

## EXHIBIT 15

The applicant has several Auction 83 FM translator applications pending which have some 60 dBu contour overlap with the instant application. Those applications are as follows:

BNPFT-20030313ARL, channel 249, New Castle, DE

BNPFT-20030313ASE, channel 260, Newark, DE

BNPFT-20030313ASI, channel 237, Wilmington, DE

Unlike the instant application, these applications are not on the "singleton" list of Appendix A of public notice DA 03-2095; they are all mutually-exclusive with other applications not associated with the applicant. Two of the above applications are mutually-exclusive with applications filed by commercial entities. These applications may be dismissed, as a noncommercial application cannot compete in an auction against the commercial filers.

The proposed facility has a service area within the 60 dBu contour of 89.2 km<sup>2</sup> and a population of 86,411 persons<sup>1</sup>. The proposed facility has the following overlap in terms of area and population to the other applications listed above, with percentages shown being the overlap compared to the combined area/population for both the instant facility and the respective facility (area shown is in km<sup>2</sup>):

<u>File Number</u>	<u>Service Area</u>	<u>Population</u>	<u>Overlap Area</u>	<u>Overlap Population</u>
BNPFT-20030313ARL	109.0	73,026	11.8 (6.0%)	14,569 (9.3%)
BNPFT-20030313ASE	113.6	82,737	48.4 (23.9%)	50,870 (30.1%)
BNPFT-20030313ASI	117.8	137,438	7.61 (3.7%)	12,771 (5.7%)

The term "substantially the same area" is not defined in Section 74.1232(b). It is the applicant's belief that the amount of overlap in area between the instant facility and the New Castle

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<sup>1</sup> all population counts are based on 2000 Census data

(BNPFT-20030313ARL) and Wilmington (BNPFT-20030313ASI) facilities is a very small percentage (6.0% and 3.7% respectively) and cannot reasonably be said to be “substantial.”

Neither the New Castle nor Wilmington translators are located within the 60 dBu service contour of the translator proposed in the instant application. The technical need for these translators is evident when considering that they will provide service to 183,124 persons that are outside of the instant facility's service area. The applicant believes that this showing satisfies the technical need prerequisite of 47 C.F.R. §74.1232(b) such that the instant application should be granted.

The applicant acknowledges that the Newark translator (BNPFT-20030313ASE) is unlike the New Castle and Wilmington translators in that it shares significantly more service area (23.9%) and population (30.1%) with the facility proposed in the instant application. However, it is important to recognize that there is no guarantee that any of these three translators which are mutually-exclusive with other applicants' applications will ever be viable candidates for a construction permit and subsequent license grant. Section 74.1232(b) states that that multiple translators that serve substantially the same area may be licensed to an applicant upon a showing of technical need. However, 74.1232(b) does not address the instant matter whereby only one of several applications is presently eligible to apply for a construction permit, let alone be licensed. Since these other applications cannot be modified at the present time, the applicant has no means of remedy by which to minimize or eliminate the overlapping area and population by means such as relocation to an alternative site, reduction in height or ERP, or a modification in antenna pattern. As such, the instant application should be accepted irrespective of any service area overlap to the other pending applications.

Should the Commission conclude that the Newark translator's overlap area and population indicated in the tabulation above constitutes service that is "substantially the same" as

the instant application, and that such a determination must be made prior to the resolution of the mutual exclusivities which encumber the applicant's other pending applications, then it is requested that the Newark application, rather than this application, be dismissed.

If the Commission should decide that the above showing is insufficient to demonstrate the technical need prerequisite of Section 74.1232(b), a waiver of that section is respectfully requested, on the ground that a grant of this application will not result in substantial overlap with another translator licensed to the applicant, and the overlap issue can be dealt with when and if the Newark application becomes eligible for a grant.

