



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

December 12, 2019

In Reply Refer to:
1800B3-AR

Hispanic Family Christian Network, Inc.
c/o Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

Lazer Licenses, LLC
c/o Kathleen Victory, Esq.
Keenan P. Adamchak, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th St., 11th Floor
Arlington, VA 22209-1104

In re: K229DD, San Francisco, CA
File No. BLFT-20170519AAW
Facility ID No. 144139

Second Petition for Reconsideration

Dear Counsel:

We have before us the Petition for Further Reconsideration (Second Petition) filed on August 21, 2019, by Hispanic Family Christian Network, Inc. (HFCN or Petitioner).¹ HFCN seeks reconsideration of the July 22, 2019 Decision² (Reconsideration Decision) denying HFCN's first petition for reconsideration of the Media Bureau's (Bureau) March 25, 2019 letter³ ordering FM Translator Station K229DD, San Francisco, California (K229DD or Station)⁴ to cease operations due to interference caused to Station

¹ HFCN subsequently filed a Supplement to the Second Petition on September 5, 2019.

² See *Letter to Hispanic Family Christian Network, Inc. from Albert Shuldiner, Chief, Audio Division, Media Bureau*, reference 1800B3-KV (dated Jul. 22, 2019) (*Reconsideration Decision*).

³ See *Letter to Hispanic Family Christian Network, Inc. from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau*, reference 1800B3-KV (dated Mar. 25, 2019) (*Initial Decision*).

⁴ The Station is a translator for Station KVTO(AM), Berkley, California, licensed to Pham Radio Communication, LLC.

KXZM(FM), Felton, California, licensed to Lazer Licenses, LLC (Lazer).⁵ For the reasons discussed below, we dismiss the Second Petition for Reconsideration on procedural grounds as repetitious.

Background. On May 19, 2017, HFCN filed an application for license (License Application) to cover a construction permit for a move of the Station to Channel 229 at San Francisco, California.⁶ On July 11, 2017, Lazer filed a timely objection to the License Application, alleging that K229DD was interfering with the reception of Station KXZM(FM), and included multiple listener complaints.⁷ On August 28, 2017, the Bureau ordered HFCN to address the listener Complaints.⁸

On March 25, 2019, the Bureau ordered K229DD to cease operations because HFCN had failed to resolve interference caused to listeners Adriana (Torres), Isain (Pena), and Christopher (Zarate)⁹ and cautioned against engaging in behavior designed to intimidate or harass complainants.¹⁰

On April 24, 2019, HFCN filed a Petition for Reconsideration (First Petition). HFCN argued that the Torres, Pena, and Zarate Complaints were resolved because the Station's antenna was relocated in November 2017 and the listeners were unresponsive when HFCN attempted to contact them.¹¹ In its Opposition¹² to the First Petition, Lazer claimed the Complaints remained unresolved and also submitted or referenced three previously unsubmitted evidentiary documents, the Puente Complaint, the 2018 Zarate Complaint, and the 2019 Zarate and Pena Declarations. In its Reply,¹³ HFCN argued the new documents should not be considered because they were not timely submitted.

On July 22, 2019, the Bureau issued the *Reconsideration Decision* denying HFCN's Petition for Reconsideration. The Bureau found that, although the evidence submitted by the parties was not timely presented to the Commission, the Bureau found it was in the public interest to consider the parties' new information concerning the Torres, Pena, and Zarate Complaints.¹⁴ The Torres Complaint was determined resolved due to Torres' failure to cooperate after HFCN's evidenced attempts.¹⁵ The Bureau found that the Pena and Zarate Complaints remained unresolved because as recently as May 2019, they submitted sworn declarations stating that interference continued until the Station ceased operations and affirming their willingness to participate in the interference remediation process.¹⁶ Lastly, the Bureau

⁵ Also before us are Lazer's "Opposition to Petition for Further Reconsideration" (Second Opposition) filed on September 12, 2019, and HFCN's "Reply to Opposition to Petition for Further Reconsideration" (Second Reply) filed on September 20, 2019.

⁶ The License Application covers the construction permit (File No. BMPFT-20160920ACP) granted on November 21, 2016.

⁷ First Objection filed July 11, 2017.

⁸ See *Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau to Hispanic Family Christian Network, Inc.* (dated Aug. 28, 2017).

⁹ The Bureau also found that certain of the complaints were resolved. *Id.* at 9.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 3-8.

¹² First Opposition filed May 7, 2019.

¹³ First Reply filed May 20, 2019.

¹⁴ Reconsideration Decision at 6.

¹⁵ *Id.* at 7.

¹⁶ *Id.*

rejected HFCN's unilateral request,¹⁷ submitted on reconsideration, for joint interference testing, because both parties had not agreed to joint testing.¹⁸

HFCN filed its Second Petition for Reconsideration on August 21, 2019, and its Supplement to the Second Petition on September 5, 2019. HFCN reiterates its arguments from previous pleadings that it should be allowed to resume Station operations immediately, and the Complaints considered resolved, because both Pena and Zarate have been uncooperative and uncommunicative.¹⁹ HFCN also argues that the recently-issued amended Commission requirements for FM translator complaints should apply to this matter, and moreover, under the 2019 Report and Order criteria, the Pena and Zarate Complaints should be found deficient.²⁰ HFCN asserts that the past decisions in this case are not yet "final" and remain pending, so the amended requirements that became effective after the Reconsideration Decision should apply.²¹

With respect to the Pena Complaint, in the Supplement to the Second Petition, HFCN submits a declaration from its engineer, Mr. Arbona, that Mr. Pena stated on August 29, 2019 that he is no longer willing to participate in this matter.²² Regarding the Zarate Complaint, HFCN admitted that Mr. Arbona has spoken with Mr. Zarate as recently as August 6, 2019.²³

In the Second Opposition, Lazer counters that HFCN's "Further Reconsideration Petition" is procedurally defective under section 1.106(k)(3) of the Commission's rules (Rules)²⁴ and should be dismissed because it raises arguments previously dismissed by the Commission.²⁵

In the Second Reply, HFCN responds that because the Bureau considered new evidence provided by Lazer in its First Opposition, the Bureau made a new determination that is eligible for reconsideration.²⁶ HFCN also reiterates that Pena and Zarate are unwilling to cooperate and Lazer has not provided evidence to the contrary.²⁷ Lastly, HFCN maintains that it has resolved all of the outstanding interference Complaints because its attempts to work with Pena and Zarate have been fruitless.²⁸

Discussion. We dismiss the Second Petition procedurally under section 1.106(k)(3) of the Rules and section 405 of the Communications Act, which provide that a petition for reconsideration of an order

¹⁷ 47 CFR § 74.1203(b) permits HFCN to conduct "short test transmissions . . . to check for the efficacy of remedial measures."

¹⁸ We also affirmed the Bureau's initial determination that it is unnecessary to review allegations concerning whether the Station's operations under the relocated antenna was authorized as the Station remains off the air.

¹⁹ Second Petition at 3-13.

²⁰ See *In the Matter of Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457, paras. 7, 17, and 36 (2019) (2019 Report and Order) (requiring more specificity and additional detail in listener complaints to be considered valid). This Report and Order became effective on August 13, 2019. See *Effective Date of Amended Rules for FM Translator Interference*, Public Notice, DA 19-741 (Aug. 5, 2019). Second Petition at 4, 7, and 12.

²¹ Second Petition at 4.

²² Supplement to the Second Petition at 2 Attach. 1 Sept. 2019 Arbona Decl.

²³ Second Petition at 9-11 and Attach. 1 Aug. 2019 Arbona Decl.

²⁴ 47 CFR § 1.106(k)(3) (a petition for reconsideration of an order which has previously been denied on reconsideration may be dismissed as repetitious)

²⁵ Second Opposition at 4.

²⁶ Second Reply at 2.

²⁷ *Id.* at 3-4.

²⁸ *Id.* at 5.

which has been previously denied on reconsideration may be dismissed by the staff as repetitious.²⁹ The Rules do not authorize serial petitions for reconsideration and limit the circumstances under which a party may seek reconsideration of an order denying reconsideration.³⁰ An order is only subject to review if the order on a petition for reconsideration modifies the original order, and a ruling which denies a petition for reconsideration is not considered a modification of the original order.³¹

We disagree with HFCN's argument that the 2019 Report and Order should apply to this matter because the Reconsideration Order was not "final" when the amended rules took effect.³² This case was disposed of on March 25, 2019, well before the amended FM translator rules took effect.³³ Thus, we dismiss the Second Petition as repetitious.³⁴

Even were we to consider the merits of the Second Petition, we would deny it. HFCN maintains the same argument from the prior pleadings that the remaining Complaints, Pena and Zarate, should be considered resolved due to lack of communication. We previously held in the Reconsideration Order that both parties submitted sworn declarations dated May 2019 that the interference continued until the Station ceased operations.³⁵ Based on those declarations, we concluded the November 2017 antenna relocation did not solve the interference.³⁶ The Second Petition does not contain any evidence of testing or technical updates to the Station's antenna or tower site that would eliminate the interference Pena and Zarate experienced.³⁷ Even if we accept HFCN's assertion that the Pena Complaint is resolved per Mr. Arbona's September 2019 Declaration attesting that Mr. Pena is no longer willing to participate in this process,³⁸ the Zarate Complaint remains unresolved and HFCN has not demonstrated that it has remedied the actual frequency interference to Station KXZM(FM)'s signal.

²⁹ 47 CFR § 1.106(k)(3); 47 USC § 405; *Scott R. Flick, Esq. Christine A. Reilly, Esq. Paul G. Madison, Esq.*, Order on Reconsideration, 25 FCC Rcd 13725, 13727 (2010); *In the Matter of Entercom License, LLC*, 33 FCC Rcd 4605 para. 4 (2018). See also *A.G.P., Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 4628, 4629 (1996); *Iolaa Broadcasting Company*, Memorandum Opinion and Order, 2 FCC 2d 439 (1966) (it is not in the interests of orderly procedure to permit repeated petitions for reconsideration).

³⁰ See *Great Lakes Broadcast Academy, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 11655, 11656, para. 5 (2004) (stating that "neither [the Communications Act of 1934, as amended, nor the Commission's rules] provides for the filing of a second petition for reconsideration should the original petition be denied" and that "[i]f the 'tacking' of petitions were permitted, Commission actions might never become final and the rule would become nugatory.")

³¹ *Id.*

³² Second Petition at 4.

³³ The matter was then affirmed when the July 22, 2019 Reconsideration Order denying the First Petition was announced in the July 25, 2019 *Public Notice*. See *Broadcast Actions*, Public Notice, Report No. 29536 (Jul. 25, 2019). HFCN's argument is contradicted by the 2019 Report and Order, which explicitly instructed the amended rules would only apply to future cases. 2019 Report and Order, 34 FCC Rcd 3457, para. 49 (2019) (specifying that "[a]pplications or complaints that have not been acted upon as of the effective date of the rules adopted in this Report and Order will be decided based on the new rules").

³⁴ See *In the Matter of Assignment of Call Sign KCTI-MF Sun Radio Found., Licensee of KCTI-FM, Gonzales, Texas*, 32 FCC RCD 7676, para. 4 (2017).

³⁵ Reconsideration Order at 7.

³⁶ *Id.*

³⁷ We also reiterate that, per 47 CFR § 74.1203(b), HFCN is permitted to conduct short test transmissions . . . to check for the efficacy of remedial measures, see note 17, *supra*, but HFCN has not provided any evidence of such measures.

³⁸ Supplement to the Second Petition at 2 Attach. 1 Sept. 2019 Arbona Decl.

Conclusion. Based on the above, IT IS ORDERED, that the Second Petition for Reconsideration filed by Hispanic Family Christian Network, Inc, on August 21, 2019, IS DISMISSED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Al Sh", followed by a long horizontal flourish.

Albert Shuldiner
Chief, Audio Division
Media Bureau