



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-AR

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In re: **Educational Media
Foundation**

File No. 0000152823:

K205BM, Oakland, CA
Facility ID No. 18788

K281BU, San Francisco, CA
Facility ID No. 147473

K277CH, San Francisco, CA
Facility ID No. 147551

File No. 0000152763:

K220BV, San Jose, CA
Facility ID No. 53697

K265CV, Fremont, CA
Facility ID No. 18812

K205BN, Los Gatos, CA
Facility ID No. 18797

K281BL, Coyote, CA
Facility ID No. 87357

File No. 0000152803:

K216EM Arcadia, CA
Facility ID No. 88940

K220HC, Studio City, CA
Facility ID No. 91759

K224EY, Los Angeles, CA
Facility ID No. 145229

K264AF, Guasti, CA
Facility ID No. 87064

Renewal of License
Informal Objection

Dear Licensee, Counsel and Objector:

We have before us the referenced applications (Applications) filed by Educational Media Foundation (EMF) for the license renewal of FM translator stations K205BM, Oakland, California; K281BU, San Francisco, California; K277CH, San Francisco, California;¹ K220BV, San Jose, California; K265CV, Fremont, California; K205BN, Los Gatos, California; K281BL, Coyote, California;² K216EM, Arcadia, California; K220HC, Studio City, California; K224EY, Los Angeles, California; and K264AF, Guasti, California³ (collectively, Translators). Also before us is a pleading styled as a “Petition to Deny and/or an Informal Objection,” which, as discussed below, we will treat as an Informal Objection (Objection), filed against the Application by Diana Mladinich, Elle Destree, and Neal Gorenflo (Objectors) and a related responsive pleading filed by EMF (Opposition).⁴ For the reasons set forth below, we deny the Objection and grant the Applications.

Background. EMF timely filed the Applications to renew its licenses for the Translators. Objectors argue that grant of the Applications is against the public interest because: 1) EMF violated section 74.1232(b) of the Commission’s rules (Rules) by failing to demonstrate a technical need for

¹ Application File No. 0000152823 (filed Jul. 14, 2021). This application also seeks renewal of the licenses for translator stations K220JB, Vacaville, CA, Facility ID No. 81500, and K208GB, Crescent City, CA, Facility ID No. 78808. The Objection does not oppose the grant of the renewal of licenses for these translators.

² Application File No. 0000152763 (filed Jul. 14, 2021). This application also seeks renewal of the license for Station KJLV(FM), Los Altos, California, Facility ID No. 58843. The Objection does not oppose the grant of the renewal of license for this station.

³ Application File No. 0000152803 (filed Jul. 14, 2021). This application also seeks renewal of the license for Station KKLQ(FM), Los Angeles, California, Facility ID No. 70038, The Objection does not oppose grant of the renewal of license for this station.

⁴ Informal Objection, Pleading File No. 0000158632 (filed Sep. 4, 2021); Opposition to Informal Objection, Pleading File No. 0000162652 (filed Oct. 4, 2021). EMF subsequently filed a revised Opposition which provided an exhibit that had been omitted. Pleading File No. 0000165295 (filed Oct. 29, 2021). As of the date of this Letter, Objectors have not filed a Reply.

multiple redundant fill-in translators in the San Francisco, San Jose, and Los Angeles markets;⁵ 2) the Translators do not serve the purpose of supplementing poor signal areas;⁶ 3) EMF is amassing spectrum in urban areas to obtain market share using multiple channels;⁷ and 4) EMF should submit a technical need showing to demonstrate its need for its multiple fill-in translators.⁸

In its Opposition, EMF counters that the Objection should be treated as an informal objection because Objectors do not have standing to file a Petition to Deny since they have not established that they are parties in interest with injury in fact, causation, and redressability, and therefore the pleading should be treated as in Informal Objection.⁹ EMF further argues that the Objection is a late attempt to object to the previously granted translator authorization applications, where Objectors made no showing that grant would violate the Rules.¹⁰ Substantively, EMF argues that the Objection should be denied because: 1) a technical need showing is not required for its licensed translators since they are not providing the same programming to substantially the same area;¹¹ 2) almost all of the translators broadcast different primary stations, and in a number of cases, the translators that retransmit the same primary station broadcast different programming because the primary station multicasts;¹² and 3) there are only two instances where the translators broadcast the same programming; however, those translators are not in substantially the same area because they all maintain less than a 50% overlap in their 60 dBμ signal contours.¹³

Discussion. Section 309(d) of the Communications Act of 1934, as amended, authorizes any “party in interest” to file a petition to deny an application as long as the petition “contain[s] specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest].”¹⁴ The allegations of fact must also be supported by an affidavit or declaration under penalty of perjury of someone with personal knowledge of the facts alleged.¹⁵

The Objectors’ pleading is styled as a “petition to deny and/or an informal objection,” and does not satisfy the criteria for a petition to deny a license renewal application.¹⁶ Specifically, Objectors failed

⁵ Objection at 1; *see* 47 CFR § 74.1232(b) (“More than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such stations.”).

⁶ Objection at 6.

⁷ *Id.*

⁸ *Id.* at 6-7.

⁹ Opposition at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3-4.

¹² *Id.* at 4,

¹³ *Id.* at 5.

¹⁴ 47 U.S.C. § 309(d) and 47 CFR § 73.3584. *See also Tribune Media Co.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019).

¹⁵ *Id.*

¹⁶ *See* 47 U.S.C. § 309(d) and 47 CFR § 73.3584.

to provide an affidavit of a person or persons with actual knowledge of the facts alleged.¹⁷ Accordingly, we will consider the pleading as an informal objection under section 73.3587 of the Rules.¹⁸

Informal objections, like petitions to deny, also must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.¹⁹ For the reasons discussed below, we deny the Objection.

In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.²⁰ Section 309(k)(1) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²¹ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²²

Objectors' primary opposition to the instant Applications is that EMF failed to include a showing of technical need, in violation of section 74.1232(b) of the Rules, requiring such a showing for multiple translators licensed to the same applicant and serving substantially the same area.²³ Section 74.1232(b) is a “spectrum efficiency rule based on our experience that parties rarely need such multiple translators.”²⁴ In relevant part, it provides that “[m]ore than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such additional stations.”²⁵ The Commission has interpreted section 74.1232(b) to require a technical need showing only when the same party proposes to own more than one translator rebroadcasting the same signal and programming serving substantially the same area.²⁶ “Substantially the

¹⁷ See also 47 U.S.C. § 309(d)(1) (“The petition shall contain specific allegations of fact sufficient to show that ... grant of the application would be prima facie inconsistent with [Section 309(a)]. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.”); 47 CFR § 73.3584(b).

¹⁸ 47 CFR § 73.3587.

¹⁹ See 47 U.S.C. § 309(d)(2); see also, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993) (*WWOR-TV, Inc. Order*); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must also contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁰ 47 U.S.C. § 309(k).

²¹ 47 U.S.C. § 309(k)(1).

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ Objection at 1 (citing 47 CFR § 74.1232(b)).

²⁴ *Creation of a Low Power Radio Service*, MM Docket No. 99-25, MB Docket No. 07-172, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3392, para. 59 (2012).

²⁵ 47 CFR § 74.1232(b).

²⁶ *FM Translator Stations*, Report and Order, MM Docket No. 88-140, 5 FCC Rcd 7212, 7222-23 (1990) (*Translator Order*). For purposes of this rule, “technical need” refers to the “quality of the signal received and not to the programming content, format, or transmission needs of an area.” Note to 47 CFR § 74.1232(b). See also *FM Translator and Booster Stations*, Report and Order, 20 RR 2d 1538, para. 5 (1970) (stating that a showing of

same area” is generally applied by Bureau engineering staff as a more than 50 percent overlap in the subject translators’ 60 dBμ signal contours.²⁷

In this instance, eight of the eleven Translators transmit different programming because they are retransmitting the multicast channels of their respective primary station.²⁸ EMF acknowledges that there are two scenarios where its translators have overlap of their 60 dBμ contours and broadcast the same programming – stations K216EM and K264AF, and K216EM and K224EY.²⁹ However, since the 60 dBμ contour overlap does not reach the 50% threshold, a technical need showing is not required under section 74.1232(b). Accordingly, these three translators do not provide the same programming to “substantially the same area” and we will deny the Objection to the extent it relies on this argument.

Finally, to the extent that Objectors argue that the spectrum used by the Translators could be better used by NCE or LPFM licensees, we remind the Objectors that section 309(k)(4) of the Act specifically prohibits the Commission from “consider[ing] whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.”³⁰

We have reviewed the Applications in accordance with section 309(k) of the Act,³¹ and we find that the Translators served the public interest, convenience, and necessity during the subject license term. We therefore grant the Applications.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the “Informal Objection and/or Petition to Deny” filed by Diana Mladinich, Elle Destree, and Neal Gorenflo on September 4, 2021, treated as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED that the Applications filed by Educational Media Foundation for the license renewal of FM translator stations K205BM, Oakland, California; K281BU, San Francisco, California; K220JB, Vacaville, California; K277CH, San Francisco, California; K208GB, Crescent City, California (Application File No. 152823); KJLV(FM), Los Altos, California; and FM translator stations

technical need is required only where the same programming would be provided to substantially the same area or “where the question of need is raised by a party in interest who objects to grant of the application and makes a *prima facie* showing of the lack of need for the proposed new FM translator”). Here, Objectors rely on their claim that the existing FM Translators provide the same programming to substantially the same areas, and do not contend that they made a *prima facie* showing of a lack of need for proposed new FM translators.

²⁷ See *Creation of Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15419, n.106 (2012) (clarifying that the technical need rule is triggered by applications proposing “substantial contour overlap”); *John Jason Bennett*, Letter, 20 FCC Rcd 17193, 17194 (MB 2005) (explaining that a section 74.1232(b) issue could be resolved by modifying the relevant construction permit to “eliminate the vast majority of the contour overlap.”)

²⁸ Opposition at 4-5. See also *Coe W. Ramsey, Esq. Steven L. White*, Letter, 32 FCC Rcd 10105, 10111-12 (MB 2017) “Because each FM translator can rebroadcast the signal from only one such digital subchannel, it is logical to conclude that each digital subchannel, rather than the primary station’s signal as a whole, constitutes a ‘signal’ for the purposes of the technical need rule. This conclusion is consistent with the definition of a translator as a station that rebroadcasts the ‘signals of an AM or FM radio broadcast station,’ as opposed to rebroadcasting the ‘station.’ For these reasons, we find that a showing of technical need is not necessary . . . to rebroadcast different digital subchannels on the subject Translators, whether or not those Translators overlap by more than 50 percent.”)

²⁹ Opposition at 4-5 and Ex. 1.

³⁰ 47 U.S.C. § 307(k)(4).

³¹ 47 U.S.C. § 309(k)(1).

K220BV, San Jose, California; K265CV, Fremont, California; K205BN, Los Gatos, California; K281BL, Coyote, California (Application File No. 0000152763); and KKLQ(FM), Los Angeles, California; and FM translator stations K216EM, Arcadia, California; K220HC, Studio City, California; K224EY, Los Angeles, California; and K264AF, Guasti, California (Application File No. 0000152803), ARE GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau