



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

March 18, 2016

In Reply Refer to:
1800B3-HOD

Dan J. Alpert, Esq.
2120 North 21st Road
Arlington, VA 22201

Kenneth E. Satten, Esq.
Wilkinson Barker Knauer LLP
2300 N Street, NW, Suite 700
Washington, DC 20037

In re: **Eastern Sierra Broadcasting**
New FM Translator, Carson City, NV
File No. BNPFT-20130829AIJ
Facility ID No.148598

Petition to Deny

Dear Counsel:

We have before us the referenced application (Application) filed by Eastern Sierra Broadcasting (Eastern Sierra) for a new FM translator station at Carson City, Nevada. Also before us is a Petition to Deny (Petition) the Application filed by Shamrock Communications, Inc. (Shamrock), on October 25, 2013. For the reasons discussed below, we deny the Petition and grant the Application.

Background. Eastern Sierra filed the Application on August 29, 2013. Shamrock subsequently opposed it.¹ Shamrock is the licensee of KRZQ(FM), Fallon, Nevada, which operates on the same channel as the proposed translator. Shamrock alleges the proposed translator's contour overlaps with that of KRZQ(FM) in violation of Section 74.1204(a)(3) of the FCC's rules (Rules).² It also asserts that the proposed translator would cause interference to the reception of KRZQ(FM)'s signal in violation of 74.1204(f) of the Rules.³ Shamrock further claims that Eastern Sierra plans to install an antenna incapable of delivering the directional signal specified in the Application, and failed to obtain consent .

¹ In response to the Petition, Eastern Sierra submitted a Statement for the Record. Shamrock then filed a Supplement to Petition to Deny (Supplement). Eastern Sierra responded by filing an Opposition to Supplement to Petition to Deny (Opposition). Shamrock, in turn, filed a Further Supplement to Petition to Deny (Further Supplement) on April 4, 2014. These pleadings were either late-filed or unauthorized and thus subject to dismissal. See 47 CFR §§ 1.45 (requiring that oppositions to petitions to deny be filed within 10 days and replies to such oppositions be filed within 7 days) and 73.3584(e) (providing that "[u]ntimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration"); see also *Saga Communications of New England, LLC*, Letter Order, 30 FCC Rcd 4654, 4655 n. 1 (MB 2015) (declining to consider unauthorized pleadings and dismissing supplement to petition to deny that was filed after deadline for filing petitions to deny). We consider them herein, though, because Eastern Sierra made a number of amendments to the Application outside of the period for filing of petitions to deny, oppositions and replies and these amendments were directly related to the arguments set forth in the Petition.

² 47 CFR §74.1204(a)(3).

³ 47 CFR §74.1204(f).

from Educational Media Foundation (EMF)—the licensee of KYSA(FM), Sparks, Nevada⁴—for the proposed translator to rebroadcast KYSA(FM)’s signal.

Eastern Sierra amended the Application to reduce the height of the radiation center above ground level, reduce the effective radiated power, and specify a different, custom antenna.⁵ Eastern Sierra also attached a letter confirming that EMF had previously given its consent to the proposed translator’s rebroadcast of its station’s signal. Despite these changes to the Application, Shamrock continues to allege that the proposed translator will cause interference to its station in violation of Section 74.1204(f), failed to obtain rebroadcast consent from EMF prior to filing the Application, and proposes to operate with an antenna incapable of delivering the directional signal specified in the Application. We address these arguments below.

Discussion. Contour Overlap. Section 74.1204(a)(3) of the Rules prohibits the overlap of the 40 dBμ contour of an FM translator with the 60 dBμ contour of a full service co-channel FM station. In the Petition, Shamrock alleged that the 40 dBμ contour of the facilities proposed in the original Application would overlap the 60 dBμ contour of KRZQ(FM).⁶ Eastern Sierra subsequently amended the Application to reduce power and height, resulting in a smaller 40 dBμ contour, which it claimed resolved this issue. We agree.⁷ Accordingly, we find that the proposed translator complies with the contour overlap prohibition set forth in Section 74.1204(a)(3).

Interference to Reception. Section 74.1204(f) of the Rules provides that, even if there is no prohibited contour overlap under Section 74.1204(a), the Commission will not accept for filing an application for an FM translator station “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 . . . and grant of the authorization will result in interference to the reception of such signal.” The Commission has held:

in order 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.⁸

Shamrock asserts that the proposed translator will cause interference to the direct reception of KRZQ(FM) in violation of Section 74.1204(f). To support this claim, Shamrock submits contour maps demonstrating that “[m]ost of the 60 dBμ contour of the proposed Eastern Sierra facility, and part of its

⁴ Until August 2014, KYSA(FM) operated under the call sign KLRH(FM). All of the pleadings were filed prior to this call sign change and refer to the station as KLRH(FM). We refer to the station by its current call sign herein.

⁵ Eastern Sierra amended the Application on a number of occasions. We focus herein on the version of the Application currently before us.

⁶ Petition at 3; Engineering Statement at Appendices A and B.

⁷ Shamrock apparently does too. In the only pleading filed by Shamrock that addressed the technical parameters specified in the most recent version of the Application – the Supplement, Shamrock dropped its allegation regarding Section 74.1204(a)(3).

⁸ *The Ass’n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12687 para. 13 (2004).

40 dB μ contour, is located within the 54 dB μ contour of KRZQ.”⁹ Shamrock also submits the declaration of its Director of Engineering, Kevin Fitzgerald. He indicates that the overlap area “encompasses populated areas of Carson City and Dayton, [Nevada]” and notes that, by reviewing the station’s fan club membership, he has identified 13 listeners residing at Carson City addresses.¹⁰

Shamrock, however, does not include the names and addresses of the fan club members nor does it include any evidence that any of these members in fact listen to KRZQ(FM) at the addresses they listed when registering for the station’s fan club. Given this, we find that Shamrock has failed to satisfy the Section 74.1204(f) objection requirement to identify and provide declarations from specific listeners within the Application’s predicted 60 dB μ service contour. We note, however, that should actual interference to KRZQ(FM)’s signal occur, Shamrock may seek relief under Section 74.1203 of the Rules.¹¹

Rebroadcast Consent. Section 74.1284(b) of the Rules prohibits an FM translator from “rebroadcast[ing] the programs of any AM or FM broadcast station or other FM translator without obtaining prior consent of the primary station whose programs are proposed to be retransmitted.”¹² It requires a translator licensee to notify the Commission of “the call letters of each station rebroadcast” and to “certify that written consent has been received from the licensee of the station whose programs are retransmitted.”¹³ The Commission has explained that this “written consent” requirement ensures compliance with “the Congressional mandate embodied in Section 325(a)” of the Communications Act of 1934, as amended,¹⁴ “ensures retransmissions by broadcast stations in accordance with the provisions of the copyright laws, and protects broadcast stations from unauthorized uses of their programs.”¹⁵

The Application, as amended, includes a letter from EMF that confirms EMF’s “previous oral consent” to the proposed translator’s rebroadcast of KYSA(FM)’s signal.¹⁶ Shamrock acknowledges this letter but asserts that it does not demonstrate that Eastern Sierra had secured the “required written consent” prior to filing the Application.¹⁷ We agree and conclude that Eastern Sierra violated Section 74.1284(b) when it failed to obtain EMF’s written consent prior to filing the Application.¹⁸ However, given that Eastern Sierra appears to have obtained EMF’s oral consent prior to filing and has since obtained its written consent, we admonish Eastern Sierra for this violation rather than imposing a more severe sanction.

⁹ Engineering Statement at Appx. C.

¹⁰ Engineering Statement at 1.

¹¹ An FM translator, as a secondary service, is required to suspend operations if it is causing interference to a full service FM station. 47 CFR § 74.1203.

¹² 47 CFR § 74.1284(b).

¹³ *Id.*

¹⁴ *Cnty. Translator Associates*, Letter Order, 97 FCC 2d 267, 269 (1984), *citing* 47 U.S.C. 325(a) (which prohibits the “rebroadcast [of] the program or any part thereof of another broadcasting station without the express authority of the originating station”).

¹⁵ *Id.*

¹⁶ Application at Exh. 1; Opposition at Attach. 1.

¹⁷ Further Supplement at 2-3; Further Supplemental Engineering Statement at 1-2. Shamrock initially alleged that Eastern Sierra had failed to obtain the consent of EMF, the licensee of the full power FM station whose signal it proposes to rebroadcast. Petition at 4-5. Shamrock dropped this allegation after Eastern Sierra amended the Application to include the EMF letter. Further Supplement at 2-3 (arguing solely that Eastern Sierra failed to obtain written consent prior to filing the Application).

¹⁸ Eastern Sierra also incorrectly certified that it had obtained such written consent when it filed the Application. *See* Application, Section II, Item 5.

Directional Antenna. The Application, as amended, proposes what Shamrock characterizes as a “very directional” custom antenna.¹⁹ Shamrock asserts that this is “a very non-standard antenna and likely does not exist in the real world.”²⁰ Shamrock argues that we should require Eastern Sierra to submit an antenna pattern plot along with information proving the pattern would adequately protect KRZQ(FM)’s signal.²¹

We reject this argument. Shamrock does not—and could not—allege that Eastern Sierra’s proposal to use a custom antenna violates the Act, the Rules or any of the Commission’s policies. Should actual interference to KRZQ(FM)’s signal occur, though, Shamrock may seek relief under Section 74.1203 of the Rules.

Conclusion/Actions. IT IS ORDERED that the Petition to Deny filed by Shamrock Broadcasting, Inc. on October 25, 2013, IS DENIED. IT IS FURTHER ORDERED that the application (File No. BNPFT-20130829AIJ) for a new FM translator station at Carson City, Nevada, filed by Eastern Sierra Broadcasting IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ See Application, Section III, Item 10; Further Supplement, Further Supplemental Engineering Statement at 1. The Application initially proposed a different off-the-shelf antenna, which Shamrock also argued was “incapable of producing the sharply directional signal” proposed by Eastern Sierra. Petition at 4; Engineering Statement at 1-2; Supplement at 3; Supplemental Engineering Statement at 1-2.

²⁰ Further Supplemental Engineering Statement at 1.

²¹ Further Supplemental Engineering Statement at 1.