

ORIGINAL

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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)
)
EMMANUEL COMMUNICATIONS, INC.)
)
For Construction Permit for a New FM Translator)
Station, W256DN, to Operate on Channel 256)
At Worcester, Massachusetts)

BNPFT-20171220AAW
Facility ID No. 200924

ACCEPTED/FILED

MAR 14 2018

Directed to: Office of the Secretary
Attention: Chief, Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

REPLY TO OPPOSITION TO PETITION TO DENY

Plymouth Rock Broadcasting Co., Inc. ("Plymouth Rock"), licensee of WPLM-FM, Plymouth, Massachusetts, by its attorneys, hereby submits its Reply to the Opposition to Petition to Deny submitted by Emmanuel Communications, Inc. ("Emmanuel") on March 7, 2018, with regard to the above-captioned application for construction permit for a new FM translator, assigned the call letters W256DN, at Worcester, Massachusetts. With respect thereto, the following is submitted:

As noted in Plymouth Rock's Petition to Deny, Emmanuel has submitted an application for a new FM translator on Channel 256, the same channel on which WPLM-FM is licensed to operate, and that translator is predicted to cause interference to areas in which regular WPLM-FM listeners are currently located. Accordingly, pursuant to Section 74.1204(f) of the Commission's rules, the above-captioned W256DN application should not have been accepted for filing and may not be granted.

Emmanuel has now claimed, without providing any support, that the engineering statement which demonstrates the likelihood of interference to existing WPLM-FM listeners

only demonstrates that Section 74.1204(f) might present an interference issue, not that it will. An examination of Section 74.1204(f), however, demonstrates that this objection is illogical. Obviously, it is impossible for a mere application to cause actual interference to an existing facility. Section 74.1204(f), which is explicitly addressed to applications, must therefore rely on predictions of interference and states as follows:

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, ... if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station....

47 C.F.R. §74.1204(f). It should be noted that there is no specification of any essential number of persons regularly using the signal of the co-channel station, nor is there any requirement for demonstration of any particular level of interference, but only overlap of the predicted 1.0 mV/m field strength contour with the area in which the existing listeners are located.

Plymouth Rock submitted with its Petition to Deny an engineering statement which not only clearly showed the location of existing listeners within the translator's predicted 1.0 mV/m contour but also went beyond the rule's requirements to demonstrate that objectionable interference will be caused to those listeners. As a result, the Emmanuel application should not have been accepted for filing and cannot be granted. Emmanuel cannot rely on a premature grant of its application, which was then rescinded, as demonstrating anything to the contrary. The Commission's staff is unlikely to have been aware that WPLM-FM has regular listeners within the translator's proposed 1.0 mV/m contour. Now that it is aware of their existence, however, it may not again grant Emmanuel's application.

Emmanuel also protests that Plymouth Rock's Petition to Deny included the sworn declarations of a "mere" 17 current listeners who do not want to lose service from WPLM-FM. As noted above, however, there is no particular required number of listeners who must regularly use a full-power station's service for Section 74.1204(f) to apply. More importantly, however, it must be remembered that these 17 listeners are persons who felt strongly enough about the potential loss of the ability to receive WPLM-FM that they took the time and trouble to obtain, complete, sign, and return to Plymouth Rock declarations under penalty of perjury with regard to this issue. For every person who demonstrated this high level of initiative, it may be assumed that there are at least several others who also are listeners but may have been too busy, or reluctant to involve themselves in a matter before a Federal governmental agency, or hesitant to have their names involved in controversy, or had other reasons that they did not submit a declaration. Indeed, since that time, WPLM-FM has received communications from additional listeners who learned of the possible translator interference and contacted WPLM-FM. Copies of their e-mails are attached hereto as Exhibit 1. While these are not declarations, they do provide support for the contention that there are far more than 17 people who would object to interference from the proposed Emmanuel translator.

Moreover, it must also be remembered that Plymouth Rock has raised the significant issue that WPLM-FM is a Massachusetts Primary entry point for EAS alerts. As previously noted, in this capacity, WPLM-FM is a source of EAS State messages and is a key participant in the EAS system. See 47 C.F.R. §11.18(c). Because monitoring stations at the edges of Operational Areas may have difficulty receiving the stations which they have been assigned to monitor, they rely on other, nearby stations such as WPLM-FM to complete their reception of alerts and tests in accordance with FCC and FEMA regulations. Emmanuel has not addressed

the question of how its co-channel, proposed translator will ensure no interference to reception of WPLM-FM's alerts. Moreover, stations are unlikely to be aware of the impact of any interference until after they have failed to receive an important alert. In such instances, any interference will not merely limit a listener's entertainment but may have a real impact on safety of life or property.

Emmanuel has also argued essentially that its application should be granted so that it can put its proposed station on the air and see what happens. Adopting this cavalier approach would result in a huge waste of everyone's time and resources, however, and, as noted above, could even be dangerous. Everyone knows now that there are existing WPLM-FM listeners in the Worcester area, and we know that it has been predicted that they will be harmed by the translator's proposed broadcasts. It is unclear why, in the face of a rule which prohibits acceptance of the Emmanuel application, much less its grant, these listeners must suffer harm for some unspecified period of time just to indulge Emmanuel's hopes. Moreover, it also is unclear why both Plymouth Rock and its listeners should be required to duplicate their efforts and expend time and money to again file protests, while at the same time suffering with interference, when the problem can and must be prevented before it starts.

Plymouth Rock is sympathetic with the difficulties of AM stations and with the Commission's efforts to revitalize AM service. Two countervailing considerations must be kept in mind, however. First, it makes little sense to improve potential AM service only by degrading existing FM service. The idea is not to destroy what radio listeners have now but only to add further service. Second, FM translators offer only a secondary service. As a result, they are required by rule and policy to protect full-power FM stations and not deprive existing listeners of their service. Unfortunately, Emmanuel's proposed translator would do just that and thus would

fail properly to protect co-channel WPLM-FM. Accordingly, that application must be denied. Not only would grant of the above-captioned W256DN application be contrary to Section 74.1204(f) of the Commission's Rules, but it also would disrupt WPLM-FM's role as a primary provider of state EAS alerts.

WHEREFORE, the premises considered, Plymouth Rock respectfully requests that Emmanuel's above-captioned application be dismissed or denied.

Respectfully submitted,

PLYMOUTH ROCK BROADCASTING CO., INC.

By: 
Susan A. Marshall
Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street – Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

March 14, 2018

Exhibit 1

From: Kathleen Turnbull <turnbullkathleen@gmail.com>(Add as Preferred Sender)
Date: Sun, Mar 11, 2018 12:29 pm
To: scottr@easy991.com

I listen from Harvard MA enjoy the station

Sent from my iPhone

From: Kendra Bolivar <kendrabolivar.billingwestside@yahoo.com>
Date: March 12, 2018 at 3:16:38 PM EDT
To: "scottr@easy991.com" <scottr@easy991.com>
Subject: listening in worcester
Reply-To: Kendra Bolivar <kendrabolivar.billingwestside@yahoo.com>

Hello Scott,

Huge fan of the station and program management. I live in Worcester and want to know how not to lose this station in the near future.

Thanks for the help with this and for such great timeless music.

Sincerely,

Kendra Bolivar

Subject: Worcester concerns
From: Bruce R Hickox <brh339@juno.com>(Add as Preferred Sender)
Date: Sun, Mar 11, 2018 3:35 pm
To: ScottR@easy991.com

Hello Scott !

Although I reside in Taunton I am often on the road and travel in the Worcester area and would hate to think I would not be able to receive your station there.

I do not understand why the FCC would consider locating a station on the same

frequency in your market area.

Is there anything I can do as a listener to oppose the collocation of another station on your frequency ?

I look forward to your reply.

Thanks !

Bruce :-)

*BRUCE R HICKOX, RNC, BSN
331 Thrasher Street
Taunton, MA 02780-1504
(508) 880-0044
brh339@juno.com*

From: Aislann Gullotti <myace1997@gmail.com>(Add as Preferred Sender)
Date: Sat, Mar 10, 2018 2:03 pm
To: scottr@easy991.com

Hi Scott,
I'm in Worcester and listen all the time!
I hope to be able to keep listening. ☐
Thank you,

Aislann Gullotti

Subject: Listening in Worcester
From: Ruth Cammuso <mrcammuso@att.net>(Add as Preferred Sender)
Date: Sat, Mar 10, 2018 6:00 pm
To: scottr@easy991.com

I enjoy listening to 99.1 in Worcester and am interested in the possibility of continuing to listen after the change over.
Thanks, Mark
Sent from my iPhone

From: JONATHAN RAHMATI <jm2@townisp.com>(Add as Preferred Sender)
Date: Sun, Mar 11, 2018 9:52 pm
To: scottr@easy991.com

Hi
I listen from Shrewsbury MA and heard on the radio that the station will no longer air in this area or the frequency will be disrupted. I think it said to mail you or some Scott - so here I am to say that I have listened for years and this will be a big disappointment to me.

Joanne

Subject: 99.1 MHz in Worcester
From: Jeff D <jeffreydawley@yahoo.com> (Add as Preferred Sender)
Date: Mon, Mar 12, 2018 12:56 am
To: "scottr@easy991.com" <scottr@easy991.com>

Hi Scott,

I heard your ad today on 99.1, regarding a new station that will be broadcasting on the same frequency in Worcester, MA. I didn't catch all of what you said but I believe it was regarding people in that listening area. I live in Maynard, MA, work in Boston. I think I live on the fringe of your broadcast area. Depending on the particular radio I'm using, (the car is the best) I am able to listen to your station.

I truly hope nothing interferes with the signal from Plymouth. I grew up in West Plymouth, and remember when they played big band music! I recall the days of "smooth jazz" which most of us recall as elevator music, living up to it's call letters of We Play Lousy Music. I remember as a kid they tracked Santa Clause on Christmas Eve. In my 20's I lived down near Benny's, and I could hear WPLM, albeit faintly, coming through my land line telephone!

Sorry to get all nostalgic, but WPLM is a nice little connection to Plymouth for me, even though I am usually there at least once a month. I assume you're petitioning the FCC or something. If there's anything I can do to help let me know.

Thanks,
Jeffrey Dawley
Maynard, MA

From: William Trainor <trainorlaw@aol.com>
Date: March 12, 2018 at 6:40:50 PM EDT
To: scottr@easy991.com

I am against a new station in Worcester taking the 99.1 signal.

I live in Worcester and am a regular listener to your station.

Please do what you can to prevent this takeover.

Thank you

CERTIFICATE OF SERVICE

I, Joan P. George, an Assistant with the office of Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing “Reply to Opposition to Petition to Deny” was sent on this 14th day of March, 2018, via First-Class United States mail, postage pre-paid, to the following:

Stuart W. Nolan, Jr., Esquire
Legal Works Apostolate, PLLC
4 Family Life Lane
Front Royal, Virginia 22630
Counsel for Emmanuel Communications, Inc.



Joan P. George