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COPY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FILED/ACCEPTED

MAY 27 2010

Federal Communications Commission  
Office of the Secretary

In re Applications of )

MCC Radio, LLC )

For a Minor Modification of Construction )  
Permit, K292FY, Anchorage, Alaska )

VSA Arts of Alaska/Out North )

For a Minor Change to Licensed Facility )  
KONR-LP, Anchorage, Alaska )

File No. BMPFT-20100415ACB

Facility Id. No. 139586

File No. BPL-20090923AAC

Facility Id. No. 124266

To: Office of the Secretary

Attn: Audio Division, Media Bureau

**JOINT OPPOSITION**

MCC Radio, LLC ("MCC"), permittee of FM translator Station K292FY, Anchorage, Alaska, and VSA Arts of Alaska/Out North ("Out North"), licensee of low power FM Station KONR-LP, Anchorage, Alaska, hereby oppose the Petitions to Deny the above captioned applications filed by Alaska Educational Radio System, Inc. and Seward Media Partners, LLC ("Petitioners")<sup>1</sup> on May 13, 2010.<sup>2</sup> The Petitions to Deny appear to allege that the changes proposed in the above captioned applications will cause interference to two translator stations (K287AO and K283AZ) and a full-power FM station (KKN1(FM)). The Petitioners, however,

<sup>1</sup> The parties note that the CDBS entry for the above captioned KONR-LP application does not reference a Petition to Deny and the FCC has not provided notice that such a petition was ever filed. Out North was provided with a "draft" of the Petition to Deny by Wolfgang Kurtz, but does not know if Mr. Kurtz ever actually filed a Petition to Deny the KONR-LP application with the Commission. Nevertheless, the parties are responding to the Petitioners' allegations against the KONR-LP application.

<sup>2</sup> The Petition to Deny is procedurally defective because Petitions to Deny do not lie against minor change applications. See 47 C.F.R. § 73.3584.

do not provide any evidence or engineering documentation to support their claim. Nevertheless, MCC's and Out North's consulting engineer prepared the attached Engineering Statement, which demonstrates that the above captioned applications will not cause any interference and that the Petitioners' claims are baseless.

MCC and Out North also note that, on May 20, 2010, Seward Media Partners filed a modification of permit application to upgrade KKNi's facilities from Channel 287C3 to Channel 287C1. *See* BMPH-20100520AED.<sup>3</sup> As demonstrated in the attached Engineering Statement, the operation of KONR-LP with the facilities proposed in the above captioned application will not interfere with KKNi operating on Channel 287C1. Thus, the KONR-LP application complies with Section 73.809 of the Commission's rules. The KKNi application, however, should not even be considered by the Commission because it is defective. The application proposes operation of KKNi on Channel 287C1. As demonstrated in the "Allotment Study" attached to the KKNi application, the operation of KKNi on Channel 287C1 at Sterling, Alaska is not mutually exclusive with KKNi's current licensed operation on Channel 290A at Seward, Alaska. Thus, Seward Media Partners is attempting to achieve a major modification through the filing of multiple minor change applications. This is contrary to the Commission's rules and policies.<sup>4</sup>

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<sup>3</sup> It is not clear to MCC or Out North how this application was accepted for filing. For Question 3 (Section I), the applicant has indicated that a fee is not required because the "Applicant is Financially Distressed." Section 1.1114 of the Commission's Rules does not contain such an exemption and the parties are not aware of the FCC accepting this rationale. It also seems inconsistent that the applicant is too impoverished to pay a \$940 filing fee, but apparently it can afford to upgrade its facilities to Class C1.

<sup>4</sup> *See* 47 C.F.R. § 73.3573(g)(2); *Letter to Auburn Network, Inc. Station WGZZ(FM)* (July 31, 2009) (BMPH-20081216BKY); *Letter to CC Licenses, LLC, Station KJDX(FM)* (Sept. 29, 2008) (BMPH-20080304ABS). It is unclear how the underlying permit for Channel 287C3 at Sterling was granted as it is also not mutually exclusive with KKNi's licensed operation on Channel 290A at Seward, Alaska. *See* BPH-20071108AET.

Accordingly, MCC and Out North respectfully request that the Media Bureau dismiss the Petitions to Deny and grant the above captioned applications.

Respectfully submitted,

**MCC Radio, LLC**

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## Engineering Statement

May 2010

This Engineering Statement has been prepared on behalf of MCC Radio, LLC ("MCC") and VSA Arts of Alaska/Out North ("Out North") in response to a Petition to Deny which has been prepared jointly by Alaska Educational Radio System, Inc. ("AERS") and Seward Media Partners, LLC ("SMP") against an application for minor modification of construction permit for MCC's FM translator K292FY, as well as a draft of a yet to be filed Petition to Deny Out North's application for frequency change for KONR-LP (File No. BPL-20090923AAC), also jointly prepared by SMP and AERS.

This Engineering Statement has been prepared based upon review of the Petition, dated May 7, 2010 and signed by Mr. Wolfgang Kurtz (Executive Director of AERS and Member of SMP) and the draft, dated May 3, 2010 and also prepared by Kurtz.

As a threshold matter, it is noted that Petitions to Deny do not lie against minor applications. We presume that these will be treated instead as Informal Objections, and so the two AERS-SMP filings will be referred to herein as the *K292FY Objection* and the *KONR-LP Objection*.

The thrust of the AERS-SMP filings appears to be an allegation that the proposed K292FY and KONR-LP facilities will cause interference to stations owned by the objecting parties. Specifically, it is claimed in the K292FY Objection that "...AERS' facilities K287AO and K283AZ

will receive interference from the successful outcome of the present applications..." The K292FY Objection also expresses concern about "...the possibility of interference to [SMP's] facility (KKNI-FM)..."

However, nowhere in the copies of either Objection which have been provided to this firm is there included any analysis which would demonstrate that the proposed K292FY or KONR-LP facilities will cause any interference to either K287AO, K283AZ, or KKNI.

We have furthermore reviewed these claims of interference and find them to be baseless.

**K287AO** is an FM translator licensed to Hope, Alaska, and operates cochannel with the proposed KONR-LP facility. The proposed KONR-LP facility satisfies the 73.807(d)(1) spacing requirement to K287AO. The translator operates with an ERP of 99 watts with an antenna height above average terrain which is a negative value (the antenna is located at a height of just 10 meters AMSL, and the site is surrounded by mountainous terrain). Consequently the distance to the translator's reference 60 dBu contour is 5.66 kilometers. Per the spacing table in 73.807(d)(1), the required cochannel spacing between an LP100 station and an FM translator having a 60 dBu contour distance of less than or equal to 7.3 kilometers is 26 kilometers. The actual distance between the proposed KONR-LP transmitter site and the K287AO transmitter site is 28 kilometers, thereby satisfying 73.807(d)(1).

**K283AZ** is an FM translator licensed to Anchorage. It operates on a fourth adjacent channel to the proposed KONR-LP facility on Channel 287L1, and on an eighth adjacent channel to the proposed K29FY facility on Channel 291D. Since K283AZ does not operate on a channel which has an interference relationship with either of the proposed KONR-LP or K292FY facilities, and since AERS-SMP have not demonstrated any mechanism for interference, the claim of interference to K283AZ must be rejected out of hand.

**KKNI** is a full-power FM station which is presently licensed on Channel 290A at Seward, but which holds a construction permit to operate on Channel 287C3 at Sterling, and has recently filed an application (BMPH-20100520AED) to amend this construction permit to Channel 287C1.

The KKNi licensed operation is on a first-adjacent channel to the proposed operation of K292FY on Channel 291D, but the distance between the two transmitter sites is 127 kilometers. That distance is far beyond that within which it might be expected that the proposed K292FY facility might cause interference to the licensed KKNi operation, particularly so considering that the path between the two sites passes over about 80 kilometers of inhospitable mountainous terrain of the Kenai Mountains. Thus any claim of interference to the KKNi licensed operation from a first adjacent channel FM translator operation in Anchorage or from a third-adjacent LPFM operation of KONR-LP in Anchorage - would be ludicrous.

Presumably, SMP is more precisely concerned about the potential for interference caused to its proposed operation of KKNi on Channel 287C1 at Sterling by the proposed cochannel KONR-LP operation in Anchorage. 73.809 of the Commission's Rules provides that full-power stations are protected from interference from an LPFM station provided that the interference occurs within either the 70 dBu contour of the full-power station or the full-power station's community of license. However, SMP can have no claim of interference to the KKNi construction permit under 73.809 because there is fully 11 kilometers of separation even between the KONR-LP 40 dBu interfering contour and the KKNi 60 dBu contour, as is depicted on the attached map exhibit. Given the distance and terrain between Anchorage and Sterling, I would not anticipate that a 100 watt LPFM in Anchorage would cause interference to a 51 kW cochannel station in Sterling.

To the extent which SMP may be concerned that the proposed KONR-LP facility "preludes changes in class and concomitant increased service to KKNi's Community of License", it would be irrational to expect an applicant to provide protection to an application that another party may wish to file at some point in the future.

To the extent which SMP appears to express concern that the authorized KKNi facility (once and assuming it is ever constructed) might cause interference to the proposed KONR-LP facility, while that concern is laudable it is misplaced. We are quite certain that KONR-LP can operate cochannel with the authorized (and proposed) KKNi facilities while providing reliable service to its audience in Anchorage.

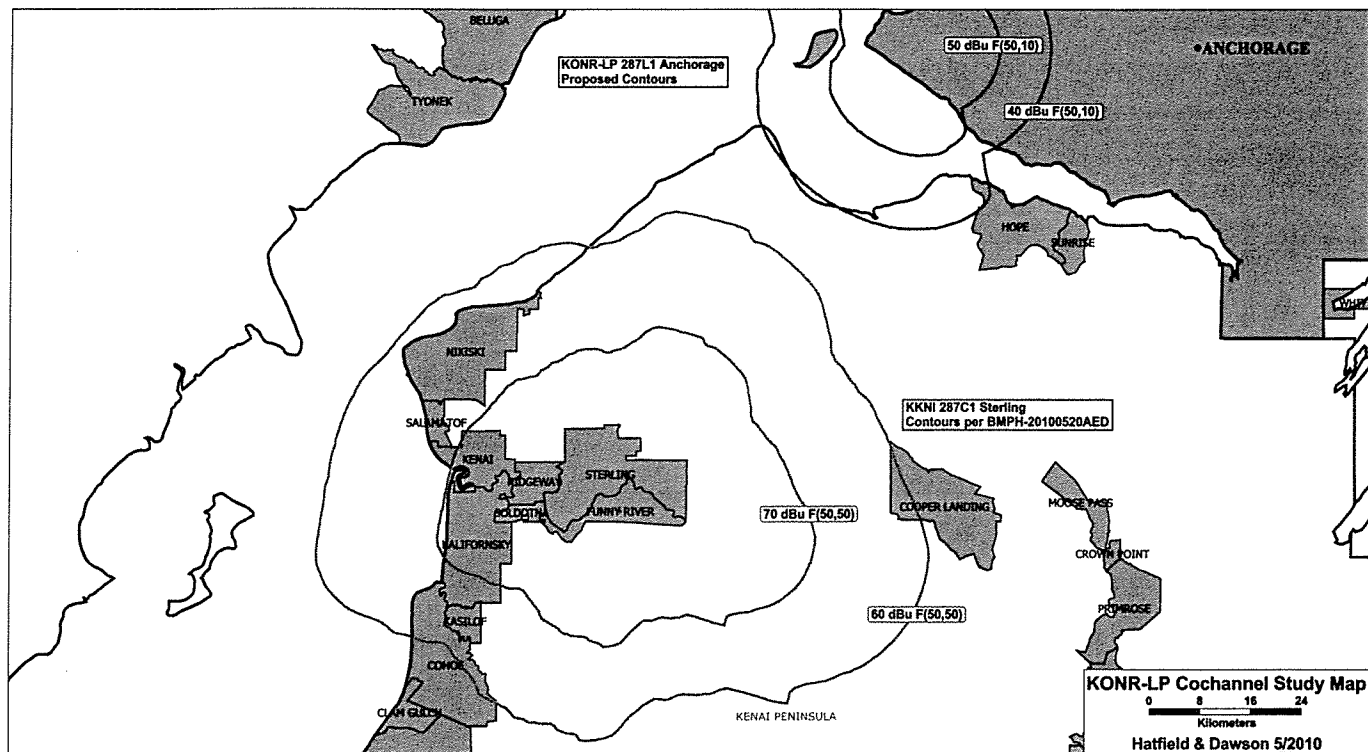
### **Statement of Engineer**

This Engineering Statement has been prepared by the undersigned. I am an experienced radio engineer whose qualifications are a matter of record with the Federal Communications Commission. I am a staff engineer in the firm of Hatfield & Dawson Consulting Engineers and am registered as a Professional Engineer in the States of Washington and Oregon.

Signed this 26<sup>th</sup> day of May, 2010



Thomas S. Gorton P.E.

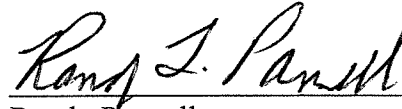




**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of May, 2010, I caused copies of the foregoing  
“**Joint Opposition**” to be mailed via first-class postage prepaid mail to the following:

Wolfgang Kurtz  
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Seward Media Partners, LLC  
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Anchorage, AK 99515

  
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Randy Jannell