

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re:)
)
Flinn Broadcasting Corporation) FCC File No. BNPFT-20180502AAQ
) FCC Facility ID No. 202962
)
Application for a New FM Translator on
FM Channel 272 (102.3 MHz)
at Memphis, TN

To: Office of the Secretary
Attn: The Chief, Audio Division (Media Bureau)

REQUEST FOR WAIVER OF SECTION 74.1233

Flinn Broadcasting Corporation (“FBC”), an applicant for a new FM translator on FM Channel 272 (102.3 MHz) at Memphis, TN, hereby submits this Request for Waiver (hereinafter referred to as “Request for Waiver” or “Waiver”). In support thereof, the following is shown:

A. Background

1. FBC is the licensee of WHBQ (AM), Memphis, Tennessee (Facility ID 21727).
2. Consistent with the FCC’s *Revitalization of the AM Radio Service, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry*, 30 FCC Rcd 12145 (2015), a filing window was established whereby licensees such as FBC could file for cross-service FM translators.
3. In response to the filing window, FBC timely filed the above-captioned application for a new FM translator on FM Channel 272 (102.3 MHz) at Memphis,

Tennessee to be used in conjunction with WHBQ (AM), Memphis, Tennessee (FCC File No. BNPFT-20180502AAQ; Facility ID 202962).

4. On May 23, 2018, East Arkansas Broadcasters, Inc. (“EAB”), licensee of KTRQ (FM), Colt, Arkansas, filed a Petition to Deny (“Petition to Deny”) against FBC’s above-captioned application, alleging that several of its current listeners on KTRQ (FM) would experience interference from the proposed operation of FBC’s FM translator on Channel 272.¹

5. As the FCC recently noted in its letter decision 1800B3-HOD (released May 30, 2018) (regarding *Indiana Community Radio Corporation*, W275BD, Greenfield, Indiana; Facility ID No. 143744; File No. BLFT-20151120AGX), allegations of interference against FM translator stations or applications are fraught with subjectivity and can result in years of costly litigation.

6. In light of the uncertainty regarding operation on Channel 272 and the availability of alternate Channel 253, FBC believes that it is the public interest; the interest of the parties; and the interest of the FCC’s processing staff to amend FBC’s current application to specify Channel 253 in lieu of Channel 272. Since the proposed amendment would normally constitute a “major” change, the subject waiver is being filed in support of acceptance of the proposed amendment.

¹ In the FCC’s recent letter decision, 1800B3-HOD (released May 30, 2018) (regarding *Indiana Community Radio Corporation*, W275BD, Greenfield, Indiana; Facility ID No. 143744; File No. BLFT-20151120AGX), the FCC stated that “interference complaints are best treated as informal requests for Commission action submitted pursuant to Section 1.41 of the Rules”. For sake of clarity, EAB’s pleading will be referred herein as a “petition to deny”.

B. Waiver of Section 74.1233

7. In most cases, the FCC does not permit “major” modifications to pending applications. That being said, the FCC has granted waivers in cases where there are allegations from full service FM stations that the FM translator in question will cause interference to the full service station (see, e.g., the FCC’s letter decision 1800B3 (released October 27, 2010) (regarding *Wilks License Company-Columbus LLC*, W272AT, Columbus, Ohio (Facility ID 72310; BPFT-20100318AAF).

8. Grant of the subject waiver of Section 74.1233 to permit FBC’s operation of the subject translator on Channel 253 in lieu of Channel 272 is in the public interest because (a) it will moot the alleged interference issues raised in EAB’s Petition to Deny; (b) will allow for grant of the subject FM translator and the provision of new/enhanced service to the Memphis, TN area; and, most importantly, (c) will not prejudice any other applicants (since the move from Channel 272 to Channel 253 does not result in any mutual-exclusivity with applications filed during the recent window pursuant to which FBC’s above-referenced application was filed).

9. In a Notice of Proposed Rulemaking in MB Docket No. 18-119 (released May 10, 2018) (“*Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*”), the FCC recognized that FM translator applicants and licensees such as FBC experience a number of procedural and practical hurdles. Among the solutions proposed is that “if interference is shown to or from any other station, FM translators should have greater flexibility to move to another available frequency”. Specifically, as Chairman Pai noted in his Statement attached to the Notice of Proposed Rulemaking in

MB Docket No. 18-119 (released May 10, 2018) (*“Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference”*):

Our current process for resolving such interference complaints can be nasty, brutish, and long (to put a twist on Hobbes). That’s why we aim to streamline and expedite it. Among other things, we propose to allow FM translators that are causing interference to or receiving interference from a primary FM station to apply for any other available same-band frequency....

10. Grant of the subject waiver would be consistent with the stated goals of the FCC and, again, since no other applicant would be prejudiced by the subject waiver request, it is a procedural and public interest win-win.

C. CDBS Filing Note

11. It should be noted that the CDBS system did not allow for the filing of the subject amendment electronically unless the original Channel 272 was specified (with the waiver attached explain the proposed move from Channel 272 to Channel 253).

12. FBC affirmatively states that, should the FCC ultimately determine that a waiver is not warranted, it does not wish to have a construction permit issued for Channel 272 (and FBC’s underlying application should be dismissed).

D. Conclusion

FBC recognizes that FM Translators are “secondary” services. That being said, the FCC has long recognized the vital role that FM translators play in the broadcast scheme, particularly as they pertain to the support (and some would say resurrection) of the AM band.

Grant of the subject waiver offers the unique opportunity to resolve a pending interference complaint without any prejudice to another applicant or licensee. As such, it is respectfully requested that FBC’s above-captioned application be granted and a

construction permit issued for operation on Channel 253 with the parameters set forth in the amended technical showing.