



Federal Communications Commission  
Washington, D.C. 20554  
September 14, 2011

*In Reply Refer to:*  
1800B3

Juan Alberto Ayala  
c/o Dan J. Alpert, Esq.  
2120 N. 21<sup>st</sup> Road  
Arlington, VA 22201

In re: DK262BP, Conner, CA  
Facility ID No. 144609  
BLFT-20080229ADN

**Petition for Reconsideration**

BLSTA-20110701ACV  
BLFT-20110705ACB

Dear Mr. Alpert:

This letter concerns FM Translator Station DK262BP, Connor, California (the "Station"). On June 8, 2001, the staff sent a letter to Station licensee Juan Alberto Ayala ("Ayala") indicating that, because Commission records indicated that the Station had been silent since February 24, 2010, its license had expired pursuant to Section 312(g) of the Communications Act of 1934, as amended,<sup>1</sup> and the Commission's data bases would be modified to indicate the expiration of the license and deletion of the Station's call sign.<sup>2</sup> In response to the *License Expiration* Letter, Ayala filed (1) a July 1, 2011, request for special temporary authorization ("STA")<sup>3</sup> to continue station operations using the facilities approved by the Commission in a Construction Permit issued on November 22, 2010;<sup>4</sup> (2) a July 5, 2011, application for license to cover the 2010 Construction Permit;<sup>5</sup> and (3) a July 12, 2011, Petition for Reconsideration of the *License Expiration* Letter. Additionally, we have before us a June 3, 2011, complaint filed on behalf of Force Broadcasting, LLC ("Force"), arguing that the Station continued to broadcast after its license had ostensibly expired on February 24, 2011, and was in violation of several operational rules for FM Translator stations. We will treat the June 3 complaint as an Informal Objection ("Objection") to the License Application and provide Ayala an opportunity to respond to all allegations raised in the Objection prior to action on its filings.<sup>6</sup>

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<sup>1</sup> 47 U.S.C § 312(g).

<sup>2</sup> *Letter to Juan Alberto Ayala*, Reference 1800B3-DW (MB Jun 8, 2011) ("*License Expiration Letter*").

<sup>3</sup> BLSTA-20110701ACV (the "STA Request").

<sup>4</sup> Permit No. BPFT-20100729ABD (the "2010 Construction Permit").

<sup>5</sup> BLFT-20100705ACB (the "License Application").

<sup>6</sup> We have attached a copy of the Objection to this letter. For the convenience of the parties, we are also attaching a copy of Ayala's Petition for Reconsideration.

Ayala received a construction permit for the Station<sup>7</sup> on March 3, 2005. The constructed the station and filed a covering license application on February 29, 2008, several days before the permit was to expire;<sup>8</sup> the staff granted the application on March 13, 2008. Some two years later, on March 10, 2010, Ayala requested STA to remain silent, indicating that the station had gone off the air on February 24, 2010, due to the loss of its site.<sup>9</sup> Ayala did not file a notification that the Station had resumed operation. It did, however, file an application for modification of facilities specifying a new transmitter site on the day it filed for silent authority,<sup>10</sup> which the Staff dismissed on June 9, 2010 for violating the technical requirements for FM translator stations. It then filed the 2010 Construction Permit application, which the staff granted on November 22, 2010. Ayala did not file an application for license to cover the 2010 Construction Permit, as noted above, until July 5, 2010.

In the Petition for Reconsideration, Ayala attaches several letters and declarations under penalty of perjury that the Station resumed operations on December 1, 2010, with at the site authorized in the 2010 Construction Permit and has remained on the air at that site since that time.<sup>11</sup> He indicates that he inadvertently neglected to notify the Commission that he had returned the Station to the air or to file a timely license to cover the 2100 Construction Permit,<sup>12</sup> but avers that at no time has Station K262BP been off the air for more than 12 consecutive months, and requests that the Station's license be reinstated.

In the Objection, Force observes that, although there is no evidence in the Commission's records that the Station returned to the air prior to February 25, 2011, or that the licensee constructed or sought program test authority for the 2010 Construction Permit, the station was indeed broadcasting and appears to directly originating much, if not all, of its programming, in violation of Sections 74.1201 and 74.1231 of the Commission's Rules (the "Rules").<sup>13</sup> It also indicates that the station is apparently overmodulating and causing interference to Station s KKAQ(FM), Tehachapi, California, and KMQA(AM), East Porterville, California.<sup>14</sup>

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<sup>7</sup> BNPFT-20030825AMC.

<sup>8</sup> BLFT-20080229ADN.

<sup>9</sup> BLSTA-20100310ACO, Exhibit 1.

<sup>10</sup> BPFT-20100310ACP.

<sup>11</sup> Petition for Reconsideration, Attachment 1.

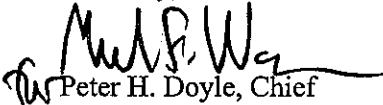
<sup>12</sup> Petition for Reconsideration at 1-2.

<sup>13</sup> 47 C.F.R. §§ 74.1201; 74.1231. It also states that the Station indicated that it intended to rebroadcasting the signal of primary station KZAV(FM), Avenal, California, an unbuilt construction permit that is not on the air, but that the Station's identification announcements indicate that it is rebroadcasting Station KAFY(AM), Bakersfield, California; Force indicates that there is no record of any notification that the Station intended to rebroadcast KAFY(AM) or that written consent had been obtained from that Station's owner.. Objection at 2-3. We note that, in the Petition for Reconsideration, Ayala indicates (and provides evidence of consent from the primary station owner) that it has been rebroadcasting the signal of Station KAFY(AM), Bakersfield, California, since December of 2010. Nothing further is needed with respect to this argument.

<sup>14</sup> The Objection contains only the declaration under penalty of perjury of a consulting engineer in the Bakersfield, area, Rusty W. Burchfield, but nothing from listeners or the licensees of KKAQ(FM) and KMQA(FM). Accordingly, although Ayala should address the overmodulation argument, it need not address the interference argument. The staff generally requires demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dBμ contour who are unconnected with the full-service station whose service allegedly will be disrupted. See *Association for Community Education, Inc.*, 19 FCC Rcd at 12688 n.37 (approving

We will provide Ayala with a period of 20 days from the date of this letter to respond fully to the arguments in the Objection, including providing any additional documentary evidence (such as electric bills, transmitter logs, or other objective evidence) that the Station returned to the air prior to February 25, 2011. The response should be filed in triplicate with the Office of the Secretary and served on Force's counsel; if possible, courtesy copies should be provided to Robert Gates and Michael Wagner of the Media Bureau's Audio Division. We will withhold action on the STA Request, license application, and petition for reconsideration pending submission of the response here. In light of this course of action, we remind Ayala that at this time he has no authority to be on the air with Station DK262BP, Conner, California, and he should cease Station operations until the staff has taken action on those filings.

Sincerely,

  
Peter H. Doyle, Chief  
Audio Division  
Media Bureau

Attachments

cc: Dawn Sciarrino, Esq. (counsel for Force Broadcasting, LLC)

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staff practice requiring that the complainant be "disinterested," e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding).

SCIARRINO & SHUBERT, PLLC  
BROADCAST & MEDIA LEGAL SERVICES

Dawn M. Sciarrino  
dawn@sciarrinolaw.com  
(202) 350-9658

Lee W. Shubert  
lee@sciarrinolaw.com  
(202) 350-9658

June 3, 2011

S&S file:  
Force - KLHC

HAND DELIVERY

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
c/o 9300 East Hampton Drive  
Capitol Heights, MD 20743

Re: Request for Order directing FM translator station K262BP, Conner, CA (FCC Facility ID No. 144609) to Cease and Desist from Further Broadcast Operations

Dear Ms. Dortch:

On behalf of **FORCE BROADCASTING, LLC** ("*Force*"), licensee of KLHC(AM), Bakersfield, California (FCC Facility ID No. 61420), and pursuant to Sections 1.41 and 1.91 of the Commission's Rules, this is to respectfully request that the Commission (i) direct FM Translator Station, K262BP, Conner, California (FIN: 144609) (hereafter referred to as either the "*Translator*" or "*K262BP*"), licensed to **JUAN ALBERTO AYALA** ("*Ayala*"), to immediately cease broadcast operations, and either (ii) designate the Translator and Ayala for hearing for violating Part 74 of the Commission's Rules, or (iii) impose a significant monetary forfeiture upon Ayala for knowing and willful violations of Part 74 of the Rules.

*Standing.* Force has standing to file this protest because KLHC serves the Bakersfield, California area and radio market, and competes directly with the Translator for audience and advertising revenues. *FCC v. Saunders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008 (1940); *See Sierra Club v. Morton*, 405 U.S. 727 (1972).

5425 TREE LINE DR. CENTREVILLE, VA 20120-1676  
202.350.9658 (PHONE) 703.991.7120 (FAX)

**Background and Facts.** The Translator went silent on February 24, 2010, due to the loss of its transmitter site.<sup>1/</sup> Therefore, the Translator's license was to be cancelled by operation of law on February 25, 2011, if K262BP did not return to the air before that date. The cancellation resulted from the failure of the Translator to operate for twelve (12) consecutive months.<sup>2/</sup>

There is no evidence in the Commission's records that the Translator returned to broadcast operations under its previously licensed parameters (FCC File No. BLFT-20080229ADN) prior to February 25, 2011. Further, no application for license apparently has ever been filed to authorize program test authority pursuant to the construction permit issued on November 22, 2010 (FCC File No. BPFT-20100729ABD). That Construction Permit<sup>3/</sup> contains special operating conditions or restrictions. The second of those expressly provides as follows:

Prior to commencing program test operations, FM Translator or FM Booster permittee must have on file at the Commission, FCC Form 350, Application for an FM Translator or FM Booster Station License, pursuant to 47 C.F.R. Section 74.14.

Thus, from all available evidence, K262BP does not have FCC authority to be broadcasting, and more than three (3) months ago the Translator's authorization expired as a matter of law. Therefore, at the very least, the Translator must be compelled by the FCC to immediately cease operations.

Nonetheless, K262BP, indeed, is broadcasting. The Translator not only is broadcasting, but is either (i) directly originating much, if not all, of its programming – in express violation of Sections 74.1201 and 74.1231 of the Commission's Rules,<sup>4/</sup> or (ii) retransmitting programming of a radio station for which it does not have FCC authority to rebroadcast.

Both the 2008 license and the 2010 construction permit for K262BP indicate that Ayala planned to rebroadcast KZAV(FM), Avenal, California (FIN: 174071). KZAV,

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<sup>1/</sup> See, BLSTA-20100310ACO. Letter to Juan Alberto Ayala dated April 13, 2010, attached hereto as Exhibit 1.

<sup>2/</sup> 47 U.S.C. § 312(g).

<sup>3/</sup> See, Exhibit 2, hereto, for a copy of the Construction Permit (FCC File No. BPFT-20100729ABD).

<sup>4/</sup> 47 C.F.R. §§ 74.1201 and 74.1231. See attached Declaration of Maria Ochoa at Exhibit 3.

however, is an unbuilt construction permit and according to the Commission's records is not on the air.<sup>5/</sup>

When monitoring the Translator, its station identification indicates that it is rebroadcasting radio station KAFY(AM), Bakersfield, California (FIN: 36027), licensed to LA FAVORITA RADIO NETWORK, INC. ("LFRN")<sup>6/</sup> The Translator does not have authority to rebroadcast KAFY, because there is no record (i) that Ayala, the Translator's licensee, ever notified the FCC of his intent to rebroadcast KAFY, or (ii) of a certification that written consent has been obtained from LFRN authorizing such rebroadcasts. (See 47 C.F.R. § 74.1284.) Moreover, when listening to both KAFY and K262BP simultaneously, it is obvious that the translator broadcast is not a simulcast of KAFY. It is *entirely* different programming. Aside from emergency warnings of imminent danger, an FM Translator is not authorized to originate a total of *more than thirty (30) seconds* of programming per hour.<sup>7/</sup> Given the circumstances, it seems that K262BP's illegal operation is nothing more than that of a pirate rogue station!<sup>8/</sup>

Further complicating the Translator's rogue status is that research into K262BP's location reveals that there is no tower or transmission equipment at the licensed coordinates listed.<sup>9/</sup>

Finally, K262BP is also apparently over-modulating. The station is causing interference to radio stations at 100.1 MHz and 100.5 MHz.<sup>10/</sup> These stations should not be

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<sup>5/</sup> See, FCC File No. BNPED-20071018AUW.

<sup>6/</sup> See Declaration of Maria Ochoa at **Exhibit 3**. Off-air recordings are available and English translations thereof are available at the Commission's request.

<sup>7/</sup> See, 47 C.F.R. § 74.1231(g). The rule specifically provides that:

Solicitations of contributions shall be limited to the defrayal of the costs of installation, operation and maintenance of the translator or acknowledgements of financial support for those purposes. Such acknowledgements may include identification of the contributors, the size or nature of the contributions and advertising messages of contributors. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

<sup>8/</sup> Not only is K262BP originating its programming, it is even selling advertising!

<sup>9/</sup> The FCC Database shows the licensed coordinates are 35° 09' 34.00" North Latitude; 119° 07' 13.00" West Longitude (NAD 27), and the CP coordinates are 35° 12' 6.00" North Latitude; 119° 05' 27.00" West Longitude (NAD 27).

<sup>10/</sup> Stations KKZQ (100.1 MHz) Tehachapi, California (FIN: 85024) and KMQA (100.5 MHz) East Porterville, California (FIN: 3395). See Declaration of Rusty Burchfield, attached hereto as **Exhibit 4**.

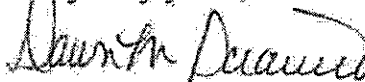
Marlene H. Dortch, Secretary  
June 3, 2011  
Page 4

experiencing interference if K262BP is operating within parameters. It is our understanding that the licensees of these stations have complained to the FCC's Los Angeles Field Office.

In sum, it is evident that Ayala and the Translator are materially violating no fewer than a half-dozen Commission Rules!

*Request for Action.* Accordingly, this is to respectfully request that the Commission (i) direct Ayala and translator station K262BP to immediately cease broadcast operations, and either (ii) designate the Translator and Ayala for hearing for knowing and willful violations of Part 74 of the Commission's Rules, including Subpart L, or (iii) impose a significant monetary forfeiture upon Ayala for knowing and willful violations of the Commission's Rules.

Very truly yours,



Dawn M. Sciarrino  
Lee W. Shubert

Counsel for  
FORCE BROADCASTING, LLC

SCIARRINO & SHUBERT, PLLC  
5425 TREE LINE DR. CENTREVILLE, VA 20120-1676  
202.350.9658 (PHONE) 703.991.7120 (FAX)

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554

APR 13 2010

IN REPLY REFER TO:  
1800B3-KAW

Juan Alberto Ayala  
8500 N. Semmons Fwy., Suite 5050  
Dallas, TX 75214

In re: K262BP, Conner, CA  
Facility ID No. 144609  
Silent Since February 24, 2010  
Request For Special Temporary  
Authority To Remain Silent

Dear Mr. Ayala:

This letter concerns the request, filed on March 10, 2010, for Special Temporary Authority to permit FM Translator Station K262BP to remain silent.

The request states that K262BP went silent on February 24, 2010, due to the loss of its site. The request includes the appropriate certification regarding Section 5301 of the Anti-Drug Abuse Act of 1988.<sup>1</sup>

The request will be granted. Accordingly, Special Temporary Authority is granted to permit FM Translator Station K262BP to remain silent until for a period not to exceed 180 days from the date of this letter. Notwithstanding the grant of this special temporary authority, the broadcast license for K262BP will automatically expire as a matter of law if broadcast operations do not commence by 12:01 a.m. February 25, 2011.<sup>2</sup> See Section 312(g) of the Communications Act, 47 U.S.C. Section 312(g).

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<sup>1</sup> In the event extension of special temporary authority is sought, please renew the certification in this matter.

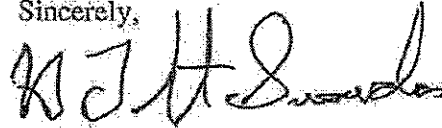
<sup>2</sup> Notification of resumption of broadcast operations must be mailed to:

Federal Communications Commission  
Attn: 1800B3-DW, Room 2-B450  
445 12th Street, S.W.  
Washington, D.C. 20554



The station's silent status does not suspend the licensee's obligation to comply with all other relevant Commission rules, including the filing, when appropriate, of applications for renewal of broadcast license. Finally, we note that it is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower shall be maintained until removed. See 47 C.F.R. Sections 17.6 and 73.1740(a)(4).

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Taft Snowden". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

H. Taft Snowden  
Supervisory Attorney  
Audio Division  
Media Bureau

cc: Dan J. Albert, Esq.



United States of America  
**FEDERAL COMMUNICATIONS COMMISSION**  
**FM BROADCAST TRANSLATOR/BOOSTER STATION**  
**CONSTRUCTION PERMIT**

Authorizing Official:

Official Mailing Address:

JUAN ALBERTO AYALA  
121 SOUTH WICK DR  
CEDAR HILL TX 75104

James D. Bradshaw  
Deputy Chief  
Audio Division  
Media Bureau

Facility Id: 144609

Call Sign: K262BP

Permit File Number: BPFT-20100729ABD

Grant Date: November 22, 2010

This permit expires 3:00 a.m.  
local time, 36 months after the  
grant date specified above.

Commission rules which became effective on February 16, 1999, have a bearing on this construction permit. See Report & Order, Streamlining of Mass Media Applications, MM Docket No. 98-43, 13 FCC RCD 23056, Para. 77-90 (November 25, 1998); 63 Fed. Reg. 70039 (December 18, 1998). Pursuant to these rules, this construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration. See Section 73.3598.

Name of Permittee: JUAN ALBERTO AYALA

Principal community to be served: CA-CONNER

Primary Station: KZAV (FM), Channel 204, AVENAL, CA

Via: Direct - off-air

Frequency (MHz): 100.3

Channel: 262

Hours of Operation: Unlimited

Callsign: K262BP

Permit No.: BPFT-20100729ABD

Antenna Coordinates: North Latitude: 35 deg 12 min 06 sec

West Longitude: 119 deg 05 min 27 sec

Transmitter: Type Accepted. See Sections 73.1660, 74.1250 of the Commission

Antenna type: (directional or non-directional): Directional

Major lobe directions 90 180 270  
(degrees true):

Horizontally Polarized Antenna:	Vertically Polarized Antenna:
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Effective radiated power in the Horizontal Plane (kw):	0.04	0.04
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Height of radiation center above ground (Meters):	35	35
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Height of radiation center above mean sea level (Meters):	128	128
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Antenna structure registration number: 1015627

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.
- 2 Prior to commencing program test operations, FM Translator or FM Booster permittee must have on file at the Commission, FCC Form 350, Application for an FM Translator or FM Booster Station License, pursuant to 47 C.F.R. Section 74.14.

\*\*\* END OF AUTHORIZATION \*\*\*

DECLARATION OF MARIA OCHOA

I, Maria Ochoa, hereby state that the following is true and correct to the best of my personal knowledge:

1. I am a resident of the greater Bakersfield, California, area, and am a listener to radio stations KLHC and KAFY, both licensed to Bakersfield, California, and FM translator station K262BP, Conner, California.

2. I have monitored the output of FM translator station K262BP, and have determined that the programming on the translator station does not consistently mirror the over-the-air programming of KAFY. This is even though K262BP routinely carries the station identification announcements for KAFY. On several occasions I have recorded simultaneously the programming of KAFY and K262BP, and have determined that each time I have conducted such simultaneous recordings the programming on the two stations has not been identical or even similar. For example, in one instance, on May 5, 2011, KAFY featured two Spanish-language speakers discussing the advent Cinco de Mayo while at the same time K262BP was broadcasting music. Subsequently, after the music concluded, the two Spanish-language speakers were being broadcast on both stations, but the subject-matter of what they were discussing was different. In short, the two programming streams did not match.

Stated under penalty of perjury, this 27<sup>th</sup> day of May, 2011.

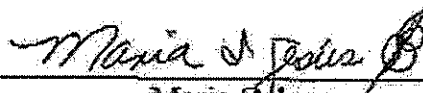
  
\_\_\_\_\_  
Maria Ochoa

Exhibit 4  
Informal Objection

DECLARATION OF RUSTY W. BURCHFIELD

I, Rusty W. Burchfield, hereby state that the following is true and correct to the best of my personal knowledge:

1. I am a resident of the greater Bakersfield, California, area. I am a broadcast engineer and provide engineering and technical services to radio broadcast stations throughout the Bakersfield, California, area. I am a member of the Society of Broadcast Engineers (SBE), the American Radio Relay League (ARRL), the Audio Engineering Society (AES) and IEEE.

2. In my capacity as a broadcast engineer in the Bakersfield area I have monitored radio stations KAFY(AM) and KLHC(AM), both licensed to Bakersfield, California, KKZQ(FM), Tehachapi, California, and KMQA(FM), East Porterville, California, as well as FM translator station K262BP, Conner, California.

3. Within the past 30 days I have visited the sites that have been specified by Juan Alberto Ayala as transmitter locations for K262BP in (a) the 2008 license application (FCC File No. BLFT-20080229ADN), purportedly located at the geographic coordinates 35° 09' 34.00" NL; 119° 07' 13.00" WL (NAD 27) (hereafter "Site 1"), and (b) the most recent Construction Permit application (FCC File No. BPFT-20100729ABD), located at the geographic coordinates 35° 12' 6.00" NL; 119° 05' 27.00" WL (NAD 27) (hereafter "Site 2").

4. Base upon my observations no tower or transmitter of any kind is located at Site 1. I did find an abandoned tower a few miles away from Site 1 which I presume was the licensed transmitter site for K262BP, but that incorrect geographic coordinates had been furnished to the FCC.

5. On May 23, 2011, I visited Site 2 and monitored the signal output of the antennas that are located there (using my spectrum analyzer). I determined that one of the stations on the tower (ASRN 1015627) was transmitting on 100.3 MHz (FM Channel 262).

6. While monitoring at Site 2, I determined that the signal on Channel 262 was over-modulated and was causing interference to adjacent-channel stations operating on FM Channels 261 (KKZQ) and 263 (KMQA).

Stated under penalty of perjury, this 2 day of May, 2011.

  
Rusty W. Burchfield