



**Federal Communications Commission
Washington, D.C. 20554**

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In Reply Refer to:
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In re: **Rocket Radio Corporation**
K246CH, Tuba City, Arizona
Facility ID No. 155722
File No. BPFT-20160129AVI

Petition for Reconsideration

K259AS, Globe, Arizona
Facility ID No. 144058
File No. BPFT-20160129AWZ

Petition for Reconsideration

Dear Counsel:

The Media Bureau (Bureau) has before it: (1) Linda C. Corso's (Corso)¹ nearly identical² March 1, 2016, Petitions for Reconsideration (collectively, the Petitions) of the Bureau's grant of the applications of Rocket Radio Corporation (RRC) for minor modifications of the facilities of its unbuilt FM translator permits for Stations K246CH, Tuba City (K246CH Application), and K259AS,³ Globe, Arizona (K259AS Application); (2) Corso's March 1, 2016, Motion for Stay (Motion) of the effectiveness of only the K259AS Application grant; and (3) related pleadings.⁴ For the reasons discussed

¹ Corso is licensee of Station KRDE(FM), San Carlos, Arizona, operating on Channel 231 (94.1 MHz).

² Although the texts of the two Petitions are identical, the electronically-filed Petition associated with the K259AS Application in the Commission's CDDBS database contains "Exhibits B through P" which are not contained in the Petition associated with the K246CH Application.

³ K259AS received an authorization to operate as K230BT on Channel 230, but in this proceeding, we shall refer to the station under its former call sign. See K259AS Application.

⁴ On March 10, 2016, RRC filed separate Motions for Extension of Time to respond to the Petition and the Motion, respectively; on April 5, 2016, it filed its Opposition to the Petition (Opposition) (regarding K246CH), to which Corso replied on April 15, 2016 (Reply). On March 10 and April 15, 2016, RRC filed Motions for Extension of

below, we dismiss the Petition against the granted K246CH Application, and we dismiss the Petition and Motion against the amended K259AS Application as moot.

Background. K246CH is currently authorized to operate on Channel 246 (97.1 MHz) at Tuba City, Arizona, as a “fill-in” translator for Station KIKO(AM), Claypool, Arizona;⁵ K259AS is currently authorized to operate on Channel 259 (99.7 MHz) at Globe, Arizona, as a fill-in translator for Station KBSZ(AM), Apache Junction, Arizona.⁶ On January 29, 2016, RRC filed the modification applications at issue here during the authorized filing window for FM translator modification applications.⁷ The applications essentially proposed that the RRC translator stations switch primary stations: The K259AS Application initially proposed operation on Channel 275 (102.9 MHz) to operate as a fill-in translator for KIKO(AM),⁸ while the K246CH Application initially proposed operation on Channel 230 (102.9 MHz), a first-adjacent channel to Corso’s station KRDE(FM), to operate as a fill-in translator for KBSZ(AM).⁹

On February 12, 2016, Corso filed an Informal Objection to the K246CH Application, asserting that the proposal was fatally defective because it would cause harmful interference to Corso’s KRDE(FM), in violation of Section 74.1204(f) of the FCC’s rules (Rules).¹⁰ RRC did not respond to this pleading. However, on February 19, 2016, RRC amended the applications, proposing that K259AS operate on Channel 230 as a fill-in for Station KBSZ(AM) and that K246CH operate on Channel 275 as a fill-in for KIKO(AM). The staff subsequently dismissed the Informal Objection as moot and granted the amended K246CH and K259AS Applications on February 24 and 25, 2016, respectively.¹¹ Corso timely filed the Petitions on March 1, 2016.

On April 4, 2016, RRC filed a covering license application for K246CH;¹² on May 19, 2016, RRC filed a covering license application for K259AS.¹³ On February 28, 2017, RRC requested that the

Time to respond to the Petition, which Corso opposed on April 25, 2016. On April 29, 2016, RRC filed an Opposition to the Petition regarding K259AS, to which Corso replied on May 6, 2016.

⁵ See File No. BLFT-20160918ACN.

⁶ See File No. BLFT-20150630AAP.

⁷ See *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 14690-1 (MB 2015), (*FM Translator Modification Window Notice*); see also *Revitalization of the AM Radio Service*, Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12150, para. 12 (2015), 81 Fed. Reg. 2751-01 (Jan. 19, 2016) (*AM Revitalization Order*) (AM licensee seeking to rebroadcast on an FM translator may acquire and relocate one and only one authorized non-reserved band FM translator station up to 250 miles). The K246CH Application proposed a relocation of 53 miles; the K259AS Application proposed a relocation of 49 miles.

⁸ K259AS and KIKO(AM) are under the common control of John Low (Low). See K259AS Application at Exhibit 3.

⁹ K246CH and KBSZ(AM) are also under the common control of Low. See K246CH Application at Exhibit 3.

¹⁰ 47 CFR § 74.1204(f).

¹¹ See *Broadcast Actions*, Public Notice, Report No. 48680 (rel. Feb. 29, 2016), p.16 (announcing grant of the K259AS Application); see also *Broadcast Actions*, Public Notice, Report No. 48681 (rel. Mar. 1, 2016), p.9 (announcing grant of the K246CH Application and dismissal as moot of Corso’s Informal Objection).

¹² File No. BLFT-20160404ACM (K246CH License Application).

¹³ File No. BLFT-20160519ABI (K259AS License Application).

Commission dismiss the K259AS License Application and cancel its underlying construction permit for K259AS to operate on Channel 230.¹⁴ On March 2, 2017, the staff did so.¹⁵

In the Petition, Corso argues that she has standing to file the Petition with respect to the grant of the K246CH Application because she became a party to the proceeding through the filing of her Informal Objection and service upon RRC's counsel.¹⁶ Next, Corso claims that by amending the K246CH Application so as to specify a markedly different, nonadjacent channel from Corso's station, RRC attempted to moot her Informal Objection.¹⁷ In addition, Corso claims that by RRC's failing to serve her or her counsel of record with the amended K246CH Application, RRC violated the Commission's *ex parte* rules and attempted to get a grant of the K246CH Application without further intervention by Corso.¹⁸ Further, Corso argues that, although the now-authorized K246CH facility will not cause predicted interference to her station, other than blanketing interference, the K246CH and K259AS Applications are inextricably joined. Specifically, Corso asserts that the amended K246CH and K259AS Applications constitute a "switcheroo" by RRC; *i.e.*, "a blatant and outrageous attempt to game the system and obtain a grant for operation on Channel 230 from a site that had already drawn a protest from Corso."¹⁹ Finally, Corso argues that the staff should rescind the grants and dismiss both the K246CH and K259AS Applications, or, in the alternative, designate both for a full evidentiary hearing with *ex parte* and abuse of process issues specified.²⁰

In Opposition, RRC asserts that: (1) the amended K246CH Application demonstrates compliance with all Commission requirements, and absent a showing of harm, Corso lacks standing to challenge its grant;²¹ (2) Corso's argument that RRC violated the *ex parte* rules by not serving Corso with the amended K246CH Application should have been properly submitted to the Commission's Office of the General Counsel (OGC) and not the Bureau, pursuant to Section 0.251(g) of the Rules,²² and, in any event, amendments to pending applications need not be served on other parties to a proceeding when the filing is a "required form";²³ (3) Corso's Petition is an *ex parte* filing because it was not served upon RRC's counsel "in paper form," as prescribed by Section 1.47(d) of the Rules²⁴ and that the penalty for violation of the *ex parte* rules "includes having his or her claim or interest in the proceeding dismissed, denied,

¹⁴ K259AS Application; *see also Letter to Marlene H. Dortch, Secretary, FCC, from Grant Wisniewski, Consulting Engineer, Rocket Group*, filed Feb. 28, 2017. On March 13, 2017, RRC filed an application for a minor change to K259AS, proposing operation on Channel 258. *See* File No. BPFT-20170313AAJ.

¹⁵ *See Broadcast Actions*, Public Notice, Report No. 48936 (rel. Mar. 7, 2017), pp. 3, 8.

¹⁶ Petition at 6; *see also* 47 CFR §§ 1.1202(d)(1) and 1.106(b)(1).

¹⁷ Petition at 17.

¹⁸ *Id.*

¹⁹ Petition at iii.

²⁰ Petition at 17.

²¹ Opposition at 2, 3.

²² *Id.* at 3; *see also* 47 CFR § 0.251(g).

²³ *Id.* at 5.

²⁴ 47 CFR § 1.47(d). Section 1.47(d) states, in part, that: "[D]ocuments must be served in paper form . . . unless the party to be served agrees to accept service in some other form." RRC claims that it did not agree to accept another form of service. Opposition I at 4.

disregarded, or otherwise adversely affected;²⁵ and (4) Corso's Petition is itself an abuse of Commission process because she filed it "to apply pressure" to RRC regarding its K259AS permit.²⁶

In Reply, Corso argues that: (1) she did not violate *ex parte* rules because RRC's specifying of an email address on its applications "implied . . . explicit consent to receive . . . pleadings . . . via electronic means, pursuant to Section 1.47(d);²⁷ (2) RRC's claim that Corso should have raised an *ex parte* issue not with the staff but with OGC is incorrect because here the *ex parte* issue relates directly to the grantability of the K246CH Application and that is a matter for the Bureau to decide;²⁸ (3) Corso did not file an Informal Objection against the K259AS Application due to RRC's lack of service of the amended K246CH and K259AS Applications;²⁹ and (4) Corso has standing to file the Petition because the simultaneous amendment of the K246CH and K259AS Applications threatens her station's established service.³⁰

Discussion. Procedural Issue. We take this opportunity to note that RRC was not required by the Commission's *ex parte* Rules to serve Corso with the amended K246CH Application. Section 1.1204(a)(1) of the Rules³¹ classifies as exempt a presentation if it ". . . involves the filing of required forms." The Commission has held that "[r]equests for technical modification of FM translator authorizations, and the amendment . . . to a minor change, must be filed on FCC Form 349."³² The Commission thus treated these filings as "required forms."³³ Consistent with *Association*, we find that RRC did not violate the *ex parte* rules in not serving Corso with its amended K246CH Application because it was filing a "required form" pursuant to Section 1.1204(a)(1) and that sanctions against RRC are not appropriate.

Substantive matters. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.³⁴ A petitioner who is not a party to the proceeding 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.³⁵ As discussed below, we find that Corso has not met this threshold requirement.

²⁵ *Id.* at 4-5; *see also* 47 CFR § 1.1216(d).

²⁶ *Id.* at 6.

²⁷ Reply I at 4.

²⁸ *Id.* at 6.

²⁹ *Id.* at 7.

³⁰ *Id.* at 8.

³¹ 47 CFR § 1.1204(a)(1).

³² *See Ass'n for Cmty Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685, paras. 7-8 (2004) (*Association*).

³³ *See Saga Commc'ns of New England, LLC*, Memorandum Opinion and Order, 21 FCC Rcd 2466, 2467, para. 7 (2006).

³⁴ *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 3 (1964), *aff'd sub nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

³⁵ 47 CFR § 1.106(b)(1).

With respect to Corso's argument that she is a party to this proceeding concerning the K246CH Application, we disagree. The Communications Act of 1934, as amended (Act), provides that a petition for reconsideration may be filed by (1) a party to a proceeding or (2) "any other person aggrieved or whose interests are adversely affected by" the underlying decision.³⁶ Unlike the filing of a petition to deny, the filing of an informal objection, as is the case here, does not confer party status upon the objector.³⁷ Accordingly, she must establish how she was "aggrieved or adversely affected" by grant of the K246CH Application under Section 405(a) of the Act.

We find that Corso has not established that she is aggrieved or adversely affected by the grant of the amended K246CH Application, as required by Section 405(a). Indeed, Corso acknowledges in the Petition that operation of K246CH "poses no threat to her station."³⁸ Moreover, Corso's claim that the K246CH and K259AS proposals are "inextricably joined" is belied by the fact that RRC has surrendered the K259AS permit yet has continued to prosecute the K246CH License Application. Therefore, we conclude that Corso has failed to establish with particularity that she is "aggrieved" or "adversely affected" by a grant of the amended K246CH Application, within the meaning of Section 405(a) of the Act. We therefore will dismiss the Petition.

Conclusion/Actions. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Linda C. Corso on March 1, 2016, seeking reconsideration of the grant of the K246CH Application (File No. BPFT-20160129AVI), IS DISMISSED.

IT IS FURTHER ORDERED, that the Petition for Reconsideration filed by Linda C. Corso on March 1, 2016, seeking reconsideration of the grant of the K259AS Application (File No. BPFT-20160129AWZ), IS DISMISSED as moot.

IT IS FURTHER ORDERED, that the Motion for Stay filed by Linda C. Corso on March 1, 2016, seeking reconsideration of the grant of the K259AS Application (File No. BPFT-20160129AWZ), IS DISMISSED as moot.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Ms. Linda C. Corso
Rocket Radio Corporation

³⁶ 47 U.S.C. § 405(a); *see also* 47 CFR § 1.106(b)(1).

³⁷ *See Montgomery County Broad. Corp.*, Memorandum Opinion and Order, 65 FCC2d 876, 877 para. 2, n.2 (1977); *Barnes Enterprises, Inc.*, Memorandum Opinion and Order, 55 FCC2d 721, 722, para. 3 (1975).

³⁸ Petition at 7.