



Federal Communications Commission
Washington, D.C. 20554

February 27, 2023

In Reply Refer To:
1800B3-KV

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In re: K295CQ, St. Louis, Missouri
Fusion Radio, LLC
Facility ID No. 142045
Application File No. 0000200645

**Petition for Reconsideration/Interference
Complaint**

Dear Counsel:

We have before us a petition for reconsideration (Petition)¹ filed by Gateway Creative Broadcasting, Inc. (Gateway).² The Petition seeks reconsideration of the grant of a construction permit (Permit)³ to Fusion Radio, LLC (Fusion), licensee of FM Translator Station K295CQ, St. Louis, Missouri (K295CQ or Translator), to relocate the Translator to channel 231.⁴ For the reasons discussed below, we dismiss the Petition.

Background. On September 21, 2022, Fusion filed the Permit application seeking to relocate the Translator to channel 231 at St. Louis, Missouri, and change the Translator's directional antenna pattern.⁵

¹ Petition for Reconsideration of Gateway, Pleading File No. 0000203306 (filed Nov. 7, 2022). Also before us is an Erratum of Gateway, Pleading File No. 0000203521 (filed Nov. 11, 2022), and an Opposition of Fusion Radio, LLC, Pleading File No. 0000203706 (filed Nov. 17, 2022) (Opposition).

² Gateway is the licensee of KNBS(FM), Bowling Green, Missouri (KNBS(FM)).

³ Application File No. 0000200645, granted October 12, 2022. See *Broadcast Actions*, Public Notice, Report No. PN-2-221014-01, at 1 (MB Oct. 14, 2022).

⁴ Upon relocation to channel 231, the Translator will be known as K231DL. Currently, the Translator is licensed as K295CQ; therefore, in this letter we will refer to the Translator by its licensed callsign, K295CQ.

⁵ See Comprehensive Technical Statement at 1, Permit Application.

On September 23, 2022, the Media Bureau (Bureau) listed the application on public notice as accepted for filing.⁶ On October 12, 2022, after review of the uncontested application, the Bureau granted the Permit application.⁷

On November 7, 2022, Gateway filed the Petition requesting that the Bureau rescind the grant of the Permit because the Translator's operations on channel 231 would purportedly cause interference to co-channel station KNBS(FM).⁸ Specifically, Gateway claims that the Translator's "proposed operation on channel 231 is predicted to cause significant interference within the KNBS predicted 45 dBu contour."⁹ In support, Gateway submitted declarations from 15 KNBS(FM) listeners, who Gateway claimed were predicted to experience interference to their KNBS(FM) reception, along with engineering showings.¹⁰

On November 17, 2022, Fusion filed the Opposition arguing that the Petition should be dismissed because it does not demonstrate good cause as to why Gateway did not participate in the earlier stages of the proceeding, *i.e.* while Fusion's application was pending, as required by section 1.106(b)(1)¹¹ of the Rules.¹² Fusion also contends that the Petition is meritless because "interference within the predicted [KNBS(FM)] 45 dBu contour is excessive protection"¹³ and Gateway did not attempt to privately resolve the interference dispute prior to filing the Petition as required by section 74.1204(f)(4) the Commission's rules (Rules).¹⁴

Discussion. We dismiss the Petition as procedurally defective because we find that Gateway lacks standing to file the Petition. Section 405(a) of the Communications Act of 1934, as amended, (Act),¹⁵ grants standing to file a petition for reconsideration to: (1) "any party" to a proceeding, or (2) "any other person aggrieved or whose interests are adversely affected by" the underlying decision.¹⁶ The Commission has implemented section 405(a) of the Act through section 1.106(b)(1) of the Rules.¹⁷ To qualify as a party to the proceeding, a petitioner for reconsideration must have filed a valid petition to deny against the application whose grant the petitioner now seeks to have reconsidered.¹⁸ If a petition for reconsideration is filed by a non-party, then the non-party must "state with particularity the manner in which the [petitioner's] interests are adversely affected" and "show good reason why it was not possible

⁶ See Broadcast Applications, Public Notice, Report No. PN-1-220923-01, at 2 (MB Sep. 23, 2022).

⁷ See *supra* note 3.

⁸ See 47 CFR § 74.1204(f).

⁹ Petition at 1.

¹⁰ See, Engineering Statement, Appendix A, *Id.*

¹¹ 47 CFR § 1.106(b)(1).

¹² Opposition at 1.

¹³ *Id.*

¹⁴ 47 CFR § 74.1204(f)(4).

¹⁵ 47 U.S.C. § 405.

¹⁶ *Id.*

¹⁷ 47 CFR § 1.106(b)(1).

¹⁸ See *Sagittarius Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551 (2003).

. . . to participate in the earlier stages of the proceeding.”¹⁹

We find that Gateway is a non-party to the proceeding who has failed to show good reason for why it was not possible for Gateway to participate earlier in this proceeding. As an initial matter, we note that Gateway does not have standing as a party to the proceeding because petitions to deny do not lie against applications seeking a minor modification of a licensed facility.²⁰ To establish standing as a non-party to this proceeding, Gateway must satisfy the “aggrieved or adversely affected” test.²¹ Specifically, Gateway must: 1) be “aggrieved” or have interests that were “adversely affected” by grant of the Permit; and (2) show “good reason” why Gateway was unable to participate during the pendency of Fusion’s application.²² As a competitor licensee alleging potential interference from the Translator’s permitted operations on channel 231, Gateway is an “aggrieved” party and has interests that have been “adversely affected” by grant of the Permit.²³ However, Gateway has not shown “good reason” for failing to object to the Permit application while it was pending. The Commission has held that where a petitioner is precluded from filing a petition to deny, the submission of an informal objection is sufficient to confer standing as a non-party to the proceeding.²⁴ In particular, the Commission reasoned that by filing an informal objection, the potential participant “participated in our processes to the fullest extent permitted” and . . . met the good cause standard of 47 CFR §1.106(b)(1).²⁵ Where, however, a potential participant could have filed an informal objection, but did not, the Commission has found the petitioner lacks standing to file a reconsideration petition.²⁶ Here, Gateway could have filed an informal objection to Fusion’s application while it was pending, but did not do so. Moreover, Gateway does not provide any reason for its non-participation. Thus, Gateway has failed to provide good reason for its non-participation and accordingly, we dismiss the Petition for lack of standing.

Even if we were to consider the Petition on the merits, we would deny it. In the Petition, Gateway argues that the Translator’s permitted operations on channel 231 would cause interference to the over-the-air reception of KNBS(FM). The Rules concerning translator interference require that stations complaining of predicted interference must submit a complete interference claim package consisting of the required minimum number of rule-compliant listener complaints, along with specified technical showings.²⁷ Review of the Petition reveals that the interference claim has the following deficiencies: (1) none of the KNBS(FM) listener complaints list a phone number as required by section 74.1201(k)(1) of

¹⁹ 47 CFR § 1.106(b)(1).

²⁰ *Id.* §§ 73.3580(a)(1), 73.3584(a). *See also CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, para. 11, n.31 (2008) (*CMP*).

²¹ *See* 47 U.S.C. § 405; 47 CFR § 1.106(b)(1).

²² *See id.*

²³ *See, e.g., Cloud Nine Broad., Inc.*, Letter Order, 10 FCC Rcd 11555, 11556 (MMB 1995) (*Cloud Nine*).

²⁴ *See also CMP*, 23 FCC Rcd at 10656, para. 11, n.31 (stating that although petitions to deny do not lie against minor modification applications an entity filing an informal objection to such an application can establish standing to file a reconsideration petition).

²⁵ *Id.* (quoting *Cloud Nine*, 10 FCC Rcd at 11556).

²⁶ *See Davidson County Broad. Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 1689, 1690, para 7 (1993) (“WNEU’s petition for reconsideration was defective. WNEU could have filed an informal objection against the WWGL application but failed to do so.”).

²⁷ *See* 47 CFR § 74.1204(f)(1)-(5).

the Rules;²⁸ (2) the Petition does not include a statement that KNBS(FM) was operating within its licensed parameters as required by section 74.1204(f)(3) of the Rules;²⁹ and (3) the Petition does not include a statement that Gateway used commercially reasonable efforts to inform Fusion of the claimed interference and attempted a private resolution as required by section 74.1204(f)(4) of the Rules.³⁰ Thus, the Petition is not a valid and complete interference claim package, and for this reason we would still dismiss the Petition even if we were to consider it on the merits.³¹ We note that notwithstanding our dismissal of the Petition, Gateway may file a complaint alleging actual interference caused by the Translator's operations at any time. Any such complaint must include all necessary requirements as specified in sections 74.1201(k) and 74.1203(a)(3) of the Rules.³²

Conclusions/Actions. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Gateway Creative Broadcasting, Inc., on November 7, 2022 (Pleading File No. 0000203306) IS DISMISSED.

Sincerely,

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

²⁸ 47 CFR § 74.1201(k)(1).

²⁹ 47 CFR § 74.1204(f)(3).

³⁰ 47 CFR § 74.1204(f)(4).

³¹ 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), *recon denied*, Order on Reconsideration, 35 FCC Rcd 11561 (2020) (“upon receipt of an interference claim, Commission staff will review the contents of the interference claim package.”). We note that because the Petition contained the above-noted deficiencies an engineering review was unnecessary and we express no opinion on the Petition’s technical showings.

³² 47 CFR §§ 74.1201(k) and 74.1203(a).