



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

June 13, 2019

*In Reply Refer to: 1800B3-KV*

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**In re: K278CR, Houston, TX**  
File No. BLFT-20171213ADO  
Facility ID No. 148295

**Interference Complaint**

Dear Counsel:

This letter refers to the April 18, 2018, "Complaint of Interference" (Complaint) filed by Educational Media Foundation (EMF), licensee of noncommercial educational (NCE) Station KHJK(FM), LaPorte, Texas, alleging interference from FM Translator Station K278CR (K278CR or Station) licensed to Centro Cristiano De Vida Eterna (Centro or Licensee).<sup>1</sup> For the reasons set forth below, we grant the Complaint and require Centro to immediately cease operation of FM Translator Station K278CR.<sup>2</sup>

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<sup>1</sup>Also, before us is Centro's Opposition (Opposition) to the Complaint filed on July 26, 2018.

<sup>2</sup> Our actions herein have no effect on the March 1, 2018, Petition for Reconsideration against the License filed by Cypress Broadcasting Club, licensee of KCYB-LP, alleging interference, the Petition will remain pending.

**Background.** The Station is authorized to operate on Channel 278 as a Translator for Station KBRZ(AM), Missouri City, Texas, owned by Daij Media, LLC.<sup>3</sup> On December 13, 2017, Centro filed an application for a license to cover a granted construction permit<sup>4</sup> to operate the Station on Channel 278 at Houston, Texas. On January 31, 2018, the Media Bureau (Bureau) granted Centro's uncontested license application (License).<sup>5</sup>

On April 18, 2018, EMF filed the Complaint, alleging that K278CR is interfering with the reception of NCE Station KHJK(FM) and that overtures to Centro to remediate the interference were unsuccessful.<sup>6</sup> In support, EMF, submitted 12 listener complaints (Listener Complaints), dated February

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<sup>3</sup> See BLFT-20171213ADO.

<sup>4</sup> See File No. BPFT-20170714AAM, granted on July 25, 2017.

<sup>5</sup> See *Broadcast Actions*, Public Notice, Report No. 49166 (Feb. 5, 2018).

<sup>6</sup> EMF also attached an April 17, 2018, "Declaration of Sam Wallington" Vice President of Operations and Engineering, Complaint, Exh. 2, stating, in pertinent part:

- EMF began receiving complaints of interference . . . around February 17, 2018.
- EMF called two different numbers and left messages with the licensee on February 19, 2018
- On February 22, 2018, after receiving no return phone calls, I called the consulting engineer who prepared the engineering portion of K278CR's application. He [referred me to] . . . Martin Guevara, whom I then called . . . I informed him that the TPO specified in Form 350 appeared to be approximately 10 times higher than it should be (240 watts rather than about 24 watts). I also mentioned the possibility that K278CR was overmodulating. . . . [H]e said . . . that he would talk with his other brother Hector . . . to discuss the issues I raised. When I asked when K278CR would deal with the problem, he said . . . 'maybe Tuesday.' I reiterated the urgency of resolving the interference . . . and asked him to get back to me by Monday February 26 . . . .
- There was no change in interference by February 27, 2018, and so I called M. Guevara again and was told K278CR had been shut down due to a filter failure and that K278CR would return to air once corrected, by the end of the week. He claimed . . . that the TPO was set at 22 watts.
- I was informed by EMF's contract engineer . . . that K278CR was indeed off the air the morning of February 27<sup>th</sup> but had resumed operations by 9:45 AM CST, so I once again called M. Guevara who was surprised K278CR was back on the air and indicated he would call me back. He did not.
- On March 2, 2018, I contacted M. Guevara . . . and requested that K278CR be turned off to avoid legal actions. He said his boss (his older brother) . . . is 'considering all options.' He stated that they have asked their consulting engineer to find a new frequency, and that the translator was now operating with 'lower power.' I did not get an explanation of that last statement. I . . . requested again that they cease operation until a suitable resolution to the interference could be found and implemented.
- To date, K278CR continues to operate and cause interference . . . .

2, 2018 – March 19, 2018, each reporting interference to their KHJK(FM) reception.<sup>7</sup> EMF also includes an engineering map purportedly showing “the extent of the interference area . . . .”<sup>8</sup>

On June 11, 2018, the Bureau sent Centro a letter directing it to resolve the complaints of interference within 30 days or suspend K278CR’s operations.<sup>9</sup> The *Bureau Letter* required Centro to submit a detailed report for each complainant which included: “(1) the name and address of each 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 K278CR for each device allegedly receiving the interference and whether such interference persists.”<sup>10</sup>

On July 12, 2018, Centro requested via email a two week extension to respond to the *Bureau Letter*.<sup>11</sup> On July 13, 2018, EMF agreed via email to Centro’s extension request.<sup>12</sup>

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<sup>7</sup> Crystal Yarborough (Yarborough) experienced interference driving “I-10/Bingle Houston Memorial Area [and] West Chase Area”; Lauren Oblath (Oblath) experienced interference at home (Houston) and driving in “West Houston/Galleria”; Jeff Jones (Jones) experienced interference at home (Houston); work (unspecified location) and driving “all over West & Northwest, Worst @290 and Gessner”; Duane Kelly (Kelly) experienced interference driving “Downtown, Greenway Plaza, Galleria areas”; Janice Griffin (Griffin) experienced interference at home (“Bingle/Merlin Houston, TX”); Mary A. Birdsong (Birdsong) experienced interference at home (“Spring Branch (West Houston) Bltwy 8 – Between 290/240), work (unspecified location) and driving “West Houston”; Laura Piper (Piper) reported “Interference near my home [Houston] is bad, but is a little more tolerable near my work zip code 77030. Experiencing both static and another station”; Dan McDonald (McDonald) reported “Experiencing interference on 159 between West Airport in Sugarland and Edloe in Houston. Really bad bleed from 103.5 to the extent I cannot even listen.”; George Burnetz (Burnetz) reported experiencing “a lot of interference, it is so bad, it makes it impossible to listen. Another station is overriding the signal but I can’t tell who it is.”; Donna Moore (Moore) reported “The static starts out low and gradually takes over the station.”; Adam Farley (Farley) reported experiencing “static in most areas of Houston especially near where I work off the Sam Houston Tollway and Westpark Drive in Houston.”; and Alexandra Stewart (Stewart) reported “We have the same interference as far South as South Braeswood Dr./Chimney Rock Rd. and as far North as Highway 290/Gessner Rd. There is a new radio station on 103.5 in Vietnamese which is constantly banging in on the air/signal from every part of Houston I drive in.” *See Id.*, Exh. 1.

<sup>8</sup> *Id.* at 2 (citing Exhibit 3).

<sup>9</sup> *See* Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, FCC Media Bureau, to Centro Cristiano De Vida Eterna (June 11, 2018) (*Bureau Letter*).

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *See* Email from Dan J. Alpert, Esq. to Mary O’Connor, Esq. *et. al.* , (dated Jul. 12, 2018), stating:

We are in the process of completing the Report concerning this matter. It has been tremendously difficult getting in touch with many of the complainants. Certified letters were sent out to all persons. Only certain parties have been able to be contacted. However efforts are continuing.

There are five remaining complainants that have responded to letters. Two have agreed to an appointment this weekend. One more has not committed to this weekend, but may become available. The remaining two indicated that they are on vacation, and will not be available until the end of next weekend.

Obviously, if the station is off the air, it will be impossible at the time the complainants are available for the interference claim to be assessed. Therefore, I request on behalf of my client an extension of time of two weeks within which my client may complete appointments and submit a response to the Commission’s letter.

<sup>12</sup> *See* Email from to Mary O’Connor, Esq. to Dan J. Alpert, Esq. *et. al.* (dated Jul 13, 2018) stating.

EMF is of the belief that there has been plenty of time, not just the 30 days for K278CR to resolve these interference issues, and K278CR has chosen over the previous several months not to do so. That being said, EMF is willing to let K78CR turn on the translator for the limited time periods (not to exceed 1 hour) during which they are working with the complainants to resolve the interference. At this point there is no need to [sic] for the translator to be operating full time. The

On July 26, 2018, Centro responded that it had resolved the interference for the complaining listeners that it was able to contact.<sup>13</sup> It reported installing, on July 20, 2018, a “Vimesa BICAV 150 FM Pass Filter to the [Station’s] transmission system”<sup>14</sup> which it believed had eliminated the interference.

With respect to specific Listener Complaints, Centro stated:

- Yarborough: She did not respond to: 1) a letter sent, “in early June 2018”; 2) a July 18, 2018, email; and 3) a July 13, 2018, certified letter was “in-transit.” In July 21, 2018, telephone call, however, Yarborough informed Martin Guevara (Guevara), Centro’s Chief Engineer, that she “would not allow me to meet with her . . . [because a drive] test would be too intrusive, and she was not willing to do [it] to go forward with such a test.” Guevara also performed solo testing at Yarborough’s reported interference location which found no interference;
- Oblath: She did not respond to: 1) a letter sent, “in early June 2018”; 2) a July 18, 2018, email; and 3) a July 13, 2018, certified letter, delivered on July 18, 2018. In a July 19, 2018, telephone call, however, Oblath informed Guevara “that she ‘no longer has interference. I told her that I would be closing her interference claim.’”;
- Jones: Centro states “the handwriting on the complaint . . . was hard to decipher . . .” but it sent information to the address it believed he listed. Jones did not respond to: 1) a letter sent, “in early June 2018”; 2) an undated email purportedly sent July 18, 2018; 3) a July 18, 2018, telephone call; and 4) a July 13, 2018, certified letter in which the USPS attempted delivery on July 14, 2018, and a left a notice. Guevara also performed solo testing at Jones’ reported interference location which found no interference;
- Kelley: He did not respond to: 1) a letter sent, “in early June 2018”; 2) a July 18, 2018, email; and 3) a July 13, 2018, certified letter in which the USPS attempted delivery on July 19, 2018, and a left a notice. In a July 19, 2018, telephone call, however, Kelley informed Guevara “that he was not able to meet and drive around with me. . . . Kelley asked that I close his interference claim.” Guevara also performed solo testing at Kelley’s reported interference locations which found no interference;

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interference is illegal and the translator should not be operating. In no event should this time period for interference resolution extend beyond 2 weeks.

<sup>13</sup> Centro states that it attempted to contact all complainants, but

- Seven were not successfully contacted or would not respond to Centro’s attempts to investigate interference (Centro lists complainants Piper, Jones, Kelley, Yarborough, and Birdsong), including five who had supplied addresses to which the United States Post Office could not make deliveries (Centro specifies only complainants Kelly, Griffin, and Oblath);
- Three other complainants asked that their complainants to be “closed out” (Centro lists complainants Yarborough, Oblath, and Griffin); and
- “at least four” complainants would not make themselves available for appointments (Centro lists complainants Yarborough, Kelley, Griffin, and Birdsong).
- Four other complainants failed to provide sufficient information – no street address or no location of interference – for their complaints to be investigated (Centro lists complainants McDonald, Burnetz, Moore, and Farley).

Opposition at 1-2.

<sup>14</sup> *Id.* at 2.

- Griffin: She did not respond to: 1) a letter sent, “in early June 2018”; 2) a July 18, 2018, email; and 3) a July 13, 2018, certified letter, delivered on July 17, 2018. In a July 19, 2018, telephone call, however, Griffin informed Guevara “that she only filled out a questionnaire from KHJK, and that she no longer wished for me to contact her, and to close her interference claim”;
- Birdsong: She did not respond to: 1) a letter sent, “in early June 2018”; 2) a July 19, 2018, email; and 3) a July 13, 2018, certified letter in which the USPS attempted delivery on July 16, 2018, and a left a notice. In a July 18, 2018, telephone call, however, Birdsong informed Guevara “that she was at work and could not talk because of that. I have called Ms. Birdsong several additional times more with no success.” Guevara also performed solo testing at Birdsong’s reported interference locations which found no interference;
- Piper: She did not respond to: 1) a letter sent, “in early June 2018”; 2) a July 19, 2018, email; and 3) a July 13, 2018, certified letter was “in-transit.” Piper did not provide a telephone number on her complaint. Guevara also performed solo testing at Piper’s reported interference locations which found no interference;
- McDonald: He did not provide any mailing address, but rather listed only an email address. McDonald did not respond to a July 19, 2018, email. Guevara also performed solo testing at McDonald’s reported interference locations which found no interference;
- Burnetz: He did not respond to: 1) a letter sent, “in early June 2018”; and 2) a July 13, 2018, certified letter, delivered on July 19, 2018. Burnetz did not provide a telephone number on his complaint. He also did not identify “any specific area of static in his interference claim . . .” but Guevara performed solo testing at Burnetz’s home address which found no interference;
- Moore: She did not respond to: 1) a letter sent, “in early June 2018”; and 2) a July 13, 2018, certified letter delivered on July 19, 2018. A July 18, 2018, email was returned as undeliverable. She also did not identify “any specific area of static in her interference claim . . .” but Guevara also performed solo testing at Moore’s home address which found no interference;
- Farley: He did not provide a complete mailing address and listed only an email address. Farley did not respond to a July 19, 2018, email. Guevara also performed solo testing at McDonald’s reported interference locations which found no interference; and
- Stewart: She did not respond to: 1) a letter sent, “in early June 2018”; 2) a July 19, 2018, email; and 3) a July 13, 2018, certified letter delivered on July 19, 2018. Stewart did not provide a telephone number on her complaint. Guevara also performed solo testing at McDonald’s reported interference locations which found no interference.<sup>15</sup>

**Discussion.** Section 74.1203(a) provides, in pertinent part, that an FM translator station “will not be permitted to continue to operate if it causes any actual interference to . . . the direct reception by the public of off-the-air signals of any authorized broadcast station . . .”<sup>16</sup> The rule currently places no geographic or temporal limitation on complaints, and we have long held that mobile receivers, such as automobile radios,

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<sup>15</sup> *Id.* at Attachments 1-12.

<sup>16</sup> 47 CFR § 74.1203(a).

should not be subject to interference resulting from the operation of an FM translator or booster station.<sup>17</sup> The FM translator rules strictly prohibit interference by these secondary service stations, and an interfering FM translator station must remedy the interference or suspend operation.<sup>18</sup>

The Commission has interpreted “direct reception by the public” to limit actionable complaints to those that are made by *bona fide* listeners.<sup>19</sup> Thus, it has declined to credit claims of interference<sup>20</sup> or lack of interference<sup>21</sup> from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant “be ‘disinterested,’ *e.g.*, a person or entity without a legal stake in the outcome of the translator station licensing proceeding.”<sup>22</sup> The staff has routinely required a complainant to provide his or her name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints,<sup>23</sup> the staff has considered only those complaints of FM translator interference where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.<sup>24</sup> Accordingly, when the Commission concludes that a *bona fide* listener has made an actionable complaint<sup>25</sup> of uncorrected interference from an FM translator, it will notify the station that “interference is being caused” and direct the station to discontinue operations.<sup>26</sup>

The issue before us is whether Centro has eliminated the actual interference caused by the Station to the 12 KHJK(FM) listeners who filed complaints. Of these 12 listeners, we find the following nine Listener Complaints are not *bona fide* complainants warranting resolution by Licensee: 1) McDonald and Farley for failure to list a complete contact address;<sup>27</sup> 2) Burnetz and Moore for failure to provide any

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<sup>17</sup> See, *e.g.*, *Forus FM Broad. of New York, Inc.*, 7 FCC Rcd 7880, 7882, para. 16 (MB 1992) (because of the secondary nature of FM booster stations, and the resulting requirement that they provide interference-free service, such stations will not be permitted to cause interference to mobile receivers).

<sup>18</sup> 47 CFR § 74.1203(b).

<sup>19</sup> See *Ass'n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Ass'n for Cmty. Educ.*).

<sup>20</sup> See *id.*

<sup>21</sup> See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15070, 15077, n.46 (2008).

<sup>22</sup> *Ass'n for Cmty. Educ.*, 19 FCC Rcd at 12688 n.37.

<sup>23</sup> See, *e.g.*, *Jay Ayer and Dan J. Alpert*, Letter, 23 FCC Rcd 1879, 1883 (MB 2008) (requiring complainants to cooperate fully with the station's efforts to resolve interference and cautioning that the failure to do so could lead to a finding that the station has fulfilled its interference remediation obligations).

<sup>24</sup> See *Radio Power, Inc.*, Letter, 26 FCC Rcd 14385, 14385-86 (MB 2011) (listing grounds that translator licensee claimed are sufficient to conclude that complainant has failed to reasonably cooperate and finding that a listener may reasonably reject a non-broadcast technology to resolve interference claim).

<sup>25</sup> Because only a complaint from a *bona fide* listener of the desired station can force a translator station to suspend operation, KHJK(FM)'s engineering map, submitted in Exhibit 3 to the Complaint does not meet that criterion. See, *e.g.*, *Ass'n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 16 (station's engineer locating the points on a map where the translator had interfered with the stations' signal as he drove around the full-service station's coverage area listening to the car radio did not meet that criterion) and *Valley Broad., Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 4317, 4319, para. 26 (MB 1992) (tests for booster interference were conducted under Special Field Test Authority by a neutral party, using a mobile receiver and a stationary receiver. The application was granted with the caveat that if the booster station resulted in listener interference complaints, the permittee would be required to discontinue its operation until all complaints had been resolved).

<sup>26</sup> See 47 CFR § 74.1203(e); see also *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 131 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993); *Ass'n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 15.

<sup>27</sup> See Complaint at Exh. 1., McDonald failed to list any mailing address; and Farley listed an incomplete address.

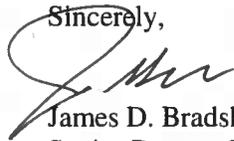
information detailing the interference location and being non-responsive;<sup>28</sup> and 3) Yarborough, Oblath, Kelley, Griffin, and Jones for being “uncooperative.”<sup>29</sup>

Regarding the remaining three Listener Complaints, Birdsong, Piper, and Stewart, we find that Centro has failed to resolve these complaints as last documented in the record. As initial matter, although Centro’s engineer performed testing which purportedly found no interference at the locations reported by these listeners we cannot rely on this solo testing by a non-disinterested party. With respect to Birdsong, Centro did not provide any details of outreach efforts after she stated in a July 18, 2018, call “that she was at work and could not talk”<sup>30</sup> but rather merely claimed to have called “several additional times more with no success.”<sup>31</sup> As for Piper, Centro claims she was unreachable, but it appears that delivery was never attempted for the July 13, 2018, certified letter which is listed by USPS tracking information as only “in transit.”<sup>32</sup> Concerning Stewart, although Centro’s engineer stated, in a July 23, 2018, declaration, that she was unresponsive to a certified letter delivered on July 19, 2018, and an email sent the same date, under the circumstances here we do not find three days to await a reply to be sufficient when Centro had six weeks to contact Stewart.<sup>33</sup> Consequently, we conclude that Centro has failed to eliminate the interference and that Station K287CR must suspend operations.<sup>34</sup>

**Conclusion.** Based on the above, IT IS ORDERED, that the Interference Complaint filed by Educational Media Foundation on April 18, 2018, IS GRANTED.

IT IS FURTHER ORDERED that pursuant to Sections 74.1203 and 0.283 of the Rules,<sup>35</sup> based on the above, Centro Cristiano De Vida Eterna IS HEREBY ORDERED TO CEASE OPERATION OF STATION K278CR IMMEDIATELY.<sup>36</sup>

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

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<sup>28</sup> See *Id.* Moore stated only “The static starts out low and gradually takes over the station”; and Burnetz stated only “Noticed a lot of interference, it is so bad, it makes it impossible to listen. Another station is overriding the signal but I can’t tell who it is.”

<sup>29</sup> Yarborough, Oblath, Kelley, and Griffin orally declined to participate in the remediation process. See *Opposition* at Attachments 1, 2, 4, and 5. Jones did not respond to Centro’s outreach efforts sent to his contact information as Centro believed it to be and EMF did not challenge Centro’s interpretation. *Id.* at Attachment 3.

<sup>30</sup> *Id.* at Attachment 6.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at Attachment 7. An April 2019 review of the tracking information continued to list the letter as “in-transit.”

<sup>33</sup> *Id.* at Attachment 12. The Bureau allotted 30 days for Centro to conduct its outreach efforts and remediation. See *Bureau Letter*. Thereafter, Centro requested, and EMF agreed, to an additional two weeks. See *supra* notes 11-12.

<sup>34</sup> We further note that should Centro elect to address the unresolved interference, it should consider engaging with EMF an independent and mutually agreed upon third party engineer for testing, pursuant to guidelines adopted in the recent FM Translator interference proceeding. See *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Report and Order, FCC 19-40 at para. 33 (2019).

<sup>35</sup> 47 CFR §§ 74.1203 and 0.283.

<sup>36</sup> Please note that any request by Centro to operate with reduced/temporary facilities on this same channel will only be granted upon a demonstration that the proposed facilities will not cause interference at all of the listening locations provided by the remaining listeners.