BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re	)	
	)	
Edgewater Broadcasting, Inc.	)	
Licensee of FM Translator	)	File No. BPFT-20171229ABE
W256CL	)	
Park Forest, IL	)	

To: Chief, Media Bureau

PETITION FOR RECONSIDERATION

SOUND OF HOPE RADIO, NFP

By its attorneys,

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July 1, 2019

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EXECUTIVE SUMMARY

Sound of Hope Radio NFP ("SOH"), licensee of low power FM radio station WQEG-LP, Chicago, Illinois, by its attorneys, submits this Petition for Reconsideration of the Bureau's June 5, 2018 letter decision ("Letter Decision") denying SOH's Informal Objection and granting the modification application of Edgewater Broadcasting, Inc. ("EBI"), seeking to relocate the transmitter site of FM translator station W256CL, Park Forest, Illinois ("Station").

The Bureau has concluded that EBI engaged in a series of translator site hops that demonstrate a straight-line march from rural Illinois to downtown Chicago, which the Bureau concludes is evidence of an abuse of process. The Bureau has concluded that there was no clearly legitimate reason for any of the translator hops other than to march into downtown Chicago, which the Bureau concludes is evidence of an abuse of process. Amazingly however, the Bureau places form over substance by ruling that the period of time that these hops took, February 9, 2015 to December 29, 2017, and the limited operations that the Station undertook at two of these sites, somehow excuses their clear abuse of process. The Bureau's decision subverts, undermines and violates Section 74.1233(a) and gives EBI and other licensees a blueprint for circumventing that rule in the future.

Similarly, the Bureau's analysis of the *Ashbacker* doctrine fails to recognize that Section 74.1233(a) sets forth the Commission's determination of how the *Ashbacker* rights of other potential applicants are to be protected from a major modification. Section 74.1233(a) requires that an applicant for a major modification must comply with the public notice requirements of Section 73.3580 and the filing window requirement of Section 74.1233(d)(e)(i). The Bureau cannot allow EBI and future applicants to circumvent the major change public notice

requirement and filing window requirement by a stealth process of using a series of minor change hops. Section 74.1233(a) and *Ashbacker* require that the major change public notice requirements of Section 783 3580 and the filing window requirement of Section 74.1233(d)(2)(i) be followed.

The Bureau began its analysis by defining an abuse of process. In very key ways it determined that EBI has committed an abuse of process. The Bureau's decision improperly excuses an abuse of process. The Bureau has failed to explain how the public interest is served by excusing an abuse of process and undermining the purpose of Section 74.1233(a). The Bureau has failed to provide reasons and a basis for its decision, as required by Section 557 of the Administrative Procedure Act, 5 U.S.C. § 557, and the decision is therefore arbitrary, capricious and an abuse of discretion and is therefore subject to judicial reversal pursuant to Section 706 of the Administrative Procedure Act 5 U.S.C. § 706. The Letter Decision should be reconsidered and reversed. The EBI Modification Application should be dismissed or denied.

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PETITION FOR RECONSIDERATION

Sound of Hope Radio NFP ("SOH"), licensee of low power FM radio station WQEG-LP, Chicago, Illinois, by its attorneys, submits this Petition for Reconsideration of the Bureau's June 5, 2018 letter decision ("Letter Decision") denying SOH's Informal Objection[1] and granting the modification application of Edgewater Broadcasting, Inc. ("EBI"), seeking to relocate the transmitter site of FM translator station W256CL, Park Forest, Illinois ("Station").

I. INTRODUCTION

As SOH shall demonstrate below, the Letter Decision can best be described as a "Blueprint for how to evade the letter and spirit of Section 74.1233(a) of the Commission's Rules, 47 CFR § 74.1233(a)." The Letter Decision discusses the relevant evidence and case law but fails to place proper weight on the purpose of Section 74.1233(a). The Letter Decision concludes that EBI's conduct provides clear evidence of an abuse of process in two fundamental ways. But it fails to hold EBI accountable for that abuse of process. In particular, the Letter Decision fails to address the fundamental question: how is the public interest served by allowing

[1] Sound of Hope Informal Objection, filed January 19, 2018.

EBI to use a series of four transmitter site hops to move a translator 40 miles from Beecher, Illinois (population 4,359)[2] to the center of Chicago (population 2,705,994)[3]? By failing to place proper weight on the purpose of Section 74.1233(a), the Letter Decision fails to recognize that EBI has engaged in an abuse of the Commission's processes that must not be condoned. Moreover, the Bureau decision violates the requirements in Section 74.1233(a), which requires public notice pursuant to Section 73.3580 of major modification applications and Section 74.1233(d)(2(i), which limits the filing of major modification applications to Commission designated filing windows. Failure to comply with these notice requirements deprived other potential applicants of the *Ashbacker* rights those rules established. This leaves the Letter Decision in violation of the Administrative Procedure Act. For this reason, the Letter Decision should be reconsidered and reversed, and the Modification Application should be dismissed or denied.

II. BACKGROUND

In its Informal Objection, SOH provided Exhibit A, prepared by the engineering firm of Smith and Fisher. Exhibit A shows the six applications that Edgewater filed to bring its translator to the heart of Chicago. Exhibit A shows the moves have been a virtual straight line toward the heart of Chicago. Exhibit A also shows that four of the six construction permits did not place a 60 dBu contour over the entirety of the Park Forest, Illinois, the community of

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[2] Beecher, Illinois population data, 4,460, U.S. Census Bureau, retrieved June 26, 2019. The EBI translator is licensed to Park forest, but the Bureau noted that the original transmission site as near Beecher. Letter Decision at 1. The significance of the move to Chicago is just as significant if the population of Park Forest, 21,429, is compared with the population of Chicago.

license. This is further evidence that the moves have not been made to improve service to its community of license. Also attached is Exhibit B, a print out of the Commission's CDBS system, which shows that this pattern of successive modification applications filed by EBI, moving closer to the center of Chicago, has taken place over a very short period of time, further evidence that these modifications have been part of a concerted series of "hops." Such a series of "hops" in such a short period of time cannot reasonably be considered necessary – a fact the Bureau concedes.

III. THE LETTER DECISION FAILS TO GIVE PROPER WEIGHT TO THE EVIDENCE AND THE LAW

In the Letter Decision, the Bureau examined the evidence and law, but failed to give proper weight to either. The Bureau began by noting that the first construction permit application filed by EBI to move toward Chicago was filed on February 9, 2015.[4] The Bureau then proceeds to describe the three construction permit applications that were filed, granted and licensed between February 9, 2015 and September 11, 2017.[5] The Bureau notes that the Modification Application at issue in this proceeding was filed December 29, 2017, just three months[6] after the third construction permit was granted.

After describing this string of hops, the Bureau began its analysis of the applicable law. The Bureau stated:

Abuse of process analysis. In *Mattoon* and *Broadcast Towers*, we articulated the

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[3] Chicago, Illinois population data, 2,705,994, U.S. Census Bureau, retrieved June 26, 2019.
[4] Letter Decision at 1.
[5] *Id.* at 1-2.
[6] The Letter Decision incorrectly describes this as four months later.

> policy that a licensee who effectuates a major change in antenna location by means of a succession of serial minor changes may be abusing the Commission's processes. 'Abuse of process' has been defined as 'the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule.' An abuse of process ordinarily involves an intent to gain some benefit by manipulating the Commission's procedures. (footnotes omitted)[7]

The Bureau then presents what it explains to be an important point to be considered in its decision:

> Because the Commission has considered allegedly abusive serial translator modifications in both the waiver and enforcement contexts, it is important to note that these two types of proceedings are governed by different standards and procedures. In an enforcement proceeding, as here, the Commission determines whether the conduct at issue violates a Commission rule or policy, and, if so, what sanctions or other actions would be appropriate. In a waiver proceeding—although the Commission must carefully consider all waiver requests—the requesting party is by no means entitled to a waiver grant and faces a 'high hurdle even at the starting gate.' The burden is on the waiver requestor to show that (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[8]

The Bureau then states:

> Therefore, the same set of circumstances (or public interest considerations) that might lead the Commission to deny a waiver request may not equally warrant an enforcement action. This distinction is crucial, because while the decisions cited by Sound of Hope are waiver cases, including *Mattoon* itself, in this case Edgewater is not requesting a waiver. Rather, Sound of Hope urges us to take enforcement action based on abuse of process, as discussed above. (footnotes omitted)[9]

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[7] Letter Decision at 3-4, citing *John F. Garziglia*, Letter Decision. 26 FCC Rcd 12685, 12687 (MB 2011) ("*Mattoon*"), and *Broadcast Towers, Inc.*, Order, 26 FCC Rcd 7681, 7684, paras. 3-5 (MB 2011) ("*Broadcast Towers*").

[8] Letter Decision at 4.

[9] *Id.*

In that statement, the Bureau explains that the standard for imposing an enforcement action is higher than the standard for denying a waiver. The Bureau then discusses the two previous cases where it reviewed serial translator moves as an enforcement matter, discussing first *Broadcast Towers*:

> In its only previous enforcement action based on serial modifications, *Broadcast Towers*, the Bureau entered into a consent decree resolving various violations including the 'abuse of Commission processes committed by BTI as it migrated the Translators north to Miami.' After reiterating this policy in *Mattoon* (in the context of a waiver request), the Bureau has considered only one other non-waiver serial modification case.[10]

The Bureau then discussed *Branchport*:

> In *Branchport*, the Bureau determined that it would not pursue an enforcement action where the serial modifications at issue ultimately returned the station's antenna to its approximate starting location, explaining that in such circumstances enforcement was not necessary '(1) to protect the *Ashbacker* rights of potential applicants to comparative consideration for the 'same' license (i.e. that are mutually exclusive with the final destination of the 'hopping' station), and (2) to prevent, in the public interest, FM translator stations from abusing Commission processes in order to 'abandon[] their present service areas' in favor of more populous locations.' Based on the reasoning of *Mattoon* and *Branchport*, we first analyze the potential abuse of process issue and then consider the *Ashbacker* implications of the Edgewater serial modifications. (footnotes omitted)[11]

Thus, the Bureau emphasized that its review was "to prevent, in the public interest, FM translator stations from abusing Commission processes in order to abandon their present service areas in favor of more populous locations." The Bureau then proceeded to analyze the EBI series of hops based upon four criteria:

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[10] *Id.*

1. Temporary construction
2. Duration of operation
3. Alternative purposes
4. Pattern of translator relocations

Unfortunately, the Bureau's analysis of the four criteria was flawed.

A. Temporary Construction

With respect to temporary construction, the Bureau concluded that there was no abuse of process, because EBI operated at the First and Third Application Sites for over a year. The Bureau somehow concludes that operating a translator at a site for slightly over a year negates the conclusion that the construction was temporary. This conclusion fails to acknowledge that broadcasters ordinarily construct facilities for much longer periods. Indeed, the common practice in the industry is to lease tower facilities under long-term leases for five, ten or more years.[12] Hopping from one site to another in a year indicates that EBI entered into no long- term leases at any of the sites it used. Thus, each and every site that EBI used was a temporary site.

Indeed, the hopping from one site to another suggests that EBI may have entered into no leases at some of these sites and instead was only a month-to-month tenant. Therefore, at a minimum, the Bureau should have investigated the nature of EBI's relationships with the site

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[11] Letter Decision at 4, citing *Gary S. Smithwick, Esq.*, Letter Decision, 28 FCC Rcd 15494, 15497-98 (MB 2013) ("*Branchport*").

[12] An industry sector leader details its business model as "Typical contract terms include an initial term of 5 to 10 years with multiple 5-year renewal periods. See *Introduction to the Tower Industry & American Tower*, The Business Model, Long Term Customers' Leases, at 8. Available online at file: http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTEwMDI2fENoaWxkSUQ9LTF8VHlwZT0z&t=1

owners at each of the sites. The Bureau should have directed EBI to submit copies of all leases and other agreements that it signed at each of the sites. It is most likely that such an investigation would demonstrate that EBI arranged for each site to be a temporary site.

Similarly, the fact that EBI did not use telescoping antennas transported by vehicle to public roadside sites powered by portable generators is not evidence that these were not temporary facilities. The difference between the facilities used by EBI and the applicant in *Broadcast Towers* is only a matter of cost. With the prize objective being a translator in downtown Chicago, the purchase of durable facilities and construction on third-party sites was a small investment in obtaining the desired objective. The facility investment could be moved to each successive site without purchasing new equipment. The additional cost of moving these facilities in comparison to the cost of portable facilities should have little weight in considering whether an abuse of process has been perpetrated.

B. Duration of Operation

The Bureau said the following about the duration of operation:

> Here, as noted above, Edgewater operated the station at the First Application Site for more than a year. Although it operated the Station at the Second Application site for only one month, which is a red flag that the Second Application site could represent simply a waystation, Edgewater then broadcast from the Third Application site for more than a year, from August 2017 to the present. The prolonged periods of service at the First and Third Application sites indicate that these facilities were not temporarily constructed and that Edgewater in fact served the public from each location. Therefore, although it partially cuts both ways, this factor overall does not support an enforcement action based on abuse of process.[13]

The Bureau's balancing of the periods of operation is clearly misguided. As SOH has

demonstrated above, operation for a year should not be regarded as long-term operation. On the other hand, operation at the Second Application site for only one month must be given great weight. The Second Application site was clearly only a waystation on the path to downtown Chicago. In addition, the only reason EBI has operated at its Third Application site for more than a year is because of SOH's Petition to Deny. EBI filed its Modification Application after operating at its Third Application site for only three months. EBI should be given no credit for operating at its Third Application site for over a year. This series of hops is an abuse of the Commission's processes.

C. Alternative Purposes

The Bureau's treatment of this criteria is the most perplexing part of the Letter Decision. The Bureau stated:

> Alternative purposes. As mentioned above, our policy against serial modifications is based on potential abuse of the Commission's licensing procedures, i.e., intentional efforts to evade rule restrictions. An application that is filed for a demonstrably legitimate purpose—e.g., that is the result of unexpected tower damage, or to resolve interference issues that are outside the translator licensee's control—does not raise abuse of process concerns. In this case, however, ***there is no evidence that Edgewater filed any Application due to interference or any other clearly legitimate reason***, so this factor does not remove ***any*** of the Applications from further scrutiny regarding potential abuse of process. (emphasis added)[14]

This is the most correct and most damning conclusion in the Letter Decision. "[T]here is no evidence that Edgewater filed any Application due to interference or any other clearly legitimate reason." Case closed! The purpose of Section 74.1233(a) is to prevent precisely the conduct

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[13] Letter Decision at 6.

engaged in here. As the Bureau explained:

> Some translator licensees have attempted to accomplish what would otherwise be dismissed as an impermissible major change under Section 74.1233(a) by filing serial minor modification applications to 'hop' to new locations that are sometimes over 100 miles away. We believe the filing of serial modification applications represents an abuse of process. We recently entered into a consent decree with a party that acknowledged this practice was an abuse of process and agreed to forfeit several authorizations.[15]

The Bureau then discussed the purpose of Section 74.1233(a):

> The purpose of the overlap requirement is "[t]o prevent ... FM translator stations from abandoning their present service areas." The evident purpose of the serial applications is to achieve the prohibited result. No rule specifically prohibits such a practice, but the Commission can take appropriate enforcement action, including denial of applications that are intended to evade the requirement or subvert its purpose pursuant to Section 308(a) of the Communications Act of 1934, as amended, on the ground that grant would not serve the public interest.[16]

The Bureau concludes that EBI had **no clearly legitimate reason** to file **any** of the Applications. In other words, the only purpose for filing any of the Applications was to make a steady march into downtown Chicago. How the Bureau could reach this overwhelming conclusion and reach its contrary final decision is unfathomable. The Bureau's finding of no alternative purpose should be the lynchpin of its determination that this entire procession of site hops was an abuse of process.

D. Pattern of Translator Relocations

The Bureau adds to the perplexing nature of its ultimate conclusion with its analysis of the pattern of translator relocations. The Bureau begins:

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[14] Letter Decision at 6.
[15] Letter Decision at 2.

> Pattern of translator relocations. The purpose of the overlap requirement of the major change rule is "[t]o prevent . . . FM translator stations from abandoning their present service areas." The Commission has long been concerned that its statutory goal of distributing radio service fairly and equitably may be undermined by the financial incentive for broadcasters to move their stations from rural areas into heavily populated urban areas. In *Branchport*, we concluded that serial modifications do not implicate abuse of process concerns if they ultimately return the relevant station's facilities to their original location.[17]

The Bureau then points out the important parallel between the instant case and the *Broadcast Towers* case:

> In contrast, in *Broadcast Towers*, we found that abuse of process existed where the licensee migrated its translators straight north from the Florida Keys area into Miami. Such straight-line "marches" are clearly indicative of an intention to circumvent the major change rule by moving the station to a distant location that would otherwise be considered a major change. This is particularly the case in the presence of a clear incentive for avoiding the major change rule—such as increasing signal coverage in a densely populated area. ***In this case, the Station modifications moved the station directly from the rural outskirts of Chicago into the center of the (presumably) more lucrative urban area. Therefore, this factor weighs in favor of a finding of abuse of process***. (emphasis added) (footnotes omitted)[18]

Once again, the Bureau reaches what should be a decisionally controlling conclusion of abuse of process. The Bureau correctly concludes that EBI's straight-line march "from the rural outskirts of Chicago into the center of the (presumably) more lucrative urban area … weighs in favor of finding an abuse of process."

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[16] *Id.*
[17] *Id.* at 6.
[18] Letter Decision at 6-7.

IV. THE BUREAU'S FAILURE TO FIND AN ABUSE OF PROCESS IS CONTRARY TO THE EVIDENCE AND THE LAW

The Bureau's conclusions with respect to: (1) the lack of a legitimate alternative purpose for any of the site moves and (2) the clear pattern of moving into downtown Chicago, demonstrate that the ultimate conclusion should have been that EBI has engaged in an abuse of process. Amazingly however, the Bureau concluded as follows:

> Based on the above, although we agree that the pattern of translator relocations in this case raises concerns regarding potential abuse of process, we conclude that the record evidence taken as a whole does not support a finding that Edgewater deliberately and abusively attempted to evade the major change rule. Critical to this conclusion are the facts that (1) none of the Station facilities were temporarily constructed, and (2) Edgewater operated the Station for more than a year at two of the relevant interim locations. We are not persuaded that such gradual changes are the functional equivalent of a single major change and therefore evidence of an attempt to evade the major change rule. Taking the totality of the circumstances into account, we conclude that the serial modifications at issue here to do not warrant an enforcement action based on abuse of process. However, we will continue to monitor the actions of Edgewater and other licensees to ensure that they are not abusing our application processes to relocate facilities in a manner that is not permitted and inconsistent with the minor modification rules.[19]

This conclusion is inconsistent with the evidence before the Bureau and the law. The Bureau's decision provides a blueprint for evading the major change rule. The Bureau has concluded that EBI's conduct shows no purpose other than to evade the major change rule. Thus, the Bureau's decision guides EBI and future translator licensees that, if you are willing to spend three years and a little money, you too can evade the major change rule and bring a rural translator into the third largest city in the U.S. The Bureau's decision mistakenly suggests that the only purpose of Section 74.1233(a) is to keep licensees from abandoning rural communities

[19] Letter Decision at 7.

in one step. This is incorrect. The purpose of Section 74.1233(a) is to keep licensees from abandoning rural communities period. The Letter Decision completely undermines the purpose of Section 74.1233(a).

V. THE LETTER DECISION VIOLATES THE ADMINISTRATIVE PROCEDURE ACT

The Letter Decision completely undermines Section 74.1233(a) without providing any public interest justification for doing so. The Letter Decision provides no explanation for why allowing licensees to evade the major change rule is in the public interest. The Bureau has concluded that Section 74.1233(a) prevents licensees from abandoning rural communities quickly, but it does not prevent them from abandoning them slowly. However, the Bureau has not explained what public interest benefit is derived from allowing licensees to abandon their rural communities slowly. The public interest established by Section 74.1233(a) is that translator licensees should continue to serve their licensed communities. The Letter Decision eviscerates that rule.

Section 557 of the Administrative Procedure Act ("APA") 5 U.S.C. § 557 requires that the decisions of an administrative agency must contain the reasons and basis for its findings on the evidence and the law. Where the agency decision fails to provide an adequate explanation of the reasons and basis for its conclusions, the decision is rendered arbitrary, capricious and an abuse of discretion and will be reversed by a reviewing court, pursuant to Section 706 of the

APA 5 U.S.C. § 706.[20] The Letter Decision fails to meet the requirements of the APA and is subject to reversal by a reviewing court.

VI. *ASHBACKER* CONSIDERATIONS

The Letter Decision concludes with an analysis of whether EBI's serial modifications raise *Ashbacker*-related procedural concerns. On this issue the Bureau concludes:

> We conclude that grant of the Modification Application is consistent with the *Ashbacker* doctrine. Absent a waiver request, Edgewater is subject to the same procedural rules as any other potentially competing applicant, including the overlap requirement of Section 73.1233(a), and is therefore 'competing on an equal basis' as required by *Ashbacker*. This situation is distinguishable from the *Mattoon* waiver situation, in which a proposed 'long-distance, one-step move' could take 'even a vigilant competitor' by surprise. It is likewise distinguishable from the *Broadcast Towers* situation, in which a rapid series of modifications could have effectively precluded potential competitors from filing mutually exclusive applications.[21]

The Bureau then states:

> Because Edgewater operated the Station at the Third Application site for four months[22] before filing the Modification Application, other potentially competing applicants had ample notice that a modification application affecting nearby areas might be filed and sufficient time to file mutually exclusive modification applications if desired. For these reasons, we conclude that grant of the Modification Application does not unfairly preclude potentially competing applications in violation of the *Ashbacker* doctrine.[23]

The Bureau's *Ashbacker* analysis rests on the assumption that EBI's operation from the Third Application site for three months provided adequate notice to other potential applicants.

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[20] See, *Prometheus Radio Project v. FCC,* 824 F.3d 33, 40, 57-60 (3d Cir. 2016); *Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501, 507, 510 (D.C. Cir. 1988); *National Black Media Coalition v. FCC,* 775 F.2d 342, 355-358 (D.C. Cir. 1985).

[21] Letter Decision at 7.

[22] As noted above, the Station was operated at the Third Application site for only three months, not four months, before the Modification Application was filed.

The Bureau has failed to apply the applicable law in reaching this conclusion. EBI has completed a major change of its service area without complying with the public notice requirements of Section 73.3580, as required by Section 74.1233(a), and without filing in a Commission designated filing window, as required by Section 74.1233(d)(2)(i). It is the public notice requirement of Section 73.3580 and the filing window requirement of Section 74.1233(d)(2)(i) that provide protection of the *Ashbacker* rights of other potential applicants. Potential competitors are not placed on adequate notice by the mere filing of a minor change application. The Bureau's determination that operating for three months at a minor change site is sufficient for other potential applicants to be put on notice violates Section 74.1233(a) and the *Ashbacker* doctrine. The *Ashbacker* doctrine requires adequate notice to other potential applicants. The Commission determined in Section 74.1233(a) that adequate notice for a major change application requires compliance with the public notice requirement of Section 73.3580 and the filing window requirement of Section 74.1233(d)(2)(i). The Bureau's determination that it is permissible to complete a major change without providing the public notice required by Section 73.3580 and applying in a filing window pursuant to Section 74.1233(d)(2)(i) violates Section 74.1233(a) the Commission's rules and fails to meet the requirements of the *Ashbacker* doctrine. This also violates the requirements of the APA.

VII. CONCLUSION

The Bureau has concluded that EBI engaged in a series of translator site hops that demonstrate a straight-line march from rural Illinois to downtown Chicago, which the Bureau

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[23] Letter Decision at 7-8.

concludes is evidence of an abuse of process. The Bureau has concluded that there was no clearly legitimate reason for any of the translator hops other than to march into downtown Chicago, which the Bureau concludes is evidence of an abuse of process. Amazingly however, the Bureau places form over substance by ruling that the period of time that these hops took, February 9, 2015 to December 29, 2017, and the limited operations that the Station undertook at two of these sites, somehow excuses their clear abuse of process. The Bureau's decision undermines and violates Section 74.1233(a) and gives EBI and other licensees a blueprint for circumventing that rule in the future.

Similarly, the Bureau's analysis of the *Ashbacker* doctrine fails to recognize that Section 74.1233(a) sets forth the Commission's determination of how the *Ashbacker* rights of other potential applicants are to be protected from a major modification. Section 74.1233(a) requires that an applicant for a major modification must comply with the public notice requirements of Section 73.3580 and the filing window requirement of Section 74.1233(d)(2)(i). The Bureau cannot allow EBI and future applicants to circumvent the major change public notice requirement and the filing window requirement by a stealth process of using a series of minor change hops. Section 74.1233(a) and *Ashbacker* require that the major change public notice requirements of Section 73.3580 and the filing window requirement of Section 74.1233(d)(2)(i) be followed. The decision therefore violates the Administrative Procedure Act and is subject to reversal upon appellate review.

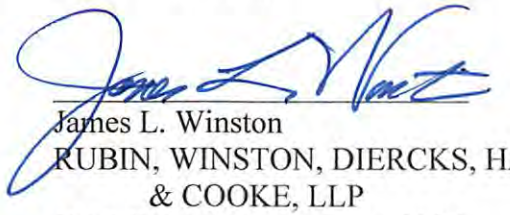
The Bureau began its analysis by defining an abuse of process. In very key ways it determined that EBI has committed an abuse of process. The Bureau's decision improperly

excuses an abuse of process. The Bureau has failed to explain how the public interest is served by excusing an abuse of process and undermining the purpose of Section 74.1233(a). The Letter Decision should be reconsidered and reversed. The EBI Modification Application should be dismissed or denied.

Respectfully submitted,

SOUND OF HOPE RADIO NFP

By its Attorneys,



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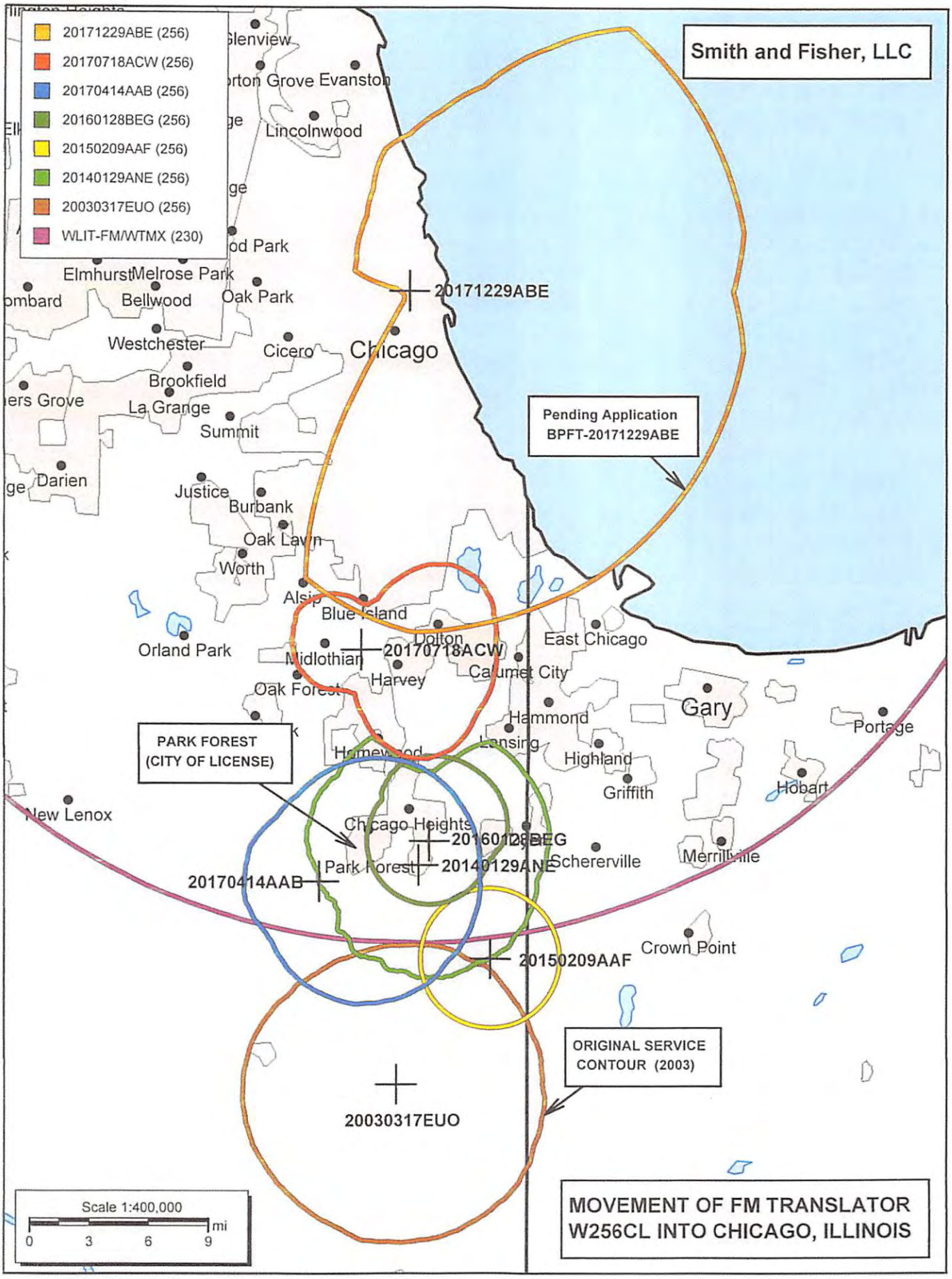
July 1, 2019

EXHIBIT A

ENGINEERING MAP
PREPARED BY SMITH AND FISHER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Smith and Fisher, LLC
20171229ABE
Chicago
Pending Application
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20170718ACW
PARK FOREST
(CITY OF LICENSE)
20160128BEG
20140129ANE
20170414AAB
20150209AAF
ORIGINAL SERVICE
CONTOUR (2003)
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0 3 6 9 mi
MOVEMENT OF FM TRANSLATOR
W256CL INTO CHICAGO, ILLINOIS
Evanston
Lincolnwood
Elmhurst
Melrose Park
Bellwood
Oak Park
Westchester
Cicero
Brookfield
La Grange
Summit
Darien
Justice
Burbank
Oak Lawn
Worth
Orland Park
Midlothian
Harvey
Oak Forest
Blue Island
Dolton
East Chicago
Calumet City
Gary
Hammond
Portage
Highland
Griffith
Hobart
Lansing
Chicago Heights
Park Forest
Schererville
Crown Point
New Lenox

EXHIBIT B

W256CL APPLICATION SERIES
PRINTOUT FROM CDBS

FCC Federal Communications Commission

Application Search Details

Search returned: 11 matching applications

Application Search Results

File Number	Form	Paper/ Elect	Call Sign	Facility Id	Service	Status	Status Date	Details
BPFT 20171229ABE	349	E	W256CL	152811	FX	ACCEPTED FOR FILING	01/02/2018	Info | Application
BLFT 20170825ABG	350	E	W256CL	152811	FX	GRANTED	09/11/2017	Info | Application
BPFT 20170718ACW	349	E	W256CL	152811	FX	GRANTED	07/31/2017	Info | Application
BLFT 20170717ACV	350	E	W256CL	152811	FX	GRANTED	07/28/2017	Info | Application
BMPFT 20170414AAB	349	E	W256CL	152811	FX	GRANTED	05/10/2017	Info | Application
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BLFT 20160127AFF	350	E	W256CL	152811	FX	GRANTED	02/08/2016	Info | Application
BMPFT 20150209AAF	349	E	W256CL	152811	FX	GRANTED	03/16/2015	Info | Application
BMPFT 20140129ANE	349	E	W256CL	152811	FX	GRANTED	07/25/2014	Info | Application
BNPFT 20130828AFF	349	E	W256CL	152811	FX	GRANTED	12/27/2013	Info | Application
BNPFT 20030317EUO	349	E	W256CL	152811	FX	GRANTED	12/27/2013	Info | Application

Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

Federal Communications Commission
445 12th Street SW
Washington, DC 20554
More FCC Contact Information...

Phone: 1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
E-mail: fccinfo@fcc.gov

- Privacy Policy
- Website Policies & Notices
- Required Browser Plug-ins
- Freedom of Information Act

CERTIFICATE OF SERVICE

I, Sheree Kellogg, do hereby certify that I sent via first class U.S. mail, this 1st day of July, 2019 copies of the foregoing PETITION FOR RECONSIDERATION to the following:

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