

Calvary Chapel of the Finger Lakes, Inc.
FM Translator W283AU -- Facility ID 151698
October 2012 Application for Minor Change Construction Permit

Exhibit 10B – Request for Waiver of 47 CFR §74.1233(a)(1)

The instant application proposes a minor change in facilities of FM Translator W283AU, which is presently silent under Special Temporary Authority¹ due to termination of the tower lease at its licensed site.

Calvary Chapel of the Finger Lakes, Inc. (CCFL) respectfully requests a waiver of Section 74.1233(a)(1) of the Commission's Rules to permit a move of W283AU from its licensed site near Houghton, NY to a new site in the Town of Eagle, NY, as shown in Exhibit 10A. Grant of this waiver would provide FM Translator fill-in service for AM "daytimer" WCJW, Warsaw, NY (to a rural area not presently served by other WCJW translators) while conserving Commission staff resources that would otherwise be required to process interim applications if strict procedural standards of Section 74.1233(a)(1) were followed.

In *The Cromwell Group, Inc. of Illinois*, Letter, 26 FCC Rcd 12685 (MB 2011) ("*Mattoon*"), the Commission granted a similar waiver request. In *Mattoon*, the Cromwell Group, Inc. proposed an FM translator move where the existing and proposed protected contours of FM translator W263AQ did not overlap and requested a waiver of 74.1233(a)(1). The Commission determined that the Cromwell waiver was in the public interest because, (1) Cromwell did not have a history of filing serial minor modification applications; (2) the proposed site was mutually exclusive to the licensed facility; (3) the proposed move did not implicate the concerns raised by the Commission in the recent Third Further Notice in the low-power FM ("LPFM") docket; and (4) the move would be an efficient use of spectrum as Cromwell proposed to rebroadcast an AM station. Additionally, the FCC agreed with Cromwell that the waiver would avoid unnecessary translator interim move expenses and preserve FCC staff resources. CCFL submits that the same public interest justifications are present in this case, and warrant a similar waiver of Section 74.1233(a)(1).

CCFL notes that there is no history of "hopping" the transmitter location of W283AU by filing serial minor modification applications. Two previous modification applications for this facility² were filed and subsequently granted for changes in antenna specifications, but the geographical coordinates have remained unchanged since the initial construction permit application was filed in March 2003.³

¹ BLSTA - 20120904ABS, request for authority to remain silent for a period up to 180 days.

² BNPFT - 20030829AMO to reduce antenna elevation, and BPFT - 20090528ABF to change antenna type.

³ The original W283AU application BNPFT - 20030317KEJ specified coordinates 42-27-41 N, 78-18-26 W, the present licensed location.

In accordance with similar *Mattoon* requests recently granted by Audio Division staff, the proposed W283AU facility is mutually exclusive with the present licensed facility, because the proposed 40 dBu F(50,10) interfering contour overlaps the present 60 dBu F(50,50) protected contour, as demonstrated in Exhibit 10A.

In regard to the third *Mattoon* criterion (concerns raised in the *LPFM Third Further Notice and Fourth Report and Order*), CCFL notes that the proposed W283AU site is not within an LPFM spectrum-limited market. The rural Town of Eagle is a minor civil division of Wyoming County, New York, which is not presently a part of any Arbitron metro radio market. Therefore, the proposed one-step move of W283AU is not subject to the processing freeze of translator modifications, nor will it alter the availability of LPFM channels in a listed metro market. Further, a preliminary "LPFM Channel Finder" study indicates two available LP100 channels at the proposed W283AU site,⁴ neither of which would be precluded if the instant application is granted.

Finally, CCFL proposes fill-in service within the licensed 2 mV/m contour of WCJW, Warsaw, NY (Facility ID 37858), a daytime-only AM station. In anticipation of approval of the proposed modification, CCFL plans to transfer ownership of W283AU to Lloyd Lane, Inc., licensee of WCJW. A Form 345 application for Assignment of License will be filed with the Commission within the next several days.

In summary, CCFL believes that a waiver of the Commission's rules to process this proposed modification as a minor change application is in the public interest and grant of the same would be in accordance with FCC precedent.

⁴ Channels 248 and 296 are shown as meeting LPFM spacing requirements.