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JUN 10 2013

Educational Media Foundation
5700 West Oaks Blvd.
Rocklin, CA 95765

In re: W267AT, Oneonta, NY
BPFT-20130416AAG
Facility ID No. 140739

Dear Applicant:

This letter refers to the above-captioned translator application for W267AT, Oneonta, New York.

Our study reveals that the application is in violation of Section 74.1233(a)(1) of the Commission's Rules. Specifically, the proposed 60 dBu service area fails to provide service to some portion of its 60 dBu licensed service area, (BLFT-20070805AAA).

The applicant recognizes this violation and requests waiver of Section 74.1233(a)(1) of the Commission's Rules by using a waiver granted to The Cromwell Group, Inc. of Illinois.¹ The waiver was granted based on several criteria. The first criteria is that the facility does not have a history of filing serial minor modification applications. The second criteria is that the proposed facility's contour is mutually exclusive with the licensed facility's contour. The third criteria is that the proposed translator does not implicate the concerns raised by the Commission concerning available frequencies in some markets and the fourth criteria is that the proposal will be a fill-in to an AM or FM station.

The application proposes to rebroadcast WKVU(FM), Utica, New York. WKVU(FM)'s 60 dBu contour does not fully encompass ("fill-in") the proposed 60 dBu contour. Since the proposed application is not a fill-in to the primary station, the Mattoon waiver is denied.

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 139, 192 (D.C. Cir. 1987), quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968 (per curiam)). We have afforded The Original Company, Incorporated's waiver request the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances presented are not sufficient to warrant waiver of 47 CFR Section 74.1233(a)(1).

¹ *The Cromwell Group, Inc. of Illinois*, Letter, 26 FCC Rcd 12685 (MB 2011) ("Mattoon").

Accordingly, the request for waiver of 74.1233(a)(1), IS HEREBY DENIED, and the Application BPFT-20130416AAG IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Bradshaw". The signature is stylized with a large initial "J" and a long horizontal stroke.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau