



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

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In Reply Refer to:
1800B3-CEG

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In re: **K247CP, Houston, Texas**
Facility ID No. 148127
File Nos. BALFT-20170705ABE
BPFT-20170608ABA

Informal Objections

Dear Counsel:

We have before us two matters filed by Gow Communications, L.L.C. (Gow)¹. On June 30, 2017, Gow filed an informal objection (June 2017 Informal Objection)² to the above-referenced application (June 2017 Modification Application) for a minor modification of the licensed facilities of FM translator station K247CP, Houston, Texas (Translator). On August 10, 2017, Gow filed an informal objection (Assignment Informal Objection) to the above-referenced application (Assignment Application) to assign the Translator's license from Centro Cristiano de Vida Eterna (Centro Cristiano) to Elohim Group Corporation.³ No oppositions to the Informal Objections were filed. For the reasons stated below, we: (1) grant the June 2017 Informal Objection and dismiss the June 2017 Modification Application pursuant to Section 74.1204(f) of the Commission's rules (Rules)⁴; (2) deny the Assignment Informal Objection and grant the Assignment

¹ Gow is the licensee of KFNC(FM), Mont Belvieu, Texas (KFNC).

² On July 10, 2017, Gow filed a supplement to the June 2017 Informal Objection (Supplement).

³ The June 2017 Informal Objection and the Assignment Informal Objection are collectively referred to as Informal Objections.

⁴ 47 CFR § 74.1204(f) (Section 74.1204(f)) ("An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.").

the Assignment Application; and (3) admonish Gow for violating Sections 73.3588(a)⁵ and 1.17(a)⁶ of the Rules.

Background. On February 6, 2017, Centro Cristiano filed a modification application (February 2017 Modification Application), seeking to relocate the Translator to a tower in Rosenberg, Texas (Rosenburg Site) and change its frequency from Channel 246 to 247 (first adjacent to KFNC's Channel 248).⁷ On March 3, 2017, Gow filed an informal objection (March 2017 Informal Objection), arguing that the February 2017 Modification Application should be dismissed under Section 74.1204(f) of the Rules because the predicted 60 dBμ contour of the proposed facilities would overlap a populated area already receiving the regularly used signal of KFNC. In support of its argument, Gow submitted listener statements, plotted the listeners' location on a map showing the Translator's 60 dBμ contour, and provided "undesired-to-desired" (U/D) signal strength ratios for each listener.⁸ On March 28, 2017, the Bureau dismissed the February 2017 Modification Application, finding that Gow had adequately "demonstrated that there are listeners within the proposed 60 dBμ contour of proposed K246CQ."⁹

On April 12, 2017, Centro Cristiano filed a second, nearly identical, modification application (April 2017 Modification Application) seeking to relocate the Translator to the Rosenberg Site.¹⁰ Gow did not oppose the April 2017 Modification Application and requested to withdraw its March 2017 Informal Objection.¹¹ In the Withdrawal Letter, Gow did not disclose the existence or terms of any agreement with Centro Cristiano but stated that "neither Gow nor its principals has received nor will they receive any money or other consideration in exchange for the requested dismissal of Gow's previously granted Informal Objection."¹² On May 26, 2017, the Bureau granted the April 2017 Modification Application.¹³ On May 30, 2017, Centro Cristiano filed an unopposed application for a license to cover the April 2017 Modification Application, which was granted on June 8, 2017 (License to Cover).¹⁴ The License to Cover is now final.

⁵ 47 CFR § 73.3588(a) (Section 73.3588(a)) (requiring a party that seeks to withdraw an informal objection to file a copy of any written agreement related to the withdrawal and an affidavit setting forth: (1) a certification that "neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny"; (2) the exact nature and amount of any consideration received or promised; (3) an itemized accounting of the expenses for which it seeks reimbursement; and (4) the terms of any oral agreement related to the dismissal or withdrawal of the petition to deny). Section 73.3588(a) further requires that, within 5 days of such a request, each remaining party to any written or oral agreement must also submit an affidavit setting forth a certification that "neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny" and the terms of any oral agreement relating to the withdrawal.

⁶ 47 CFR § 1.17(a) (prohibiting any Commission licensee from providing "material factual information that is incorrect").

⁷ File No. BPFT-20170206ACJ. *Broadcast Applications*, Public Notice, Report No. 28919 (Feb. 7, 2017).

⁸ March 2017 Informal Objection, Attach. B.

⁹ *Centro Cristiano De Vida Eterna*, Letter, Ref. No. 1800B3-RG (Mar. 28, 2017) (*Dismissal Letter*); *Broadcast Actions*, Public Notice, Report No. 48954 (Mar. 31, 2017).

¹⁰ File No. BPFT-20170412ABL. *Broadcast Applications*, Public Notice, Report No. 28965 (April 13, 2017).

¹¹ *Letter from David Gow, President of Gow Communications, L.L.C., to Robert Gates, Audio Division* (Apr. 19, 2017) (*Withdrawal Letter*).

¹² *Withdrawal Letter* at 1.

¹³ *Broadcast Actions*, Public Notice, Report No. 48997 (June 1, 2017).

¹⁴ File No. BLFT-20170530ADG. *Broadcast Actions*, Public Notice, Report No. 49005 (June 13, 2017).

Also on June 8, 2017, Centro Cristiano filed the June 2017 Modification Application, seeking to move the Translator facilities to a tower site in Missouri City, Texas (Missouri City Site).¹⁵ On June 30, 2017, Gow filed the June 2017 Informal Objection, claiming that the proposed facilities would cause “impermissible interference” to KFNC listeners.¹⁶ In the June 2017 Informal Objection, Gow explains that it did not object to the April 2017 Modification Application or License to Cover because it had entered into an agreement with Centro Cristiano whereby Centro Cristiano would relocate the Translator to a non-interfering location and rebroadcast KFNC as its primary station.¹⁷ However, Gow states, Centro Cristiano did not perform “its part of the bargain,” as a result of which Gow filed the June 2017 Informal Objection.¹⁸

On July 5, 2017, Centro Cristiano filed the Assignment Application.¹⁹ In the Assignment Informal Objection, Gow makes the same interference arguments set forth in the June 2017 Informal Objection. No opposition to the Assignment Informal Objection was filed. The Translator has been silent pursuant to special temporary authority (STA) since August 17, 2017.²⁰

Discussion. An informal objection may be filed at any time prior to action on the subject application²¹ and must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (Act), provide properly supported allegations of fact which, if true, would establish a substantial and material question of fact regarding whether grant of the application in question would be consistent with the public interest, convenience and necessity.²²

Modification Application. On review of the record, we find that Gow has adequately substantiated its Section 74.1204(f) claim. In promulgating Section 74.1204(f), the Commission stated that it “will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap.”²³ To provide “convincing evidence” under Section 74.1204(f) that grant of the translator construction permit “will result in interference to the reception” of an existing full-service station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBμ contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person, in fact, listens to the full-service station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.²⁴ The Commission has stated that “[t]he best

¹⁵ See *Broadcast Applications*, Public Notice, Report No. 29005 (June 9, 2017).

¹⁶ Although the June 2017 Informal Objection provides engineering data only for the Translator’s licensed Rosenberg Site, Gow provides engineering data for the proposed Missouri City Site in the Supplement.

¹⁷ June 2017 Informal Objection at 2.

¹⁸ June 2017 Informal Objection at 3; Assignment Informal Objection at 3.

¹⁹ *Broadcast Applications*, Public Notice, Report No. 29024 (July 11, 2017).

²⁰ File No. BLSTA-20170905ABY (filed September 5, 2017, and granted Oct. 16, 2017. *Dan J. Alpert, Esq.*, Letter, Ref. No. 1800B3-DW (Oct. 16, 2017)).

²¹ 47 CFR § 73.3587.

²² See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

²³ See *The Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6 (2004) (*Community Education*) (citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230 (1990)).

²⁴ *Community Education*, 19 FCC Rcd at 12687.

method, of course, is to plot the specific addresses on a map depicting the translator station's 60 dBμ contour."²⁵ Here, Gow has followed this protocol by submitting documentation from listeners certifying that they are regular listeners of KFNC, either at home or at work, and plotting the specific addresses on a map depicting the Translator's proposed 60 dBμ contour at the Missouri City Site. Gow has also demonstrated that grant of the June 2017 Modification Application would result in interference to those listeners.²⁶ Therefore, we will dismiss the June 2017 Modification Application under Section 74.1204(f).

Assignment Application. We find that Gow has not raised a substantial and material question of fact that grant of the Assignment Application would not be in the public interest. When the Commission grants an assignment or transfer of control application, it merely finds that the parties to the application are qualified under, and the proposed transaction does not violate, the Act, the Rules or the Commission's policies.²⁷ We note that the proposed assignment will not prejudice any further relief that Gow might be entitled to under the Rules, such as protection from interference under Section 74.1203(a).²⁸ Therefore, we see no reason to deny or defer action on the Assignment Application based on Gow's interference allegations.

Section 73.3588(a). Section 73.3588(a) of the Rules is designed to "curb process abuse whereby petitions are filed to extract monetary consideration at the expense of broadcast licensees."²⁹ Under the rule, an informal objector seeking to withdraw its objection may not receive a direct monetary payment or an indirect financial benefit in excess of its legitimate and prudent expenses. The withdrawing objector must also submit an affidavit certifying "neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny."³⁰ Finally, the withdrawing objector must certify as to the exact terms of any agreement, oral or written, related to the withdrawal, describe the exact nature and amount of any consideration received or promised, and provide a copy of any written agreement related to the dismissal or withdrawal.³¹ For the purposes of Section 73.3588(a), "other consideration" includes "financial . . . as well as non-financial concessions that confer any type of benefit on the recipient."³²

In this case, the parties entered into an agreement whereby Gow would withdraw the March 2017 Informal Objection in exchange for Centro Cristiano relocating the Translator to a "non-interfering location" and rebroadcasting the signals of KFNC (Retransmission Agreement).³³ Regardless of whether the agreed-upon site would be "non-interfering" (it is closer to the KFNC transmitter than the Translator's licensed site), or whether another channel change may have been part of the bargain, the key factor in our Section 73.3588(a) analysis is Centro Cristiano's commitment to rebroadcast KFNC. This contractual term unequivocally qualifies as "consideration" under Section 73.3588(a), as it would confer a benefit to

²⁵ *Id.* n.30.

²⁶ Supplement, Exh. A, at 5.

²⁷ See, e.g., *GB Enterprises Communications Corp.*, Order, 31 FCC Rcd 1985, 1988, para. 14 (MB 2016).

²⁸ 47 CFR § 74.1203(a) ("An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to . . . [t]he transmission of any authorized broadcast station").

²⁹ *Ms. Valerie Klemmer Watts*, Letter, 22 FCC Rcd 21467, 21473 (MB 2007) (citing *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, Report and Order, 5 FCC Rcd 3911, 3912-13, paras. 14-15 (1990)).

³⁰ 47 CFR § 73.3588(a)(1).

³¹ 47 CFR § 73.3588(a)(1)-(6).

³² 47 CFR § 73.3588(c)(4).

³³ June 2017 Informal Objection at 2, 4; Assignment Informal Objection at 3. At the request of Bureau staff, Gow submitted a copy of the agreement, entitled "Retransmission Agreement," with a confidentiality request pursuant to 47 CFR § 0.459(b).

Gow by expanding KFNC's signal coverage and potential listening audience. Therefore, we conclude that Gow violated the core requirement of Section 73.3588(a) that an informal objector may not receive a direct or indirect financial benefit in return for withdrawing its objection to an application. In its Withdrawal Letter, Gow also failed to disclose the existence or terms of the Retransmission Agreement, provide a copy of the Retransmission Agreement, or describe the exact nature and amount of any consideration received under the terms of the Retransmission Agreement. For all of these reasons, we admonish Gow for violating Section 73.3588(a) of the Rules.

Section 1.17(a). Section 1.17(a) prohibits a Commission licensee from providing "material factual information that is incorrect" in an adjudicatory matter.³⁴ Here, Gow's Withdrawal Letter stated that "neither Gow nor its principals has received nor will they receive any money or other consideration in exchange for the requested dismissal of [the March 2017 Informal Objection]."³⁵ This statement is in direct contradiction to Gow's later admission that Centro Cristiano had entered into the Retransmission Agreement in exchange for Gow's withdrawal.³⁶ Moreover, the Commission acted in reliance on this statement when it granted the April 2017 Modification Application. Therefore, we admonish Gow for making a false statement in the Withdrawal Letter, in violation of Section 1.17(a) of the Rules.

Conclusion/Actions. For these reasons, IT IS ORDERED that the informal objection filed by Gow Communications, L.L.C. on June 30, 2017, IS GRANTED and the June 2017 Modification Application, File No. BPFT-20170608ABA, IS DISMISSED pursuant to Section 74.1204(f) of the Rules.

IT IS FURTHER ORDERED that the informal objection filed by Gow Communications, L.L.C. on August 10, 2017, IS DENIED and the Assignment Application, BALFT-20170705ABE, IS GRANTED.

IT IS FURTHER ORDERED that Gow Communications, L.L.C. IS ADMONISHED for violating Sections 73.3588(a) and 1.17(a) of the Rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Shuldiner", with a horizontal line extending to the right.

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁴ 47 CFR § 1.17(a).

³⁵ Withdrawal Letter at 1.

³⁶ June 2017 Informal Objection at 2; Assignment Informal Objection at 3.