



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

July 16, 2014

*In Reply Refer to:*  
1800B3-ATS

Russell C. Powell, Esq.  
Taylor & Powell, PLLC  
888 16<sup>th</sup> Street, N.W., Suite 800  
Washington, DC 20006

Mr. William H. Payne  
K95.5, Inc.  
24189 East 865 Road  
Welling, OK 74471

In re: **K95.5, Inc.**  
K266BU, Muskogee, Oklahoma  
File No. BNPFT-20130830ALZ  
Facility ID No. 157298

**Petition for Reconsideration**

Dear Counsel and Mr. Payne:

We have before us the Petition for Reconsideration filed on February 5, 2014, by KXOJ, Inc. (“KXOJ”), seeking reconsideration of the grant of the above-referenced application (“Application”) of K95.5, Inc. (“K95.5”), for a construction permit for a new FM Translator Station at Muskogee, Oklahoma (“Station”). For the reasons discussed below, we find KXOJ lacks standing to challenge the grant of the Application and we dismiss the Petition.

**Background.** K95.5 filed a short-form application for a new FM translator as part of the Auction 83 filing window.<sup>1</sup> On July 31, 2013, the Media Bureau (“Bureau”) opened a filing window for certain Auction 83 applicants – including K95.5 – to file FCC Form 349.<sup>2</sup> K95.5 filed the Application on August 30, 2013, and the Bureau announced it had been accepted for filing by Public Notice on September 20, 2013.<sup>3</sup> No petition to deny was filed against it, and the staff granted the Application on January 9, 2014.<sup>4</sup>

KXOJ filed the Petition on February 5, 2014. KXOJ argues that because the Station will operate on an adjacent channel to its own full-service station, KXOJ-FM, Sapulpa, Oklahoma, it will cause interference to KXOJ-FM in violation of Section 74.1204(f) of the Commission’s Rules.<sup>5</sup> KXOJ includes statements from three listeners of KXOJ-FM along with contour maps that identify the locations of these listeners, and calculations of the undesired-to-desired signal strength ratios at these locations with respect to the facilities proposed in the Application.<sup>6</sup> KXOJ requests that we rescind the grant of the Application and dismiss it.

<sup>1</sup> File No. BNPFT-20030317LGS.

<sup>2</sup> *Media Bureau Announces FM Translator Auction 84 Filing Window and Filing Procedures*, Public Notice, 28 FCC Rcd 11098 (MB 2013).

<sup>3</sup> *Broadcast Applications*, Public Notice, Report No. 28078 (MB 2013).

<sup>4</sup> *Broadcast Actions*, Public Notice, Report No. 48155 (MB 2014).

<sup>5</sup> Petition at 1, *citing* 47 C.F.R. § 74.1204(f).

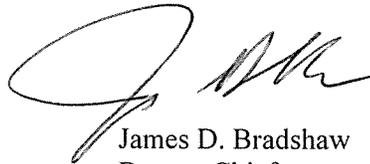
<sup>6</sup> Petition at Exhibits 1 and 2.

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.<sup>7</sup> A petitioner who is not a party to the proceeding also must state with particularity the manner in which its interests are adversely affected by the action taken, and show good reason why it was not possible to participate in the earlier stages of the proceeding.<sup>8</sup> KXOJ has not met this threshold requirement.

KXOJ has not provided any explanation for why it did not object to the Application prior to its grant. While the Commission has accorded standing to petitioners for reconsideration who failed to file pre-grant objections when prompt staff action "effectively precludes participation during the initial consideration of an application,"<sup>9</sup> we will not award KXOJ such standing here. KXOJ had more than 90 days to object to the Application but failed to do so. The staff may dismiss a petition for reconsideration seeking to overturn the grant of an application where the petitioner did not show good cause for failing to participate earlier in the proceeding.<sup>10</sup> Accordingly, we will dismiss the Petition.

**Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by KXOJ, Inc., on February 5, 2014, IS DISMISSED.

Sincerely,



James D. Bradshaw  
Deputy Chief  
Audio Division  
Media Bureau

---

<sup>7</sup> See 47 C.F.R. § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

<sup>8</sup> 47 C.F.R. § 1.106(b)(1).

<sup>9</sup> See, e.g., *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854 (1997) (standing awarded to file petition for reconsideration without pre-grant objection when application granted five days after Public Notice of its acceptance); *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816 (1989) (standing to file petition for reconsideration without pre-grant objection when application granted four days after Public Notice of its acceptance).

<sup>10</sup> KXOJ asserts that the Bureau has rescinded grants of FM translator construction permits on Section 74.1204(f) grounds, despite the absence of a petition to deny. See Petition at n.2, citing *Hope Christian Church of Marlton, Inc.*, Letter, File No. BPFT-20110711AAP (MB June 8, 2012); *Jacobs Radio Programming, LLC*, Letter, File Nos. BPFT-20111219AAF and BLFT-20120208AEA (MB Mar. 7, 2012). We disagree. See *The Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682 (2004) (refusing to treat an untimely informal objection to an FM translator application on Section 74.1204(f) grounds as a petition for reconsideration because the objector had failed to participate earlier and had not shown good reason for its failure to participate); *Revival Christian Ministries*, Letter, 28 FCC Rcd 2041 (MB 2014) (dismissing petition for reconsideration that argued translator modification would cause interference in violation of Section 74.1204(f) because petitioner had failed to file an objection to the application prior to its grant). We note that the two cases KXOJ cites to support its claim were unpublished and thus lack any precedential value. See 47 C.F.R. § 0.445(e).