



Federal Communications Commission
Washington, D.C. 20554

April 28, 2020

In Reply Refer to:
1800B3-DB

Bustos Media Holdings, LLC
c/o Dennis J. Kelly, Esq.
P.O. Box 41177
Washington, DC 20018

Northwest Rock 'N' Roll Preservation Society
c/o Brian Spencer
P.O. Box 2673
Olympia, WA 98507

In re: **New Translator, Auburn, WA**
Facility ID No. 202942
File No. BPFT-20180418ABI

Informal Objection

Dear Counsel and Petitioner:

This letter concerns: (1) the referenced application (Application) of Bustos Media Holdings, LLC (Bustos) for a construction permit for a new FM translator station in Auburn, Washington, on Channel 266 (101.1 MHz) (Translator);¹ (2) Informal Objections (Objection) filed on July 31, 2018 and October 5, 2018, by Northwest Rock 'N' Roll Preservation Society (Northwest);² (3) Supplemental Information and a Request for Waiver filed by Northwest on August 19, 2019, January 3, 2020, and February 13, 2020;³ and (4) related responsive pleadings.⁴ For the reasons set forth below, we grant the Objection in part and dismiss the Application.

¹ See Application No. BNPFT-20180418ABI. The Application proposes to rebroadcast Station KMIA(AM), Auburn, Washington on Channel 266.

² Informal Objection filed by Northwest on July 31, 2018; Informal Objection Addendum filed by Northwest on October 5, 2018. Northwest is licensee of Station K266BM, Olympia, Washington operating on Channel 266 (101.1 MHz). Northwest is also the licensee of Station K281CI, Tacoma, Washington (104.1 MHz), located less than 10 miles away from the proposed Translator. The input signal of Northwest translator K281CI is Channel 266.

³ Northwest Supplemental Information to Informal Objection (filed Aug. 19, 2019); Northwest Addendum to Supplemental Information to the Informal Objection (filed Jan. 3, 2020); and Northwest Request for Waiver & Addendum 2 to Supplemental Information to Informal Objection (filed Feb. 13, 2020) (Request for Waiver).

⁴ On May 9, 2018, Northwest filed a Petition to Deny (Northwest Petition) the Application, which Bustos opposed on July 3, 2018. On July 31, 2018, Northwest filed a Reply to Bustos's Opposition as well as an Informal Objection. Northwest also submitted an Addendum to the Informal Objection on October 5, 2018. On October 18, 2018, Bustos filed a Motion to Strike Northwest's Informal Objections, which Northwest opposed on November 5, 2018. Bustos then filed a Supplement to its Opposition on March 18, 2019, to which Northwest replied on May 7, 2019. On May 22, 2019, Bustos filed an opposition to Northwest's reply, which Northwest opposed on June 5, 2019. We will treat Northwest's pleadings filed on May 9, 2018, July 31, 2018, October 5, 2018, August 19, 2019, January 3, 2020, and February 13, 2020, collectively, as an Informal Objection to the Application at issue. See 47 CFR §73.3587. Because there is no time limitation for filing such pleadings, we will not consider Bustos's Motion to Strike Northwest's July 31 and October 5, 2018 Informal Objections. See *id.*

Background. Bustos filed the Application proposing to construct the new Translator on April 30, 2018.⁵ The staff accepted the Application for filing on May 3, 2018.⁶ Bustos then filed an amended Application with an updated engineering section on October 9, 2019.⁷ The staff accepted the amended Application for filing on October 22, 2019.⁸

In its Petition, Northwest argues that the proposed Translator will violate Section 74.1203(a)(2) of the Commission's Rules (Rules)⁹ by taking over the input signal of Northwest's translator K281CI.¹⁰ Northwest maintains that a pirate has been operating intermittently in the same area as the proposed new Translator with less than 250 watts, causing catastrophic interference to the input signal of Station K281CI.¹¹

In its Opposition, Bustos argues that the proposed Translator can co-exist with the reception of co-channel K266BM at the K281CI site and any potential "actual interference" can be avoided through implementation of a simple and inexpensive fix.¹² Bustos further argues that the issue raised by Northwest may be moot because Station K266BM holds a modified construction permit to increase its height above average terrain in order to retransmit the signal of Station KGTK 920(AM) which would encompass the community served by Station K281CI.¹³ Additionally, Bustos maintains it has been Commission policy to refrain from adjudicating Section 74.1203 interference claims at the construction permit stage and therefore Northwest's arguments are premature.¹⁴ Bustos also claims that Northwest lacks standing to challenge the Application at issue.¹⁵

⁵ See License No. BNPFT-20180418ABI (filed Apr. 30, 2018).

⁶ See *Broadcast Applications*, Public Notice, Report No. 29228 (rel. May 3, 2018).

⁷ See License No. BNPFT-20180418ABI.

⁸ See *Broadcast Applications*, Public Notice, Report No. 29597 (rel. Oct. 22, 2019).

⁹ 47 C.F.R. § 74.1203(a)(2) ("an authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to the reception of the input signal of any ... FM translator...").

¹⁰ See Northwest Petition at 1.

¹¹ *Id.* at 2.

¹² See Bustos Opposition at 4 (filed July 3, 2018). According to Bustos, the proposed Translator would have a signal strength at the Station K281CI transmit site of 45.12 dBμ, while Station K266BM would have a signal strength of 34.49 dBμ at the same location. *Id.* Bustos states that because these signals are coming from directions that are 172.0 degrees apart and the undesirable signal is less than 11 dBμ greater than the desired signal, any interference can be eliminated by using an inexpensive Yagi directional FM receiver antenna to isolate the desired input signal. *Id.* In its Reply, Northwest states that the K281CI site has had to contend with an intermittent pirate on Channel 266 from approximately the same direction as the proposed facility and uses a directional antenna, but still succumbs to interference when the pirate is broadcasting. See Northwest Reply at 2 (filed July 31, 2018). Thus, Northwest contends that it is extremely doubtful that the co-channel 266 signal can be received at the K281CI site if the proposed facility is broadcasting, no matter what receiving antenna is used. *Id.*

¹³ See Bustos Opposition at 4.

¹⁴ See Bustos Opposition at 1-3, 7, citing *Radio Assist Ministry, Inc.*, Letter Decision, BNPFT-20030826AEY (MB Nov. 23, 2004) (stating that Section 74.1203 refers to authorized stations currently operating); *Creation of Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19224, para. 41 (2000) (stating that the Commission should follow the procedures currently used to resolve allegations of interference, but the Commission will not make such interference a routine consideration prior to the grant of an application).

¹⁵ See Bustos Opposition at 5.

Northwest disputes the arguments raised in Bustos's Opposition.¹⁶ In particular, Northwest maintains that it has standing to challenge the Application because it will suffer injury (i.e., the loss of input signal and subsequent loss of listeners) caused by the overwhelming signal interference from the proposed Translator in Auburn, Washington.¹⁷ Northwest states that if the Commission grants the Application, it should place conditions on the construction permit to protect Station K281CI's input.¹⁸

Northwest also submits an Informal Objection to the Application alleging that the proposed FM Translator will interfere with the listening audiences of Station K266BM in violation of Section 74.1204(f) of the Rules.¹⁹ In support of its Informal Objection, Northwest provides: (1) declarations of eight allegedly unaffiliated Station K266BM listeners;²⁰ (2) maps showing the location of these listeners within the 60 dB μ contour proposed in the amended Application;²¹ and (3) an engineering statement, purportedly using the standard contour prediction methodology specified in the revised Rules, to demonstrate the relative field strengths of the "undesired" and "desired" signals at the listener locations.²² Northwest argues that the operation of Bustos's proposed Translator, as modified, would cause prohibited interference with the reception of Station K266BM within the Translator's 60 dB μ contour.²³

Bustos opposes Northwest's Informal Objections alleging that its arguments are without merit as there is no audible broadcast signal on 101.1 MHz at eight locations in the communities of Auburn, Kent, and Federal Way, Washington.²⁴ In response, Northwest asserts that Bustos's field assessment was conducted by one of its employees, not an independent engineer, and that the facts presented in its Objections are indeed true.²⁵ Bustos then takes issue with Northwest's response, arguing that it constitutes a pleading which is not contemplated by the FCC's Rules and fails to meet the statutory requirement of 47 U.S.C. § 309(d).²⁶

¹⁶ See Northwest Reply at 2 (filed July 31, 2018). See also *supra*, n.12.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3-4.

¹⁹ See Northwest Informal Objection at 1 (filed July 31, 2018); Northwest Informal Objection Addendum at 1 (filed Oct. 5, 2018). See also 47 CFR § 74.1204(f) ("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 1 mV/m field strength contour of the FM translator station will 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 authorization will result in interference to the reception of such signal.").

²⁰ See Northwest Informal Objection at 3 (July 31, 2018); Northwest Informal Objection Addendum at Exhibit B (filed Oct. 5, 2018).

²¹ See Northwest Informal Objection at Exhibit A (filed July 31, 2018); Northwest Informal Objection Addendum at Exhibit A (filed Oct. 5, 2018).

²² See Northwest Informal Objection, Engineering Statement of W. Jeffrey Reynolds (filed July 31, 2018); Northwest Informal Objection Addendum, Engineering Statement of W. Jeffrey Reynolds (filed Oct. 5, 2018).

²³ See Northwest Informal Objection at 1 (filed July 31, 2018).

²⁴ See Bustos Supplement at 3-4 (providing video links to demonstrate that, throughout the day on March 6, 2019, there was no audible broadcast signal on 101.1 MHz at any of the eight locations).

²⁵ Northwest Reply to Bustos Supplement at 2 (filed May 7, 2019).

²⁶ See Bustos Comments in Opposition to Motion for Leave to File Reply to Supplement (May 22, 2019).

In response, Northwest presents documentation supporting the arguments raised in its Reply.²⁷ Northwest also contends that Bustos's original application was defective and should have been dismissed because it was submitted without exhibits and an engineering certification.²⁸ Nevertheless, Northwest states that the more serious interference issues arise with the modified Application at issue.²⁹ Northwest states that the Commission should consider the possibility that Bustos purposefully submitted a flawed and un-grantable application on January 30, 2018, with the intention of slipping in modifications later.³⁰

On May 9, 2019, the Commission adopted the *Translator Interference Order* in which it streamlined the rules relating to interference caused by FM translators and expedited the translator complaint resolution process.³¹ The revised rules became effective on August 13, 2019.³² Because the Application at issue had not been acted upon as of the effective date of the revised rules, Northwest submitted additional materials to respond to the revised FM translator interference standards.³³

In its supplemental filings, Northwest reiterates its position that the proposed Translator will cause harmful interference to regular listeners of Station K266BM.³⁴ Northwest provides: (1) declarations of 60 allegedly unaffiliated Station K266BM listeners;³⁵ (2) maps showing the location of these listeners within the 45 dBμ contour proposed in the amended Application;³⁶ and (3) an engineering statement, purportedly using the standard contour prediction methodology specified in the revised Rules to demonstrate the relative field strengths of the "undesired" and "desired" signals at the listener locations.³⁷ Northwest also requests a waiver of the 45 dBμ contour limit to allow it to continue

²⁷ See Northwest Reply to Bustos Comments in Opposition to Motion for Leave to File Reply to Supplement (filed June 4, 2019).

²⁸ *Id.* at 2.

²⁹ *Id.*

³⁰ *Id.* at 2-3. Northwest states that Bustos submitted License Number BNPFT-20180130ABM without an engineer's certifying signature, making it extremely difficult for Northwest, or any licensee in a similar situation, to respond to proposed facilities in a timely manner to prevent catastrophic interference. *Id.* at 3 (referring to Bustos License Number BNPFT-20180130ABM (filed Jan. 30, 2018)). Note that the staff did not accept this application for filing.

³¹ See *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*).

³² See *Media Bureau Announces August 13, 2019, Effective Date for Amended Rules for FM Translator Interference*, Public Notice, 34 FCC Rcd 7004 (MB 2019).

³³ See *supra*, n.3.

³⁴ See Northwest Supplemental Information to Informal Objection at 2; Northwest Addendum to Supplemental Information to the Informal Objection at 1-2; and Request for Waiver at 2-3.

³⁵ See Northwest Supplemental Information to Informal Objection, Attachment A; Northwest Addendum to Supplemental Information to the Informal Objection, Addendum to Tabulation Table; Request for Waiver at 3, Listener Tabulation Table. Northwest states that, pursuant to revised 47 CFR § 73.1204(f) and 47 CFR § 73.1203 Table 1, it is required to submit only six valid listener complaints, but it submits 60 complaints in support of its Informal Objection. See Request for Waiver, Engineering Statement of W. Jeffrey Reynolds and Listener Tabulation Table.

³⁶ See Northwest Supplemental Information to Informal Objection, Map; Northwest Addendum to Supplemental Information to the Informal Objection, Map 2; Request for Waiver, Map.

³⁷ See Request for Waiver, Engineering Statement of W. Jeffrey Reynolds.

broadcasting to listeners outside of K266BM's 45 dB μ contour.³⁸ In support of its waiver request, Northwest provides declarations of 35 complainants who either live in or travel through a zone of predicted interference outside of Station K266BM's 45 dB μ contour.³⁹ Northwest states that reception outside the 45 dB μ contour is not limited to geographic "pockets" and that the interference zone includes a large and varied area.⁴⁰ Northwest also maintains that Station K266BM provides unique programming for its listeners and that it has been broadcasting from its current location since August 2009.⁴¹

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended,⁴² 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.⁴³ In this case, the Objection 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.

As an initial matter, we clarify that Section 74.1204(f), rather than Section 74.1203, is the appropriate remedy in this instance. Section 74.1203 applies to actual interference caused by "authorized" FM translator or booster stations,⁴⁴ while Section 74.1204(f) applies to situations such as the one presented here where a proposed FM translator is likely to interfere with a regularly used off-the-air service.

Under revised Section 74.1204(f) of the Rules, "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, as set forth in paragraph (a) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations within the 45 dB μ field strength contour of the desired station. Interference is demonstrated by: (1) the required minimum number of valid listener complaints as determined using Table 1 of Section 74.1203(a)(3) and defined in Section 74.1201(k) of the part; (2) a map plotting the specific location of the alleged interference in relation to the complaining station's 45 dB μ contour; (3) a statement that the complaining station is operating within its licensed parameters; (4) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (5) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third- adjacent channel situations,

³⁸ See Request for Waiver at 1, 3 and Listener Tabulation Table. Northwest states that it did not seek a waiver previously because it believed the Rules regarding interference were clear enough that Bustos would opt to move to a different channel. *Id.* at 2.

³⁹ See Request for Waiver at 1, 3 and Listener Tabulation Table. Northwest states that it did not seek a waiver previously because it believed the Rules regarding interference were clear enough that Bustos would opt to move to a different channel. *Id.* at 2.

⁴⁰ See *id.* at 3 and Maps.

⁴¹ *Id.*

⁴² See 47 U.S.C. § 309(d).

⁴³ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff'd sub nom. Garden State Broad. 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).

⁴⁴ See 47 CFR § 74.1203(a) (referring to authorized FM translator and booster stations currently operating).

calculated using the Commission's standard contour prediction methodology set out in Section 73.313 of the Rules."⁴⁵

In this instance, Northwest has followed the required protocol by submitting documentation from 60 listeners certifying that they are regular listeners of Station K266BM at least twice a month at home, at work, or in their cars.⁴⁶ By plotting the complainants' specific addresses on a map showing the specific location of the alleged interference in relation to the complaining station's 45 dB μ contour, Northwest has demonstrated that at least 49 complainants listen to Station K266BM and that their addresses are located where the undesired to desired signal strength exceeds -20 dB for co-channel situations, calculated using the Commission's standard contour prediction methodology set out in Section 73.313 of the Rules.⁴⁷ Northwest has also indicated that Station K226BM has been operating within licensed parameters,⁴⁸ and it includes a statement that it has used commercially reasonable efforts to inform Bustos (*via* Bustos's counsel) of the claimed interference and attempted a private solution (in this case, suggesting a modification of the Translator's proposed channel).⁴⁹ In light of this evidence, we find that Northwest has adequately substantiated its Section 74.1204(f) claims by demonstrating that there are Station K266BM listeners located inside Station K266BM's 45 dB μ contour that are predicted to receive interference from the facilities proposed in the Application.⁵⁰ We will therefore dismiss the Application. Furthermore, given our decision to dismiss the Application on Section 74.1204(f) grounds, we conclude that the Request for Waiver filed by Northwest is moot.

Conclusion/Actions. For the reasons discussed above, IT IS ORDERED, that the Informal Objection filed by Northwest Rock 'N' Roll Preservation Society on July 31, 2018, and supplemented on October 5, 2018, August 19, 2019, January 3, 2020, and February 13, 2020, IS GRANTED in part.

IT IS FURTHER ORDERED that, pursuant to Section 74.1204(f) of the Commission's Rules, 47 CFR § 74.1204(f), the Application (File No. BNPFT-20180418ABI) of Bustos Media Holdings, LLC for a new Translator in Auburn, Washington on Channel 266 (101.1 MHz) IS DISMISSED.

⁴⁵ See 47 CFR § 74.1204(f) (2019).

⁴⁶ See Northwest Supplemental Information to Informal Objection, Attachment A; Northwest Addendum to Supplemental Information to the Informal Objection, Addendum to Tabulation Table; Request for Waiver at 3, Listener Tabulation Table. We find that 49 of these complaints are rule-compliant; the remaining 11 complaints fail to provide a signature date, a complete address, or a clear and concise interference location and therefore will not be considered.

⁴⁷ See Northwest Supplemental Information to Informal Objection at 2, Map 1; Northwest Addendum to Supplemental Information to the Informal Objection at 1-2, Map 2; Request for Waiver, Map.

⁴⁸ See Northwest Supplemental Information to Informal Objection at 2, Exhibit 1.

⁴⁹ See Northwest Supplemental Information to Informal Objection at Exhibit 2 (letter from president of Northwest to counsel for Bustos).

⁵⁰ We note that the documentation submitted in Northwest's Informal Objection, as originally filed, was also sufficient to substantiate dismissal of the Application, pursuant to prior rule Section 74.1204(f). See Informal Objection (filed July 31, 2018); Informal Objection Addendum (filed Oct. 5, 2018).

IT IS FURTHER ORDERED that, in light of our dismissal action taken pursuant to Section 74.1204(f) of the Commission's Rules, 47 CFR § 74.1204(f), the Request for Waiver filed by Northwest Rock 'N' Roll Preservation Society on February 13, 2020, IS DISMISSED AS MOOT.

Sincerely,

/s/

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau