



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

**September 11, 2018**

*In Reply Refer to:*  
1800B3-SS

Mr. Joel Christerson  
9513 N. Todd Street  
Portland, OR 97203

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**In re: New(FX), Portland, OR  
Facility ID No. 201227**

File No. BNPFT-20171212AAB

**Petition to Deny**

Dear Counsel and Mr. Christerson:

This letter concerns: (1) the referenced application (Application) of Bustos Media Holdings, LLC (Bustos) for a construction permit for a new FM translator station on Channel 268 at Portland, Oregon;<sup>1</sup> (2) a Petition to Deny (Petition) the Application, filed on February 13, 2018, by Joel Christerson (Christerson);<sup>2</sup> and (3) related responsive pleadings.<sup>3</sup> For the reasons set forth below, we deny the Petition.

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<sup>1</sup> The proposed translator is a fill-in for Station KRYN(AM), Gresham, Oregon.

<sup>2</sup> Christerson claims to be a listener of Station KFLY(FM), Corvallis, Oregon. He asserts that the proposed FM translator will interfere with his ability to listen to the signal of Station KFLY(FM) because the proposed translator and KFLY(FM) are both located at 101.5 MHz.

<sup>3</sup> Bustos filed an Opposition to Petition to Deny (Opposition) on February 28, 2018, to which Christerson replied on March 4, 2018 (Reply). Bustos subsequently filed a Motion for Leave to File Supplement and Supplement to Opposition to Petition to Deny (Supplement) on March 14, 2018. In addition, Scott Seckington, David Kyle and Derric Crooks filed self-styled, separate "Informal Objections" on April 1, April 12 and May 14, 2018, respectively, which are, in fact, listener complaints against the proposed FM translator. They claim that it could in the future cause interference to KXYQ-LP, Portland, Oregon. We reject the listener declarations of Scott Seckington, David Kyle and Derric Crooks which were also not made under penalty of perjury and made no demonstration that the address of each purported listener falls within the 60 dB $\mu$  service contour of the proposed translator station under Section 74.1204(f). Further discussion of these three listener complaints is therefore unwarranted. Further, on May 16, 2018, the Center for International Media Action, Common Frequency, Inc., and Prometheus Radio Project filed

**Background.** Bustos filed for a new FM Translator station at Portland during the filing window in July of 2017.<sup>4</sup> Bustos's proposal was determined to be a "singleton," and it was invited to file a long-form application,<sup>5</sup> which it did on December 12, 2017. The staff accepted the Application for filing on January 26, 2018.<sup>6</sup> Bustos filed an amendment to the Application on March 14, 2018, proposing a rotation of the antenna pattern.<sup>7</sup>

In his Petition, Christerson argues that Bustos's proposed translator will interfere with the established listening audiences of KFLY(FM), Corvallis, and KXYQ-LP and KDOO-LP, Portland, Oregon, in violation of Section 74.1204(f) of the FCC's rules (Rules) and that the Application should be dismissed.<sup>8</sup> Christerson supplies his complaint as an unaffiliated KFLY(FM) listener and his own Engineering Statement to demonstrate, using a Longley-Rice coverage area analysis, as opposed to the standard prediction method, that the operation of Bustos's proposed translator is likely to cause interference with the reception of KFLY(FM) in areas inside the proposed translator's 60 dB $\mu$  contour and cause interference to the two low-power FM stations just outside of their respective 60 dB $\mu$  contours.<sup>9</sup> Finally, Christerson argues that: (1) the proposed translator will create cochannel interference to the two LPFM stations with a service gain of merely 64 interference-free listeners; (2) Bustos has filed an application to assign station KRYN(AM)<sup>10</sup> and therefore filed for the proposed fill-in translator to enhance the "asset value" of its AM station; (3) the Application's engineering section regarding the proposed translator's antenna is "patently defective";<sup>11</sup> and (4) there was no local public notice of the Application's filing, in violation of Section 73.3580 of the Rules.<sup>12</sup>

In its Opposition, Bustos argues that the Petition is procedurally defective because Christerson has failed to demonstrate that he has standing in this matter because Christerson is not listed as the owner of the address<sup>13</sup> where he states that he listens to KFLY(FM) and that his "Declaration" submitted with the Petition fails to meet the requirements of Section 1.16 of the Rules, which requires that a declaration filed in lieu of an affidavit must be done "under penalty of perjury."<sup>14</sup> Substantively, Bustos submits the

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a joint Informal Objection against multiple unrelated FM translator applications (including the Application). On June 8, 2018, the staff dismissed the Informal Objection. *See Center for International Media Action, Common Frequency, Inc., and Prometheus Radio Project*, Letter Order, DA 18-597 (MB rel. Jun. 8, 2018).

<sup>4</sup> *See* Application File No. BNPFT-20170731AJK; *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>5</sup> *See Media Bureau Announces Filing Window for Long-Form Applications*, Public Notice, 32 FCC Rcd 9248, 9265 (MB 2017).

<sup>6</sup> *See Broadcast Actions*, Public Notice, Report No. 29163 (rel. Jan. 31, 2018).

<sup>7</sup> *See Broadcast Applications*, Public Notice, Report No. 29195 (rel. Mar. 19, 2018).

<sup>8</sup> Petition at 6; *see also* 47 CFR § 74.1204(f).

<sup>9</sup> Christerson indicates that his residence is located inside Bustos's proposed 60 dB $\mu$  contour. Petition at 1, 4. *See also* Petition at Engineering Statement, Attachments A-1, 2 and B-1 through 4.

<sup>10</sup> *See* File No. BAL-20171221AAY, granted by the staff on May 18, 2018. *See Broadcast Applications*, Public Notice, Report No. 49242 (rel. May 23, 2018).

<sup>11</sup> *See* Petition at 4 and at Engineering Statement, Attachments C-1 and C-2.

<sup>12</sup> *Id.* at 2-5 and at Engineering Statement, Attachment E. *See also* 47 CFR § 73.3580.

<sup>13</sup> 9513 N. Todd Street, Portland, Oregon.

<sup>14</sup> Opposition at 1-2; *see also* 47 CFR § 1.16.

Engineering Statement of Kevin J. Youngers to demonstrate that Christerson's address is well outside the "normally protected contour of KFLY" and that, in fact, KFLY(FM)'s 60 dB $\mu$  contour indicates that it is a Eugene, Oregon, market station and not a Portland market station.<sup>15</sup> In addition, Bustos argues that Christerson could not possibly have a reasonable expectation of listening to KFLY(FM) at the listed address because the service areas of KXYQ-LP and KDOO-LP block KFLY(FM)'s signal.<sup>16</sup> Bustos also argues that it is in the public interest to allow an Hispanic-owner radio station to improve its service to the Portland area.<sup>17</sup> Finally, Bustos argues that it is Commission policy to not adjudicate interference claims at the construction stage.<sup>18</sup>

In his Reply, Christerson asserts that KFLY(FM)'s signal envelops Portland because its 27.5 kW signal from an elevation of 707 meters height above average terrain permits line of site coverage down the Willamette Valley, achieving "listenability" into the Portland area.<sup>19</sup> In addition, Christerson notes that, although he is not the owner of the residence at 9513 N. Todd Street, Portland, Oregon, he rents there.<sup>20</sup> Christerson also notes that, regarding Bustos's public interest argument, although the AM station is currently Hispanic-owned, it is being sold.<sup>21</sup> Finally, Christerson reiterates the aforementioned arguments made in the Petition.<sup>22</sup>

In its Supplement, Bustos attaches a declaration made under penalty of perjury by Bustos President and CEO Amador S. Bustos declaring that, on March 10, 2018 at 1:26 pm (PST), he parked his car in front of Christerson's residence at 9513 N. Todd Street and that the only station audible on his car radio at 101.5 MHz was KDOO-LP and not KFLY(FM), as Christerson asserts.<sup>23</sup>

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended,<sup>24</sup> 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.<sup>25</sup> In this case, the Petition 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.

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<sup>15</sup> *Id.* at 2. See also Engineering Statement of Kevin J. Youngers at Exhibit C.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, citing *Letter from James D. Bradshaw, Deputy Chief, Audio Division, to Radio Assist Ministry, Inc.*, Ref. 1800B3 (MB rel. Nov. 23, 2004).

<sup>19</sup> Reply at 1.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> See Supplement at Attachment, "Declaration of Amador S. Bustos."

<sup>24</sup> See 47 U.S.C. § 309(d).

<sup>25</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) (petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested).

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.”<sup>26</sup> 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 $\mu$  service contour of the proposed translator station;<sup>27</sup> (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 “desired” station at that location.<sup>28</sup> 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 $\mu$  contour.”<sup>29</sup>

We find that the declaration submitted by Christerson in the Petition is not probative that the proposed translator’s signal will interfere with the signal of KFLY(FM).<sup>30</sup> Initially, we note that Christerson’s declaration, which was not made under penalty of perjury,<sup>31</sup> carries less probative weight than the referenced declaration submitted by Amador S. Bustos in support of the Application, which was made under penalty of perjury.<sup>32</sup> Moreover, even were we to consider substantively the declaration submitted by Christerson, we would still deny the Petition. Specifically, we reject Christerson’s use of Longley-Rice coverage area analysis to demonstrate predicted interference. The Commission has only 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.<sup>33</sup> 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,<sup>34</sup>

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<sup>26</sup> 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).

<sup>27</sup> The staff generally requires demonstrations of actual or potential interference from listeners within the translator station’s proposed 60 dB $\mu$  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.”)

<sup>28</sup> *Id.*, 19 FCC Rcd at 12687.

<sup>29</sup> *Id.*

<sup>30</sup> In addition, we note that the staff’s review off the BIA/Kelsey Media Access Pro database indicates that Station KFLY(FM) is home to the Eugene-Springfield, Oregon, Nielsen radio market and is not located nor home to the Portland, Oregon, Nielsen radio market. See <http://media.biakelsey.com/MAPro/?forceAjax=1>, viewed June 5, 2018 at 11:15 am (EDT).

<sup>31</sup> We note that Christerson submitted a declaration made under penalty of perjury with his Reply, but that declaration only declared that he rents and resides at 9513 N. Todd Street. See Reply at Attachments.

<sup>32</sup> See, e.g., *Texas Educational Broadcasting Co-Operative, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 13038, 13045 (MB 2007) (unsupported allegation adequately rebutted by licensee submission supported by affidavit from station employee with responsibility for that matter).

<sup>33</sup> 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).

<sup>34</sup> 47 CFR §73.313.

alternative prediction methods will not be accepted.<sup>35</sup> As such, the staff is precluded from considering Christerson's technical submission. Accordingly, we find that the proposed translator is in compliance with Section 74.1204 of the Rules.

Regarding Christerson's submitted evidence that Bustos failed to publish local notice of the Application, pursuant to Section 73.3580 of the Rules, the Commission has concluded that an applicant's publication of local notice after the 30-day period has elapsed is not a disqualifying defect.<sup>36</sup> The Commission has also consistently permitted an applicant who has not complied with the rule to publish its local notice late.<sup>37</sup> Because the applicant here did not respond to this allegation, we have no evidence that it published the required notice. To remedy this deficiency, the applicant must publish local notice of the Application, if it has not already done so, and inform the staff of its publication.<sup>38</sup> We will withhold action on the Application for a minimum of **40 days** after the applicant provides evidence of its compliance with Section 73.3580 of the Rules.

Finally, concerning Christerson's argument that Bustos's dual applications for the referenced FM translator construction permit and application for consent to assign the license of fill-in station KRYN(AM) amount to "translator trafficking," we disagree. When the Commission took up the matter of translator trafficking, it was in the context of Auction 83 where the extraordinarily high number of applications filed in that auction window, particularly by certain applicants (both nationally and in certain markets), and the significant number of authorized stations that were either assigned to another party or never constructed were strong indicia that the applications were filed for speculative purposes (either for potential sale or to game the auction system) rather than a good faith intent to construct and operate the proposed stations.<sup>39</sup> Here, Bustos filed an application for consent to assign the license of its full-service, Station KRYN(AM) to another Hispanic entity,<sup>40</sup> and in keeping with the dictates of the *AM Revitalization Order*,<sup>41</sup> the staff granted that application on May 18, 2018,<sup>42</sup> conditioned upon the proposal of KRYN(AM) as primary station for the proposed fill-in translator remaining intact. We

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<sup>35</sup> 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., *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).

<sup>36</sup> See *Ojeda Broadcasting*, Hearing Designation Order, 8 FCC Rcd 1648, 1649, para. 9 (1993) (petition to dismiss application due to noncompliance with the public notice requirement without merit).

<sup>37</sup> See, e.g., *United Broadcasting Co. of Eastern Maryland, Inc.*, Memorandum Opinion and Order, 90 FCC 2d 534, 537, para. 8 (1982).

<sup>38</sup> *Id.*

<sup>39</sup> *Creation of Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15405, para. 7 (2012).

<sup>40</sup> See n.10, *supra*. New licensee is Centro Familiar Cristiano.

<sup>41</sup> *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015) (*AM Revitalization Order*).

<sup>42</sup> See *Broadcast Actions*, Public Notice, Report No. 49242 (rel. May 23, 2018).

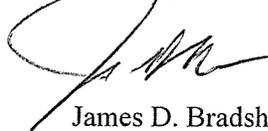
therefore find that grant of the proposed FM translator will assist the licensee of KRYN(AM) to better serve the public, thereby advancing the Commission's fundamental goals of localism, competition, and diversity in broadcast media.<sup>43</sup> Accordingly, further discussion of this issue is unwarranted.

**Conclusion/Actions.** In light of the discussion above, we find that Christerson 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 Petition. We note, however, that Section 74.1203(a) of the Rules<sup>44</sup> states that, should the translator commence operation and cause actual interference to KFLY(FM) or any other full-service station, the translator will be required to eliminate the interference or cease operation. 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.

For these reasons, IT IS ORDERED, that the Petition to Deny filed by Joel Christerson, on February 13, 2018, IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BNPFT-20171212AAB) of Bustos Media Holdings, LLC, for a new FM Translator Station at Portland, Oregon, remains ACCEPTED FOR FILING, pending the applicant's demonstration of compliance with Section 73.3580 of the Rules.

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

cc: Bustos Media Holdings, LLC

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<sup>43</sup> *Id.* at 12146, para. 1.

<sup>44</sup> 47 CFR § 74.1203(a).