

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Received & Inspected

OCT 8 - 2009

FCC Mail Room



In re application of )

STU-COMM, INC. )

) File No. BPFT-20090819AHH

For Authority to Construct )

or Make Changes in )

FM Translator Station W218BZ, )

Crozet, Virginia )

9/283

To: Chief, Audio Services Division

Media Bureau

PETITION FOR RECONSIDERATION

The James Madison University Board of Visitors, licensee of WMRA, Harrisonburg, Virginia ("**WMRA**") and WMRY, Crozet, Virginia, pursuant to Section 1.106 (b)(1) of the Rules, hereby files a *Petition for Reconsideration* concerning the grant by the Commission of a construction permit in response to the above referenced application (the "**application**") of STU-COMM, INC. ("**permittee**").

Legal Standing

Section 1.106 (b)(1) of the Rules states that "any other person whose interests are adversely affected by any action taken by the Commission" shall "state with particularity the manner in which

*the person's interest are adversely affected by the action taken."*

The issues which we raise here affect the fairness of the allocation process and concern us as spectrum-holders. As demonstrated in Exhibit A., both WMRA and WMRY have overlapping coverage with the B-1 equivalent translator proposed by Stu-Comm. The shared market coverage defines us as a *party of interest*.

Section 1.106 (c) of the Rules states:

*A petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only under the following circumstances: (1) The facts fall within one or more of the categories set forth in § 1.106(b)(2); or (2) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.*

Among those categories, Section 1.106 (b)(2)(ii) states:

*The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.*

In preparing our objections to the **application** we determined that the application fit the criteria for a major change and would in fact require the most of the 30-day time period normally allocated to diligently raise objections to such an application. We could not have anticipated that the Commission would have processed this major change application in a shorter time period.

Another category referenced in Section 1.106 (c) is Section 1.106 (b) (2) (i) which states:

*The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters.*

A Minor Change application specifying a frequency change not-permitted-to-be-approved as a Minor Change should have been procedurally dismissed, making any objection unnecessary. That fact has changed with the grant of this Major Change Application within a 14 day timetable.

Public notice of the most recent amendment to the application was given by the Commission on August 24, 2009. After a cursory review of the **application**, field work - entailing a site visit to verify the claims of both the **permittee** and the representative of the parent station - was scheduled and performed on September 4, 2009. We were in fact prepared to file, with signed affidavit on hand, a Petition to Deny on September 8, 2009, when we became aware of the grant of the instant application was made on September 4, 2009, and public notice of the grant was released on September 10, 2009 (*Broadcast Actions*, Report No. 47067).

We do not think that it is in the "public interest" for a Major Change to be processed as a Minor Change under a two-week

timetable without sufficient time for concerned parties to prepare an adequate response. Furthermore, we consider the processing of a Major Change without local public notice, required by Section 73.3580 of the Rules, as not being in the "public interest." Finally, our instant petition will point out several precedent-setting aspects of this grant that, if sustained, will change the entire nature of the FM translator service, and we suggest that such change is not in the "public interest."

For all of these reasons we present our Petition for Reconsideration and maintain that it fulfills multiple requirements of Section 1.106 (c) of the Rules.

#### Nature of Change

The first pertinent issue to be addressed is the nature of the proposed change. The **permittee** has filed the proposed modification from Channel 218 to Channel 266 as a "Minor Change." In *1998 Biennial Regulatory Review*<sup>1</sup> the Commission determined that only frequency changes to an adjacent channel or an I.F. related (+/- 53 or 54) channel would be treated as

---

<sup>1</sup> *First Report and Order*, in MM Docket 98-93, FCC 99-55, 64 FR 19498

"minor." The proposed change does not meet the requirement for a minor change as stated in Section 74.1233 (a)(1) of the Rules and therefore cannot be processed as a minor change.

Powel Level for non-primary station fill-in

In the instant **application** the **permittee** incorrectly claimed to be entitled to rely on the less-restrictive power limitations afforded only to *licensees of primary stations* for "fill-in" purposes. Section 74.1235 (a) of the Rules explicitly states:

An application for an FM translator station filed by the licensee or permittee of the primary station to provide fill-in service within the primary station's coverage area will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds 250 watts. (emphasis ours)

The **permittee**, Stu-Comm, Inc., is not the licensee of the specified primary station WVTU(FM), which is licensed instead to The Virginia Tech Foundation. As a result, the power limitations set forth in Section 74.1235 (b) of the Rules applies to this **application** as it is for "other than for fill-in service which is covered in paragraph (a) of this section." More specifically, because the **permittee** is not, as per paragraph (a), the licensee of the primary station for which it proposes to serve as a "fill-in" translator station, the power limitation, at an HAAT above 141 Meters, should be 10 watts, not 195 watts as wrongly approved in the instant **application**.

### Purpose and Permissible Service

The **application** also raises an interesting question in that it proposes to provide "fill-in" service with purportedly<sup>2</sup> the same pattern and essentially the same coverage as the Class B-1 primary station<sup>3</sup>. The **permittee** specified an antenna located on the same tower and with the same ERP and directional pattern as the Part 73 primary station<sup>4</sup> but with an HAAT which is 4.3% lower<sup>5</sup>. This question is addressed in Section 74.1231(a) of the Rules which defines the purpose and permissible service of translator stations:

*FM translators provide a means whereby the signals of AM or FM broadcast stations may be retransmitted to areas in which direct reception of such AM or FM broadcast stations is unsatisfactory due to distance or intervening terrain barriers.*

Since the proposed station specifies the same distance and

---

<sup>2</sup> Although the parent station pattern which the proposed station will purportedly match required certification as per Section 73.316 of the Rules, no such requirement, as suggested by 74.1235 (i) of the Rules was stipulated. The permittee did depend on the direction pattern to avoid prohibited interference.

<sup>3</sup> The applicant's engineering exhibit shows that the 60 dbu contours of the parent station and the proposed translator station are essentially identical.

<sup>4</sup> "The proposed translator antenna will be on the WVTU tower. The directional antenna pattern proposed for this facility is the same as the pattern of WVTU; the power is the same as WVTU, and the antenna will be 22 meters below the WVTU antenna." From applicant's narrative submitted with the application.

<sup>5</sup> WVTU's HAAT is 517 meters, the instant application therefore has an HAAT of 495 meters.

intervening terrain barriers to potential listeners as the parent station, it does not fall in line with the Commission's definition of "purpose and permissible service." We would therefore conclude that co-located translators are not what the Commission envisioned when it established the translator service. Ironically, according to the signal studies provided by the permittee, the areas which now receive the primary station poorly will also receive the translator poorly.

We note that Commission policy is to prohibit multiple translators in the same area, requiring the applicant to "describe any relevant terrain obstruction as a means of showing technical need."<sup>6</sup> The same policy should be applied to a translator co-located with its primary station.

In the recent Report and Order concerning changes to the FM translator rules the FCC restated this policy: "The proper role of FM translators is to provide secondary service to areas in which direct reception is unsatisfactory."<sup>7</sup> Under this criterion, the instant **application** is improper.

---

<sup>6</sup> See *Amendment of Part 74*, 5 FCC Rcd 7222.

<sup>7</sup> Report and Order MB Docket No. 07-172, RM-11338, see footnote 31.

### Gaming the system

As demonstrated above, the application does not meet the requirements or intent of the rules concerning the FM translator service in general as defined in Section 74.1231(a) of the Rules or more specifically the fill-in service as defined in Section 74.1235 (a) of the Rules. The **permittee** has stated its actual purpose in its application, to wit:

*The purpose of this application is to change the channel from 218 to 266, and to make it a "fill-in" translator for WVTU, channel 207B1, Charlottesville, Virginia. **The translator will carry the WVTU HD-3 channel. (emphasis supplied).***

Apart from the error that approved the **permittee's** reliance on the less-restrictive power limitations afforded exclusively to licensees of primary stations for fill-in purposes, we also suggest that the Commission should consider the appropriateness of licensing "fill-in" translator stations which seek to provide multiple analog programming streams in a market from the same transmitter site. This exemption, if allowed to stand, would allow high-elevation stations to gain additional stations under Part 74 with coverage identical to their Part 73 station but without the normal requirements, conditions and expectations placed upon Part 73 stations<sup>8</sup>.

---

<sup>8</sup> Those "requirements, conditions and expectations" include among other things the requirements for certified directional antenna patterns and a surveyor's certification, ownership limits, and EEO requirements. Many technical and operational standards, which are imposed on the primary station will not be imposed on the functionally identical "translator" station.



We ask this question: can stations gain additional B-1 equivalent stations at their existing transmitter sites by merely citing "fill-in" purposes? This is a bigger issue than the instant application, but one which the instant application raises. The potential for abuse is great, and we believe the instant grant is indeed one which will set precedent.

In the recent Report and Order concerning AM stations using FM translators, the Commission addressed the issue of licensees obtaining cross-service translators to be used as surrogates for FM stations or to circumvent local radio ownership limits<sup>9</sup>. We fail to see any significant difference between this and obtaining a B-1 equivalent translator to "fill in" a non-existent signal deficiency with programming not currently offered. We note that while the applicant states that "the translator will carry the WVTU HD-3 channel," that channel is not currently utilized (See Exhibit B.).

#### Summary

In summary, the **Application** was improperly filed as a "Minor Change" when it does not meet the requirements of Section 74.1233 (a)(1) of the Rules. The **permittee** incorrectly claimed to be entitled to rely on the less-restrictive power limitations afforded only to *licensees of primary stations* for "fill-in" purposes as set forth in Section 74.1235 (a) of the Rules. The

---

<sup>9</sup> Report and Order MB Docket No. 07-172, RM-11338, Paragraph 30.

**permittee** also specified a location for a translator which does not meet the requirements of Section 74.1231 (a) of the Rules. By the **permittee's** own admission, the stated purpose of the proposed "fill-in" (quotes used by permittee) translator is to simply gain a second analog programming channel equivalent to the parent stations class B-1 signal.

For these reasons **WMRA** requests that the construction permit issued to the **applicant** be rescinded.

Respectfully Submitted,  
**JAMES MADISON UNIVERSITY**  
**BOARD OF VISITORS**

October 7, 2009


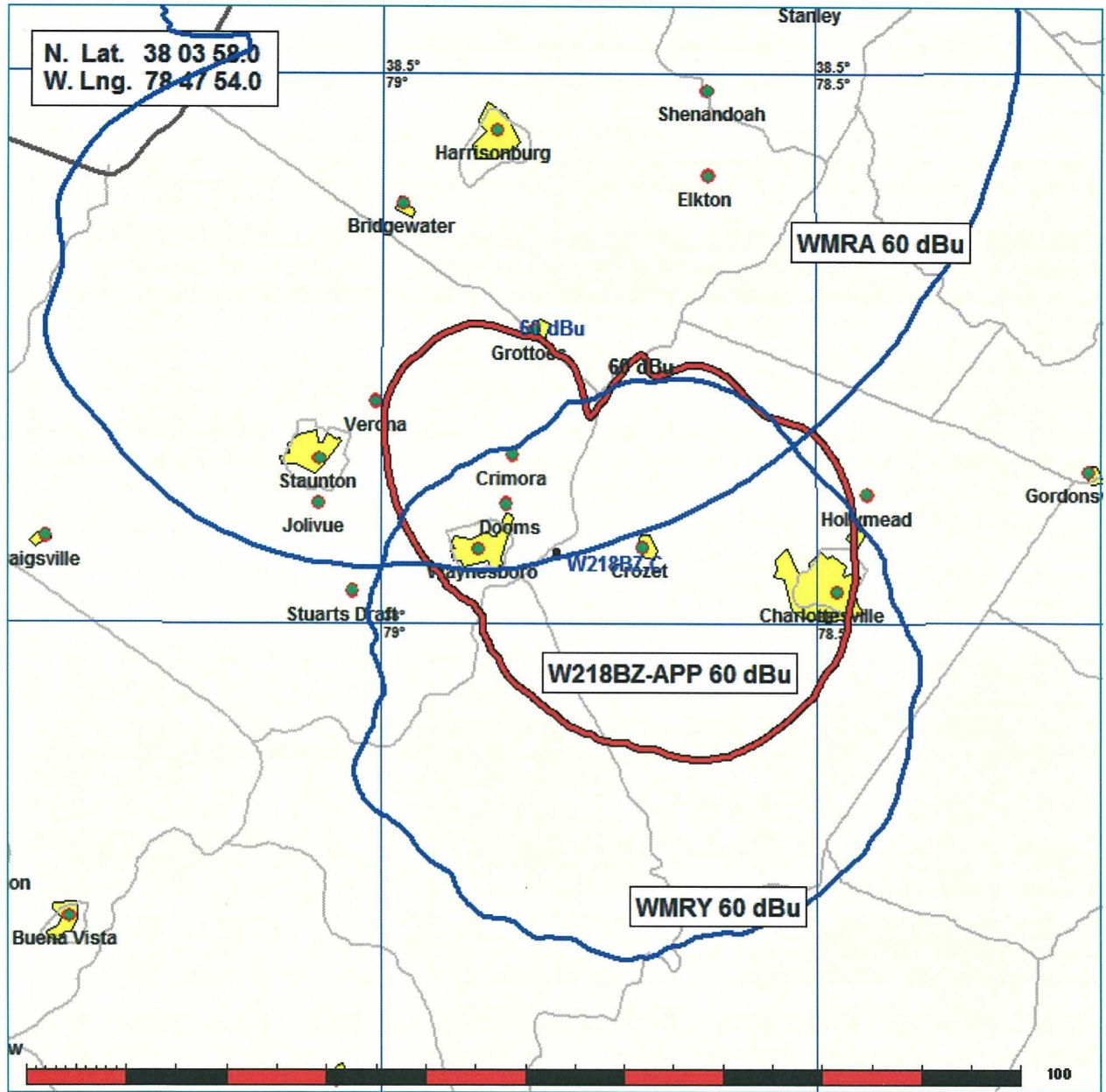
By:   
Thomas E. DuVal  
General Manager, WMRA

Exhibit A.

WMRA, WMRV and W218BZ-APP Coverage Contours

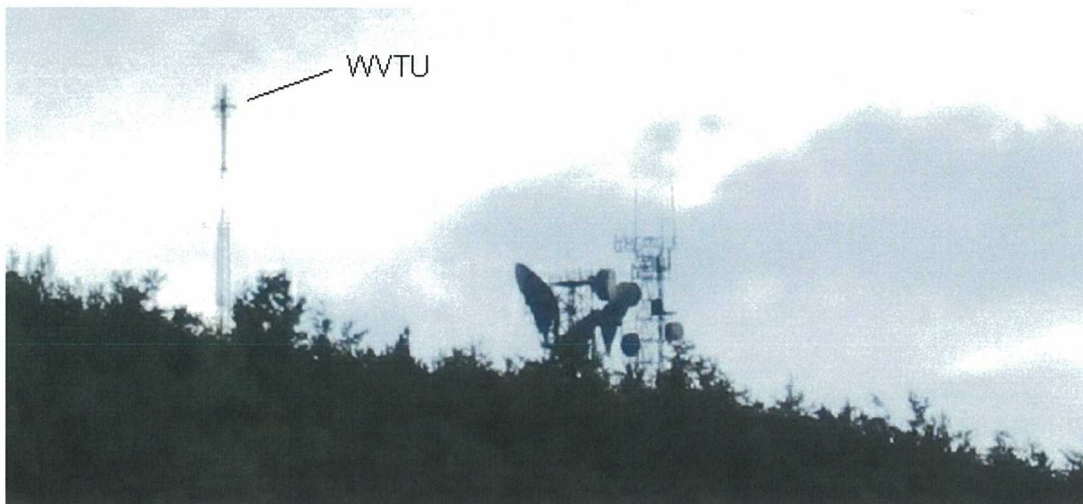
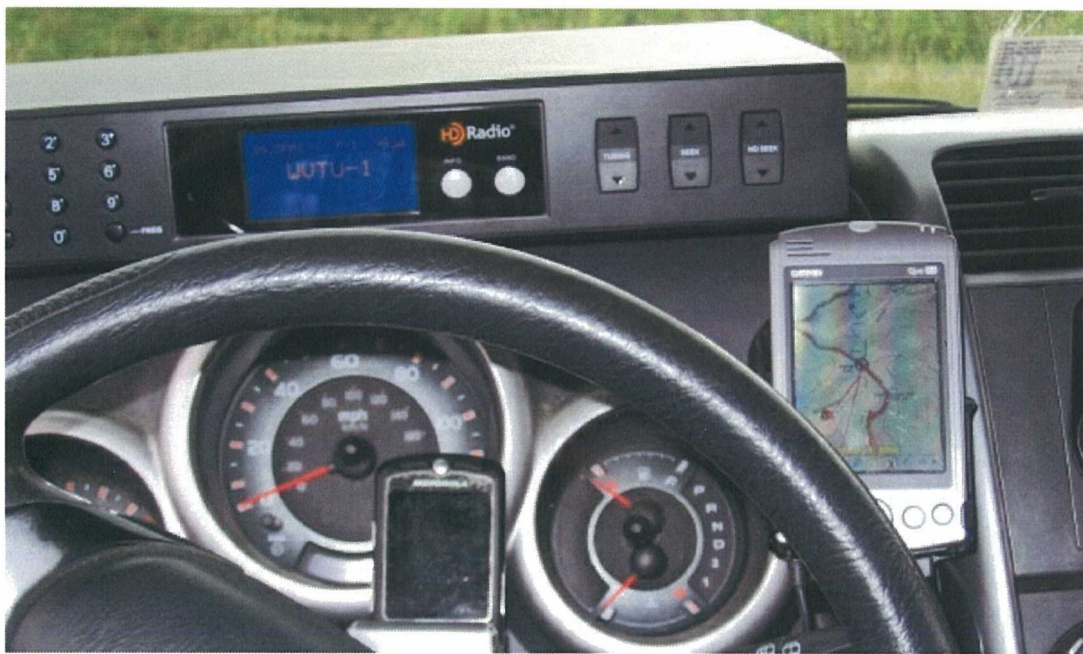


## Exhibit B.

### WVTU - HD3 Channel

On September 10, 2009 at 1728 EDT and again on October 6, 2009 at 1444 EDT, WVTU's signal was monitored for HD-3 transmissions. At the specified times, WVTU was broadcasting in HD-1 and HD-2 but not in HD-3.

The signal was monitored at the Beagle Gap Appalachian Trail parking area, which is roughly ½ mile NE from the WVTU antenna and in the main lobe of WVTU's directional pattern. The WVTU antenna is visible from this location.



AFFIDAVIT

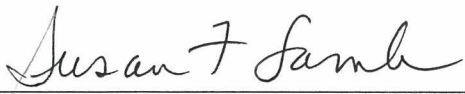
Commonwealth of Virginia     )  
  )  
City of Harrisonburg            )                    ss:

William D. Fawcett, having been first duly sworn upon oath,  
states that he is an *Electronic Manager I* employed by the  
Commonwealth of Virginia; and that he is the holder of a First  
Class Radiotelephone Operator License P1-23-12550, issued July  
13, 1978 and replaced by a Lifetime General Radio Telephone  
Operator License number PG-4-10874; that his qualifications are  
a matter of record before the Federal Communications Commission;  
that the foregoing exhibits were prepared under his direction;  
and that the statements contained therein are true of his own  
personal knowledge, except those stated to be information on  
belief, and as to those, he believes them to be true.

  
\_\_\_\_\_

William D. Fawcett

Subscribed and sworn to before me this 7th day of October 2009.

  
\_\_\_\_\_

Notary Registration Number  
167754

Susan F. Lamb  
NOTARY PUBLIC (SEAL)

My commission expires  
**July 31, 2012**

SUSAN F LAMB  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #167754  
My Commission Expires July 31, 2012

AFFIRMATION OF SERVICE

I, William D. Fawcett, Director of Engineering for WMRA, do  
certify that on this date, by United States Postal Service First  
Class mail, a copy of this Petition for Reconsideration was sent  
to:

Mr. Michael C. Friend  
General Manager  
Stu-Comm, Inc.  
2250 Old Ivy Road  
Charlottesville, Virginia 22903

September 7, 2009

By: 

William D. Fawcett  
Director of Engineering





James Madison University  
Office of the President  
MSC 7608  
Harrisonburg, VA 22807  
(540) 568-6868  
(540) 568-2338 Fax

February 1, 1999

Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

RE: CONFIRMATION OF SIGNATURE AUTHORITY OF WILLIAM FAWCETT  
AND THOMAS DUVAL

The purpose of this letter is to confirm that William Fawcett and Thomas E. DuVal have been delegated the authority to sign FCC applications and other forms on behalf of all stations licensed to the Board of Visitors of James Madison University (WMRA and its auxiliary stations WMRL and WMRY, as well as WXJM).

Sincerely,

Linwood H. Rose  
President

LHR/deb

cc: Dr. Richard Whitman, Dean, College of Arts and Letters  
Mr. Thomas DuVal, General Manager, WMRA  
Mr. William Fawcett, Engineer, WMRA✓