

# Educational Media Foundation

5700 West Oaks Blvd ♦ Rocklin ♦ California ♦ 95765

## WAIVER OF SECTION 74.1233(a)(1)

Educational Media Foundation (EMF) respectfully requests a waiver of Section 74.1233(a)(1) of the Commission's rules which provides that any change in a translator's antenna location where the proposed 60 dBu protected contour would not continue to cover some portion of its previously authorized 60 dBu protected contour will be processed as a major change. Pursuant to Section 74.1233(b)(3) applications for major changes to existing facilities can only be filed during an appropriate window. The instant application seeks to relocate the transmitter site for W225AM as a minor modification and in a single step, notwithstanding the lack of overlap between the existing and proposed protected contours. For the reasons set forth below, EMF 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.

In *John F. Garziglia, Esq.*, 26 FCC Rcd 12685 (2011) ("*Garziglia*"), the Commission granted a similar waiver request. In *Garziglia*, 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*<sup>1</sup> 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.<sup>2</sup> Additionally, the FCC agreed with Cromwell that the waiver would avoid unnecessary translator interim move expenses and preserve FCC staff resources.<sup>3</sup> EMF submits that the same public interest justifications are present in this case, and warrant a similar waiver of Section 74.1233(a)(1).

### 1. No History of Filing Serial Modifications

In *Garziglia*, the FCC determined that filing a series of minor modification applications to effectively achieve a major modification of a translator's facilities was an abuse of process and contrary to the public interest.<sup>4</sup> Based on the record before the Commission, it concluded that Cromwell did not have a history of such serial modification applications and had not attempted to relocate the translator using such serial modifications.<sup>5</sup> Likewise, EMF does not have a history of filing serial minor modification applications in an effort to evade the FCC's overlap rules and has not previously attempted to move this translator's antenna location to the proposed site via serial minor modification applications.

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<sup>1</sup> *Creation of a Low Power Radio Service*, Third Further Notice of Proposed Rulemaking, FCC 11-105 (re. Jul. 12, 2011) ("*Third Further Notice*").

<sup>2</sup> See *Garziglia*, 26 FCC Rcd at 12686.

<sup>3</sup> See *Garziglia*, 26 FCC Rcd at 12685.

<sup>4</sup> See *Garziglia*, 26 FCC Rcd at 12687.

<sup>5</sup> See *Garziglia*, 26 FCC Rcd at 12688.

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## 2. Proposed Site is Mutually Exclusive to Licensed Site

The Commission also justified its grant of the Cromwell waiver because the existing and proposed translator facilities remained mutually exclusive even if the protected contours did not overlap.<sup>6</sup> Cromwell's proposed interfering contour continued to serve some portion of the area within its existing interfering contour.<sup>7</sup> The same is true for W225AM's proposed site. Exhibit A-1 illustrates the overlap between the W225AM licensed and proposed 40dBu contours.

## 3. No Impact on LPFM

In *Garziglia*, the Commission was also persuaded to grant Cromwell's waiver request because the translator's proposed move did not foreclose the possibility of future LPFM licensing opportunities or run afoul of the temporary restrictions set forth in the *Third Further Notice*.<sup>8</sup> In the *Third Further Notice*, the Media Bureau was directed to suspend processing of translator modification applications that proposed a transmitter site move for the first time within spectrum limited markets.<sup>9</sup> However, such freeze does not apply to moves within the same market.<sup>10</sup> The licensed W225AM transmitter site is currently located within the Toledo, OH Arbitron market, which is not identified as a spectrum-limited market in the *Third Further Notice* and the proposed move is within the Toledo, OH Arbitron market and is therefore not subject to the freeze. Accordingly the instant proposal should not foreclose future LPFM licensing opportunities within the Toledo, OH Arbitron market. Moreover, from the proposed site, and based on the LPFM spacing rules set out in Section 73.807, with the rules as to third-adjacent channel spacings being eliminated, the instant proposal should not foreclose future LPFM licensing opportunities within the Toledo, OH Arbitron market.

## 4. Efficient Use of Spectrum

The Commission found that Cromwell's proposal to rebroadcast an AM station was an efficient use of spectrum and hence also in the public interest.<sup>11</sup> EMF submits that the instant proposal is also an efficient use of spectrum because the relocation of the transmitter site within the same market will result in a population gain of 36,794 or 496%. See Exhibit A-2.

As illustrated above, this waiver is in the public interest and grant of this waiver would be consistent with the Commission's decision in *Garziglia*. Accordingly, EMF respectfully requests that the Commission grant this waiver and the instant application.

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<sup>6</sup> See *Garziglia*, 26 FCC Rcd at 12688.

<sup>7</sup> *Id.*

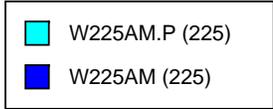
<sup>8</sup> *Id.*

<sup>9</sup> See *Third Further Notice* at ¶31.

<sup>10</sup> *Id.*

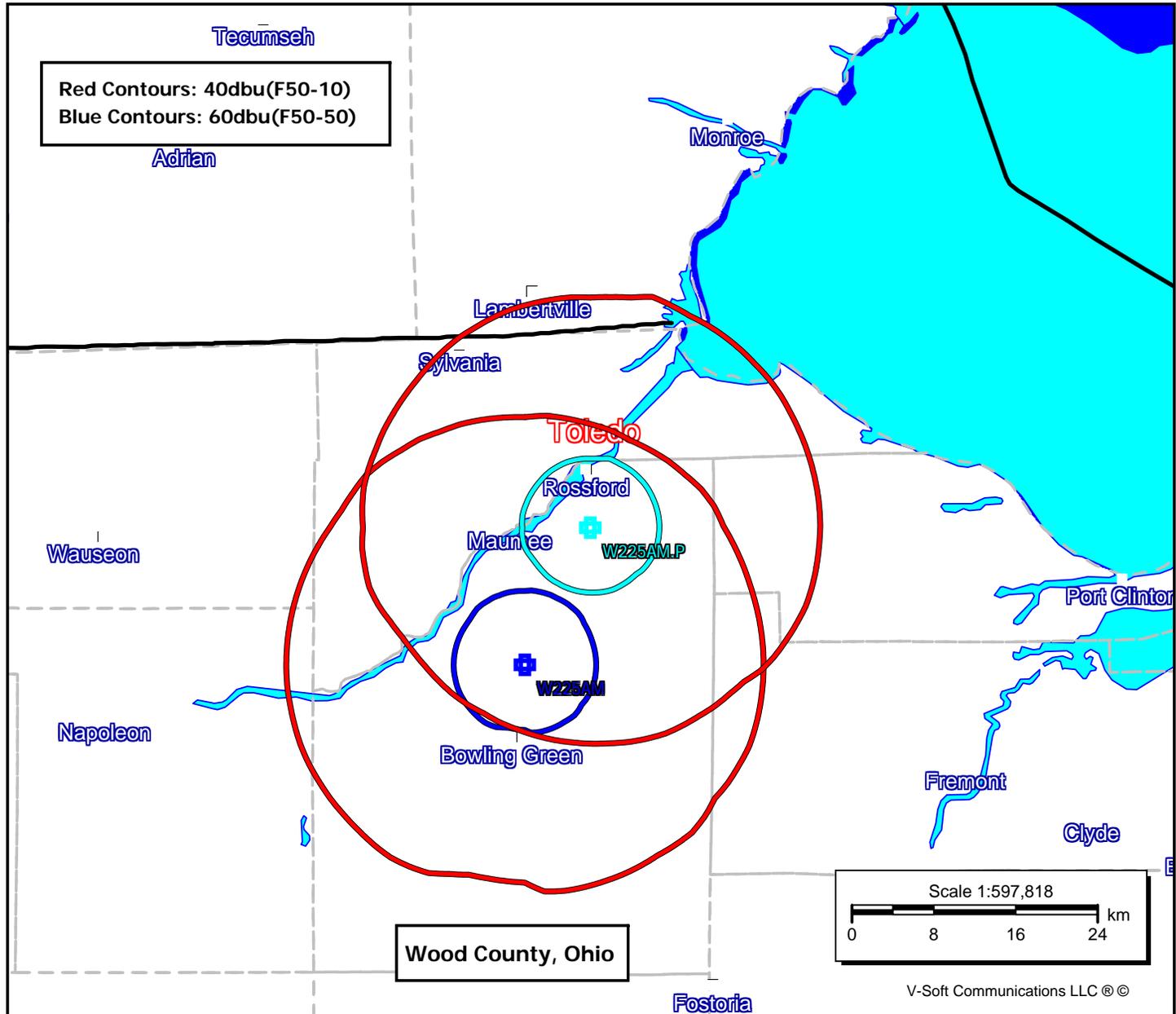
<sup>11</sup> See *Garziglia*, 26 FCC Rcd at 12689.

**Exhibit A-1  
Mutually Exclusive Contours**



**W225AM.P**  
BLFT20070522ADL  
Latitude: 41-33-30 N  
Longitude: 083-33-33.60 W  
ERP: 0.027 kW  
Channel: 225  
Frequency: 92.9 MHz  
AMSL Height: 265.4 m  
Horiz. Pattern: Omni  
Vert. Pattern: No  
Prop Model: None

**W225AM**  
BLFT20070522ADL  
Latitude: 41-26-16 N  
Longitude: 083-38-09 W  
ERP: 0.055 kW  
Channel: 225  
Frequency: 92.9 MHz  
AMSL Height: 257.0 m  
Horiz. Pattern: Omni  
Vert. Pattern: No  
Prop Model: None



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*Exhibit A-2*  
*Middleton Township, OH*

Population Report for All Contours

Population Database: 2010 US Census (PL)

	Population	Housing Units	Area(sq.km)
W225AM.P (225) [ Middleton Township, OH ]			
FCC F(50-50) 60.00dBu	46,074	21,230	137.4
W225AM (225) [ Middleton Township, OH ]			
FCC F(50-50) 60.00dBu	9,280	3,884	151.6

\*Note - The city limits and population were calculated using the 2000 Census data as rendered by V-Soft Communications program Probe 3.

# Arbitron Toledo Area Map

