



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

**June 26, 2018**

*In Reply Refer to:*  
1800B3-SS

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**In re: New(FX), Worcester, MA  
Facility ID No. 200924**

File No. BNPFT-20171220AAW

**Petition to Deny**

Dear Counsel:

This letter concerns: (1) the referenced application (Application) of Emmanuel Communications, Inc. (Emmanuel) for a construction permit for a new FM translator station on Channel 256 at Worcester, Massachusetts;<sup>1</sup> (2) a Petition to Deny (Petition) the Application, filed on February 18, 2018, by Plymouth Rock Broadcasting Co., Inc. (Plymouth Rock);<sup>2</sup> and (3) related responsive pleadings.<sup>3</sup> For the reasons set forth below, we grant the Petition and dismiss the Application.

**Background.** Emmanuel filed for a new FM Translator station in Worcester during the filing window in July of 2017.<sup>4</sup> Emmanuel's proposal was determined to be a "singleton," and it was invited to file a long-form application,<sup>5</sup> which it did on December 20, 2017. The staff accepted the Application for filing on January 29, 2018.<sup>6</sup>

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<sup>1</sup> The proposed translator is a fill-in for Station WNEB(AM), Worcester, Massachusetts.

<sup>2</sup> Plymouth Rock is licensee of WPLM-FM, Plymouth, Massachusetts, which is on the same channel and proximate to the 60 dBμ contour of Emmanuel's proposed FM translator.

<sup>3</sup> Emmanuel filed A Motion for Extension of Time to oppose the Petition on February 26, 2018, and an Opposition to Petition (Opposition) on March 7, 2018, to which Plymouth Rock replied on March 14, 2018 (Reply).

<sup>4</sup> See Application File No. BNPFT-20170726ABK; *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017*, Public Notice, 32 FCC Rcd 4663 (MB/WTB 2017).

<sup>5</sup> See *Media Bureau Announces Filing Window for Long-Form Applications*, Public Notice, 32 FCC Rcd 9248, 9265 (MB 2017).

<sup>6</sup> See *Broadcast Actions*, Public Notice, Report No. 29164 (rel. Feb. 1, 2018).

In its Petition, Plymouth Rock argues that Emmanuel's proposed translator will interfere with Plymouth Rock's established listening audiences in violation of Section 74.1204(f) of the FCC's rules (Rules) and that the Application should be dismissed.<sup>7</sup> Plymouth Rock supplies the complaints of 17 allegedly unaffiliated WPLM-FM listeners and the Engineering Statement of Louis R. du Treil, Jr., to demonstrate that the operation of Emmanuel's proposed translator is likely to cause interference with the reception of WPLM-FM in areas both inside and just outside of the proposed translator's 60 dBμ contour.<sup>8</sup> Using an undesired-to-desired (U/D) signal strength ratio analysis, Plymouth Rock claims that the proposed translator can be predicted to cause interference to the reception of WPLM-FM's signal at the listeners' locations.<sup>9</sup> Finally, Plymouth Rock argues that the reception of WPLM-FM, "as an upstream initiator of [EAS] alerts," must not be compromised by the operation of a co-channel translator.<sup>10</sup>

In its Opposition, Emmanuel argues that the Application fully complies with the contour protection requirements of Section 74.1204 of the Rules with respect to WPLM-FM and that Plymouth Rock fails to provide "factual evidence" that the proposed FM translator will interfere with WPLM-FM's signal.<sup>11</sup> Emmanuel also claims that Section 74.1204(f) provides no guidance for how to determine whether an application proposes interference to a regularly used off-the-air signal and that it also provides no authority for how to distinguish between anticipated interference of a *de minimis* nature as opposed to actual interference.<sup>12</sup> In addition, Emmanuel claims that the 17 individuals who claim to have listened to WPLM-FM represent only a "miniscule" fraction of the 165,210 person service area of the proposed translator.<sup>13</sup> Emmanuel therefore argues that the Commission's revitalization efforts of the AM radio service should not be precluded by "a mere 17 allegations of hypothetical interference."<sup>14</sup> Finally, Emmanuel asserts that should any "actual interference" occur, "displacement relief" would be available and appropriate.<sup>15</sup>

In its Reply, Plymouth Rock reiterates that the engineering statement it provided in the Petition not only clearly showed the location of existing listeners within the proposed translator's 1.0 mV/m field strength contour but also went beyond Section 74.1204(f)'s requirements to demonstrate that objectionable interference will be caused to those listeners.<sup>16</sup> In addition, Plymouth Rock notes that, contrary to Emmanuel's assertion, Section 74.1204(f) currently specifies no minimum number regarding complainants and that 17 listener complaints are more than enough for the requirements of Section 74.1204(f) to apply.<sup>17</sup> Moreover, Plymouth Rock claims that since the filing of its Petition, eight other listeners have lent their support to the original 17 listener complaints.<sup>18</sup> Plymouth Rock also asserts that

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<sup>7</sup> Petition at 1; *see also* 47 CFR § 74.1204(f).

<sup>8</sup> Plymouth Rock indicates that all 17 listeners are located both inside and outside Emmanuel's proposed 60 dBμ contour. Petition at 2. *See also* Engineering Statement of Louis R. du Treil, Jr. at Exhibit 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> Opposition at 1-2. *See also* Engineering Statement of Matthew Wesolowski at Exhibit A.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3.

<sup>16</sup> Reply at 2.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* *See also* at Exhibit 1.

Emmanuel has not addressed Plymouth Rock's concerns that the proposed translator's signal would disrupt WPLM-FM's role as a primary provider of state EAS alerts.<sup>19</sup> Finally, Plymouth Rock asserts that while it is sympathetic to the revitalization of the AM service, FM translators offer only a secondary service and are required by policy and rules to protect full-power FM stations.<sup>20</sup>

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended,<sup>21</sup> a petition to deny must provide properly supported allegations of fact that, if true, establish a substantial and material question of fact that granting the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.<sup>22</sup> In this case, the Petition must establish a substantial and material question of fact that grant of the Application would be inconsistent with Section 74.1204(f) of the Rules.

In promulgating Section 74.1204(f) of the Rules, the Commission stated that it “will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap.”<sup>23</sup> Under Section 74.1204(f), in order to provide “convincing evidence” that grant of an FM translator construction permit application “will result in interference to the reception” of an existing station, an opponent must provide, at a minimum: (1) the name and specific address of each potentially affected listener; (2) some demonstration that the address of each purported listener falls within the 60 dBμ service contour of the proposed translator station;<sup>24</sup> (3) a declaration from each of the affected listeners that he or she listens to the station at the specified location; and (4) some evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.<sup>25</sup> The Commission has stated that “[t]he best method, of course, is to plot the specific addresses on a map depicting the translator station's 60 dBμ contour.”<sup>26</sup>

Here, Plymouth Rock has followed the required protocol by submitting documentation from listeners certifying that they are regular listeners of WPLM-FM at home, at work, or in their cars. By plotting the complainants' specific addresses on a map depicting the proposed translator's 60 dBμ contour, Plymouth Rock has provided 17 complainants averring that they listen to WPLM-FM, of which at least two<sup>27</sup> are listed at addresses clearly within the proposed translator's 60 dBμ contour. By virtue of

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<sup>19</sup> Reply at 4, 5.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> See 47 U.S.C. § 309(d).

<sup>22</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>23</sup> See *Association for Community Education, Inc.*, 19 FCC Rcd 12682, 12685-6, paras. 7-9 (2004) (*Association*), citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7230 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993).

<sup>24</sup> The staff generally requires demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dBμ contour who are unconnected with the full-service station whose service allegedly will be disrupted. See *Association*, 19 FCC Rcd at 12688 n.37 (approving staff practice requiring that the complainant be “disinterested.”)

<sup>25</sup> *Id.*, 19 FCC Rcd at 12687.

<sup>26</sup> *Id.*

<sup>27</sup> Leeds Mitchell III and Paul LaMalva. See Engineering Statement, “WPLM-FM Listener Predicted Interference Analysis” chart and “WPLM-FM Listener Locations Map.”

its Exhibit utilizing the U/D signal ratio, Plymouth Rock also provides evidence that the proposed translator will result in interference to the complainants at the listed locations.

We will consider only the two complainants whose addresses are identified to be within the proposed translator's 60 dBμ contour. Although Plymouth Rock attempts to demonstrate that WPLM-FM listeners outside the proposed translator's contour also will receive interference, Section 74.1204(f) clearly applies "if the predicted 1 mV/m (60 dBμ) field strength contour of the FM translator will overlap a populated area already receiving a regularly used, off-the air signal" of a co-, first-, second-, or third-adjacent channel broadcast station. We therefore believe it appropriate to limit our consideration to complainants who reside and/or listen to the full-service station within the proposed translator station's 60 dBμ contour.

Even doing so, however, we find that Plymouth Rock has adequately substantiated its Section 74.1204(f) claim, and we reject Emmanuel's attempts to discredit Plymouth Rock's listener declarations. Emmanuel's claim that the identified listeners are only a miniscule fraction of the population to be affected by the proposed translator and are thus insufficient to satisfy Plymouth Rock's burden of proof of interference is misguided. Even the two listeners supplied in the Petition are sufficient under Section 74.1204(f) and Commission precedent to establish predicted interference,<sup>28</sup> and declaration under penalty of perjury from listeners at a specific address or in a car is sufficient for Section 74.1204(f) purposes.<sup>29</sup> Emmanuel's invocation of the *AM Revitalization* proceeding is misguided, as FM Translator stations remain a secondary service and there is nothing in that proceeding indicating that we would apply our FM translator processing standards less stringently when the translator proposes to rebroadcast an AM station. On the contrary, the Bureau has indicated clearly that it will apply Section 74.1204(f) strictly irrespective of whether a proposed translator operator is to rebroadcast an AM station.<sup>30</sup>

Because we find that Plymouth Rock has demonstrated that there are WPLM-FM listeners located inside the 60 dBμ contour of the proposed translator that are predicted to receive interference from the facilities proposed in the Application, we will dismiss the Application pursuant to Section 74.1204(f) of the Rules.

**Conclusion/Actions.** For these reasons, IT IS ORDERED, that the Petition to Deny filed by Plymouth Rock Broadcasting Co., Inc., on February 18, 2018, IS GRANTED.

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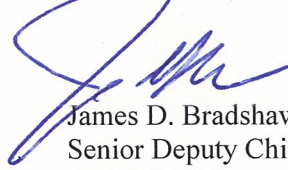
<sup>28</sup> See, e.g., *Association*, 19 FCC Rcd at 12687, para. 13 ("Section 74.1204(f) would require an objector to show that a specific U/D signal strength ratio is exceeded at the location of a *bona fide* listener of the 'desired' station to establish that interference 'will result.'") (emphasis supplied); see also *Red Wolf Broad. Corp.*, Letter Order, 27 FCC Rcd 4870, 4873 (MB 2012) (staff considers three listener complaints).

<sup>29</sup> See *Frank Jazzo, Esq. and Gregg P Skall, Esq.*, Letter Order, 32 FCC Rcd 5962, 5963 (MB 2017) (statements made under penalty of perjury by "regular listeners" adequately substantiates Section 74.1204(f) claim).

<sup>30</sup> See, e.g., *W262CY, Cleveland, Ohio*, Letter Order, 32 FCC Rcd 5692, 5696 (MB 2017) (FM translator application dismissed pursuant to Section 74.1204(f) notwithstanding that the application was filed to take advantage of a one-time 250-mile FM translator modification window).

IT IS FURTHER ORDERED, that the Application (File No. BNPFT-20171220AAW) of Emmanuel Communications, Inc., for new FM Translator Station at Worcester, Massachusetts, Washington, IS DISMISSED.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Bradshaw', is written over the typed name.

James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

cc: Emmanuel Communications, Inc.  
Plymouth Rock Broadcasting Co., Inc.