



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer To:
1800B3-ATS

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In re: **Emmanuel Communications, Inc.**
Station W256DN, Worcester, MA
Facility ID No. 200924
File No. BNPFT-20171220AAW

Petition for Reconsideration

Dear Counsel:

We have before us the Petition for Reconsideration (Petition) filed by Emmanuel Communications, Inc. (Emmanuel), requesting reconsideration of the dismissal¹ of its application (Permit Application) for a construction permit for FM Translator Station W256DN, Worcester, Massachusetts.² For the reasons set forth, we deny the Petition.

Background. Emmanuel filed the Permit Application on December 20, 2017, seeking authorization to construct a cross-service FM translator station to rebroadcast Station WNEB(AM), Worcester, Massachusetts, and the Bureau accepted the Permit Application for filing on January 29, 2018. Plymouth Rock filed a Petition to Deny the Permit Application on February 18, 2018, in which it argued that the Translator would cause interference to listeners of WPLM-FM, Plymouth, Massachusetts, which is licensed to Plymouth Rock.³ In the *Staff Decision*, the Bureau held that that Plymouth Rock had demonstrated that the Translator would cause interference to listeners of WPLM-FM in violation of Section 74.1204 of the FCC's rules (Rules) and dismissed the Permit Application.⁴

In the Petition, Emmanuel argues that the *Staff Decision* “presents a false dichotomy” between revitalizing the AM radio service through the use of translators and preventing interference from translators to listeners of full-power stations.⁵ Emmanuel furthers argues that the *Staff Decision* failed to address two alternatives to dismissal proposed in the Emmanuel Opposition that would have allowed

¹ *Emmanuel Communications, Inc.*, Letter Order, Ref. 1800B3-SS (MB June 26, 2018) (*Staff Decision*).

² Emmanuel filed the Petition on July 26, 2018. Plymouth Rock Broadcasting Co., Inc. (Plymouth Rock) filed an Opposition on August 3, 2018.

³ Emmanuel filed an Opposition to the Petition to Deny on March 7, 2018 (Emmanuel Opposition).

⁴ *Staff Decision* at 3-4.

⁵ Petition at 1-2.

Emmanuel to construct the Translator while not resulting in likely interference to WPLM-FM.⁶

First, Emmanuel argues that the Bureau could grant the Permit Application “contingent on Emmanuel’s immediate submission of an acceptable modification application proposing such displacement relief” and further suggests that a limited waiver of Section 74.1204 could be granted to facilitate this outcome.⁷ Second, Emmanuel argues that the Bureau should consider the suggestion it raised previously that the Permit Application remain pending while Emmanuel negotiates an agreement with Plymouth Rock by which Plymouth Rock would withdraw its Petition to Deny and Emmanuel would modify the Permit Application to seek displacement relief authority to a channel not objectionable to Plymouth Rock.⁸

In its Opposition, Plymouth Rock notes that the Petition does not dispute the finding in the *Staff Decision* that the Translator would cause interference to listeners of WPLM-FM, but instead requests that Emmanuel be granted a contingent grant of the Permit Application so it can subsequently seek displacement relief.⁹ Plymouth Rock urges the Commission to not grant a construction permit to Emmanuel on the Translator’s current channel, and argues that there are more WPLM-FM listeners beyond those who filed declarations that would receive harmful interference from the Translator.¹⁰ Regarding a potential agreement with Emmanuel, Plymouth Rock notes that it considered Emmanuel’s proposal, but the parties “do not, however, have a current agreement, and it is not yet clear whether any agreement can or will be reached.”¹¹

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.¹² Emmanuel has failed to meet this burden.

We reject Emmanuel’s argument that the Bureau could issue a “contingent grant” of the Application and waive Section 74.2014. Section 73.3517 of the Rules expressly prohibits the filing of contingent applications for new stations, and Emmanuel’s suggestion that we process the Permit Application in a manner that would violate that provision is rejected.¹³ Even if Section 73.3517 were not dispositive of Emmanuel’s argument, there is no provision in the Rules that permits the Bureau to grant a

⁶ *Id.* at 2.

⁷ Petition at 2; *see also* Emmanuel Opposition at 3 (“Rather, we respectfully submit that there exists a proper means of resolving any actual interference, quickly and effectively, should evidence of a true Section 74.1204(F) issue exist after the application has, once again, been granted. At that time, arguendo, displacement relief for the proposed FM translator would be available and appropriate.”).

⁸ Petition at 3-4; *see also* Emmanuel Opposition at 3 (“In the interim, at the very least, the application should remain pending so that the parties to this pleading cycle may identify a way forward acceptable both to petitioner and to Emmanuel – while avoiding undue violence to the FCC’s efforts to revitalize the AM radio service.”).

⁹ Opposition at 1-2.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 2.

¹² 47 CFR § 1.106(c); *WJLZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

¹³ 47 CFR § 73.3517 (“Contingent applications for new stations and for changes in facilities of existing stations are not acceptable for filing.”).

patently defective application on the condition that an applicant agree to correct the defect in the application at some future point in time, and Emmanuel cites to no authority for this novel proposition. Emmanuel fails to show any error in the dismissal of the Permit Application in accordance with Section 73.3566(a) of the Rules.¹⁴

To the extent that Emmanuel seeks a waiver of Section 74.1204, the Rules may be waived only for good cause shown.¹⁵ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”¹⁶ and must support its waiver request with a compelling showing.¹⁷ Waiver is appropriate only if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation better serves the public interest.¹⁸ Emmanuel has not presented any special circumstances that warrant a waiver, nor has it explained how the public interest will be served by such a waiver, and we thus deny its request to waive Section 74.1204.¹⁹

We also reject Emmanuel’s argument that we should reinstate the Permit Application so it can attempt to negotiate an agreement with Plymouth Rock. Emmanuel again provides no support for its novel theory that the Bureau should reinstate a defective application to allow an applicant to reach some form of agreement with an objector.²⁰ We further note that the Permit Application was pending for a period of three months between the filing of the Petition to Deny and the issuance of the *Staff Decision*, and during that period no agreement was reached. Finally, as Emmanuel notes in the Opposition, no such agreement exists, and it is uncertain whether one could be reached.²¹

Instead of seeking a contingent grant or reinstatement to negotiate an agreement, Emmanuel could have filed an amendment to the Permit Application while it was pending to correct the Section 74.1204 violation, or alternatively, filed a corrective amendment after the dismissal of the Permit Application pursuant to the Commission’s *Name Pro Time* policy.²² Emmanuel has done neither, nor has it identified any error in the *Staff Decision*’s determination that the Permit Application was defective because it proposed a new FM translator station operation that would cause impermissible interference to listeners of WPLM-FM in violation of Section 74.1204.²³ Accordingly, we will deny the Petition.

¹⁴ 47 CFR § 73.3566(a).

¹⁵ 47 CFR § 1.3.

¹⁶ *WALT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WALT Radio*) (subsequent history omitted).

¹⁷ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broad. Sys., Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

¹⁸ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (*NetworkIP*); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ See *WALT Radio*, 418 F.2d at 1157 n.9 (“The agency is not bound to process in depth what are only generalized pleas The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary.”).

²⁰ See 47 CFR § 73.3566(a).

²¹ Opposition at 2.

²² *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 49 Fed. Reg. 47331 (Dec. 3, 1984).

²³ Emmanuel suggests that the Bureau should consider that only two listeners of WPLM-FM would receive interference. Petition at n.4. The *Staff Decision* rejected this argument and noted that under Section 74.1204, two listeners are sufficient under Section 74.1204 and Commission precedent to establish predicted interference, and further noted that that nothing in the *AM Revitalization* proceeding indicated otherwise. *Staff Decision* at 4. Emmanuel presents no authority showing this holding was in error.

Conclusion. Accordingly, for the reasons discussed above, IT IS ORDERED that the Petition for Reconsideration filed on July 26, 2018, by Emmanuel Communications, Inc., IS DENIED.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Shuldiner", with a horizontal flourish at the end.

Albert Shuldiner
Chief, Audio Division
Media Bureau