



Federal Communications Commission
Washington, D.C. 20554

July 26, 2018

In Reply Refer to:
1800B3-ATS

Ms. Jennifer Karr
4810 Browns Creek Road
Saint Albans, WV 25177

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In re: **West Virginia Radio Corporation of
Charleston**
FM Translator Station W294CL,
Charleston, WV
File No. BNPFT-20171201ADL,
BLFT-20180510AAO
Facility ID No. 201510

**Petition for Reconsideration and
Petition to Deny**

Dear Ms. Karr and Counsel:

We have before us: 1) the Petition for Reconsideration (Permit Petition) filed by Jennifer Karr (Karr), seeking reconsideration of the grant of the application (Permit Application) of West Virginia Radio Corporation of Charleston (WVRCC), for a construction permit for a new FM translator station (Translator) at Charleston, West Virginia (Permit); 2) the license to cover application filed by WVRCC for the Translator (License Application); and 3) the Petition to Deny (License Petition) filed by Karr against the License Application.¹ For the reasons discussed below, we dismiss the Permit Petition, deny the License Petition, and grant the License Application.

Background. WVRCC filed the Permit Application on December 1, 2017, seeking authorization to construct a cross service FM translator station to rebroadcast Station WSWW(AM), Charleston, West Virginia. Karr filed a Petition to Deny the Permit Application, claiming that the Translator would cause interference to listeners of Station WAXE-LP, Saint Albans, West Virginia, which operates on a first-adjacent channel to the Translator and is licensed to Coal Mountain Broadcasting, of which Karr is President. Accordingly, the Petition to Deny requested the dismissal of the Permit Application pursuant to Section 74.1204(f) of the FCC's rules (Rules).² Because the Petition to Deny was not supported by a listener statement, the Media Bureau (Bureau) denied the Petition to Deny and granted the Permit Application.³

In the Permit Petition, Karr again argues that the Translator will cause interference to listeners of WAXE-LP, and provides, for the first time, a listener statement from Mary A. Grinnan.⁴ Karr states that

¹ Karr filed the Permit Petition on April 4, 2018. WVRCC filed an Opposition on April 19, 2018. Karr filed a Reply on May 2, 2018. Karr filed the License Petition on May 15, 2018.

² Petition to Deny at 1-2 (citing 47 CFR § 74.1204(f)).

³ *West Virginia Radio Corporation of Charleston*, Letter Order (MB Feb. 28, 2018).

⁴ Permit Petition at Exh. 1 (Grinnan Statement).

Grinnan resides “within the [] 50 dBμ radius of WAXE-LP’s transmitter site.”⁵ Accordingly, Karr requests that the Bureau rescind the grant of the Permit Application.

In the Opposition, WVRCC argues that the Translator will not interfere with WAXE-LP, and provides an Engineering Statement showing that the signal of WAXE-LP is weak at Grinnan’s residence.⁶ WVRCC further argues that Karr has not complied with the requirements of Section 74.1204(f) because she does not provide names and addresses of each affected listener aside from herself and Grinnan. WVRCC further notes that Karr’s argument that the listeners reside within the WAXE-LP 50 dBμ contour is misplaced because the Commission requires that these listeners reside within the 60 dBμ contour of the interfering translator.⁷ Finally, WVRCC avers that the Permit Petition is defective because it relies on the Grinnan Statement, which Karr did not submit earlier in the proceeding and fails to explain why it failed to do so.⁸

In the Reply, Karr states that “WVRCC is seeking a 250-watt translator that it only intends to operate at 99 watts” and reasons that this is because WVRCC intends to use the Translator to “drown-out other radio stations such as WAXE-LP.”⁹ Karr also notes that WVRCC is the licensee of several stations in the Charleston area and argues that WVRCC does not need the Translator in the area, and that the Translator would not inference with licensed stations if it operated on a different channel.¹⁰

WVRCC filed the License Application on May 10, 2018. In the License Petition, Karr repeats her arguments from the Reply that WVRCC is using the Translator as a way to stifle competition in Charleston and that the Translator would cause interference to listeners of WAXE-LP in violation of Section 74.1204(f).¹¹ WVRCC did not file a response to the License Petition.

Discussion. *Permit Petition.* The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.¹²

Karr attempts to introduce the Grinnan Statement for the first time in the Permit Petition. Karr has provided no explanation why she did not provide this statement earlier. It is axiomatic that an adjudicatory process cannot operate efficiently or accurately if a party does not participate in a proceeding but is permitted to “sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence.”¹³ As such, we will dismiss the Petition as procedurally defective.¹⁴

⁵ *Id.* at 2.

⁶ Opposition at 3-4 and Engineering Statement.

⁷ *Id.* at 5-6.

⁸ *Id.* at 7-9.

⁹ Reply at 1.

¹⁰ *Id.* at 2.

¹¹ License Petition at 1-2.

¹² 47 CFR § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum Opinion and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

¹³ *See, e.g., Canyon Area Residents for the Env't*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)).

¹⁴ *See, e.g., Lake City Lighthouse, Inc.*, Letter Order, 28 FCC Rcd 411, 413 (MB 2013) (dismissing petition for reconsideration that raised arguments which could have been raised earlier); *CCBL Broad. Licenses*, Letter Order, 23 FCC Rcd 4526, 4828 (MB 2008) (same).

Moreover, were we to consider the Permit Petition, we would deny it. In promulgating Section 74.1204(f), 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.”¹⁵ To provide “convincing evidence” under Section 74.1204(f) that grant of the translator construction permit “will result in interference to the reception” of an existing radio station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBμ contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person, in fact, listens to the specified radio station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.¹⁶ The Commission has stated that “[t]he best method, of course, is to plot the specific [listener] addresses on a map depicting the translator station's 60 dBμ contour.”¹⁷

Karr has again failed to follow this protocol in the Permit Petition. Karr's repeated assertions that Grinnan resides within the 50 dBμ contour of WAXE-LP are misplaced because she has not demonstrated that Grinnan resides within the 60 dBμ contour of the Translator, nor has Karr provided an engineering exhibit showing that Grinnan is likely to receive interference at her residence. Karr has again failed to meet the requirements of Section 74.1204(f), and we would thus deny the Permit Petition were we to consider it.¹⁸

License Petition. 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, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.²⁰ Karr has not met that standard with regard to the License Application.

We reject the argument raised in the License Petition that WVRCC is using the Translator to stifle competition in the Charleston area. Karr provides no evidence in support of this argument, nor has she shown that WVRCC is violating either the Act or any FCC rule with regard to the Translator. Moreover, we reject Karr's argument that the Translator violates Section 74.1204(f) for the reason stated above—Karr has failed to provide the information required by the Commission to support such an allegation. Accordingly, we deny the License Petition and grant the License Application.

¹⁵ See *Ass'n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6, para. 10 (2004) (*ACE*) (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)).

¹⁶ *ACE*, 19 FCC Rcd at 12687, para. 13.

¹⁷ *Id.* n.30.

¹⁸ We remind the parties that WVRCC is required to comply with Section 74.1203(a)(1) of the Rules and will be required to cease operation of the Translator if it causes actual interference to any listeners of WAXE-LP. See 47 CFR § 74.1203(a)(1).

¹⁹ 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 Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed by Jennifer Karr on April 4, 2018, IS DISMISSED.

IT IS FURTHER ORDERED that the Petition to Deny filed by Jennifer Karr on May 15, 2018, IS DENIED.

IT IS FURTHER ORDERED that the license to cover application for FM translator station W294CL, Charleston, West Virginia (File No. BLFT-20180510AAO) IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Shuldiner", with a stylized flourish at the end.

Albert Shuldiner
Chief, Audio Division
Media Bureau