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Washington, D.C. 20554

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DA 14-1524

*In Reply Refer to:*

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In re: **W289AZ, Trenton, NJ**  
Facility ID No. 141522  
File No. BPFT-20140716AEP

Dear Counsel:

We have before us the above-referenced application (“Application”) for a minor change to FM translator station W289AZ, Trenton, New Jersey (“Station”), filed on July 16, 2014, by Hope Christian Church of Marlton, Inc. (“Hope”). From the proposed facility, the Station would rebroadcast the signal of Station WEMG(AM), Camden, New Jersey, licensed to Davidson Media Station WEMG Licensee, LLC.

**Background.** The Application seeks to relocate the Station’s transmitter approximately 25 kilometers to a site at which its 60 dB $\mu$  contour would not overlap with the 60 dB $\mu$  contour of the existing facilities. Because this proposal constitutes a major change under Section 74.1233(a)(1) of the Rules,<sup>1</sup> Hope requests a waiver of Section 74.1233(a)(1) to permit the proposed changes using a minor change application (“Waiver Request”).<sup>2</sup> This type of waiver is commonly known as a “*Mattoon* Waiver.”<sup>3</sup> Hope recently filed for and received authorization to move the Station’s transmitter to its current location (“April Modification”).<sup>4</sup> The April Modification placed the Station at a site that is mutually exclusive

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<sup>1</sup> 47 C.F.R. § 74.1233(a)(1) (“For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area”) (“Section 74.1233(a)(1)”). The purpose of the overlap requirement is “[t]o prevent . . . FM translator stations from abandoning their present service areas.” *1998 Biennial Regulatory Review*, Notice of Proposed Rulemaking, 13 FCC Rcd 14859, 14872 (1998); First Report and Order, 14 FCC Rcd 5272, 5277 (1999).

<sup>2</sup> See Application, Attachment 13.

<sup>3</sup> See *John F. Garziglia*, Letter, 26 FCC Rcd 12685 (MB 2011) (“*Mattoon*”).

<sup>4</sup> On December 11, 2013, Hope filed the minor modification application for the April Modification, File No. BPFT-20131211BEF, which was granted on February 25, 2014, and placed on public notice February 28, 2014. *Broadcast Actions*, Public Notice, Report No. 48186 (MB February 28, 2014). On April 23, 2014, Hope filed a license to cover application, File No. BLFT-20140423ADR, which was granted on June 6, 2014, and placed on public notice on June 11, 2014. *Broadcast Actions*, Public Notice, Report No. 48258 (MB June 11, 2014).

with the site proposed in the Application.<sup>5</sup> Hope argues that a *Mattoon* waiver is thus warranted because: (1) Hope does not have a history of filing serial minor modification applications because the recent transmitter move to its current location was “unrelated to this one”; (2) the proposed facility is mutually exclusive with the Station’s current facility; (3) the proposed move does not implicate LPFM spectrum; and (4) the translator will rebroadcast an AM station.<sup>6</sup> The period for filing a petition to deny the Application has ended and the Application is unopposed.

**Discussion.** The Commission's Rules may be waived only for good cause shown.<sup>7</sup> The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”<sup>8</sup> and must support its waiver request with a compelling showing.<sup>9</sup> 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.<sup>10</sup> Hope has failed to meet this burden.

In *Mattoon*, we found that a waiver was in the public interest because: (1) the applicant did not have a history of filing serial minor modification applications; (2) the proposed site was mutually exclusive with the licensed facility; (3) the proposed move was not in an LPFM spectrum-limited market; and (4) the translator would rebroadcast an AM station.<sup>11</sup> Here, we find that Hope does not satisfy the first *Mattoon* criterion regarding a history of filing serial minor modification applications. Without more information, we are unable to credit Hope’s unsupported assertion that the Application is “unrelated” to the previous move. Rather, our own engineering analysis indicates that the previous transmitter relocation of 8 kilometers in the April Modification was designed to place the Station so that its 40 dBμ contour overlapped the 60 dBμ contour of the proposed facility, in order to satisfy the *Mattoon* criterion of mutual exclusivity.<sup>12</sup>

We have held that an attempt to achieve a certain result by means of a Commission process, procedure, or rule that was not designed or intended for that purpose may represent an abuse of process.<sup>13</sup> Filing serial minor modifications applications to accomplish a move that would otherwise constitute an impermissible major change is such an abuse.<sup>14</sup> Without the April Modification, the Station’s current

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<sup>5</sup> Application, Attachment 13, Exhibit A.

<sup>6</sup> Application, Attachment 13.

<sup>7</sup> 47 C.F.R. § 1.3.

<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

<sup>9</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>10</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>11</sup> *Mattoon*, 26 FCC Rcd at 12686.

<sup>12</sup> 47 C.F.R. § 74.1204.

<sup>13</sup> *Id.* at 12687; *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, Notice of Proposed Rulemaking, 2 FCC Rcd 5563 ¶ 2 (1987) (“We believe that ‘abuse of process’ may be characterized as any action designed or intended to manipulate or take improper advantage of a Commission process, procedure or rule in order to achieve a result which that process, procedure or rule was not designed or intended to achieve; or to subvert the underlying purpose of that process, procedure or rule.”).

<sup>14</sup> *Mattoon*, 26 FCC Rcd at 12687.

facilities would not be mutually exclusive with the proposed site and the Application would not qualify for a *Mattoon* waiver. Therefore, the evident purpose of the April Modification was to manipulate the Commission's modification and waiver policies in an effort to achieve an otherwise prohibited result. Hope does not provide any information to the contrary, nor does it provide any information regarding the lack or unavailability of existing translators in the proposed area that might support the public interest in a long-distance move. For these reasons, we deny Hope's waiver request and dismiss the Application.

**Conclusion/Actions.** For the reasons stated above, IT IS ORDERED that the request for waiver of Section 74.1233(a)(1) IS DENIED and the Application filed by Hope Christian Church of Marlton, Inc., File No. BPFT-20140716AEP, IS DISMISSED as a proposal for a major change.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau