



Federal Communications Commission
Washington, D.C. 20554

January 2, 2019

In Reply Refer to:
1800B3-SS

Radio Activo Broadcasting License, LLC
c/o Francisco R. Montero, Esq.
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Ondas de Vida Network, Inc.
c/o Jeffrey Southmayd, Esq.
Southmayd & Miller
4 Ocean Ridge Blvd. South
Palm Coast, FL 32137

In re: **K234BS, Las Vegas, NV**
Facility ID No. 156220

File No. BPFT-20140930ALO

Informal Objection

Dear Applicant and Objector:

This letter concerns: (1) the referenced application (Application) of Ondas de Vida Network, Inc. (OVN) for a minor change to the licensed facility of its FM translator station K234BS (Station) on Channel 234 at Las Vegas, Nevada; and (2) an Informal Objection (Objection) to the Application, filed by Radio Activo Broadcasting License, LLC (RAB)¹ on April 6, 2015, and related pleadings.² For the reasons set forth below, we grant the Objection and dismiss the Application.

Background. FM translator Station K234BS was originally licensed in 2007 and has operated continually since that time rebroadcasting Spanish-language Station KODV(FM), Barstow, California.³ On September 30, 2014, OVN filed the Application to relocate K234BS's antenna to the top of the Rio

¹ RAB is licensee of Spanish-language Station KXLI(FM), Moapa, Nevada.

² On April 13, 2015, RAB filed a Supplement to its Objection. On May 11, 2015, OVN filed an Opposition to the Objection (Opposition), to which RAB replied on May 29, 2015 (Reply). On June 1, 2015, RAB filed a Supplement to its Reply.

³ See File No. BLFT-20070803AAI, granted by the staff on August 22, 2007. See *Broadcast Actions*, Public Notice, Report No. 46558 (rel. Aug. 27, 2007).

All-Suite Hotel and Casino in Las Vegas (Rio Hotel). The staff accepted the Application for filing on October 1, 2014.⁴

In its Objection, RAB argues that OVN's proposed minor change will interfere with the established listening audience of RAB's KXLI(FM), Moapa, Nevada,⁵ in violation of Section 74.1204(f) of the FCC's rules (Rules) and that the Application should be dismissed.⁶ RAB supplies 11 complaints of purportedly unaffiliated KXLI(FM) listeners and its own Engineering Statement,⁷ using the standard prediction method computing the relative field strengths of the "undesired" and "desired" (U/D) signals at the listener locations, to demonstrate that the operation of OVN's translator at the proposed, significantly higher site is likely to cause interference with the reception of KXLI(FM) in areas inside K234BS's 60 dB μ contour.⁸ In addition, RAB argues that, notwithstanding the minor change proposed in the Application, the aforementioned listeners are currently receiving actual interference from K234BS in violation of Section 74.1203(a) of the Rules⁹ and that the staff must instruct OVN to cease operations [of K234BS] immediately pending modification of its facilities to prevent the interference it is causing to KXLI."¹⁰

In its Opposition, OVN argues that, unlike K234BS, RAB's KXLI(FM) is not licensed to Las Vegas and, in fact, uses a booster¹¹ to implement its signal there.¹² OVN also argues that it received no serious interference complaints regarding K234BS until 2012, when RAB acquired KXLI(FM) and changed its format to Spanish language, the same format as K234BS's primary station KODV(FM).¹³ In addition, OVN argues that the 11 listener complaints submitted by RAB are deficient and should be rejected,¹⁴ because: (1) not all of the complaint forms are signed; (2) none are under penalty of perjury; (3) KXLI employees filled out the forms and solicited the complaints at two KXLI broadcast events; (4) none of the listeners allege that the interference occurs within the 60 dB μ contour of KXLI(FM); and (5) listeners Ecelina Cabrera and Karina Trevo, pursuant to an investigation performed by an OVN employee, have withdrawn their complaints and have certified in writing that they do not receive interference to the reception of KXLI(FM)'s signal.¹⁵ Finally, OVN argues that RAB has failed to provide "convincing evidence," pursuant to Section 74.1204(f), that the proposed minor change to K234BS is likely to interfere with the reception of KXLI(FM) and that the alleged Section 74.1203(a) complaints to the

⁴ See *Broadcast Applications*, Public Notice, Report No. 28338 (rel. Oct. 3, 2014).

⁵ KXLI(FM) (94.5 MHz) and K234BS (94.7 MHz) are first-adjacent channel stations.

⁶ Objection at 2-3 *see also* 47 CFR § 74.1204(f).

⁷ See Supplement to Objection at Exhibit 2 "Declaration of Joseph Sands" (Sands Report).

⁸ *Id.* at 2.

⁹ 47 CFR § 74.1203(a).

¹⁰ Objection at 4; *see also* Objection at Exhibit 2, Sands Report at 3.

¹¹ KXLI-FM1.

¹² Opposition at 2.

¹³ *Id.*

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 2-3. OVN also notes that Ecelina Cabrera was a client of attorney and controlling member of KXLI(FM) Eric Palacios, and therefore, she is not a "disinterested" party as required by the Commission. *Id.* at 3.

reception of KXLI(FM)'s signal "have been fully resolved by OVN in connection with Commission policy."¹⁶

In its Reply, RAB argues that, regarding Section 74.1203(a) current interference complaints, despite OVN's comments to the contrary, RAB has been "unsuccessful" in coordinating with OVN to resolve the problem.¹⁷ Regarding the Application, RAB argues that OVN's proposed antenna move to the top of the Rio Hotel would "inundate KXLI's signal."¹⁸ In its Supplement to Reply, RAB submits several maps from the DeLawder Report to augment the Sands Report.¹⁹ Using Longley-Rice coverage analysis, DeLawder states that the proposed minor change to K234BS will cause interference to 306,315 listeners of KXLI-FM1 and 307,400 listeners of KXLI(FM) within K234BS's 60 dB μ contour.²⁰

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended,²¹ an informal objection, like a petition to deny, must provide properly supported allegations of fact that, if true, establish a substantial and material question of fact that granting the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.²² In this case, the Objection must establish a substantial and material question of fact that grant of the Application would be inconsistent with Section 74.1204(f) of the Rules.

Regarding the Objection, we note that, in promulgating Section 74.1204(f) of the Rules, 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."²³ Under Section 74.1204(f), in order to provide "convincing evidence" that grant of an FM translator construction permit application "will result in interference to the reception" of an existing station, an opponent must provide, at a minimum: (1) the name and specific address of each potentially affected listener; (2) some demonstration that the address of each purported listener falls within the 60 dB μ service contour of the proposed translator station;²⁴ (3) a declaration from each of the affected listeners that he or she listens to the station at the specified location; and (4) some evidence that grant of the authorization will result in interference to the reception of the

¹⁶ *Id.* at 3-4, and 5.

¹⁷ Reply at 1.

¹⁸ *Id.* at 3.

¹⁹ See Reply at Exhibit 1, "Engineering Report of Darryl DeLawder" (DeLawder Report).

²⁰ See DeLawder Report at 2-3. DeLawder also alleges that the currently licensed K234BS causes interference to 168,624 listeners of KXLI-FM1 and to 182,119 listeners of KXLI(FM) within K234BS's 60 dB μ contour. *Id.*

²¹ See 47 U.S.C. § 309(d).

²² 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).

²³ See *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6, paras. 7-9 (2004) (*Association*), citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7230 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993).

²⁴ The staff generally requires demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dB μ contour who are unconnected with the full-service station whose service allegedly will be disrupted. See *Association*, 19 FCC Rcd at 12688 n.37 (approving staff practice requiring that the complainant be "disinterested.").

“desired” station at that location.²⁵ The Commission has stated that “[t]he best method, of course, is to plot the specific addresses on a map depicting the translator station's 60 dB μ contour.”²⁶

Here, RAB has followed the required protocol by submitting documentation from listeners certifying that they are regular listeners of KXLI(FM) at their homes, at work, or in their cars. By plotting the complainants' specific addresses and commuting routes on a map depicting the proposed translator's 60 dB μ contour, RAB has demonstrated that at least two of those complainants listen in their homes, two at work, and two more listen on their commuting routes to KXLI(FM) within the proposed translator's 60 dB μ contour.²⁷ By virtue of its Exhibits 2 and 3 in the Supplement to Objection, RAB provides evidence that the proposed translator will result in interference to at least five of these complainants at their listed locations (*i.e.*, Elias Rosas, Maria Lopez, Luz Fatima Jorge, Melven Silva, Alexia Olivas, and Karina Trevo²⁸). We therefore find that RAB has adequately substantiated its Section 74.1204(f) claim. Because we find that RAB has demonstrated that there are KXLI(FM) listeners located within the 60 dB μ contour of K234BS that are predicted to receive interference from the facilities proposed in the Application, we will dismiss the Application pursuant to Section 74.1204(f) of the Rules.²⁹

However, we reject RAB's supplemental submission³⁰ of Longley-Rice coverage area analysis to predict the location of the 60 dBu service area of the K234BS's proposed minor change and to demonstrate predicted interference. The Commission generally has allowed the use 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.³¹ Such is not the case here.

Finally, regarding RAB's current interference allegations, Section 74.1203(a)(3) states that an FM translator station will not be permitted to continue to operate if it causes any actual radio signal interference to the direct reception by the public of the off-the-air signals of any authorized broadcast

²⁵ *Id.*, 19 FCC Rcd at 12687.

²⁶ *Id.*

²⁷ See Objection at Exhibit 2, Sands Report at 2.

²⁸ OVN alleges that Karina Trevo has withdrawn her complaint. See Opposition at 3. Even were we to accept that Karina Trevo withdrew her complaint, we find that Elias Rosas and Luz Fatima Jorge listening in their homes; Melven Silva and Alexia Olivas listening in their cars; and Maria Lopez listening at work meet the requirements of Section 74.1204(f). See, e.g., *Association*, 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); see also *Red Wolf Broad. Corp.*, Letter Order, 27 FCC Rcd 4870, 4873 (MB 2012) (staff considers three listener complaints).

²⁹ See, e.g., *Association* at 19 FCC Rcd at 12688, para. 16, n.37 citing *Letter to Aaron P. Shainis, Esq. and James L. Oyster, Esq. (Station W279AD, Chesapeake, Virginia)*, (MMB rel. Jan 9, 2003); *Letter to Robert J. Rini, Esq. and Arthur S. Landerholm, Esq. (Station W220CV, Winnsboro, South Carolina)*, (MMB rel. Apr. 5, 2002) (staff practice requires “verifiable” complaints from listeners of the station whose reception may be affected by the translator station's operation).

³⁰ See Supplement to Reply at Exhibit 1.

³¹ 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).

station.³² Actual interference is based on listener complaints indicating that the signal that the complainant regularly receives is being impaired by the signal radiated by the FM translator station. Section 74.1203(b) states that, if the interference cannot be properly eliminated by the application of suitable techniques, the operation of the offending FM translator station shall be suspended and shall not be resumed until the interference has been eliminated.

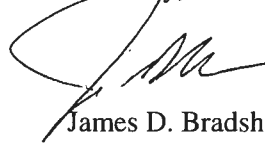
Therefore, in addition to dismissing the Application, we find it necessary, pursuant to Section 74.1203 of the Rules, for OVN to submit a detailed report (Interference Response) on each of the eleven aforementioned listener complaints, even if an individual listener has previously filed a complaint in a different interference proceeding that OVN has addressed. For each listener complaint, the Interference Response must include: (1) the name and address of the complainant; (2) specific devices receiving the interference (*i.e.*, type of device, manufacturer's name, model number, and serial number); and (3) any assistance provided by the Station for each device allegedly receiving the interference and whether such interference persists. Each of the listener complaints must be addressed individually.

Within thirty days of this letter, OVN must take appropriate actions required by the provisions of Section 74.1203 to resolve all complaints of interference to fulfill its obligations and submit its Interference Response.³³ Further action on the complaints will be withheld for a period of thirty days from the date of this letter to provide OVN an opportunity to respond. Failure to correct all complaints within this time may require Station K234BS to suspend operations, pursuant to Section 74.1203 of the Rules.

Conclusion/Actions. For these reasons, IT IS ORDERED, that the Objection filed by Radio Activo Broadcasting License, LLC, on April 6, 2015, IS GRANTED.

IT IS FURTHER ORDERED, that the Application (File No. BPFT-20140930ALO) of Ondas de Vida Network, Inc., for a minor change to the facilities of FM Translator Station K234BS, at Las Vegas, Nevada, IS DISMISSED.

Sincerely,



James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

cc: Ondas de Vida Network, Inc.
Radio Activo Broadcasting License, LLC

³² An FM translator station creating actual radio signal interference to any authorized broadcast station is obligated to eliminate the interference, regardless of the location where the impaired signal reception occurs. *See Joseph C. Chautin III, Esq.*, Letter Order, 22 FCC Rcd 5364, 5365 (MB 2007).

³³ OVN also should send a courtesy copy via email to Stephen Svab at stephen.svab@fcc.gov and James Bradshaw at james.bradshaw@fcc.gov. Additionally, the obligation to resolve interference complaints is ongoing. Specifically, should any complaints be filed in the future, OVN must resolve or address those complaints within 30 days of receipt.