



Federal Communications Commission
Washington, D.C. 20554

September 8, 2022

In Reply Refer To:
1800B3-KV

Mountain Community Translators, LLC
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Cheyenne, WY 82001

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In re: K243BN, Laveen, AZ
Facility ID No. 92373
Application File Nos. BLFT-
20171211AAV, 0000125254, and
0000143329

**Interference Complaint, Petition for
Reconsideration, and Informal
Objection**

Dear Counsel and Licensee:

We have before us: (1) an “Interference Complaint and Request for Immediate Suspension of Operations” (2020 Complaint) filed on July 2, 2020, and supplemented on April 12, 2021, by 1TV.com,¹ Inc. (1TV), alleging that FM Translator K243BN (K243BN or Translator),² as licensed with 250 watts Effective Radiated Power (ERP) on channel 243 at Laveen, Arizona,³ is causing harmful interference to the direct reception by the public of the off-the-air signal of KIKO-FM;⁴ (2) a Petition for

¹ 1TV is the licensee of Station KIKO-FM, Claypool, Arizona (KIKO-FM or Complaining Station).

² K243BN is licensed to Mountain Community Translators, LLC (MCT or Licensee).

³ Application File No. BLFT-20171211AAV, granted December 18, 2017 (2017 License). *See Broadcast Actions*, Public Notice, Report No. 49137, at 12 (MB Dec. 21, 2017).

⁴ Complaint of 1TV, Application File No. BLFT-20171211AAV (rec’d July 2, 2020) (2020 Complaint), and a Supplement of 1TV, Application File No. BLFT-20171211AAV (rec’d Apr. 12, 2021) (2021 Complaint Supplement).

Reconsideration (2021 Permit Petition) filed on April 23, 2021, and a supplement filed on July 5, 2022, by 1TV requesting that the Media Bureau (Bureau) rescind MCT's construction permit, issued on March 29, 2021,⁵ because the permitted facilities will purportedly cause harmful interference to certain KIKO-FM listeners;⁶ and (3) an Informal Objection (2021 License Application Objection) filed on April 23, 2021, by 1TV requesting that the Bureau deny MCT's application for a license to cover the permitted facilities, filed on April 12, 2021,⁷ because 1TV alleges K243BN will cause harmful interference to certain KIKO-FM listeners.⁸

For the reasons set out below, **we order MCT to submit to the Bureau, within 60 days of this letter, either: (1) the jointly agreed upon interference tests concerning whether K243BN's operations as specified in the 2021 License Application cause harmful interference to certain KIKO-FM listeners, detailed herein; or (2) the interference test results of the parties' mutually agreed upon independent engineer concerning whether K243BN's operations as specified in the 2021 License Application cause harmful interference to certain KIKO-FM listeners, as detailed herein.**

Background. *2017 License.* On July 20, 2020, 1TV filed the 2020 Complaint alleging, per section 74.1203(a)(3) of the Commission's rules (Rules),⁹ that FM Translator K243BN, operating under the 2017 License with 250 watts ERP on channel 243, was causing harmful interference to certain KIKO-FM listeners.¹⁰ On September 17, 2020, the Bureau found that 1TV's 2020 Complaint was a valid and complete interference claim package with 11 rule-compliant listener complaints reporting harmful interference from K243BN to the direct reception of the off-the-air signal of KIKO-FM, along with the required engineering showings.¹¹ Accordingly, the Bureau directed MCT to file, within 30 days of the

⁵ Application File No. 0000125254, (rec'd Nov. 2, 2020), as amended Nov. 10, 2020, granted on March 29, 2021 (2021 Permit). *See Pleadings*, Public Notice, Report No. PN-3-210331-01, at 1 (MB Mar. 31, 2021). The 2021 Permit grants MCT's minor modification application to reduce K243BN's operations to 1 watt ERP and rotate its directional antenna.

⁶ 2021 Permit Petition of 1TV, Pleading File No. 0000143955 (rec'd Apr. 23, 2021) and a Supplement of 1TV, Pleading File No. 0000194466 (rec'd Jul. 5, 2022) (2021 Permit Petition Supplement). Also, before us are a Reply and Opposition of MCT, Pleading File No. 0000144127 (rec'd Apr. 27, 2021) (2021 Permit Petition Opposition) and a Motion for Expedited Processing of 1TV, Pleading File No. 0000194468 (rec'd Jul. 5, 2022) (Expedited Treatment Motion).

⁷ Application File No. 0000143329, (rec'd April 12, 2021) (2021 License Application). *See Broadcast Applications*, Public Notice, Report No. PN-1-210413-01, at 4 (MB Apr. 13, 2021).

⁸ 2021 License Application Objection of 1TV, Pleading File No. 0000143955 (rec'd Apr. 23, 2021). Also, before us is a Reply and Opposition of MCT, Pleading File No. 0000144137 (rec'd Apr. 27, 2021) (2021 Objection Opposition).

⁹ 47 CFR § 74.1203(a)(3).

¹⁰ *See supra* note 4.

¹¹ *See* Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to Mountain Community Translators, LLC, *et al.*, Application File No. BLFT- 20171211AAV (Sept. 17, 2020) (*Remediation Required Letter*). Specifically, the Bureau found that 1TV had exceeded its required minimum showing of ten rule-compliant listener complaints with 11 rule-compliant complaints from the following complainants: Jayne Burgess (Burgess); Thomas Cammarata (Cammarata); Thomas E. Davis (T.E. Davis); Thomas Davis (T. Davis); Susan Holley (Holley); Edward Hooten (E. Hooten); Jamie Hooten (J. Hooten); Ryan Hooten (R. Hooten); Terri Hooten (T. Hooten); Rachel Hudgens (Hudgens); Jeffrey J. McDonald (McDonald); Linda S. Moore (Moore); Terry L. Pyle (Pyle); Danielle O'Neal (O'Neal); Laura L. Robinson (Robinson); and Jeydi Sanchez (Sanchez). *Id.* at 2 & n.17. Collectively, these listener complainants will be referred to as the Complainants (Complainants). Because several of

Remediation Required Letter, a plan to resolve the interference to the Complainants or evidence demonstrating that the 2020 Complaint was not a valid and complete interference claim package.¹² The Bureau further directed MCT to submit, within 60 days of filing a timely interference remediation plan (if one was filed), certain specific evidence demonstrating that the interference was resolved.¹³ The Bureau cautioned MCT that “[f]ailure to comply with the remediation timeline may result in K243BN being ordered to cease operations.”¹⁴

On September 18, 2020, MCT filed a response stating that it planned to eliminate the interference to the Complainants by filing an application for “minor” modification of license¹⁵ to relocate K243BN from channel 243 (non-reserved band) to channel 220 (reserved band).¹⁶ On October 9, 2020, the Bureau dismissed MCT’s application as proposing a major change without sufficient justification for a waiver of the Rules.¹⁷

2021 Permit. On November 2, 2020, “because of interference issues with KIKO-FM,” MCT filed an application for minor modification of license¹⁸ proposing to reduce K243BN’s operations from 250 watts to 3 watts ERP and replace the “current one-bay directional antenna with a higher gain Nicom BLK-5 yagi directional antenna.”¹⁹ On November 6, 2020, 1TV objected arguing that MCT’s Permit Application, as originally filed, failed to eliminate the interference experienced by Complainants E. Hooten, Hudgens, and Sanchez.²⁰ 1TV also submitted with the objection two new complaints from listeners Jo Ramsey (Ramsey) and Martin Pryer (Pryer), who 1TV alleged would also experience interference from K243BN.²¹

On November 10, 2020, MCT amended the Permit Application to further reduce K243BN’s operations to 1 watt ERP and rotate the proposed antenna “an additional 10 degrees towards the north or

the Complainants reported multiple interference locations such as home, work and driving, the Bureau noted in a parenthetical the acceptable interference location(s). *Id.*

¹² *Id.* at 3-4.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ Application File No. 0000121878 (rec’d Sep. 18, 2020). *See Broadcast Applications*, Public Notice, Report No. PN-1-200922-01, at 4 (MB Sep. 22, 2020).|

¹⁶ *See* Letter from Victor A. Michael, Jr, Sole Member/Technical Consultant, Mountain Community Translators, LLC, to James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, Application File No. BLFT-20171211AAV (rec’d Sep. 18, 2020) (*Remediation Response*).

¹⁷ *K243BN, Laveen, AZ*, Letter Order, Application File No. 0000121878 (MB Oct. 9, 2020); *see Broadcast Actions*, Public Notice, Report No. PN-2-201014-01, at 1 (Oct. 14, 2020).

¹⁸ Application File No. 0000125254 (rec’d Nov. 2, 2020) (Permit Application). *See Broadcast Applications*, Public Notice, Report No. PN-1-201103-01, at 3 (MB Nov. 3, 2020).|

¹⁹ Technical Statement at 1-2, Permit Application.

²⁰ First Objection of 1TV, Pleading File No. 0000125638 (rec’d Nov. 6, 2020) (First Objection). 1TV also characterized the pleading as a supplement to the 2020 Complaint because of the complaints of listeners Ramsey and Pryer that were submitted with the First Objection. *See id.* at 3. However, as noted in the *Remediation Required Letter*, the Bureau had previously found that the 2020 Complaint was a valid and complete interference claim package, and MCT did not dispute the Bureau’s finding. Thus, supplementation of the 2020 Complaint with additional listener complaints was unnecessary.

²¹ *Id.*

oriented at 330 degrees.”²² On November 24, 2020, 1TV again objected²³ arguing that MCT’s amended Permit Application failed to eliminate interference experienced by Complainants E. Hooten, Hudgens, and Sanchez,²⁴ as well as listener Ramsey, whose complaint was submitted with the previous objection.²⁵

On March 29, 2021, after an independent engineering review, the Bureau found that 1TV had failed to submit the required minimum of ten rule-compliant listener complaints to support a claim of predicted interference against MCT’s Permit Application as required per section 74.1204(f) of the Rules.²⁶ Specifically, the Bureau found that only two listener complainants were predicted to experience interference from K243BN.²⁷ Although the Bureau did not identify the affected complainants, we clarify that Complainants Sanchez and Hudgens were predicted to experience interference from K243BN’s permitted facilities. Therefore, the Bureau dismissed 1TV’s objection and issued the 2021 Permit, as amended.²⁸

On April 23, 2021, 1TV filed a petition for reconsideration arguing that the Bureau erred in granting the 2021 Permit because that grant tacitly waives section 74.1203 of the Rules as MCT failed to resolve the interference experienced by all Complainants cited in the *Remediation Required Letter*.²⁹ Specifically, 1TV asserts that the Bureau’s grant of the 2021 Permit “pursuant to § 74.1204 of the rules concerning predicted interference . . . overlooks . . . the directive [in the *Remediation Required Letter*] to resolve all interference complaints.”³⁰ 1TV further declares that MCT’s Permit Application “was not filed in a vacuum and must be processed consistently and in conjunction with the intended goals of § 74.1203 of the Commission’s rules and the ongoing [2020 Complaint] proceeding.”³¹ Here, 1TV contends, “MCT has utterly failed to make any showing that K243BN’s power reduction [specified in the 2021 Permit] has resolved all verified interference complaints caused by K243BN operations.”³² Lastly, 1TV opines that K243BN has never suspended operations and the interference continues unabated.³³

On April 27, 2021, MCT filed an opposition arguing that the 2021 Permit Petition should be dismissed as meritless because the Bureau did not err in granting the 2021 Permit.³⁴ Specifically, MCT

²² See Technical Statement at 1, Permit Application, as amended.

²³ Second Objection of 1TV, Pleading File No. 0000127135 (rec’d Nov. 24, 2020) (Second Objection). 1TV also characterized the pleading as a supplement to the 2020 Complaint based on the complaints submitted with the First Objection. See *id.* at 3. As stated *supra* note 20, the Bureau had previously found that 1TV had exceeded the minimum number of required listener complaints for the 2020 Complaint, and, therefore, such supplementation with additional listener complaints for the 2020 Complaint was unnecessary.

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ 47 CFR § 74.1204(f). See *K243BN, Laveen, AZ*, Letter Order, Application File No. 0000125254 (MB Mar. 29, 2021) (*2021 Permit Grant Letter*).

²⁷ *Id.* at 2.

²⁸ *Id.*

²⁹ 2021 Permit Petition at 1.

³⁰ *Id.* at 3.

³¹ *Id.* at 2.

³² *Id.*

³³ *Id.* at 3.

³⁴ 2021 Petition Opposition at 6.

contends that the Bureau correctly dismissed 1TV's objection to MCT's Permit Application because the Bureau found that only two Complainants were predicted to receive interference from K243BN under the permitted facilities, which was far less than required minimum of ten listener complaints.³⁵ Lastly, MCT states, "1TV has made no efforts to contact MCT about scheduling 'on-off' tests or lowering its ERP temporarily to address individual listener interference issues."³⁶ Rather, MCT opines, "1TV's only proposed solution is a continued demand for K243BN to cease broadcasting despite K243BN being totally compliant under § 74.1204 in regards to contour overlaps."³⁷

On July 5, 2022, over one year after filing the 2021 Permit Petition, 1TV filed a supplement to the 2021 Permit Petition along with a motion requesting expedited processing of the 2021 Permit Petition.³⁸ In the supplement, 1TV reiterates arguments raised in the 2021 Permit Petition that interference to the over-the-air-reception of KIKO-FM remains unresolved. In support, 1TV attaches 22 new listener complaints, dated between July 6, 2021 and April 26, 2022, complaining of interference to their reception of KIKO-FM.³⁹ Additionally, in the motion, 1TV requests expedited treatment for the 2021 Permit Petition due to the ongoing interference purportedly experienced by certain KIKO-FM listeners as supported by the 22 new listener complaints; in the motion, 1TV does not provide any explanation for submitting the 22 new listener complaints nearly fifteen months after filing the 2021 Permit Petition.⁴⁰ To date, MCT has not responded to 1TV's July 2022 filings.

2020 Complaint Supplement and 2021 License Application. On April 12, 2021, 1TV filed a supplement to the 2020 Complaint requesting that K243BN be ordered to cease operations because the interference to the two Complainants specified in the *Remediation Required Letter* remain unresolved.⁴¹ 1TV further notes that in a March 31, 2021, email the Bureau reminded MCT that it is required to resolve the interference experienced by the all Complainants specified in the *Remediation Required Letter*.⁴²

Also, on April 12, 2021, MCT filed the 2021 License Application to operate K243BN with 1 watt ERP and modify the antenna as specified in the 2021 Permit.⁴³

On April 23, 2021, 1TV filed an objection to the 2021 License Application.⁴⁴ In support, 1TV reiterates arguments that MCT has not resolved the interference experienced by all Complainants as required in the *Remediation Required Letter* and the interference from K243BN remains ongoing.⁴⁵

³⁵ *Id.* at 4.

³⁶ *Id.* at 6.

³⁷ *Id.*

³⁸ *See supra* note 6.

³⁹ *See* 2021 Permit Petition Supplement, New Listener Complaints at 1-23.

⁴⁰ *See* Expedited Treatment Motion at 2.

⁴¹ *See* 2021 Supplement at 3.

⁴² *Id.* at 4. (referencing an Email from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to Vic Michael, Mountain Community Translators, LLC (Mar. 31, 2021, 8:14 AM EST)).

⁴³ *See supra* note 7.

⁴⁴ *See supra* note 8.

⁴⁵ 2021 License Application Objection at 2.

On April 27, 2021, MCT filed an opposition arguing that 1TV's objection fails to raise any legal or technical basis for dismissing the 2021 License Application.⁴⁶ In support, MCT repeats arguments that 1TV: has failed to file the required minimum of ten rule listener complaints; has not contacted MCT to coordinate on-off testing; and has a history of filing "false" interference complaints against FM translators licensed to MCT.⁴⁷

Discussion. Section 74.1203(a) of the Rules prohibits an FM translator station from causing actual interference to "the direct reception by the public of off-the-air signals of any authorized broadcast station or previously authorized secondary station."⁴⁸ The Commission has interpreted "direct reception by the public" to limit actionable complaints to those that are made by *bona fide* listeners.⁴⁹ Upon receipt of an interference claim package from a complaining station alleging that an FM translator is causing interference to the direct reception by the public of the complaining station's over-the-air signal, the Bureau reviews the contents to determine if it is a valid and complete interference claim package.⁵⁰ If the Bureau determines that it is a valid and complete interference claim package, the Bureau issues a letter directing the translator to submit, within specified time period, a remediation plan or contest the validity or completeness of the interference claim package.⁵¹

In the *Remediation Required Letter*, we found 1TV's 2020 Complaint to be a valid and complete interference claim package.⁵² In light of this finding, the burden in the 2020 Complaint proceeding then shifted to MCT. Accordingly, we directed MCT to file within 30 days a plan to resolve the interference to the Complainants or information demonstrating that the 2020 Complaint was not a valid and complete interference claim package.⁵³ We further directed MCT to submit, within 60 days of filing a timely interference remediation plan (if one is filed), certain specific evidence demonstrating that the interference was resolved.⁵⁴ In particular, we stated, if MCT elected to file a remediation plan, then "MCT must file either (i) the **jointly** agreed upon interference testing results; (ii) the testing results of the parties mutually agreed upon independent engineer; or (iii) the results from MCT's remediation with the 11 referenced listeners if said listeners elect to participate in the remediation process. No unilateral testing results will be considered."⁵⁵

Thus, MCT has the burden to either submit evidence that the 2020 Complaint was not a valid and complete interference claim package or file a remediation plan and demonstrate, as detailed in the *Remediation Required Letter*, that MCT has resolved the interference to all Complainants. Here, MCT does not dispute that 1TV has filed a valid and complete interference claim package with 11 rule-

⁴⁶ 2021 Objection Opposition at 6.

⁴⁷ *Id.* at 5-6.

⁴⁸ 47 CFR § 74.1203(a).

⁴⁹ *See Ass'n for Cmty Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004).

⁵⁰ *See Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457, 3468, para. 21 (2019) (*Translator Interference Order*), *recon. denied*, Order on Reconsideration, 35 FCC Rcd 11561 (2020).

⁵¹ *See Translator Interference Order*, 34 FCC Rcd at 3474, para. 35.

⁵² *See Remediation Required Letter* at 2.

⁵³ *Id.* at 3-4.

⁵⁴ *Id.*

⁵⁵ *Id.* at 3 (footnotes omitted and emphasis original).

compliant complaints. Rather, MCT has elected to remediate the interference caused to the Complainants by seeking to modify K243BN's facilities. Initially, in September 2020, MCT filed, a plan proposing to remediate the interference to the Complainants by filing an application seeking to relocate K243BN from the non-reserved band to the reserved band.⁵⁶ On October 9, 2020, the Bureau dismissed MCT's application as proposing a major change without sufficient justification for a waiver of section 74.1233(a)(1)⁵⁷ of the Rules; MCT did not appeal this dismissal.⁵⁸

Next, although MCT did not file a new remediation plan as directed,⁵⁹ MCT apparently sought to remediate the interference to the Complainants by filing in November 2020, the amended Permit Application, seeking to reduce K234BN's ERP to 1 watt and install a new directional antenna with a minor rotation change.⁶⁰ 1TV objected to MCT's amended Permit Application claiming that it failed to eliminate interference experienced to all Complainants.⁶¹ On March 29, 2021, the Bureau issued the 2021 Permit after finding that while a minimum of ten listener complaints were required to support a predicted interference claim, per section 74.1204(f) of the Rules, only two Complainants, Sanchez and Hudgens, were predicted to experience interference from K243BN's permitted facilities.⁶² Thereafter, on April 12, 2021, MCT filed the 2021 License Application, but MCT did not submit any evidence demonstrating that MCT had resolved the interference to all Complainants specified in in the *Remediation Required Letter*.⁶³

We are therefore unable to find that MCT has remediated the interference to all Complainants as directed in the *Remediation Required Letter*.⁶⁴ In particular, MCT has failed to submit evidence demonstrating that K243N's operations under the 2021 License Application will not cause actual interference, per section 74.1203(a)(3) of the Rules, to the locations identified by Complainants Sanchez and Hudgens as detailed in the *Remediation Required Letter*.⁶⁵ We note that although Complainants Sanchez and Hudgens have stated that they do not wish to participate in the remediation process, MCT and 1TV should have engaged in interference testing at the locations identified by Complainants Sanchez and Hudgens.⁶⁶ Here, although MCT acknowledges that interference testing of K243N's facilities, specified in the 2021 License Application, is required, MCT appears to be waiting on 1TV to initiate said

⁵⁶ See *Remediation Response*.

⁵⁷ 47 CFR § 74.1233(a)(1).

⁵⁸ See *supra* note 17.

⁵⁹ See *Remediation Required Letter* at 3 (requiring MCT to file "a plan to resolve the interference . . .").

⁶⁰ See Technical Statement at 1, Permit Application.

⁶¹ See Second Objection at 3.

⁶² See *2021 Permit Grant Letter* at 2.

⁶³ See *Remediation Required Letter* at 3.

⁶⁴ See *Id*; see also *Translator Interference Order*, 34 FCC Rcd at 3474, para.27 ("[T]ranslator operator must submit data demonstrating that the interference has been resolved by the relevant deadline . . .").

⁶⁵ See *Remediation Required Letter* at note 17.

⁶⁶ See *Id.*; see also *Translator Interference Order*, 34 FCC Rcd at 3474, para.33 ("lack of interference can be demonstrated by on-off tests and/or field strength measurements at the relevant site, provided that they take place in a manner acceptable to both parties.") (footnote omitted).

testing.⁶⁷ However, **both MCT and 1TV are obligated to work together to resolve the interference.**⁶⁸ Because of the factual circumstances presented here, we will extend the remediation deadline, set forth in the *Remediation Required Letter*, and we will afford MCT one final opportunity to provide such evidence as detailed below.⁶⁹

Therefore, we require MCT and 1TV to jointly engage in inference testing or hire a mutually agreed upon independent engineer to determine whether K243BN's operations, specified in the 2021 License Application, cause actual interference to the locations identified by Complainants Sanchez and Hudgens as specified in the *Remediation Required Letter*.⁷⁰ No unilateral testing results will be considered.⁷¹ We further require MCT to submit, within sixty days of this letter, said joint testing results to the Bureau for review. We will withhold further action on the parties' filings discussed herein during the interference testing timeline set forth above.

Conclusion. Accordingly, in light of the foregoing, IT IS ORDERED that within sixty days of this letter, MCT must file either (i) the **jointly** agreed upon interference testing results of the locations identified Complainants Sanchez and Hudgens as specified in the *Remediation Required Letter*; or (ii) the interference testing results of the locations identified Complainants Sanchez and Hudgens as specified in the *Remediation Required Letter* of the parties **mutually agreed** upon independent engineer. We will withhold further action on the parties' filings discussed herein for sixty days of the date of this letter.

Sincerely

James D. Bradshaw
Senior Deputy Chief, Audio Division
Media Bureau

⁶⁷ See 2021 Objection Opposition at 6 (“1TV has made no efforts to contact MCT about scheduling ‘on-off’ tests or lowering its ERP temporarily to address individual listener interference issues.”).

⁶⁸ See *Translator Interference Order*, 34 FCC Rcd at 3474, para.33 (“translator operators and complaining stations must work together to identify whether interference exists and to resolve listener complaints in a mutually acceptable fashion.”).

⁶⁹ See *Translator Interference Order*, 34 FCC Rcd at 3474, para. 35 (extension of the remediation deadline allowed upon explanation by the Bureau).

⁷⁰ See *Remediation Required Letter* at note 17 (“Hudgens (driving) and Sanchez (driving)”).

⁷¹ The Commission opined that “[a]t any point in the process the parties may also agree that interference has been resolved using any mutually acceptable means; however, any contested data may not be unilaterally presented . . . as a remediation showing (or to dispute a remediation showing).” *Translator Interference Order*, 34 FCC Rcd at 3474, para. 33.