



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

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*In Reply Refer To:*  
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In re: **Strategic International Ministries**  
**KWSV-LP-FM1, Chatsworth, CA**  
Facility ID No. 198611  
File No. BLFTB-20170724AAAA  
File No. BNPFTB-20150521ACF

**KWSV-LP, Simi Valley, CA**  
Facility ID No. 197314  
File No. BMILL-20150413AAO  
File No. BPL-20170717AAAT

**Petition for Reconsideration**

Dear Counsel and Mr. Tayloe:

We have before us a petition for reconsideration (Petition) filed on August 31, 2017, by Machine Project (MP).<sup>1</sup> MP seeks reconsideration of the staff's grant of the referenced covering license application (License Application) for FM booster station KWSV-LP-FM1, Chatsworth, California (Booster), filed by Strategic International Ministries (SIM).<sup>2</sup> As discussed below, we dismiss the Petition in part and deny it in part.

**Background.** The following application filings and staff actions are relevant to understanding the issues presented in this case:

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<sup>1</sup> MP is the licensee of low power FM (LPFM) Station KZUT-LP, Los Angeles, California

<sup>2</sup> File No. BLFTB-20170724AAAA. *See Broadcast Actions*, Public Notice, Report No. 49040 (rel. Aug. 2, 2017). SIM filed an Opposition and Motion to Strike the Petition on September 2, 2017. We note that MP has also referenced two applications for primary station KWSV-LP, Simi Valley, California, in its Petition.

- The Media Bureau (Bureau) granted SIM's application for a construction permit (Station Permit) for a new LPPFM Station at Simi Valley, California, on October 8, 2014 (KWSV-LP or Station).<sup>3</sup>
- On March 16, 2015, SIM filed an application for license to cover the Station Permit, which the Bureau granted on March 23, 2015.<sup>4</sup>
- On May 21, 2015, SIM filed the referenced application for a construction permit for the Booster to rebroadcast the Station, which the staff granted on June 22, 2017 (Booster Permit).<sup>5</sup>
- On July 24, 2017, SIM filed the License Application for the Booster, which the staff granted on July 28, 2017. On August 31, 2017, MP filed the Petition seeking reconsideration of the License Application grant.

In its Petition, MP argues that the Booster is “overpowered” and in violation of Section 74.1235(c) of the FCC’s rules (Rules).<sup>6</sup> Specifically, MP states that the maximum allowable ERP for the Station (LPPFM, class L1) is 100 watts at 30 meters HAAT.<sup>7</sup> MP states that, per the “FCC’s FM Query,” the Booster’s site is 702 meters above sea level, which is approximately 281 meters HAAT. MP claims that at this location, the maximum allowable ERP for the Station is 1.5 watts, rounding out to 2 watts, and thus the maximum allowable ERP for the Booster is 0.4 watts (*i.e.*, 20 percent of the Station’s maximum allowable ERP). MP claims, however, that the Booster’s ERP is at 6 watts – 15 times (11.7 dB) the maximum allowable under Section 74.1235(c) of the Commission’s Rules (Rules).<sup>8</sup> MP argues that

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<sup>3</sup> File No. BNPL-20131114BCK. *See Broadcast Actions*, Public Notice, Report No. 48344 (rel. Oct. 14, 2014). The Station Permit authorized a facility with an effective radiated power (ERP) of 100 watts (horizontal) and 50 watts (vertical) and an antenna height above average terrain (HAAT) of 6 meters and a radiation center height above mean sea level of 440 meters at a location of 34° 16’ 55” NL, 118° 39’ 17” WL.

<sup>4</sup> File No. BLL-20150316ACO. *See Broadcast Actions*, Public Notice, Report No. 48454 (rel. Mar. 26, 2015). SIM subsequently filed an application to modify KWSV-LP’s licensed facilities, correcting the gain factor for the antenna resulting in a 10 watt increase in transmitter power output (TPO) to achieve the authorized 100 watts effective radiated power (ERP). *See* File No. BMLL-20150413AAO (2015 Modification Application). The Bureau granted that application on April 22, 2015. *See Broadcast Actions*, Public Notice, Report No. 48476 (rel. Apr. 27, 2015).

<sup>5</sup> File No. BNPF TB-20150521ACF. *See Broadcast Actions*, Public Notice, Report No. 49015 (rel. Jun. 27, 2017). authorized a facility with an ERP of 6 watts and a radiation center height AMSL of 702 meters at a location of 34° 15’ 24” NL, 118° 38’ 25” WL. On July 17, 2017, SIM filed an application for a minor change to KWSV-LP’s licensed facility, proposing a height increase from 10 to 15 meters the facility’s radiation center height above ground level (HAGL) at its current site and to employ different, single-bay, circular-polarized antenna. The staff granted that application on July 21, 2017. File No. BPL-20170717AAT (2017 Modification Application). *See Broadcast Actions*, Public Notice, Report No. 49035 (rel. July 26, 2017).

<sup>6</sup> 47 CFR § 74.1235(c), which states that:

The effective radiated power of FM booster stations shall be limited such that the predicted service contour of the booster station . . . may not extend beyond the corresponding service contour of the primary FM station that the booster rebroadcasts. In no event shall the ERP of the booster station exceed 20% of the maximum allowable ERP for the primary station’s class.

<sup>7</sup> Petition at 2.

<sup>8</sup> *Id.*

therefore the Booster is operating far beyond the 60 dBμ contours granted in the Booster Permit and License Application.<sup>9</sup>

In its Opposition, SIM argues that MP's Petition is procedurally deficient for a number of reasons.<sup>10</sup> SIM argues MP's issues with the authorized ERP of the Booster are not relevant to the grant of the License Application and are therefore an untimely request to reconsider the grant of the Booster Permit.<sup>11</sup> In addition, SIM argues that the Petition is incomplete because a petition for reconsideration claiming electrical interference to an existing station must be accompanied by an affidavit of a qualified radio engineer, which MP's Petition did not present.<sup>12</sup> SIM also argues that since 30 days have passed since the release of a *Public Notice* announcing the grant of the License Application, MP may not supplement its Petition with the submission of interference complaints.<sup>13</sup>

Substantively, SIM argues that MP's interpretation of Section 74.1235(c) is "misguided."<sup>14</sup> SIM asserts that the Commission never proposed a reduced ERP based on the HAAT of a booster when revising its FM Booster rules in 1987.<sup>15</sup> Rather, according to SIM, the Commission decided to implement the "20 percent rule" only in the final booster rules, with an additional outer limit that would restrict the 1 mV/m contour of the booster to remain inside the 1 mV/m contour of the primary station.<sup>16</sup> SIM claims that the 1 mV/m protected contour of its Booster is entirely within the 1 mV/m protected contour of its Station and that it is in compliance with Section 74.1235(c) of the Rules.<sup>17</sup> Finally, SIM argues that its Booster Permit pre-dates the filing of MP's amendment to its construction permit application specifying operation on Channel 256<sup>18</sup> and that by amending its application, MP has "accepted" the interference inside MP's protected service contour caused by the subsequent operation of SIM's Booster.<sup>19</sup>

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<sup>9</sup> *Id.* Finally, MP claims that it has received listener complaints that the Booster is interfering with KZUP-LP's signal and that it will submit the complaints in a supplement. The record indicates that no such filing has been made. This unsupported claim will receive no further consideration.

<sup>10</sup> SIM notes that the Petition's caption includes the Station's 2015 and 2017 Modification Applications, but the Petition's basis is "frivolous" and "untimely by over two years" with respect to the 2015 Modification Application and "untimely by six days" regarding the 2017 Modification Application to increase the Station's height by five meters. Opposition at 1, 2. Because below we treat the Petition as filed only against the Booster's License Application, we need not address these arguments.

<sup>11</sup> Opposition at 5. SIM asserts that the Petition is untimely by more than 30 days in regard to the granted Booster Permit. *Id.* at 2.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.*

<sup>14</sup> Opposition at 2.

<sup>15</sup> *Id.* at 3, citing *Amendment of Part 74 of the Commission's Rules Concerning FM Booster Stations and Television Booster Stations*, Notice of Proposed Rule Making, 2 FCC Rcd 1073 (1987).

<sup>16</sup> *Id.*, citing *Amendment of Part 74 of the Commission's Rules Concerning FM Booster Stations and Television Booster Stations*, Report and Order, 2 FCC Rcd 4625-5647, para. 23 (1987).

<sup>17</sup> Opposition at 4 and Appendix A.

<sup>18</sup> File No. BNPL-2013114BKP, amended on April 22, 2016.

<sup>19</sup> Opposition at 5. SIM notes that, MP's original construction permit application (BNPL-2013114BKP) for what became KZUT-LP specified operation on Channel 268 (101.5 MHz), but on April 22, 2016, MP amended the application as part of the resolution of LPFM MX Group 27 to specify operation on Channel 256 (99.1 MHz).

**Discussion.** Reconsideration is appropriate where an applicant demonstrates new facts or an error in the original decision.<sup>20</sup> Moreover, a petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action.<sup>21</sup> Additionally, according to Section 1.106(e) of the Rules, “[w]here a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, *must* be accompanied by an affidavit of a qualified radio engineer.”<sup>22</sup>

Initially, we note that, although the caption of the Petition includes the 2015 and 2017 Modification Application for the Station and the Booster Permit applications, the Petition’s first paragraph clearly seeks reconsideration only of the grant of the License Application. We will consider the Petition only in that context and dismiss it with respect to all other captioned applications.

Nevertheless, we agree with SIM that MP’s concerns with the Booster’s alleged overpower operation are not, in truth, directed at the Bureau’s ministerial action granting the License Application. Rather, by its “overpower” allegation, MP essentially seeks reconsideration of the staff’s grant of the 6-watt Booster Permit Application. The time period for filing petitions for reconsideration is prescribed by statute and expired on July 27, 2017.<sup>23</sup> As a result, we may not, with one extremely narrow exception not applicable here, waive or extend the filing period.<sup>24</sup> Accordingly, we find this indirect challenge to our grant of the Booster Permit Application constitutes an impermissible collateral attack and is properly denied.<sup>25</sup>

Moreover, if we were to consider the merits of MP’s Petition, we would deny it. Booster stations are intended only to fill in areas that a primary station cannot reach directly. In order to ensure that a substantial amount of primary service is not inadvertently displaced, the Commission limits the ERP of booster stations to 20 percent of the maximum permissible ERP for the class of primary station they

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<sup>20</sup> See 47 CFR § 1.106(c).

<sup>21</sup> See 47 CFR § 1.106(f).

<sup>22</sup> *Id.* §1.106(e) (emphasis added). See also *C.L. Tadlock*, Memorandum Opinion and Order, 8 FCC 2d 197 (1967) (finding a petition defective because “[p]aragraph (e) of section 1.106 requires that a claim of electrical interference in support of a petition for reconsideration be accompanied by an affidavit of a qualified radio engineer showing [...] that such interference will be caused to petitioner’s station within its normally protected contour.”).

<sup>23</sup> 47 U.S.C. § 405(a) (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of.”); *Citylight Ministry Center*, Memorandum Opinion and Order, 20 FCC Rcd 10179 (2005).

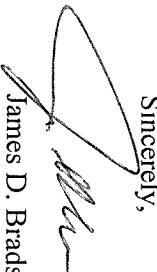
<sup>24</sup> See *Reuters Ltd. v. FCC*, 781 F.2d 946, 95 (D.C. Cir. 1986) (“[W]e conclude that the Commission acted beyond its lawful authority when it entertained the belated petition for reconsideration.”). See also *Metromedia Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909, 909-10 para. 2 (1975) (Commission may not waive 30-day filing period to accept a petition for reconsideration filed one day late); *Fortuna Systems Corp.*, Order on Reconsideration, 3 FCC Rcd 5122, 5123, para. 9 (CCB 1988). Specifically, the courts have held that the Commission may not accept untimely reconsideration petitions in the absence of extremely unusual circumstances. See, e.g., *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993).

<sup>25</sup> See, e.g., *Lighthouse Christian Center*, Memorandum Opinion and Order, 32 FCC Rcd 6444, 6446, para. 8, citing *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, Memorandum Opinion and Order, 5 FCC Rcd 216, 228 n.38 (1990), *recon. denied*, 5 FCC Rcd 3463 (1990), *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (*per curiam*).

rebroadcast,<sup>26</sup> and it prohibits the booster's service contour from extending beyond that of the primary station rebroadcast. This limit both enables the use of boosters to provide service to unserved areas and ensures that booster service remains secondary to that of the primary station.<sup>27</sup> In this case, the staff found initially, and we affirm, that grant of the Booster Permit Application complied and still complies with Section 74.1235(c) of the Rules. The maximum allowable ERP for all FM booster stations is 20 percent of the maximum ERP for the primary station's class. In the case of LPFM stations, the maximum allowable ERP is 100 watts; thus, the Booster could be authorized to operate with a maximum ERP of 20 watts under Section 74.1235(c), if the service contour restrictions were met; it operates with 6 watts, and the Booster's service contour is completely contained within the Station's service contour. The allegation that the Booster is overpowered, based on the maximum ERP that would be authorized for a LPFM station at this site and height is irrelevant and unsupported by the Rules. Accordingly, we find that MP has failed to find error in the staff's original decision.

**Conclusion/Action.** In light of the above discussion, the petition for reconsideration of the staff's grant of the license to FM booster station KWSV-LP-FM1, Chatsworth, California, IS DISMISSED to the extent indicated above and IS DENIED in all other respects.

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

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<sup>26</sup> We note that this is the ERP limit generally enables a booster station to serve an area with a radius equal to one half that of its primary station, if that station were operating at the maximum facilities permissible for its class.

<sup>27</sup> See *Amendment of Part 74 of the Commission's rules Concerning FM Booster Stations and Television Booster Stations*, Report and Order, 2 FCC Red 4625-47, paras. 22-23 (1987) (*Booster Stations Order*); see also 47 CFR § 74.1235(c).