



Federal Communications Commission
Washington, D.C. 20554

May 11, 2022

In Reply Refer to:
1800B3-AR

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In re: **H&H Broadcasting, LLC**
File No. 0000160296
KURT(FM), Prineville, OR
Facility ID No. 198808

Informal Objection

Dear Licensee and Objector:

We have before us the above referenced application for renewal of license (Application) filed by H&H Broadcasting, LLC (Licensee) for Station KURT(FM), Prineville, Oregon (Station).¹ Also before us is a Petition to Deny opposing grant of the Application, which we will treat as an Informal Objection (Objection), filed by Western Radio Services Co. (Western) and Richard L. Oberdorfer (Oberdorfer), in his capacity as President of Western.² For the reasons set forth below, we deny the Objection and grant the Application.

Background. In the Objection, Oberdorfer argues the Commission should deny the Application because: 1) the Station allegedly creates noise and spurious emissions at 158 MHz, which cause interference to Western's commercial mobile radio service (CMRS) stations at Grizzly Mountain, Oregon, as well as to public safety communications, causing harm to Oberdorfer as a central Oregon resident and as operator of commercial mobile radio service (CMRS) stations;³ and 2) the Station is in violation of its lease for the site and the site plan issued by the Bureau of Land Management (BLM), both

¹ Application File No. 0000160296 (filed Sept. 24, 2021).

² Objection, Pleading File No. 0000178044 (filed Dec. 28, 2021). As explained below, the Objection fails to meet the requirements of a Petition to Deny. We will treat the pleading as an informal objection under section 73.3587 of the Commission's rules (Rules).

³ Objection at 1.

of which limit use to low power two-way radio, point to point microwave, cellular, cable television, and low power translators, and require a protective shield on transmitters, including cavity bandpass filters.⁴

In its Opposition, Licensee argues the Objection should be dismissed or denied because: 1) Oberdorfer lacks standing to file the petitions to deny as either a party in interest, or a party who has suffered injury, and does not demonstrate that withholding grant of the applications provides redress;⁵ 2) Oberdorfer's claims lack specificity, are conclusory, and are not based on any specific allegations of fact, and Oberdorfer does not allege any specific violation of the Rules;⁶ 3) Oberdorfer fails to utilize appropriate channels for interference complaints and fails to cooperate with Licensee or the Station's tower owner to resolve the alleged interference;⁷ 4) local public safety organizations transitioned out of 158 MHz and now use 800 MHz spectrum, and have never filed an interference complaint against the Station;⁸ and 5) without further investigation, there is no need to install a cavity bandpass filter, which is only recommended and not required under the BLM site plan, which also provides that, in the case of interference, the need for any filtering equipment would be determined on a case-by-case basis.⁹

In his Reply, Oberdorfer reiterates that the Application should be denied because: 1) Licensee will only agree to install a cavity bandpass filter if Oberdorfer submits to burdensome testing hurdles;¹⁰ 2) the BLM site plan attached to the Opposition does require protective devices and filters regardless of whether the Station causes interference;¹¹ and 3) the BLM site plan does not list broadcast stations nor the Station's ERP power limit under authorized uses.¹²

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Communications Act of 1934, as amended (Act).¹³ The Commission shall grant a renewal application 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁴

Petitions to deny 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

⁴ *Id.*

⁵ Opposition, Pleading File No. 0000181828 (filed Jan. 27, 2022) at 2-4. Licensee filed an Erratum to the Opposition, Pleading File No. 0000183120 (filed Jan. 31, 2022), to correct an error in a footnote.

⁶ *Id.* at 4-7.

⁷ *Id.* at 7-11; Exhs. A, B, C, and D.

⁸ *Id.* at 12; Exhs. D and E.

⁹ *Id.* at 9-11; Exhs. A, B, and F.

¹⁰ Reply, Pleading File No. 0000185482 (filed Feb. 23, 2022) at 1.

¹¹ *Id.*

¹² *Id.* at 2.

¹³ 47 U.S.C. § 309(k).

¹⁴ 47 U.S.C. § 309(k)(1).

with section 309(k) of the Act.¹⁵ Moreover, both petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief request.¹⁶

Under section 309(d) of the Act, only a “party in interest” has standing to file a petition to deny.¹⁷ In addition to containing the necessary factual allegations to support a *prima facie* case that grant of the application would be inconsistent with the public interest, convenience, and necessity, a petition to deny must contain specific allegations of fact demonstrating that the petitioner is a party in interest.¹⁸ The allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit or declaration under penalty of perjury of someone with personal knowledge of the facts alleged. A petitioner must also allege and prove that grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.¹⁹ In the broadcast regulatory context, standing is generally obtained by a petitioner in one of three ways: (1) as a competitor in the market suffering signal interference; (2) as a competitor in the market suffering economic harm; or (3) as a resident of the station's service area or regular listener of the station.²⁰

Oberdorfer has not provided any documentation to support his claims that he has suffered harm in his capacity as president of Western, whose CMRS stations are allegedly suffering signal interference, or as a resident of the Central Oregon area. The Objection lacks any factual evidence or documentation of precisely where Oberdorfer resides, and in fact provides only a mailing address for a post office box in Arizona. The Objection also fails to include any evidence of instances of interference which harm Western’s CMRS stations. Oberdorfer likewise does not demonstrate that there is a causal link between his alleged injury and grant of the Application, or that withholding grant of the Application would remedy or prevent the alleged injury in fact. Accordingly, Oberdorfer has not demonstrated that he is a party-in-interest in this proceeding.

Because the Objection does not satisfy the standing requirements of sections 309(d), we treat the pleading as an informal objection.²¹ We find that Oberdorfer has not made a *prima facie* case that the Station failed to meet its public interest obligation or violated any Commission rule or policy, and deny the Objection.

Interference Claims. The Commission has found that blanket assertions of a conclusory nature regarding interference do not meet the evidentiary requirements of either a petition to deny or an informal

¹⁵ 47 U.S.C. § 309(d). 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), *reh’g denied* (Sept. 10, 1993) (*WWOR-TV*).

¹⁶ See *Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

¹⁷ See 47 U.S.C. § 309(d)(1).

¹⁸ *Id.*

¹⁹ See, e.g., *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063 (1992); *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC 2d 696 (1978).

²⁰ See *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250 (MB 2014); *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999) (“[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station”); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (D.C. Cir. 1966) (“*United Church of Christ*”) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

²¹ 47 CFR § 73.3587.

objection.²² The Objection's allegations are conclusory, are unsubstantiated by any extrinsic evidence, and fail to cite any provision of the Act or the Rules.²³ Oberdorfer submits no evidence to support his interference claims. Oberdorfer also fails to make any determination as to what level of noise or interference the Station causes. The Objection lacks details regarding instances of interference, locations or duration of the interference observed, a description of how the emissions were measured, or any engineering or technical information otherwise to support the claims. Moreover, Oberdorfer has not submitted any documentation of attempts to resolve the alleged interference directly with the Licensee, nor any record of submitting an interference complaint to FCC Regional and Field Offices, the Bureau, or the Enforcement Bureau, to request assistance with interference complaints involving the Licensee. Oberdorfer likewise alleges that the Station causes interference to public safety and public service communications, yet submits no documentation or testimony of any interference complaint from a public safety or public service representative to corroborate this allegation.

While Oberdorfer argues that Licensee should install cavity bandpass filters to reduce the likelihood of interference, Licensee maintains that there is no technical need for a cavity bandpass filter and submits a declaration from its director of programming and operations stating that the Station operates according to the technical parameters of its license.²⁴ Due to Oberdorfer's failure to provide sufficient evidence of interference, we find no basis to consider the allegation further.

Violations of the BLM Lease and Site Plan. We decline to consider Oberdorfer's claims that Licensee is allegedly in violation of contractual and lease obligations involving the BLM, the Station's tower company, or both. The Commission has consistently held that it is not the proper forum to adjudicate contractual disputes of third parties.²⁵ Here, any dispute over whether Licensee is complying with the requirements of the BLM should be raised with that agency. We also note, the Commission has a long history of granting otherwise grantable renewal applications notwithstanding the existence of outside legal disputes.²⁶ Grant of the Application merely finds that the party is qualified under, and the proposed renewal does not violate, the Act or the Rules.²⁷ It is therefore permissive and does not prejudice or influence any relief to which the parties may be entitled.²⁸

²² See *License Renewal Applications of Certain Broadcast Stations Licensed to Communities in Maryland, Virginia, West Virginia, and the District of Columbia*, Memorandum Opinion and Order, 9 FCC Rcd 2143, 2145, paras. 8-9 (1994) (finding that non-specific testimony regarding interference, and conclusory allegation that 47 license renewal licensees would likely cause interference to National Radio Astronomy Observatory facility, without specific supporting engineering evidence, does not establish a prima facie showing that grant of the applications would not be in the public interest). Western and Oberdorfer filed similar informal objections to fourteen license renewal applications filed by eight licensees of stations in Central Oregon, including the subject Application.

²³ See *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5223, 5230, para. 19 (MB 2018) (finding that vague, unsupported, and non-actionable allegations in an objection would not be given further consideration); *Texas Educ. Broad. Co-Op., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13038, 13040, para. 6 (MB 2012) (concluding that unsupported and irrelevant allegations without specific instances of misconduct, nor any activity that bears on the Station's compliance with the Act and the Rules, warrants no further consideration).

²⁴ Opposition at 9-11 and Exh. D.

²⁵ See e.g. *Birach Broad. Corp.*, Letter, 23 FCC Rcd 478, 4781 (MB 2008) (the Commission is not the appropriate forum to resolve the contractual, property, and bankruptcy issues raised by petitioner) (citing *John F. Runner, Receiver*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976) (local court of competent jurisdiction, not the FCC, is the proper forum to resolve private disputes)).

²⁶ See *Cnty. Media Corp.*, Memorandum Opinion and Order, 61 FCC 2d 493, 494, para. 5 (1976).

²⁷ See, e.g., *Cumulus Licensing LLC*, Letter, 21 FCC Rcd 2998, 3007 (2006).

²⁸ *Id.*

Further, the Objection offers no evidence to support these claims. While he repeatedly claims that the BLM site plan requires band pass filters, the exhibits provided by Licensee in the Opposition show such filters are only recommend.²⁹ Accordingly, the Bureau finds no basis to insert itself into disputes regarding interpretation of contractual provisions to agreements between the Bureau of Land Management, a tower company, and the Licensee.

We have reviewed the Application in accordance with section 309(k) of the Act,³⁰ and we find that the Station has served the public interest, convenience, and necessity during the subject license term. We therefore grant the Application.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED**, that the Petition to Deny filed by Western Radio Services Co. and Richard L. Oberdorfer, (Pleading File No. 0000178044), considered as an informal objection, **IS DENIED**.

IT IS FURTHER ORDERED that the Application of H&H Broadcasting, LLC, for renewal of license for Station KURT(FM), Prineville, Oregon, (Application File No. 0000160296), **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁹ Opposition at Exh. A, Section VI, C (“A bandpass device (cavity, crystal filter, etc.) is recommended at the input of all receiving devices.”).

³⁰ 47 U.S.C. § 309(k)(1).