



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer To:
1800B3-ATS

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In re: Tyler Media, LLC
Station K279CR, Coweta, Oklahoma
Facility ID No. 157276
File Nos. BMPFT-20160129AGL;
BLFT-20160908AAO

**Informal Objection and
Petition for Reconsideration**

Dear Counsel:

We have before us: 1) the Informal Objection filed by Perry Broadcasting of Southwest Oklahoma, Inc. (Perry), against the referenced application (Permit Application) of Tyler Media, LLC (Tyler), to modify its construction permit for FM Translator Station K279CR, Coweta, Oklahoma (Station); 2) the Petition for Reconsideration filed by Perry, seeking reconsideration of the Media Bureau (Bureau) grant¹ of the Permit Application; and 3) the referenced covering license application (License Application) filed by Tyler for the Station.² For the reasons set forth below, we grant the Petition in part, deny the Objection, dismiss the Petition in part, and grant the License Application.

Background. The Commission's AM revitalization proceeding established temporary special procedures for modifications of FM translator stations or permits to be used to rebroadcast AM station programming.³ The Permit Application was filed on January 29, 2016, during the first filing window opened for such translator modification applications, and proposed moving the Station's transmitter site

¹ *Broadcast Actions*, Public Notice, Report No. 48676 (MB Feb 23, 2016).

² Perry filed the Objection on February 11, 2016 and the Petition on February 24, 2016. Tyler filed a "Consolidated Opposition to Informal Objection and Petition for Reconsideration" on March 4, 2016 (First Opposition). Perry filed a Reply on March 16, 2016 (First Reply). Tyler filed an "Opposition to Reply and Petition for Reconsideration" on March 28, 2016 (Second Opposition). Perry filed a Reply on April 7, 2016 (Second Reply). For the reasons explained below, we are dismissing the First Reply to the extent it presents new information and dismissing the responsive Second Opposition and Second Reply addressing this new information as unauthorized pleadings.

³ See *Revitalization of the AM Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12152, para. 15 (2015).

and modifying the Station's operations from Channel 298 to Channel 279.⁴ In the Objection, Perry argued that the Station would cause harmful interference to the licensed facility of Station KSVF(FM), Anadarko, Oklahoma, which is licensed to Perry, in violation of Section 74.1204(f) of the FCC's Rules (Rules).⁵ Perry provided an exhibit prepared by its engineer, Charles M. Anderson, in support of this argument.⁶ The Anderson Exhibit provides a map of the Station's proposed 60 dBμ contour, a map showing the predicted interference to KSVF, and a map showing the location of existing KSVF listeners within the Station's proposed 60 dBμ contour.⁷

The Bureau granted the Permit Application on February 18, 2016, but did not consider the Objection. Perry subsequently filed the Petition, in which it argues that the Bureau erred in granting the Permit Application without considering the Objection.⁸ Perry also again argues that the Permit Application should have been dismissed pursuant to Section 74.1204(f) and provides a copy of the same Anderson Exhibit submitted with the Objection.⁹

In the First Opposition, Tyler argues that the Anderson Exhibit is flawed. It states that its own engineer was unable to replicate the results provided in the Anderson Exhibit, and that its own studies indicate that the Station would cause no interference to KSVF.¹⁰ Tyler further argues that the Objection failed to meet the requirements of Section 74.1204(f) because it does not provide the names, addresses and listening locations of affected KSVF listeners.¹¹

In the First Reply, Perry argues that Section 74.1204(f) "is silent with regard to the issue of providing statements from listeners, and indeed requires only a showing of the proposed translator's contour overlaps 'a populated area' which receives the affected full power station's 'regularly used, off-the-air' signal" and argues that the Anderson Exhibit satisfied that requirement.¹² Perry also provides affidavits from seven listeners.¹³ Finally, Perry states that Tyler's inability to recreate the results of the Anderson Exhibit is attributable to that exhibit's reliance on more current software.¹⁴

Discussion. Because the Bureau failed to consider the Objection, we will grant the Petition in part and consider the interference argument raised in the Objection. Pursuant to Section 309(d) of the Communications Act of 1934, as amended (Act),¹⁵ petitions to deny and informal objections must provide

⁴ *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications and Availability of FM Translator Technical Tools*, Public Notice, 30 FCC Rcd 14690 (MB 2015).

⁵ Objection at 1-2.

⁶ *Id.* at Exh. 1 (Anderson Exhibit).

⁷ *Id.* at Exh. E1, Exh. E2., and Exh. E3.

⁸ Petition at 1.

⁹ *Id.* at 2-3 and Exh. A.

¹⁰ First Opposition at 2. Tyler provides an engineering exhibit in support of this argument. See *id.* at Exh. 1.

¹¹ *Id.* at 2-3.

¹² First Reply at 1-2.

¹³ *Id.* at 2 and Exh. 1.

¹⁴ *Id.* at 2.

¹⁵ 47 U.S.C. § 309(d).

properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹⁶

We reject Perry's argument that the Anderson Exhibit meets the requirements of Section 74.1204(f). In promulgating Section 74.1204(f),¹⁷ 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."¹⁸ In order to demonstrate that grant of an FM translator construction permit application "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.¹⁹

The Objection failed to satisfy the Section 74.1204(f) requirement because it failed to provide the names of each listener and also failed to provide evidence—such as declarations—from those listeners that they are within KSVF's 60 dBμ service contour and are in fact listeners of KSVF at that the addresses identified in the Anderson Exhibit.

Perry improperly attempted to cure its omission of listener statements by presenting them in the First Reply. Section 1.106(h) limits replies to "matters raised in the opposition."²⁰ Perry's legal argument concerning the proper interpretation of Section 74.1204(f) was appropriate for a reply, but the listener statements presented new information that Tyler could not address in the First Opposition, submitted pursuant to Section 1.106(g).²¹ Accordingly, we will dismiss this portion of the First Reply, and dismiss

¹⁶ See, e.g., *WVOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁷ 47 CFR § 74.1204(f).

¹⁸ See *Ass'n for Cmty. Ed., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6, para. 10 (2004), 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), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993).

¹⁹ *Ass'n for Cmty. Ed., Inc.*, 19 FCC Rcd at 12687, para. 13 (international citation omitted). The staff generally requires demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dBμ contour who are unconnected with the full-service station whose service allegedly will be disrupted. See *id.* at 12688 n.37 (approving staff practice requiring that the complainant be "disinterested," i.e., a person or entity without a stake in the outcome of the translator station licensing proceeding).

²⁰ 47 CFR § 1.106(h).

²¹ 47 CFR § 1.106(g). See *Indus. Bus. Corp.*, Memorandum Opinion and Order, 26 R.R.2d 1447, 1449, para. 4 (Rev. Bd. 1973) ("A petitioner will not be permitted to attempt to cure an otherwise defective petition where information contained in its reply pleading was readily available and could have been included in the original petition to enlarge issues. To allow the reply to thus serve the purpose of the original petition would be to either (a) effectively render meaningless provisions in the rules for a fair opportunity by another party to respond to allegations or (b) compel the addition of supplementary pleadings not ordinarily contemplated by the rules."). Here, Perry's belated introduction of the listener statements resulted in the filing of the Second Opposition to address the

the Second Opposition and Second Reply as unauthorized pleadings.²² Based on the pleadings remaining in the record, we find Perry's argument concerning interference from the Station under Section 74.1204(f) unsubstantiated.²³

Perry is likewise barred from presenting the listener statements for the first time on reconsideration. Section 1.106(c) of the Rules provides that a petition for reconsideration that relies on facts or arguments not previously presented to the Commission or its designated authority may be granted only (1) if those newly raised facts or arguments concern events (i) that have occurred or circumstances that have changed since the petitioner's last opportunity to present such matters to the Commission or (ii) that were unknown to the petitioner until after the last opportunity to present such matters and that the petitioner could not, through the exercise of ordinary diligence, have learned of prior to such opportunity; or (2) if the Commission or the designated authority determines that consideration of the facts and arguments relied on is required in the public interest.²⁴ Perry has failed to show why it was unable to provide the names and declarations of KSVP listeners with its Objection. Accordingly, we will not consider these statements on reconsideration and will dismiss the Petition to the extent it relies on them. We will also grant the License Application.²⁵

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED the Reply filed on March 16 2016, by Perry Broadcasting of Southwest Oklahoma, Inc., IS DISMISSED to the extent indicated above, and the Opposition filed on March 28, 2016, by Tyler Media, LLC, and the Reply filed on April 7, 2016, by Perry Broadcasting of Southwest Oklahoma, Inc., ARE DISMISSED as unauthorized pleadings.

IT IS ORDERED that the Petition for Reconsideration filed on February 24, 2016, by Perry Broadcasting of Southwest Oklahoma, Inc., IS GRANTED to the extent indicated above and IS DISMISSED in all other respects.

IT IS FURTHER ORDERED that the Informal Objection filed on February 11, 2016, by Perry Broadcasting of Southwest Oklahoma, Inc., IS DENIED.

adequacy of those statements and the Second Reply thereafter. Because we find that those listener statements were improperly provided, we need not consider either the Second Opposition or the Second Reply.

²² See, e.g., *Fourteen Hundred, Inc.*, Letter Order, 15 FCC Rcd 4486, 4488 (MB 2010) (dismissing filings submitted after reply as unauthorized pleadings).

²³ See *Red Wolf Broad. Corp.*, Letter Order, 27 FCC Rcd 4870, 4873 (MB 2012) (denying objection to a new translator station application where objector failed to provide any declarations from specific listeners falling within the Application's predicted 60 dBµ service contour).

²⁴ 47 CFR § 1.106(c); (b)(2)(i); (b)(2)(ii).

²⁵ We remind the parties that Tyler is required to comply with Section 74.1203(a)(1) of the Rules and will be required to cease operation of the Station if it causes actual interference to any listeners of KSVP. See 47 CFR § 74.1203(a)(1).

IT IS FURTHER ORDERED that the covering license application filed by Tyler Media, LLC for Station K279CR, Coweta, Oklahoma (BLFT-20160908AAO) IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau