



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

July 22, 2019

In Reply Refer to:
1800B3-KV

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In re: K229DD, San Francisco, CA
File No. BLFT-20170519AAW
Facility ID No. 144139

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (Petition) filed on April 24, 2019, by Hispanic Family Christian Network, Inc. (HFCN or Petitioner) seeking reconsideration of the Media Bureau's (Bureau) decision¹ ordering FM Translator Station K229DD, San Francisco, California (K229DD or Station)² to cease operations due to interference caused to Station KXZM(FM), Felton, California, licensed to Lazer Licenses, LLC (Lazer).³ For the reasons discussed below, we deny the Petition.

Background. On May 19, 2017, HFCN filed the License Application to, *inter alia*, implement a move of the Station to Channel 229 at San Francisco, California.⁴ On July 11, 2017, Lazer objected to the License Application, alleging that K229DD was interfering with the reception of Station KXZM(FM) and

¹ See *Letter to Hispanic Family Christian Network, Inc. from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau*, reference 1800B3-KV (dated Mar. 25, 2019) (*Letter Decision*).

² The Station is a translator for Station KVTO(AM), Berkley, California, licensed to Pham Radio Communication, LLC.

³ Also, before us are Lazer's "Opposition to Petition for Reconsideration" (Opposition) filed on May 7, 2019; and HFCN's "Reply to Opposition to Petition for Reconsideration" (Reply) and an "Errata to Reply to Opposition to Petition for Reconsideration" (Errata) filed on May 20, 2019, and May 21, 2019, respectively.

⁴ The License Application implements construction permit (File No. BMPFT-20160920ACP) granted on November 21, 2016.

attached six listener complaints.⁵ On August 28, 2017, the Bureau ordered HFCN to address the listener complaints.⁶

On September 29, 2017, HFCN responded that the listeners were either unreachable, unresponsive, or uninterested in pursuing their complaints.⁷ On October 20, 2017, Lazer countered that HFCN “sought to intimidate listeners into dropping their complaints . . . by falsely stating [in an August 2017 Letter] that their continued pursuit of their complaints could result in litigation.”⁸ Lazer also argued that K229DD was operating with unauthorized facilities due to its antenna placement.⁹ Lastly, Lazer attached three new listener complaints.¹⁰

On November 21, 2017, HFCN reported that its investigation was ongoing and it had sent new certified letters to the listeners that omitted reference to litigation.¹¹ On January 18, 2018, HFCN declared that all complaints were resolved because the listeners were either non-responsive or uncooperative.¹² It also reported the interference was resolved by the Station’s November 14, 2017, antenna relocation on the tower site.¹³ HFCN’s consulting engineer, Jaimie Arbona (Arbona) opined that “K229DD’s signal was reflected into the Hayward area at one point, it is my conclusion that relocating its [K229DD’s] antenna to a new segment on Sutro tower clearly resolved this issue”¹⁴

⁵ Axel Alejandro (Alejandro); Melissa Alatorre (Alatorre); Adriana Torres (Torres); Olivia Cortez (Cortez); Catalina de Gonzalez (Gonzalez); and Sonia Ochoa (Ochoa). *Letter Decision* at note 6.

⁶ See *Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau to Hispanic Family Christian Network, Inc.* (dated Aug. 28, 2017) (*Bureau Letter*).

⁷ *Letter Decision* at 2-3.

⁸ *Id.* at 4.

⁹ *Id.* at 5.

¹⁰ Alejandro Sanchez (Sanchez); Isain Pena (Pena); and Cristopher Zarate (Zarate). *Id.*

¹¹ *Letter Decision* at 5-6.

¹² *Id.* at 6.

¹³ HFCN attached a January 16, 2018, “Letter from Shane Best, Tower and Facilities Maintenance Manager” stating, in pertinent part:

The K229DD antenna was originally located at 370 feet AGL on the east face of Level 3 in vertical orientation. This height caused reflection off the metal side of the tower at Level 3, which may have been the cause of the initial interference reports from late June 2017. In early July 2017 . . . the K229DD antenna was dropped down away from the metal siding of Level 3, still in a vertical orientation, to allow more projection of the signal to the west.

When [more] interference reports were received. . . the K229DD antenna [was moved] to the middle (vertically speaking) of the NW face of Level 3 . . . (approximately 375 foot elevation AGL) . . . [with] a special mount that put the K229DD antenna on a 45 degree angle (neither vertical nor horizontal). This last move put the K229 antenna approximately 50 feet to the North northwest of its original position. Importantly, due to the structural siding and steel of the tower at Level 3, the current location of the antenna blocks all RF emissions from the K229DD antenna to the Southeast, which is the direction from which interference were momentarily reported. The antenna has been at this location since November 14, 2017.

In all three locations the antenna has remained on a 40 degree azimuth”

Id. at 8.

¹⁴ *Id.* at 8 (quoting “Declaration of Jaimie Arbona” (dated Jan. 15, 2018)).

On March 25, 2019, the Bureau ordered K229DD to cease operations¹⁵ because HFCN had failed to resolve interference caused to listeners Torres, Pena, and Zarate¹⁶ and cautioned against engaging in behavior designed to intimidate or harass complainants.¹⁷ Regarding Torres, the Bureau found that although she did not accept delivery of HFCN's October 26, 2017, certified letter (October 2017 Letter), there was subsequent correspondence with her that HFCN failed to include in its submissions to the Commission.¹⁸ The Bureau found review of the Arbona-Torres email correspondence to be critical and in the absence of such review the Bureau could not find that the Torres complaint was resolved. With respect to Pena and Zarate, the Bureau tentatively concluded that their complaints were unresolved due to a lack of sufficient documentary support. Specifically, Pena and Zarate wrote, in response to HFCN's October 2017 Letter, that they were experiencing interference. HFCN replied with a November 28, 2017, letter (November 2017 Letter), written in Spanish, purportedly requesting contact, but Pena and Zarate did not respond to the letter. However, HFCN failed to include a translation of the November 2017 Letter. Because HFCN conceded that its use of "non-lawyer's terminology" in previous letters caused the listener complainants "confusion," the Bureau found that review of the November 2017 Letter was necessary to establish HFCN's assertion that Pena's and Zarate's complaints were resolved due to their non-responsiveness.¹⁹ Because HFCN did not submit a translated version of its November 2017 Letter, the Bureau was unable to find the Pena and Zarate complaints resolved.

Petition. In its April 24, 2019, Petition, HFCN argues that the Torres, Pena, and Zarate complaints were resolved by the Station's November 2017 antenna relocation and the listeners failure to cooperate. Its consulting engineer, Arbona, reiterates that the Station's antenna relocation resolved all interference because the tower's structural siding and steel now blocks interference in the previously reported areas. Regarding listener Torres, HFCN attaches the Arbona-Torres email correspondence, dated July 17 – November 15, 2017, written in Spanish and translated into English,²⁰ and describes the exchange as "respectful, cordial, and cooperative . . ."²¹ HFCN indicates that Ms. Torres was invited multiple times to provide information if interference persisted, but received nothing from her after September 1, 2017. HFCN also attaches an undated communication, purportedly sent via email on March 25, 2019, from Arbona to Torres, written in Spanish and translated in English,²² to which Torres did not respond.²³ Arbona claims to have recently learned "that [HFCN's] Maria Guel . . . was also calling Ms. Torres during the same period . . . due to an unfortunate miscommunication between myself and Ms. Guel. Maria Guel clearly should not have been duplicating my efforts . . ."²⁴ Guel also expresses regret

¹⁵ On December 21, 2018, Commission staff granted the License Application without acting on the Objection-Complaint, however, the Bureau found this to be harmless error. *Letter Decision* at note 47.

¹⁶ The Bureau also found the complaints of Alejandro, Cortez, Ochoa; Alatorre, Gonzalez and Sanchez were resolved. *Id.* at 9. Because the Bureau's decision on these listeners is uncontested we will not discuss them further.

¹⁷ The Bureau stated that, because the Station was being ordered to cease operations, it was unnecessary to address allegations that it was operating with unauthorized facilities.

¹⁸ Specifically, Arbona reported exchanging "a number of emails" with Torres who was "initially very cooperative" but failed to respond to an email, sent after November 14, 2017, when HFCN relocated the Station's antenna.

¹⁹ On March 29, 2019, HFCN filed a "Letter Request to Resume Operations" which Lazer opposed on April 2, 2019. On April 10, 2019, the Bureau denied the request stating that HFCN failed to demonstrate the need for immediate action. *Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau to Hispanic Family Christian Network, Inc.* (dated Apr. 10, 2019).

²⁰ Petition at Attachments 1-2.

²¹ *Id.* at 3.

²² *Id.*

²³ *Id.*, "Declaration of Jaimie Arbona," (dated Apr. 24, 2019) (2019 Arbona Declaration) at para.12.

²⁴ *Id.*, at para. 10.

at not better coordinating her contacts with Arbona, and states that her repeated attempts to contact Torres were due to inadvertence.²⁵

As for listener Pena, HFCN contends that he remains non-responsive and claims that “[m]ore recent phone calls to Pena, to verify that [the Station’s antenna relocation resolved the interference] . . . have not been returned . . . There has been no communication from Mr. Pena since November 2017, since before the antenna adjustments were performed.”²⁶ HFCN also attaches its November 2017 Letter, written in Spanish and translated into English, to which Pena purportedly did not respond. From all indications, writes HFCN, “it appears that Mr. Pena has determined that there is no need for him to pursue his complaint further.”²⁷

With respect to listener Zarate, HFCN asserts that he remains non-responsive and contends that Zarate did not respond to an email sent on April 19, 2019, or voicemail messages left on April 22-23, 2019.²⁸ HFCN also attaches an undated communication purportedly sent via email from Arbona, written in Spanish and translated into English,²⁹ and its November 2017 Letter, written in Spanish and translated into English, to which Zarate purportedly did not respond. It states that the locations at which Zarate reported interference “were investigated by Mr. Arbona” after the antenna adjustment and no interference to KXZM(FM) from K229DD could be detected.³⁰ HFCN further claims that, insofar as Zarate only reports interference in his car and does not provide the specific routes where the interference occurred, HFCN cannot investigate the alleged interference without his cooperation.³¹ It also argues that Zarate’s March 30, 2018, complaint (2018 Zarate Complaint) that Lazer attached to its opposition to HFCN’s March 29, 2019, Request to resume operations, was never previously served on HFCN and cannot be verified.

Opposition. In its May 7, 2019, Opposition, Lazer argues the Petition should be denied because: (1) the complaints remain unresolved; (2) the Station’s antenna was unauthorized; and (3) the Station’s antenna relocation did not eliminate the interference. Regarding the listener complaints, it claims that HFCN used “threatening tactics”³² and unauthorized text messages to contact complainants.³³ Lazer declares that HFCN did not submit “definitive proof” that Torres’ complaint is resolved and its repeated contacts caused her to feel “at least hassled and likely harassed.”³⁴ It also attaches declarations, dated May 3, and 6, 2019, from Zarate and Pena, stating that they did not respond to Arbona’s recent text messages because they did not know him and that they wish to pursue their complaints.³⁵ Lazer further

²⁵ *Id.*, “Declaration of Maria C. Guel,” (dated Mar.26, 2019) (2019 Guel Declaration) at 2.

²⁶ Petition at 5.

²⁷ *Id.*

²⁸ *Id.* at 7.

²⁹ *Id.*, 2019 Arbona Declaration.

³⁰ *Id.*, 2019 Guel Declaration at 3.

³¹ Petition at 8.

³² Lazer opines that “the tone, language, and frequency of the letters and calls has clearly resulted in the lack of cooperation from the complainants.” Opposition at 5.

³³ Neither party submitted copies of said text messages into the record.

³⁴ Opposition at 4.

³⁵ *Id.* at 5-6, Attachments B-C (Collectively, the 2019 Zarate and Pena Declarations), both Zarate and Pena state, in pertinent part:

I have experienced interference with my reception of KXZM . . . due to the operation of . . . K229DD. . . .

As stated in my original interference complaint . . . I began experiencing interference . . . around April/May 2017.

asserts that when K229DD was operating its antenna was unauthorized.³⁶ It declares that the Station's November 2017 antenna relocation did not resolve the interference. As proof, Lazer submits an undated interference complaint, purportedly received after November 2017, from listener Heidi Puente (Puente Complaint) and references, but does not submit to this proceeding, the 2018 Zarate Complaint. It opines that although the Commission was already reviewing the original set of complaints and responses, Lazer retained the additional complaint from Mr. Zarate – and also from Ms. Puente – in case they became necessary in the future.³⁷ Lazer claims that it will suffer irreparable harm if K229DD is allowed to resume operations.³⁸

Reply. In its May 20, 2019, Reply, HFCN reiterates its claim that the listener complaints were resolved or are not currently actionable and denies any allegation that it “embarked on a campaign of threatening and hostile correspondence” with complainants.³⁹ Regarding Torres, it declares that “no further word has been heard from [her] . . . in over 1 ½ years.”⁴⁰ As for Pena and Zarate, HFCN opines that although they “now are agreeable to cooperating . . . the offer to cooperate is coming after K229DD already is off the air, when a test cannot easily be accomplished without FCC intervention and cooperation.”⁴¹ It also argues that the following constitute impermissible new information that could have been presented previously: (1) the Puente Complaint; (2) the 2018 Zarate Complaint; and (3) the 2019 Zarate and Pena Declarations.⁴² HFCN further asserts that K229DD operated exclusively with its authorized facilities. Lastly, it requests that K229DD be permitted to resume operations immediately⁴³ and that the Bureau order joint interference testing.⁴⁴

I continued to experience interference . . . until K229DD ceased operations . . .

Recently, Jaime Arbona, presumably from Hispanic Family Christian Network contacted me via text message requesting that I meet with him to discuss the interference issue.

I did not respond to Jaime Arbona's text message because I did not know this person, and did not know what the discussion was to be about.

I, however, wish to continue cooperating with Hispanic Family Christian Network's efforts at resolving my interference complaint, and will respond to such inquiries made by a Hispanic Family Christian Network representative if done so in an appropriate fashion.

³⁶ Specifically, Lazer states “K229D was operating with a single, vertically polarized Jampro J3YF antenna – not [the authorized] vertical and horizontal antenna system . . .” and there is no evidence that HFCN resolved these issues in the November 2017 antenna adjustments. *Id.* at 7-8.

³⁷ *Id.* at 6 (footnote omitted).

³⁸ *Id.* at 9-10 and Attachment A. Lazer also includes technical showings from its consulting engineer indicating that, based on his review of the stations' relevant interfering and protected contours using the Longley-Rice signal prediction methodology, there is “absolutely no way that K229DD would not interfere with KZXM.” Opposition at 9 and Attachment D, Declaration of Lynden L. Williams. This information concerning predicted interference, per 47 CFR §74.1204(f), is irrelevant to our review of actual interference under 47 CFR §74.1203(a).

³⁹ Reply at 3-5, 6.

⁴⁰ HFCN also submits an undesired-to-desired signal strength ratio study by its engineer purporting to demonstrate that there is no predicted interference in the communities of Leandro, Newark, Hayward, Northside, Oakland, and Redwood, which were referenced in the complaints. *Id.* at 3, 5, 9, and Attachment 1. Because this information concerns predicted interference, it is not germane to our review of the complaints of actual interference here.

⁴¹ *Id.* at 4.

⁴² *Id.* at 7-8.

⁴³ *Id.* at 8.

⁴⁴ HFCN claims that Lazer proposed a joint testing program in an informal email to Commission staff. See *Id.* at Attachment 2, “Email from Keenan Adamchak to James Bradshaw *et. al.*” (dated May 8, 2019) stating, in pertinent part:

Discussion. Procedural Issue. Section 1.106(c)(1) of the Rules⁴⁵ provides that the Bureau will only accept a petition for reconsideration relying on facts not previously presented to the Commission in one of three circumstances: (1) the petition relies on facts relating to events which have occurred, or circumstances which have changed since the last opportunity to present such matters; (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters, which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity; or (3) the designated authority determines that consideration of the facts relied on is required in the public interest.⁴⁶

Here, both HFCN and Lazer are relying on new evidence concerning interference remediation efforts before and after the Bureau's *Letter Decision*.⁴⁷ The Commission has held that "[w]e cannot allow a party 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.'"⁴⁸ However, in this situation where the staff has ordered K229D to cease operations, we find it in the public interest to consider the parties' new information concerning the Torres, Pena, and Zarate complaints but not the 2018 Zarate Complaint or the Puente Complaint. Regarding the 2018 Zarate Complaint, it was never submitted as part of this reconsideration proceeding, but rather as part of the Bureau's now-final decision on HFCN's March 29, 2019 Request to resume operations with K299DD.⁴⁹ As for the undated Puente Complaint, because this has not been properly documented we decline to consider it on reconsideration.

Substantive Issues. Section 74.1203(a) provides, in pertinent part, that an FM translator station "will not be permitted to continue to operate if it causes any actual interference to . . . the direct reception by the public of off-the-air signals of any authorized broadcast station" ⁵⁰ We have long held that mobile receivers, such as automobile radios, should not be subject to interference resulting from the operation of an

In the event that the Commission grants K229DD authority to resume operations . . . Lazer requests that [the] HFCN translator only be permitted to resume operations to test for interference with KXZM and that any on-air testing . . . be limited to short durations and be subject to the following conditions:

1. That HFCN notify Lazer at least 7 days in advance . . . so KXZM may provide prior on-air notification to its listeners . . . with instructions on what to do if they experience any interference during a coordinated test.
2. That representatives of Lazer be present during all tests to observe the execution and outcome

⁴⁵ 47 CFR § 1.106(c)(1) ("In the case of any order other than an order denying an application for review, a petition for reconsideration . . . may be granted only [if] . . . the facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2) . . .").

⁴⁶ See *Coosa Valley News, Inc., c/o Mr. Thom Holt, Mr. Howard C. Toole*, Letter Order, 23 FCC Rcd 17310, 17313 (MB 2008); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686, para. 2 (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); see also *id.*

⁴⁷ On reconsideration, HFCN submits: 1) the 2017 Arbona-Torres email correspondence along with translations, 2) an undated written communication purportedly sent in 2019 from Arbona to Torres, 3) the November 2017 letter sent to Pena and Zarate as translated; 3) the 2019 Arbona Declaration; and 4) the 2019 Guel Declaration. Additionally, Lazer submits: 1) the 2019 Zarate and Pena Declarations; 2) the undated Puente complaint; it references but does not submit in this proceeding the 2018 Zarate Complaint.

⁴⁸ See *Canyon Area Residents*, 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)); *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900 (2002).

⁴⁹ See *supra* note 19.

⁵⁰ 47 CFR § 74.1203(a).


FM translator or booster station.⁵¹ The FM translator rules strictly prohibit interference by these secondary service stations, and an interfering FM translator station must remedy any interference or suspend operation.⁵²

With respect to the listener complaints, we find the Torres complaint has been resolved, but the Pena and Zarate complaints are unresolved. Regarding Torres, in the *Letter Decision*, the Bureau found review of the 2017 Arbona-Torres email correspondence was necessary because Torres reported feeling “harassed” by HFCN’s multiple emails and calls. Indeed, HFCN’s Arbona and Guel acknowledge repeatedly contacting Torres without knowledge that both were doing so. We have reviewed the 2017 Arbona-Torres email correspondence and an email, purportedly sent on March 25, 2019, to which she did not respond, and find them to be legitimate outreach efforts. We further note that Lazer has not submitted any evidence that Torres remains willing to participate in the interference remediation process. Therefore, although we are troubled by HFCN’s admitted duplication of contacts, we find the Torres complaint to be resolved due to her failure to cooperate.

With respect to listeners Pena and Zarate, both have submitted sworn declarations, dated in May 2019, that their interference continued until the Station ceased operations and affirm their willingness to participate in the interference remediation process. They also explained that they did not respond to Arbona’s recent text messages because they were unfamiliar with him. In *Indiana Community Radio*, the Bureau stated that “contact with the complainants . . . [should] be via the method of communication specified by them [*i.e.*, the listeners].”⁵³ Here, there is no record evidence that Pena and Zarate authorized contact by text messaging. Therefore, HFCN’s text messages to Pena and Zarate were inappropriate. Moreover, HFCN acknowledges that they are currently cooperative, but claims that testing “cannot easily be accomplished without FCC intervention and cooperation.”⁵⁴ However, HFCN has not sought permission to engage in said testing. Based on the Pena and Zarate Declarations, we find the Station’s November 2017 antenna relocation did not solve their interference. We further find that they have remained engaged in the interference process and that HFCN has unreasonably failed to remediate their interference.⁵⁵ Lastly, we reject HFCN’s unilateral request,⁵⁶ submitted on reconsideration, for joint interference testing, because both parties have not agreed to joint testing.⁵⁷

Conclusion. Based on the above, IT IS ORDERED, that the Petition for Reconsideration filed by Hispanic Family Christian Network, Inc, on April 24, 2019, IS DENIED.

Sincerely,


Albert Shuldiner
Chief, Audio Division
Media Bureau

⁵¹ See, e.g., *Forus FM Broad. of New York, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 7880, 7882, para. 16 (MB 1992) (because of the secondary nature of FM booster stations, and the resulting requirement that they provide interference-free service, such stations will not be permitted to cause interference to mobile receivers).

⁵² 47 CFR § 74.1203(b).

⁵³ See *Indiana Community Radio*, Letter Decision, reference 1800-HOD, (MB 2018) at 7.

⁵⁴ Reply at 4.

⁵⁵ We have also reviewed HFCN’s November 2017 Letter to Pena and Zarate and found it to be an acceptable contact.

⁵⁶ Per Section 74.1203(b), as currently written, HFCN is permitted to conduct “short test transmissions . . . to check for the efficacy of remedial measures.”

⁵⁷ We also affirm the Bureau’s decision that it is unnecessary to review allegations concerning whether the Station’s operations under the relocated antenna was authorized as the Station remains off the air.