

## **SECTION 74.1233(a)(1) WAIVER REQUEST**

James S. Bumpous d/b/a Big Bend Broadcasting (“Big Bend”), licensee of FM Translator Station K288FJ, Bastrop, Texas (Facility ID No. 148213), requests a minor modification of Station K288FJ to relocate the station so that it can provide a fill-in service for Station KTXF-FM, Bee Cave, Texas. In order to accomplish this, a waiver of Section 74.1233(a)(1) of the Commission’s rules is requested. Such a waiver would advance the public interest consistent with the Commission’s recent decision in *Letter to John F. Garziglia, Esq.*, DA 11-1495 (Med. Bur. rel. September 2, 2011) (“*Cromwell*”).

In *Cromwell*, the Commission granted a waiver of Section 74.1233(a)(1) to The Cromwell Group, Inc. of Illinois (“Cromwell”), licensee of Station W263AQ, Mattoon, Illinois, to relocate the station’s transmitter site in order to serve as a fill-in service for AM station WCRA, Effingham, Illinois. Cromwell stressed in its request that waiver of the FCC rules would “avoid unnecessary and onerous translator move expenses” and would “preserve Commission staff resources that would otherwise be used to process multiple applications.”<sup>1</sup> The Commission granted Cromwell’s waiver request, finding it to be in the public interest because (1) the applicant did not have a history of filing serial minor modification applications; (2) the proposed site was mutually exclusive to the translator’s licensed facility; (3) the proposed move did not implicate concerns raised by the Commission in its recent *Third Further Notice*;<sup>2</sup> and (4) the translator would be rebroadcasting and serve as a fill-in facility for an AM station.<sup>3</sup>

The facts in Big Bend’s case are very similar to the facts in the *Cromwell* waiver grant. In fact, there are no material difference in the two cases. Here, as in *Cromwell*, Big Bend does

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<sup>1</sup> *Cromwell* at p.1.

<sup>2</sup> *Creation of a Low Power Radio Service*, Third Further Notice of Proposed Rule Making, FCC 11-105 (rel. July 12, 2011) (“*Third Further Notice*”).

<sup>3</sup> *Cromwell* at p.2.

not have a history of filing serial modification applications and is not attempting to relocate its transmitter via such “hops.”<sup>4</sup> Also, as in *Cromwell*, the proposed Big Bend facilities are mutually exclusive with its licensed facilities. See Attachment A. As noted in the *Cromwell* decision, the Commission’s translator minor modification rule is more restrictive than the general full-power minor change rule, where it is sufficient that the two proposals be mutually exclusive. When coupled with the fact that Big Bend has never previously filed serial minor modification “hops,” it is clear here, as it was in *Cromwell*, that the mutual exclusivity of its proposed and licensed facilities for Station K288FJ support a waiver grant.<sup>5</sup>

Similarly, as in the *Cromwell* case, the proposed translator site move would not foreclose future licensing opportunities in the LPFM service. Thus, this factor also weighs in favor of a waiver grant. In the *Third Further Notice*, the Commission found that placing certain temporary restrictions on the modification of translator stations was necessary to preserve LPFM licensing opportunities in identified spectrum-limited markets. Therefore, the Commission directed the Media Bureau to suspend its processing of and imposed a freeze on the filing of translator modification applications proposing a transmitter site *for the first time* within those markets. However, the Commission specifically exempted from the freeze “any translator modification application which proposes to move its transmitter site from one location to another within the

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<sup>4</sup> *Cromwell* at p. 4. While Big Bend only recently again became licensee of K288FJ, it was the original owner of the translator (BNPFT-20030821AFK) and it constructed and licensed the station (BLFT-20070702DHY), then owned the station until May 4, 2010. It is also the licensee of other translator stations. In no case has Big Bend attempted to relocate its transmitter site via the filing of serial modification applications.

<sup>5</sup> The Commission noted in *Cromwell* that “where the new allotment is mutually exclusive with the existing one, foreclosing competing applications does not, as a practical matter, deprive potential applicants of opportunities for comparative consideration. Under our rules, such potential applicants already are precluded from requesting such a new allotment because of the mutual exclusivity with the existing one.” *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4873 (1989) (subsequent history omitted), *quoted in Cromwell* at p. 4. Therefore, as occurred in *Cromwell*, because there is mutual exclusivity between its proposed and licensed facilities, treating the Big Bend proposal as a minor change application will not abrogate the *Ashbacker* rights of potential competing applicants.

same spectrum-limited market.”<sup>6</sup> In this case, Station K288FJ is already located and is licensed to operate in the Austin, Texas market and has been operating in that market for over four years. Accordingly, the proposed move is not subject to the current freeze on translator moves into spectrum-limited markets and does not implicate concerns about LPFM spectrum availability.

Finally, just as a fill-in service was proposed in *Cromwell*, here Big Bend seeks to provide “fill-in” service to Station KTXF-FM. See Attachment B. The current coverage of KTXF-FM within its protected 60 dBu contour is challenged by terrain obstructions. FM translators were first authorized in 1970 “to provide secondary FM service to areas and populations that were unable to receive satisfactory service due to intervening terrain obstacles.”<sup>7</sup> Approval of the instant application, as in *Cromwell*, will provide service to areas and populations where direct reception is currently unsatisfactory. As such, grant of the proposed waiver request will clearly serve the public interest.

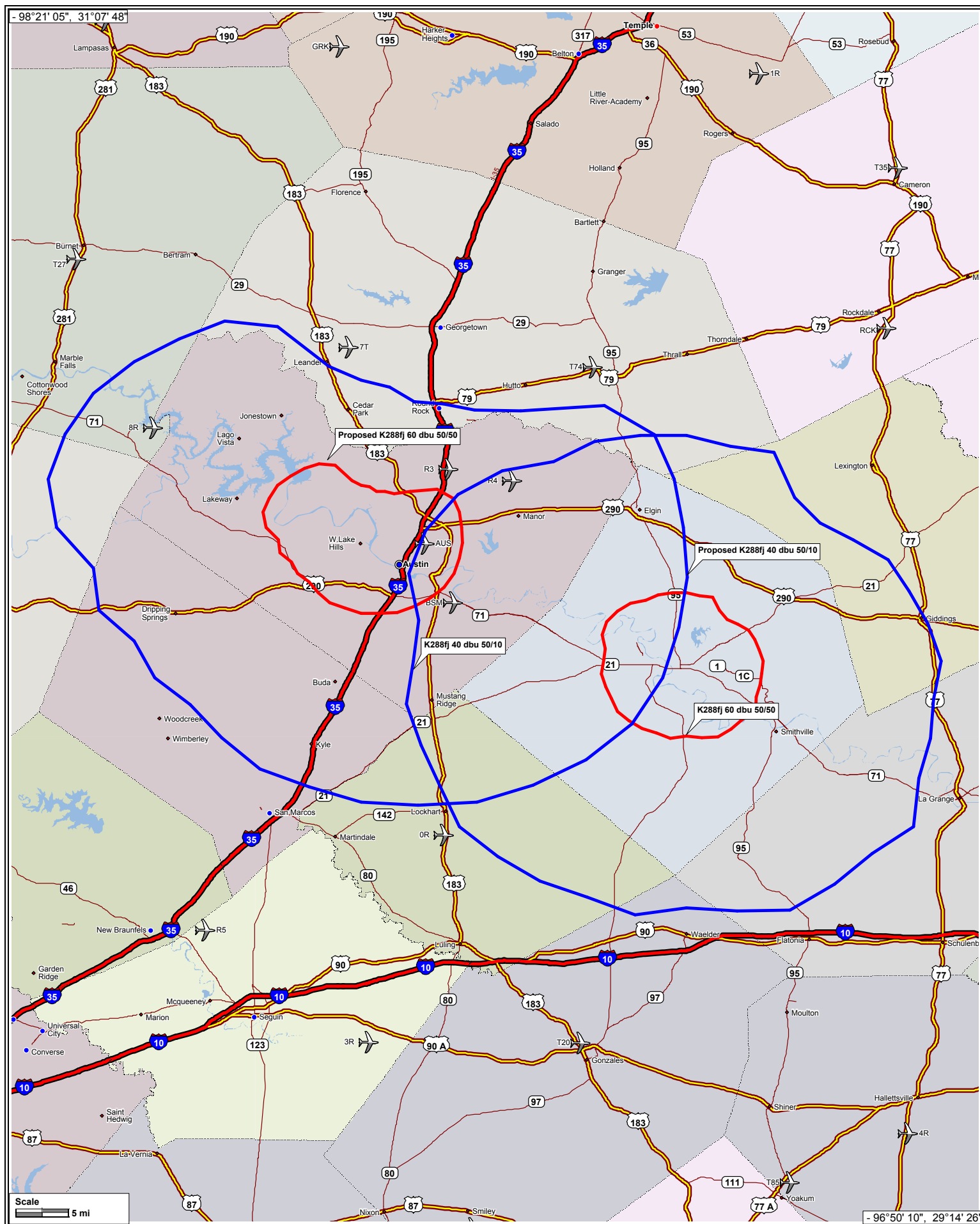
Accordingly, for the reasons discussed herein, the Commission should waive Section 74.1233(a)(1) of its rules in this case and treat Big Bend’s proposed site change application as a minor change.

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<sup>6</sup> *Third Further Notice* at para. 31.

<sup>7</sup> See *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7219 (1990) (subsequent history omitted).

## Attachment A



Attachment B: Fill-in status

