



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

May 27, 2015

In Reply Refer to:
1800B3-MM

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CC 317
1200 Park Road
Harrisonburg, VA 22802

Mr. Thomas E. DuVal
James Madison University
Board of Visitors
MSC 7608
800 S. Main Street
Harrisonburg, VA

In re: W266BQ, Crozet, VA

Facility ID No. 91283
Stu-Comm, Inc.

File Nos. BPFT-20090819AHH

Application for Minor Change

Petitions for Reconsideration

BLFT-20100809CJM

Application for License to Cover

Informal Objection

Dear Counsel, Ms. Yoder, and Mr. DuVal:

We have before us the referenced minor change and covering license applications ("Change Application" and "License Application," respectively) involving translator W266BQ (formerly W218BZ), Crozet, Virginia ("Station"), filed by Stu-Comm, Inc. ("Stu-Comm"). We also have before us two petitions for reconsideration of the grant of the Change Application, filed on October 8, 2009, by James Madison University Board of Visitors ("JMU Petition") and Board of Trustees of Eastern Mennonite University ("EMU Petition," collectively, "Petitions") and related pleadings.¹ In addition,

¹ Stu-Comm filed two separate Oppositions on October 21, 2009 ("Opposition to JMU" and "Opposition to EMU"), to which EMU and JMU filed two separate replies on October 30, 2009, and November 2, 2009, respectively.

JMU filed an Informal Objection (“Objection”) to the License Application on August 20, 2010.² For the reasons set forth below, we dismiss the Petitions, deny the Objection, and grant the License Application.

Background. The Station previously rebroadcast the signal of primary station WVTF(FM), Roanoke, Virginia, a noncommercial educational station owned by Virginia Tech Foundation, Inc. (“Virginia Tech”). On August 19, 2009, Stu-Comm filed the Change Application, proposing to move from Channel 218 to 266 and become a “fill-in” translator for Virginia Tech station WVTU(FM), Charlottesville, Virginia, operating with an effective radiated power (“ERP”) of 195 watts.³ The staff granted the uncontested Change Application on September 4, 2009, approximately two weeks after it was filed.⁴

Discussion. *Petitions for Reconsideration. Change Application.* In the Petitions, JMU and EMU acknowledge that they did not participate in this proceeding prior to grant of the Change Application. Nevertheless they claim standing to file the Petitions under Section 1.106(c) of the Commission’s Rules (“Rules”),⁵ arguing that, because the Change Application proposed a significant frequency change, it ordinarily would have been classified as a “major change” under Section 74.1233(a) of the Rules, requiring a 30-day petition period.⁶ They both indicate that they did not expect the ostensible major change application to be processed as a minor change application and granted within two weeks, before they had time to file a petition to deny the proposal.⁷ Additionally, they claim that the “public interest” requires that they be permitted to challenge these erroneous staff actions.⁸

Substantively, EMU first argues that the Change Application did not meet the requirements for a minor change, and any policy change that authorized such processing contradicts the Rules.⁹ Second, it claims that grant of the Change Application violated the requirement in Section 74.1204 of the Rules that there be “no population” in a contour overlap area.¹⁰ JMU also argues that the Commission should have processed (and dismissed) the Change Application as an impermissible major change application.¹¹ Additionally, it claims that: (1) according to Section 74.1235(b), the Station’s maximum effective

² Stu-Comm opposed the Objection on September 1, 2010 (“Opposition to Objection”).

³ Change Application at Attachment 10, p. 2 (as amended Aug. 21, 2009).

⁴ *Broadcast Actions*, Public Notice, Report No. 47067 (rel. Sept. 10, 2009).

⁵ 47 U.S.C. §§ 1.106(c), referencing 1.106(b)(2)(i), (ii) (if a petition for reconsideration is the first pleading in a matter, petitioner must demonstrate changed circumstances or inability to present such facts at an earlier date or allowing such petitions “if consideration of the facts relied on is in the public interest.”) JMU Petition at 2-3 and EMU Petition at 2-3.

⁶ 47 C.F.R. §73.1233(a).

⁷ JMU and EMU claim that the staff’s consideration of the Change Application as a minor change proposal constituted a “changed fact” and that, even though they were exercising ordinary diligence in preparing an objection to the Change Application, they were denied the requisite 30-day period to file a petition to deny. JMU Petition at 2-3; EMU Petition at 3-4.

⁸ 47 C.F.R. §1.106(c)(2). EMU also alleges that it has standing based upon its involvement in separate proceedings against Virginia Tech, viz., its petition to deny Virginia Tech’s application for a new FM Translator station at Harrisonburg, Virginia. (The staff denied the petition and granted the application on June 25, 2014. *Letter to Virginia Tech Foundation, Inc.*, Reference 1800B3 (MB Jun. 25, 2014). JMU argues that overlapping coverage between its stations, WMRA(FM), Harrisonburg, Virginia and WMRY(FM), Crozet, Virginia, and that of the Station, gives it standing as a market competitor. EMU Petition at 2. JMU Petition at 2.

⁹ EMU Petition at 5.

¹⁰ *Id.* at 6-7.

¹¹ JMU Petition at 4-5.

radiated power should be 10 watts,¹² not 195 watts;¹³ (2) co-location of the Station with the primary station violates the purpose and permissible service of translators, and is similar to having multiple translators in the same area, a prohibited practice;¹⁴ (3) Stu-Comm “gamed” the system by proposing a translator that acts like a full-power station but avoids the stringent full-power station compliance requirements.¹⁵

In its Oppositions, Stu-Comm argues, *inter alia*, that the Petitions are procedurally flawed because they do not appear to be signed, verified, or contain the address of the signatory. Accordingly, Stu-Comm questions whether the Petitions were “truly authorized” by the Petitioners.¹⁶ It also claims that neither JMU nor EMU demonstrated standing, because they have not proven that they were either unable to participate earlier¹⁷ or adversely affected by the grant.¹⁸

In their respective Replies, EMU and JMU claim to have signed their Petitions in accordance with the Rules and referenced their addresses in the Petitions’ respective cover letters.¹⁹ JMU also defends the “signature authority” of Mr. Thomas E. DuVal, General Manager of JMU station WMRA(FM) and Mr. William D. Fawcett, JMU’s Director of Engineering. JMU reports that Mr. DuVal, who signed the JMU Petition, has “on numerous occasions” signed “similar documents submitted to the Commission on behalf of the Board.”²⁰

Section 1.52 of the Rules requires documents submitted to the Commission by a party not represented by an attorney to be signed and verified and state the party’s address.²¹ Here, the Petitions were signed, but not verified.²² Ms. Twila King Yoder, Corporate Secretary to EMU’s Board, signed the Commission’s copy of the EMU Petition. Mr. Thomas E. DuVal signed JMU’s Petition as General Manager of JMU Station WMRA(FM), Harrisonburg, Virginia. However, neither Petition contains the requisite declaration made under oath.²³ Moreover, although JMU referenced its address in the letter included in its Petition granting Mssrs. DuVal and Fawcett authority to sign “FCC Applications and other forms” on behalf of all stations licensed to JMU, we have no record of the requisite address on the EMU

¹² 47 C.F.R. § 74.1235(b).

¹³ JMU Petition at 5, citing 47 C.F.R. § 74.1235(a).

¹⁴ JMU Petition at 6-7.

¹⁵ *Id.* at 8-9.

¹⁶ Opposition to EMU at 2-3, Opposition to JMU at 2-3, citing 47 C.F.R. § 1.52.

¹⁷ Opposition to JMU at 5; Opposition to EMU at 5.

¹⁸ *Id.* at 3-4. Opposition to JMU at 3-4. 47 C.F.R. § 1.106. Stu-Comm claims it is irrelevant that EMU is involved in a proceeding against the station this translator seeks to rebroadcast. Opposition to EMU at 3.

¹⁹ EMU Reply at 3. We cannot substantiate these claims because the Commission’s copies of the Petitions do not include a cover letter for either EMU or JMU.

²⁰ JMU Reply at 2-3. JMU included in its Petition a letter from university President Linwood H. Rose dated February 1, 1999, granting Mssrs. DuVal and Fawcett authority to sign “FCC Applications and other forms” on behalf of all stations licensed to JMU. See JMU Petition, Letter from Linwood H. Rose dated Feb. 1, 1999.

²¹ 47 C.F.R. § 1.52.

²² See *Harrea Broadcasters, Inc.*, Memorandum Opinion and Order, 52 FCC 2d 998, 1001 (1975) (A verification is a declaration, made before any officer authorized by law to administer oaths (*e.g.*, a notary public), that the contents of the petition are true).

²³ The JMU Petition contains only an Affidavit from Mr. Fawcett that the engineering exhibits attached to the Petition were “prepared under his direction and that the statements contained therein are true of his own personal knowledge, except those stated to be on information and belief, and as to those, he believes them to be true. JMU Petition, Affidavit of William D. Fawcett.

Petition. Because JMU failed to verify its petition, and EMU failed to include its address or verify its petition, we find that the Petitions are procedurally defective under Section 1.52 of the Rules. We therefore will dismiss them.²⁴

License Application. In its Objection to the License Application,²⁵ JMU states that the Station operates “ostensibly as a Class B-1 equivalent ‘fill-in’ translator” utilizing a digital programming stream of primary station WVTU(FM), Charlottesville, Virginia, owned by Virginia Tech. It again alleges that Stu-Comm is “gaming the system” by its “intention . . . to license the non-parent-station-owned translator as a ‘fill-in’ in order to (improperly) afford itself of a higher-than-normal power limitation (B1 equivalent) by using a previously unused low-bit-rate HD channel as the ‘parent station.’”²⁶ JMU indicates, without elaboration, that the Station’s current operation “confirmed [its] suspicions,” as instead of the “requisite legal ID ‘WVTU-HD3 Charlottesville,’” the Station identifies itself on-air as “WNRN”²⁷ and “thrice-daily as W266BQ.”²⁸

In its Opposition, Stu-Comm again questions JMU’s standing in this matter, because the “circumstances . . . have no bearing or impact on JMU’s radio stations.”²⁹ It claims JMU has failed (and is unable) to “establish any basis for standing or detail any harm that would result from” grant of the License Application.³⁰ Furthermore, Stu-Comm characterizes the Objection as “spurious and repetitive” and an “abuse of process,” and it asks the Commission to invoke Section 1.52 to deter future filings of this kind.³¹ Substantively, Stu-Comm argues that the primary station airs its station identification every hour, and the Station airs its own identification three times daily, both in accordance with the Rules.³²

As an initial matter, with respect to Stu-Comm’s claim that JMU does not have standing to file the Objection against the License Application, “any person” may file an informal objection prior to Commission action on an application for authorization.³³ Accordingly, we will consider the Objection.

With respect to JMU’s substantive arguments, Section 319(c) of the Communications Act of 1934, as amended (“Act”),³⁴ is a stringent standard by which we judge challenges to an application for license to cover. Under Section 319(c), so long as all the terms, conditions, and obligations set forth in

²⁴ See, e.g., *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326 (2004) (finding that petition to deny failed to comply with the verification requirements of Section 1.52 of the Rules, but treats it as an informal objection); *Mr. Luis A. Mejia and MSG Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11902, 11904 (MB 2008) (dismissing petitions to deny per Section 1.52 where petitioners’ addresses appeared to be false). Because we dismiss the Petitions based on the Section 1.52 violation, there is no need to address whether EMU and JMU have standing to file a petition for reconsideration.

²⁵ The Objection is signed and verified by Mr. Fawcett.

²⁶ Objection at 3. JMU also alleges in the Objection that Stu-Comm’s use of WVTU(FM)’s HD-2 programming on W201CN suggests “a *quid pro quo* scenario.” *Id.* Without elaboration on this “scenario,” we find this claim baseless and it will receive no further consideration.

²⁷ WNRN(FM) is a Stu-Comm station in Charlottesville, Virginia, rebroadcast by Stu-Comm translator W236BG).

²⁸ *Id.* at 2. JMU does not include dates and times in which it tuned to the station to hear these station identifications.

²⁹ Opposition to Objection at 1.

³⁰ *Id.*

³¹ *Id.* at 2-3.

³² *Id.* at 3-4, citing 47 C.F.R. §§ 73.1201(b), 74.1283.

³³ 47 C.F.R. § 73.3587.

³⁴ 47 U.S.C. § 319(c).

the construction permit have been met, which is the case here, a licensee is entitled to a presumption that the Section 309 public interest determination made in granting the associated construction permit application continues in effect unless “extraordinary circumstances” have arisen that would make grant of the License Application against the public interest.³⁵

JMU’s Objection fails to meet this standard. It is unclear what JMU means by its claim that the Station is operating “as a Class B-1 equivalent ‘fill-in’ translator” station.” Additionally, JMU does not identify, and it is unclear how, Stu-Comm violated any statute, rule, or policy by its alleged “intention . . . to license the non-parent-station-owned translator as a ‘fill-in’ in order to (improperly) afford itself of a higher-than-normal power limitation (B1 equivalent) by using a previously unused low-bit-rate HD channel as the ‘parent station.’” The Commission does not prohibit FM translator stations from rebroadcasting a primary station’s digital stream “HD” channels, and JMU does not indicate how the “bit rate” of such channel in any way affects the propriety of the retransmission. Additionally, JMU does not indicate in the Objection how Stu-Comm intended, by operating the Station as a “fill-in” translator for a primary station it does not own, to operate the station with a “higher than normal” power limitation. Indeed, it does not explain what “normal” power limitation it believes is required here. Neither does JMU explain how Stu-Comm’s alleged identification of the Station as “WNRN” supports its claim that Stu-Comm is attempting to circumvent any Commission requirements. JMU thus has failed to provide any persuasive arguments that “extraordinary circumstances” exist in this case that make grant of the License Application against the public interest.³⁶

Moreover, considering the facts alleged by JMU in support of its arguments, the alleged “thrice-daily” station identifications of “W266BQ” are not a rule violation because, in the absence of evidence regarding when those station identifications were broadcast, they appear to be in accordance with Section 74.1283 of the Rules.³⁷ Moreover, JMU did not substantiate its claim that the Station falsely identified itself as “WNRN” by stating the times and dates in which it tuned to the Station to hear this alleged error. However, even if the Station occasionally identified itself as “WNRN,” such an act would not reach the level of “extraordinary circumstances” required by Section 319(c) of the Act.³⁸ Accordingly, we will deny the Objection.

Additionally, in accordance with Section 319(c) of the Act, it appears that all terms, conditions, and obligations set forth in the Change Application have been fully met, and there is no cause or circumstance that would make operation of the Station with its modified facilities against the public interest. We will, therefore, grant the License Application.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the October 8, 2009, Petitions for Reconsideration filed by The Board of Trustees of Eastern Mennonite University and James Madison University Board of Visitors ARE DISMISSED.

³⁵ See *Whidbey Broadcasting Service, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8726, 8727 (1989). See also *Benton Broadcasting Service*, 9 RR 586, 588 (1953) (holders of construction permits are entitled to a “high degree of protection” not available at the application for construction permit stage).

³⁶ *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1989) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested)

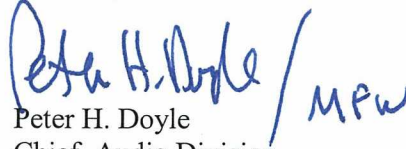
³⁷ 47 C.F.R. §§ 73.1283(c) (requiring that the translator station’s call sign and location be broadcast three times each day: once between 7:00 a.m. and 9:00 a.m.; once between 12:55 p.m. and 1:05 p.m., and once between 4:00 p.m. and 6:00 p.m.).

³⁸ See generally *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

IT IS FURTHER ORDERED that the August 20, 2010, Informal Objection filed by James Madison University IS DENIED.

IT IS FURTHER ORDERED that the application of Stu-Comm, Inc. for a license to cover (File No. BLFT-20100809CJM) for FM translator station W266BQ IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter H. Doyle", followed by a large forward slash and the initials "MPW".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Michael C. Friend, General Manager, Stu-Comm, Inc.
Mr. William D. Fawcett, Director of Engineering, WMRA