



Federal Communications Commission
Washington, D.C. 20554

July 30, 2018

In Reply Refer to:
1800B3-ATS

Jerrold Miller, Esq.
Miller and Neely, P.C.
3750 University Blvd. W., Suite 203
Kensington, MD 20895

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, Suite 1100
Arlington, VA 22209

In re: **Southern Broadcast Media, LLC**
FM Translator Station W264DO,
Winston-Salem, NC
File No. BNPFT-20180322ABG
Facility ID No. 201392

Petition for Reconsideration

Dear Counsel:

We have before us the Petition for Reconsideration (Petition) filed by Love and Faith Christian Fellowship (LFCF), seeking reconsideration of the grant of the application (Permit Application) of Southern Broadcast Media, LLC (SBM), for a construction permit for a new FM translator station (Translator) at Winston-Salem, North Carolina.¹ For the reasons discussed below, we dismiss the Petition.

Background. SBM filed the Permit Application on March 22, 2018, seeking authorization to construct a cross service FM translator station to rebroadcast Station WTOB(AM), Winston-Salem, North Carolina. The Media Bureau gave public notice of the filing of the Permit Application on March 27, 2018, noting that petitions to deny were required to be filed within 15 days of the public notice.² No petition or objection was filed, and the Bureau granted the Permit Application on April 13, 2018.³

In the Petition, LFCF explains that, after the filing of the Permit Application, it promptly retained legal counsel and a consulting engineer to review the Permit Application and determine whether it would interfere with Station WLFJ-LP, Greensboro, North Carolina, which is licensed to LFCF and is co-channel to the Translator.⁴ LFCF further states that it obtained statements from five listeners of WLFJ-LP that were concerned over potential interference from the Translator.⁵ However, LFCF states that its engineer was not able to complete an engineering study in the 15-day petition to deny period.⁶

The Petition further argues that the grant of the Permit Application should be rescinded because the Translator is likely to cause interference to listeners of WLFJ-LP.⁷ In addition to the five listener

¹ LFCF filed the Petition on April 30, 2018. SBM filed an Opposition on May 15, 2018.

² See *Broadcast Applications*, Public Notice, Report No. 29202 (MB Mar. 27, 2018) (Filing PN).

³ See *Broadcast Actions*, Public Notice, Report No. 49217 (MB Apr. 18, 2018).

⁴ Petition at 1.

⁵ *Id.* at 1-2. Those statements are attached to the Petition.

⁶ *Id.* at 2.

⁷ Petition at 2-3.

statements, the Petition includes an Engineering Statement which includes maps showing the contours of WLJF-LP and the Translator as determined by Longley-Rice methodology and stating that the Translator will cause interference to WLJF-LQ, and a separate map showing the location of the five listeners that submitted statements.⁸ Accordingly, LFCF requests dismissal of the Permit Application pursuant to Section 74.1204(f) of the FCC's rules (Rules).⁹

In the Opposition, SBM argues that the Translator will not cause interference to WLJF-LP's signal, and provides declarations from three of its employees stating that they conducted measurements at the listener locations identified by LFCF and were unable to receive WLJF-LP's signal.¹⁰ SBM further argues that the maps LFCF provided with the Petition fail to demonstrate that the five listeners reside within the 60 dBμ contour of the Translator, and thus LFCF has not met the Commission's requirements under Section 74.1204(f).¹¹ Finally, SBM argues that the Petition is procedurally defective because LFCF failed to show good reason why it did not participate earlier in the proceeding, and that its engineer's inability to complete the required engineering showing within the 15-day petition to deny period does not excuse its failure to file a timely petition to deny.¹²

Discussion. A petitioner who is not a party to the proceeding generally 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.¹³ The Commission has afforded reconsideration to petitioners where the grant of an application occurred shortly after the application was filed, thus "effectively precluding" participation in the proceeding.¹⁴

LFCF has not satisfied the procedural standard for seeking reconsideration despite having failed to participate earlier in the proceeding. Here, the public was notified that the Permit Application would be granted after the 15-day petition to deny period had run.¹⁵ LFCF had ample opportunity to file a petition to deny or informal objection prior to the grant of the Permit Application, and the fact that LFCF's engineer was unable to prepare the required Engineering Statement within 15 days is not a good reason for its failure to timely participate.¹⁶ It is axiomatic that an adjudicatory process cannot operate efficiently or accurately if a party does not participate in a proceeding but is permitted to "sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence."¹⁷ The staff may dismiss a petition for reconsideration seeking to overturn the grant of an application where the

⁸ *Id.* at Engineering Statement and Statements.

⁹ *Id.* at 2-3 (citing 47 CFR § 74.1204(f)).

¹⁰ Opposition at 4-5, and Exhs. A, B, and C.

¹¹ *Id.* at 6.

¹² *Id.* at 6-8.

¹³ 47 CFR § 1.106(b)(1).

¹⁴ See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, para. 3 (1989) (standing to file a petition for reconsideration found when application was granted four days after public notice issued); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55, para. 9 (1997) (standing to file a petition for reconsideration found when application was granted five days after acceptance).

¹⁵ See Filing PN ("Petitions to deny this application must be on file no later than 15 days from the date of the notice accepting this application for filing").

¹⁶ Compare *Caron Broad, Inc.*, Letter Order, 32 FCC Rcd 5692, 5695 (MB 2017) (accepting a petition for reconsideration where petitioner had failed to timely object to a 250-mile FM translator move but because of unique circumstances related to AM Revitalization proceeding, consideration of petition was in the public interest).

¹⁷ See, e.g., *Canyon Area Residents for the Env't*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)).

petitioner did not show good cause for failing to participate earlier in the proceeding.¹⁸ Accordingly, we will dismiss the Petition.

Moreover, were we to consider the Petition, we would deny it. 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.”¹⁹ 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 radio 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 specified radio 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.²⁰ The Commission has stated that “[t]he best method, of course, is to plot the specific [listener] addresses on a map depicting the translator station’s 60 dBμ contour.”²¹

LFCF has failed to follow this protocol in the Petition because it has not demonstrated that the five listeners that submitted statements reside within the 60 dBμ contour of the Translator. Additionally, for the purposes of determining predicted interference, translator applicants are required to comply with the standard prediction methodology set forth in Section 74.1204(a) and Section 73.313 of the Rules, and thus may not rely on Longley-Rice methodology.²² The Engineering Statement utilizes Longley-Rice methodology and thus fails to provide convincing evidence that that grant of the translator construction permit “would result in interference to the reception” of WLJF-LP. Because LFCF has failed to meet the requirements of Section 74.1204(f), and we would thus would deny the Petition were we to consider it.²³

¹⁸ See *Ass’n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682 (2004) (*ACE*) (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 Order, 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).

¹⁹ See *ACE*, 19 FCC Rcd at 12685-6, para. 10 (citing *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 128 (1990)).

²⁰ *ACE*, 19 FCC Rcd at 12687, para. 13.

²¹ *Id.* n.30.

²² 47 CFR §§ 74.1204(f), 73.313.

²³ We remind the parties that SBM is required to comply with Section 74.1203(a)(1) of the Rules and will be required to cease operation of the Translator if it causes actual interference to any listeners of WLJF-LP. See 47 CFR § 74.1203(a)(1).

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the April 30, 2018, Petition for Reconsideration filed by Love and Faith Christian Fellowship IS DISMISSED.

Sincerely,

A handwritten signature in black ink, appearing to read 'Albert Shuldiner', written over a horizontal line.

Albert Shuldiner
Chief, Audio Division
Media Bureau