

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12<sup>th</sup> STREET S.W.**  
**WASHINGTON DC 20554**

**MEDIA BUREAU**  
**AUDIO DIVISION**  
**TECHNICAL PROCESSING GROUP**  
**APPLICATION STATUS:** (202) 418-2730  
**HOME PAGE:** [WWW.FCC.GOV/MB/AUDIO](http://WWW.FCC.GOV/MB/AUDIO)

DEC 23 2010

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Katherine Pyeatt  
2215 Cedar Springs Road #1910  
Dallas, TX 75201

In Re: K287AY, Austin, TX  
Facility ID # 156299  
BPFT-20100510ABW

Informal Objection

Dear Applicant:

The staff has under consideration: (1) the above captioned minor change application (“Application”) to change channel from 287 to 242; (2) the Informal Objection filed by Bryan King (“King”) on May 26, 2010; (3) all related pleadings. For the reasons set forth herein, we deny the Informal Objection and grant the application.

K287AY, Austin, Texas is licensed to Katherine Pyeatt (“Pyeatt”). The Application proposes a waiver of the minor change rule, 47 C.F.R. Section 74.1233, to change to channel 242 to eliminate interference it previously caused to co-channel station KSMG(FM), Seguin, Texas. King, licensee of KAJZ(FM), Llano, Texas, filed an Informal Objection stating that the proposed translator will cause interference to KAJZ on Channel 242. King states that the proposed facility will be in violation of Section 74.1204(f).

Pyeatt’s original Application proposed operation with 250 watts. The Informal Objection included documentation from seven people that claimed to listen to KAJZ within the 60 dBu contour of the original Pyeatt proposal. Each listener submitted statements suggesting that they listened to KAJZ at the time of their statements. All such statements were dated between May 21, 2010 and May 24, 2010. However, KAJZ was silent from October 1, 2009 until beginning operation with 0.11 kW pursuant to a Special Temporary Authorization on May 27, 2010. Subsequently, on July 15, 2010, Pyeatt amended the Application to reduce power to 100 watts. In doing so, Pyeatt reduced the proposed 60 dBu contour enough to exclude the location of all the alleged KAJZ listeners. On July 26, 2010, King submitted a Reply that included statements from two listeners, Jeff Jack and Jim Reese, that allegedly listen to KAJZ along the 5900 block of Bold Ruler Way, in Austin, within the amended 60 dBu contour. Mr. Jack and Mr. Reese both indicate that they “have listened to KAJZ 96.3 Llano, TX both prior to the time it went off the air in October 2009 and since it resumed operation in May of 2010.”

In her August 13, 2010 Reply and Opposition, Pyeatt argues that Section 74.1204(f) only protects “regular listeners” of an existing station. She also provided links to videos intended to demonstrate that there is no listenable KAJZ service along Bold Ruler Way “that a truly

‘Disinterested Party’ would voluntarily listen to.” She further shows that King and Mr. Jack previously served together as officers on the Austin Neighborhoods Council, and therefore suggests that Mr. Jack is not a truly disinterested party. She goes on to question why either Mr. Jack or Mr. Reese would have a need to listen to KAJZ along Bold Ruler Way. In his August 27, 2010 Response, King argues that neither Jack nor Reese are “interested parties” as previously defined by the Commission.

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, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the location of each purported listener falls within the 60 dB $\mu$  contour of the proposed translator station;<sup>1</sup> (3) some evidence, such as a declaration from each of the claimed listeners, that the person listens to the full-service station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location. The “undesired-to-desired” (“U/D”) signal strength ratio methodology may be used to demonstrate the potential for interference under Section 74.1204(f).<sup>2</sup> Section 74.1204(f) requires the objector to show that a specific U/D signal strength ratio is exceeded at the location of a *bona fide* listener of the desired station to establish that interference will result. Our review of KAJZ’s 0.11 kW authorized facilities reveals that KAJZ currently places a 17 dBu signal at the location of Bold Ruler Way. As Pyeatt’s videos suggest, it is highly unlikely that anyone would be able to listen to this station with such a low signal strength. Therefore, we find that King has failed to provide convincing evidence under Section 74.1204(f). Please note, Section 74.1203(a) states that should the translator commence operation and cause interference to KAJZ, the translator will be required to eliminate the interference or cease operation. Should KAJZ experience actual interference from the translator at any time, including if and when KAJZ commences operation with its licensed power of 2.9 kW, the translator station would be required to eliminate the interference.

King also argues that Pyeatt’s application violates 47 C.F.R. Section 74.1235(a). King argues that the rule requires FM translators that operate with power in excess of those specified in Section 74.1235(b) must be commonly owned with the primary FM station being rebroadcast.

Pyeatt proposes to rebroadcast the HD Channel 2 signal of Station KKMJ-FM, licensed to Entercom Austin License, LLC. The proposed FM translator station would provide fill-in service within Station KKMJ-FM’s 60 dBu coverage area. The more flexible FM translator power limitations in Section 74.1235(a) are restricted to situations in which the fill-in translator application “is filed by the licensee or permittee of the primary station . . . .”<sup>3</sup> For the reasons set forth below, we waive Section 74.1235(a) and grant the application in accordance with the power limitations set forth therein.

The Commission gives the highest priority to translator applicants proposing fill-in service.<sup>4</sup> In this case, the Application is not “filed by” but would directly benefit the primary station. The proposed translator station would provide only fill-in service for the primary station. It is instructive that the *FM Translator R&O* provides no rationale for the “licensee or permittee” restriction which appeared for the first time in that order. In adopting this rule, the Commission

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<sup>1</sup> The best method is to plot the specific addresses on a map depicting the translator station’s 60 dB $\mu$  contour.

<sup>2</sup> See *The Association for Community Education, Inc.*, FCC 04-155, Para. 13, (rel. July 8, 2004).

<sup>3</sup> 47 C.F.R. § 74.1235(a).

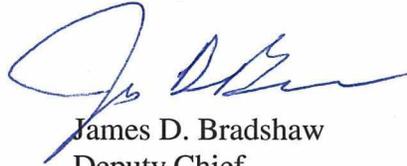
<sup>4</sup> E.g., *Amendment of Part 74 of the Commission’s Rules Concerning Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7223 (1990) (“*FM Translator R&O*”).

merely noted that other restrictions on fill-in translators, e.g., the strict definition of a fill-in translator, would adequately restrict their coverage areas.<sup>5</sup> Subsequently, on reconsideration of the *FM Translator R&O*, the Commission similarly omitted the “licensee or permittee” restriction, simply observing that the “the coverage contour of fill-in translators may not go beyond the coverage contour of the primary station.”<sup>6</sup>

In these circumstances, we conclude that waiving Section 74.1235(a) to permit the processing of the Application in accordance with the power limitations set forth therein serves the public interest and this action is consistent with the Commission’s policy determination to restrict power levels and coverage areas of FM translator stations. Please note that any change resulting in the proposed translator station no longer operating on a fill-in basis shall be subject to the more restrictive power limitations set forth in Section 74.1235(b).

Accordingly, the Informal Objection filed on May 26, 2010 by Bryan King IS HEREBY DENIED and Application BPFT-20100510ABW IS HEREBY GRANTED. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



James D. Bradshaw  
Deputy Chief  
Audio Division  
Media Bureau

cc: Lee J. Peltzman  
John J. Mullaney

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<sup>5</sup> *FM Translator R&O*, 5 FCC Rcd at 7225.

<sup>6</sup> *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Memorandum Opinion and Order, 8 FCC Rcd 5093, 5098 (1993).