FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730

PROCESSING ENGINEER: ROBERT GATES
TELEPHONE: (202) 418-0986
FACSIMILE: (202) 418-1410
INTERNET ADDRESS: Robert.Gates@fcc.gov

FEB 09 2017

Spanish American Civic Association for Equality, Inc.
545 Pershing Avenue
Lancaster, PA 17602

In re: W257DI, Reading, PA
BMPFT-20160321ABX
Facility ID # 143437

Dear Applicant:

This refers to the above-captioned FM application for W257DI, Reading, Pennsylvania.

An engineering study of the application reveals that it is in violation of 47 C.F.R. § 74.1231(b). Section 74.1231(b) of the Commission's Rules states that a noncommercial translator operating in the reserved band and co-owned by the primary station can receive the programming from the primary station by satellite. W257DI operates on channel 257 which is not in the reserved band.

The applicant states that due to mountainous terrain, it is not possible for W257DI to receive the programming "direct off air" from WLCH(FM) to serve the Hispanic population in Reading, Pennsylvania. The application requests a waiver of Section 74.1231(b).

If the waiver of Section 74.1231(b) is denied, the applicant requests a waiver of Section 74.1233(a) to allow W257DI to move to channel 209. Section 74.1233(a) of the Commission's Rules states that "a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels". W257DI is authorized to broadcast on channel 257. The application proposes channel 209 requesting a waiver of Section 74.1233(a)(1).

On February 6, 2003, the Media Bureau released a public notice to open a window for new FM translator stations and major modification to authorized FM translator facilities in the non-reserved band (Channels 221 to 300) [1]. The applicant filed the short-form application (BNPFT-20030313ASW) for a new FM translator station on Channel 257 to rebroadcast WLCH(FM). On August 16, 2013, the applicant filed the long-form application (BNPFT-20130816ABX), specifying Channel 257 and the long-form application was granted on September 17, 2014. On

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[1] *FM Translator Auction Filing Window and Application Freeze; Notice and Filing Requirements Regarding March 10 –14, 2003 Window for Certain FM Translator Construction Permits; Notice Regarding Freeze on the Acceptance of FM Translator and FM Booster Minor Change and FM Booster New Construction Permit Applications from February 8 to March 14, 2003, Public Notice*, 18 FCC Rcd 1565 (2003) ("*February 2003 Window Public Notice*").

March 21, 2016, the applicant filed an application changing the channel from Channel 257 to Channel 209 which is in the reserved band (Channels 201-220). Therefore, the March 21, 2016 application is in violation of the non-reserved translator window.

The applicant requested waivers to provide Hispanic public radio service to Reading, Pennsylvania. We note that such impediments to receiving a clear input signal are not unusual and do not justify waiver of Section 74.1231(b) the rules. Furthermore, the applicant has not demonstrated that this waiver is unique and compelling to grant waivers of Section 74.1231(b) or Section 74.1233(a) of the Rules. When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. Columbia Communications Corp. v. FCC, 832 F.2d 139, 192 (D.C. Cir. 1987), quoting Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F. 2d 644, 666 (D.C. Cir 1968 (per curiam)). We have afforded Spanish American Civic Association for Equality, Inc.'s waiver request the "hard look" called for under WAIT Radio v. FCC, 418 F. 2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances presented are not sufficient to warrant waiver of 47 CFR Section 74.1231. Furthermore, Spanish American Civic Association for Equality, Inc. failed to cite other similar situations where the Commission has waived Section 74.1231(b) or Section 74.1233(a). Accordingly, we will deny the waiver requests and dismiss the application.

Accordingly, the request for waivers of 74.1231(b) and 74.1233(a), IS HEREBY DENIED, and the Application BMPFT-20160321ABX IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

for

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau