



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

**October 25, 2018**

*In Reply Refer to:*  
1800B3-SS

Dontron, Inc.  
c/o John S. Neely, Esq.  
Miller and Neely, P.C.  
3750 University Blvd., Suite 203  
Kensington, MD 20895

The Moody Bible Institute of Chicago  
c/o Jeffrey D. Southmayd, Esq.  
Southmayd & Miller  
4 Ocean Ridge Blvd. South  
Palm Coast, FL 32137

**In re: New(FX), Chicago, IL  
Facility ID No. 203053**

File No. BNPFT-20180418AAL

**Petition to Deny**

Dear Counsel:

This letter concerns: (1) the referenced application (Application) of Moody Bible Institute of Chicago (Moody) for a construction permit for a new FM translator station on Channel 292 at Chicago, Illinois;<sup>1</sup> (2) a Petition to Deny (Petition) the Application, filed on May 3, 2018, by Dontron, Inc. (Dontron);<sup>2</sup> and (3) related responsive pleadings.<sup>3</sup> For the reasons set forth below, we deny the Petition and grant the Application.

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<sup>1</sup> The proposed translator is a fill-in for Station WMBI(AM), Chicago, Illinois.

<sup>2</sup> Dontron is licensee of Station WSRB(FM), Lansing, IL. Dontron asserts that the proposed FM translator will interfere with the signal of WSRB(FM) because the proposed translator and WSRB(FM) are both located on Channel 292 (106.3 MHz).

<sup>3</sup> Moody filed an Opposition to Petition to Deny (Opposition) on May 16, 2018, to which Dontron replied on May 19, 2018 (Reply).

**Background.** Moody filed for a new FM Translator station at Chicago during the filing window in January of 2018.<sup>4</sup> Moody'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 April 18, 2018. The staff accepted the Application for filing on April 19, 2018.<sup>6</sup> Dontron timely filed its Petition on May 3, 2018.

In its Petition, Dontron argues that Moody's proposed translator will interfere with the established listening audiences of WSRB(FM), Lansing, Illinois, in violation of Section 74.1204(f) of the FCC's rules (Rules).<sup>7</sup> Dontron supplies 13 unaffiliated complaints, each including a statement made under penalty of perjury, from persons claiming to listen to WSRB(FM) at their residences or in their cars. Dontron also submits three separate maps depicting pertinent contours of the proposed translator and WSRB(FM) plotting listener locations:

- The first depicts an area of predicted interference using a -20 dB undesired-to-desired (U/D) signal strength ratio utilizing WSRB(FM)'s 47 dB $\mu$  contour (the claimed usable stereo signal strength for automobile receivers in the absence of interference) and the proposed translator's 27 dB $\mu$  contour;<sup>8</sup>
- The second depicts WSRB(FM)'s 60 dB $\mu$  protected service contour and the proposed translator's 40 dB $\mu$  interfering contour as determined by the Longley-Rice alternative signal propagation model, showing "significant overlap" of those contours;<sup>9</sup>
- The third depicts only the proposed translator's 60 dB $\mu$  coverage contour, calculated using the Longley-Rice model.<sup>10</sup>

Dontron claims these graphics indicate that the operation of Moody's proposed translator is likely to cause interference with the reception of WSRB(FM) in areas inside the proposed translator's 60 dB $\mu$  contour<sup>11</sup> and that the Application therefore must be dismissed or denied.

In its Opposition, Moody argues that Dontron has not provided "convincing evidence," pursuant to Section 74.1204(f), that the predicted 60 dB $\mu$  contour of the proposed translator would 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" and that "grant of the authorization will result in interference to the reception of such signal."<sup>12</sup> It argues that the "predicted contour" is to be derived through use of the Commission's service contour calculations in Section 74.683(a) of the Rules, and no

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<sup>4</sup> See Application File No. BNPFT-20180130ABS; *Filing Instructions for Second Cross-Service FM Translator Auction Filing Window for AM Broadcasters (Auction 100) to be Open January 25-January 31, 2018*, Public Notice, 32 FCC Rcd 10173 (MB/WTB 2018).

<sup>5</sup> See *Media Bureau Announces Filing Window for Auction 100 FM Translator Long-Form Applications*, Public Notice, DA 18-256 (MB rel. Mar. 15, 2018).

<sup>6</sup> See *Broadcast Actions*, Public Notice, Report No. 29221 (rel. Apr. 24, 2018).

<sup>7</sup> Petition at 3; see also 47 CFR § 74.1204(f).

<sup>8</sup> Petition, Technical Exhibit at 1 and Figure 1.

<sup>9</sup> *Id.* at Figure 2.

<sup>10</sup> *Id.* at Figure 3.

<sup>11</sup> *Id.* at 3. See also Petition at Engineering Statement of W. Cris Alexander, Crawford Broadcasting Co., at 1-2.

<sup>12</sup> Opposition at 2, citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7232, para. 143 (1990) (*1990 Translator Order*).

other technical showing is permitted.<sup>13</sup> Moody attaches its own Engineering Statement, asserting that, when using the standard prediction method, none of the alleged WRSB(FM) listeners for whom statements were submitted are located either within the predicted 60 dB $\mu$  contour of WRSB(FM) or the predicted 60 dB $\mu$  contour of the proposed translator.<sup>14</sup> In addition, Moody argues that Dontron's use of an alternative contour prediction methodology, *i.e.*, Longley Rice, is a "futile attempt to buttress its case."<sup>15</sup> Moody claims that Longley Rice is irrelevant and useless to the potential interference claim here under Commission precedent and policy.<sup>16</sup> Finally, Moody argues that the Commission, if it desires, can dismiss the Petition based on new interference rules proposed by the Commission because, even though those proposed rules would provide Dontron with more interference protection than it currently receives, Dontron's interference showing fails under both the current and proposed new rules.<sup>17</sup>

In its Reply, Dontron cites *Association* to support its contention that the Commission will review the totality of circumstances in assessing potential interference caused by a secondary FM translator to a primary FM station.<sup>18</sup> In addition, Dontron asserts that Moody points to no Commission rule or case precedent denying the use of Longley Rice in conjunction with Section 74.1204(f) of the Rules,<sup>19</sup> and Dontron argues that Section 74.1204(f) permits the use of Longley-Rice calculations to determine a proposed translator's 60 dB $\mu$  contour to demonstrate that interference to a regularly received FM signal "will result" from operation of a proposed FM translator.<sup>20</sup> Dontron also states that, should the Commission determine that a Longley-Rice study is not applicable here, it requests a waiver of the "policy element that affected listeners must be located within the proposed translator's predicted 60 dB $\mu$  contour."<sup>21</sup> Dontron also submits 11 additional unaffiliated listener complaints made under penalty of perjury,<sup>22</sup> and it submits a supplemental Engineering Statement plotting these 11 affected listeners' addresses on a map, showing the WSRB(FM) predicted 54 dB $\mu$  contour -- *i.e.*, the outer protected contour proposed in the *NPRM*, although it asserts that the *NPRM* has no bearing in this proceeding<sup>23</sup> – computed in accordance with the standard contour prediction methodology.<sup>24</sup>

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<sup>13</sup> Opposition at 3, citing 47 CFR § 74.683(a). We note that there is no Section 74.683(a) in the Code of Federal Regulations (2017). We believe that Moody is referring to Section 73.313 of the Rules. *See Mark J. Prak, Esq.*, Letter Order, 26 FCC Rcd 15677 (MB 2011) (standard contour prediction methodology set forth in Section 73.313 of the Rules); 47 CFR § 73.313.

<sup>14</sup> *Id.* at 3; *see also* Opposition at Engineering Statement of Radiodataservices.at 1.

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

<sup>16</sup> *Id.*, citing *Shaw Communications, Inc.* Memorandum Opinion and Order, 24 FCC Rcd 2852 (2009), *Lee G. Petro, Esq.*, Letter Order, 25 FCC Rcd 4486 (MB 2010), and *Lee Shubert, Esq.*, 10 FCC Rcd 3159 (MB 1995).

<sup>17</sup> Opposition at 4-5, citing *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rule Making, MB Docket No. 18-119, FCC 18-60 (rel. May 10, 2018) (*NPRM*).

<sup>18</sup> *See Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-86, para. 10 (2004) (*Association*).

<sup>19</sup> *Id.* at 3. Dontron notes that its Longley-Rice study was used only to illustrate that WSRB(FM) has a listenable signal within the proposed translator's 60 dB $\mu$  contour, not to extend the WSRB(FM) protected signal, citing *Red Wolf Broadcasting Corporation*, Letter Order, 27 FCC Rcd 4870, 4873, n.19 (MB 2012) (*Red Wolf*).

<sup>20</sup> Reply. at 2.

<sup>21</sup> *Id.* at 4.

<sup>22</sup> Reply at 5-6.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.*; *see also* Supplemental Engineering Statement of W. Cris Alexander, Crawford Broadcasting Co.

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended,<sup>25</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>26</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>27</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 dB $\mu$  service contour of the proposed translator station;<sup>28</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>29</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 dB $\mu$  contour.”<sup>30</sup>

We find that the declarations submitted by Dontron in the Petition and in the Reply are not probative that the proposed translator's signal will interfere with the signal of WSRB(FM) because we reject Dontron's use of Longley-Rice coverage area analysis to predict the location of the 60 dBu service area of the proposed translator and to demonstrate predicted interference. The Commission generally has allowed the use of alternate prediction methods in limited circumstances, namely, to demonstrate adequate coverage of the community of license or to establish that the main studio location would be within the principal community contour.<sup>31</sup> Where a proposal in an application, such as here, conforms to the Rules utilizing the standard prediction method set forth in Section 73.313 of the Rules,<sup>32</sup> alternative

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<sup>25</sup> See 47 U.S.C. § 309(d).

<sup>26</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>27</sup> See *Association*, 19 FCC Rcd at 12685-6, paras. 7-9, citing *1990 Translator Order*, 5 FCC Rcd at 7230 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993).

<sup>28</sup> The staff generally requires, as is the case here, demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dB $\mu$  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>29</sup> *Id.* at 12687.

<sup>30</sup> *Id.*

<sup>31</sup> See 47 CFR § 73.313(e). See also *In the Matter of Grandfathered Short-Spaced FM Stations*, Report and Order, 12 FCC Rcd 11840, 11846, para. 17 (1997) (discussing circumstances in which an alternative prediction study may be considered).

<sup>32</sup> 47 CFR §73.313.

prediction methods will not be accepted.<sup>33</sup> Dontron is correct that in *Red Wolf*, the Bureau permitted an objector to use a Longley-Rice alternative contour-prediction methodology because “its use of supplemental engineering methodology does not appear to be designed to extend the protected service (60 dB $\mu$ ) contour of [the objecting station] but rather to support its claim that [that station] has a listenable (54 dB $\mu$ ) signal in the area within the 60 dB $\mu$  contour proposed in [the translator construction permit application].”<sup>34</sup> In *Red Wolf*, the Bureau did not permit the use of Longley-Rice methodology to predict the location of the 60 dB $\mu$  contour of the subject proposal. In this case, however, Dontron does in fact use Longley-Rice to extend the protected service (60 dB $\mu$ ) contour of the proposed translator station, and Dontron is silent regarding Moody’s assertion that none of Dontron’s specified listeners reside within the 60 dB $\mu$  contour proposed in the Application computed using the standard contour prediction methodology set forth in the Rules. Accordingly, we find that Dontron has not raised a substantial and material question of fact calling for further inquiry regarding the Application’s compliance with Section 74.1204 of the Rules.

Additionally, we deny Dontron’s request for waiver of “the policy element that affected listeners must be located within the translator standard predicted 60 dB $\mu$  contour.” The Rules may be waived only for good cause shown.<sup>35</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>36</sup> and must support its waiver request with a compelling showing.<sup>37</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>38</sup>

We find that Dontron has failed to meet the burden for grant of a waiver request. It has failed to identify any “special circumstances” that would warrant a deviation from the prohibition against alternative interference prediction methodologies. Moreover, in 2009, the Commission authorized the use of certain FM translators to rebroadcast the signal of a local AM station,<sup>39</sup> thus bringing enhanced local service to hundreds of communities and allowing AM stations to compete more effectively in their local markets. The Commission has taken subsequent steps to expand this practice.<sup>40</sup> Approving Dontron’s

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<sup>33</sup> See *Shaw Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 5852, 5853, para. 5 (2008), citing *Lee Shubert, Esq.*, Letter Order, 10 FCC Rcd 3159, 3160 (MMB 1995). There, the staff rejected a petitioner’s attempt to apply (Longley-Rice) Tech Note 101 calculations in order to disqualify an assignment application that had demonstrated compliance with 47 CFR § 73.3555 using standard calculation methods set forth in 47 CFR § 73.313, holding that requiring applicants with conforming applications to defend applications against alternative prediction methodologies would result in unreasonable delay to the applicants and unnecessary administrative burden upon the limited technological resources available to the Commission for evaluating alternative prediction studies. *Id.*

<sup>34</sup> *Red Wolf, supra*, 27 FCC Rcd at 4873 n.19.

<sup>35</sup> 47 C.F.R. § 1.3.

<sup>36</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

<sup>37</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999), citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012, para. 5 (1974).

<sup>38</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>39</sup> See *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642 (2009).

<sup>40</sup> See, e.g., *Revitalization of the AM Radio Service*, Notice of Proposed Rule Making, 28 FCC Rcd 15221 (2013); *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015); and *Revitalization of the AM Radio Service*, Second Report and Order, 32 FCC Rcd 1724 (2017).

request for waiver of the Bureau's interference standards as derived from Section 74.1204(f) of the Rules would provide full-service stations more protection than currently authorized and is inconsistent with the Commission's continuing efforts to revitalize the AM service by virtue of FM Translators. Accordingly, contrary to Dontron's claims, the public interest is better served by requiring that affected listeners must be located within the translator's standard predicted 60 dB $\mu$  contour.

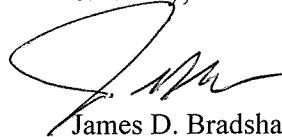
**Conclusion/Actions.** In light of the discussion above, we find that Dontron has not raised a substantial and material question of fact calling for further inquiry regarding whether grant of the Application will further the public interest, convenience, and necessity. We will therefore deny the Petition. We note, however, that Section 74.1203(a) of the Rules<sup>41</sup> states that, should the translator commence operation and cause actual interference to WRSB(FM) or any other station, the translator will be required to eliminate the interference or cease operation.

Additionally, we have evaluated the Application and find that it complies with all pertinent statutory and regulatory requirements and that its grant would indeed further the public interest, convenience, and necessity, and we will grant the Application below.

For these reasons, IT IS ORDERED, that the Petition to Deny filed by Dontron, Inc., on May 3, 2018, IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BNPFT-20180418AAL) of Moody Bible Institute of Chicago, for a new FM Translator Station at Chicago, Illinois, IS GRANTED.

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

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<sup>41</sup> 47 CFR § 74.1203(a).