

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In re Applications of)	MX Group No. 91
)	
HAITIAN RELIEF RADIO AND)	File No. BNPL-20131112AMG
COMMUNITY SERVICES, INC.)	Facility ID # 192845
Orlando, Florida)	
)	
AWAKENING/ART & CULTURE)	File No. BNPL-20131106AJH
Orlando, Florida)	Facility ID # 192636
)	
For Construction Permits for)	
New Low Power FM Stations)	

TO: Honorable Marlene H. Dortch
 Secretary of the Commission

ATTN: Chief, Audio Division, Media Bureau

**PETITION FOR RECONSIDERATION
AND
PETITION FOR LEAVE TO AMEND**

Haitian Relief Radio and Community Services, Inc. (HRR), by its attorney, and pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. §405, and Section 1.106 of the Commission's Rules, 47 C.F.R. §1.106, hereby respectfully submits this Petition for Reconsideration of the grant of the application of Awakening/Art & Culture (AA&C) for a construction permit for a new Low Power FM (LPFM) Station on Channel 259 at Orlando, Florida. In so doing, the following is shown:

1. A descriptive public notice of the grant of the AA&C application was released by the Commission on March 26, 2015, **Public Notice, Broadcast Actions, Report No. 48454** (the relevant page of this public notice is attached as Exhibit A). Since the thirtieth day subsequent to the release of said public notice fell on a Saturday, this pleading is filed on the first business day thereafter and is timely filed. 47 C.F.R. §1.106(f); 47 C.F.R. §1.4(j).

Factual Background

2. HRR and AA&C were mutually-exclusive applicants for new LPFM construction permits in the Orlando, Florida area, and were assigned to MX Group 91 by the Commission's December 23, 2014 Public Notice, FCC 14-211, entitled "**Commission Identifies Tentative Selectees in 96 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments**".

3. To attempt to resolve MX Group 91, HRR, AA&C and another applicant, Ministerio RM, Inc. (MRM), reached a Time Sharing Agreement (Exhibit B), through which each of them would broadcast eight hours per day. MRM's proposal, on Channel 260 at Sanford, Florida, roughly 30 miles from HRR's proposed transmitter site, was not mutually-exclusive with HRR, although it was part of a daisy chain which included AA&C and HRR.

4. In an attempt to create a situation where HRR, AA&C and MRM could achieve 24 hour per day, 7 day per week LPFM stations, HRR electronically filed an amendment to its application on March 20 to move to Channel 220, 91.9 MHz, which was permitted during the 90 day "major change" window allowed by FCC 14-211.

5. The Commission granted the AA&C and MRM applications. The AA&C construction permit (Exhibit C) contains the following condition:

2 This is a time-shared facility authorized to operate only during the following times (local times):

Sunday through Saturday (7 days): 12:00 noon to 8:00 pm

This facility is time-shared with facility id: 192921 for Channel 259L1, Sanford, FL

6. For the reasons stated herein, HRR seeks reconsideration of the AA&C construction permit that fails to fully mention that HRR is part of the Time-Share Agreement. HRR hereby respectfully requests leave to amend its application to re-specify its facilities on Channel 260. HRR cannot electronically file such an amendment as a matter of right; the CDBS application filing system returns the following error message:

●Section VI, Question 1, The original station channel was changed, please make sure the current channel is within (+/-) 1,2,3,53,54 of the original station channel Value is: 260.0

Bible Broadcasting Network, Inc. Informal Objection

7. On March 27, 2015, Bible Broadcasting Network, Inc. (BBN), licensee of primary FM Broadcast Station WYFO, Channel 220, 91.9 MHz, Lakeland, Florida, and FM Translator Station W228BK, Channel 228, 93.5 MHz, Union Park, Florida, filed an Informal Objection against the HRR application as amended (Exhibit D). BBN alleges that the proposed grant of the HRR LPFM construction permit on Channel 220 would create a situation where station W228BK could not receive off-air primary station WYFO.

8. What caused the problem in the first place was that the FCC's CDBS database shows that WPIO(FM), Channel 207, Titusville, Florida, is W228BK's primary station (see Exhibit E). BBN's March 27, 2015 assertion that WYFO(FM) was W228BK's primary station literally blindsided HRR. Out of an abundance of caution, in order to have a broadcast station that it can serve the Haitian community in the Orlando area, HRR now seeks to return to Channel 260 and to avail itself of the Time-Share agreement.

Petition for Leave to Amend

9. The "major change" amendment window closed on March 23, 2015. As a result, HRR could not move back to Channel 260 without a waiver of the Commission's rules, including but not limited to Section 73.871(c). Therefore, assuming *arguendo* that

HRR cannot be granted and cannot build on Channel 220, HRR hereby respectfully petitions the Commission for leave to amend its application and for a waiver of the Commission's "major change" rule to return to Channel 260.

10. There is the "suicide amendment" doctrine in Commission case law in other broadcast services. In **Sacred Heart University, Inc.**, 6 FCC Rcd 4606 (Bureau, 1991), it was stated:

Commission precedent provides for the nonacceptance and predesignation return of major amendments which would cause the dismissal of mutually exclusive applications. See **Golden Shores Broadcasting, Inc.**, 2 FCC Rcd 4743 (1987); See also **Tequesta Television, Inc.**, 2 FCC Rcd 41 (1987), modifying 103 FCC 2d 1182 (Rev. Bd. 1986); **Redwood Television Ministries**, 52 RR 2d 1365 (1982). Consequently, the amendment will be returned.

11. By filing an amendment during the "major change" window to a channel which it could not reasonably have anticipated an interference problem, the public interest, convenience and necessity would be served by applying the "suicide amendment" doctrine to the HRR application and permitting it to return to Channel 260.

12. The test for "good cause" for leave to amend is stated in **Erwin O'Conner Broadcasting Co.**, 22 FCC Rcd 140, 143 (Rev. Bd. 1970):

- [1] the moving party must demonstrate that it acted with due diligence;
- [2] that the proposed amendment was not required by the voluntary act of the applicant;
- [3] that no modification or addition of issues or parties would be necessitated;
- [4] that the proposed amendment would not disrupt the orderly conduct of the hearing or necessitate additional hearing;
- [5] that the other parties will not be unfairly prejudiced; and
- [6] that the applicant will not gain a competitive advantage.

13. Applied to the instant case, HRR has acted with due diligence as it is filing this petition for leave to amend within 30 days of the BBN filing. The amendment was not required by the voluntary act of the applicant, as it learned for the first time of the WYFO interference situation after the close of the "major change" window. No modification or enlargement of issues would be required; HRR was fully qualified to construct and operate on Channel 260. The proposed amendment would not disrupt this case, as AA&C's construction permit only allows them eight hours per day of broadcasting as per the Time-Share Agreement, and HRR would be authorized to broadcast during a different eight hour period. Further, the "suicide amendment" doctrine clearly permits HRR to withdraw its amendment for Channel 220 and to return to Channel 260. AA&C would not be unfairly prejudiced, as no applicant has a vested interest in the dismissal of a competing applicant. ***Crosthwait v. FCC***, 584

F.2d 550, 555 (D. C. Cir. 1978). HRR would not gain a comparative advantage, as it would have been entitled to a grant on Channel 260 pursuant to the Time-Share agreement, and AA&C would not be affected.

Conclusion

14. The public interest, convenience and necessity would be well served by a grant of the HRR application for a new LPFM station to serve the underserved Haitian community in the Orlando, Florida area.

WHEREFORE, it is urged that the Commission re-issue the Awakening/Art & Culture construction permit on Channel 259 at Orlando, Florida to recognize the Time-Share agreement with both Ministerio RM, Inc. and with Haitian Relief Radio and Community Services, Inc.; and, further,

WHEREFORE, it is urged that the Commission grant leave to amend the Haitian Relief Radio and Community Services, Inc. application to specify Channel 260 and to grant its application for a construction permit for a new LPFM station at Orlando, Florida consistent with the Time-Share Agreement attached hereto.

Respectfully submitted,

**HAITIAN RELIEF RADIO AND
COMMUNITY SERVICES, INC.**



By _____
Dennis J. Kelly
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300

dkellyfcclaw1@comcast.net

DATED: April 27, 2015

EXHIBIT A



PUBLIC NOTICE

Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 48454

Broadcast Actions

3/26/2015

STATE FILE NUMBER

E/P CALL LETTERS

APPLICANT AND LOCATION

NATURE OF APPLICATION

Actions of: 03/23/2015

LOW POWER FM APPLICATIONS FOR LICENSE TO COVER GRANTED

KY	BLL-20150319ABI	WEIM-LP 194595 92.5 MHZ	EAGLE EYE, INC. KY , WEST LIBERTY	License to cover.
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LOW POWER FM APPLICATIONS FOR MINOR MODIFICATION TO A CONSTRUCTION PERMIT GRANTED

FL	BMPL-20150323AAN	WDKK-LP 191815 101.1 MHZ	AMERICAN MULTI-MEDIA SYNDICATE INC FL , NORTH DADE	Low Power FM Mod of CP to chg Requests waiver pursuant to Section 73.807(e)(1) with respect to WHYI-FM and WLYF.
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LOW POWER FM APPLICATIONS FOR ORIGINAL CONSTRUCTION PERMIT GRANTED

FL	BNPL-20131106AJH	NEW 192636 99.7 MHZ	AWAKENING/ART & CULTURE FL , ORLANDO	Low Power FM CP New Station. Engineering Amendment filed 03/04/2015
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EXHIBIT B

LOW POWER FM TIME-SHARE AGREEMENT

Awakening/Art & Culture (AA&C), Haitian Relief Radio and Community Services, Inc. (HRR) and Ministerio R.M., Inc. a/k/a Malaquias Bosques (MB) hereby enter into this “Low Power FM Time-Share Agreement” as of the 4th day of March, 2015:

WHEREAS, AA&C has filed an application with the Federal Communications Commission (FCC or Commission) for a construction permit for a new Low Power FM (LPFM) Station on 99.7 MHz, Channel 259, at Orlando, Florida, File No. BNPL-20131106AJH, Facility ID #192636 (the AA&C Application); and

WHEREAS, HRR has filed an application with the FCC for a construction permit for a new Low Power FM (LPFM) Station on 99.9 MHz, Channel 260, at Orlando, Florida, File No. BNPL-20131112AMG, FCC Facility ID #192845 (the HRR Application); and

WHEREAS, MB has filed an application with the FCC for a construction permit for a new Low Power FM (LPFM) Station on 99.7 MHz, Channel 259, at Sanford, Florida, File No. BNPL-20131113BOZ, FCC Facility ID #192921 (the MB Application); and

WHEREAS, the AA&C, HRR and MB applications were determined by the FCC to be mutually-exclusive with each other in LPFM Mutually-Exclusive Group 91 (Group 91) along with nine other LPFM applications specifying channels 258, 259 and 260 at various locations in Orange and Seminole Counties in Florida; and

WHEREAS, on December 23, 2014 the FCC released an Order, FCC 14-211, entitled “*Commission Identifies Tentative Selectees in 96 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*” (the FCC Order); and

WHEREAS, the parties hereto seek to aggregate their total points pursuant to the FCC’s “point system” set forth in Section 73.872 of the FCC’s Rules; to wit, by entering into this Agreement, the parties will have an aggregate of 15 points; and

WHEREAS, AA&C, HRR and MB hereby enter into the following voluntary time-share agreement, to wit:

1. Hours of Operation. AA&C, HRR and MB agree to request that the FCC grant each application subject to hours of operation stated in Schedule A attached hereto and incorporated herein by reference. Neither AA&C, HRR or MB will operate its transmitter simultaneously during times when the station licensed to the other party is on

the air and broadcasting during licensed broadcast times during the term of this Agreement.

2. Operating Schedule Minimum Requirements. The hours of operation proposed in this Agreement comply with 47 C.F.R. §73.872(c). Each party hereto agrees and covenant that each party will operate its respective station for at least ten (10) hours per week in accordance with the FCC's Rules. The hours of operation proposed in this agreement also comply with 47 C.F.R. §73.850(b) because each LPFM station will operate at least 5 hours of operation per day on at least 6 days of the week in accordance with the FCC's Rules.

3. Schedule Modifications. This Agreement may be amended or modified only by a written instrument executed by all of the Applicants and submitted to the Commission prior to the time of the proposed change. The parties agree that they will review the allocated hours of operation as necessary, but at least every six months.

4. Vacant Time. There is currently no vacant time. In the event that vacant time becomes available, it will be divided up by written agreement executed by all three Applicants. In the event that two or more Applicants are vying for the same vacant time slot, that time slot will be divided equally among the applicants. Should one of the contracting parties be unable to operate its respective station for any reason, one of the other parties to this Agreement may operate the Station on behalf of the party unable to broadcast.

5. Transmitter locations. All three applicants (AA&C, HRR, and MB) will use the transmitter locations specified in their respective applications and will each be responsible for their own costs of construction and operation. Should any of the applicants agree to share a transmitter location in the future, the applicants will amend their applications to reflect that change. In the event that such amendment occurs, applicants agree to share equally with one another the cost of construction and operation of said shared transmitter location.

6. Studio Space. MB will construct and operate its own studio. AA&C will attempt to construct and operate its own studio. In the event that AA&C is unable to secure its own studio space by the time that the station begins broadcasting, it will share HRR's studio. In the event that AA&C shares studio space with HRR, AA&C will rent an office space in the studio building currently occupied by HRR. In the event that AA&C and HRR share studio space, AA&C will help defray the studio utilities cost per month since it will be occupying office space in the same building next to the radio studio. Therefore, AA&C will pay HRR ONE HUNDRED DOLLARS (\$100.00) per month for rental of said space from HRR. In the event of any application costs arriving from this timeshare agreement or subsequent waivers (if required) the costs will be shared equally (on a 50%/50% basis). Both AA&C and HRR will revisit this timeshare agreement a year after the later date upon which the FCC has granted both the HRR and AA&C construction permits to determine whether they will continue to share studio space.

7. Equipment. All three applicants (AA&C, HRR, and MB) will own their own transmission and studio equipment. In the event that HRR and AA&C share in the ownership of their transmission and studio equipment, they will share the costs on an equal (50%/50%) basis.

8. Cross Promotion. HRR and AA&C will promote and mention each other's name, programming content on-air and might even share advertising materials, if the advertising is relevant, appropriate and done by mutual and prior agreement. MB will not promote or mention the programming of either HRR or AA&C and will not mention or discuss any of their programming on its low power FM station. It is the intention of the parties that MB will remain entirely distinct and separate from HRR and AA&C.

9. Termination. This agreement may be terminated only after an agreement stating the terms of such termination is submitted to the FCC for its approval and is in fact approved by the FCC. Should any party wish to terminate this Agreement, it is hereby required to give sixty (60) day notice to the other parties and must receive unanimous approval from the other parties in order to enter into a valid termination of this Agreement.

10. Valid Organization and Warranty. Each Applicant represents that (a) it is a duly organized, validly existing, and in good standing in its state of incorporation, and (b) the execution, delivery, and performance of this Agreement has been duly and effectively authorized by its governing board.

11. Amendments. Amendments or modifications to this Agreement must be in writing, signed by all of the Applicants, and submitted to the FCC.

12. Conduct. Each Applicant will use its best efforts to cooperate with other Applicants specified in this Agreement and with the FCC by expeditiously furnishing any additional information that may be reasonably required, and by performing all other acts reasonably necessary to carry out this Agreement.

13. Confidentiality. The Applicants shall henceforth maintain the confidentiality of any information received from any other Applicant in connection with negotiating, filing, and carrying out this Agreement.

14. Remedies on Default. In the event that one of the Applicants defaults on this Agreement, any Applicant not in default shall have available to it all remedies, at law or equity to which it is entitled under Florida law, including the right to obtain specific performance of the terms of this Agreement.

15. Attorney's Fees. The prevailing Party in any lawsuit to enforce this Agreement or to be compensated for the default of another Party is entitled to reasonable attorneys' fees, at trial and on appeal, as are determined by the court.

16. Benefit and Assignment. This Agreement is binding upon the benefit of the Parties and their respective heirs, legal representatives, and successors. No party to this Agreement may assign its interest under this Agreement without prior written consent of all the other Parties. In no event will an assignment be permitted if the consideration promised or received exceeds the depreciated fair market value of the physical equipment or facilities; and/or the transferee or assignee is incapable of satisfying all of the eligibility criteria that apply to an LPFM licensee in violation Section 73.865 of the FCC Rules.

17. Counterparts. This Agreement may be executed in counterparts, which, when executed shall constitute one Agreement, binding on all of the Parties.

18. Entire Agreement. This Agreement contains the entire understanding between and among the Applicants and supersedes all prior written or oral agreements between them. There are no representations, agreements, or understandings among the Parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

19. Acknowledgement. By signing this agreement, all of the Parties acknowledge that they have read this Agreement fully and understand each provision. Each signer represents and warrants that he has the legal and actual legal authority on behalf of his entity to bind his entity according to the terms of this Agreement.

20. Governing Law; Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida. Any action under this agreement shall be brought in the courts of Orange County, Florida.

21. Notices. Any notice required hereunder shall be in writing, and any notice or other communication shall be deemed provided when delivered by either hand or first-class United States mail, postage prepaid, to the following addresses, or such other addresses as may hereafter be specified in writing:

If to AA&C:

Mr. Nelson Betancourt, President
Awakening/Art & Culture
5350 East Kaley Street
Orlando, FL 32812-8864

If to HRR:

Mr. Joel Conserve, Treasurer
Haitian Relief Radio and Community Services, Inc.
5166 Millenia Boulevard #204
Orlando, FL 32839

If to MB

Mr. Malaquias Bosques, President
Ministerio R.M., Inc.
Post Office Box 5521
Deltona, FL 32728

22. Waiver. Failure of any Party to complain of any act or omission on the part of any other Party in breach of this Agreement, no matter how long the same may continue, shall not be deemed a waiver of any rights hereunder. No waiver of any provision of this Agreement will be deemed a waiver of any other provision or consent to any subsequent breach of the same or other provisions.

23. Liability. Nothing contained in this Agreement shall limit any Party's other business, waive any claims any Party might have against another Party, or allow any Party to bind any other Party except as may expressly be stated herein.

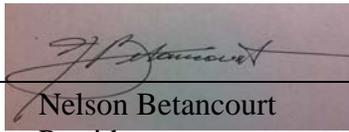
24. Severability. If any term or provision of this Agreement be invalid or unenforceable as to any Party, the remainder of this Agreement shall not be affected thereby, and each remaining term of provision of this Agreement shall be valid and enforceable.

25. FCC Section 73.3525 Statements. This Agreement constitutes the entire understanding between AA&C, HRR and MB for settlement of this proceeding. Other than as stated in the Settlement Agreement, neither AA&C, HRR nor MB (nor their officers and/or directors) have either paid or promised or have been paid or promised any consideration, direct or indirect, for their mutual decisions to enter into this Time-Share Agreement. Neither AA&C, HRR nor MB filed its respective application for the purpose of reaching or carrying out a settlement agreement. This Agreement is in the public interest because it was reached in order to simplify Group 91 and to minimize to the extent possible the use of scarce FCC adjudicatory resources.

[THIS SPACE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGES]

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED
THIS AGREEMENT AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE:**

AWAKENING/ART & CULTURE

By  _____
Nelson Betancourt
President

**HAITIAN RELIEF RADIO AND COMMUNITY
SERVICES, INC.**

By _____
Joel Conserve
Treasurer

**MINISTERIO R.M., INC. a/k/a
MALAQUIAS BOSQUES**

By _____
Malaquias Bosques
President

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED
THIS AGREEMENT AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE:**

AWAKENING/ART & CULTURE

By _____
Nelson Betancourt
President

**HAITIAN RELIEF RADIO AND COMMUNITY
SERVICES, INC.**

By  _____
Joel Conserve
Treasurer

**MINISTERIO R.M., INC. a/k/a
MALAQUIAS BOSQUES**

By _____
Malaquias Bosques
President

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE:

AWAKENING/ART & CULTURE

By _____
Nelson Betancourt
President

HAITIAN RELIEF RADIO AND COMMUNITY SERVICES, INC.

By _____
Joel Conserve
Treasurer

**MINISTERIO R.M., INC. a/k/a
MALAQUIAS BOSQUES**

By  _____
Malaquias Bosques
President

EXHIBIT C



United States of America
FEDERAL COMMUNICATIONS COMMISSION
LOW POWER FM BROADCAST STATION
CONSTRUCTION PERMIT (TIMESHARED FACILITY)

Authorizing Official:

Official Mailing Address:

AWAKENING/ART & CULTURE
5350 E KALEY ST
ORLANDO FL 32812

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

Facility ID: 192636

Grant Date: March 23, 2015

Call Sign: NEW

This permit expires 3:00 a.m.
local time, 18 months after the
grant date specified above.

Permit File Number: BNPL-20131106AJH

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be made only in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules. See Section 73.875.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee: AWAKENING/ART & CULTURE

Station Location: FL-ORLANDO

Frequency (MHz): 99.7

Channel: 259

Class: LP100

Hours of Operation: Limited - Time shared

Callsign: NEW

Permit No.: BNPL-20131106AJH

Transmitter: Type Certified. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: As required to operate within authorized range of effective radiated power.

Antenna type: Non-Directional

Antenna Coordinates: North Latitude: 28 deg 32 min 18 sec

West Longitude: 81 deg 18 min 30 sec

Maximum Effective radiated power in the Horizontal Plane (watts): 100

Minimum Effective radiated power in the Horizontal Plane (watts): 50

Height of radiation center above ground (Meters): 15

Height of radiation center above mean sea level (Meters): 46

Height of radiation center above average terrain (Meters): 25

Antenna structure registration number: Not Required

Overall height of antenna structure above ground: 16 Meters

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

None Required

Special operating conditions or restrictions:

1 The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

2 This is a time-shared facility authorized to operate only during the following times (local times):

Sunday through Saturday (7 days): 12:00 noon to 8:00 pm

This facility is time-shared with facility id: 192921 for Channel 259L1, Sanford, FL

*** END OF AUTHORIZATION ***

EXHIBIT D

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of)
)
HAITIAN RELIEF RADIO) File No. BNPL-20131112AMG
AND COMMUNITY SERVICES, INC.) Facility ID No. 192845
)
For Construction Permit for a)
New LPFM Station at Orlando, FL)

To: Office of the Secretary
Attention: Chief, Audio Division, Media Bureau

INFORMAL OBJECTION

Bible Broadcasting Network, Inc. (“BBN”), by its attorneys and pursuant to Title 47 C.F.R. §73.3587, hereby respectfully files this Informal Objection against the above-captioned pending application, as amended, of Haitian Relief Radio and Community Services, Inc. (“HRRCSI”) for a construction permit for a new low power FM (“LPFM”) station on FM Channel 220 at Orlando, Florida (the “Amendment”). As demonstrated herein, grant of the Amendment would not serve the public interest, convenience, and necessity as required by 47 U.S.C. § 309(a) because it would cause impermissible interference to the operations of a previously-authorized FM translator facility. Therefore, the Audio Division should deny or dismiss the Amendment.

**OPERATION OF A NEW LPFM STATION ON CHANNEL 220
AT ORLANDO, FLORIDA, WOULD INTERFERE WITH THE INPUT
CHANNEL OF W228BK**

On November 12, 2013, HRRC SI filed an application for a construction permit for a new LPFM station to operate on *Channel 260* at Orlando, Florida (the “Application”). The Application appeared on a Public Notice as accepted for filing on December 23, 2014.¹ At that time, BBN had

¹ See *Public Notice*, “COMMISSION IDENTIFIES TENTATIVE SELECTEES IN 96 GROUPS OF MUTUALLY

no reason to object to the Application. However, on or about March 20, 2015, HRRC SI filed the Amendment to the Application to specify *Channel 220* at Orlando. BBN's FM translator station W228BK, Union Park, Florida, receives commonly-owned noncommercial educational FM station WYFO, Lakeland, Florida, over the air for rebroadcast on W288BK. WYFO also operates on Channel 220, co-channel to the proposed LPFM facility. The attached Engineering Statement² provides in detail a showing that the theoretical off-air reception signal of WYFO at the W228BK transmitter site is 33.1 dB μ , using the F(50:50) prediction method. The proposed theoretical signal strength of the HRRC SI LPFM signal at the W228BK site will be 41.0 dB μ . This represents a -7.9 dB desired to undesired ratio for co-channel operation, significantly below the standard desired-to-undesired ratio for an interference free co-channel signal of +20.0 dB μ . Therefore, if the Amendment were granted and HRRC SI were to build out the LPFM facility, the result would be excessive amounts of co-channel interference to the reception of BBN's WYFO.

Section 73.827(b) of the Commission's rules provides that an authorized LPFM station will not be permitted to continue to operate if an FM translator station demonstrates that the LPFM station is causing actual interference to the FM translator station's input signal, provided that the same input signal was in use or proposed in an application filed with the Commission prior to the release of the Public Notice announcing the dates for an LPFM application filing window and has been continuously in use or proposed since that time. WYFO has been using Channel 220 since 1988 (File No. BLED-19880422KE) and W228BK has been continuously receiving the off-air signal of WYFO since 2007, in each case well before the release of the December Public Notice.

EXCLUSIVE APPLICATIONS FILED IN THE LPFM WINDOW; ANNOUNCES A 30-DAY PETITION TO DENY PERIOD AND A 90-DAY PERIOD TO FILE VOLUNTARY TIME-SHARE PROPOSALS AND MAJOR CHANGE AMENDMENT." FCC 14-211, released December 23, 2014 ("December Public Notice").

² This Informal Objection is supported by a declaration signed by the engineers who prepared and supervised the preparation of the Engineering Statement.

Section 73.827(a) of the Commission's rules provides that theoretical third-adjacent channel interference to the direct reception of an FM translator station's input signal will not be authorized; however, such a prohibition does not exist for co-channel interference. Instead, the LPFM facility would have to commence operations and then, when real-world interference exists, the FM translator would be able to object at the Commission. BBN believes that such omission was an error in drafting the rule. As shown in the Engineering Statement, the practical effect of this situation is that, should HRRC SI receive a permit for the proposed facility, it would have to immediately shut it down due to interference to the reception of WYFO by W228BK. The better practice is for the Commission to dismiss the Amendment now, or permit HRRC SI to amend the Application to use another non-interfering channel, rather than authorize HRRC SI – an LPFM applicant that likely has limited resources – to expend funds needlessly.

In light of the foregoing, BBN requests the Bureau to either dismiss or deny the Amendment.

Respectfully submitted,

BIBLE BROADCASTING NETWORK, INC.

By: 

Gary S. Smithwick
Its Attorney

SMITHWICK & BELENDIUK, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, DC 20016
202-363-4560

March 27, 2015

ATTACHMENT

Copy of Supporting Engineering Statement

ENGINEERING STATEMENT TO SUPPORT AN INFORMAL OBJECTION

BNPL-20131112AMGU
(As Amended on 03/23/2015)
APP220L1 – Orlando, FL
Channel 220L1 – 91.9 MHz
(Facility ID No. 192845)

§73.827 Violation - Interference to the
Input Signal of an FM Translator Station

March 2015

CERTIFICATION OF ENGINEERS

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 385 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of such data errors or omissions.

The report has been prepared by properly trained electronics specialists under the direction of the undersigned whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of the laws of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

March 27, 2015

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By Wayne S. Reese
Wayne S. Reese, President

By Justin W. Asher
Justin W. Asher, Project Engineer

ENGINEERING STATEMENT

This Engineering Statement is being filed in support of an *Informal Objection* against pending LPFM application BNPL-20131112AMG (As Amended on 03/23/2015). Pending Application BNPL-20131112AMG now requests a new APP220L1 (91.9 MHz) – Orlando, FL (FAC ID: 192845) facility, as filed by LPFM applicant Haitian Relief Radio and Community Services, Inc. ("HRRCSI"). This *Informal Objection* is being filed by Bible Broadcasting Network, Inc. ("BBN"), licensee of FM Translator W228BK – Union Park, FL (FAC ID: 138970), BLFT-20070521ACK. W228BK is licensed as an off-air (non-fill-in), non-commercial FM Translator rebroadcasting BBN Primary Station WYFO(FM) – Lakeland, FL (FAC ID: 5116). WYFO(FM) operates on CH220C3 under FCC License BLED-19900604KA. W228BK has utilized the off-air input of WYFO(FM), CH220C3 (91.9 MHz), since the commencement of W228BK operations in 2007.

The HRRCSI (91.9 MHz) LPFM facility will operate co-channel to the existing W228BK off-air input reception of Primary Station WYFO(FM) (91.9 MHz). The LPFM site is located 79.08 km away from WYFO(FM) on a bearing of 42.2°T. The W228BK site is located 96.32 km away from WYFO(FM) also on bearing of 43.8°T. The HRRCSI (91.9 MHz) LPFM facility will be located 17.43 km from the existing W228BK off-air input reception of Primary Station WYFO(FM) (91.9 MHz). This LPFM site is both located on the direct bearing of and in between the WYFO(FM) to W228BK off-air reception path.

The theoretical WYFO(FM) (91.9 MHz) off-air reception signal at the W228BK site has been calculated to be 33.1 dB μ F(50:50). The proposed theoretical HRRCSI (91.9 MHz) LPFM interference signal at the W228BK site has been calculated to be 41.0 dB μ F(50:10). This represents a -7.9 dB Desired to Undesired ratio for co-channel operation. The standard Desired to Undesired ratio for an interference free co-channel signal is +20.0 dB μ D to U. Therefore the proposed HRRCSI (91.9 MHz) LPFM facility is predicted to cause excessive amounts of co-channel interference to the existing Primary Station WYFO(FM) (91.9 MHz) off-air reception at the existing W228BK site over and above the FCC's reception standards.

Inspection of FCC Rule §73.827(a) indicates theoretical third-adjacent channel interference to the direct reception of an FM translator input signal will not be authorized at the processing stage. However, no provisions in §73.827(a) addresses theoretical co-channel interference at the processing stage. Therefore, apparent to the reading of Rule §73.827(a), theoretical third-adjacent channel (off-air input) interference is not allowed; but theoretical co-channel (off-air input) interference is.

This omission of Rule §73.827(a), (whereby a lesser third-adjacent channel is afforded greater processing protection than a more severe co-channel concern), is unfair to all parties involved. The secondary provisions of §73.827(b-c), (whereby LPFM stations must address and resolve all "real-world" off-air reception interference complaints regardless of channel relationship), will continue to apply. Therefore, BBN's off-air reception of WYFO(FM) will ultimately be afforded protection. However, under the current wording of §73.827(a), this will not occur until the HRRCSI (91.9 MHz) facility commences operation resulting in the predicted and catastrophic interference to W228BK. Even though the FCC's own interference standards predicts this off-air reception interference to occur, §73.827(a) fails to protect W228BK at the processing stage.

ENGINEERING STATEMENT (continued)

Conversely, HRRCSI filed their CH220L1 (91.9 MHz) application in compliance with the Rules; including a §73.827(a) showing fully protecting all lesser third-adjacent channel concerns. However, as §73.827(a) limits theoretical protection to the lesser channel relationships, (while omitting theoretical protection to the greater co-channel protections), HRRCSI is left with a false sense of security due to the ineffective protection study thresholds. The HRRCSI (91.9 MHz) LPFM facility has already invested substantial time and resources into an application which superficially complies with §73.827(a), but in reality, will be dismissed under §73.827(b-c). A grant and construction of the CH220L1 (91.9 MHz) LPFM facility would represent a further waste of resources, as HRRCSI would only see its authorization revoked by "real world" §73.827(b-c) interference complaints of catastrophic interference. While each LPFM applicant is ultimately responsible for its own filing, and more importantly responsible for the protection of other broadcast concerns, this off-air reception interference remains predictable ahead of time. The intent of §73.827(a) was believed to predict this very interference at the processing stage; thus protecting LPFM applicants from filing "train-wreck" applications. However the limited scope of §73.827(a) has put HRRCSI in a very bad situation. In other words, §73.827(a) has failed to protect the LPFM applicant as well.

A dismissal of Haitian Relief Radio and Community Services, Inc.'s APP220L1 (91.9 MHz) – Orlando, FL (FAC ID: 192845), Application BNPL-20131112AMG (As Amended on 03/23/2015), is still believed merited under the provisions of §73.827(a). Regardless of the wording which limits §73.827(a) solely to third-adjacent channel off-air reception relationships, it is believed the Commission still retains the authority to interpret FCC Rules and Policy as need to provide a fair, efficient and equitable distribution of radio services to the public. The current reading of §73.827(a), (whereby theoretical third-adjacent channel (off-air input) interference is not allowed; but theoretical co-channel (off-air input) interference is), is anything but efficient. Neither is this fair to the offended Translator party who can document the existence of catastrophic theoretical interference; but must wait until its off-air reception is utterly decimated before the Rule will offer any protection. Nor is this fair to the LPFM applicant who will have expended both application and future construction expenses, through the unequable (and unanticipated) application of §73.827(a).

If the Commission intended to protect the off-air reception of FM Translators and Booster Stations through §73.827(a), then the interpretation of §73.827(a) to include co-channel (and other adjacent channel) relationships at the processing stage is the appropriate action. A dismissal of Haitian Relief Radio and Community Services, Inc.'s APP220L1 (91.9 MHz) – Orlando, FL (FAC ID: 192845), Application BNPL-20131112AMG (As Amended on 03/23/2015), is merited in this instance.

Primary Station - 33.1 dBμ F(50:50)

**§73.827(a) Study
Interference to the input of an FM Translator**

W228BK.L
Union Park, FL
BLFT20070521ACK
Facility ID: 138970
Latitude: 28-34-07 N
Longitude: 081-13-55 W
ERP: 0.038 kW
Channel: 228D (93.5 MHz)
AMSL Height: 80.0 m
Horiz. Pattern: Omni

43.8° T - Bearing from Primary Station To Translator
WYFO(FM) W228BK

APP220L1.A
Orlando, FL
BNPL20131112AMG
Facility ID: 192845
Latitude: 28-28-16 N
Longitude: 081-22-18 W
ERP: 0.0254 kW
Channel: 220L1 (91.9 MHz)
AMSL Height: 86.0 m
Horiz. Pattern: Omni

W228BK.L

WYFO.L
Lakeland, FL
BLED1990604KA
Facility ID: 5116
Latitude: 27-56-35 N
Longitude: 081-54-45 W
ERP: 25.00 kW
Channel: 220C3 (91.9 MHz)
AMSL Height: 139.0 m
Horiz. Pattern: Directional

APP220L1.A
+

NED 03 SEC Terrain Database
US Census 2010 PL Database

Terrain
0 58 m

Scale 1:175,000
0 3 6 9 km

LPFM - 47.0 dBμ F(50:10)



CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Informal Objection" was mailed by First Class U.S. Mail, postage prepaid (or via electronic mail if marked with an asterisk), this 27th day of March, 2015, to the following:

Mr. Gary A. Loehrs*
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(Email: gary.loehrs@fcc.gov)

Dennis J. Kelly, Esq.
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P. O. Box 41177
Washington, DC 20018-0577
(Counsel for Haitian Relief Radio and
Community Services, Inc.)



Sherry L. Schunemann

EXHIBIT E



Station Search Details

[FCC](#)> [Media Bureau](#)> [MB-CDBS](#)> [CDBS Public Access](#)> [Station Search](#)

[Help](#) [site map](#)

Station Search Details

Call Sign:	W228BK
Facility Id:	138970
Primary Station Call Sign:	WPIO
Community of License:	UNION PARK, FL
Service:	FX
Fac Type:	FM TRANSLATOR
Status:	LICENSED
Status Date:	06/19/2007
Frequency:	93.5
Channel:	228
Digital Status:	
Lic Expir:	02/01/2020
Licensee:	BIBLE BROADCASTING NETWORK, INC.
Address:	11530 CARMEL COMMONS BOULEVARD
Address 2:	
City:	CHARLOTTE
State:	NC
Zip Code:	28226 -
Phone Number:	(704) 523-5555
Engineering Data	View Engineering Data
Call Sign History	View Call Sign History
FRN History	View FRN History
Correspondence Folder	View Correspondence Folder

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Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

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Washington, DC 20554
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CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing "Petition for Reconsideration and Petition for Leave to Amend" were served by first-class mail, postage prepaid, on this 27th day of April, 2015 upon the following:

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Dennis J. Kelly