

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
GALAXY UTICA LICENSEE LLC)	FCC File No. BNPFT-20180418AHD
)	FCC Facility ID No. 202809
For New FM Translator)	
Utica, New York)	
)	

To: Office of the Secretary
Attn: Chief, Audio Division, Media Bureau

OPPOSITION TO PETITION TO DENY

Galaxy Utica Licensee LLC ("Galaxy") by its attorneys, hereby submits this Opposition to the Petition to Deny filed by WOLF Radio, Inc. ("WRI") in the above-captioned matter.

WRI asks the Commission to deny Galaxy's application for a new FM translator at Utica, New York, alleging that the translator would interfere with WRI's station WMVN, Sylvan Beach, New York, in the general area of Utica, New York. Because WRI has failed to meet the Commission's requirements for opposing a new FM translator based on a claim of potential interference, the Petition must be denied.

A petitioner in WRI's position must provide four pieces of information in order to state a claim under Section 74.1204(f) of the Commission's rules. To establish the "convincing evidence" required under the Section, a petitioner must provide, at a minimum:

- (1) the name and specific address of each listener for which it claims credit;
- (2) some demonstration that the address of each purported listener falls within the 60 dB μ contour of the proposed translator station;
- (3) some evidence, such as a declaration from each of the claimed listeners, that the person, in fact, listens to the full-service station at the specified location; and
- (4) evidence that

grant of the authorization will result in interference to the reception of the “desired” station at that location.¹

The Petition does not meet any of these requirements. WRI states in the most general of terms that WMVN has “substantial listenership” in the Utica area, but does not provide the name or address of any potentially aggrieved listeners. Without this basic information, WRI cannot (and does not) demonstrate that any such WMVN listeners are located within the 60 dBu contour of the proposed translator. No listener declarations are provided, nor is any evidence that the translator will actually result in interference to WMVN at any particular location.

The evidence that WRI does present is irrelevant. WRI admits that Utica, its primary area of concern, lies beyond WMVN’s 54 dBu contour. It then attempts to mitigate this with a Longley-Rice study that shows WMVN serving certain sections of Utica. The Commission considers Longley-Rice to be a “supplemental engineering methodology”² and does not depend on it in situations like this.³ WRI also submits Nielsen data and zip code maps. As the Bureau has expressly stated, “[p]opulation counts and Arbitron zipcode information are not acceptable methods to show a Section 74.1204(f) violation.”⁴

For the reasons set forth above, Galaxy respectfully seeks denial of the Petition and grant of the above-captioned application.

¹ *Association for Community Education, Inc.*, 19 FCC Rcd 12682, 12687 (2004).

² *Richard J. Bodorff, Esq.*, 27 FCC Rcd 4870, 4873 n.19 (2012).

³ *See Shaw Communications, Inc.*, 24 FCC Rcd 5852, 5853 (2009).

⁴ *Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Penn-Jersey Educational Radio Corporation* (Aug. 29, 2014) at 2.

Respectfully submitted,

GALAXY UTICA LICENSEE LLC

By: /s/
Sally A. Buckman
F. Scott Pippin


Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
Tel. (202) 429-8970

May 24, 2018

Its Attorneys

DECLARATION OF EDWARD LEVINE

I, Edward Levine, CEO of Galaxy Utica Licensee LLC, hereby declare that I have reviewed the foregoing Opposition to Petition to Deny, and certify that the facts set forth therein, except those of which public notice may be taken or which are certified by others, are true and correct.

A handwritten signature in black ink, appearing to read 'E. Levine', is written over a horizontal line.

Edward Levine

May 24, 2018

CERTIFICATE OF SERVICE

I, F. Scott Pippin, certify that, on this 24th day of May, 2018, I served a copy of the foregoing Opposition to Petition to Deny by first-class United States mail, postage prepaid, upon the following:

Craig Fox, President
WOLF Radio, Inc.
4853 Manor Hill Dr.
Syracuse, NY 13215

James L. Oyster, Esq.
108 Oyster Lane
Castleton, VA 22716 – 2839

James Bradshaw*
Senior Deputy Chief
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Sent by e-mail only

/s/
F. Scott Pippin