



Federal Communications Commission
Washington, D.C. 20554

November 28, 2018

In Reply Refer to:
1800B3-SS

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In re: **New(FX), Baltimore, MD**
Facility ID No. 200467

File No. BNPFT-20171213ADK

Petition to Deny
Informal Objection

Dear Counsel:

This letter concerns: (1) the referenced application, as amended, (Application) of Family Stations, Inc. (FSI) for a construction permit for new FM translator station on Channel 277 (103.3 MHz) at Baltimore, Maryland;¹ (2) a Petition to Deny (Petition) the Application, filed on December 29, 2017, by Empire Broadcasting System, Inc. (EBS);² (3) an Informal Objection (Objection) to the Application, filed June 13, 2018, by Washington DC FCC License Sub, LLC (License Sub) and (4) related responsive pleadings.³ For the reasons set forth below, we deny the Objection, but we grant the Petition and dismiss the Application.

¹ The proposed translator is a fill-in for Station WBMD(AM), Baltimore, Maryland.

² EBS is licensee of WRNR-FM, Grasonville, Maryland, which is on Channel 276 (103.1 MHz) and proximate to the 60 dBµ contour of FSI's proposed FM translator.

³ On January 22, 2018, FSI filed a Response to Petition to Deny (Response) stating that it would amend the Application in response to the allegations in the Petition; it filed a Second Response to Petition to Deny (Opposition) on April 10, 2018, to which EBS replied on April 18, 2018 (Reply). Our records indicate that FSI did not respond to the Objection.

Background. FSI filed for a new FM Translator station in Baltimore during the filing window in July of 2017.⁴ FSI's proposal was determined to be a "singleton," and it was invited to file a long-form application,⁵ which it did on December 13, 2017. The staff accepted the Application for filing on December 19, 2017.⁶ On March 23, 2018, as described below, FSI amended the Application to move from Channel 276 to 277 and to reduce Effective Radiated Power (ERP) to 0.02 kW.

In its Petition, EBS argues that FSI's proposed translator on Channel 276 will interfere with EBS's established listening audiences in violation of Section 74.1204(f) of the FCC's rules (Rules) and that the Application should be dismissed.⁷ EBS supplies the complaints of 68 allegedly unaffiliated WRNR-FM listeners (34 within the 60 dB μ contour of the proposed translator) and an engineering statement to demonstrate that the operation of FSI's proposed translator is likely to cause interference with the reception of then co-channel Station WRNR-FM in areas both inside and outside of the proposed translator's 60 dB μ contour. EBS claims that the proposed translator can be predicted to cause interference to the reception of WRNR-FM's signal at the listeners' locations and that, because the proposed translator would be co-channel with WRNR-FM, no amount of filtering would minimize or alleviate the interference.⁸

In its Response, FSI asserts that it would file an amendment to re-locate to Channel 277 in order to resolve the interference claims made in EBS's Petition.⁹ In its Opposition, FSI claims that it has rectified any interference issues by proposing a new first-adjacent channel frequency (Channel 277); an antenna model change to SCA/Model CL-FM; an antenna azimuth change; and a reduction of the proposed translator's ERP to 0.02 kW. FSI therefore argues that the Petition should be denied.¹⁰

In its Reply, EBS submits further engineering statements demonstrating that FSI's amended proposal will not resolve the interference claims made in the Petition. Specifically, EBS claims that "[l]isteners shown within the 'new' 60 dB μ contour are the same as those shown within the 'old' 60 dB μ contour."¹¹ In addition, EBS asserts that, pursuant to *Association for Community Education, Inc.*,¹² it has provided "convincing evidence" that the proposed translator would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap.¹³ Finally, EBS argues that, even with FSI's amended Application, EBS has now identified more than 20 established listeners of WRNR-FM who can be expected to receive interference to the reception of their

⁴ See Application File No. BNPFT-20170726AOD; *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).

⁵ See *Media Bureau Announces Filing Window for Long-Form Applications*, Public Notice, 32 FCC Rcd 9248, 9265 (MB 2017).

⁶ See *Broadcast Actions*, Public Notice, Report No. 29138 (rel. Dec. 22, 2017).

⁷ Petition at 1; see also 47 CFR § 74.1204(f).

⁸ Petition at 3.

⁹ Response at 2. As noted above, FSI filed the promised amendment on March 23, 2018.

¹⁰ Opposition at 3.

¹¹ Reply at 3. See also *id.* at Attachments A-D.

¹² See *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-86, para. 10 (2004) (*Association*).

¹³ Reply at 3, 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).

station.¹⁴ It concludes that, although Family has addressed the EBS interference issues, it has not alleviated them.¹⁵

In its Objection, License Sub argues that FSI's proposed translator will interfere with the established listening audience of now first-adjacent channel Station WTOP-FM, Washington, DC, in violation of Section 74.1204(f) of the Rules and that the Application should be dismissed.¹⁶ Specifically, License Sub submits the Engineering Statement of Erik C. Swanson, P.E., demonstrating that the 60 dB μ contour of the proposed translator will overlap a populated area in which listeners regularly listen to the off-the-air signal of WTOP-FM.¹⁷ In addition, License Sub submits nine allegedly unaffiliated WTOP-FM complaints from listeners residing within the proposed translator station's 60 dB μ contour, made under penalty of perjury, and a technical showing using a Longley-Rice coverage area analysis, purporting to demonstrate that the operation of FSI's proposed translator is likely to cause interference with the reception of WTOP-FM in areas inside the proposed translator's 60 dB μ contour.¹⁸

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended,¹⁹ petitions to deny and informal objections 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.²⁰ 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.

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."²¹ 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;²² (3) a declaration from each of the affected

¹⁴ Reply at 4.

¹⁵ *Id.*

¹⁶ Objection at 1. WTOP-FM operates on Channel 278 (103.5 MHz). License Sub notes that its Objection constitutes separate and independent grounds from FSI's Petition for dismissing the Application. *Id.* at n.2.

¹⁷ *Id.* at 2. *See also id.* at Appendix A (Engineering Statement of Erik C. Swanson, P.E.).

¹⁸ *Id.* at 3. *See also id.* at Appendix B (Engineering Statement of Erik C. Swanson, P.E.).

¹⁹ *See* 47 U.S.C. § 309(d).

²⁰ *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).*

²¹ *See Association, 19 FCC Rcd at 12685-6, paras. 7-9 (2004), 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).*

²² 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.")*

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.²³ 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.”²⁴

Here, EBS has followed the required protocol by submitting documentation from listeners certifying that they are regular listeners of WRNR-FM at home, at work, or in their cars. By plotting the complainants’ specific addresses on a map depicting the proposed translator’s 60 dB μ contour, EBS has demonstrated that at least 20 complainants listen to WRNR-FM; their addresses are clearly within the proposed translator’s 60 dB μ contour.

Although we find that License Sub also has followed the required protocol by submitting documentation from listeners certifying that they are regular listeners of WTOP-FM at home, at work, or in their cars, we reject License Sub’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.²⁵ 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,²⁶ alternative prediction methods will not be accepted.²⁷ As such, the staff is precluded from considering License Sub’s technical submission. Accordingly, License Sub’s Objection will be denied.

We therefore find that EBS has adequately substantiated its Section 74.1204(f) claim. Because we find that EBS has demonstrated that there are WRNR-FM listeners located inside the 60 dB μ contour of the proposed translator that are predicted to receive interference from the facilities proposed in the amended Application, we will dismiss the Application pursuant to Section 74.1204(f) of the Rules.

Conclusion/Actions. For these reasons, IT IS ORDERED, that the Petition to Deny filed by Empire Broadcasting System, Inc., on December 29, 2017, IS GRANTED.

IT IS FURTHER ORDERED, that the Informal Objection filed by Washington DC FCC License Sub, LLC, on June 13, 2018, IS DENIED.

²³ *Id.*, 19 FCC Rcd at 12687.

²⁴ *Id.*

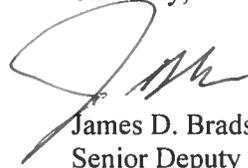
²⁵ See 47 CFR § 73.313(e). See also, *In the Matter of Grandfathered Short-Spaced FM Stations*, Report and Order, 12 FCC Rcd 11840, 11846, para. 17 (1997) (discussing circumstances in which an alternative prediction study may be considered).

²⁶ 47 CFR § 73.313.

²⁷ 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).

IT IS FURTHER ORDERED, that the Application (File No. BNPFT-20171213ADK) of Family Stations, Inc., for a new FM Translator Station at Baltimore, Maryland, IS DISMISSED.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bradshaw', written over a horizontal line.

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

cc: Washington DC FCC License Sub, LLC
Empire Broadcasting System, Inc.
Family Stations, Inc.