



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

December 18, 2014

In Reply Refer to:
1800B3-MM

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In re: W208BR Wheeling, West Virginia
Facility ID No. 90545
Pensacola Christian College, Inc.
File No. BLFT-20111004AAB
BPFT-20110809ABV

**Application for License to Cover
Application for Minor Change**

**Informal Objection
Petition for Reconsideration**

Dear Counsel:

We have before us the covering license application ("License Application") of Pensacola Christian College, Inc. ("Pensacola") for FM translator W208BR (formerly W204BE), Wheeling, West Virginia ("Station"). We also have before us: (1) West Virginia Educational Broadcasting Authority's ("WVEBA") Informal Objection ("Objection") to Pensacola's minor change application ("Change Application") filed on September 22, 2011; (2) its October 31, 2011, Petition for Reconsideration ("Petition") of the grant of the Change Application;¹ and (3) related pleadings.² For the reasons stated below, we grant the Petition to consider the arguments raised in the Informal Objection, deny the Petition in all other respects, deny the Informal Objection, and grant the License Application.

Background. On August 9, 2011, Pensacola filed the Change Application, proposing to move from Channel 204 to Channel 208 at its licensed site due to interference from full service station WULV(FM), Moundsville, West Virginia. It claimed that Channel 208 was the nearest available frequency, as interference precluded operation on first-, second-, and third-adjacent channels.³ Operation

¹ File No. BPFT-20110809ABV.

² Pensacola filed an untimely Motion for Extension of Time on November 14, 2011, and an Opposition to Petition for Reconsideration on November 22, 2011, and WVEBA filed a Reply to Opposition on November 29, 2011. We will grant this motion. *See, e.g., Rocking M Radio, Inc.*, Letter, 25 FCC Rcd 1322, 1323 n.1 (MB 2010) (granting extension of time motion in interest of complete record and because neither party was prejudiced thereby); *see also New FM, Avondale, Colorado*, Letter, 28 FCC Rcd 5667, 5667 n.1 (granting unopposed extension motion).

³ Change Application at Exhibit 17.

on Channel 208, however, placed the Station's service contour completely within the 60 dB μ protected service contours of WVEBA second-adjacent channel stations WVNP(FM) and WVNP-FM1, a booster station rebroadcasting WVNP(FM)'s signal. Accordingly, Pensacola sought waiver of Section 74.1204(a) of the Rules, "if necessary," arguing that no interference would occur due to lack of population within the area of interference, as the term is defined by Commission caselaw.⁴ Specifically, based on an undesired-to-desired signal strength ratio interference prediction methodology ("U/D Ratio") showing,⁵ Pensacola claimed that the Station's proposed interfering contour was 122 dB μ and 126 dB μ for WVNP-FM1 and WVNP(FM), respectively, and therefore that the actual interference area within WVNP(FM)'s protected contour would be relatively small and contained "no road, structure or population."⁶ Pensacola supplied several engineering studies purporting to demonstrate that no other channels were available, and that no interference would occur due to lack of population within the area of interference for both WVNP and WVNP-FM1.⁷ On September 21, 2011, Pensacola amended the Change Application to correct the coordinates of the Station's antenna and provide new population and coverage information ("Pensacola Amendment").⁸

The next day, September 22, 2011, WVEBA filed its Objection, alleging that the Bureau should "dismiss or deny" the Change Application for two reasons. First, WVEBA alleged that the Change Application would cause interference with the reception of WVNP(FM) and WVNP-FM1, in violation of Sections 74.1204 of the Rules because the proposal did not fall into the "no population" exception to that Rule.⁹ WVEBA claimed that the interference area is "visited regularly by maintenance workers,"¹⁰ and, contrary to Pensacola's characterization of no road in the area, there is a dirt road, located "in the immediate vicinity of a residential community" that is likely used as a walking, jogging, or biking trail.¹¹ It also argued that the Change Application contains numerous errors and inconsistencies, namely that the antenna and tower information in the original Change Application conflicts with data listed in the Commission's Antenna Structure Registration database¹² and that Pensacola miscalculated the interfering field strengths, resulting in the prediction of smaller interference areas for both stations than would

⁴ Petition at 3, citing *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 17054 (2002) (providing guidance for future applicants to demonstrate lack of population in the context of Section 74.1204 of the Rules) ("*Living Way*"), *State of Oregon Acting By and Through the State Board of Higher Education for the Benefit of Southern Oregon State College*, Letter, 17 FCC Rcd 11842, 11844 (MB 2000), and 47 C.F.R. § 74.1204(d).

⁵ Under the U/D signal strength ratio methodology accepted by the staff in this and similar cases, interference is predicted to occur between two stations operating on second-adjacent channels in areas where the "undesired" (or "interfering") signal is at least 40 dB greater than the "desired" (or "protected") signal. See 47 C.F.R. § 74.1204(a)(3).

⁶ Change Application at Exhibit 17.

⁷ See Change Application at Exhibit 17, Figures 1-4. The proposal also resulted in the Station receiving prohibited overlap from WQED-FM, Pittsburgh, Pennsylvania, and Pensacola requested waiver of 47 C.F.R. § 73.509 of the Rules. Pensacola included in its engineering Exhibit a U.S. Census Block study to demonstrate "little adverse effect" to the Station due to received interference from WQED-FM, Pittsburgh, Pennsylvania. *Id.* at Figures 5-6.

⁸ Specifically, Pensacola changed coordinates for latitude, longitude and antenna location site elevation above mean sea level. See Section III-A, Questions 4 and 6; Section IV, Question 4.

⁹ 47 C.F.R. § 74.1204(d) (providing that the Commission will grant an application notwithstanding predicted interference "if it can be demonstrated that no actual interference will occur due to...lack of population...")

¹⁰ Objection, Engineering Statement at 5.

¹¹ Objection at 3. 47 C.F.R. §§ 74.1203 (prohibits FM translators from continued operations if they "cause any actual interference to the transmission of any authorized broadcast station"), 73.1204 ("no FM translator station application will be accepted for filing if the proposed operation would involve overlap of predicted field contour with any other authorized commercial...FM broadcast stations"). Objection at 2-4.

¹² Objection, Engineering Statement at 2-3. Change Application, Section II, Questions 6 and 8.

actually occur.¹³ Specifically, it argued that that the Station's proposed interfering field strength was 114.34 dBμ for WVNP-FM1 and 119.98 dBμ for WVNP.¹⁴

The Media Bureau granted the Change Application on September 26, 2011, without acting on the Objection.¹⁵ On October 4, 2011, Pensacola filed the License Application, in which it stated that it would "conduct program tests and measurements prior to commencing full-time operations" to "address and reconcile" issues cited in the Objection.¹⁶

WVEBA timely filed the Petition on October 31, 2011, urging the Bureau to rescind the grant because: (1) it granted the Change Application without first considering the Objection; (2) the Change Application violates Section 74.1204(a) of the Rules and does not warrant a Section 73.1204(d) waiver based on lack of population;¹⁷ and (3) the numerous errors and inconsistencies cited in the Objection warrant such action.¹⁸

On November 22, 2011, Pensacola opposed the Petition, noting that it had corrected any discrepancies in the tower coordinates the day before WVEBA filed the Objection. As for the alleged Section 74.1204(a) violation, Pensacola claims it is inapplicable here because the Commission granted the Change Application and the proposed facilities are authorized, citing *Dodge City*, in which the Bureau found Section 74.1204(a) inapplicable after an FM translator station was authorized.¹⁹ Pensacola's Opposition includes an exhibit showing that, in accordance with its statement that it would address WVEBA's concerns upon commencing operations, the Station's proposed interfering contour is 119.98 dBμ for WVNP(FM) and 114 dBμ for WVNP-FM1. As to WVEBA's allegations regarding no population within the prohibited overlap area, Pensacola states that the Change Application's interfering contour extends approximately 34.75 meters from the tower, covers about 80 meters of adjacent dirt road, contains "no homes or residences" and "only covers the structures located at the transmitter site."²⁰ Because the road ends with a locked gate, Pensacola claims that its use by local residents it is "at best, speculation and surmise,"²¹ and highlights that WVEBA submitted no evidence to support this argument. Pensacola includes a sworn statement from Randy Foster, an employee of Staley Communications, Inc., which owns, through an affiliate, Staley Wireless LP ("SWL"). Foster states that "visitations to the site are limited," occurring only periodically, possibly monthly, and that humans do not inhabit any of the buildings "in a residential sense."²²

¹³ WVEBA also argues that the Census Data submitted by Pensacola does not help to prove lack of population for Section 74.1204 purposes. Objection, Engineering Statement at 3-4. The Census information Pensacola submitted was evidence of the percentage of population affected by the interference that the Station would receive from full power WQED-FM, not an attempt to prove anything in regard to Section 74.1204(d). Change Application at Exhibit 17, Figure 6. This allegation will receive no further consideration here.

¹⁴ Objection, Engineering Statement at 4.

¹⁵ See *Broadcast Actions*, Public Notice, Report No. 47582 (Sept. 29, 2011).

¹⁶ License Application at Exhibit 1.

¹⁷ Petition at 2-3.

¹⁸ *Id.* at 4, note 11.

¹⁹ Opposition at 3, citing *K225AG(FX), Dodge City, KS*, Letter, 25 FCC Rcd 12812 (MB 2010) ("*Dodge City*") (displaced station's licensed expired after 12 consecutive months of silence, despite licensee's argument that it ceased operations to protect itself from violating Section 74.1204 because that section pertains to applications, not licensed facilities).

²⁰ Opposition at 4.

²¹ *Id.*

²² *Id.* at Attachment 8 ("Randy Foster Declaration").

WVEBA states in its Reply that *Dodge City* is inapposite because WVEBA filed the Objection before Pensacola began operations from the site proposed in the Change Application, and the Bureau should evaluate the proposal as if it had not granted the Change Application.²³ WVEBA again alleges that Pensacola's evidence is insufficient to establish "no population" in the area, and argues that maintenance workers and station employees regularly work and travel to the contour overlap area to maintain the SWL facilities.²⁴

Discussion. Procedural Matter. Section 1.106(b)(2)²⁵ provides that the Commission will entertain a petition for reconsideration only if: (i) the petition relies on facts which relate to events which have occurred or circumstances that have changed since the last opportunity to present such matters;²⁶ or (ii) the petition relies on facts unknown to the petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.²⁷ As an initial matter, because the Bureau failed to rule on the Objection before it granted the Change Application, we will grant the Petition to the extent that we will consider the arguments raised in the Objection. Given our determination herein, however, that listeners will not encounter any interference, we find that the premature grant was harmless error.²⁸

Substantive Matters. Pursuant to Section 309(e) of the Act, informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.²⁹ For the reasons discussed below, WVEBA does not carry that burden.

We first address Pensacola's argument that Section 74.1204 does not apply, or is irrelevant, citing *Dodge City*, because that rule applies only to proposed operations. Here, the Station is indeed authorized and operational as proposed in the Change Application, but, as discussed above, we grant the Petition to the extent that we will consider the arguments raised in the Objection against the Change Application for which the facilities were not, at the time, operational and licensed. Accordingly, *Dodge City* is not dispositive here, and we properly apply Section 74.1204 to the issues raised in connection with the Change Application.

With respect to WVEBA's argument that the predicted interference area is indeed populated, the Commission will accept FM translator applications where, as here, the 100 dBμ contour of the FM translator overlaps the 60 dBμ contour of a second-adjacent channel station, provided that the applicant can show, *inter alia*, "a lack of population in the area of interference."³⁰ Although initially WVEBA and Pensacola disagreed on the extent of contour overlap for the stations involved, they appear to have agreed that 114 dBμ and 119 dBμ are the appropriate interfering contour field strengths for WVNP(FM) and WVNP-FM1, respectively.

²³ Reply to Opposition at 3.

²⁴ *Id.* at 4-6.

²⁵ 47 C.F.R. § 1.106(2).

²⁶ 47 C.F.R. § 1.106(b)(2)(i).

²⁷ 47 C.F.R. § 1.106(b)(2)(ii).

²⁸ *Hawaii Public Radio, Inc.*, Letter, 25 FCC Rcd 3697 (MB 2010) (finding that dismissal of a competing application before action on a timely petition to deny against the tentative selectee was a harmless error in view of the ultimate denial of the petition to deny).

²⁹ 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), *reh'g denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

³⁰ 47 C.F.R. § 74.1204(a)(3), (d). See Note 5, *supra*.

Our engineering analysis reveals that, based on the +40 dB U/D ratio analysis, the interfering contours do not affect any population. The Bureau staff's calculations, using the relevant signal strength ratios, the WVNP(FM) signal strength at the Station's transmitter site is 73 dBμ. Therefore, the Station's interfering contour for WVNP(FM) is the 113 dBμ contour, which extends approximately 50 meters from the transmitting antenna. For WVNP-FM1, that station's signal strength at the Station's transmitter site is 79 dBμ. Therefore, the relevant interfering contour is the Station's 119 dBμ contour, which extends approximately 25 meters from the transmitting antenna. The Change Application proposes an antenna location of 55 meters above ground level. At this height, the Station's interfering contours *vis á vis* WVNP(FM) and WVNP-FM1 do not reach the ground, and thus do not affect listeners or violate Section 74.1204.³¹ Accordingly, WVEBA has not established a substantial and material question of fact that grant of the Change Application would be inconsistent with the public interest.

Finally, we find meritless WVEBA's claim that we should rescind grant of the Change Application because it contains errors and inconsistencies. Indeed, Pensacola initially incorrectly listed the antenna coordinates in the Change Application; however, the Pensacola Amendment reconciled the differences in the Commission's ASR database³² so that the Station's technical information now matches SWL's antenna information. Pensacola also corrected its calculations of the interfering contour to match WVEBA's.³³ Accordingly, we do not find the prior discrepancies problematic in relation to the Change Application, but we remind Pensacola that the Commission requires applicants to provide and maintain accurate information in their applications at all times.³⁴

License Application. We have examined the W208BR license application and find that the Station was constructed in accordance with all terms and conditions of its authorization. We therefore find that the public interest, convenience, and necessity would be furthered by grant of that application. We remind Licensee that if the Station commences operation and causes interference to WVNP(FM), it must eliminate the interference or cease operation.³⁵

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED, that West Virginia Educational Broadcasting Authority's Petition for Reconsideration, filed October 31, 2011, IS GRANTED to the extent indicated above, and DENIED in all other respects.

³¹ See, e.g., *W245BL, Branchport, NY*, Letter, 28 FCC Rcd 15494 (MB 2013) (accepting a translator application despite contour overlap where the applicant demonstrated that the translator station's interfering contour would not reach ground level.)

³² See ASR File No. A0642178 (filed Jul. 1, 2009).

³³ Opposition at Attachment 5.

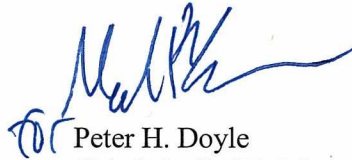
³⁴ 47 C.F.R. § 1.65.

³⁵ 47 C.F.R. § 74.1203(a).

IT IS FURTHER ORDERED, that West Virginia Educational Broadcasting Authority's Informal Objection, filed on September 22, 2011, IS DENIED.

IT IS FURTHER ORDERED that Pensacola Christian College, Inc.'s application for covering license (File No. BLFT-20111004AAB), IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter H. Doyle", with a stylized flourish extending to the right.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Caleb Keener, Electronics Supervisor, Pensacola Christian College, Inc.