

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

In re Application of	)	
	)	
<b>SDK FRANCO LLC</b>	)	File No. 0000142845
	)	Facility ID No. 148239
For Renewal of License	)	
K223CW, Houston, Texas	)	

To: Office of the Secretary  
Attention: Audio Division, Media Bureau

**OPPOSITION TO PETITION TO DENY**

The Petition to Deny (“Petition”) the above-referenced application for license renewal (“Renewal Application”) is yet another salvo in an ongoing harassment campaign being waged by Centro Cristiana de Vida Eterna (“CCVE”) against SDK Franco LLC (“SDK”) and its members. Because the Petition lacks any merit whatsoever, the Commission must dismiss it and grant the Renewal Application.<sup>1</sup> This Opposition is being submitted on behalf of SDK, by its attorney.

Pursuant to Section 309 of the Communications Act of 1934, as amended (“Act”), a petition to deny an application for license renewal must contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with Section 309 of the Act. Indeed, as the Commission previously has stated, “[t]he proper function of a Petition to Deny a license renewal application is to point out conduct of the licensee during the previous license term which raises a substantial and material question of fact as to whether renewal of the license would serve the public interest, convenience or necessity.”<sup>2</sup> The Petition completely

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<sup>1</sup> CCVE also filed a Petition to Deny against SDK’s application for renewal of K287BQ, Houston, Texas (Facility No. 148244). That Petition also fails to state any rational claim as to why that license renewal application should not be granted.

<sup>2</sup> *Regents of the University of California at Davis*, 1985 Lexis 2712 (Mass Media Bur., rel. August 27, 1985), at ¶ 11.

fails to make such a showing.

CCVE actually was the former licensee of the above-captioned FM translator station, K223CW, Houston, Texas (“Station”). Pursuant to File No. BALFT-20200108AAX (“Assignment Application”), CCVE sought Commission consent for the assignment of the Station’s license (and the license associated with K287BQ) to SDK as part of civil divorce proceedings involving the principal of CCVE and the parent of the principal of SDK. On April 17, 2020, the parties consummated the Assignment Application.

By the Petition, CCVE impermissibly is seeking to drag the Commission into the divorce proceedings, even though such proceedings have no bearing at all on SDK’s qualifications to serve as a Commission licensee and the public interest benefits that would accrue by the Commission’s grant of the Renewal Application. Indeed, as set forth in the Renewal Application, SDK has served the public interest during the time that it has been the licensee of the Station.

CCVE’s Petition fallaciously argues that the Commission should not grant the Renewal Application because: (a) SDK accidentally filed an application for a minor modification of the Station’s license on the incorrect form in the Commission’s Licensing and Management System (“LMS”); (b) at the time that the Renewal Application was filed, the Commission’s records had not yet been updated regarding the full-power station that is being rebroadcast on the Station; (c) of CCVE’s mistaken belief that the four-year requirement for the Station to rebroadcast station KCOH(AM), Houston, Texas (Facility No. 65309) (“KCOH”) is attributable to SDK; and (d) KFNC(FM), Mont Belvieu, Texas (Facility No. 52407) (“KFNC”), which currently is being rebroadcast on the Station, is somehow an ineligible primary station. Each of the arguments is either untrue, misleading or, even if true, do not stand – individually or collectively – as an impediment towards the Commission’s grant of the Renewal Application.

**A. Even Though SDK Previously Filed an Application for Minor Modification on the Incorrect Form (*See* Petition at 2-4), There Is No Basis on Which to Deny the Renewal Application.**

As of April 17, 2020, the date on which SDK acquired the Station, SDK also acquired an outstanding construction permit that CCVE had prepared and filed associated with the Station (File No. BPFT-20170407AAY). On April 27, 2020, SDK filed an application for a license to cover that construction permit (File No. 0000112788, the “April 2020 LTC Application”). The April 2020 LTC Application remains pending, in part because of an informal objection that was filed by the licensee of a low power FM station, claiming that its station would suffer interference from the facilities proposed by the April 2020 LTC Application.

To resolve the potential interference with the LPFM station, on March 1, 2021, SDK filed a license modification application to remove the directional antenna system (File No. 0000137403, the “March 2021 Modification Application”). Unfortunately, the March 2021 Modification Application was filed on the improper form in LMS. Instead of selecting “Minor Modification of Licensed Facility (FM Translator)” in LMS, SDK selected “Modification of License (FM Translator).” This is a simple mistake, owing to the similarities of how the forms are labeled in LMS. SDK now has corrected the innocent mistake (“September 2021 Modification Application”), and also has filed an application for Special Temporary Authority to allow the Station to operate with the facilities set forth in the March 2021 Modification Application (and the September 2021 Modification Application) until there is Commission approval of the September 2021 Modification Application and an application for a license to cover thereof.

Importantly, the licensee of the low power FM station did not file any objection against the March 2021 Modification Application, so it stands to reason that the facilities set forth in the March 2021 Modification Application (and now the September 2021 Modification Application) should be acceptable to the LPFM complainant and the Commission, and SDK expects that the

Commission will grant the pending request for STA and the September 2021 Modification Application in the ordinary course. Upon a grant of the September 2021 Modification Application (and the grant of a subsequent license to cover application), SDK expects that the Commission will dismiss the March 2021 Modification Application and the April 2020 LTC Application as moot.<sup>3</sup>

Even if, for the sake of argument, the March 2021 Modification Application were not later corrected by the September 2021 Modification Application, such fact would not give rise to the ability of the Commission to deny the Renewal Application. But now that the March 2021 Modification Application has been corrected by the September 2021 Modification Application, this matter has been fully resolved and therefore cannot be used as a reason to deny the Renewal Application.

**B. Even Though The Commission's Records Regarding the Station's Primary Station Were Incomplete at the Time the Renewal Application Was Filed (See Petition at 4), There Is No Basis on Which to Deny the Renewal Application.**

When the Renewal Application was filed, the Commission's records, and the Renewal Application, mistakenly indicated that the primary station being rebroadcast on the Station was KCOH. To clean up all paperwork issues relating to this matter, on September 2, 2021, SDK filed a letter with the Commission ("September 2 Letter"), reporting that KFNC is the primary station being rebroadcast on the Station. A copy of that Letter, along with the e-mail transmitting it, is attached as **Attachment 1**. In addition, on September 10, 2021, SDK filed an amendment to the Renewal Application, to specify that the station being rebroadcast on the Station is KFNC. Now that the September 2 Letter has been filed with the Commission, and an amendment to the Renewal

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<sup>3</sup> A separate Informal Objection, filed by counsel to CCVE on behalf of an individual ("Jose Zamora") also is associated with the April 2020 LTC Application. As set forth in Section C herein, the Informal Objection has no merit because not only can "Jose Zamora" not be identified, but also the statements set forth in that Informal Objection are either incorrect or false.

Application also has been filed, this matter has been fully resolved and cannot be used as a reason to deny the Renewal Application.

**C. The Allegations Regarding the Rebroadcast of the Primary Station (*See* Petition at 1-2 and 5) Are Misleading or False.**

On October 20, 2016, the Commission granted a “250 mile” construction permit to CCVE associated with the Station (File No. BMPFT-20160912ADA, the “250 Mile Permit”). The 250 Mile Permit indicated that KCOH was to be the primary station rebroadcast on the Station. On October 20, 2016, the Station commenced on-air operations, as set forth in File No. BLFT-20161020ABY.

As set forth above, on April 17, 2020, SDK acquired the Station pursuant to the Assignment Application (a “long-form” application). Accordingly, not only does SDK have no actual knowledge of how the Station was operated between October 20, 2016 and April 17, 2020, but also, SDK is not charged with any responsibility associated with the period in the most recent license term in which it was not the licensee of the Station. That is because, pursuant to the Commission’s rules and policies, in evaluating any license renewal application, including the Renewal Application, if the subject station license was assigned during the subject license term pursuant to a “long-form” application, the renewal applicant’s certifications are required to cover only the period during which the renewal applicant held the station’s license.<sup>4</sup> Thus, SDK’s certifications set forth in the Renewal Application are required to cover only the period since April 17, 2020, the date on which it acquired the Station.

With this in mind, the question of whether the Station rebroadcast KCOH for four years – between October 20, 2016 and October 20, 2020 – is irrelevant. Because far fewer than four years lapsed since April 17, 2020 and April 1, 2021 (the date on which SDK filed the Renewal

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<sup>4</sup> See, e.g., Instructions to FCC Form 303-S.

Application), it does not matter, for purposes of evaluating SDK's Renewal Application, whether the Station rebroadcast KCOH for four years following its initial on-air operations pursuant to the 250 Mile Permit. That is especially the case here, where ironically, it is CCVE (the party who filed the Petition) who was responsible for the Station's operations for nearly all of the first four years that the Station was on the air pursuant to the 250 Mile Permit (from October 20, 2016 to April 17, 2020). It would be Kafkaesque for the Commission to penalize SDK for any failure of CCVE, the complaining party, to adhere to the Commission's rules during the time that CCVE was the licensee of the Station.

Since April 17, 2020, the date on which SDK acquired the Station, SDK has acted in the public interest to provide programming to listeners in Houston and the surrounding areas. Due to the overly contentious nature of the divorce proceedings, CCVE acted like a petulant child when it came time to provide SDK with the equipment necessary to conduct the Station's broadcasting operations following the consummation of the transaction set forth in the Assignment Application. Instead of making the transmitter and antenna available as promised, CCVE removed those items from the Station's transmitter site prior to April 17, 2020. As a result, SDK was forced to install replacement equipment before April 27, 2020, as set forth in the April 2020 LTC Application.<sup>5</sup>

Shortly after April 27, 2020, SDK was notified by the Station's transmitter site landlord that the Station was not operating properly and had to cease operating for a short period. Based upon SDK's information and belief, the principals, agents or employees of CCVE had removed a

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<sup>5</sup> On April 29, 2020, twelve days after the consummation of the transaction set forth in the Assignment Application and two days after the filing of the April 2020 LTC Application, somehow CCVE was able to file a Notification of Suspension of Operations ("Notification") associated with the Station. Not only was the filing of the Notification not authorized by SDK, but also it contains several false statements and outright incorrect information. Pursuant to e-mails between counsel for SDK and CCVE and members of the Commission's staff around May 1, 2020, the Commission's staff agreed to dismiss the Notification and strike it from the Commission's records and databases. Unfortunately, it appears as if the Notification remains in CDBS, and CCVE now is seeking to use it as a weapon against SDK. SDK urges the Commission to ignore the existence of the Notification because SDK did not file it and the statements therein are untrue.

filter necessary to accommodate the Station's broadcast equipment, thus making proper on-air operations impossible. The Station resumed operating in July of 2020 for several days, but could not operate properly, and had to cease broadcast transmissions temporarily. The Station resumed operating on October 20, 2020 and has remained on the air since that date, including as of April 1, 2021, the date on which the Renewal Application was filed.<sup>6</sup> Accordingly, the only question that matters is whether SDK has been operating the Station in the public interest since it acquired the Station. Except for periods of time since April 17, 2020 that the Station could not operate due to circumstances beyond its control (*i.e.*, the forcible and unauthorized removal of transmission equipment, likely by CCVE or its agents), the answer is affirmative. Therefore, the Commission should grant the Renewal Application.

**D. KFNC Is Properly Being Rebroadcast on the Station, *Contra* to the Statements of the Petition at 5-6.**

The Station has been rebroadcasting KFNC since October 20, 2020. SDK is cognizant of, and has been in complete compliance with, Section 74.1232(d) of the Commission's rules, which prohibits a translator licensee from receiving any support from a primary station in cases where the relevant signal contour of the translator station extends beyond the relevant signal contour of the primary station.

Here, the Station's signal contour extends beyond the relevant signal contour of KFNC. However, SDK has not at any time received any support or consideration associated with the

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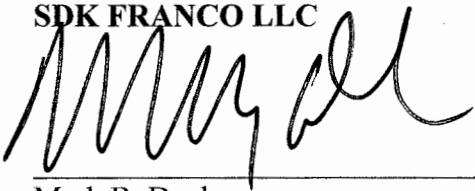
<sup>6</sup> The Informal Objection from "Jose Zamora" associated with the April 2020 LTC Application, which was also included as part of the Petition, has no merit. First of all, the identity of Mr. Zamora cannot be verified. Shortly after the Informal Objection was filed, SDK's engineer sought to visit Mr. Zamora to discuss the statements in his Informal Objection, but was told by the individuals who were present at the address set forth in the Informal Objection signed by "Jose Zamora" that Mr. Zamora was not present at that address and that nobody present at that address had filed any document with the Commission regarding the Station. Even if the identity of Mr. Zamora could be verified, it is very likely he was confused by the existence of another FM translator that operates on the same frequency as the Station, K223DH, Houston, TX, which also is licensed to CCVE. SDK believes that the statements in Mr. Zamora's Informal Objection regarding the alleged operations of the Station actually should be attributed to the manner in which CCVE had been operating K223DH. See Declaration of Omar Romero, at **Attachment 2**; see also Declaration of Josue Salmeron, at **Attachment 3**.

rebroadcast of KFNC on the Station. Accordingly, because there has been no violation of Section 74.1232(d), there is no basis on which to deny the Renewal Application.

**E. Conclusion.**

As set forth herein, the Petition really is part of a larger harassment campaign being waged against SDK by CCVE in connection with a family law dispute. The allegations lodged by CCVE in the Petition are either untrue or, even if true, would not give rise to the denial of the Renewal Application. Accordingly, because the Petition does not meet the requirements of the Communications Act and the Rules, the Petition must be summarily dismissed or denied, and the Renewal Application promptly granted.

Respectfully submitted,

**SDK FRANCO LLC**  
  
By: \_\_\_\_\_  
Mark B. Denbo  
Its Attorney

**SMITHWICK & BELENDIUK, P.C.**  
5028 Wisconsin Avenue, N.W., Suite 301  
Washington, DC 20016  
202-350-9656

September 13, 2021

**DECLARATION OF KAREN GUEVARA**

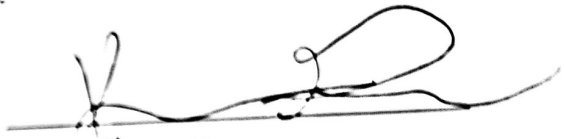
I, Karen Guevara, hereby declare under penalty of perjury as follows:

1. I am a member of SDK Franco LLC.

2. I have read the foregoing Opposition to Petition to Deny. The statements made in the Opposition are true and correct to the best of my personal knowledge, information and belief.

3. SDK Franco has not received any consideration or support from the licensee of KFNC associated with the rebroadcast of KFNC by K223CW.

Executed on the 10<sup>th</sup> day of September, 2021.

  
Karen Guevara

# **ATTACHMENT 1**

**September 2 Letter**

LAW OFFICES  
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COUNSEL

MARK B. DENBO  
M. SCOTT JOHNSON

DIRECT DIAL NUMBER: (202) 350-9656  
E-MAIL ADDRESS: [mdenbo@fccworld.com](mailto:mdenbo@fccworld.com)

September 2, 2021

FILED BY E-MAIL PURSUANT TO

Public Notice, *Audio Division Announces Procedures Related to Coronavirus*, DA 20-266,  
rel. March 13, 2020, addressed to Mr. James Bradshaw, Senior Deputy Chief  
([james.bradshaw@fcc.gov](mailto:james.bradshaw@fcc.gov)); and Nazifa Sawez, Esq. ([nazifa.sawez@fcc.gov](mailto:nazifa.sawez@fcc.gov))

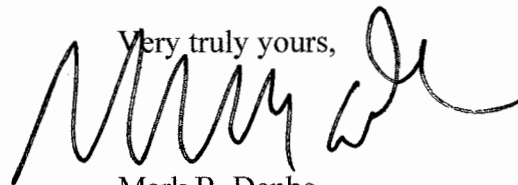
Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
9050 Junction Drive  
Annapolis Junction, MD 20701

**Re: FM Translator K223CW, Houston, Texas (Facility No. 148239)  
Notice of Change of Input Station**

Dear Ms. Dortch:

SDK Franco LLC ("SDK"), licensee of FM Translator Station K223CW, Houston, Texas (Facility No. 148239), by its counsel and pursuant to 47 C.F.R. Section 74.1284 of the Commission's Rules, hereby notifies the Commission that K223CW is rebroadcasting the signal of FM station KFNC, Mont Belvieu, Texas (Facility No. 52407), a station is licensed to Gow Media, LLC ("Gow"). SDK has obtained permission from the licensee of Gow to rebroadcast KFNC on K223CW.

Should there be any questions, please contact the undersigned.

Very truly yours,  


Mark B. Denbo  
Counsel to SDK Franco LLC

cc: Robert Gates/FCC (via electronic mail - [robert.gates@fcc.gov](mailto:robert.gates@fcc.gov))

## Mark Denbo

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**From:** James Bradshaw <James.Bradshaw@fcc.gov> on behalf of James Bradshaw  
**To:** Mark Denbo  
**Sent:** Thursday, September 2, 2021 4:32 PM  
**Subject:** Read: [EXTERNAL]: K223CW, Houston, TX - Notice of Change in Primary Station Being Rebroadcast

Your message

To: James Bradshaw  
Subject: [EXTERNAL]: K223CW, Houston, TX - Notice of Change in Primary Station Being Rebroadcast  
Sent: Thursday, September 2, 2021 4:24:52 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Thursday, September 2, 2021 4:30:49 PM (UTC-05:00) Eastern Time (US & Canada).

## Mark Denbo

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**From:** Nazifa Sawez <Nazifa.Sawez@fcc.gov> on behalf of Nazifa Sawez  
**To:** Mark Denbo  
**Sent:** Thursday, September 2, 2021 5:15 PM  
**Subject:** Read: [EXTERNAL]: K223CW, Houston, TX - Notice of Change in Primary Station Being Rebroadcast

Your message

To: Nazifa Sawez  
Subject: [EXTERNAL]: K223CW, Houston, TX - Notice of Change in Primary Station Being Rebroadcast  
Sent: Thursday, September 2, 2021 4:24:52 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Thursday, September 2, 2021 5:14:53 PM (UTC-05:00) Eastern Time (US & Canada).

# **ATTACHMENT 2**

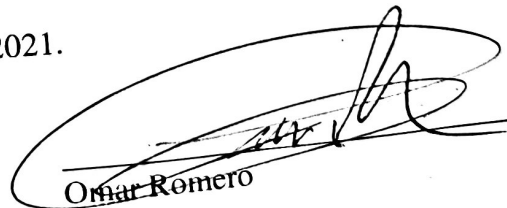
**Declaration of Omar Romero**

## DECLARATION OF OMAR ROMERO

I, Omar Romero, hereby declare under penalty of perjury as follows:

1. I am a consultant to SDK Franco LLC and I have extensive knowledge regarding the manner in which FM translator station K223CW, Houston, Texas has been operated since the time that it was acquired by SDK Franco. I have no actual knowledge of the manner in which K223CW was operated before that time.
2. When SDK Franco assumed ownership of K223CW, the former owner did not make the transmitter and antenna available to SDK Franco. Luckily, I assisted SDK Franco with obtaining replacement equipment, and it was quickly installed, on or before April 27, 2020.
3. Soon after April 27, 2020, the tower site landlord informed SDK Franco that K223CW was not operating properly and had to stop broadcasting. At some point during the transfer process, I believe that someone from Centro Cristiana de Vida Eterna removed a filter necessary to keep K223CW on the air. K223CW went back on the air for a few days in July of 2020, but the station still was not operating up to standards, so the station had to go back off the air. K223CW went back on the air on October 20, 2020 and has remained on the air since that date.
4. I have read the Informal Objection of Jose Zamora. Even if such an individual exists, I believe that he is confusing the operations of K223CW with the operations of K223DH, another station that is owned by Centro Cristiana de Vida Eterna that broadcasts on the same channel as K223CW. That is, I believe that what Mr. Zamora may have been hearing were the broadcasts of Centro Cristiana de Vida Eterna's K223DH, not the broadcasts of SDK Franco's K223CW.
5. Since October 20, 2020, K223CW has been rebroadcasting KFNC. I have informed SDK Franco that, under the FCC's rules, SDK Franco cannot receive any consideration from the licensee of KFNC. To my knowledge, SDK Franco has not received any such consideration from the licensee of KFNC.

Executed on the 10<sup>th</sup> day of September, 2021.



Omar Romero

# **ATTACHMENT 3**

**Declaration of Josue Salmeron**

On the evening of December 28, 2020, I went to 13319 Indianapolis St, Houston TX 77015 to visit Mr. Jose Zamora to see how I could clear up the issue with K223CW. The residence was answered by a lady and her son. I asked if Jose Zamora lived in the residence and she said she knew no one by that name. At this point, the owner of the home comes out and presents himself as Kevin. I show him the informal complaint and he tells me he doesn't recognize the signature or the name then proceeds and turns around and asks the lady and her son the same question which they both say they don't recognize the signature. Kevin then asks why I come to his address if the guy doesn't live there and I proceed to show him that his address is on the paperwork. I asked him to confirm if I was at the same address and he said yes but no Jose Zamora lives at this residence. At this point I thanked him for his time and left.

As far as the supplement from the informal objection, Jose Zamora states that the address is his mailing address which puts into question whether or not he really is a Houston resident as he claimed. Mr Kevin (which now I believe is his grandfather) along with a lady and another gentleman all stated that Jose Zamora was not at the residence which contradicts with what Jose Zamora states that "They [referring to me] did know I was there". The question was asked if Jose Zamora was at the home more than once and Kevin along with the lady and her son all said no. Mr Kevin did say to call the police which at that point I had no issue if they did but the lady told her son and Kevin not to. I also have a recording of this visit and will provide it if requested because that truth is there.

One last thing to note, the signatures do not match from the informal objection and the supplement.

Informal objection

Supplement

ity of perjury.

Respectfully submitted,

Jose Zamora



**Jose Zamora**



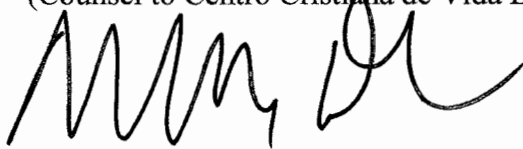
This statement is a first hand account from me, Josue Salmeron.

This letter was written 08/25/2021.

**CERTIFICATE OF SERVICE**

I, Mark B. Denbo, do hereby certify that a copy of the foregoing “Opposition to Petition to Deny” was mailed by First Class U.S. Mail, postage prepaid (or via electronic mail if marked with an asterisk), this 13<sup>th</sup> day of September, 2021 to the following:

Dan J. Alpert, Esq.  
The Law Office of Dan J. Alpert  
2120 21<sup>st</sup> Road, North  
Arlington, VA 22201  
(Counsel to Centro Cristiana de Vida Eterna)

A handwritten signature in black ink, appearing to read 'Mark B. Denbo', written over a horizontal line.

Mark B. Denbo