

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

In the Matter of	)	
	)	
Bustos Media Holdings, LLC,	)	Facility ID No. 201738
Application for Construction Permit for	)	File No. BNPFT-20171212AAF
FM Translator Station K260DK, Portland, Oregon	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 13, 2020

Released: October 14, 2020

By the Commission:

I. INTRODUCTION

1. We have before us an Application for Review (AFR) filed by Media Institute for Social Change (MISC) on November 13, 2018. MISC challenges the Media Bureau's (Bureau) denial of its Petition for Reconsideration (Petition) of the grant of an application (Application) filed by Bustos Media Holdings, LLC (Bustos) for a construction permit for FM translator station K260DK, Portland, Oregon (Translator).¹ For the reasons discussed below, we grant the AFR, rescind the Application's grant, and dismiss the Application.

II. BACKGROUND

2. Bustos filed the Application on December 12, 2017. The Bureau issued a Public Notice accepting the Application for filing on December 26, 2017, and establishing a deadline of January 10, 2018, for filing petitions to deny. The Bureau granted the unopposed Application on February 1, 2018.

3. MISC then filed the Petition.² MISC asserted that the Bureau should rescind its grant of the Permit Application because the Translator would cause interference to regular listeners of its station—KXRW-LP, Vancouver, Washington—in violation of section 74.1204(f) of the Commission's rules (Rules).³ In support of its claim, MISC submitted: (1) maps of the 60 dBμ contours of KXRW-LP and

¹ *Bustos Media Holdings, LLC*, File No. BNPFT-20171212AAF, Letter Order (MB Oct. 15, 2018) (*Reconsideration Decision*).

² Petition for Reconsideration of Media Institute for Social Change, File No. BNPFT-20171212AAF (filed Mar. 1, 2018) (Petition). MISC did not file a Petition to Deny the Application. As a result, it was required to show good reason why it was not possible to participate in the earlier stages of the proceeding. See 47 CFR § 1.106(b)(1). MISC asserted that Bustos had not provided the local public notice required by section 73.3580 of the Rules and stated it "only recently" had become aware of the Application. Petition at 6. In the *Reconsideration Decision*, the Bureau noted that Bustos had not "indicated whether it complied with Section 73.3580." *Reconsideration Decision* at 4. The Bureau explained that, "[i]n cases where an applicant has failed to comply with the local public notice rule, 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." *Id.* Given that MISC had provided "substantial technical information" in the Petition, the Bureau concluded that MISC "has had an opportunity to fully participate in the proceeding" and decided to "consider the argument raised in the Petition, rather than require[] Bustos to prove compliance with Section 73.3580." *Id.* In the alternative, the Bureau concluded that it would serve "the public interest to use our discretion under Section 1.106(c)(2) of the Rules to consider the Petition." *Id.* at n.38, citing 47 CFR § 1.106(c)(2). Neither MISC nor Bustos has challenged these findings.

³ *Id.* at 2-4.

the Translator, with KXRW-LP's Longley-Rice propagation overlaid,⁴ (2) a map showing ten listeners of KXRW-LP, whose addresses fell within the Translator's 60 dBμ contour,⁵ (3) a map showing listeners outside of the Translator's 60 dBμ contour who, based on the Longley-Rice propagation methodology, were predicted to receive interference from the Translator,⁶ (4) a map showing areas where the Translator's signal would cause interference to the signal of KXRW-LP,⁷ (5) a list of KXRW-LP listeners and their addresses,⁸ (6) an engineering statement describing the Longley-Rice propagation settings used,⁹ and (7) declarations from 25 listeners of KXRW-LP providing the addresses at which they listen to KXRW-LP.¹⁰ MISC also asserted that section 5 of the Local Community Radio Act of 2010 (LCRA) requires the Commission to favor LPFM service in this case.¹¹ Bustos opposed the Petition, claiming it was procedurally defective because it was not properly verified.¹² Bustos further contended that section 74.1204(f) does not protect LPFM stations.¹³ MISC replied, disputing both of these claims.¹⁴

4. The Bureau then issued the *Reconsideration Decision*, which considered and rejected Bustos' assertion that the Petition had not been properly verified,¹⁵ and its position that section 74.1204(f) did not protect LPFM stations, but ultimately denied the Petition. In denying the Petition, the Bureau explained that MISC could not rely on "Longley-Rice coverage area analysis to demonstrate predicted interference."¹⁶ Having determined it was "precluded from considering MISC's technical submission," the Bureau held MISC had "failed to demonstrate that grant of the Permit Application would result in interference" to the listeners identified in the Petition and concluded the Translator complied with section 74.1204(f).¹⁷ MISC then filed the AFR. Bustos opposed the AFR, and MISC replied.¹⁸

⁴ *Id.* at Attachs. A and B. The Longley-Rice method is an irregular terrain model named for Anita Longley and Phil Rice, who devised the model in 1968. See Longley, A.G. and Rice, P.L., Prediction of Tropospheric Radio Transmission Loss Over Irregular Terrain, A Computer Method-1968, ESSA Technical Report ERL 79-ITS 67, Institute for Telecommunications Sciences (1968). It predicts radio field strength based on the elevation of terrain between the transmitter and specific reception points. Its algorithm and source code are maintained by the Institute for Telecommunications Sciences, National Telecommunications Information Administration of the U.S Department of Commerce at <https://www.its.bldrdoc.gov/resources/radio-propagation-software/itm/itm.aspx>. See also OET Bulletin No. 69, Longley-Rice Methodology for Evaluating TV Coverage and Interference (2004) available at: <https://transition.fcc.gov/bureaus/oet/info/documents/bulletins/oet69/oet69.pdf>.

⁵ Petition 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 5-6.

¹² Opposition to Petition for Reconsideration of Bustos Media Holdings, LLC, File No. BNPFT-20171212AAF, at 1-3 (filed Mar. 14, 2018).

¹³ *Id.* at 3-4.

¹⁴ Reply to Opposition of Media Institute for Social Change, File No. BNPFT-20171212AAF (filed Mar. 19, 2018) (PFR Reply).

¹⁵ *Reconsideration Decision* at 5.

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6-7.

¹⁸ Opposition to Application for Review of Bustos Media Holdings, LLC, File No. BNPFT-20171212AAF (filed Nov. 28, 2018) (Opposition); Reply to Opposition of Media Institute for Social Change, File No. BNPFT-

III. DISCUSSION

A. Procedural Issues

5. We reject Bustos' claim that the AFR is procedurally defective.¹⁹ Specifically, we find no merit to Bustos' assertion that the AFR does not concisely and plainly state the questions of law presented as required by section 1.115(b)(1).²⁰ The AFR clearly sets forth two questions presented. Both the introductory paragraphs and the text of the summary set forth these two questions.²¹

6. We likewise reject Bustos' assertion that the AFR should be dismissed because it was "not executed by an attorney-at-law" and thus not properly "executed."²² Section 1.52 of the Rules permits the filing of "petitions, motions, pleadings, briefs, and other documents" by a "party who is not represented by an attorney."²³ While the AFR was signed by a non-attorney, that in itself does not violate section 1.52 of the Rules. We further note that, "except as otherwise expressly provided," "a duly authorized corporate officer or *employee* may act for the corporation in any matter which has not been designated for an evidentiary hearing."²⁴ The AFR was signed by the Executive Director of MISC, an individual who is registered with the State of Oregon as MISC's agent.²⁵

20171212AAF (filed Dec. 3, 2018).

¹⁹ *Id.* at 2-3. To the extent that Bustos' reprises its claim that the Petition was not properly verified because it was signed by a "non-attorney, non-officer of a corporate applicant," *id.*, we likewise reject that position and affirm the Bureau's findings that the Petition was properly verified. *See Reconsideration Decision* at 5.

²⁰ Opposition at 3, citing 47 CFR § 1.115(b)(1).

²¹ AFR at 1-2 (arguing that the Bureau erred in finding "MISC did not utilize proper protocol in predicted interference demonstration via § 74.1204(f)" and that "MISC's additional public interest stipulations were not gauged appropriately concerning Local Community Radio Act . . . precedent"); 3-4 (asserting that the Commission "has permitted use of Longley-Rice concerning Section 74.1204(f) protocol in past instances," that it was "arbitrary and capricious" for the Bureau to deny MISC the use of Longley-Rice studies, that the Bureau has not substantiated its LCRA findings, and that these findings "veer[] from the FCC precedent on the matter"). In contrast to cases cited in the Opposition, the AFR specifically identifies precedent that conflicts with the Bureau's actions. *See, e.g.*, AFR at 5-8 (citing and providing a detailed analysis of several letter decisions where the Bureau permitted use of Longley-Rice concerning Section 74.1204(f) protocol in past instances).

²² Opposition at 2.

²³ 47 CFR § 1.52. It also provides that, if a document is "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." *Id.* To the extent that Bustos seeks to resurrect its argument that section 73.3513(a)(3) is applicable and requires dismissal of the AFR because it was not signed by an officer of MISC, we reject this argument. Opposition at 2-3. *See also* 47 CFR § 73.3513(a) (specifying that "[a]pplications, amendments thereto, and related statements of fact required by the FCC" must be signed by "[a]n officer, if the applicant is a corporation"). As the Bureau noted, section 73.3513 sets forth signature requirements applicable to applications. 47 CFR § 73.3513. Section 73.3511, in turn, defines the term "applications" for purposes of section 73.3513. 47 CFR § 73.3511 (defining "formal application" as "any request for authorization where an FCC form for such request is prescribed" and "informal application" as "all other written requests for authorization"). Accordingly, by its terms that rule does not apply to pleadings such as petitions for reconsideration or applications for review. *Reconsideration Decision* at 5.

²⁴ 47 CFR § 1.21(d).

²⁵ PFR Reply at 2. *See* Oregon Secretary of State, Corporation Division, [http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_det?p_be_rsn=1175157&p_srce=BR_INQ&p_print=F](http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_det?p_be_rsn=1175157&p_srce=BR_INQ&p_print=FALSE)
[ALSE](http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_det?p_be_rsn=1175157&p_srce=BR_INQ&p_print=F) (visited Aug. 26, 2020). It also appears that the individual who signed the pleadings has been an officer of MISC since at least April 2018. *See* Oregon Records Management Solution, <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/5942078> (visited Aug. 26, 2020),
<http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/6599135> (visited Aug. 26, 2020),

B. Substantive Issue

7. Section 74.1204(f) protects full power FM, FM translator and LPFM stations from interference by subsequently proposed new or modified FM translator stations.²⁶ At the time MISC filed the Petition, section 74.1204(f) of the Rules provided that, even if an FM translator application complied with the Commission's contour overlap requirements, the Commission would not accept the application for filing if an objecting party provided "convincing evidence" that the predicted 60 dBμ contour of the proposed FM translator would "overlap a populated area already receiving a regularly-used, off-the-air signal of any authorized co-channel, first, second, or third adjacent channel broadcast station" and "grant of the [application would] result in interference to the reception of such signal."²⁷ To provide "convincing evidence," the Commission required an objecting party to provide: (1) the name and specific address of each listener for which it claimed credit; (2) some demonstration that the address of each purported listener fell 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, listened to the full-service station at the specified location; and (4) evidence that grant of the authorization would result in interference to the reception of the "desired" station at that location.²⁸

8. We find that, as MISC asserts,²⁹ the Bureau erred in concluding MISC failed to show that the Translator would interfere with the reception of KXRW-LP by listeners. Specifically, we find that, even without the Longley-Rice studies that accompanied it, the Petition contained "convincing evidence" that the Translator would cause such interference. As the Bureau noted,³⁰ the Petition included a list of KXRW-LP listeners and their addresses,³¹ a map demonstrating that ten of those listeners resided within

<http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7295982> (visited Aug. 26, 2020).

²⁶ *Reconsideration Decision* at 5. Indeed, section 74.1204 is titled "Protection of FM broadcast, FM Translator and LP100 stations." 47 CFR § 74.1204. While Bustos initially argued that section 74.1204(f) does not apply to LPFM stations, PFR Opposition at 3-4, it has not challenged the Bureau's finding that section 74.1204(f) does apply to them. See Opposition at 4.

²⁷ 47 CFR § 74.1204(f) (2018). See also *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 128 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. den.*, 8 FCC Rcd 5093 (1993). We note that the Commission amended section 74.1204(f) in 2019. *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119, Report and Order, 34 FCC Rcd 3457 (May 9, 2019). The revised rule, however, only applies to "applications or complaints that [had] not been acted upon" as of the effective date of that Report and Order. *Id.* at 3482, para. 49; see also *Media Bureau Announces August 13, 2019, Effective Date of Amended Rules for FM Translator Interference*, MB Docket No. 18-119, Public Notice, 34 FCC Rcd 7004 (MB 2019). Because the Application and Petition were acted upon in 2018, the revised rule is inapplicable here.

²⁸ *The Association for Community Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12687, para. 13 (2004). See also *Caron Broad., Inc.*, Letter Order, 32 FCC Rcd 5692 (MB 2017) (dismissing FM translator application(s) pursuant to section 74.1204(f), and noting affected station(s) had followed the required protocol by (1) submitting documentation from listeners certifying that they are regular listeners of affected station, (2) plotting the listeners' specific addresses on a map depicting the Translators' 60 dBμ contour, and (3) demonstrating that the proposed modifications would result in interference to those listeners).

²⁹ AFR at 9.

³⁰ *Reconsideration Decision* at 6.

³¹ Petition at Attach. F.

the Translator's 60 dBμ contour,³² and sworn declarations from those ten listeners.³³ Further, by demonstrating that KRXW-LP is listenable within the Translator's 60 dBμ contour (which MISC plotted using the standard prediction methodology set forth in section 73.313 of the Rules), MISC showed that grant of the authorization would result in interference to reception of KRXW-LP by those ten listeners.³⁴ Thus, we find that, even excluding the Longley-Rice studies proffered by MISC, MISC presented convincing evidence of predicted interference.³⁵ Accordingly, we grant the AFR, rescind the Bureau's grant of the Application, and dismiss it.³⁶

³² *Id.* at Attach. C (map showing Translator's 60 dBμ contour—calculated using the standard prediction methodology set forth in section 73.313 of the Rules—and listener addresses within that contour). While Bustos points out that MISC has admitted that “the relevant contours” of the Translator and KRXW-LP do not overlap, Opposition at 5, this is immaterial to our section 74.1204(f) analysis. See 47 CFR § 74.1204(f) (2018) (specifying that “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” if the predicted 60 dBμ contour of the FM translator would “overlap a populated area already receiving a regularly-used, off-the-air signal of any authorized co-channel, first, second, or third adjacent channel broadcast station” and “grant of the [application would] result in interference to the reception of such signal”).

³³ Petition at Attach. I (declarations made by KRXW-LP listeners). Each listener declaration (1) indicates that the person making the declaration is a “regular listener to KRXW-LP” and has no “personal or business connection” to KRXW-LP or MISC, (2) specifies the address at which the person “usually listen[s]” to KRXW-LP, and (3) objects to the Application based on the fact that its grant would cause interference to the person's reception of KRXW-LP. *Id.*

³⁴ Although MISC did not include calculations of the specific desired-to-undesired signal strength ratio for each listener as we required in *Association for Community Educ., Inc.*, see *supra* para. 7, we find that these calculations are not necessary to demonstrate interference here. Listeners of a co-channel LPFM station will always be predicted to receive interference to their reception of an LPFM station's signal within an FM translator station's proposed 60 dBμ contour. This is so because section 74.1204(a) of the Rules prohibits the overlap of a proposed FM translator's 40 dBμ contour and an existing co-channel LPFM station's 60 dBμ contour. See 47 CFR § 74.1204(a). As such, section 74.1204(a) necessarily ensures that the 60 dBμ contours of a proposed FM translator station and an existing co-channel LPFM station do not overlap. This means that an existing LPFM station's signal strength will always be less than a proposed FM translator's signal strength at all locations within a proposed Translator's 60 dBμ contour. See Petition at Attach. A (showing this to be true here). This, in turn, means that a proposed Translator's signal always will be predicted to be stronger than a co-channel LPFM station's signal at all points within the Translator's proposed 60 dBμ contour. Because the proposed FM Translator's signal strength will exceed that of an existing co-channel LPFM station at all locations within the proposed FM translator's 60 dBμ contour, and because co-channel interference is predicted to occur at all locations where an existing LPFM station's signal strength does not exceed that of a proposed FM translator by 20 dB or more, interference is predicted to occur to a co-channel LPFM station at all locations within a Translator's proposed 60 dBμ contour. See 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking and Order, 13 FCC Rcd 14849, 14859, para. 23 (1998).

³⁵ We acknowledge that, as Bustos states, it is required to comply with section 74.1203 of the Rules, which prohibits actual interference to any listeners of KRXW-LP. Opposition at 7. However, the fact that the Translator—if constructed—would need to comply with section 74.1203 does not exempt Bustos from section 74.1204(f), which furthers the policy goal of identifying and preventing “potential interference issues” and thus ensures that FM translator applicants “do not invest in facilities that are not viable, and protect[s] existing stations from the loss of listeners due to actual interference.” See *Emmanuel Communications, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 9294, 9297, n.24 (2019).

³⁶ Because we find MISC demonstrated the Application failed to comply with section 74.1204(f) via these showings and thus rescind the Application's grant and dismiss it, we need not reach MISC's contention that the Bureau should have accepted the Longley-Rice studies it included with the Petition, AFR at 3-9, or its assertion that grant of the Application violated the LCRA. AFR at 10-16.

IV. ORDERING CLAUSES

9. For the reasons set forth above, **IT IS ORDERED** that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended,³⁷ and section 1.115(g) of the Commission's rules,³⁸ the Application for Review filed by the Media Institute for Social Change on November 13, 2018, **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that grant of the application of Bustos Media Holdings, LLC, for a construction permit for K260DK, Portland, Oregon (File No. BNPFT-20171212AAF), **IS RESCINDED**, and the application **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁷ 47 U.S.C. § 155(c)(5).

³⁸ 47 CFR § 1.115(g).