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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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Federal Communication Commission
Bureau/Office

In re the Application of)

EDWARD A. SCHOBER)

For an Original FM Translator Construction)
Permit, Manahawkin, New Jersey)

) Facility ID No. 142127

) FCC File No. BNPFT-20030825AIW

To: Chief, Media Bureau)

PETITION TO DISMISS OR DENY

Millennium Shore License Holdco, LLC ("Millennium"), the licensee of full-service FM broadcast station WBBO, Channel 253A (98.5 MHz), Ocean Acres, New Jersey ("WBBO"), by its attorneys, hereby petitions the Commission to promptly dismiss or deny the above-captioned application filed by Edward A. Schober for a permit to construct a new FM translator facility on third-adjacent Channel 250D (97.9 MHz) in Manahawkin, New Jersey (the "Application") because the Application is not acceptable under 47 C.F.R. §74.1204. The Application was announced as "accepted for filing" in a Commission Public Notice released on January 15, 2004. Accordingly, this petition is timely filed.

Discussion

Section §74.1204(a) of the Commission's Rules provides that "an application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field contours with any other authorized commercial or noncommercial educational FM broadcast stations, FM translators, and Class D (secondary) noncommercial educational FM stations...." The Overlap Study Narrative attached to the Application contends that the proposal

complies with §74.1204. That contention, however, is plainly wrong on the facts and, in any event, unsupported.

WBBO(FM) is a full-service, Class A FM broadcast station. Accordingly, §74.1204(a)(3) generally bars the Commission from accepting any application which proposes a new FM translator station if that new FM translator (i) will operate on a channel which is second or third adjacent to a Class A full-service FM station and (ii) will cause its predicted 100 dBu interference contour¹ to overlap the predicted 60 dBu contour of a Class A FM station.² The Overlap Study Narrative expressly accepts this requirement.³ The Application concedes that the translator is located “well inside” WBBO(FM)’s predicted 60 dBu contour.⁴ As is underscored in the Statement of William J. Getz, attached hereto as Exhibit 1, the translator’s “proposed 100 dBu interfering contour is wholly contained within the WBBO(FM) 60 dBu F(50,50) protected contour.”⁵ The applicant’s concession, in conjunction with the engineering statement supporting this petition, illustrate that construction of the translator would result in prohibited contour overlap, and consequently causing prohibited interference in violation of §74.1204.⁶

¹ Although §74.1204(a) employs the term “predicted” in reference to the field contours of existing stations, the Commission has stated that “an FM translator application will not be accepted for filing if there would be overlap of the proposed station’s predicted interfering contour with the protected contour of an existing full-service FM station.” *See In re Application of California State University*, 18 FCC Rcd 6867 (2003).

² This includes all classes of FM stations other than Commercial Class B, Commercial Class B1, or LP100 stations.

³ *See* Overlap Study Narrative, Schober Application, Exhibit 12, Figure 2 at 1, fifth paragraph.

⁴ *See* Overlap Study Narrative, Schober Application, Exhibit 12, Figure 2 at 1, fourth paragraph.

⁵ *See* Exhibit 1, 2.

⁶ The Commission’s Media Bureau has explained that a petitioner may meet its burden of demonstrating prohibited, theoretical interference under §74.1204 by showing that there is prohibited contour overlap. *See In re W210AW(FM), New Wilmington, PA*, Media Bureau Letter, Federal Communications Commission (March 17, 1997).

To try to circumvent the acceptability problem with its proposal, the Overlap Study Narrative, while not specifically invoking §74.1204(d) (which allows an applicant an opportunity to “demonstrate that no actual interference will occur due to intervening terrain, lack of population, or other factors as may be applicable”), contends that “at no point on the ground will the translator produce an interfering contour, thereby protecting WBBO....”⁷ This contention is based on calculations set forth in Table 1 to the Application which purportedly show that the proposed translator’s effective radiated power (“ERP”) at incremental angles below the antenna would remain below 100 dBu.⁸ For several reasons, the applicant has not met its burden of demonstrating that no actual interference will occur.

1. The Application does not assert that there are “intervening terrain” factors that must be considered.

2. The Application does not assert any lack of population as a factor. In fact, as shown in the Statement, there are at least five homes/buildings and a well traveled road (Beach Avenue) within the translator’s proposed interfering contour.⁹ In addition, there are 185 persons within one mile and 4,395 persons within two miles of the proposed translator site which currently receive the off-the-air signal of WBBO(FM) and which may be subject to new interference if the proposed translator becomes operational. Also, there are 21,163 persons within the proposed translator’s 60 dBu service contour who currently receive the off-the-air signal of WBBO(FM) and which may be subject to new interference from the proposed translator station depending

⁷ See Overlap Study Narrative, Schober Application, Exhibit 12, Figure 2 at 2.

⁸ See Computation of Signal Level on Ground, Schober Application, Exhibit 12, Table 1 [“Table 1”].

⁹ Several places of business and organizations are located along this road, including a church, a school, and medical offices.

upon individual FM receiver characteristics, foliage, building/structure obstructions, and weather.

3. The Application does not contain a “vertical radiation pattern” and “[a]bsent a measured vertical plane radiation pattern for the exact antenna proposed in the Application, the validity of the field strength predictions in Table 1 cannot be verified.”¹⁰ It is a basic principle of engineering that theoretical vertical field values do not account for various “real world” factors, such as tower and mounting effects. Therefore, relying on a theoretical vertical plane relative field pattern to demonstrate lack of prohibited overlap or interference is clearly inappropriate. The Commission has recognized this fact because no FCC Rule allows a broadcast station to use a vertical plane relative pattern for this purpose.¹¹

In short, the Application concedes that prohibited interference is predicted to occur, and the Application clearly has not met its burden under §74.1204(d) to show that “interference will not *in fact* occur.”¹² The Commission has stressed that 74.1204(d) is “designed to be narrow in scope” and contemplated that its use would be very rare.¹³ At bottom, the final acceptance and ultimate grant of the Application would subvert the regulatory scheme which is intended to protect full-service FM broadcast stations.

Conclusion

¹⁰ See Exhibit 1, 3; see also 47 C.F.R. §74.1204(b)(3) which states that, to predict coverage “the effective radiated power (ERP) to be used is the maximum ERP of the main radiated lobe in the pertinent azimuthal direction. If the transmitting antenna is not horizontally polarized only, either the vertical component or the horizontal component of the ERP should be used, whichever is greater in the pertinent azimuthal direction.”

¹¹ See 47 C.F.R. §74.1204, §73.213, §73.215, §73.318, §73.509, §73.525

¹² See *Amendment of Part 74 of the commission's Rules Concerning Translator Stations*, FCC Rcd 7212, 7229 (December 4, 1990) (emphasis added).

¹³ See *In re Application of Living Way Ministries Inc.*, 17 FCC Rcd 17054, ¶ 9 (September 9, 2002).

Based on the foregoing, Millennium respectfully requests the Media Bureau to promptly dismiss or deny the Application.

Respectfully submitted,

MILLENNIUM SHORE LICENSE HOLDCO, LLC

By: 

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Its Attorneys

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Dated: January 29, 2004

EXHIBIT A

CARL T. JONES
CORPORATION

**STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF A PETITION TO DENY
AN APPLICATION FOR CONSTRUCTION PERMIT
FOR A NEW FM TRANSLATOR STATION TO SERVE
MANAHAWKIN, NEW JERSEY
FACILITY ID: 142127
FCC FILE NO. BNPFT-20030825AIW**

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by Millennium Shore License Holdco, LLC, licensee of full-service FM station WBBO(FM), Ocean Acres, New Jersey, (Channel 253A), to prepare this statement in support of a Petition to Deny an application for a new FM translator station to serve Manahawkin, New Jersey. The FM translator application (FCC File No. BNPFT-20030825AIW) was filed by Edward A. Schober ("Schober"), for a new FM translator station to serve Manahawkin, New Jersey, on Channel 250D, a third-adjacent channel to WBBO(FM).

The translator applicant proposes to construct a new FM translator station on FM Channel 250D, operating with a nondirectional, Effective Radiated Power (ERP) of 30 Watts. The FM translator's proposed transmitter site is located within the WBBO(FM) 60 dBu protected contour.

PROHIBITED CONTOUR OVERLAP

Radio station WBBO(FM), Ocean Acres, NJ, is licensed (FCC File No. BLH-20010720ABR) to operate on Channel 253A with an ERP of 2.95 kW at an antenna Height Above Average Terrain (HAAT) of 142 meters. As stated above, the FM translator application specifies operation on Channel 250D, a third-adjacent channel to WBBO(FM). Pursuant to Section 74.1204(a)(3), the proposed translator's 100 dBu F(50,10) interfering contour must not overlap the WBBO(FM) 60 dBu F(50,50) protected service contour.

As shown in the translator application, the translator's proposed 100 dBu interfering contour is wholly contained within the WBBO(FM) 60 dBu F(50,50) protected contour in violation of Section 74.1204 of the FCC Rules. Section 74.1204(a)(1) of the FCC Rules prohibits an FM translator station from causing contour overlap to the protected service contour of any authorized station. The application contains a statement contending that translator's proposed interfering contour will not reach the ground, thus WBBO(FM) is properly protected.¹

Exhibit 12, Table 1, attached to the translator application, purportedly shows the translator's predicted signal strength at ground level along incremental angles below the proposed antenna (Table 1 refers to this angle as the "Depression Angle"). According to Table 1, the applicant used a vertical relative field value to compute the translator's proposed

¹ See BNPFT-20030825AIW, Exhibit 12, Figure 2, Narrative.

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ERP at each depression angle. However, a vertical radiation pattern was not submitted with the Schober application. Absent a measured vertical plane radiation pattern for the exact antenna proposed in the Schober application, the validity of the field strength predictions in Table 1 cannot be verified.

Using the FCC's conventional propagation curves, the translator's proposed 100 dBu F(50,10) interfering contour is predicted to extend 0.38 kilometers. The translator's interfering contour area is not unpopulated. As shown on the attached topographic map, there are at least 5 homes/buildings and a road (Beach Avenue) within the translator's proposed interfering contour.

The proposed translator's transmitter site is not located in a remote area. Full service station WBBO(FM) provides a regularly received off-the-air signal to the translator's proposed service area and to the homes and businesses in the immediate area of the proposed FM translator's transmitter site. In addition to the people who either reside, work or travel through the translator's proposed interfering contour, there are 185 persons within one mile and 4,395 persons within two miles of the proposed translator site which currently receive an off-the-air signal from WBBO(FM) and may be subject to new interference from the proposed translator station. Moreover, there are 21,163 persons within the proposed translator's 60 dBu service contour which currently receive an off-the-air signal from WBBO(FM) which may be subject to new interference from the proposed translator station depending upon the individual FM receiver characteristics, foliage, building/structure obstructions, and even the weather.

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Finally, and significantly, the proposed translator station's 60 dBu contour overlays the community of Ocean Acres, NJ, the WBBO(FM) community of license. The potential for interference within the WBBO(FM) community of license is another direct violation of Section 74.1204(f) of the FCC Rules.

In light of the above, the translator application does not satisfy Section 74.1204(a) or Section 74.1204(f) with respect to potential interference caused to full service station WBBO(FM). This statement has been prepared by me or under my direct supervision and, under the penalty of perjury, is believed to be true and correct.

DATED: January 28, 2004



William J. Getz

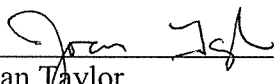
CERTIFICATE OF SERVICE

I, Joan Taylor, a secretary in the law firm of Shaw Pittman LLP, hereby certify that on this 29th day of January, 2004 I caused to be served by hand delivery, first-class, United States mail, postage prepaid, a copy of the foregoing "**PETITION TO DISMISS OR DENY**" on the following:

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