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JUL 31 2013

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

In re: W279AQ, Mascoutah, IL
BMPFT-20130219ACP
Facility ID No. 151819

Dear Applicant:

This letter refers to the above-captioned translator application for W279AQ, Mascoutah, Illinois.

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-20090904ACH).

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 move its transmitter site northwest approximately 47.5 kilometers toward St. Louis, Missouri. St. Louis is a "Spectrum Limited" market[2] per the *Fourth Report and Order*. On channel 279, there are LPFM opportunities in the St. Louis market. This proposed transmitter site precludes these opportunities which does not comply with the third criteria of the justification of the Mattoon waiver. Therefore, the waiver of Section 74.1233(a)(1) 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

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[1] *The Cromwell Group, Inc. of Illinois*, Letter, 26 FCC Rcd 12685 (MB 2011) ("*Mattoon*").
[2] *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fourth Report and Order and Third Order on Reconsideration*, 27 FCC Rcd 3364 (2012) ("*Fourth Report and Order*").

644, 666 (D.C. Cir 1968 (per curiam)). We have afforded Educational Media Foundation'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).

Accordingly, the request for waiver of 74.1233(a)(1), IS HEREBY DENIED, and the Application BMPFT-20130219ACP IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

for James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau