

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

Received & Inspected
SEP -3 2010
FCC Mail Room

In re Application of)
)
STU-COMM, INC.)
) File No. BPFT-20100629AXN
For Authority to Construct)
or Make Changes in)
FM Translator Station W201CN,)
Afton, Virginia)
)

To: Chief, Audio Services Division Media Bureau

INFORMAL OBJECTION

The James Madison University Board of Visitors, licensee of WMRA, Harrisonburg, Virginia ("WMRA") and WMRV, Crozet, Virginia, pursuant to Section 73.3584 of the Rules hereby files an Informal Objection to the above referenced application (the "**Application**") of STU-COMM, INC. ("**Applicant**").

This instant objection is a correction to the objection filed July 15, 2010, which while referencing the correct file number, inadvertently referred to W218BZ, Crozet, Virginia in the header. We apologize for any confusion this may have caused.

Powel Level for non-primary station owned fill-in

In the instant application the applicant incorrectly claimed to be entitled to rely on the less-restrictive power limitations which by law is afforded only to *licensees of primary stations* for "fill-in" purposes. A "fill-in" translator meeting certain qualifications may operate at higher-than-standard power levels¹ - up to 250 Watts - as long as the signal is contained within the primary station's designated coverage contour (see Section 74.1201(g) of the Rules). However, this "fill-in" service is qualified by Section 74.1235 (a) of the Rules which states:

An application for an FM translator station filed by the licensee or applicant of the primary station to provide fill-in service within the primary station's coverage area will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds 250 watts.
(emphasis ours)

This language does not mean that non-primary station licensee applicants for fill-in translators may exceed 250 watts, it means that one must be the licensee of the primary station in order to be afforded the high power limitations of paragraph (a).

¹ Normal power levels are specified in Section 74.1235 (b) of the Rules.

The **applicant**, Stu-Comm, Inc., is not the licensee of the specified primary station WVTU(FM), which is licensed instead to Virginia Tech Foundation, Inc. As a result, the more-restrictive power limitations set forth in Section 74.1235 (b) of the Rules apply to this **application** as it is for "other than one for fill-in service which is covered in paragraph (a) of this section."

More specifically, because the **applicant** is not, as per paragraph (a), the licensee of the primary station for which it proposes to serve as a "fill-in" translator station, the power limitation, at an HAAT above 141 Meters, should be 10 watts, not 125 watts as specified in the instant **application**.

As further evidence of the Commission's intentions concerning fill-in stations, it can be seen in Section 74.1233(e) of the Rules that there is a consistent link between a "fill-in" translator and a "commonly owned primary station."

Although any translator may functionally serve a "fill-in" purpose², it is impermissible to gain the full benefits of

² This is recognized by the FCC on their website at the following URL <http://www.fcc.gov/mb/audio/translator.html#WHATIS> however it does not go into detail concerning the effect on power limits. We also note that the FCC website disclaimer explicitly states: "In the event there is any conflict between information posted on this website and the Commission's rules, the rules shall prevail." See <http://www.fcc.gov/webpolicies.html>

attribution as "fill-in" for a translator that is not commonly owned with the primary (parent) station. These benefits of attribution of "fill-in" status to a translator station include the relaxation of power limits (up to a maximum 250 watts) and not having to list the translator on station counts for the purposes of the point system used in evaluating mutually exclusive Part 73 applications (see Section 73.7003(b)(2) of the Rules).³ Under the current rules these benefits only inure to translator licensees or applicants who specify a "commonly owned primary station."

For instance, the instructions to Form 340 explicitly state "When counting translator stations, count all non-fill-in stations, i.e., those that extend outside the applicant's primary station's service contour..."⁴ The exception used in MX point proceedings correctly recognizes that if the applicant (for an unrelated station) owns the primary station ("the applicant's primary station"), the co-owned "fill-in" translator serving that primary station should not count against the applicant in their unrelated application.

³ This also comes to play in Section 74.1233(e) (3) of the Rules.

⁴ Instructions for Form 340, Section IV, Question 2(a): Diversity of Ownership.

Purpose and Permissible Service

The **application** also raises an interesting issue because it proposes to provide "fill-in" service from essentially the same antenna location as the Class B-1 primary station⁵. The **applicant** has specified an antenna located on the same tower and with practically the same ERP as the Part 73 primary station⁶ but with an HAAT which is only 1.5% lower⁷. We find that this question is addressed in Section 74.1231(a) of the Rules which defines the purpose and permissible service⁸ of translator stations:

FM translators provide a means whereby the signals of AM or FM broadcast stations may be retransmitted to areas in which direct reception of such AM or FM broadcast stations is unsatisfactory due to distance or intervening terrain barriers. (emphasis supplied)

Since the proposed station specifies the same distance and intervening terrain barriers to potential listeners as the parent station (at essentially the same power level), it does

⁵ The applicant's engineering exhibit shows that the 60 dbu contours of the proposed translator station and the parent station are essentially identical in many pertinent bearings.

⁶ Quoting the applicant's narrative submitted with the application: "The proposed translator antenna will be on the WVTU tower."

⁷ WVTU's HAAT is 517 meters with a RCAMSL of 908 meters, therefore the instant application with an RCAMSL of 900 has a comparative HAAT of 509 meters.

⁸ This section is titled: "Purpose and permissible service."

not comport with the Commission's codified definition of "purpose and permissible service." We have illustrated this concept in Exhibit A.

It is patently clear that co-location of the translator with the primary station is not what the Commission envisioned when it established the translator service and that in spite of whatever compelling reasons the applicant may invent, such co-location is an impermissible use under the present rules.

In a recent Report and Order - concerning changes to the FM translator rules - the FCC restated this policy: "The proper role of FM translators is to provide secondary service to areas in which direct reception is unsatisfactory."⁹ Under this criterion, the instant **application** specifies an improper role.

The Multiple Translator Issue

Stu-Comm presently has a construction permit, BPFT-20090819AHH, for another so-called "fill-in" translator for the same parent station WVTU¹⁰, co-located with the instant

⁹ Report and Order MB Docket No. 07-172, RM-11338, see footnote 31 citing 5 FCC Rcd at 7219.

¹⁰ The permit for W266BQ specifies "Primary Station: WVTU(FM)" with no notation that the application specified an HD channel.

application¹¹. We note that Commission policy prohibits multiple translators licensed to the same parent station and serving the same area without a special showing, requiring the applicant to "describe any relevant terrain obstruction as a means of showing technical need."¹² The actual stipulation in Section 74.1232 of the rules states:

(b) 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. (emphasis ours)

And the explanatory note to that Rule states:

As used in this section need refers to the quality of the signal received and not to the programming content, format, or transmission needs of an area. (emphasis ours)

By policy, the overlap of two co-located translators is limited to 50%; the overlap of the instant application with the applicant's other construction permit is 100% (See Exhibit "B"). The applicant has not made a satisfactory showing of technical need as defined in the Rules.

Anticipating the argument that different HD channels on the primary station are de-facto separate "primary stations," we

¹¹ This is the subject of separate pleadings by WMRA.

¹² See Amendment of Part 74, 5 FCC Rcd 7222.

note that because FCC does not currently designate an HD channel as a "primary station" on any license¹³, there can be no distinction between different HD channels on the same primary station¹⁴. The notes from Section 74.1232(b) of the Rules makes it clear that "programming content, format, or transmission needs of an area" are not a sufficient showing of "need." And this therefore precludes any arguments such as those citing "the lack of analog capacity by the primary station."

Furthermore, two translator licenses which specify the same primary station could be utilized by wideband (HD capable) heterodyne translators - without further notification - creating the exact situation the FCC wishes to avoid. Additionally, even if the FCC did designate a specific HD channel as the primary station, such channels are fungible; there is nothing in the Rules to prevent the primary station from running identical programming on its HD-2 and HD-3 channels or changing the true primary station on either or both at-will.

¹³ We note that on the Construction Permit for BPFT-20090819AAH, the co-located translator under discussion, the Primary Station is only designated as WVTU(FM), Channel 207, Charlottesville, VA. The application for that station also specified an HD channel.

¹⁴ Stu-Comm has previously admitted that "...licensees are not required to specify the digital program stream being rebroadcast, but merely the call sign of the primary station..." See "Opposition to Informal Objection" dated April 5, 2010 by Stu-Comm concerning **WMRA**'s objection to BPFT-20100304AAA.

Mitigation

The applicant for this station has submitted applications for numerous failed modifications for this translator in the last several years, to which we have raised similar objections. Previously, the applicant has suggested¹⁵ that the objection to the power level for the non-primary station owned fill-in station issue could be simply resolved by "transferring such translator stations directly to the licensee of the primary station." The process is simple, and if they believe it will further their position, we invite them to do so.

Summary

In summary, the **applicant** incorrectly claimed to be entitled to rely on the less-restrictive power limitations afforded only to *licensees of primary stations* for "fill-in" purposes as set forth in Section 74.1235 (a) of the Rules. The **applicant** also specified a location for a translator which does not meet the requirements of Section 74.1231 (a) of the Rules as it is co-located with the primary station. Additionally, the **applicant** has specified a location for a translator which does


¹⁵ "Opposition to Informal Objection" dated April 5, 2010 by Stu-Comm concerning **WMRA's** objection to BPFT-20100304AAA.

not meet the requirements of Section 74.1232 (b) of the Rules as it is co-located with another translator.

For these reasons **WMRA** requests that the construction permit application be denied.

Respectfully Submitted,
JAMES MADISON UNIVERSITY
BOARD OF VISITORS

September 2, 2010

By: 

William D. Fawcett
Director of Engineering, WMRA

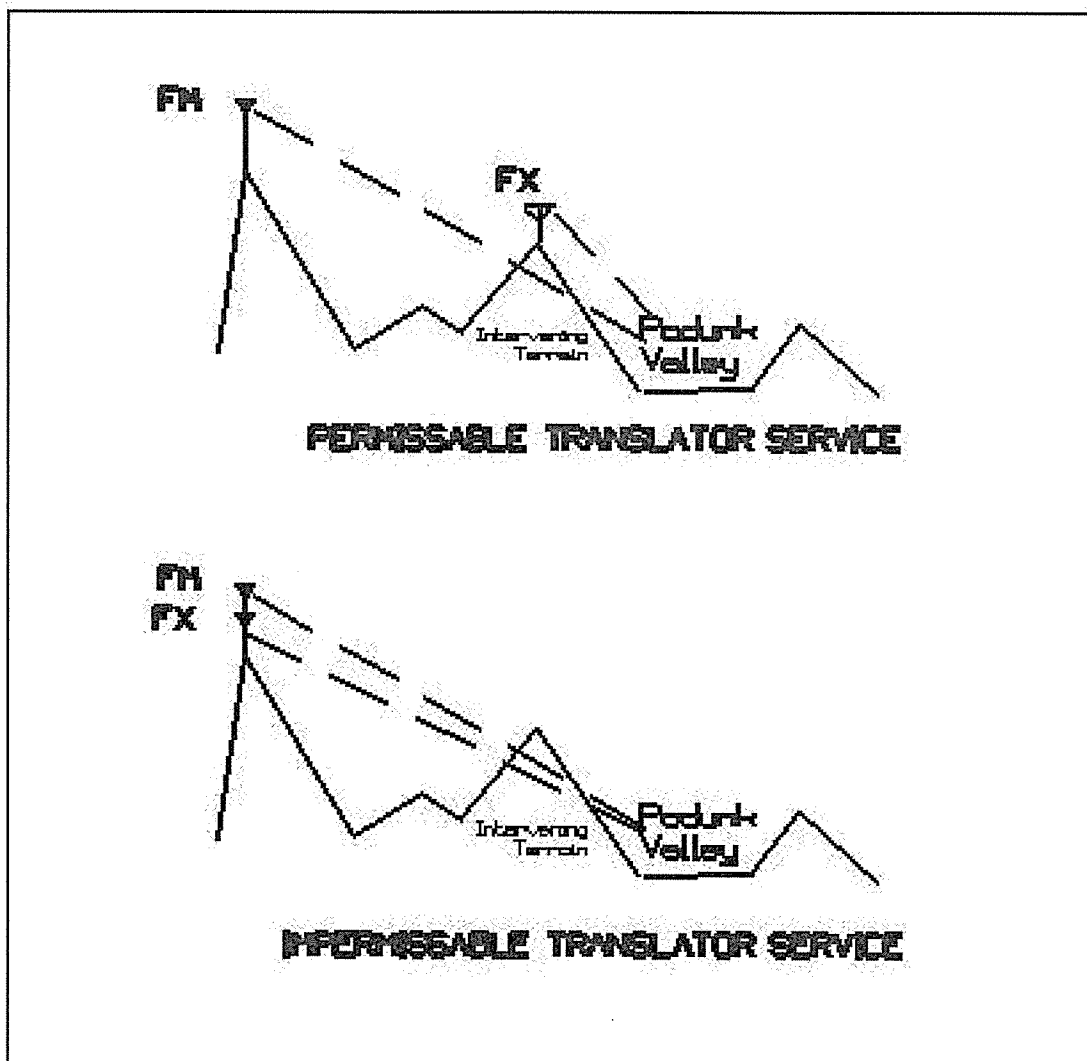
James Madison University Board of Visitors
William D. Fawcett, WMRA
983 Reservoir Street
Harrisonburg, Virginia 22801

Exhibit A.

Permissible Service for Translators

§ 74.1231 Purpose and permissible service.

(a) FM translators provide a means whereby the signals of AM or FM broadcast stations may be retransmitted to areas in which direct reception of such AM or FM broadcast stations is unsatisfactory due to distance or intervening terrain barriers...

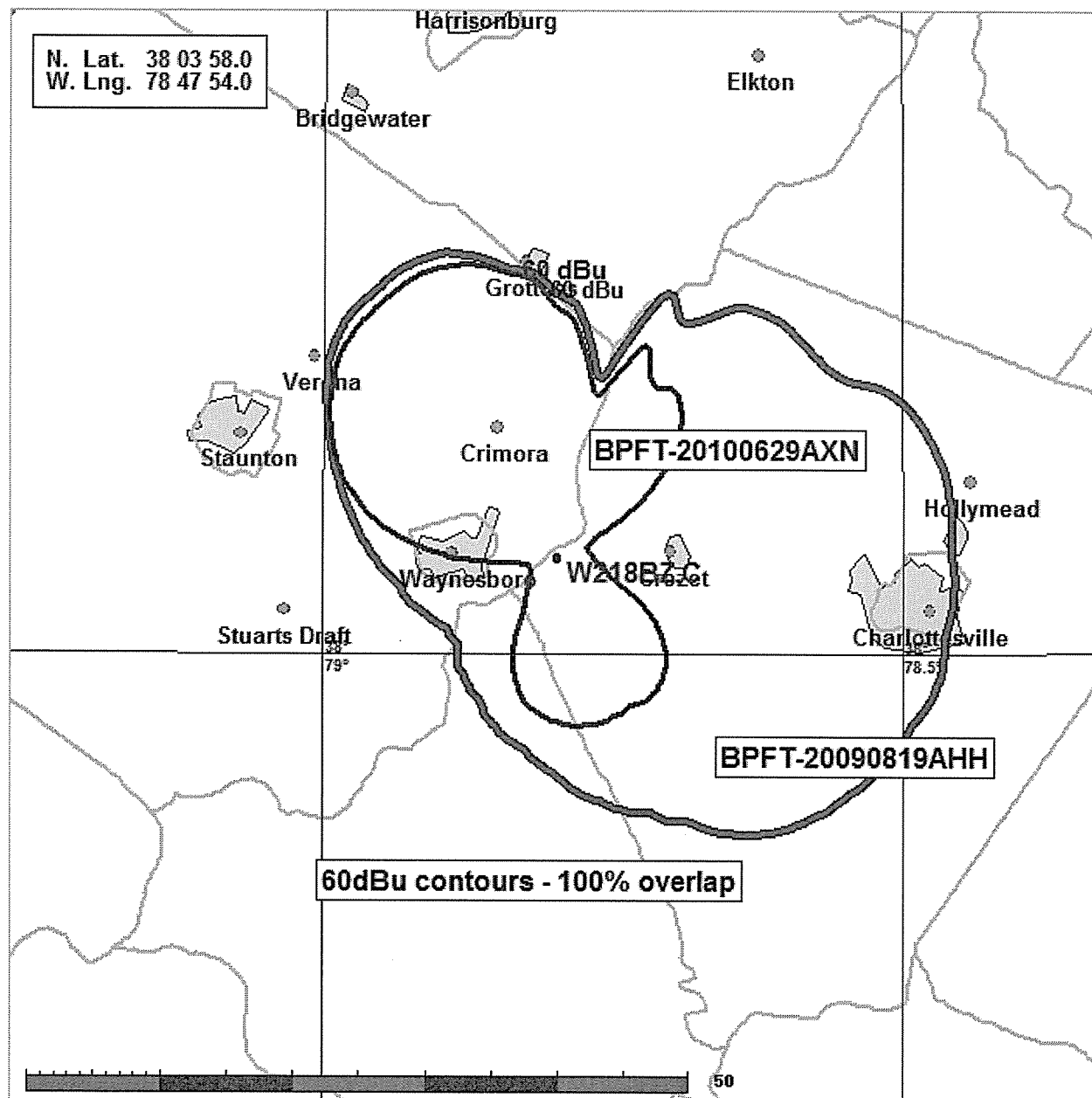


FM = Parent Station
FX = Translator

Exhibit B.

Translator Service Areas

BPFT-20090819AHH 60 dBu and BPFT-20100629AXN 60 dBu





James Madison University
Office of the President
MSC 7608
Harrisonburg, VA 22807
(540) 568-6868
(540) 568-2338 Fax

February 1, 1999

Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RE: CONFIRMATION OF SIGNATURE AUTHORITY OF WILLIAM FAWCETT
AND THOMAS DUVAL

The purpose of this letter is to confirm that William Fawcett and Thomas E. DuVal have been delegated the authority to sign FCC applications and other forms on behalf of all stations licensed to the Board of Visitors of James Madison University (WMRA and its auxiliary stations WMRL and WMRY, as well as WXJM).

Sincerely,

Linwood H. Rose
President

LHR/deb

cc: Dr. Richard Whitman, Dean, College of Arts and Letters
Mr. Thomas DuVal, General Manager, WMRA
Mr. William Fawcett, Engineer, WMRA✓

AFFIDAVIT

Commonwealth of Virginia)
)
City of Harrisonburg) ss:

William D. Fawcett, having been first duly sworn upon oath, states that he an *Electronic Manager I* employed by the Commonwealth of Virginia; and that he is the holder of a First Class Radiotelephone Operator License P1-23-12550, issued July 13, 1978 and replaced by a Lifetime General Radio Telephone Operator License number PG-4-10874; that his qualifications are a matter of record before the Federal Communications Commission; that the foregoing Objection and exhibits were prepared by himself; and that the statements contained therein are true of his own personal knowledge, except those stated to be information on belief, and as to those, he believes them to be true.

He further states that this Opposition is not interposed for delay, and that the James Madison University Board of Visitors has granted him signature authority concerning such matters before the Federal Communications Commission.

W D Fan

William D. Fawcett

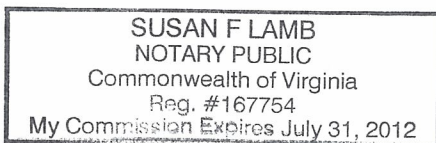
Subscribed and sworn to before me this 2nd day of September,
2010.

Susan F. Lamb

Notary Registration Number
167754

Susan F. Lamb
NOTARY PUBLIC (SEAL)

My commission expires
July 31, 2012




AFFIRMATION OF SERVICE

I, William D. Fawcett, Director of Engineering for WMRA, do
certify that on this date, by United States Postal Service First
Class mail, a copy of this Informal Objection was sent to:

Mr. Michael C. Friend
General Manager
Stu-Comm, Inc.
2250 Old Ivy Road
Charlottesville, Virginia 22903

Mr. Brendan Holland, Esq.
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, DC 20006

September 2, 2010

By: 
William D. Fawcett
Director of Engineering, WMRA

Gates



Your NPR® Station

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Received & Inspected

SEP -3 2010

FCC Mail Room

September 2, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Application of Stu-Comm, Inc. for Authority to Construct or Make Changes in an FM Translator Station, Afton, Virginia, File No. BPFT-20100629AXN

Dear Ms. Dortch:

Enclosed, please find a signed original and *four* copies of an *Informal Objection* pertaining to the above referenced application. A fifth copy is included to be date stamped and returned.

A separate copy of this cover letter and document is being sent via e-mail to the chief of the Audio Division, Media Bureau, Peter Doyle and also to Robert Gates and Ben Halprin

Correspondence concerning this *Informal Objection* may be sent to the following address:

William D. Fawcett
WMRA
983 Reservoir Street
Harrisonburg, Virginia 22801

Sincerely,

William D. Fawcett