

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

Received & Inspected
NOV 2 - 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)
)

9/28/3

To: Chief, Audio Services Division Media Bureau

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

The James Madison University Board of Visitors, licensee of WMRA, Harrisonburg, Virginia ("WMRA") and WMRY, Crozet, Virginia, respectfully submits this reply to the *Opposition to Petition for Reconsideration* ("opposition") submitted by Stu-Comm, Inc. ("Stu-Comm").

Procedural Issues

The **opposition** states that the petition filed by **WMRA** is lacking in both signature and address.

The original copy of the *Petition for Reconsideration* submitted to the Commission was signed by Thomas E. DuVal on October 7, 2009. The signing was witnessed by William D. Fawcett. The cover letter attached to the petition, and received by **Stu-Comm**, plainly stated the address for any correspondence to the signatory.

The **opposition** states that they have "*significant concerns about whether this filing was truly authorized by the James Madison University Board of Visitors.*"

Mr. DuVal, an employee of James Madison University, which is an agency of the Commonwealth of Virginia, was acting within the limits of the delegated signature authority granted to him by the James Madison University Board of Visitors. DuVal, on numerous occasions, has signed similar documents submitted to the Commission on behalf of the Board. A letter confirming his signature authority status was filed with the Commission on

February 1, 1999. A copy of that letter was attached to the original *Petition for Reconsideration* and was received by **Stu-Comm**.

We also note that the original petition was submitted with a signed affidavit by William D. Fawcett who also has delegated signature authority granted to him by the James Madison University Board of Visitors.

The Displacement Exemption

Stu-comm states in their **opposition** "*In circumstances where a translator station is effectively displaced from operating on any first, second or third adjacent channel or any intermediate frequency channel, such as with W218BZ, it has been established policy of the Media Bureau to permit such displaced translators to seek relocation to a non-adjacent channel as a minor modification*" (emphasis supplied).

The "established" (informal) policy that they cite has no rulemaking or public notice behind it¹, however since **Stu-Comm** now

¹ We reject **Stu-Comm's** notion that the television translator rule in Section 73.3572(a)(4) of the Rules applies to FM translators.

states that W218BZ is subject to this displacement exemption² we must examine that claim.

Stu-Comm stated in its original application that "W218BZ will be displaced at 10 watts on channel 218 by one of the following full service applications filed in the October 2007 window" (emphasis supplied) and then lists six applications. Of those six, one of those applications³ was not actually in the "FM window," however our engineering studies (Exhibit A.) show that the grant is clear of interference. One of the remaining 5 applications also will not receive interference from W218BZ.

It is important to note that of these 5 applications in MX Group 541 which have been "tendered for filing" none have been awarded construction permits or even "accepted for filing."

For reference, MX Group 541 contains 36 applications from Western Virginia to New Jersey. Of the "FM window" applications cited by **Stu-Comm** that could possibly displace W218BZ, all appear to be in the middle-to-lower tier in the Section 307b Fair

² No exemption from Section 74.1233 (a)(1) of the Rules was cited or requested in **Stu-Comm's** application.

³ This "application," wrongly cited by **Stu-Comm** as BNPED-2007100907AAU Harrisonburg, VA is most-likely an application, now construction permit BPED-20070907AAU Harrisonburg, VA.

Distribution of Service "white space sweepstakes" among those 36 applications. It is highly unlikely that W218BZ will be displaced by any of these applications, but we acknowledge that it is conjecture (as is the displacement claim).

Regardless, no displacement exemption (if it does exist) can be claimed simply on the basis of applications that have been "tendered for filing." To permit this would allow the applicant to tender an application to supposedly displace itself and therefore claim the exemption - which they have done.⁴

Technical Need

Stu-Comm, in addressing the technical need requirements of Section 74.1232 of the Rules, states in their **opposition**: "*here the technical deficiency sought to be corrected by use of a translator is essentially the lack of analog capacity by the primary station. WVTU(FM) lacks sufficient analog capacity to provide all of the station's programming to its analog listeners.*"

⁴ Stu-Comm, Inc., BNPED-20071018AUH, Staunton, VA


We contrast this statement with the Note to Section 73.1232(b) of the Rules which states "as used in this section need refers to the quality of the signal received and not to the programming content, format or transmission needs of an area" (emphasis supplied). Stu-Comm's argument for their B-1 equivalent translator, co-located with the parent station is directly rejected by this Note to the Rules.

Conclusion

WMRA's Petition for Reconsideration was filed solely for the purposes enumerated in that pleading. WMRA has no interest in attempting to "delay, obfuscate or harass Stu-Comm in its operation," rather WMRA desires that our petition be considered on its merits. WMRA has not made any request to shut down Stu-Comm's currently licensed secondary service and as we have demonstrated is not even legitimately subject to displacement. Stu-Comm's argument concerning technical need is fanciful and is addressed directly in the Rules. Accordingly, WMRA stands fast to the issues presented in its Petition for Reconsideration and requests again that the instant construction permit issued to Stu-Comm be rescinded.

Respectfully Submitted,
JAMES MADISON UNIVERSITY
BOARD OF VISITORS

October 30, 2009

By: 
Thomas E. DuVal
General Manager, WMRA

James Madison University Board of Visitors
Thomas E. DuVal, WMRA
983 Reservoir Street
Harrisonburg, Virginia 22801

AFFIDAVIT

Commonwealth of Virginia)
)
City of Harrisonburg) SS:

Thomas E. DuVal, having been first duly sworn upon oath,
states that he is the General Manager of Radio Station WMRA,
employed by James Madison University, and that the James Madison
University Board of Visitors, licensee of WMRA, has granted him
signature authority on their behalf concerning filings such as
this with the Federal Communications Commission.

He further states that he has read the Opposition document to
which this is attached, and that to the best of his knowledge,
information, and belief there is good ground to support it, and
that it is not interposed for delay.

Thomas E. DuVal

Thomas E. DuVal

Subscribed and sworn to before me this 30th day of October 2009.

Lois R. Shank

Notary Registration Number
362663

Lois R. Shank
NOTARY PUBLIC (SEAL)

My commission expires
November 30, 2009





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,

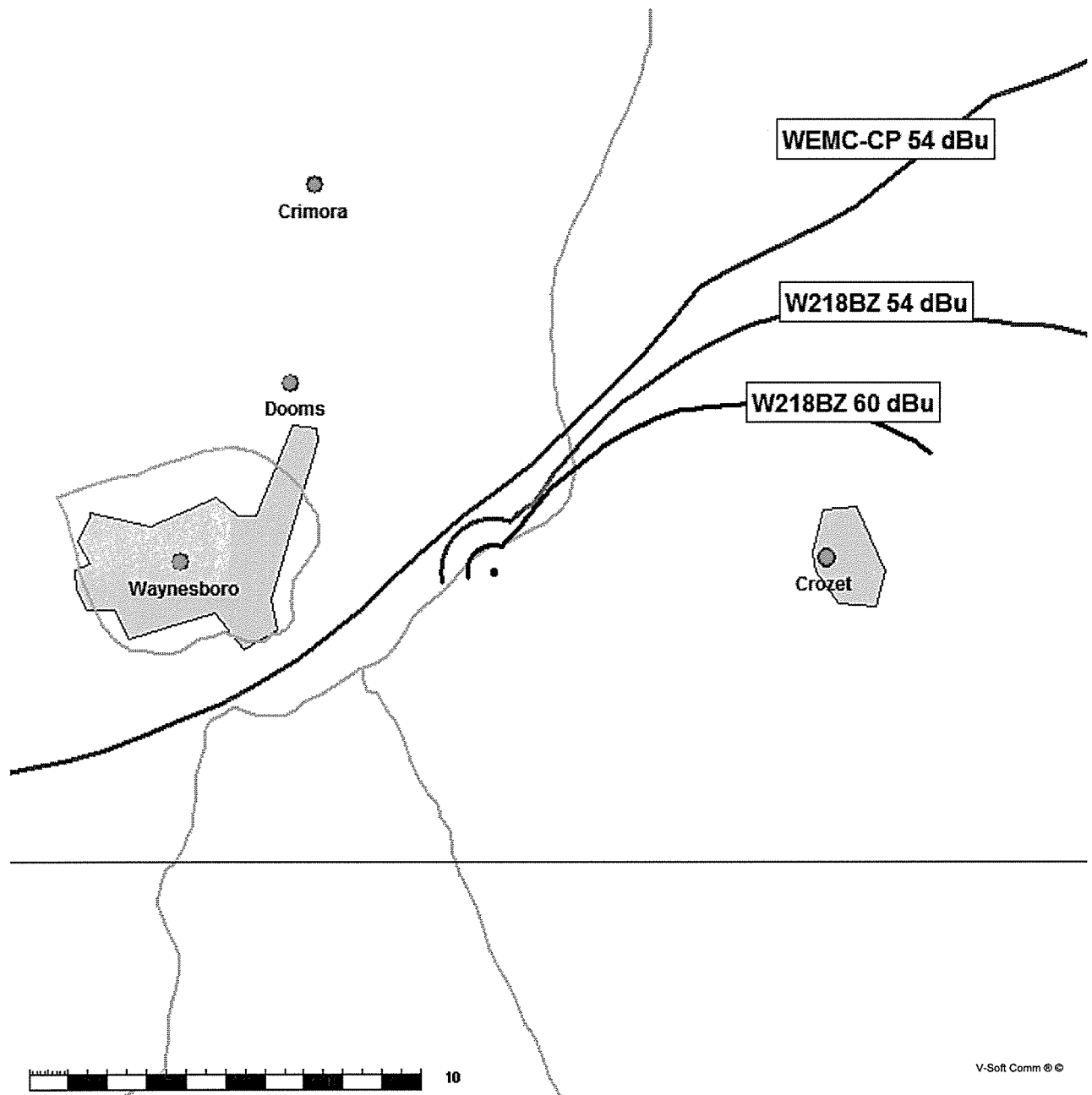
Linwood H. Rose
President

LHR/deb

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

Exhibit A., Page 1. Stu-comm, Inc. W218BZ-LIC CH# 218D - 91.5 MHz, Pwr= 0.01 kw, HAAT= 483.3 M, COR= 881 M Average Protected F(50-50)= 12.44 km Standard Directional												
REFERENCE		DISPLAY DATES										
38 03 58.0 N.		DATA 10-28-09										
78 47 54.0 W.		SEARCH 10-28-09										
CH	CALL	TYPE	ANT	AZI	DIST	LAT	PWR(kw)	INT(km)	PRO(km)	*IN*	*OUT*	
CITY		STATE		<--	FILE #	LNG	HAAT(M)	COR(M)	LICENSEE	(Overlap in km)		
218D	W218BZ	LIC	DV__	0.0	0.0	38 03 58.0	0.010	4.7	0.7	-5.4*	-5.4*	
Crozet		VA		0.0	BLFT20051108AGG	78 47 54.0		881	Stu-comm, Inc			
218B1	1211631	APP	DCX	193.5	25.7	37 50 27.0	1.650	76.5	26.4	-51.7*	-8.3*	
Scottsville		VA		13.4	BNPED20071015ALJ	78 52 00.0	229	576	Virginia Organizing Projec			
218B1	1216414	APP	DVX	147.7	63.8	37 34 48.0	6.000	89.6	30.8	-37.0*	-10.6	
Buckingham		VA		327.9	BNPED20071019BBC	78 24 39.4	136	270	James Madison University B			
218A	1212845	APP	_CX	114.0	66.5	37 49 18.0	0.900	57.8	17.4	-5.6	-3.3	
Columbia		VA		294.4	BNPED20071019AED	78 06 28.0	108	201	Liberty University, Inc.			
217B1	1208327	APP	DCX	255.9	34.8	37 59 23.0	20.000	34.4	23.1	-0.4	10.4	
Greenville		VA		75.7	BNPED20071012AUC	79 10 56.0	19	606	Calvary Chapel of Staunton			
219B	WEMC	CP	DCX	346.6	56.5	38 33 40.0	9.500	54.7	36.6	1.1	18.5	
Harrisonburg		VA		166.5	BPED20070907AAU	78 56 56.0	199	715	Board Of Trustees Of Easte			
217B1	1226604	APP	ZCX	255.9	34.8	37 59 22.0	10.000	32.5	21.9	1.6	11.5	
Staunton		VA		75.7	BNPED20071018AUH	79 10 57.0	21	600	Stucomm, Inc.			
216B1	WTJU	LIC	_CN	108.7	29.1	37 58 55.0	0.600	1.6	26.6	13.1	2.3	
Charlottesville		VA		288.9	BLEDD19980605KI	78 29 03.0	325	493	University Of Virginia			
220A	WNRN	LIC	NCN	108.7	29.1	37 58 55.0	0.320	1.3	23.0	13.4	5.9	
Charlottesville		VA		288.9	BLEDD19970121KB	78 29 03.0	325	493	Stu-comm, Inc.			
219A	WEMC	LIC	_CN	350.8	45.7	38 28 20.0	1.850	31.1	21.1	13.9	23.3	
Harrisonburg		VA		170.7	BLEDD19940707KB	78 52 57.0	58	506	Board Of Trustees Of Easte			
221D	644154	APP	_C_	3.8	36.4	38 23 36.0	0.008	0.2	12.1	35.5	24.3	
Harrisonburg		VA		183.9	BNPFT20030317LEQ	78 46 13.0		896	Virginia Tech Foundation,			
221D	1282396	APP	_C_	3.8	36.4	38 23 35.0	0.006	0.2	11.2	35.5	25.2	
Harrisonburg		VA		183.8	BNPFT20080612ABJ	78 46 14.0		908	Virginia Tech Foundation,			
218A	WARN	LIC	_C_	58.4	83.1	38 27 15.0	0.930	34.8	10.0	40.3	43.1	
Culpeper		VA		238.9	BMLED20000918AGH	77 59 10.0	37	157	American Family Associatio			
218A	WLUR	LIC	_CX	242.3	64.5	37 47 42.0	0.175	21.6	6.5	42.2	53.0	
Lexington		VA		61.9	BLEDD20060309ACD	79 26 49.0	-51	353	Washington And Lee Univers			
219A	KDRH	APP	DCX	130.0	75.7	37 37 36.0	4.900	15.3	10.8	47.0	43.6	
Powhatan		VA		310.4	BMJPED20071022BFI	78 08 27.0	84	172	Educational Media Foundati			
219A	WWEM	LIC	_C_	196.6	90.4	37 17 07.0	1.150	45.2	29.8	44.4	59.0	
Rustburg		VA		16.4	BLEDD20071210ABQ	79 05 26.0	228	464	Educational Media Corporat			
217B	WTRM	LIC	DCX	15.9	129.1	39 11 02.0	5.600	81.5	54.5	46.9	73.3	
Winchester		VA		196.1	BLEDD20051207ABI	78 23 15.0	427	812	Timber Ridge Ministries, I			
219B1	1210477	APP	DEX	87.7	112.3	38 06 00.0	25.000	46.0	29.2	52.9	61.7	
Bowling Green		VA		268.5	BNPED20071019ADP	77 31 10.0	93	159	Calvary Chapel of Spotsylv			
219B1	1215785	APP	ZVX	88.8	112.9	38 04 50.0	20.000	39.8	25.5	59.7	66.0	
Spotsylvania		VA		269.6	BNPED20071019AJY	77 30 42.0	77	144	Virginia Tech Foundation,			
062T	W06CP	CP	D_N	17.1	104.6	38 57 57.0	3.000	0.1	2.7	131.5R	101.8M	
Mt. Olive		VA		197.3	BNPTVL20000831CKO	78 26 32.0	188	360	word Of God Fellowship, In			

Terrain database is NGDC 30 SEC , R= 73.215 qualifying spacings or FCC minimum spacings in KM, M= Margin in KM
 Contour distances are on direct line to and from reference station. Reference zone = 1, Co to 3rd adjacent.
 Ant Column: (D= DA Standard, Z= DA 73.215, N= Not DA 73.215, _= Omni), Polarization (C,H,V,E), Beamtilt(Y,N,X)
 "*"affixed to 'IN' or 'OUT' values = site inside protected contour.
 "<" = Contour Overlap
 Reference station has protected zone issue: WV Quiet Zone



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.

W D Fawcett

William D. Fawcett

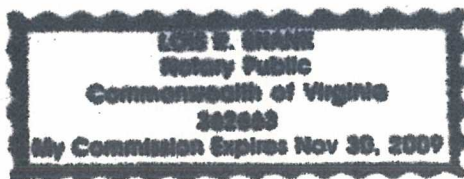
Subscribed and sworn to before me this 30th day of October 2009.

Lois R. Shank

Notary Registration Number
362663

Lois R. Shank
NOTARY PUBLIC (SEAL)

My commission expires
November 30, 2009




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

Mr. Brendan Holland, Esq.
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

October 30, 2009

By: 

William D. Fawcett
Director of Engineering, WMRA