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In Reply Refer to:
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In re: **Kevin J. Youngers**
K280FW FM Translator, Del Valle, TX
Facility ID No. 155890
File Nos. BNPFT-20130815ACV,
BMPFT-20140129ANW

Petition for Reconsideration

Dear Counsel:

We have before us: 1) the Petition for Reconsideration filed by Emmis Austin Radio Broadcasting Company, L.P. ("Emmis"), seeking reconsideration of the Media Bureau ("Bureau") grant of the long-form application ("2013 Application") of Kevin J. Youngers ("Youngers") for a construction permit for a new FM Translator Station at Del Valle, Texas ("Translator"); and 2) the application filed by Youngers to modify his construction permit for the Translator ("2014 Application").¹ For the reasons discussed below, we dismiss the Petition as moot and grant the 2014 Application.

Background. Youngers filed a short-form application for a new FM translator as part of the Auction 83 filing window, proposing to serve Del Valle, Texas, on Channel 223 ("2003 Application").² On March 14, 2013, the Bureau issued a Public Notice announcing a filing window from April 1 to April 19, 2013, for certain Auction 83 applicants – including Youngers – to file preclusion showings in accordance with the *Fifth Order on Reconsideration* in the low-power FM proceeding, and to file minor modification amendments to their applications.³ On April 1, 2013, Youngers amended the 2003 Application to specify a new location and operation on Channel 221. Youngers again amended the application on April 19, 2013, proposing yet another location and operation on Channel 277 ("Channel 277 Amendment").⁴

On July 31, 2013, the Bureau opened a filing window for certain Auction 83 applicants – including Youngers – to file FCC Form 349.⁵ The *Translator Public Notice* indicated that applicants were permitted to file minor amendments, and that no amendments would be permitted that specified "a

¹ Youngers filed an Opposition on January 29, 2014.

² File No. BNPFT-20030317EDR.

³ *Media Bureau Announces April 1 – April 19 Filing Window for FM Translator Auction 83 Preclusion Showings*, Public Notice, 28 FCC Rcd 2495 (MB 2013).

⁴ *See Broadcast Applications*, Public Notice, Report No. 27974 (MB Apr. 24, 2013).

⁵ *Media Bureau Announces FM Translator Auction 84 Filing Window and Filing Procedures*, Public Notice, 28 FCC Rcd 11098 (MB 2013) ("Translator Public Notice").

‘major change’ from the initial Auction 83 Filing Window tech box proposal.”⁶ On August 15, 2013, 2013, Youngers filed the 2013 Application, proposing operation on Channel 280 and a new transmitter site. On August 22, 2013, the Bureau announced that the 2013 Application had been accepted for filing, and indicated that petitions to deny the 2013 Application must be filed within 15 days of the Public Notice.⁷ On November 16, 2013, Youngers amended the 2013 Application to propose a new site (“November 2013 Amendment”).⁸

Emmis filed the Petition on January 2, 2014, raising objections to: 1) the 2013 Application; 2) the November 2013 Amendment; and 3) the Channel 277 Amendment to the 2003 Application. Emmis first argues that the 2013 Application constituted a major modification to the 2003 Application because it resulted in a change from Channel 223 in the original 2003 Application to Channel 280.⁹ The *Translator Public Notice*, Emmis notes, only allows minor changes based on “the initial Auction 83 Filing Window tech box proposal.”¹⁰ Emmis also argues that the November 2013 Amendment constituted a major modification because the 60 dBμ contour proposed by that amendment does not overlap with the 60 dBμ contour of the original 2013 Application.¹¹ Finally, Emmis argues that the Channel 277 Amendment should have been dismissed because the ERP it proposed exceeded the maximum allowable for the proposed translator; the contour proposed by the Channel 277 Amendment does not overlap with the contour of the original 2003 Application; and the modified proposal would cause interference to Emmis’ Station KBPA(FM), San Marcos, Texas.¹² Emmis explains that it did not participate previously in the proceeding because the Bureau granted the 2013 Application nine days after the November 2013 Amendment was filed and it did not have an opportunity to review the amendment and file a petition to deny.¹³

In his Opposition, Youngers states that the concurrently filed 2014 Application will modify the construction permit for the Translator by specifying a new transmitter site and operations on Channel 225.¹⁴ Youngers argues that the 2014 Application is essentially a minor change of the 2003 Application and should be granted to correct the defect of the 2013 Application.¹⁵ Emmis did not file an objection to the 2014 Application.

Discussion. We will dismiss the Petition as moot. Emmis is correct that the 2013 Application and the November 2013 Amendment constitute impermissible major modifications to the 2003 Application;¹⁶ such applications can only be filed during a designated filing window.¹⁷ The *Translator*

⁶ *Id.* at 11098-99 (“An applicant may make minor amendments to the associated tech box proposal. . . . A Form 349 application that, as of the Application Deadline, specifies a “major change” to the facilities specified in the initial Auction 83 Filing Window tech box proposal and/or creates a new conflict to a pending Auction 83 tech box proposal will be dismissed.”).

⁷ *See Broadcast Applications*, Public Notice, Report No. 28053 (MB Aug. 22, 2013).

⁸ *See Broadcast Applications*, Public Notice, Report No. 28119 (MB Nov. 20, 2013).

⁹ Petition at 8, *citing* 47 C.F.R. § 74.1233(a) (“For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area.”).

¹⁰ Petition at 8, *citing Translator Public Notice*, 28 FCC Rcd at 11098-99.

¹¹ Petition at 9, *citing* C.F.R. § 74.1233(a).

¹² Petition at 10.

¹³ *Id.* at 9.

¹⁴ Opposition at 1.

¹⁵ *Id.* at 2-3.

¹⁶ *See* 47 C.F.R. § 74.1233(a).

Public Notice specifically prohibited such applications.¹⁸ However, were the Bureau to dismiss the 2013 Application, Youngers would be entitled to seek reconsideration of the dismissal and file a curative amendment to reinstate the 2013 Application *nunc pro tunc* at a compliant channel and site.¹⁹ The 2014 Application specifies a channel and transmitter site that would be compliant with the Rules and the *Translator Public Notice* if it were filed as an amendment to the 2013 Application.²⁰ In the interest of processing efficiency, we will therefore grant the 2014 Application and dismiss the Petition as moot.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Emmis Austin Radio Broadcasting Company, L.P., on January 2, 2014, IS DISMISSED.

IT IS FURTHER ORDERED that the application (File No. BMPFT-20140129ANW) filed by Kevin J. Youngers to modify the construction permit for FM Translator K280FW, Del Valle, Texas, IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Kevin J. Youngers
Emmis Austin Radio Broadcasting Company, L.P.

¹⁷ See 47 C.F.R. §§ 74.1233(b)(3) (reserved band) and (d)(2)(i) (non-reserved band).

¹⁸ See *Translator Public Notice*, 28 FCC Rcd at 11098-99 (“An applicant may make minor amendments to the associated tech box proposal. . . . A Form 349 application that, as of the Application Deadline, specifies a “major change” to the facilities specified in the initial Auction 83 Filing Window tech box proposal and/or creates a new conflict to a pending Auction 83 tech box proposal will be dismissed.”).

¹⁹ See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984).

²⁰ The proposed channel in the 2014 Application, 225, is second-adjacent to the channel proposed in the 2003 Application, 223, and the 60 dBμ contour proposed in the 2014 Application is entirely within the 60 dBμ contour proposed in the 2003 Application.