

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

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In re Application of)
)
JVC Media, LLC)
)
For Modified Facilities of FM Translator)
On Channel 271 at Riverhead, NY)
Facility Identification No. 139350)

File No. BMPFT-20151104EXY

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JAN 19 2016

Federal Communications Commission
Bureau / Office

To: Marlene H. Dortch, Secretary

For transmission to: Audio Division, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

JVC Media, LLC (“JVC”), by its attorneys, hereby submits this Opposition to Petition for Reconsideration responding to Cox Radio, Inc.’s (“Cox”) January 6, 2016 Petition for Reconsideration (“Petition”).¹ JVC is the licensee of FM translator W271BZ (FID 139350), currently licensed at Tiana, NY. JVC filed an application for a minor modification to its construction permit, which was accepted for filing by the Federal Communications Commission (“FCC” or “Commission”) on November 9, 2015.² JVC’s application was granted on December 7, 2015.³

Cox’s Petition is untimely and should be dismissed and returned by FCC staff without consideration. Under the FCC’s rules, an entity must be a party in interest to file a Petition for

¹ Petition for Reconsideration filed by Cox Radio, Inc., File No. BMPFT-20151104EXY (Jan. 6, 2016) (“Cox Petition”).

² FCC Report No. 28608 (Nov. 9, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-336235A1.pdf.

³ FCC Report No. 48626 (Dec. 7, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-336708A1.pdf.

Reconsideration.⁴ The FCC’s rules provide an avenue for any party in interest to file a Petition to Deny “*provided such petitions are filed prior to the day such application are granted. . .*”⁵ Cox must have filed an objection or Petition to Deny JVC’s application before it was granted in order to be considered a party to the proceeding. But it declined to do so.

A non-party may also file a Petition for Reconsideration if it specifically articulates how its interests would be impacted by the FCC’s action, and it “show[s] good reason why it was not possible for him to participate in the earlier stages of the proceeding.”⁶ Cox cannot and did not proffer a legitimate reason why it did not participate during the 28 days between FCC Public Notices. Indeed, it simply states, in a footnote, that it “was not possible for Cox to participate earlier in the proceeding, because the Commission granted the Application less than thirty days after it initially appeared on Public Notice.”⁷ Cox argues that the FCC’s “prompt action” granting JVC’s application after 28 days “effectively prevented Cox from raising its objections earlier.”⁸

To support its assertion that it has standing to file its Petition without participating prior to FCC grant, Cox incorrectly relies upon *The Association for Community Education, Inc.* (“ACE”).⁹ Cox is correct that *ACE* acknowledged that the Commission has accorded standing in situations where the FCC’s prompt action “effectively precludes participation during the initial

⁴ 47 C.F.R. § 1.106(b)(1).

⁵ 47 C.F.R. §73.3584(a) (emphasis added).

⁶ *Id.*

⁷ Cox Petition at n.1.

⁸ *Id.*

⁹ *The Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd. 12682 (2004) (“ACE”).

consideration of an application.”¹⁰ Of course, Cox neglects to mention the second clause of that sentence, where the FCC explained that “prompt staff action” is a very short amount of time, “such as when an application is granted *four or five days* after Public Notice of its acceptance.”¹¹

In the case at hand, the application was granted 28 days after Public Notice of its acceptance. Contrary to Cox’s argument,¹² no law or FCC decision requires the FCC to wait 30 days before granting a minor modification application. Cox had ample time to participate in this proceeding and had no reasonable basis to expect 30 days before the FCC granted the application. Nor did Cox rush to get this Petition filed once JVC’s application was granted. Instead of filing the Petition right away in response to the FCC’s “prompt action,” Cox waited an additional 30 days. It now seeks a second bite at the apple, nearly 60 days after JVC’s application was originally accepted for filing. FCC precedent is clear. By failing to file an objection to the application or a Petition to Deny during the 28 days between Public Notices, Cox’s Petition must be dismissed.¹³

If the FCC were to grant Cox’s Petition, it would eviscerate a long line of established precedent.¹⁴ Cox would have the FCC change its definition of “prompt staff action” from “four or five days”¹⁵ to 28 days. This expansion of 23 days, more than three weeks, before the FCC could act would mean an effective elimination of the minor modification. Minor and major applications, transfers, and assignments would have nearly the same pleading deadlines. This result runs counter to the point of a minor modification. Granting Cox’s application would not

¹⁰ *Id.*, ¶ 6.

¹¹ *Id.*, ¶ 6 (emphasis added).

¹² Cox Petition at n.1.

¹³ *Revival Christian Ministries*, 28 FCC Rcd. 2041, 2043 (MB 2014) (“*Revival*”).

¹⁴ See, e.g., *The Association for Community Education; Revival; Red Wolf Broadcasting Corp.*, Letter, 27 FCC Rcd. 4870 (2012) (“*Red Wolf Broadcasting Corp.*”).

¹⁵ *ACE*, ¶ 6.

Cox also writes that it will have “no choice” but to file a complaint if interference occurs when JVC constructs as permitted. A threat of a complaint is not a reasonable basis for the FCC to consider granting Cox’s Petition, when it should otherwise be dismissed. JVC also appreciates Cox’s concern that we may strand our investment in W271BZ.¹⁸ We are confident we will operate without causing interference. In any event, that is not a valid reason to grant the Petition. JVC will operate W271BZ consistent with the FCC’s rules. In the unlikely event that interference does occur, JVC will eliminate the interference or cease operation, consistent with Section 74.1203.¹⁹

FCC precedent and rules are clear, the staff may dismiss a petition for reconsideration seeking to overturn the grant of an application if the petition does not show good cause for failing to participate earlier in the proceeding.²⁰ Cox’s claim that it was unable to participate in the 28 days between FCC public notices is not good cause. The FCC should dismiss the Petition consistent with its case law. To act otherwise would open all minor modification grants to uncertainty and freeze broadcaster action until the end of the reconsideration deadline. JVC respectfully submits that such a result would be against the public interest.

¹⁸ Cox Petition at 3.

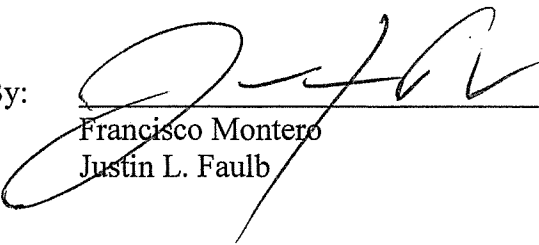
¹⁹ 47 C.F.R. § 74.1203.

²⁰ 47 C.F.R. § 1.106(b)(1). *See also The Association for Community Education; Revival; Red Wolf Broadcasting Corp.*

Respectfully submitted,

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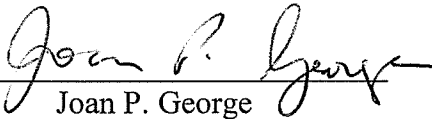
January 19, 2016

CERTIFICATE OF SERVICE

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that a true copy of the *Opposition to Petition for Consideration* was sent this 19th day of January, 2016 via hand where indicated and via United States First Class Mail, postage prepaid, to the following:

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