



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

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In Reply Refer To:
1800B3-ATS

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In re: Bustos Media Holdings, LLC
FM Translator Station K260DK,
Portland, OR
File No. BNPFT-20171212AAF
Facility ID No. 201738

Petition for Reconsideration

Dear Counsel:

We have before us the Petition for Reconsideration (Petition) filed by Media Institute for Social Change (MISC) seeking reconsideration of the grant of the application (Permit Application) of Bustos Media Holdings, LLC (Bustos) for a construction permit for FM Translator Station K260DK, Portland, Oregon (Translator).¹ For the reasons discussed below, we deny the Petition.

Background. Bustos filed the Permit Application on December 12, 2017, seeking authorization to construct a cross-service FM translator station to rebroadcast Station KOOR(AM), Milwaukie, Oregon. On December 26, 2017, the Media Bureau (Bureau) issued a Public Notice accepting the Permit Application for filing and advising that "Petitions to deny this application must be on file no later than 15 days from the date of the notice accepting this application for filing."² No such petition was filed and the Permit Application was granted on February 1, 2018.

In the Petition, MISC argues that the grant of the Permit Application should be rescinded because the Translator is likely to cause interference to regular listeners of Station KXRW-LP, Vancouver, Washington, which is licensed to MISC, in violation of Section 74.1204(f) of the FCC's rules (Rules).³ In support of this argument, MISC provides with the Petition: 1) maps showing the 60 dBμ contours of KXRW-LP and the Translator, with KXRW-LP's Longley-Rice propagation overlaid;⁴ 2) a map showing

¹ MISC filed the Petition on March 1, 2018. Bustos filed an Opposition on March 14, 2018. MISC filed a Reply on March 19, 2018.

² *Broadcast Applications*, Public Notice, Report No. 29139 (MB Dec. 26, 2017).

³ Petition at 1-2 (citing 47 CFR § 74.1204(f)).

⁴ Petition at Attach. A and B.

ten listeners of KXRW-LP, with their addresses, within the 60 dBμ contour of the Translator;⁵ 3) listeners outside of the Translator's 60 dBμ contour who, using Long-Rice propagation methodology, are expected to receive interference from the Translator;⁶ 4) a map showing the interference area to KXRW-LP on account of the Translator, using Longley-Rice propagation methodology;⁷ 5) a list of KXRW-LP listeners and their addresses;⁸ 6) an engineering statement explaining the Longley-Rice propagation settings used;⁹ and 7) declarations from twenty-five listeners of KXRW-LP providing the address at which they listen to the station.¹⁰

MISC further argues that the Translator's signal would cause interference to Station KRKT-FM, Albany, Oregon, a full-power station that is co-channel to the translator.¹¹ MISC also notes that Section 5 of the Local Community Radio Act (LCRA)¹² "states that decisions between LPFM and translators usage should be 'made based on the needs of the local community'" and argues that KXRT-LP better serves the needs of community than the Translator would because of KXRT-LP's public service and unique programming.¹³

Finally, MISC states that it was unable to participate previously in the proceeding because it was not aware that the Permit Application had been filed. MISC notes that although it monitored the local newspaper, *The Oregonian*, for public notices, no such notice was run regarding the filing of the Permit Application as required by Section 73.3580 of the Rules.¹⁴

In the Opposition, Bustos first argues that the Petition is procedurally defective because it was not properly verified. Bustos notes that the Petition was executed by Phil Busse, the Executive Director of MISC, and because Bustos is not an attorney, he was required to sign and verify the Petition and state his address pursuant to Section 1.52 of the Rules.¹⁵ Bustos also notes that Section 73.3513(a)(3) of the Rules requires that "applications, amendments and related statements of fact filed on behalf of a corporation must be signed by 'an officer, if the application is a corporation.'"¹⁶ Bustos further notes that Busse is not listed as an officer of MISC in either its initial construction permit application¹⁷ or the Annual Report MISC filed with the Oregon Secretary of State on March 31, 2017.¹⁸ Bustos thus argues that because "the Petition [] was not validly executed pursuant to a combined reading of Sections 1.52 and

⁵ *Id.* at Attach. C.

⁶ *Id.* at Attach. D.

⁷ *Id.* at Attach. E.

⁸ *Id.* at Attach. F.

⁹ *Id.* at Attach. H.

¹⁰ *Id.* at Attach. I

¹¹ *Id.* at Attach. G.

¹² Pub. L. 111-371, 124 Stat. 4072 (2011).

¹³ Petition at 5-6 (citing LCRA, Section 5(2)).

¹⁴ *Id.* at 6 (citing 47 CFR § 73.3580).

¹⁵ Opposition at 1-2 (citing 47 CFR § 1.52).

¹⁶ Opposition at 2 (citing 47 CFR § 73.3513(a)(3)).

¹⁷ File No. BNPL-20131115AAP.

¹⁸ Opposition at 2 and Exh. A.

73.3513(a)(3)” and “was not verified by Phil Busse in accordance with Section 1.16 of the [] Rules” it should be dismissed as procedurally defective.¹⁹

Bustos further argues that Section 74.1204(f) does not apply to LPFM stations. Bustos notes that Section 73.801 of the Rules, which lists rules applicable to LPFM stations, does not include Section 74.1204.²⁰ Bustos further notes that Section 74.1204(f) “states that its provisions apply to ‘any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations’” but “does not make reference to ‘LP100’ low power FM stations such as KXRW-LP.”²¹ Bustos also notes that, as the Petition acknowledges, “the relevant contours of [the Translator] and KRXW-LP do not overlap.”²² Bustos argues that the Commission has stated that “LPFM regulation is different from FM Translator regulation in the area of interference.”²³ Bustos finally argues that “[i]t has been Commission policy not to adjudicate interference claims at the construction permit stage.”²⁴ Bustos did not address the issue of public notice raised by MISC in the Petition.

In the Reply, which was filed by MISC’s counsel, MISC notes that the electronic filing form used to file the Petition provides a mailing address—4013 N Gantenbein, Portland, Oregon, 97227, and thus the Petition did provide an address as required by Section 1.52.²⁵ MISC further argues that Section 73.3513(a)(3) applies only to applications, not pleadings such as a petition for reconsideration, and that there is no requirement that a pleading be signed by a board member.²⁶ MISC further notes that Busse is its registered agent—as demonstrated by Oregon SOS documents provided as Exhibit A in the Opposition—and Busse in fact verified the Petition in the electronic filing form, thus satisfying the verification requirement of Section 1.52.²⁷ Alternatively, MISC’s counsel states he verifies the contents of the Petition.²⁸

Regarding Bustos’ Section 74.1204(f) argument, MISC notes that the rule does not exclude LPFM stations, but in fact applies to “any broadcast station.”²⁹ MISC further argues that the lack of overlap between the contours of KRXW-LP and the Translator does not exempt the Translator from

¹⁹ *Id.* at 3 (citing 47 § CFR 1.16).

²⁰ Opposition at 3 (citing 47 CFR § 73.801).

²¹ Opposition at 3 (citing 47 CFR § 74.1204(f)).

²² Opposition at 3 (citing Petition at Exh. B).

²³ Opposition at 3-4 (citing *Razorcake/Gorsky Press, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 2697, 2700 n.25 (2017) (*Razorcake*)).

²⁴ Opposition at 4 and Exh. C (citing *Radio Assist Ministry, Inc.*, Letter Order (MB Nov. 23, 2004) (*Radio Assist Ministry*)).

²⁵ Reply at 1. See also https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.htm?context=25&appn=101779874&formid=917&fac_num=0.

²⁶ Reply at 1-2 (citing 47 CFR § 73.3513(a)(3); 47 § CFR 1.204).

²⁷ Reply at 2. See also Opposition at Exh. A; https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.htm?context=25&appn=101779874&formid=917&fac_num=0.

²⁸ Reply at 3.

²⁹ Reply at 3 (citing 47 CFR § 74.1204(f)).

Section 74.1204(f), because the rule explicitly applies regardless of whether there is a contour overlap.³⁰ MISC also argues that *Razorcake* is distinguishable because that case addressed the different interference remediation schemes of LPFM stations causing interference to full-power stations versus translators causing interference to full-power stations.³¹ Finally, MISC argues that Bustos' interpretation of *Radio Assist Ministry* conflicts with the language of Section 74.1204(f), which explicitly applies to the application stage of a construction permit, and notes that in a different proceeding, Bustos itself relied on Section 74.1204(f) to contest a construction permit that would cause interference to listeners of Station KZZR, which is licensed to Bustos.³² Finally, MISC notes that the Bureau has previously dismissed a translator construction permit application on the basis that the proposed translator would cause prohibited interference to an LPFM station's listeners outside of the LPFM station's 60 dBμ contour in violation of Section 74.1204(f).³³

Discussion. Procedural issues. A petitioner who is not a party to the proceeding generally must state with particularity the manner in which its interests are adversely affected by the action taken and show good reason why it was not possible to participate in the earlier stages of the proceeding.³⁴ The Commission has afforded reconsideration to petitioners where the grant of an application occurred shortly after the application was filed, thus "effectively precluding" participation in the proceeding.³⁵

Bustos has not indicated whether it complied with Section 73.3580. In cases where an applicant has failed to comply with the local public notice rule,³⁶ we have rescinded our grant of the subject application and required the applicant to comply with that rule to allow interested parties to participate in the proceeding.³⁷ However, given the substantial technical information provided in the Petition, MISC has had an opportunity to fully participate in the proceeding and we will consider the argument raised in the Petition rather than requiring Bustos to prove compliance with Section 73.3580.³⁸

³⁰ Reply at 3-4 (citing 47 CFR § 74.1204(f) ("even though the proposed operation would not involve overlap of field strength contours with any other station")).

³¹ Reply at 4.

³² Reply at 4-5 (citing *Salem Media of Oregon, Inc.*, Letter Order, Ref 1800B3-SS (MB Apr. 11, 2017)).

³³ Reply at 5 (citing *Salem Media of Oregon, Inc.*, Letter Order, Ref 1800B3-ATS (MB Jan. 9, 2018)).

³⁴ 47 CFR § 1.106(b)(1).

³⁵ See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816, para. 3 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55, para. 9 (1997) (standing to file a petition for reconsideration found when application granted five days after acceptance).

³⁶ 47 CFR § 73.3580(g) ("An applicant who files for authorization . . . for a . . . FM translator . . . must give notice of this filing in a daily, weekly or biweekly newspaper of general circulation in the community or area to be served.").

³⁷ *Threshold Communications*, Letter Order, 29 FCC Rcd 15300, 15303 (MB 2014).

³⁸ Alternatively, we would find it in the public interest to use our discretion under Section 1.106(c)(2) of the Rules to consider the Petition. 47 CFR § 1.106(c)(2) ("In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances . . . the designated authority determines that consideration of the facts or arguments relied on is required in the public interest."); see also *Caron Broad., Inc.*, Letter Order, 32 FCC Rcd 5692, 5695 (MB 2017) (accepting a petition for reconsideration where petitioner had failed to timely object to a 250-mile FM translator move but because of unique circumstances related to AM Revitalization proceeding, consideration of petition was in the public interest).

Verification. We reject Bustos' argument that the Petition was not properly verified. The Petition includes the facsimile signature of Busse.³⁹ This is sufficient to meet the verification requirements of Section 1.52.⁴⁰ We reject Bustos' argument that Sections 1.52 and 73.3513(a)(3) should be read together to create a requirement that petitions for reconsideration must be signed by a corporate officer. Section 73.3513—titled “Signing of applications”—by its plain terms does not apply to pleadings such as petitions for reconsideration,⁴¹ and Bustos provides no case law to support its novel theory. Moreover, as MISC notes, the electronic form used to electronically file petitions for reconsideration in CDBS has a signature requirement which requires the signor to attest to the truthfulness of the statements being made.⁴² This satisfies the verification requirement of Sections 1.52 and 1.16. Finally, any remaining doubt over whether the Petition has been properly verified is eliminated by MISC's counsel verification of the Petition.⁴³ We thus find that the Petition has been properly verified.

Section 74.1204. We agree with MISC that Section 74.1204(f) protects LPFM stations from interference by subsequently proposed new or modified FM translator stations. Section 74.1204 in fact is titled “Protection of FM broadcast, FM Translator and *LP100* stations.”⁴⁴ “LP100” refers to the class of LPFM stations, including KXRW-LP, authorized to operate with a maximum power of 100 watts.⁴⁵ Section 74.1204(a) is phrased in terms of contour overlap, specifically references LP100 stations, and sets forth the interference standards for such stations.⁴⁶ Section 74.1204(f) provides a distinct protection standard for situations in which there is no contour overlap but listeners within the proposed translator's protected service area would lose access to existing, regularly used broadcast signals. The plain language of Section 74.1204(f) refers broadly to “any” station and cross-references Section 74.1204(a), which includes LPFM-specific language:

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of *field strength contours with any other station, as set forth in paragraph (a) of this section*, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated

³⁹ Petition at 7.

⁴⁰ 47 CFR § 1.52 (“Either the original document, the electronic reproduction of such original document containing the facsimile signature of the . . . represented party . . . is acceptable for filing. . . . If filed electronically, a signature will be considered any symbol executed or adopted by the party with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.”); *see also RJM Communications, Inc.*, Letter Order, 21 FCC Rcd 7980, 7981 (MB 2006) (“A party's signature verifies that such party has read the document; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.”).

⁴¹ 47 CFR § 73.3513 (“Applications, amendments thereto, and related statements of fact required by the FCC must be signed by the follow persons”).

⁴² Reply at 1. *See also* https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/forms/prod/cdbsmenu.htm?context=25&appn=101779874&formid=917&fac_num=0 (“I hereby certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.”).

⁴³ Reply at 3.

⁴⁴ 47 CFR § 74.1204 (emphasis added)

⁴⁵ *See Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2211, para. 11 (2000) (subsequent history omitted); *see also* FCC File No. BLL-20170301ADJ (licensing KXRW-LP to operate as an LP100 Class station on Channel 260).

⁴⁶ 47 CFR § 74.1204(a)(4).

area already receiving a regularly used, off-the-air signal of *any authorized* co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.⁴⁷

Bustos' argument that Section 74.1204 does not apply to LPFM stations is unsupported and is rebutted by the plain wording of that section.⁴⁸ Additionally, Bustos' reliance on *Razorcake* is misplaced. As MISC notes, that decision addressed the interference protection regimes that prohibit LPFM stations and FM translators from causing interference to listeners of a full-service station.⁴⁹ The case at hand, in contrast, involves a proposed FM translator causing interference to listeners of an existing LPFM station, which is governed by Section 74.1204. Finally, Bustos' reliance on *Radio Assist Ministry* is equally misplaced. That decision addressed an Informal Objection that argued that a proposed new translator would violate Section 74.1203(a) of the Rules and noted that rule only applies to *authorized* translator stations.⁵⁰ *Radio Assist Ministry* did not address Section 74.1204, which MISC correctly cites as applying to *proposed* translator stations.

In promulgating Section 74.1204(f), the Commission stated that it "will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap."⁵¹ To provide "convincing evidence" under Section 74.1204(f) that grant of the translator construction permit "will result in interference to the reception" of an existing radio station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBμ contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person, in fact, listens to the specified radio station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the "desired" station at that location.⁵² The Commission has stated that "[t]he best method, of course, is to plot the specific [listener] addresses on a map depicting the translator station's 60 dBμ contour."⁵³

Here, MISC has submitted documentation from listeners, with their names and addresses, certifying that they are regular listeners of KXRW-LP and plotting the specific addresses on a map depicting the Translator's 60 dBμ contour.⁵⁴ However, MISC has failed to demonstrate that grant of the Permit Application would result in interference to those listeners. We reject MISC's use of Longley-Rice coverage area analysis to demonstrate predicted interference. The Commission has only allowed the use

⁴⁷ 47 CFR § 74.1204(f) (emphasis added).

⁴⁸ Likewise, Bustos' attempt to invoke 47 CFR § 73.801 is misplaced. *See* note 20 *supra*. That rule, in Subpart G of Part 73, cross-references broadcast rules in other subparts of Part 73 that apply to LPFM applications and LPFM station operations. This proceeding, by contrast, is an FM translator application proceeding governed by the FM translator rules in Subpart L of Part 74.

⁴⁹ Reply at 4.

⁵⁰ *See* 47 CFR § 74.1203 ("An *authorized* FM translator . . .").

⁵¹ *See Assoc. for Cmty. Educ.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6, para. 10 (2004) (*ACE*) (citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 128 (1990)).

⁵² *ACE*, 19 FCC Rcd at 12687, para. 13.

⁵³ *Id.* n.30.

⁵⁴ Petition at Attach. C.

of alternate prediction methods in limited circumstances, namely, to demonstrate adequate coverage of the community of license or to establish that the main studio location would be within the principal community contour.⁵⁵ However, where a proposal in an application, such as here, conforms to the Rules utilizing the standard prediction method set forth in Section 73.313 of the Rules,⁵⁶ alternative prediction methods will not be accepted.⁵⁷ As such, the staff is precluded from considering MISC's technical submission. Accordingly, we find that the Translator is in compliance with Section 74.1204 of the Rules.⁵⁸

We also reject MISC's argument that the Translator would not provide "any net benefit over the established service on channel 260." MISC does not identify any violations of the Rules, and as noted above, we reject MISC's reliance on Longley-Rice methodology. Should the Translator cause interference to listeners of KRKT-FM or KXRW-LP, Bustos will be required to remediate the interference or cease the Translator's operations.⁵⁹

Finally, we reject MISC's argument that Section 5(2) of the LCRA requires us to dismiss the Permit Application. As noted above, MISC has failed to demonstrate that the translator would cause interference to listeners of KXRW-LP, and we remind MISC that Section 5 of the LCRA also requires that Commission ensure "licenses are available to FM translator stations, FM booster stations, and low-power FM stations" and that "FM translator stations, FM booster stations, and lowpower FM stations remain equal in status."⁶⁰ In implementing the LCRA, the Commission noted that "translators and LPFM stations both serve the needs of communities."⁶¹ Finally, Bustos applied for the Translator as part of the Commission's efforts to revitalize the AM radio service, and the Commission has noted that it "does not have a statutory obligation under the LCRA or any other statute to prefer possible LPFM protection over revitalization of the AM radio service," and further held that because the AM revitalization proceeding "addresses community needs by allowing improved primary service by AM broadcasters, the

⁵⁵ See 47 CFR § 73.313(e). See also, *In the Matter of Grandfathered Short-Spaced FM Stations*, Report and Order, 12 FCC Rcd 11840, 11846, para. 17 (1997) (discussing circumstances in which an alternative prediction study may be considered).

⁵⁶ 47 CFR § 73.313.

⁵⁷ See *Shaw Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 5852, 5853, para. 5, citing *Lee Shubert, Esq.*, Letter Order, 10 FCC Rcd 3159, 3160 (MMB 1995). There, the staff rejected a petitioner's attempt to apply (Longley-Rice) Tech Note 101 calculations in order to disqualify an assignment application that had demonstrated compliance with 47 CFR § 73.3555 using standard calculation methods set forth in 47 CFR § 73.313, holding that requiring applicants with conforming applications to defend applications against alternative prediction methodologies would result in unreasonable delay to the applicants and unnecessary administrative burden upon the limited technological resources available to the Commission for evaluating alternative prediction studies. *Id.* See also, e.g., *ACE*, 19 FCC Rcd at 12687, para. 13 ("Section 74.1204(f) would require an objector to show that a *specific U/D signal strength ratio* is exceeded at the location of a *bona fide* listener of the 'desired' station to establish that interference 'will result.'") (emphasis supplied).

⁵⁸ We remind the parties that Bustos is required to comply with Section 74.1203(a)(1) of the Rules and will be required to cease operation of the Translator if it causes actual interference to any listeners of KRXXW-LP. See 47 CFR § 74.1203(a)(1).

⁵⁹ See 47 CFR § 74.1203(a)(1).

⁶⁰ LCRA, Sections 5(1) and 5(3).

⁶¹ *Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3372, para. 18 (2012).

requirements of Section 5 of the LCRA have been met.”⁶² Accordingly we find MISC’s argument without merit.

Conclusion/Actions. For these reasons, IT IS ORDERED that the Petition for Reconsideration filed by Media Institute for Social Change, on March 1, 2018, IS DENIED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

⁶² *Revitalization of the AM Radio Service*, Order on Reconsideration, FCC 18-64, para. 14 (2018).