbelievably difficult to listen to an extremely weak 2nd adjacent signal in such a saturated RF environment that is also subject to interference from numerous other FM stations.

Katherine Pyeatt believes that her response herein is more than sufficient to totally discredit King's claimed technical objection under Section 74.1204(f). KAJZ is **"not a regularly listened"** to signal within the **"proposed 60 dBu"** of K287AY. As such, she calls on the **FCC Staff to end this ridiculous & obvious abuse of the FCC rules** and grant the pending modification application of K287AY over King's flawed objections.

In an abundance of caution, Katherine Pyeatt has decided to reluctantly respond to Mr. King's other flawed arguments so as to leave a complete

record to rely on when Mr. King undoubtedly re-files yet another informal objection or files an appeal.

Now for the first time, King claims Pyeatt's pending translator application **has a violation of 74.1235** regarding the power limitations and antenna systems. King asserts that in order for a translator to be providing **true "fill-in" service** it must be **commonly owned by the primary station to which "fill-in" service is claimed**. If not so co-owned by the primary station King states that the translator must comply with the **ERP-HAAT limitations** specified for "non fill-in" translators by Section 74.1235(b)(2).

Lets than waste a lot of time arguing against such a ludicrous interpretation of the FCC rules. The rules clearly state that independent or 3rd parties are permitted to own fill-in translator facilities in any area. In addition, there would be no public interest justification to artificially restrict the coverage of a fill-in facility because of whom the owner is. While on the other hand, there is an obvious public interest benefit to prevent the non fill-in translators from being owned by the primary station or by the licensee of any commercial FM facility (unless a white area waiver is sought).

If this were not the correct "legal" interpretation of the FCC rules then **Mr. King's own attorney would presumably not have** prepared and filed two such recent similar translator "fill-in" applications for **one of his other clients**. Using the FCC's own CDBS system, we direct the staff's attention to two recently granted

“fill-in” applications by **Big Bend Broadcasting**. Those applications are for K246BD BPFT-20100420AAE and for K293BF BPFT-20100420ABH, both of which were granted on the same day, 7/19/2010. Mr. James S. Bumpous answered question 1 of Section II indicating that he was filing as **“an individual”** and question 5 of that same section indicating he was not the licensee of the primary station, KTXF-FM which is licensed to BMP Austin Licensee Company, L.P. Both CPs authorizes 99 watts with an antenna center of radiation of 553 m AMSL. To say that both of these CPs **are similar to the pending application** of K287AY is a **vast understatement**.

All three “fill-in” translator facilities are at the same Antenna Farm in Austin. K287AY proposes 100 watts at 373 m AMSL while the two recently granted CPs are for 99 watts at 553 m AMSL (all three ERP **exceed the limitations** imposed on non fill-in translator facilities). All three facilities are owned by 3rd parties and all three proposed to rebroadcast one of the secondary HD channels of the primary FM facility.

Notice is requested of MM Docket 88-140 (Adopted November 8, 1990, FCC 90-375), which extensively discusses the **ownership restrictions on FM translators**. The final sentence in paragraph 23 under the heading of “OWNERSHIP RESTRICTIONS” states **“Independent parties may establish FM translators to serve any area”**. “Any Area” within the confines of this docket refers to both a “fill-in” area or to “other” areas (outside

the customary contour of the primary station). Given this unambiguous statement by the Commission that independent party ownership is permissible Pyeatt assumes King newest slur that **“Pyeatt is little more than a figurehead and that Entercom Austin is the real party in interest”** is simply a continuation with his tactic to allege whatever FCC rule violation he wants since it will achieve the **intended purpose to delay grant of the modification application** by K287AY. In any event, **Pyeatt totally denies** that any such illicit relationship exists between her and Entercom (see attached declaration by Pyeatt). The fact that her local engineer is also employed by Entercom does not detract from his **sworn declaration** concerning the receivability on 96.3 Mhz within the area in question. The FCC rules do not prohibit Entercom from owning a “fill-in” facility for a primary station Entercom currently owns and thus, certainly **does not call into question of the veracity of Smith’s sworn statement** because he happens to work for Entercom. King on the other hand decided to conceal or at worst failed to initially identify any personal relationship to the persons supplying listener statements that he filed with the FCC in his many informal oppositions (one of listeners was his own sister). Given that King appears to be well aware that under the Citadel citation, provided in footnote 12, on page 4 of his most recent opposition, that the same independent status requirement for “interference complaints” does not apply to “listener certifications” it makes no sense to avoid such disclosures. It should be noted for the record that while not required, the relationship of Smith and Entercom was immediately disclosed in

Smith's declaration yet King's most recent opposition claimed Smith's declaration **"must be discounted as coming from a biased source"** despite its voluntary disclosure by Smith. Yet, King repeatedly provides his own declaration in each of his opposition to Pyeatt's translator application and presumably King expects the FCC Staff to accept it as **"absolute gospel"** despite his biased benefit.

Pyeatt is confused how King's attorney can in good conscious repeatedly prepare & file oppositions "Before the Federal Communications Commission" to her translator application claiming one unfounded violations after the other of the FCC rules when it appears that he prepared two nearly identical "3rd party fill-in" applications **just 18 days prior** to when she filed her application. Pyeatt assumes that while he normally provides legal representation for Bumpous, he had nothing to do with the actual filing of those two "fill-in" applications. Otherwise there would be no justification to allege violations of real party in interest an^{dd} party ERP violations.

In any event, these two recently granted CP facilities **are not the only facilities that have received CPs and been subsequent licensed** for "3rd party fill-in" facilities. Pyeatt is confident that the Staff will have no problem using its own CDBS system to document that there are numerous "3rd party fill-in" facilities and that those facilities are in full compliance with the rules since none exceed the maximum 250 watt ERP.

King repeatedly has made sworn statements in reference to the detailed technical showings filed by Pyeatt in response to his informal objections. King provides sworn declarations attesting to technical conclusions that he **apparently fails to understand**. King need to hire someone with considerably more technical understanding before providing expert opinions he expects the FCC Staff rely on - especially when so many of his opinions have been wrong or mis-leading.

The Longley-Rice maps provided by Pyeatt were based upon the **licensed 2.9 kW-DA** ERP facilities of KAJZ and **not the 190 watt** ERP facility that KAJZ has presumably operated with for the previous **6 years** and **certainly not the 110 watt ERP facility authorized by KAJZ's current STA**. Thus, the LR coverage maps overstate the potentially available signal of KAJZ **by some 9 dB**.

There are two different types of LR maps provided. The first is of potentially available **"raw signal coverage"** at 30 feet above the ground, in the absence of foliage and absence of interference. Additional **Interference-Free maps** were provided showing both individually and collectively the potential devastating impact of **predicted LR interference** from other FM facilities. Lastly, an interference map was provided using the **standard FCC contour overlap criteria**. All of the interference maps indicate that even at its licensed power of 2.9 kW-DA (which has not existed for over 6 years) KAJZ **has no realistic reason to believe that it ever should have what the FCC considers a signal which is capable of qualifying as "regularly received"**. Yet, King continue to offer

listener statements claiming reception with no indication by those listeners that the reception is spotty at best. We understand that the FCC does not require high quality reception but the videos clearly document **a quality that the FCC would never recognize for reception.**

Pyeatt amended her application to reduce the proposed ERP from 250 watts to 100 watts. King appears to believe this amendment was **a validation of his claim** of regular listenership. To the contrary, the reduction in ERP was proposed in an effort to **expeditiously** resolve King's informal objection and thus, avoid having to demand the FCC Enforcement Bureau make a visit to determine the ability of reception. **Obviously, Pyeatt's plan failed.**

King is quick to point out the fact that when a listeners states that they simply don't have the time or desire to meet with Pyeatt, that refusal does not call into question the veracity of their statements. **Those very kind hearted listeners are under no legal obligation to meet with Pyeatt** notwithstanding the fact that some have provided multiple statements for King and two have even gone out of their way to travel to an off the beaten track location, with one listener taking the time to provide photographs which reportedly document reception (neither indicated how many times over the past say 5 years have they had the occasion to actually listen to KAJZ at this location - 1, 2 or 3 times??). **King may be technically correct** that while the so called listeners have no legal obligation to cooperate or for that matter to be independent of King, their lack of cooperation & association with King **can certainly be taken into**

account by the FCC Staff when drawing their conclusions about the credibility of King's informal objection. King has chastised Pyeatt that these **were not "listener complaints"** but what King fails to understand is that should Pyeatt obtain a CP to construct a facility on 96.3 MHz, any subsequent filing alleging interference to direct reception of KAJZ does require the full cooperation of that complaining party or their complaint **can be totally ignored** by the operator of the translator facility and subsequently ignored by the FCC Staff.

While fully understanding the legal rights of the so called "listeners", King is **under the mistaken belief that Pyeatt is obligated** to explain her choice of channels. This is simply incorrect, Pyeatt only had to certify that her translator facility was being displaced and that the normal channels available under a minor change (+-3 & +-53/54) were also precluded. The channel proposed by Pyeatt in her application fully complied with the paper analysis required by any applicant proposing a change of channel. However, as Pyeatt's consulting engineer, **I can categorically state, that in my professional opinion, Ch. 242 was the best channel available for displacement use by her translator and that all other commercial FM channels were precluded by existing facilities or pending proposals according to information contained in the FCC's "unofficial" CDBS engineering data base.** There was no reason to believe that an FM facility that had been off the air for the past 8 months and that had been **operating with truly sub-standard Class A facilities** under an STA for the past **6 years** (with such reduced coverage which is clearly contrary to the public interest) would literally dig-up seven people to provide listener statements concerning an FM facility that was still off

the air at the time they were initially contacted. The listeners subsequently claimed in revised statements that they understood that the KAJZ FM facility was off the air when they initially contacted and they agreed to provide a statement because they **simply loved the KAJZ format**. However, given that each of the listeners knew the station had been off the air (presumably for financial reasons) and that a new owner would be taking over, **those listeners never indicated they ever asked King if the format under his “new” direction would remain the same**. Given that the reception on 96.3 MHz was clearly not as good as the numerous more local FM stations in Austin, the exuberant cooperation of these listeners was simply nothing short of miraculous or **“a leap of faith”**. Given that King miraculously provided these seven listeners statements concerning a station that had been off the air for the preceding 8 months, one would have thought that King might have wanted to have explained how he located & obtained these listener statements. However, **I am sure King had no legal obligation to be forthcoming on this subject**.

On page 8 of King’s opposition, he provides a quotation from the FCC staff concerning the Citadel case he cites. There the Commission states

“The submission of letters from listeners who happen to be connected in some way with the full-service station with which a proposed FM translator facility might interfere does not violate any statute or rule. Red Wolf cites no precedent, nor are we aware of any, that establishes that the submission of a listener letter that fails to disclose a relationship between the signing party and the licensee of the potentially affected full-service station constitute a lack of candor”.

The majority of people would feel more comfortable if the Commission had included an actual requirement for the listener to include a certified statement **that no direct payment in cash or kind or services was made to obtain their listener statement.** Yet, I wonder why when evaluating the potential duopoly ownership between family members (such as husband & wives), the Commission requires a statement certifying each party will operate their respective facilities independently of the other.

**King Missed the Boat to Protect Co-Owned
KITY FM - Llano, Texas**

While only recently acquiring KAJZ FM, King has owned for some 6 years the only other FM licensed to Llano, TX. Station KITY FM operates on Ch. 275A (102.9 MHz) with an ERP of 2.0 kW-DA from essentially the same antenna farm as that used by KAJZ. Despite the fact that the maximum directional ERP of KAJZ is 2.9 kW and for KITY is 2.0 kW both stations are “authorized” to have nearly identical ERPs in the direction of the city of Austin (N-118-E). However, KITY unlike KAJZ is operating with its licensed ERP 2.9 kW and not operating with the 110 watts authorized by the STA for KAJZ. Yet it is the 100 watts signal (which has existed for the past 6 years) that King seeks to protect in Austin.

At the end of April 2010, K274AX filed an application (BPFT 20100428AAN) with the FCC to increase its ERP from 75 watts at 100 m AMSL to 250 watts at 207 m AMSL. K274AX currently operates from the exact same tower that Pyeatt’s translator operates from while its CP proposes to move a few hundred feet to an adjacent tower but at a height some 97 m

AMSL higher and at the maximum permissible ERP for a translator. We realize that KAJZ is co-channel to Pyeatt's proposed operation and KITY is only 1st adjacent to K274AX. However, even a 1st adjacent facility will totally wipe-out reception of KITY in the Austin area - that is assuming KITY had any real coverage in Austin. But they must - they are operating with nearly 10 times the power of KAJZ's meager 110 watts??????

Figure Reply_4-A is a map which illustrates the 60 dBu coverages of KITY, K274AX, KAJZ & K287AY (on 242). The 60 dBu of both KITY & KAJZ are nearly identical in the direction of Austin. However, for some reason KITY is unable to generate any listeners in Austin. It lucky that KAJZ had a better Program Director who was able to attract such fiercely loyal listeners as Mr. Jack & Mr. Reese.

**Listener Declarations submitted by
Mr. Jack & Mr. Reese
are vague and provide insufficient information**

In their most recent declarations, both Jeff Jack and Jim Reese refer to their listening location as the 5900 block of Bold Ruler Way adjacent to 2200 Canonero Drive. Rounding street addresses to the “hundred block” is insufficient information.¹ The listener information must be sufficiently specific to permit the FCC to verify the presence of *bona fide* listeners within the translator station service contour.

**Is the 5900 block of Bold Ruler Way
a regularly listened to location?**

Both Jeff Jack and Jim Reese are vague as to how often they listen to KAJZ at the 5900 block of Bold Ruler Way location. Jeff Jack says, “... I have also listened to KAJZ in the 5900 block of Bold Ruler Way adjacent to 2200 Canonero Drive.” Jim Reese says, “... I have listened in the 5900 block of Bold Ruler Way adjacent to 2200 Canonero Drive.” We don’t know if they are claiming to have listened one time or one hundred times.

¹ See, Memorandum Opinion and Order, *The Association for Community Education, Inc.*, FCC 04-155, Released: July 8, 2004, pages 5 & 6, paragraphs 12 & 13.

**Listener Map must provide detail necessary
to locate any street address**

The map used to demonstrate that listeners are within the proposed translators 60 dBu must provide the detail necessary to locate street addresses.² The KAJZ Listener Map provided in King's "Reply" dated 7/26/2010, do not provide the detail necessary to locate street addresses.

**Evidence that grant of the authorization
will result in interference**

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 evidence that grant of the authorization will result in interference to the reception of the "desired" station at that location.³ Bryan King has not provided an exhibit providing that the translator construction permit will result in interference to the reception of KAJZ at the specific location.

² See, Memorandum Opinion and Order, *The Association for Community Education, Inc.* FCC 04-155, Released: July 8, 2004, page 5, paragraph 11.

³ See, Memorandum Opinion and Order, *The Association for Community Education, Inc.*, FCC 04-155, Released: July 8, 2004, pages 5 & 6, paragraph 13.

SUMMARY AND REQUESTED ACTION

Katherine Pyeatt, licensee of K287AY, requests the Commission to **grant the pending application** of K287AY as amended for 100 watts. In addition, Pyeatt requests that the informal objection of Bryan King be **dismissed as unproven. King has failed to provide credible evidence that KAJZ has “regular” listeners within the proposed translator 60 dBu contour.** Whatever signal on 96.3 that is available in the Austin area is far below what would ever qualify as a regularly listen able signal (as documented in 4 videos supplied). King is unqualified to provide declarations concerning technical and/or legal compliance with the FCC rules. His claim of no independent 3rd party ownership of a “fill-in” translator facility **is totally contrary to the actions of the FCC Staff.**

Service to Bryan King’s attorney, Lee Peltzman, will be via e-mail Friday, 9/17/2010. This statement and exhibit in opposition is being filed as an amendment to the translator application as well as in a separate opposition being filed at the Secretary’s Office of the FCC on 9/17/2010.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. Information concerning the technical equipment installed and compliance with special conditions was obtained directly from the licensee. I declare under penalty of perjury that the foregoing is true and correct.



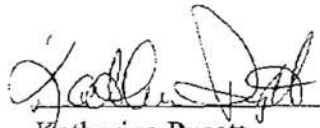
John J. Mullaney, Consulting Engineer

September 16, 2010.

In his most recent filing, at page 2, footnote #3, Bryan King says, "...that Ms. Pyeatt is little more than a figure head and that Entercom Austin is the real party in interest behind her minor change application." This is incorrect, the only agreement I have with Entercom is a retransmission agreement. I have not received any money from Entercom and they do not have an option to purchase, an option to lease or any other present or future financial interest in K287AY. Lamar Smith is my contract consulting engineer in Austin but this arrangement was not provided by Entercom. My current and legal address is 2215 Cedar Springs Rd., #1605, Dallas, Texas 75201.

These facts are true and correct to the best of my knowledge and belief.

Respectfully,

 9/16/10
Katherine Pyeatt Date

Real Party in Interest Denial

**4th Reply to Informal Objection by
K287AY - Austin, TX
BPFT-20100510ABW**

FIGURE: Reply_4-A

60 dBu SERVICE CONTOUR

Bryan A. King

KITY - 275A - Llano, TX
KAJZ - 242A - Llano, TX

Bryan King owns both KAJZ & KITY at Llano, TX. Both stations have very similar coverage in the direction of the city of Austin, TX. (N-118-E)

KAJZ filed an objection to the proposed 250 watt co-channel operation on Ch. 242 by K287AY (BPFT-20100510ABW).

However, KITY did not file an objection to the recent 1st adjacent CP issued to K274AX which increased its ERP from 75 to 250 watts. (BPFT-20100428AAN). KITY began operation June 2003.

KAJZ
 BLH20001010AAY
 Latitude: 30-41-12 N
 Longitude: 098-34-16 W
 ERP: 2.90 kW
 Channel: 242 A
 Frequency: 96.3 MHz
 HAAT: 140.0 m
 AMSL Height: 481.0 m
 AGL Height: 23.0 m
 Elevation: 458.0 m
 Horiz. Pattern: Directional

KITY
 BLH20050715AAQ
 Latitude: 30-40-37 N
 Longitude: 098-33-59 W
 ERP: 2.00 kW
 Channel: 275 A
 Frequency: 102.9 MHz
 HAAT: 151.0 m
 AMSL Height: 494.0 m
 AGL Height: 24.0 m
 Elevation: 470.0 m
 Horiz. Pattern: Directional

