

SCIARRINO & SHUBERT, PLLC

BROADCAST & MEDIA LEGAL SERVICES

Dawn M. Sciarrino
dawn@sciarrinolaw.com
(202) 350-9658

Lee W. Shubert
lec@sciarrinolaw.com
(202) 350-9658

November 22, 2011

HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554

POSTED
NOV 22 11
DIVISION
NOV 28 A 5:38
RECEIVED
FILED/ACCEPTED
NOV 22 2011
Federal Communications Commission
Office of the Secretary

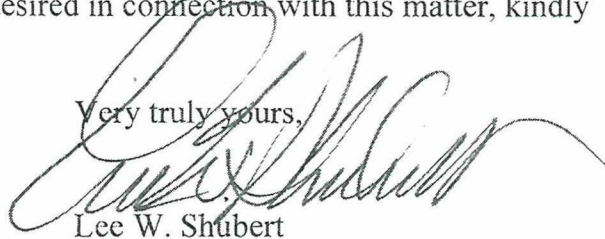
Re: **OPPOSITION TO PETITION FOR RECONSIDERATION** on
behalf of **PENSACOLA CHRISTIAN COLLEGE, INC.**,
respecting
FCC File No. BPFT-20110809ABV

Dear Mrs. Dortch:

Transmitted herewith, on behalf of **PENSACOLA CHRISTIAN COLLEGE, INC.**, are an original and four (4) copies of an Opposition to Petition for Reconsideration pertaining to its above-referenced application for a minor change to the licensed facilities for FM Translator Station W204BE, Wheeling, West Virginia (FCC Facility ID No. 90545).

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Very truly yours,



Lee W. Shubert

Enclosures (5)

cc(w/l enc.): As Per the Certificate of Service
Mr. Caleb Keener – Via E-mail

LWS/

5425 TREE LINE DR. CENTREVILLE, VA 20120-1676
202.350.9658 (PHONE) 703.991.7120 (FAX)

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

In re Application of

PENSACOLA CHRISTIAN COLLEGE, INC.

For Minor Change in Licensed Facilities
For FM Translator Station

W204BE, Wheeling, West Virginia (FCC
Facility ID No. 90545)

FCC File No. BPFT-20110809ABV

FILED/ACCEPTED

NOV 22 2011

Federal Communications Commission
Office of the Secretary

To: The Chief, Audio Division
Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

PENSACOLA CHRISTIAN COLLEGE, INC. (“PCC”), by its attorneys and pursuant to Sections 1.46^{1/} and 1.106(g) of the Commission’s Rules, hereby respectfully opposes the Petition for Reconsideration (“*Petition*”), filed on October 31, 2011, on behalf of **WEST VIRGINIA EDUCATIONAL BROADCASTING AUTHORITY** (“WVEBA”). WVEBA is the licensee of noncommercial educational FM station WVNP(ED-FM), Wheeling, West Virginia (FCC Facility ID No. 71658) (WVNP), and FM Booster Station WVNP-FM1 (FCC Facility ID No. 161955) (collectively with WVNP, the “*Stations*”). In support thereof the following is respectfully submitted.

^{1/} On November 14, 2011, PCC submitted a Motion for Extension of Time requesting until November 22, 2011, to respond to the Petition for Reconsideration.

On September 22, 2011, WVEBA submitted an Informal Objection to the above-captioned application on the basis that PCC had failed to comply with Section 74.1204 of the Commission's Rules.^{2/} On September 26, 2011, the Audio Division granted BPFT-20110809ABV,^{3/} and on October 4, 2011, PCC filed a license application (FCC Form 350)^{4/} to cover the construction permit. PCC also commenced operations with W208BR shortly after the filing of the license application. PCC, in its license application, represented that it would take steps and measurements to demonstrate the absence of prohibited interference respecting the Stations.

Before addressing the alleged interference issues, it is worthy to note that the engineering statement submitted on behalf of WVEBA utilizes the wrong geographic coordinates for its analysis of PCC's application. The problem seems to be that WVEBA's consulting engineer, Ryan Wilhour, missed the fact that PCC amended and corrected BPFT-20110809ABV on September 21, 2011. Among the purposes of the amendment was an update the information regarding the geographic coordinates for

^{2/} 47 C.F.R. § 74.1204.

^{3/} BPFT-20110809ABV was a displacement application filed because station WULV, Moundsville, West Virginia (FCC Facility ID No. 175587) filed a License Application and commenced operations. WULV is a new noncommercial educational FM station the is co-channel to W204BE. WULV's transmitter site is 23.7 km south of the former transmitter site utilized by W204BE. As a result of the September 26, 2011, grant of BPFT-20110809ABV, FCC Facility ID No. 90545 now bears the Call Sign W208BR.

^{4/} The application bears FCC File No. BLFT-20111004AAB and was accepted for filing on October 4, 2011.

the proposed transmitter site.^{5/} PCC's September 21, 2011, amendment neutralizes Mr. Wilhour's assertion that the site proposed by PCC is 548.6 meters from the actual location for ASR 1033832. In fact, BPFT-20110809ABV, as amended, utilizes the correct coordinates for ASR 1033832.^{6/}

The discrepancy regarding the engineering data contained in Mr. Wilhour's declaration, and the fact that it is the sole support for the Petition, dictates that the Petition should be discounted and summarily rejected. The entire Informal Objection, as well as the Petition for Reconsideration, are predicated upon alleged violations of Section 74.1204. As a practical matter, once the operation of an FM translator station is authorized, Section 74.1204 is irrelevant. *John Wells, King, Esq. ... Re: K225AG(FX), Dodge City, KS Facility ID No. 33369 File No. BMPFT-20100312AAC Minor Modification Application Request for Waiver*, 25 FCC Rcd 12812 (MB 2010).

PCC's FM translator station, W208BR, presently is operational. If follows, therefore, that given the prevailing facts, Section 74.1204 is no longer relevant and,

^{5/} The transmitter site is registered as ASR 1033832, and the site is owned by **STALEY WIRELESS LP** ("*SWL*"). (See **Attachment No. 1** for a copy of the Registration Data for ASR 1033832.)

^{6/} In fact, BPFT-20110809ABV actually specifies the NAD 83 geographic coordinates for ASR 1033832 and refers to them NAD 27 coordinates. The NAD 83 geographic coordinates for ASR 1033832 are 40°03'24.3" North Latitude; 80°42'52.9" West Longitude. (See **Attachment No. 1**.) The NAD 27 geographic coordinates for ASR 1033832 are 40°03'24.03790" North Latitude; 80°42'53.60727" West Longitude. (See **Attachment No. 2** for the NADCON conversion data.)

inasmuch as Section 74.1204 is the fundamental predicate underlying the Petition, it too is irrelevant.

As previously noted, and provided in PCC's license application, PCC planned to "conduct program tests and measurements, prior to commencing full-time operations, in order to address and reconcile issues proffered by West Virginia Educational Broadcasting Authority in September 2011. Those tests have been completed and PCC determined that the 114 dBu contour for W208BR extends approximately 34.75 meters (114 feet) from the tower. *See Attachment No. 3.* With that contour, there are only about 80 meters (262.5 feet) of the adjacent dirt road that is covered by the interference contour. *See Attachment No. 4.* There are no homes or residences located within the interference contour. *See Attachment No. 3.* The interference contour with WVNP-FM1 is substantially within the 114 dBu contour and really only covers the structures located at the transmitter site. *See Attachment No. 5.*

The access road that is implicated with the 114 dBu contour (referred to as the Old Hubbard Road Extension) is an unpaved, dirt road that ends at the locked gate for the tower site. *See Attachment Nos. 6 and 7.* Because the road is a dead-end at a locked gate, PCC respectfully submits that the likelihood that the Old Hubbard Road Extension is used for walking, jogging and biking, as suggested in WVEBA's Informal Objection, is unrealistic. Moreover, WVEBA's assertion that the road is used by local residents is, at best, speculation and surmise. WVEBA submits no evidence that local residents use the Old Hubbard Road Extension for anything.

According to the site owner, typically the road is only utilized by technicians and personnel accessing the transmitter site. See **Attachment No. 8**, the declaration of Randy Foster, an employee of SWL. Moreover, the visitations to the site are limited, and occur only periodically – probably amounting to a few visits monthly for maintenance. None of the buildings at the SWL Site are inhabited by humans, but only are visited for the purpose of maintaining and overseeing the operation the equipment that is located at the site.

Considering that (i) there are no residential dwellings within the interference contour, (ii) the only structures that are within the interference contour are uninhabited except for periodic maintenance visits, (iii) the interference contour extends only 34.75 meters (114 feet) from the tower, and (iv) assuming *arguendo* that Section 74.1204 remains applicable notwithstanding that W208BR now is operational, PCC respectfully submits that its transmitter site satisfies with the “lack of population” standards required by Section 74.1204(d). *Compare, Living Way Ministries, Inc.*, 23 FCC Rcd 15070, 46 CR 58 (2008).

In consideration of the foregoing, PCC respectfully submits that WVEBA’s Petition is flawed, without meaningful probative value, and essentially irrelevant. Accordingly the Petition should be denied and dismissed.

WHEREFORE, the premises considered, PCC respectfully requests that the Petition be denied and dismissed.

Respectfully submitted,

PENSACOLA CHRISTIAN COLLEGE,
INC.


By: 

Lee W. Shubert LC
Its Attorneys

SCIARRINO & SHUBERT PLLC
5425 Tree Line Drive
Centreville, VA 20120-1676
Tel: 202.350.9658
Fax: 703.991.7120
Email: lee@sciarrinolaw.com

November 22, 2011

ASR Registration Search

Registration 1033832 [Map Registration](#)**Registration Detail**

Reg Number	1033832	Status	Constructed
File Number	A0690539	Constructed	05/30/2010
FAA Study	2009-AEA-1425-OE	EMI	No
FAA Issue Date	05/27/2009	NEPA	No

Antenna Structure

Structure Type TOWER - Free standing or Guyed Structure used for Communications Purposes

Location (in NAD83 Coordinates)

Lat/Long 40-03-24.3 N 080-42-52.9 W OLD HUBBARD RD EXT
City, State WHEELING , WV
Center of
AM Array

Heights (meters)

Elevation of Site Above Mean Sea Level	Overall Height Above Ground (AGL)
362.5	96.0
Overall Height Above Mean Sea Level	Overall Height Above Ground w/o Appurtenances
458.5	91.4

Painting and Lighting Specifications

FCC Paragraphs A1, H, 3, 11, 21, 23

Owner & Contact Information

FRN	0009103862	Licensee ID	L00712980
-----	------------	-------------	-----------

Owner

Staley Wireless LP
Attention To: Mark Staley
2 - 22nd Street
P.O. Box 6379
Wheeling , WV 26003

P: (304)233-8780
E:

Contact

Staley , Mark
2 - 22nd Street
P.O. Box 6379
Wheeling , WV 26003

P: (304)233-8780
E: mstaley@staleycom.com

Last Action Status

Status	Constructed	Received	07/12/2010
Purpose	Notification	Entered	07/12/2010
Mode	Interactive		

Output from NADCON for station

North American Datum Conversion

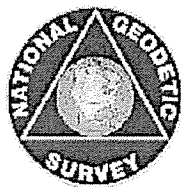
NAD 83 to NAD 27

NADCON Program Version 2.11

=====

Transformation #: 1 Region: Conus

	Latitude	Longitude
NAD 27 datum values:	40 03 24.03790	80 42 53.60727
NAD 83 datum values:	40 03 24.30000	80 42 52.90000
NAD 27 - NAD 83 shift values:	-0.26210	0.70727 (secs.)
	-8.084	16.763 (meters)
Magnitude of total shift:		18.610 (meters)

[NGS HOME PAGE](http://www.ngs.noaa.gov)

Cavell, Mertz & Associates

W204BE Measured 114 dBu
Contour
@ 34.75 Meters

WVWHE W204BE 88.7

Ruler

Line Path

Measure the distance between two points on the ground

Length: 114.00 Feet

Heading: 269.80 degrees

☒ Mouse Navigation

Save Clear

© 2011 Google
Image USDA Farm Service Agency

©2010 Google



Ruler

Line Path

Measure the distance between two points on the ground

Length: 262.56 Feet

Heading: 88.45 degrees

☒ Mouse Navigation Save Clear

Cavell, Mertz & Associates

Pensacola Christian College
Attachment No. 4



© 2011 Google

Image USDA Farm Service Agency

©2010 Google

1994

40°03'25.00" N 80°42'54.33" W elev 1212 ft

Eye alt 1852 ft



Cavell, Mertz & Associates

Pensacola Christian College
Attachment No. 5

W204BE 114.3dbu F(50,10)
Interference Contour with WVMF(FM)

W204BE 119.9dbu F(50,10)
Interference Contour with WVMF-FM1

W204BE

© 2011 Google

Image USDA Farm Service Agency

40°03'23.34" N 80°42'49.27" W elev 1134 ft

© 2010 Google

Eye alt 2176 ft

1994

**Pensacola Christian College
Attachment No. 6**



**Pensacola Christian College
Attachment No. 7**



DECLARATION

I, **RANDY FOSTER**, do state and declare under penalty of perjury as follows:

1. I am an employee of **STALEY COMMUNICATIONS, INC. ("SCI")**, in SCI's Wheeling, West Virginia, office. SCI, through an affiliated- company, **STALEY WIRELESS LP ("SWL")**, owns and operates a radio transmission tower that bears the Antenna Structure Registration Number 1033832 (the site hereafter being referred to as the "*SWL Site*"). SWL is the landlord and lessor to **PENSACOLA CHRISTIAN COLLEGE, INC.**, respecting transmitter and antenna space at the SWL Site for FM Translator Station W204BE, Wheeling, West Virginia (FCC Facility ID No. 90545).

2. I am personally familiar with the SWL site and the access road (the Old Hubbard Road Extension) that affords access to the SWL site and an adjoining SBA site. The Old Hubbard Road Extension is an unpaved, dirt road that is seldom traveled except to access the SWL Site. and an adjoining SBA site The visitations to the SWL site are limited, and occur only for maintenance. None of the buildings at the SWL Site are inhabited, in a residential sense, by humans, but only visited for the purpose of maintaining and overseeing the operation the equipment that is located the SWL Site.

3. The SWL Site is fully fenced from public access. The fence is equipped with several access gates each of which is secured by one or more locks. Accordingly, the site is generally inaccessible to the public, except in cases of wrongful trespass.

4. Since the SWL Site is restricted to public access, authorized entry typically is made to the interior perimeter only with knowledge and permission of the SCI. Because of the restricted access, visitors to the interior perimeter generally only are employees of station employees, telecommunications contractors or occupational professionals.

5. Since the commencement of operations by W204BE at the SWL Site, I am not aware of (i) the existence of any interference complaints involving W204BE, or (ii) that any interference complaints involving W204BE have been reported to SCI.

Subscribed to this 21st day of November, 2011.

RANDY FOSTER

A handwritten signature in cursive script, reading "Randy Foster", is written over a horizontal line.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** regarding FCC File No. BPFT-20110809ABV, was mailed this date by First Class U.S. Mail, postage prepaid, and/or served electronically via e-mail to the following:

Tom W. Davidson, Esq.*†
Akin Gump Strauss Hauer & Field LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
Counsel for West Virginia Educational
Broadcasting Authority

Peter Doyle, Esq.†
Chief, Audio Services Division
Mass Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Room 2-A360
Washington, DC 20554

By: 

Lee W. Shubert

November 22, 2011

* Service via U.S. Postal Service.

† Service electronically, via e-mail – A copy of this Opposition to Petition for Reconsideration also is being sent to audiodivisionpleading@fcc.gov.