

Dismissed Applications

The Commission has dismissed in the past several of EMF's other applications for new FM translators on technical grounds. EMF has also requested that applications be dismissed with prejudice as part of the universal settlements of mutually exclusive applications. The dismissal, or request for dismissal, of these applications did not involve any character issues or other similar matters relating to EMF's legal qualifications. In addition, the Commission dismissed the following application regarding which character issues had been raised:

1. Application for FM Translator Station at Golf Manor, Ohio (BPFT-19990125TB): On March 4, 1999, the Board of Trustees of the University of Cincinnati (the "University"), licensee of WGUC(FM), Cincinnati, Ohio, filed a Petition to Dismiss or Deny EMF's Golf Manor application in which it alleged that EMF falsely certified that it had reasonable assurance of the availability of its proposed transmitter site. In its Opposition, filed March 24, 1999, EMF submitted documentation demonstrating that it had obtained reasonable site assurance from Motorola Network Services ("Motorola"), a tenant at the site who had indicated to EMF that its lease with the site owner permitted it to sublease space on the tower. When the tower owner later contradicted Motorola's assertion, EMF amended its application to relocate the station. On February 9, 2000, the University challenged EMF's reasonable site assurance at the new site. In its Opposition filed on March 2, 2000, EMF submitted the Declaration of Jeff Wall, EMF's system designer, who indicated that he had obtained reasonable site assurance from the operations manager of the station whose licensee owned the tower. By letter dated November 27, 2000, the Commission dismissed the application based on its finding that, despite its representations to EMF, Motorola had no actual authority to lease space at the original site. Specifically, the Commission concluded, "[W]hile we find no evidence that EMF misrepresented the availability of its original site, we believe that EMF has not met its burden of demonstrating that it had a reasonable assurance that the specified site was in fact available to it." Letter to Veronica D. McLaughlin, Esq. from Linda Blair, Chief, Audio Services Division, Mass Media Bureau, dated November 27, 2000. Because EMF, through no fault of its own, could not have obtained reasonable site assurance from Motorola, the Commission held that EMF could not amend its application to propose a new transmitter site. Thus, the Commission did not address the allegations concerning the site specified in the amended application.