

fields from the separate antennas cannot combine in any direction to attain an effective radiated power (ERP) in excess of that which would be produced by a single antenna fed by an amplifier operating at the authorized output power. Two amplifiers may also be used to serve the same community if one is used to feed an antenna producing a horizontally polarized signal and one is used to feed an antenna producing a vertically polarized signal. Thus, the rule requires each antenna or antenna array to be fed by a single RF amplifier with a power output no greater than the maximum authorized using a single transmission line.

13. The Tuckers proposed to use a single circularly polarized antenna, which would produce signals in both vertical and horizontal planes and to feed this one antenna with a single transmission line. Reading the rule literally, TBA contends that the Tuckers could not use an antenna that has integrated horizontal and vertical elements since it would not be possible to feed each plane separately. TBA further contends that the 20 watts TPO to be used to feed the single antenna was in excess of the 10 watts allowed by the rules, and therefore was prohibited.

14. Under the circumstances described by TBA it has been our practice to permit a single feed with double the transmitting output power otherwise allowed. This is so because the effect is no different than if separate feeds were used to serve separate antennas, one producing a horizontally polarized signal and the other producing a vertically polarized signal. In the case of a dual plane polarized antenna, the antenna gain factor, or multiplier, for each plane is one half that of a single plane polarized antenna. Hence, if only a 10 watt TPO feed were used, the equivalent antenna output power and attendant coverage would be half that of an equal size single plane polarized antenna. Thus, a feed with twice the authorized TPO is allowed to feed a circularly polarized antenna comprised of integrated vertical and horizontal elements on the single antenna since the net result is equivalent antenna output power. This approach accommodates the use of more technically advanced equipment and is a more economical and efficient means of providing coverage to an authorized service area, but does not undermine the intent of the rule.

15. Section 74.1235 also provides that if multiple antennas or antenna arrays are used to serve separate communities, each must have a single amplifier of no more than 1 or 10 watts and each must use a separate transmission line to feed each transmitting antenna. Theoretically, this means that a proposal to serve two different communities using two different directional antennas would require two amplifiers and two separate feeds. However, we see no inconsistency with the rules to allow a single amplifier in excess of 1 or 10 watts and a single transmission line to feed multiple antennas. Numerous applicants have shown that this can be accomplished by locating a power divider on the tower. The power divider takes the incoming power and divides it proportionately to supply each antenna with no more than its authorized power (one or ten watts, as appropriate). Although the output power of the final frequency amplifier is in excess of that permitted by the rules, these proposals are technically more efficient and comply substantially with the rule since no more than the authorized power is utilized by any one antenna. Accordingly, we will process and

grant applications containing these proposals as being in conformance with the rules and therefore not requiring a waiver.

16. We wish to stress that these interpretations of the rules reflect current practice and are not a predetermination of new standards that might be adopted in light of our comprehensive Notice of Inquiry (NOI) on the role of the FM translator service. Until we evaluate the comments filed in that NOI and adopt new rules, if any, we will continue to process applications consistent with current practices. It is the responsibility of the applicants to demonstrate that their proposals conform with the power limitation of the rule. It must also be shown that any non-conforming technical proposal will not cause interference to any regularly used off-the-air signal of any authorized broadcast station and otherwise conforms to all the rules concerning FM translator stations.

The Russell Petition

17. The Russell's contend that the Tucker's modification of K255DL will interfere with the new translator station proposed by the Russell's in application File No. BPFT-880301TB which was filed almost one month prior to the filing of the Tucker's modification application. The Russell's thus request reconsideration of the grant of the construction permit to modify K255DL and denial of the application for license to cover the construction permit. We note that as a petition for reconsideration, the Russell pleading is untimely since it was filed almost two months after the deadline for filing petitions for reconsideration in this proceeding. The Russell's have offered no explanation as to why this pleading is untimely or, for that matter, why they were unable to participate in the earlier stages of this proceeding pursuant to 47 C.F.R. Sections 1.106(b) and (f). Accordingly, the petition for reconsideration is procedurally defective and will be dismissed. Furthermore, 47 U.S.C. Section 319(c) excludes applications for license to cover construction permits from those applications against which a petition to deny may be filed. Accordingly, as a petition to deny, the Russell pleading is also procedurally defective and will be dismissed. Furthermore, the application for license to cover construction permit BMPFT-880329TA was amended on June 13, 1988, to specify construction permit BMPFT-861103TD as the authorization for which a license to cover is being sought. Because the Russell's have no objection to grant of a license to cover BPFT-861103TD, their pleading, when treated as an informal objection to grant of the license application, is moot.

18. Accordingly, for the reasons stated herein, the petition for reconsideration filed by the Tucson Broadcasters Association IS GRANTED to the extent set forth above and in all other respects IS DISMISSED as moot; the petition for reconsideration/petition to deny filed by Joel Wayne Russell and Frances R. Russell IS DISMISSED, the grant of construction permit BMPFT-880329TA IS RESCINDED and application File No. BMPFT-880329TA IS RETURNED as unacceptable for filing pursuant to the freeze on acceptance for filing of applications for new or major changes to the facilities of commercial FM translator stations; and the license application (BLFT-880312TD), as amended, to cover construction permit BPFT-861103TD IS GRANTED.

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

In re Applications of

TED TUCKER AND File Nos. BMPFT-880329TA
JANA TUCKER BLFT-880512TD
San Manuel, Arizona

For Modification of Construction
Permit and License for FM
Broadcast Translator Station K255DL

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 1989; Released: April 17, 1989

By the Commission. Commissioner Quello dissenting in part, and issuing a statement.

1. The Commission has before it for consideration: (a) the above-captioned applications for modification of construction permit¹ (FCC Form 346) and for license for an FM broadcast translator station (FCC Form 347) filed by Ted Tucker and Jana Tucker (Tuckers);² (b) a petition for reconsideration filed May 25, 1988, by the Tucson Broadcasters Association (TBA);³ (c) an opposition filed June 8, 1988, by the Tuckers; (d) a reply filed June 20, 1988, by TBA; (e) a pleading entitled "Petition for Reconsideration Petition to Deny" filed July 25, 1988, by Joel Wayne Russell and Frances R. Russell (Russells); and (f) a motion to strike filed August 2, 1988, by the Tuckers.

2. The initial application for FM translator station K255DL was filed November 3, 1986, by Coronado Broadcasting Corporation, licensee of station KAWV(FM) (formerly KHYT(FM)), Oracle, Arizona. The applicant proposed to serve San Manuel, Arizona, with the translator rebroadcasting the signal of station KAWV(FM).⁴ San Manuel is located within the 1 mV/m contour of station KAWV(FM), the primary station. However, due to intervening terrain features, reception of its signal there is inadequate. The unopposed application was granted on January 30, 1987. On March 29, 1988, the applicant filed an application to change from a directional to a non-directional antenna and reduce effective radiated power. The cover letter to the application advised that it was a minor change application and was therefore not subject to the freeze on acceptance of new or major change applications for commercial FM translator stations. It also noted that as a minor change application no fee was required. The application was not contested, and on April 25, 1988, was granted. The petitions for reconsideration of the April 25, 1988 grant followed.

The TBA Petition

3. 47 C.F.R. Section 1.106(b)(1) provides that a party seeking reconsideration who did not participate in the earlier stages of the proceeding must demonstrate how they are adversely affected by the action under reconsideration and show good reason why they were unable to participate in the earlier stages of the proceeding. TBA comprises several full service FM radio stations serving Tucson, Arizona. Because the Tucker's translator, as modified, would directly compete with TBA member stations, TBA asserts that it will be adversely affected by the operation of that translator station. TBA further asserts that inasmuch as the Tucker's application to modify K255DL was granted four days after the release of a Public Notice announcing acceptance of the application, TBA did not have an opportunity to participate in the earlier stages of this proceeding. We believe that TBA has made the showing required per Section 1.106(b)(1) and therefore conclude that TBA has standing to file the instant petition for reconsideration.

4. TBA alleges that the March 29 amendment proposed substantial changes to the facilities authorized by the initial construction permit. TBA claims that under the rules this constitutes a major change and not a minor change as alleged by the applicant. According to TBA, the translator, as modified, would serve approximately 20 times the population as that located within the 1 mV/m contour of the primary station. This means that the translator station would serve 284,258 persons while the primary station's service area population is only 14,963. In addition, TBA asserts that the amendment increased the translator's 1 mV/m coverage area fourfold, from approximately 256 square miles to 992 square miles. Thus, the translator, which was granted authority to serve San Manuel, would now cover approximately 90% of Tucson. In TBA's view, the application to change the antenna system was clearly a major change application under the rules. As such, they contend it was unacceptable for filing because it was filed after the freeze was imposed on the acceptance of FM translator applications for new or major changes in facilities.⁵ In addition, TBA alleges that the modified proposal is "technically flawed" in several respects. More specifically TBA alleges the following deficiencies:

- i) The modified proposal is mutually exclusive with an application filed by the Russells for a proposed new co-channel translator station to serve Tucson, Arizona.
- ii) The modified proposal will cause interference to a proposed new co-channel FM broadcast station at Kearny, Arizona.
- iii) The modified application violates Section 74.1235 in that it proposes the use of separate 10 watt outputs to feed a 4 bay antenna of which the horizontal and vertical elements may not be fed separately because each element of the antenna is used for both polarization components.

5. The Tuckers, in opposition, deny the allegations and assert that whether an application is a major change or not does not depend on the total size of the translator's proposed coverage area, the percentage change in the coverage area, the size of the proposed coverage area relative to the primary station's coverage area or the additional communities and areas which will fall within the proposed coverage area. According to the Tuckers a major change results only when a change is proposed in a translator's output channel or the community or area the translator is licensed to serve. In the Tuckers' view, their