



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

October 12, 2018

In Reply Refer To:
1800B3-KV

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In re: W255CJ, Atlanta, Georgia
Facility ID No. 148550
File No. BSTA-20180810ABA

Informal Objection

Dear Counsel:

The Media Bureau (Bureau) has before it: (1) the referenced application for Special Temporary Authority (STA Application), filed on August 10, 2018, by Cumulus Licensee, LLC (Cumulus or Licensee), licensee of FM Translator Station W255CJ, Atlanta, Georgia (W255CJ or Station);¹ and (2) an "Informal Objection" (Objection) filed on August 20, 2018, and supplemented on August 21, 2018, by WKNG, LLC (WKNG), licensee of Station WWGA(FM), Tallapoosa, Georgia (WWGA).² For the reasons set forth below, we deny the Objection and grant the STA Application, as conditioned herein.

Background. On April 11, 2018, the Bureau found that the Station, licensed on Channel 255,³ was causing interference to certain listeners of co-channel Station WWGA and ordered it to cease operations.⁴ On May 11, 2018, Cumulus and WKNG each filed petitions for reconsideration of *the Letter Decision* which are currently pending.⁵

¹ The Station is a Translator Station for primary station WWWQ(FM), Atlanta, Georgia, licensed to Radio License Holding SRC, LLC.

² Also, before us are Cumulus's August 29, 2018, "Opposition to Informal Objection" (Opposition) and WKNG's September 11, 2018, "Reply to Opposition to Informal Objection" (Reply).

³ See File No. BLFT-20110915ACL, granted on September 9, 2011.

⁴ See "Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Mark D. Denbo, Esq. and Andrew Kersting, Esq.," ref 1800B3-PPD (Apr. 11, 2018) (*Letter Decision*).

⁵ See "Petition for Reconsideration", filed on May 11, 2018 by Cumulus (Cumulus Petition); and "Petition for Partial Reconsideration", filed on May 11, 2018, by WKNG (WKNG Petition). Collectively, the Cumulus Petition

On August 10, 2018, Cumulus filed the STA Application seeking a 180-day STA which it states will eliminate interference to WWGA, by reducing the Station's effective radiated power (ERP) from the currently licensed level to .25 kW to .18 kW. Cumulus opines that previously the Station radiated "between 121 – 250 watts in the direction of WWGA. W255CJ's STA facility, however, will radiate only between eight (8) watts . . . and 34 watts in the azimuths most pertinent to WWGA."⁶ Cumulus also notes that the proposed STA facilities will eliminate contour overlap with WMKP-LP, Oakwood, Georgia and WIEH-LP, Marietta, Georgia; and reduce contour overlap with WGRU-LP, Riverdale, Georgia, and FM Translator Station, W256DJ, Conyers, Georgia.⁷

On August 20, 2018, WKNG objected to the STA Application, arguing that it was filed without prior knowledge of or service to WKNG, and "fails from a technical perspective."⁸ WKNG declares that the STA Application does not "provide any data regarding: (1) the new gain coefficient for the directional antenna; (2) the new transmitter power output; (3) the system losses; and (4) the power divider."⁹ It also asserts that the STA Application does not address the impact that the proposed directional antenna would have on the collocated FM Translator Stations, W229AG, licensed to Dickey Broadcasting Company (DBC), and W250BC, also licensed to Cumulus.¹⁰ WKNG contends that "W229AG . . . will be subject to a new directional null . . . and W250BC . . . will also be subject to an appreciable directional null."¹¹ WKNG further asserts that, because Cumulus has engaged in "numerous acts of bad faith,"¹² the Bureau must condition any grant of the STA Application on an independent engineer, paid by Cumulus, to oversee that the Station's construction and operations; and (2) require the Station, if causing interference, to "immediately" cease operations without further Commission action.

On August 29, 2018, Cumulus responded that the Objection should be dismissed or denied because it raises only speculative technical allegations and issues irrelevant to the STA Application. Cumulus declares that the STA Application appeared twice on Public Notice¹³ and was served on WKNG,¹⁴ but it was not required to seek WKNG's "opinion" prior to the application's filing. Cumulus also contends that "no Commission rule or policy requires the specific technical elements [cited by WKNG] . . . to be provided in a request for special temporary authorization,"¹⁵ nor is an independent engineer to oversee the Station's STA facilities, if granted, required by any Commission rule or policy. Cumulus further asserts that the proposed STA facilities will not affect FM Translator Stations,

and the WKNG Petition will be referred to as the Petitions. The parties also filed numerous responsive pleadings in that proceeding that are currently pending.

⁶ STA Application, Exh. 12, at note 1.

⁷ *Id.* at 2.

⁸ Objection at 3.

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* WKNG asserts in the previous interference proceeding, Cumulus (1) sent the complainants "an extraordinarily lengthy and frivolous questionnaire . . ."; (2) attempted, during the first round of joint on/off testing to "trick" at least one complainant; (3) "needlessly" objected to the second round joint testing; (4) attempted to "bribe a complainant with an offer of \$7500 to drop his complaint; and (6) solicited *ex parte* presentations to the Commission. *Id.* at 2.

¹³ *Id.* at note 7 (citing *Broadcast Applications*, Public Notice, Rep. No. 29306 (rel. Aug. 23, 2018), p.12 and *Broadcast Applications*, Public Notice, Rep. No. 29307 (rel. Aug. 24, 2018), p. 16.

¹⁴ Opposition, Exh. C, "Certified Mail Receipt Confirming Service of STA Request."

¹⁵ *Id.* at 3.

W229AG¹⁶ and W250BC:

The panel antenna from which W255CJ operates has two input ports – port A and port B. W255CJ previously operated out of port A along with W229AG, W250BC, and full-power station WCLK(FM), Atlanta, Georgia. . . . Pursuant to the STA proposal, W255CJ will be moved to [the previously vacant] port B of the panel antenna to facilitate the implementation of a directional antenna, a separate power divider, transmission line and filter system will be attached to the W255CJ transmitter.¹⁷

Cumulus notes that the Commission has previously approved a similar combined antenna system¹⁸ and reiterates that grant of the STA Application will eliminate or reduce overlap with three LPFM stations and one FM Translator station. Regarding WKNG's allegations of "bad faith," Cumulus declares that these are irrelevant to the STA Application as they are untimely arguments involving the previous interference proceeding, currently on appeal; it also disputes the merits of the allegations.¹⁹ Lastly, Cumulus alleges that WKNG has acted in "bad faith" and abused the Commission's processes "by attempting to force W255CJ permanently off the air."²⁰

On September 11, 2018, WKNG replied that it would withdraw its Objection if certain conditions are imposed on grant of the STA Application. WKNG reports that its consulting engineer has reviewed Cumulus's proposed STA facilities and "believes that it might be acceptable"²¹ It, contends, however, that because Cumulus failed to resolve all complaints in the petitioned interference proceeding,²² and was found to have engaged in *ex parte* violations therein,²³ certain conditions must be imposed on grant of the STA Application. First, WKNG declares, the Bureau must require joint "on/off" testing at the six locations used in the interference proceeding. Next, if the joint testing reveals no interference, WKNG requests that the Bureau impose on Cumulus the STA conditions it imposed in its recent *Arohi* decision.²⁴ Specifically, WKNG seeks an independent engineer to review the construction and operation of the Station's STA facilities; the immediate cessation of operations and automatic termination of the STA if unresolved interference occurs; and the automatic termination of the STA if Cumulus fails to apply for a construction permit with facilities substantially similar to the STA Application.²⁵ Alternatively, WKNG continues to object to the STA Application and reiterates

¹⁶ Cumulus states that on August 20, 2018, DBC, licensee of W229AG filed a request "that the Commission withhold processing the STA request until DBC had been afforded an opportunity to review a supplemental engineering statement provided by Cumulus" *Id.* at note 4.

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 5 and note 6 (citing File Nos. BLED-20120806AAA for Station WNCH(FM); BMLED-20120821ABT for Station WVBR; and BMLED-20120912AAU for WHDQ).

¹⁹ *Id.* at 8-19.

²⁰ *Id.* at 19.

²¹ Reply at 2. WKNG reports that DBC, licensee of the collocated station W229AG filed an objection to the STA, but does not provide any information about said filing. *Id.* at note 1. Furthermore, we have no record of any objection filed by DBC. *See infra* note 34.

²² *See supra* note 4.

²³ *See* Reply at 3, Exh. A, *Cumulus Licensing, LLC*, Memorandum Opinion and Order, DA 18-924 (OGC, rel. Sep. 7, 2018) (admonishing Cumulus for violation of the Commission's *ex parte* Rules).

²⁴ *Id.* Exh. B, "Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau to Arohi Media, LLC and Christine McLaughlin, Esq.," 1800B3-IB (Aug. 30, 2018) (*Arohi*).

²⁵ *Id.* at 4.

allegations concerning Cumulus' actions during the previous interference proceedings²⁶ and its failure to provide "informal notice" prior to filing the STA Application. WKNG acknowledges service of the STA Application on August 27, 2018 but notes this was after it filed the Objection.

Discussion. Informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of the application would be *prima facie* inconsistent with the public interest.²⁷ We find, as discussed below, that WKNG has raised no such facts and that grant of the STA Application, as conditioned herein, will serve the public interest.

The Communications Act of 1934, as amended (Act) permits the Commission to grant STA, upon proper application therefor, in extraordinary circumstances requiring temporary operations in the public interest.²⁸ In similar circumstances, the Bureau found that grant of a rule compliant STA was warranted to return a silent translator station to the air with temporary facilities after authorized facilities caused interference to a primary station.²⁹

Initially, the Rules do not require consultation with WKNG prior to Cumulus' filing of the STA Application, nor do the Rules require that WKNG be served with a copy of the STA Application. In any event, the Commission placed the STA Application on *Public Notice* twice, WKNG lodged an objection to the STA Application, and we are considering that objection here. WKNG therefore was not prejudiced by Cumulus' failure to serve it with a copy of the STA Application.³⁰

Our own independent engineering analysis of the STA Application reveals that the facilities proposed in the STA Application are unlikely to cause harmful interference to WWGA. Indeed, WKNG acknowledges that the facilities proposed in the STA Application "might be acceptable."³¹ Here, the Station will reduce ERP from .25 kW to .18kW.³² Moreover, in reaching our engineering determination, we specifically examined the locations of the complainants in the previous interference proceeding and find a limited likelihood of interference from the proposed STA facilities at those locations.³³ We also expect that the proposed STA facilities will not cause harmful interference to collocated stations

²⁶ *Id.* at 4-7.

²⁷ See 47 U.S.C. § 309(d)(1); *Astroline Comm'cns Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

²⁸ See 47 U.S.C. § 309(f). There is no specific provision within Part 74 of the Rules pertaining to STA requests by FM translators. The staff's practice is to consider such requests under the same standards applicable to full service broadcast stations, *i.e.*, the Section 73.1635 requirement to describe the proposed operations and the necessity therefor. See 47 CFR § 73.1635(a)(2); *see, e.g., Infinity Radio Holdings, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 14099 n.7 (MB 2006).

²⁹ See *e.g. Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722 (MB 2013).

³⁰ See, *e.g. RJM Communications*, Letter Order, 21 FCC Rcd 7890, 7891 n.7 (MB 2006) (party not prejudiced by failure to serve).

³¹ Reply at 2.

³² Additionally, Cumulus, states that the proposed STA facilities will reduce the Station's licensed 250 wattage to WWGA to "eight (8) watts (260 and 270 degrees) and 34 watts in the azimuths most pertinent to WWGA." STA Application, Exh. 12, at note 1.

³³ See *Letter Decision* at note 10.

W229AG³⁴ and W250BC and will reduce contour overlap to certain other stations.³⁵

We find WKNG's arguments against grant of the STA Application to be erroneous or not germane to the STA Application. We reject WKNG's assertion that the STA Application lacks required technical information.³⁶ The Bureau routinely issues construction permits without requiring prior transmission system specifics, and the STA Application here contains adequate technical information to permit the staff to evaluate the proposal. As with any STA Application, we expect Cumulus to construct and operate the facilities as authorized, including, but not limited to the antenna location, maximum ERP, and directional antenna pattern. We also find that Cumulus's purported "bad faith" in the petitioned interference proceeding does not involve the instant proceeding and, therefore, is irrelevant.

We also reject WKNG's request for certain conditions to be imposed on the grant of the STA Application. Because we have concluded, based on our independent engineering review, that the proposed STA facilities should not cause harmful interference to WWGA, we find prior joint testing unnecessary. We also find the *Arohi* decision to be inapposite to Cumulus. In *Arohi*, the translator station voluntarily pledged to retain an independent engineer to oversee its STA facilities and to discontinue operations if interference occurred.³⁷ More importantly, the Bureau found that the requested STA "likely would continue to cause interference [to certain listeners] . . ."³⁸ In contrast, here we have found that Cumulus's STA Application should not cause inference to WWGA(FM).

Nevertheless, we are mindful of the history of the previous interference proceeding, wherein Cumulus failed to resolve interference caused to WWGA(FM).³⁹ Therefore, we will limit the duration of the proposed STA facilities to 90 days. We also do not anticipate extension of the STA, absent an application for modification filed by Cumulus to permanently implement the STA facilities. If, however, the Station's STA facilities cause interference to WWGA(FM), then we expect Cumulus to promptly address the inference and the parties to work in good faith to resolve said interference prior to submitting further filings to the Commission. If, however, the parties are unable to resolve the new interference, then we will require the Station to cease operations and will address the Petitions in the interference proceeding.

Conclusion. Accordingly, IT IS ORDERED that the Informal Objection, filed on August 20, 2018, and amended on August 21, 2018, by WKNG, LLC IS DENIED.

³⁴ On October 5, 2018, DBC counsel emailed Commission personnel to "request that the Commission withhold processing of the STA application until Cumulus could provide reasonable assurances to DBC that W229AG's operations would not be affected by the proposed changes to the shared antenna." *Email from Charles Natftalin, Esq. to Albert Shuldiner, Chief, Audio Division et al.* (dated Oct. 5, 2018). The Commission's Rules do not recognize a "withhold processing request" submitted *via* email. If DBC wished to participate in the STA proceeding it could have filed an Informal Objection to the STA Application. *See* 47 CFR § 73.3587. To date, however, DBC has not done so. Therefore, we are acting on the STA Application herein.

³⁵ Specifically, LPFM Stations WMKP-LP and WIEH-LP.

³⁶ *See supra* note 9.

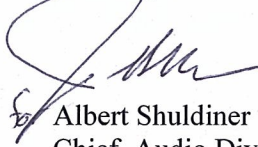
³⁷ *Arohi* at 4.

³⁸ *Id.* at 6.

³⁹ *See supra* note 4.

IT IS FURTHER ORDERED that the Request for Special Temporary Authority filed on August 10, 2018, by Cumulus Licensee, LLC (File No. BSTA-20180810ABA) by Cumulus Licensee, LLC) to resume operations of FM Translator station W255CJ, Atlanta, Georgia with temporary, reduced power facilities IS GRANTED for a term expiring 90 days from the date of this decision.

Sincerely,

A handwritten signature in dark ink, appearing to read 'A. Shuldiner', is written over a horizontal line.

Albert Shuldiner
Chief, Audio Division
Media Bureau