

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In reply refer to:
1800B3-BSH

December 13, 1996

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In re: K285AK, Cortez, NM
K285AN, Monticello/Blanding, UT
K285BW, N. La Plata County, CO
K288BD, Silverton, CO
Assignment of Licenses
BALFT-960507ED
BALFT-960507EE
BALFT-960507EF
BALFT-960507EG

Renewal of Licenses
BRFT-960201CT
BRFT-960521WM
BRFT-960201D3
BRFT-960201D2

Dear Mr. Davidson:

This is in reference to the applications for license renewal and the applications to assign the above-captioned translator stations from Fordstone, Inc. ("Fordstone") to Four Corners Broadcasting, LLC ("Four Corners"). According to a Memorandum submitted with the applications, approval of the proposed assignment would result in common ownership of these translator stations and KRSJ(FM), their primary station, contrary to 47 C.F.R. Section 74.1232(d), which prohibits the common ownership of an FM translator station whose coverage contour extends beyond the protected contour of its commercial primary station. Fordstone filed a waiver request with the Commission on May 16, 1994 to permit the joint ownership of the primary and translator stations, and that request was pending at the time the subject assignment applications were filed. Applications to assign primary stations KIUP(AM) and KRSJ(FM), Durango, Colorado, from Fordstone to Four Corners (File Nos. BAL-960507EA and BALH-960507EB) were granted on June 28, 1996, and action on the above-captioned translator assignment applications was deferred. Action on the above-captioned renewal applications has

also been deferred. On September 13, 1996, the Commission requested that the applicants submit additional information to demonstrate that grant of waivers for these translators would serve the public interest. On October 10, 1996, a response to our request was filed. For the reasons stated below, we conclude that the record before us demonstrates that one translator may be assigned without requiring a waiver; two of the translators warrant grant of a waiver, and the fourth translator does not warrant a waiver.

In determining whether waivers of Section 74.1232(d) should be granted for the above-captioned translators, we must determine whether the public interest would best be served by grant of such waivers, in light of the standards set forth with the modification of the Commission's translator rules. In evaluating waiver requests, the staff is guided by the Commission's pronouncements in the *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212 (1990) ("*Report and Order*"), modified, 6 FCC Rcd 2334 (1991), recon. denied, 8 FCC Rcd 5093 (1993) ("*Reconsideration Order*"), that permanent waivers of the FM translator ownership restrictions would undermine its stated policy in imposing new FM translator eligibility rules. The Commission determined that, "the most appropriate and efficient means of providing additional FM service nationwide is by creating opportunities for the establishment and development of full-service FM stations. We believe that a modification of our rules to permit the expansion of FM service through the use of translators would be inconsistent with our basic FM allotment scheme." *Report and Order*, 5 FCC Rcd at 7215. In this regard, the Commission stated that:

in situations where a licensee establishes that [full-time aural] service is indeed unavailable, we will be favorably disposed toward requests for waivers of this rule to address these unique circumstances. Within the context of this proceeding, we will define a "white area" as any area outside the coverage contour of any full-time aural service. We emphasize that in order for commercial primary stations to own translators in such areas, the Commission will require a showing of a lack of service in accordance with the "white area" definition given above.

Report and Order, 5 FCC Rcd at 7216. On reconsideration, the Commission expressly rejected the contention that waiver of the ownership restrictions could be based either on the provision of a second service to "gray" areas or the provision of an additional service to an "underserved" area. *Reconsideration Order*, 8 FCC Rcd at 5094-95.

Station K288BD, Silverton, Colorado

Although the assignment application contained a request for a waiver of Section 74.1232(d) for K288BD, engineering exhibits submitted with the October 10, 1996 supplement demonstrate that the 1 mV/m coverage contour of this translator facility is completely within the protected contour (60 dBu) of primary station KRSJ(FM). Therefore, assignment of K288BD would comply with Section 74.1232(d) and no waiver is necessary.

Station K285AN, Monticello/Blanding, Utah

The October 10, 1996 submission states that approximately 38 percent of K285AN's 1 mV/m contour (over 422 square kilometers) serves white area, including the community of Monticello,

Utah, with a population of 1,806. The submission notes that three percent of K285AN's 1 mV/m signal is overlapped by the coverage contour proposed in the construction permit for station KCYN(FM), Moab, Utah, but since this unbuilt station does not yet provide full-time aural service, this area is white area, as defined above by the *Report and Order* at 7216. Based on the above, we find that grant of a waiver for this translator is consistent with Commission policy, as stated in the *Report and Order*, as well as precedent. *See Kevin C. Boyle*, 11 FCC Rcd 2348, 2350 (MMB 1996). We remind Four Corners, however, that Section 74.1232(h) provides that authorization to an applicant for a translator described in Section 74.1232(d) and (e) may be terminated at any time, upon not less than sixty days written notice, where the circumstances in the community or area served are so altered as to have prohibited grant of the application had such circumstances existed at the time the application was filed.

Station K285BW, North La Plata, Colorado

The submission requests a *de minimis* waiver for K285BW. In support of this request, the October 10, 1996 letter states that the 1 mV/m contour of this translator is almost completely within the protected (60 dBu) contour of KRSJ(FM), with only 2.7 percent of the translator's 1 mV/m contour (four square kilometers) extending beyond the primary station's protected contour. The submission states that the four square kilometer extension area is comprised of rugged mountainous terrain, contains no communities, and has few (if any) roads or dwellings. The *de minimis* request appears to be a case of first impression. Based on the totality of facts that are presented, and the absence of objection from any other broadcaster, we find that a *de minimis* waiver is warranted for K285BW.

Station K285AK, Cortez, Colorado

We deny the waiver request regarding K285AK. While the submission argues that if the Commission does not permit common ownership of this translator and KRSJ(FM), the residents of Cortez and other stations serving Cortez "might have no access to . . . EBS information," we find that explanation speculative and inadequate to justify a waiver. Since a waiver is not justified, and because Four Corners and Fordstone are interested and connected parties, Fordstone is given sixty days from the date of this letter to file an application assigning this translator to an entity which is not an interested or connected party with Four Corners (as those terms are used in Section 74.1232(d)) or to surrender the license for this translator.

Accordingly, for the reasons stated above, the request for a waiver of 47 C.F.R. Section 74.1232(d) for K285AK, Cortez, Colorado, IS DENIED, the application to assign K285AK from Fordstone to Four Corners (BALFT-960507ED) IS DISMISSED, and Fordstone is given sixty days from the date of this letter to file an application assigning K285AK to an entity which is not an interested or connected party with Four Corners, (as those terms are used in Section 74.1232(d)) or to surrender the license for K285AK, while action on the license renewal application for K285AK (BRFT-960201CT) is deferred for that period; a waiver of Section 74.1232(d) for station K285AN, Monticello/Blanding, Utah, IS GRANTED, the license renewal application for K285AN (BRFT-960521WM) and the application to assign K285AN (BALFT-960507EE) ARE GRANTED; a waiver of Section 74.1232(d) for station K285BW, North La Plata, Colorado, IS GRANTED, the license renewal application for K285BW (BRFT-960201D3)

and the application to assign K285BW (BALFT-960507EF) ARE GRANTED; and the license renewal application (BRFT-960201D2) and the assignment application (BALFT-960507EG) for K288BD, Silverton, Colorado ARE GRANTED.

Sincerely,

Linda Blair, Chief
Audio Services Division
Mass Media Bureau