

Before the
Federal Communications Commission
Washington, DC 20554

1/3/14

ACCEPTED/FILED

DEC 20 2013

Federal Communications Commission
Office of the Secretary

In re Application of)
HENDEE BROADCASTING, INC.)
New Low Power FM Station,)
Facility ID Number 193061)
Wilmington, OH)
For Construction Permit)

File No. BNPL-20131021ABP

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

RECEIVED

2013 DEC 20 4:08

PERMISSIONS SERVICES DIVISION

PETITION TO DENY

Grant County Broadcasters, Incorporated, licensee of FM Station WNKR, Williamstown, Kentucky ("WNKR"), by its attorneys, hereby requests that the above-captioned application of Hendee Broadcasting, Inc. ("Hendee") for a new Low Power FM Broadcast Station on 106.7 MHz, Channel 294, at Wilmington, Ohio be denied. In support hereof, the following is submitted.

WNKR operates on 106.7, Channel 294, at Williamstown, Kentucky. The Hendee application proposes co-channel operation at Wilmington, Ohio. As demonstrated herein, the operation of the proposed Hendee station will cause harmful interference to listeners of WNKR. Thus, WNKR has standing as a party in interest since the operation of the proposed Hendee station would bring about an indirect modification

of the WNKR license in violation of Section 316 of the Communications Act of 1934, as amended.¹

The captioned application appeared on Public Notice as accepted for filing on Report No. 28124, released November 27, 2013. The instant petition is filed within 30 days of the Public Notice, and therefore is timely filed.

WNKR concedes that the Hendee application meets the minimum distance separation requirements of Section 73.807 of the Rules.² Nevertheless, operation of the proposed station will cause interference to the direct reception of off-the-air signal of WNKR.

Attachment A hereto is an Affidavit of Jeffrey K. Ziesmann, General Manager and Chief Executive Officer of WNKR attesting to the fact that the WNKR signal is regularly heard in areas where such interference to reception of the signal is not only likely, but certain, to occur. The map attached to the Affidavit provides further support.

In Mr. Ziesmann's Affidavit, mention is made of FM Translator Station W292CO. That station was granted a construction permit to change frequency to Channel 294. Immediately upon commencing operation, WNKR began receiving complaints of interference. The map attached to Mr. Ziesmann's Affidavit shows the location of many of those complaints. As a result of those complaints, the Translator Station ceased operation on Channel 294. The Translator Station then filed an application to move to another frequency.³ Attachment B hereto is a page from the

¹ *NBC v. FCC*, 362 F.2d 946 (DC Cir 1966) citing *NBC v. FCC (KOA)*, 132 F.2d 545 (DC Cir. 1942), aff'd 319 U.S. 239 (1943) and *L.B. Wilson, Inc. v. FCC*, 170 F.2d 793 (DC Cir. 1948).

² 47 C.F.R. § 73.807.

³ File No. BPFT-20120404ACN,

Translator Station's displacement application acknowledging the complaints. Because of those complaints, the Translator Station's license to operate on Channel 294 was rescinded. Attachment C hereto is a copy of an Audio Division letter explaining the reason for the rescission.

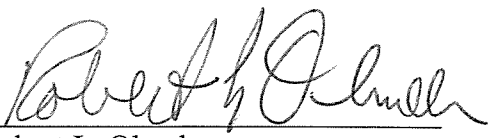
The transmitter site of the Translator Station was located approximately 53 miles from the WNKR transmitter site. The transmitter site proposed by the Hendee application is approximately 70 miles from the WNKR transmitter site, in the same general direction.

Given the location of the complaints resulting from the Translator Station's operation co-channel to WNKR, as depicted on the map attached to Mr. Ziesmann's Affidavit, it is obvious that operation of the proposed co-channel Hendee station will result in the same complaints. To issue a construction permit for a facility which will inevitably be forced to terminate operation is an exercise in futility, and does a disservice to WNKR, the Hendee applicant and to the Commission itself. All three will have expended resources for naught.

Accordingly, it is requested that the captioned application be denied.

Respectfully submitted,

GRANT COUNTY BROADCASTERS,
INCORPORATED

By: 
Robert L. Olender
Its Attorney

Koerner & Olender, P.C.
11913 Grey Hollow Court
North Bethesda, MD 20852
(301)468-3336

December 20, 2013

ATTACHMENT A

AFFIDAVIT OF JEFFREY K. ZIESMANN

AFFIDAVIT

I, Jeffrey K. Ziesmann hereby declare under penalty of perjury that I am the General Manager and Chief Executive Officer of Grant County Broadcasters, Incorporated, licensee of FM station WNKR at Williamstown, Kentucky (FCC Facility ID #24817), and that the following statements are true to the best of my information knowledge and belief concerning application BNPL-20131021ABP for new LPFM service on channel 294 at Wilmington, Ohio and WNKR, licensed to Williamstown, Kentucky and transmitting on channel 294 from our licensed facilities north of Dry Ridge, Kentucky.

OVERVIEW

WNKR has operated on channel 294 since the FCC authorized our move there from channel 293 concurrent with the adoption by The Commission of the re-assignments contained in Docket 02-266. WNKR commenced operations on channel 294 in the spring of 2008. Prior to these moves, channel 294 was occupied in our region by class B station WSRW-FM at Hillsboro, Ohio, resulting in WNKR having a wide area to the north and east where there is no interference to our signal.

Last year, WNKR experienced massive interference from translator station W292CO. While this was resolved without a formal filing on our part with The Commission, we logged dozens of interference complaints in the direction the proposed Wilmington LPFM will cover. This exercise led to a desire on our part to identify the locations of regular users of WNKR who were "deep fringe" area listeners and we have collected dozens of additional names and addresses documenting these locations over the past year.

The vast majority of these listeners have several things in common. First, they are located in rural or semi-rural areas where our unique programming format is not available on any other station. Second, they are passionate about being able to receive this format. And third, they are willing to listen to a signal that is quite weak at their location in order to hear WNKR programs, a task made possible by the lack of co-channel interference mentioned above.

The map, submitted as an exhibit with this petition, has crosses at various locations on it, including Wilmington, Ohio and several locales very near to Wilmington, the proposed city of license for application BNPL-20131021ABP. These represent locations that we have documented regular use of WNKR at. In most locations, the single cross actually denotes multiple documented listeners


ENGINEERING DATA

Using Longley- Rice methodology, we have plotted the predicted coverage area for the facilities specified in application BNPL-20131021ABP. We conclude that this station would cause interference to our existing signal at points where we have documented regular use by listeners- making this application defective for use on channel 294, contour spacing

notwithstanding. It is equally certain that this interference cannot be mitigated by any action other than a change of channel by the applicant.

CONCLUSION

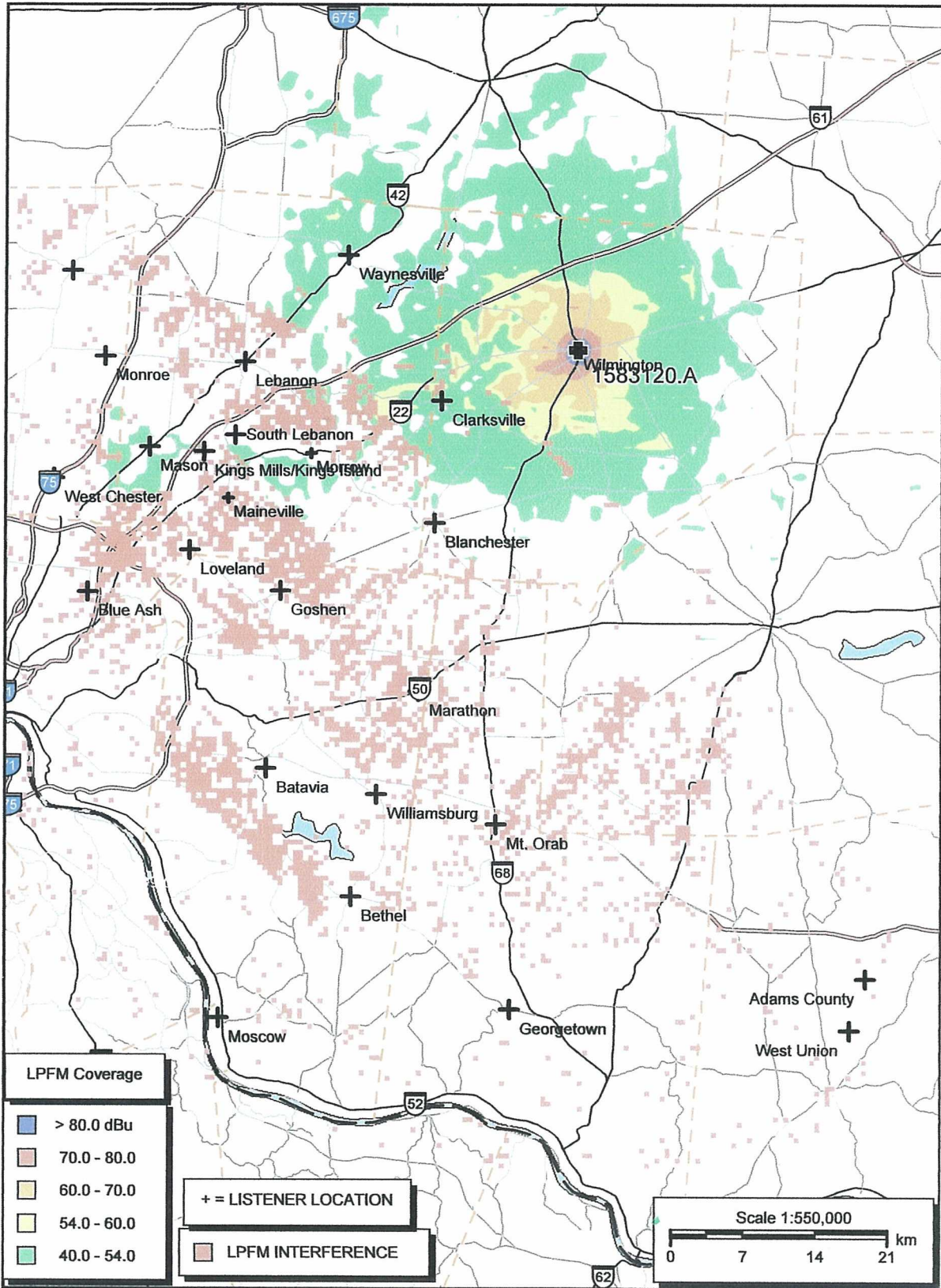
If this proposed LPFM is built as applied for, it is certain that it cannot operate long-term because of the interference it will cause to our listeners. This will serve nobody's interest, since our listeners will be denied the ability to receive WNKR while the matter is resolved and the applicant for the LPFM at Wilmington will have their considerable investment in construction of the station at risk. We therefore respectfully ask The Commission to deny application BNPL-20131021ABP on the grounds that it would cause interference to WNKR in areas where there is regular use of our facilities.



Jeffrey K. Ziesmann

12/12/2013
12/12/2013

Predicted Interference to Regular Use Listeners of WNKR



ATTACHMENT B

TRANSLATOR STATION ACKNOWLEDGEMENT
OF INTERFERENCE COMPLAINTS

Educational Media Foundation
5700 West Oaks Boulevard
Rocklin, CA 95765

Exhibit 1
Middletown, OH

Displacement Application

Educational Media Foundation ("EMF") submits this application in order to change the channel of its licensed translator facility W292CO, Middletown, OH (BLFT-20120323AFK) from channel 294 to channel 251.

On December 13, 2011, EMF was granted a construction permit to change W292CO from channel 292 to channel 294 (BPFT-20111024AAV) which is co-channel to WNKR, Channel 294A, Williamstown, KY.

EMF has received complaints of interference from listeners of WNKR, channel 294A, Williamstown, KY, and wishes to resolve the issue by moving to a different channel.

In order to eliminate this potential for interference, a move to an alternate frequency was necessary.

EMF submits that it is not technically feasible to operate W292CO on its current channel 294 or the 1st, 2nd, 3rd adjacent channels, or the intermod frequency channels (see attached Exhibit 1B). In order to continue to provide service to the listeners of W292CO, EMF has chosen channel 251. The primary station, ERP, and physical location of the translator remain unchanged.

Changes to the application are as follows:

1. Section III-A, Item 1: Channel updated
2. Section III-A, Item 10: Transmitting Antenna information has been updated
3. Section III-A, Item 12: Channel Study

ATTACHMENT C

AUDIO DIVISION LETTER

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio

PROCESSING ENGINEER: Larry Hannif-Ali
TELEPHONE: (202) 418-2143
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: Larry.Hannif-Ali@fcc.gov

JUN 06 2012

Educational Media Foundation
5700 West Oaks Boulevard
Rocklin, CA 95765

In re: W294BM, Middletown, OH
BPFT-20120404ACN
Facility ID No. 138872

Dear Applicant:

This letter refers to the above-captioned application for W294BM, Middletown, Ohio. For the reasons set forth below, the waiver request to move to a non-adjacent channel is denied and the application is dismissed.

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 74.1233(a)(1). The application requests waiver of Section 74.1233(a)(1) based on interference caused to co-channel station WNKR(FM), Williamstown, KY. WNKR has been operating with its current facilities since April 29, 2009 (BLH-20080424AAY).

W294BM was originally licensed on channel 292 (BLFT-20070320ABY) and was granted construction permit BPFT-20111024AAV on December 13, 2011 to move to channel 294, making the facility co-channel to WNKR. License BLFT-20120323AFK was granted to cover construction permit BPFT-20111024AAV, but was rescinded on April 17, 2012 due to interference complaints. W294BM requests to move to a non-adjacent channel to alleviate the interference caused to station WNKR based on "displacement".

Displacement is justified only when a full service FM station commences operation in the vicinity of a translator and there is interference predicted or caused by the translator to the authorized FM station. Since WNKR has not moved since 2009, displacement is not warranted in this case and Section 74.1233(a)(1) will not be waived to allow W294BM to move to a non-adjacent channel.

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 Big Bend Broadcasting'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 74.1231.

Accordingly, the request for waiver of 74.1233(a)(1), IS HEREBY DENIED, and the Application BPFT-20120404ACN IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

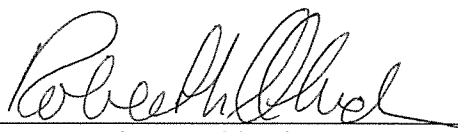


James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

CERTIFICATE OF SERVICE

I, Robert L. Olender, do hereby certify that a copy of the foregoing Petition to Deny was served this 20th day of December, 2013, via first class US mail upon the following:

Robert Hendee
Hendee Broadcasting, Inc.
739 North South Street
Wilmington, OH 45177


Robert L. Olender