

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In re Application of	)	
	)	
MICHAEL BUTLER BROADCASTING, LLC	)	File No. BNPFT-20171220ABH
	)	Facility ID No. 201563
For Construction Permit for a New FM Translator	)	
At Tallassee, Alabama	)	

Filed with : Office of the Secretary  
Directed to: Chief, Audio Division, Media Bureau

**REPLY TO OPPOSITION TO PETITION TO DENY**

Troy Broadcasting Corporation (“Troy”), by its attorneys, hereby respectfully replies to the Opposition to Petition to Deny submitted by Michael Butler Broadcasting, LLC (“Butler”), on February 6, 2018. With respect thereto, the following is stated:

Troy previously submitted a Petition to Deny the above-captioned application, based upon the fact that Butler had no assurance whatsoever as to the availability of its proposed transmitter location. Butler has opposed that Petition by attempting to amend its application and by noting that the case of *Christopher Faletti*, 30 FCC Rcd 827 (2015) provides for a liberal allowance of amendments to specify a new site to correct defects. That case, however, originated from an auction of mutually exclusive full-power FM facilities. Its rationale does not apply in a proceeding like the instant one, which involves only FM translators to provide fill-in service to AM stations. In such a proceeding, the likelihood of non-mutually exclusive applications is much greater, and the Commission has indicated that it will allow changes to be made in the event that a situation of mutual exclusivity arises. Moreover, even if Butler were allowed to remedy past defects by amending its application, that amendment has created more defects which make the application ungrantable. Therefore, notwithstanding the amendment,

after failing to cure the application's initial defect, Butler's above-captioned application must be dismissed.

As noted above, Butler has relied upon *Faletti* for the proposition that, since the cross-service FM translator filing window was technically an auction window, it was allowed simply to specify any transmitter site which might strike its fancy, without even checking as to whether it could ever obtain access to the site or construction there was even technically feasible. The Commission's logic in *Faletti*, 30 FCC Rcd at 830, relies heavily upon the smaller number of long-form applications which the Commission's staff has to review following an auction and the different incentives which arise out of a bidding process. In this instance, however, that rationale does not apply.

Here, the Commission made it quite clear that its goal in allowing AM stations to apply for new cross-service translators was to see that as many AM stations as possible acquire such translators. *Revitalization of the AM Service*, 30 FCC Rcd 12145 (2015). This attitude was reflected in its pronouncement that any applicants which were mutually exclusive would be allowed to resolve such exclusivity through settlements or technical resolutions. *Id.* at 12154. As a result of these policy decisions, it was clear not only that the number of applications filed during the window would be high, but also that the resulting number of long-form applications would be proportionally much larger than the norm, since the number of possible applicants within a particular area was limited, and there was an opportunity to cure any mutual exclusivity that might arise. Moreover, once the translator long forms were filed, the applicants knew that they were not going to be required to expend funds in bidding.

Because it was clear from the beginning that there likely would be no significant investment required, either to file an application or to obtain a construction permit, applicants

had every incentive simply to throw their hat in the ring, with any old facilities specified, whether they could be built or not, and see what happened. Consequently, the basis for the *Faletti* ruling is inapplicable with regard to cross-service translator applications such as those of Butler, and these applications should be treated as non-auction applications. Indeed, a substantial majority of the applications filed in response to the window notice, “Public Notice,” *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017*, DA 17-533, 32 FCC Rcd 4663 (MB/WTB 2017), either were non-mutually exclusive when filed or became so after settlement or modification.

Even if *Faletti*'s holding were applicable in this instance, the Commission should rethink that decision. Liberally allowing applicants that never had any basis for specifying a particular transmitter site to amend to a new site after being challenged is a waste of the Commission's resources. In the case of full-service stations, in the smaller communities now typically included in auctions, the required investment of bidders is quite low. With little at stake, they may file long-form applications with no prospect of using the site specified. One of three things then will happen. If the application is granted quickly, then the permittee will need to file another application at a new site in order to construct a station. If the applicant is able to find a new site before the grant, it will need to amend that application away from the initial site studied by the staff, one that the applicant never intended to use, to a new site that will require new study. The third possibility is that the applicant will be unable to find a suitable site at which it can build, and the construction permit will expire.<sup>1</sup> In either of the first two instances, staff resources will

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<sup>1</sup> Indeed, it should be noted that the construction permit awarded to Christopher Faletti, Facility ID No. 190421, was cancelled on July 13, 2016, after it expired unbuilt, perhaps due to lack of a transmitter site.

be wasted in study of non-serious proposals. In the third set of circumstances, staff resources are wasted in the processing and grant of an unbuildable facility, the spectrum lies fallow, and other parties that might have been able to put that spectrum to good use are prevented from doing so.

Finally, even if Butler properly should be allowed to amend its application to specify a new transmitter site, the amendment it has submitted fails to make the application grantable. First of all, as an initial matter, it is unclear who prepared the technical portion of the application, as no Preparer's Certification is included as required. Second, it is impossible to deduce from the information submitted precisely what facilities are proposed. In Section III, the response to Question 7 states that the Overall Tower Height Above Ground Level is 60 meters. In response to the next question, Question 8, it is stated that the Height of Radiation Center Above Ground Level is 138 meters. This combination of bits of information necessarily means that the transmitting antenna's center of radiation is proposed to be 78 meters above the very top of the supporting tower. It is incredible that the applicant is proposing an FM translator transmitting antenna that is well more than 78 meters high, and that such an antenna could be supported by such a small tower. It seems obvious that there must be an error somewhere, but since there is no Antenna Structure Registration Number, there is no other source to which one could turn to find clarification. Furthermore, the figures indicated on one of the maps attached to the application do not match up with any of the answers provided to Section III Questions 6 through 8. Thus, there is no reliable way to determine what facilities are proposed for the translator. This amendment, which itself seeks to correct a site availability defect, is thus itself defective. In this case, two strikes are sufficient, and the Commission's staff should cease temporizing with such a flawed proposal and dismiss it.

WHEREFORE, the premises considered, Troy hereby requests that the above-captioned Butler application be dismissed.

Respectfully submitted,

TROY BROADCASTING CORPORATION

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February 16, 2018

**CERTIFICATE OF SERVICE**

I, Deborah N. Lunt, an Assistant with the office of Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing “Reply to Opposition to Petition to Deny” was sent on this 16<sup>th</sup> day of February, 2018, via First-Class United States mail, postage pre-paid, to the following:

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Deborah N. Lunt