



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

**June 22, 2018**

*In Reply Refer to:*  
1800B3

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**In re: New(FX), Sequim, WA  
Facility ID No. 200256**

File No. BNPFT-20171201ALA

**Informal Objection**

Dear Counsel:

This letter concerns: (1) the referenced application (Application) of Radio Pacific, Inc. (RPI) for a construction permit for a new FM translator station on Channel 269 (101.7 MHz) at Sequim, Washington;<sup>1</sup> (2) an Informal Objection (Objection) to the Application, filed on December 27, 2017, on behalf of Dungeness Heights Homeowners (DHH).<sup>2</sup> and (3) related responsive pleadings. For the reasons set forth below, we deny the Objection and grant the Application.

**Background.** RPI filed for a new FM Translator station during the filing window in July of 2017.<sup>3</sup> RPI's proposal was determined to be a "singleton," and it was invited to file a long-form application,<sup>4</sup> which it did on December 1, 2017. The staff accepted the Application for filing on December 11, 2017.<sup>5</sup>

In its Objection, DHH references both: (1) its Petition for Reconsideration of the grant of an application<sup>6</sup> for modification of the construction permit for RPI station KZQM(FM), Sequim,

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<sup>1</sup> The proposed translator is a fill-in for Station KONP(AM), Port Angeles, Washington.

<sup>2</sup> RPI filed an Opposition to the Objection on January 2, 2018.

<sup>3</sup> See Application File No. BNPFT-20170726APY; *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017*, Public Notice, 32 FCC Rcd 4663 (MB/WTB 2017).

<sup>4</sup> See *Media Bureau Announces Filing Window for Long-Form Applications*, Public Notice, 32 FCC Rcd 9248, 9266 (MB 2017).

<sup>5</sup> See *Broadcast Actions*, Public Notice, Report No. 29132 (rel. Dec. 14, 2017).

<sup>6</sup> File No. BMPH-20150922ACS, which was granted by the staff on March 14, 2016.

Washington; and (2) its “Request for Environmental Review” of the related antenna structure registration (ASR) application<sup>7</sup> for the tower supporting KZQM(FM)’s modified transmission facilities. DHH indicates that it also has challenged in Washington state court the local zoning and building permits issued for the proposed tower. DHH argues that the Media Bureau (Bureau) should not rule on the Application before there is a final decision on its state court zoning and building permit challenge or before there is a final Commission determination on the environmental issues raised in its Petition for Reconsideration and Request for Environmental Review.<sup>8</sup>

In its Opposition, RPI briefly restates its procedural objections to the DHH Petition for Reconsideration and observes that DHH has no objection to the proposed Sequim FM translator station, but instead objects to the tower on which the translator station will be collocated. RPI argues that the Objection is nothing more than a collateral attack on the tower which, it states does not require registration because of its low (47-meter) height.<sup>9</sup>

**Discussion.** Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”),<sup>10</sup> informal objections, like petitions to deny, 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 Section 309(a) of the Act.<sup>11</sup>

Here, as RPI correctly observes, DHH does not object to the Application or the translator service proposed by RPI. Rather, it objects only to the KZQM(FM) tower on which RPI will collocate the facility. With respect to that tower, on June 19, 2018, the Bureau denied DHH’s Petition for Reconsideration of the KZQM(FM) modification application and granted the station a covering license,<sup>12</sup> and on that same date the Commission’s Wireless Telecommunications Bureau denied DHH’s Request for Environmental Review.<sup>13</sup> The MB Disposition contained a discussion of DHH’s zoning appeal.<sup>14</sup>

**Conclusion/Actions.** In light of the discussion above, we find that DHH has not raised a substantial and material question of fact calling for further inquiry regarding whether grant of the Application will further the public interest, convenience, and necessity. We will therefore deny the Objection. Additionally, we have evaluated the Application and find that it complies with all pertinent statutory and regulatory requirements and that its grant would indeed further the public interest, convenience, and necessity.

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<sup>7</sup> Application No. A0985196.

<sup>8</sup> Objection at 1.

<sup>9</sup> Opposition at 2. RPI voluntarily applied to register the tower with the Commission’s ASR data base; it correctly indicates that it was not required to do so.

<sup>10</sup> 47 U.S.C. § 309(e).

<sup>11</sup> 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), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>12</sup> File No. BLH-20171221ACM. See *Letter to Gerald Steel, P.E., Esq. and Melodie Virtue, Esq.*, reference 1800B3 (MB Jun. 19, 2018) (*MB Disposition*).

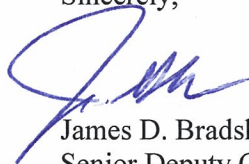
<sup>13</sup> See e-mail from Jennifer Flynn, Attorney Advisor, Wireless Telecommunications Bureau (Jun. 19, 2018), which can be found at: <http://wireless2.fcc.gov/UlsApp/AsrSearch/asrApplication.jsp?appKey=4390820>.

<sup>14</sup> *MB Disposition* at n.66.

For these reasons, IT IS ORDERED, that the Informal Objection filed by Dungeness Heights Homeowners on December 27, 2017, IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BNPFT-20171201ALA) of Radio Pacific, Inc., for a new FM Translator Station at Sequim, Washington, IS GRANTED.

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

cc: Radio Pacific, Inc.