



Federal Communications Commission
Washington, D.C. 20554

January 4, 2017

In Reply Refer to:
1800B3-HOD

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

Barry A. Friedman, Esq.
Thompson Hine LLP
Suite 700
1919 M Street, N.W.
Washington, DC 20036

In re: **Primera Iglesia Evangelica de
Apostoles y Profetas.**

K291CE, Sugar Land, Texas
Facility ID No. 147704
File No. BMPFT-20160108AAV

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration filed by Primera Iglesia Evangelica de Apostoles y Profetas (Licensee), the licensee of FM translator K291CE, Sugar Land, Texas (Translator).¹ Licensee challenges the denial of its request for waiver of the rule governing the processing of FM translator applications (Waiver Request) and the dismissal of the above-referenced application to change the Translator's frequency from Channel 291 to Channel 247 (Application).² For the reasons set forth below, we dismiss the Petition.

Background. Because the non-adjacent channel change proposed in the Application constitutes a major change under Section 74.1233 of the Rules,³ Licensee requested a waiver of that rule to permit the processing of the Application outside of a filing window.⁴ In support of its Waiver Request, Licensee stated that the Translator was receiving interference from a co-channel full service FM station and that no adjacent or intermediate frequency channels were available.⁵

We rejected the Waiver Request. While acknowledging that the Commission has waived Section 74.1233 when a translator is "displaced," we concluded that the Translator was not "displaced." We

¹ Gow Communications, L.L.C. filed an Opposition to Petition for Reconsideration on March 14, 2016.

² *Primera Iglesia Evangelica de Apostoles y Profetas*, Letter Order (MB Jan. 29, 2016).

³ 47 C.F.R. § 74.1233 (defining "major change" to include "any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels" and permitting major change applications to be filed only during filing windows).

⁴ Application at Exh. 13 (Engineering Report).

⁵ *Id.*

noted that, here, the full service FM station commenced operations prior to the Translator. We explained that, displacement occurs only when a full service FM station modifies its facilities or a new full service FM station commences operation and there is interference caused or received by an existing FM translator.

Licensee challenges our decision. It argues that “no sound policy basis exists for the denial of the waiver request.”⁶ In support, Licensee states that the Translator is “receiving destructive interference,”⁷ and notes that “what is being requested in this case is functionally no different than that already allowed in the full service band.”⁸

Discussion. Reconsideration is appropriate only when the petitioner either demonstrates a material error or omission in the underlying decision or raises additional facts or arguments not known or not existing until after the petitioner’s last opportunity to present such matters.⁹ Here, Licensee has failed to demonstrate any material error in the underlying decision. Licensee essentially takes issue with our policy regarding waivers of Section 74.1233 of the Rules not our application of the policy. Further, the new argument it makes regarding the treatment of non-adjacent channel changes in the full-service FM context is not based on facts unknown or not existing when Licensee submitted its Waiver Request. Accordingly, we find that Licensee has failed to timely present information warranting reconsideration and dismiss the Petition.

Were we to reach the merits of Licensee’s arguments, we also would find no basis for reconsideration. It is well established that the Commission’s Rules may be waived only for good cause shown.¹⁰ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.¹¹ Licensee failed to satisfy these requirements. Specifically, it did not identify any special circumstances that would warrant a deviation from the general rule. Indeed, we previously determined that the fact that non-adjacent channel changes proposed by full-service FM stations are treated as minor changes did not constitute a special circumstance warranting waiver of the FM translator application processing rules.¹²

We further note that there is a sound policy basis for distinguishing between our treatment of a displaced translator (*i.e.*, a translator that causes or receives interference as a result of the modification or licensing of a full service FM station) and a non-displaced translator (*i.e.*, a translator that chose to construct facilities that cause or receive interference). In the former scenario, the interference is outside the translator licensee’s control. In the latter scenario, the interference results from choices the translator licensee itself made.¹³

⁶ Petition at 2.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3-5.

⁹ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257 para. 2 (EB 2000), citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967, 86 S. Ct. 1272 (1966); see also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610 para. 6 (EB 2012) (providing standard of review for petitions for reconsideration).

¹⁰ 47 C.F.R. § 1.3.

¹¹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² See, e.g., *Way Media, Inc.*, Letter, 29 FCC Rcd 11287, 11291 n.38 (MB 2014).

¹³ See, e.g., *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order and Fourth Further Notice of Proposed

Conclusion/Actions. For the reasons stated above, IT IS ORDERED, that the Petition for Reconsideration filed by Primera Iglesia Evangelica de Apostoles y Profetas on March 4, 2016, IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau