

153264

2013 MAY -2 A 6:00
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)
)
Edgewater Broadcasting, Inc.) File No. BNPFT-20130320AAA
) Facility ID #153264
Construction Permit for a)
New Commercial Translator)
Tulsa, Oklahoma)

FILED/ACCEPTED

APR 30 2013

TO: The Office of the Secretary
ATTN: Chief, Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

OPPOSITION TO JOINT PETITION TO DENY

Comes now, Edgewater Broadcasting, Inc., ("Edgewater"), by its counsel, hereby respectfully opposes the "Joint Petition to Deny" (hereafter the "Petition") filed in this proceeding by Screen Door Broadcasting, LLC and John Jason Bennett ("Petitioners"). As shall be demonstrated below, the "Petition" filed by Petitioners should be denied.

1. On March 20, 2013, Edgewater filed a long-form construction permit application¹ for a new FM translator for Tulsa, Oklahoma (the "Station"). This Application was subsequently amended by Edgewater on April 4, 2013 and again on April 23, 2013. A "Petition" was filed with the Federal Communications Commission ("FCC" or "Commission") by Petitioners on April 10, 2013.

2. Petitioners allege that that Edgewater's Application must be denied because of (a) prohibited overlap pursuant to 47 CFR 74.1204(a), (b) interference with reception of regularly received off-the-air service and (c) the proposed new Station will cause interference to the translator input signal of the Petitioners.

¹ See FCC File No. BNPFT-2013AAA (the "Application").

Arguments

A. Overlap Compliance

3. The Petitioners state that Edgewater's Exhibit 13 to the Station Application is defective because Edgewater "assumes that the Proposed Translator will possess an effective radiated power ("ERP") of only 150 watts. However the Application requests authority to broadcast with a significantly higher ERP of 250 watts."² Given this discrepancy, Petitioners state that Edgewater did not provide sufficient evidence for the FCC Staff to grant a waiver of *47 CFR Section 74.1204(a)* by using the *Section 74.1204(d)* "lack of population" exception.

4. On April 23, 2013, the Edgewater Application was amended and it now clearly demonstrates compliance with *Section 74.1204*. Attached hereto is Edgewater's *Exhibit 13 Non-Interference Compliance* to the Application; with this submission, Petitioners overlap argument fails.

B. 74.1204 Compliance

5. The Petitioners allege that the Station would cause interference to the reception of regularly received off-the-air service from K289BK, Bristow, Oklahoma as rebroadcast by K235BK in Tulsa, Oklahoma. Citing to *47 CFR Section 74.1204(f)* of the Rules, Petitioners are attempting to preemptively dismiss the Edgewater Application. For years, the Commission has placed the burden on the objecting party to provide "convincing evidence [emphasis added] that the proposed translator station would likely to interfere with the reception of a regularly received off-the-air existing service."³ The Commission has said that convincing evidence may take several forms, with the minimum

² See Petition at page 3.

³ See *Letter of Dennis Williams*, DA-98-1422 (released July 20, 1998) ; See also *Letter of James D. Bradshaw* Re: K287AY, Austin, Texas, (released December 23, 2010).

being (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the location of each purported listener falls within the 60 dBU contour of the proposed translator station; (3) some evidence such as a declaration from each of the claimed listeners, that the person listens to the full-service station at the specific location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.⁴ Petitioners claim that they have a “significant number” of listeners in Station’s proposed coverage area. They provide a declaration of a Jeffrey G. Finnell, who claims that there are six individuals who are in the coverage area whom regularly listen. They failed however to provide *sworn declarations* from the impacted listeners.

6. It should also be noted that the FCC Staff has said that 74.1204(f) applies to a “full-service station”⁵. Here, this matter *does not* involve a full-service station, rather it is “secondary service” translator, therefore 74.1204(f) does not apply to this matter.

7. The Petitioners have not proffered convincing evidence to apply Section 74.1204(f) to the Edgewater Application.

C. Translator-Input Issue

8. The last argument Petitioners have made is that Edgewater’s Station would cause interference to the input signal to K235BK at Tulsa. *Section 74.1203(a)(2)* is not applicable as the Station is not on the air. In the event Edgewater initiates Station operations and those operations causes actual interference to the input signal, then Edgewater would be required to remedy such interference or cease operations in accordance with that Rule Section.

⁴ *Letter of James D. Bradshaw* Re: K287AY, Austin, Texas, (released December 23, 2010).

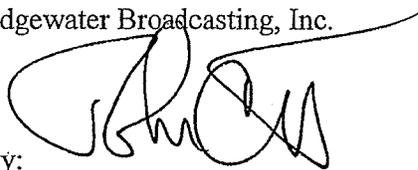
⁵ *Id.*

Conclusion

9. Petitioners have failed to provide clear and convincing evidence that Edgewater's proposed Station will cause actual interference to K235BK. For the reasons set forth above, the Commission must DISMISS the Petition to Deny and APPROVE the Edgewater Application.

Respectfully Submitted,

Edgewater Broadcasting, Inc.



By: _____

John C. Trent, Esquire
It's Attorney

April 30, 2013

Law Office of
Putbrese Hunsaker & Trent, P.C.
200 South Church Street
Woodstock, VA 22664
(540) 459-7646

Certificate of Service

I, Sharon L. Hinderer, Legal Assistant, do hereby certify that a copy of the foregoing "Opposition to Petition to Deny" was sent via First Class Mail this 30th day of April, 2013, postage pre-paid, to the following:

Peter H. Doyle, Chief
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 2A-320
Washington D.C. 20554

Jason Bennett, Managing Member
Screen Door Broadcasting, LLC
7107 South Yale #444
Tulsa OK 74136

John Jason Bennett
P.O. Box 700042
Tulsa OK 74170



Sharon L. Hinderer, Legal Assistant

Exhibit 13 Non-Interference Compliance to BNPFT-20130320AAA

[Exhibit 13]

Non-Interference Compliance

Regarding Facility id 153264

Channel 289

Description of Exhibit 13 Contents

This exhibit demonstrates that the proposed facility complies with contour overlap and interference protection provisions in all of the applicable rule sections and that this application for a construction permit is in full compliance with 47 C.F.R. § 74.1204.

Let it be noted that should any actual real world interference occur, the applicant acknowledges that it will promptly suspend operation of this translator in accordance with 47 C.F.R. § 74.1203.

Page 2 of this exhibit is an explanation of the method used to demonstrate compliance with contour overlap and interference provisions based on 47 C.F.R. § 74.1204(d), which states:

[A]n application otherwise precluded by this section will be accepted if it can be demonstrated that no actual interference will occur due to intervening terrain, lack of population or such other factors as may be applicable.

Page 3 contains a tabulation of the vertical radiation pattern of the proposed antenna and the minimum ground clearance of the interfering contour based on this pattern.

Pages 4 through 5 include a tabulation of the vertical radiation pattern for the proposed antenna provided by the antenna manufacturer.

Page 6 of this exhibit contains the tabulated data from the interference analysis, which shows all stations whose protected contours come within 50 km of the 34 dBμ F(50,10) contour of the proposed translator. These tabulated values were calculated using data from the FCC's CDBS files and 30 arc second terrain data. The column labeled "Adj" shows the number of channels difference between the entry and the proposed translator. The column labeled "Dist" shows the distance in km. The column labeled "Overlap" shows the area of contour overlap in square kilometers.

Page 7 of this exhibit is a portion of a USGS 1:24,000 scale 7.5 minute quadrangle at full scale with the calculated area of interference overlaid. The sheet includes the quadrangle name and measurement scale at the bottom-left corner (note: "Mt" refers to meters). The area of interference was calculated using the free space equation and 120 radials.

Page 8 of this exhibit is an aerial photo of the vicinity surrounding the proposed translator's tower site.

Note: The tallest buildings within the zone of interference are less than 25ft (7.6m) in height. This application provides 30.4m (99.7ft) ground clearance so a lack of population has been demonstrated within the area of interference and this application is therefore in full compliance with 47 C.F.R. § 74.1204.

Compliance with 47 C.F.R. § 74.1204(d)

All authorized second and third adjacent stations with which the proposed translator has contour overlap are tabulated below. Column four show the station's signal level at the proposed translator's tower site, and column five gives the minimum value within the entire standard interfering contour of the proposed translator (100 dBμ for most classes, 94 for class B, 97 for class B1). The minimum second or third adjacent F(50,50) contour within the proposed translator's standard interfering contour was used to calculate the proposed translator's actual "worst-case" interfering contour.

<u>Application_id</u>	<u>File Number</u>	<u>Callsign</u>	<u>Contour at Tower</u>	<u>Min. Contour</u>
-----------------------	--------------------	-----------------	-------------------------	---------------------

Minimum F(50,50) Contour of Adjacent Station within Proposed Translator's Standard Interfering Contour			71.9	
---	--	--	------	--

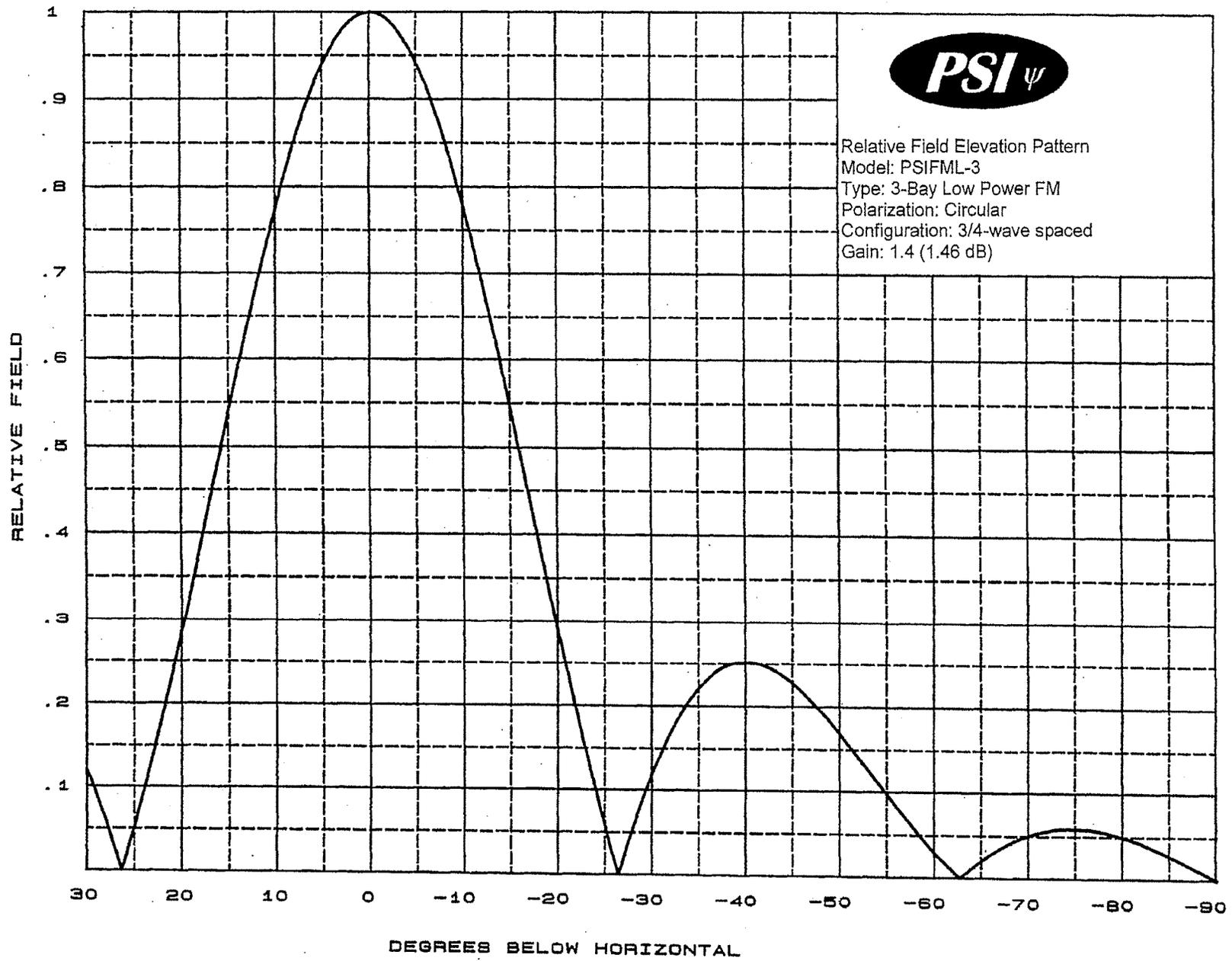
FCC 02-244 at Section II.A.5 states that "when demonstrating that 'no actual interference will occur due to . . . other factors,' pursuant to Section 74.1204(d), an applicant may use the undesired-to-desired signal ratio method." The undesired-to-desired ratio for second and third adjacent stations required by § 74.1204(a) is 40 dB. Since the minimum protected contour strength within the proposed translator's standard interference contour is **71.9 dBμ**, this makes the proposed translator's worst-case interfering contour **111.9 dBμ**. By the free-space equation, this contour is calculated to extend a maximum of **281.8 m** from the transmit antenna.

The maximum horizontal plane of the interfering contour was calculated for 120 radials and plotted on the pertinent portion of a USGS quadrangle (page 7 of this exhibit). However, the field strength of the proposed translator's antenna varies with angle of depression from horizontal. The antenna relative fields are tabulated on the following page at 5 degree increments, starting at 5 degrees below horizontal. Antenna relative field strength data was provided and certified by the manufacturer of the proposed antenna. Using a free-space calculation that neglects any loss due to reflection, the vertical ground clearance of the proposed translator's interference contour has been tabulated. As shown on the following page, the area of interference clears the tower ground level (TGL) by **30.4 m** at the lowest point. The applicant has taken into account USGS quadrangles and relevant aerial photography in stating that no structures, except possibly tower support structures, puncture the area of interference.

Note: The tallest buildings within the zone of interference are less than 25ft (7.6m) in height. This application provides 30.4m (99.7ft) ground clearance so a lack of population has been demonstrated within the area of interference and this application is therefore in full compliance with 47 C.F.R. § 74.1204.

Antenna Manufacturer:	PSI
Antenna Model:	FML-3(.75)
CORAGL:	76 m
Maximum ERP:	0.25 kW
Interfering Contour:	111.9 dBμ
Max Int. Contour Distance:	281.8 m
Min Ground Clearance:	30.4 m

Depression Angle Below Horizontal	Antenna Relative Field	ERP (watts)	Distance to Interfering Contour from Antenna (m)	Horizontal Distance of Interfering Contour from Tower (m)	Vertical Clearance of Interfering Contour above TGL (m)
5	.941	221.4	265.2	264.2	52.9
10	.777	150.9	219.0	215.6	38.0
15	.543	73.7	153.0	147.8	36.4
20	.287	20.6	80.9	76.0	48.3
25	.055	0.8	15.5	14.0	69.4
30	.120	3.6	33.8	29.3	59.1
35	.222	12.3	62.6	51.2	40.1
40	.252	15.9	71.0	54.4	30.4
45	.227	12.9	64.0	45.2	30.8
50	.168	7.1	47.3	30.4	39.7
55	.096	2.3	27.1	15.5	53.8
60	.030	0.2	8.5	4.2	68.7
65	.021	0.1	5.9	2.5	70.6
70	.050	0.6	14.1	4.8	62.8
75	.059	0.9	16.6	4.3	59.9
80	.050	0.6	14.1	2.4	62.1
85	.028	0.2	7.9	0.7	68.1
90	.001	0.0	0.3	0.0	75.7
Minimum Clearance above TGL:					30.4 m





Propagation Systems Inc.
 Elevation Pattern Tabulation
 Antenna: PSIFML-3 Special
 Bay spacing: 3/4 wave

Angle	Field	dB	Angle	Field	dB	Angle	Field	dB
-90.0	0.001	-60.000	-50.0	0.168	-15.500	-10.0	0.777	-2.194
-89.0	0.006	-44.795	-49.0	0.181	-14.829	-9.0	0.817	-1.761
-88.0	0.012	-38.775	-48.0	0.194	-14.240	-8.0	0.853	-1.379
-87.0	0.017	-35.329	-47.0	0.206	-13.714	-7.0	0.886	-1.049
-86.0	0.023	-32.869	-46.0	0.217	-13.266	-6.0	0.916	-0.766
-85.0	0.028	-31.047	-45.0	0.227	-12.881	-5.0	0.941	-0.529
-84.0	0.033	-29.622	-44.0	0.235	-12.562	-4.0	0.962	-0.338
-83.0	0.038	-28.467	-43.0	0.242	-12.308	-3.0	0.978	-0.190
-82.0	0.042	-27.510	-42.0	0.248	-12.126	-2.0	0.990	-0.085
-81.0	0.046	-26.705	-41.0	0.251	-12.010	-1.0	0.998	-0.021
-80.0	0.050	-26.073	-40.0	0.252	-11.968	0.0	1.000	0.000
-79.0	0.053	-25.559	-39.0	0.251	-12.004	1.0	0.998	-0.021
-78.0	0.055	-25.169	-38.0	0.248	-12.126	2.0	0.990	-0.085
-77.0	0.057	-24.887	-37.0	0.242	-12.336	3.0	0.978	-0.190
-76.0	0.058	-24.682	-36.0	0.233	-12.657	4.0	0.962	-0.338
-75.0	0.059	-24.614	-35.0	0.222	-13.092	5.0	0.941	-0.529
-74.0	0.059	-24.637	-34.0	0.207	-13.676	6.0	0.916	-0.766
-73.0	0.058	-24.772	-33.0	0.190	-14.432	7.0	0.886	-1.049
-72.0	0.056	-25.027	-32.0	0.170	-15.414	8.0	0.853	-1.379
-71.0	0.054	-25.411	-31.0	0.146	-16.700	9.0	0.817	-1.759
-70.0	0.050	-25.968	-30.0	0.120	-18.427	10.0	0.777	-2.194
-69.0	0.046	-26.733	-29.0	0.090	-20.871	11.0	0.734	-2.683
-68.0	0.041	-27.731	-28.0	0.058	-24.704	12.0	0.689	-3.233
-67.0	0.035	-29.081	-27.0	0.023	-32.754	13.0	0.642	-3.848
-66.0	0.028	-30.954	-26.0	0.015	-36.745	14.0	0.593	-4.534
-65.0	0.021	-33.656	-25.0	0.055	-25.217	15.0	0.543	-5.301
-64.0	0.012	-38.221	-24.0	0.098	-20.213	16.0	0.492	-6.156
-63.0	0.003	-50.816	-23.0	0.142	-16.928	17.0	0.441	-7.116
-62.0	0.007	-42.949	-22.0	0.189	-14.460	18.0	0.389	-8.196
-61.0	0.018	-34.880	-21.0	0.238	-12.484	19.0	0.338	-9.425
-60.0	0.030	-30.546	-20.0	0.287	-10.839	20.0	0.287	-10.834
-59.0	0.042	-27.541	-19.0	0.338	-9.425	21.0	0.238	-12.484
-58.0	0.055	-25.217	-18.0	0.389	-8.199	22.0	0.189	-14.460
-57.0	0.068	-23.307	-17.0	0.441	-7.116	23.0	0.143	-16.919
-56.0	0.082	-21.711	-16.0	0.492	-6.159	24.0	0.098	-20.200
-55.0	0.096	-20.335	-15.0	0.543	-5.301	25.0	0.055	-25.193
-54.0	0.111	-19.124	-14.0	0.593	-4.536	26.0	0.015	-36.745
-53.0	0.125	-18.051	-13.0	0.642	-3.850	27.0	0.023	-32.754
-52.0	0.140	-17.106	-12.0	0.689	-3.234	28.0	0.058	-24.704
-51.0	0.154	-16.253	-11.0	0.734	-2.683	29.0	0.090	-20.871
						30.0	0.120	-18.438

file: FML 3-bay elevation tabulation
 revision: A
 Date: 1/28/08

**Adjacent Channel Study
For Station NEW, Facility_id: 153264**

Co-channel through third adjacent:

App_id	Fac_id	File Number	Call	Licenses	Class	City	State	Status	ERP	RCAMSL	Chan	Adj	Dist	Overlap
227873	35015	BLH-19960806KD	KJMM	KJMM, INC.	C2	BIXBY	OK	LIC	10	465	287	2	26.4	1.4918
1400009	68294	BMLH-20100927ABU	KTGX	CLEAR CHANNEL BROADCASTING LICENSES, INC	C	OWASSO	OK	LIC	100	606	291	2	52.3	1.4918
1516458	157419	BLFT-20120921ACU	K289BK	JOHN JASON BENNETT	D	BRISTOW	OK	LIC	0.25	336	289	0	63.6	0
1049861	153233	BLFT-20050308AAJ	K289AU	THE LOVE STATION, INC.	D	BARTLESVILLE	OK	LIC	0.25	268	289	0	71.7	0
1336772	22267	BLH-20090922ABX	KGFY	STILLWATER BROADCASTING, LLC	A	STILLWATER	OK	LIC	4.2	415.7	288	1	103.9	0
1342435	51938	BLFT-20091112AFN	K290BP	THE LOVE STATION, INC.	D	STILLWATER	OK	LIC	0.25	369	290	1	107.6	0
1175341	140491	BLFT-20070305ACE	K292FJ	EDUCATIONAL MEDIA FOUNDATION	D	STILLWATER	OK	LIC	0.25	341	292	3	108.4	0
650614	157269	BNPFT-20030317LEB	NEW	K95.5, INC.	D	SALLISAW	OK	APP	0.25	294	290	1	117.2	0
226112	50351	BLH-19960523KA	KIRC	ONE TEN BROADCAST GROUP, INC.	A	SEMINOLE	OK	LIC	4.4	411	290	1	118.5	0
285224	67592	BLH-19990517KA	KTMC-FM	SOUTHEASTERN OKLAHOMA RADIO, LLC	A	MCALESTER	OK	LIC	1.6	357	286	3	123.1	0
1433903	189538	BNPH-20110630AAL	KXXM	G2 MEDIA GROUP LLC	A	MULDROW	OK	CP	6	322	286	3	131.1	0
1478446	64630	BLH-20111208CCC	KMCK-FM	CUMULUS LICENSING LLC	C1	PRAIRIE GROVE	AR	LIC	100	519	289	0	140.7	0

Intermediate Frequencies (53 and 54 channels difference):

App_id	Fac_id	File Number	Call	Licenses	Class	City	State	Status	ERP	RCAMSL	Channel	Adj	Dist	Cir
1516481	142082	BLFT-20120921ACV	K235BK	SCREEN DOOR BROADCASTING, LLC	D	TULSA	OK	LIC	0.115	320	235	54	12.4	2.4

