



Federal Communications Commission
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In Reply Refer to:
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In re: HBI Radio Bemidji, LLC
K235BP, Bemidji, Minnesota
Facility ID No. 152419
File No. BPFT-20161027ACT

**Petition for Reconsideration and
Informal Objection**

Dear Counsel:

We have before us: 1) the Petition for Reconsideration (Petition) filed by HBI Radio Bemidji, LLC (HBI), seeking *nunc pro tunc* reinstatement of its application (Application) for a construction permit to modify the facilities of FM Translator Station K235BP, Bemidji, Minnesota (Translator); and 2) the Informal Objection (Joint Objection) to the Application filed by Thomas-Dale District 7 Planning Council (Thomas-Dale) and Jeff Sibert (Sibert) (collectively, Objectors).¹ For the reasons set forth below, we deny the Objection, grant the Petition, reinstate the Application, and grant the Application.

Background. HBI filed the Application on October 27, 2016, seeking to relocate the Translator to Minneapolis, change its frequency to Channel 231, and rebroadcast Station KSPT(AM), St. Paul, Minnesota. Sibert filed an Informal Objection on October 31, 2016, and Thomas-Dale filed an Informal Objection on December 16, 2016 (Thomas-Dale Objection). The Thomas-Dale Objection alleged that the Translator, as modified by the Application, would cause interference to listeners of Station WFNU-LP, Saint Paul, Minnesota, which is licensed to Thomas-Dale. Based on the Thomas-Dale Objection, the Bureau dismissed the Application on July 5, 2017, because the Application would cause predicted interference to three listeners of WFNU-LP in violation of Section 74.1204(f) of the FCC's Rules (Rules).²

¹ HBI filed the Petition on July 18, 2017. The Objectors filed the Joint Objection on August 21, 2017. HBI filed an Opposition on September 5, 2017.

² *HBI Radio Bemidji, LLC*, Letter Order (MB Jul. 5, 2017) (*Dismissal Letter*) (citing 47 CFR § 74.1204(f)).

HBI filed the Petition on July 18, 2017, seeking *nunc pro tunc* reinstatement of the Application, and also filed a curative amendment (July Amendment) that reduced the Translator's ERP from 10 watts to 2 watts, which HBI states will eliminate predicted interference to listeners of WFNU-LP.³

In the Joint Objection, the Objectors argue that the July Amendment would still cause interference to the three listeners of WFNU-LP identified in the *Dismissal Letter*.⁴ The Objectors also argue that HBI was advised that it could operate the Translator on Channel 285 and at a different orientation without causing interference to WNFU-LP.⁵ Finally, the Objectors argue that grant of the Application will not service the public interest because of the potential harm to WNFU-LP outweighs the potential benefit to KSPT.

In the Opposition, HBI states that it although it disagrees with the argument that the July Amendment could cause interference to WNFU-LP listeners, it has concurrently filed an amendment (September Amendment) to the Application that further directionalizes the Translator's proposed antenna pattern to ensure there would be no interference to listeners of WFNU-LP.⁶ HBI also notes that the Joint Objectors' proposed channel was not feasible, and further notes that KSPT listeners experience significant difficulty receiving the station in the Translator's proposed service area.⁷ Thomas-Dale and Sibert did not file a Reply to the Opposition or oppose the September Amendment.

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended,⁸ 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.⁹

The Joint Objectors have not identified any predicted interference in violation of Section 74.1204(f) of the Rules following the filing of the September Amendment.¹⁰ 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."¹¹ 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 dB μ contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the

³ Petition at 2.

⁴ Joint Objection at 2-3

⁵ *Id.* at 3.

⁶ Opposition at 2-3.

⁷ *Id.* at 3.

⁸ 47 U.S.C. § 309(d).

⁹ 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).

¹⁰ 47 CFR § 74.1240(f).

¹¹ See *Association for Cmty. Educ.*, 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)).

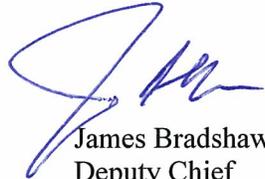
person, in fact, listens to the specified radio station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.¹² The Commission has stated that “[t]he best method, of course, is to plot the specific [listener] addresses on a map depicting the translator station's 60 dBμ contour.”¹³ Moreover, the Bureau has reviewed the September Amendment and determined that none of the listeners identified in the Thomas-Dale Objection or the Joint Objection reside within the 60 dBμ contour of the Translator. Accordingly, we will deny the Objection, grant the Petition, reinstate the Application as amended by the September Amendment, and grant the Application.

Conclusion/Actions. For these reasons, IT IS ORDERED that the Informal Objection filed by Thomas-Dale District 7 Planning Council and Jeff Sibert on August 21, 2017, IS DENIED.

IT IS FURTHER ORDERED that the Petition for Reconsideration filed by HBI Radio Bemidji, LLC, on July 17, 2017, IS GRANTED.

IT IS FURTHER ORDERED that the application filed by HBI Radio Bemidji, LLC, for a construction permit to modify its facilities for FM Translator Station K235BP, Bemidji, Minnesota (File No. BPFT-20161027ACT) IS GRANTED.

Sincerely,



James Bradshaw
Deputy Chief
Audio Division
Media Bureau

¹² *ACE*, 19 FCC Rcd at 12687, para. 13.

¹³ *Id.* n.30.