



Federal Communications Commission
Washington, D.C. 20554
November 30, 2020

In Reply Refer To:
1800B3-ALV

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In re: **K207CM, Red Bluff, CA**
Facility ID No. 89199
File No. BALFT-20190429AAK

K209DN, McFarland, CA
Facility ID No. 92055
File No. BALFT-20190429AAN

K217DA, Ridgecrest, CA
Facility ID No. 88908
File No. BALFT-20190429AAS

K220GR, Los Banos, CA
Facility ID No. 88906
File Nos. BALFT-20190429AAU

Applications for Assignment of Licenses
Petition for Reconsideration

Dear Counsel and Mr. Johnson:

We have before us a Petition for Reconsideration (Petition), filed by John Johnson (Johnson),¹ seeking reconsideration of the July 25, 2019, grant by the Audio Division, Media Bureau (Bureau) of the above-referenced applications (Applications) for the assignment of the licenses of FM Translator Stations

¹ Johnson filed the Petition on August 26, 2019. On September 9, 2019, Centro Cristiano de Vida Eterna (CCVE) filed an Opposition to the Petition (Opposition). Johnson filed a Reply on September 17, 2019; CCVE filed a "Statement for the Record" on November 7, 2019.

K207CM, Red Bluff, California, K209DN, McFarland, California, K217DA, Ridgecrest, California, and K220GR, Los Banos, California (collectively, the Stations) from Paulino Bernal Evangelism (Bernal) to Centro Cristiano de Vida Eterna (CCVE).² For the reasons discussed below, we dismiss the Petition and uphold the grant of the Applications.

Background. On April 29, 2019, Bernal filed Applications seeking to assign the subject Stations, along with two full power FM stations and ten additional FM translator stations, to CCVE. On July 17, 2019, Johnson filed a “Request to Hold Processing” letter, urging the Commission to suspend processing “until further information can be filed shortly.” Johnson expressed his belief that “there is an issue with the assignment relating to the purported status of a few select facilities listed.”³ Mr. Johnson never elaborated on the purported issue, nor filed anything further. On July 25, 2019, the Commission granted the Applications; the assignment was consummated one day later.

On August 26, 2019, Johnson filed a Petition, urging the Commission to reconsider the grant of the assignment of FM Translator Stations K207CM, K209DN, K217DA, and K220GR from Bernal to CCVE. According to Johnson, “the Commission has granted consent to assign licensed stations that apparently do not exist.”⁴ Johnson explains that he “passed by the broadcast vicinities of the translators multiple times a year and noted no broadcast relayed on these translators from the Texas NCE.”⁵ Finally, Johnson claims standing to file his Petition because he “traverses routes near the Bernal translators on a regular basis and listens to channels that already occupy these frequencies”⁶ and had filed a July 17, 2019, letter in the proceeding.

In its Opposition, CCVE argues that procedurally, Johnson is not permitted to seek reconsideration since he is not a party to the proceeding and “does not state a proper basis for not timely participating.”⁷ CCVE also argues that the Petition fails on the merits. CCVE explains that Bernal notified the Commission that the Stations had been silent since May 8, 2019, pending the sale and the acquisition of new sites, and was granted special temporary authority for the Stations to remain silent.⁸

Discussion. We dismiss the Petition as procedurally defective. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last

² The Applications were filed in conjunction with the lead application to assign the licenses of full power stations KVFM(FM), Beeville, Texas, KPMB(FM), Plainview, Texas, and ten additional FM translator stations from Bernal to CCVE. See BALED-20190429AAG. Johnson’s Petition seeks reconsideration solely of the grant of the assignment of the four above-captioned FM translator stations K207CM, K209DN, K217DA, and K220GR from Bernal to CCVE.

³ Request to Hold Processing letter at 1.

⁴ Petition at 1.

⁵ *Id.* at 2. See also *id.* at 3 (“no [K220GR] transmitter site appears to exist”); at 6 (claiming “no [K209DN] FM antenna installed on the tower. No broadcast has ever been heard from the site.”); at 9 (“no [K207CM] FM antenna constructed and no signal heard on the radio”); at 11 (“no [K217DA] signal was witnessed to be on the air”).

⁶ Petition at 1.

⁷ Opposition at 2.

⁸ *Id.* at 4.

opportunity to present such matters.⁹ If the petitioner is not a party to the proceeding, it must state with particularity the manner in which its interests are adversely affected and show good reason why it was not possible to participate in the earlier stages of the proceeding.¹⁰

Johnson failed to timely file a petition to deny the Applications.¹¹ Johnson's filing of the "Request to Hold Processing," even if treated as an informal objection, does not confer standing to later file a petition for reconsideration.¹² Johnson was not a party to the proceeding and has not justified his failure to participate earlier.¹³ Accordingly, we dismiss the Petition as procedurally defective.

Moreover, we note that even if we were to consider the Petition on its merits, we would deny it. Contrary to Johnson's allegation, there is no evidence that the Stations "do not exist." Rather, CCVE has clarified that it properly notified the Commission that the Stations had been silent since May 8, 2019, pending the sale and the acquisition of new sites, and received special temporary authority to remain silent.¹⁴

Accordingly, IT IS ORDERED that the Petition for Reconsideration, filed August 26, 2019, by John Johnson, IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁹ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹⁰ See 47 CFR § 1.106(b)(1).

¹¹ See 47 U.S.C. § 309(d)(1); 47 CFR § 1.47. The Applications appeared on Public Notice on April 30, 2019. Accordingly, any petition to deny should have been filed by May 30, 2019. Johnson submitted his "Request to Hold Processing" letter on July 17, 2019.

¹² See, e.g., *Regionet Wireless License, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 21269, 21271, para. 8, n.23 (2002) (citing *Redwood Microwave Ass'n*, Memorandum Opinion and Order, 61 FCC 2d 442, 443, para. 3 (1976)). See also *Dennis J. Kelly, Esq.*, Letter Decision, 32 FCC Rcd 6880, 6883 (MB 2017) (citing *Montgomery County Broad. Corp.*, Memorandum Opinion and Order, 65 FCC 2d 876, 877, n.2 (1977)).

¹³ The Bureau did not grant the Applications for almost three months after they appeared on public notice. Johnson, therefore, had ample opportunity to submit a petition to deny or informal objection. Johnson acknowledges that the applications appeared on public notice. See Petition at 1. Johnson, however, claims that he did not file earlier because he assumed the applications had been rescinded when he was unable to locate the file numbers in CDBS. Johnson states that he later learned that the subject Applications were "phantom applications contained within file number BALED-20190429AAG" and argues, without support, that the public notice was misleading. Petition at 2. We note that the subject Applications were not "phantom," but rather, were always viewable via the "Group Search" function, which is explained on the CDBS Public Access site. Johnson's misunderstanding of this fact does not excuse or justify his failure to timely participate in the proceeding. See, e.g., *Channel 61 Associates*, Memorandum Opinion and Order, 2018 WL 923279 (2018) (finding petitioner's erroneous interpretation of a Commission order does not excuse failure to participate earlier).

¹⁴ See FCC File Nos. BLSTA-20190808ABF, ABG, ABI, and ABL.