

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

ENGINEERING EXHIBIT EE-REPLY-2:

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

**WITH MINOR AMENDMENT
TO THE PENDING**

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

BPFT-20100510ABW - AUSTIN, TEXAS

JULY 15, 2010



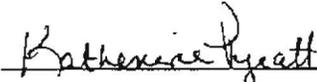
Declaration of Katherine Pyeatt

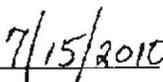
To whom it may concern:

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


Date

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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 second reply - opposition and a minor amendment (reducing ERP from 250 to 100 watts) 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 250 watts.

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 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 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). King relies upon **Section 74.1204(f)** which states:

*(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area **already receiving a regularly used**, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.*

King initially contacted the FCC Staff on approximately 5/19/2010, concerning the pending application of K287AY to change channels, indicating that an **informal objection was being prepared by King against the pending translator application**. The FCC Staff “agreed” to delay taking any action until it reviewed the **yet to be filed** informal objection. It should be noted K287AY was never formally served concerning this communication with the staff (Section 1.1202(a)).

On 5/26/2010 (7 days later) King finally filed his informal objection with the FCC and provided the required service to Pyeatt. King’s informal objection **argued two points both of which were legally flawed**. The first concerned

seven statements from local listeners indicating that they regularly listen to KAJZ in areas within the 60 dBu of the proposed co-channel translator. The second was that since the translator was re-transmitting the signal of KKMJ-FM which is essentially co-located, there was no need for a translator.

The seven statements provided by King **fell well short** of established Commission precedent required to provide **“convincing evidence”** under Section 74.1204(f) that the grant of the translator construction permit “will result in interference to the reception” of an existing **“regularly received”** off-the-air station. See paragraph 10-16 of MO&O, FCC 04-155 (Adopted: June 30, 2004). It states that **“convincing evidence”** requires statements, such as **declarations**, which provide specific street address. Footnote 37 states that the complainant is **required to be a “disinterested” party**. The seven statements provided **were not in** any form of a declaration, **did not provide** specific addresses of reception and **failed to acknowledge** the station was currently & had been silent for the past 8 months. Given the fact that at the time the listeners signed their statements KAJZ was silent, **it is not unreasonable to question** the accuracy of those statements and if the complainants were in-fact a “disinterested party”.

Kings second point was that KKMJ-FM **had no need for a translator** given that both facilities were essentially co-located. King obviously failed to fully read the translator application, since it was abundantly clear that it was not re-broadcasting the main KKMJ-FM programming but was in-fact re-broadcasting a secondary digital channel which

contains the programming of AM station KJCE which **is fully in accordance with the FCC rules to help AM stations compete.**

Notwithstanding the fact that King's filing against the pending translator application **failed to meet the "minimum" well established standards** for an informal objection, **King achieved his objective - no decision on the grant of the translator application was or has been made now some 6 weeks after the objection was filed.**

On June 25, 2010, King filed a reply to the opposition filed by Pyeatt (in the form of an amendment to the pending application of K287AY). King is quick to point-out that since Pyeatt filed her opposition as an amendment, she **circumvented the verification** requirement contained in Section 1.52 of the rules. Pyeatt now rectifies that by providing the required verification statement. However, not surprisingly, **King was totally silent about his more serious failing** to initially meet the standards set forth by the FCC for an informal objection per Section 74.1204(f).

The reply filed by King provides seven statements in the form of declarations. **Only four** of which are from the original seven complainants and now three are from "new" complainants. It should be noted that only two of the statements indicate to having listened to KAJZ at their "home" (James Kipping & Peggy Kipping). However, the Kipping home is located **over 6 miles outside** the 60 dBU of the translator (assuming an ERP of 250 watts).

King states that he did not hide the fact that KAJZ was silent at the time he filed his informal objection and **we do not dispute that**. Yet King knowingly filed seven statements from presumably “disinterested parties” which made statements about **listening** to a station (in the present tense) which had been silent for 8 months and those “disinterested parties” **made no mention** of the fact that they were eagerly awaiting the resumption of that “jazzy” musical format which was so unique to KAJZ (one might wonder if King had to give the complaints any assurance that he would continue the same format once he took over as licensee). King would like the Commission to accept that these **glaring omissions** in the original statements “in no way discredits those statements” regarding their listen habits. Despite King’s position on the previous filed statements, **he wisely had the new statements by the seven individuals re-worded to eliminate the confusion**. However, no where does King confirm that the complainants found by him and used in his informal objection are “disinterested parties” of his or of the now previous licensee, as is required by the rules.

KING'S OBJECTION IS NOW MOOT

In any event, **in order to moot King's claim** under Section 74.1204(f), Pyeatt is amending the pending application of K287AY to reduce the ERP from 250 watts to **100 watts**. At this lower ERP, all of the places identified by the seven listeners **are outside the proposed 60 dBu**.

Figure A & B are maps showing the 60 dBu as proposed in the pending application of K287AY assuming both ERPs of 250 & 100 watts. The map shows the homes of the seven residents and their described paths over which they have reportedly listened to KAJZ. All of the described routes are now outside the 60 dBu of the 100 watt facility. **Thus, no violation of Section 74.1204(f) can be claimed.**

Lamar Smith is the local engineer whom maintains the Austin translator facility on behalf of Pyeatt. Based upon his description of the reception along these routes, Pyeatt is confident that the extremely sporadic / intermittent reception of the KAJZ signal **does not meet the definition** of a "regularly received off-the-air existing service". As a result, Pyeatt is confident that upon commencing operation on Ch. 242, any complaints that are made will not be found by the staff to be credible.

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 informal objection of Bryan King be **dismissed as moot** because the reduction in ERP no longer permits Section 74.1204(f) to be used as a basis for objection.

Service to Bryan King's attorney, Lee Peltzman, will be via e-mail Friday, 7/16/2010. 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.

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

July 15, 2010.

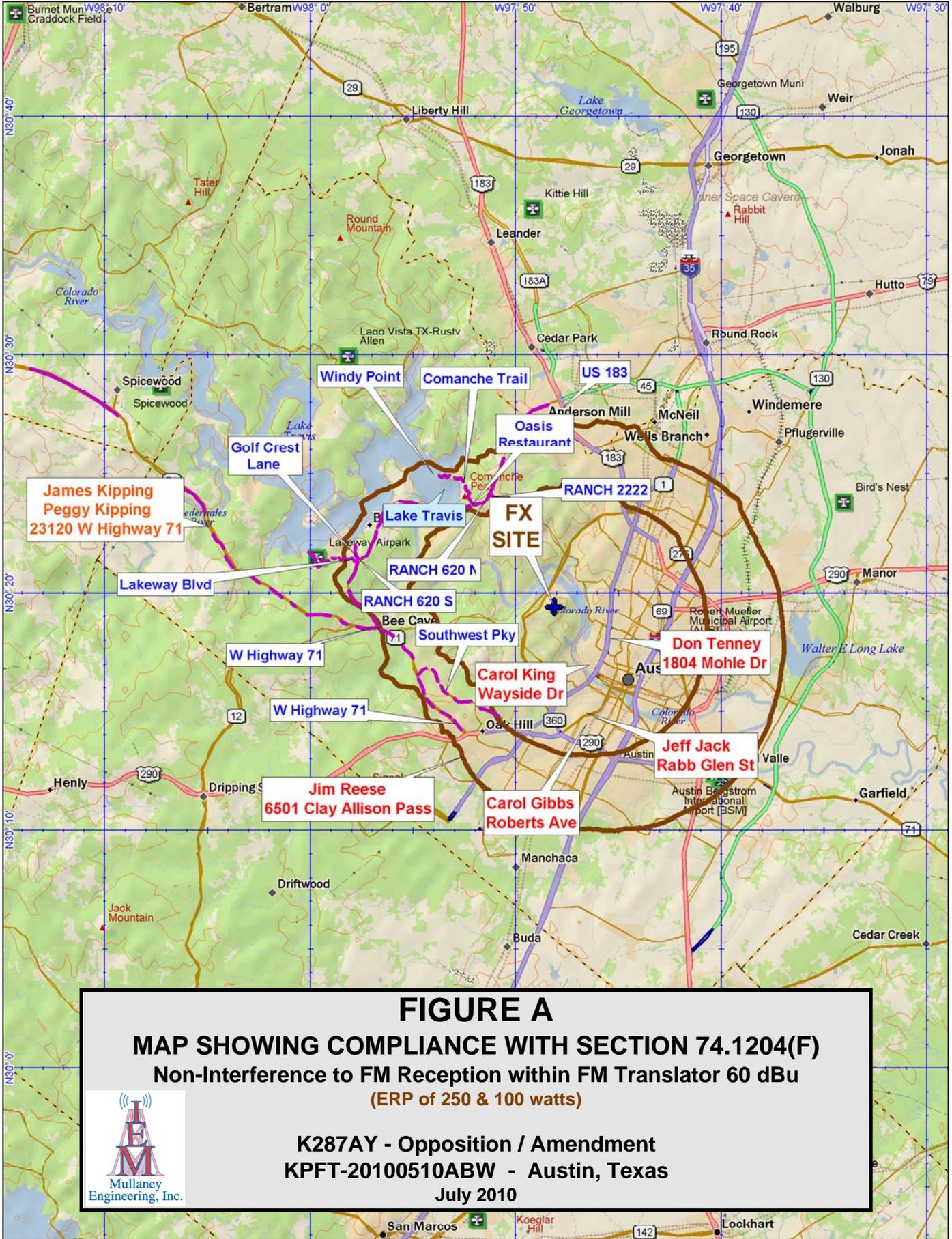


FIGURE A
MAP SHOWING COMPLIANCE WITH SECTION 74.1204(F)
Non-Interference to FM Reception within FM Translator 60 dBu
(ERP of 250 & 100 watts)

K287AY - Opposition / Amendment
KPFT-20100510ABW - Austin, Texas
July 2010

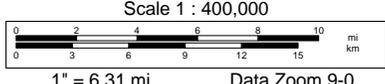


FIGURE B
MAP SHOWING COMPLIANCE WITH SECTION 74.1204(F)
Non-Interference to FM Reception within FM Translator 60 dBu
(ERP of 250 & 100 watts)

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