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In Reply Refer to: 1800B-IB

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Re: K273CW, Houston, TX  
Facility ID No. 148295  
File Nos. BMPFT-20161005ABT  
BLFT-20161028ACL

Dear Counsel:

The Media Bureau (Bureau) has before it pleadings in which Bread of Life, Inc. (BOL), licensee of Low Power FM (LPFM) station KMAZ-LP, Houston, Texas, objects to<sup>1</sup> and seeks reconsideration of<sup>2</sup> the grant of the referenced applications of Centro Cristiano de Vida Eterna (Centro) for modification of FM translator station K273CW, Houston, Texas (Translator). For the reasons discussed below, we grant BOL's Objection and Petition, rescind the grants of the referenced applications, and dismiss those applications.

## I. BACKGROUND

Centro, the Translator licensee, is also licensee of Class D AM station KBRZ(AM), Missouri City, Texas (AM Station). Centro filed an application on July 28, 2016 (July Modification Application)<sup>3</sup> to move the Translator, then licensed to Three Rivers, Texas on Channel 222, to Houston on Channel 273, the same channel on which KMAZ-LP operates. The Bureau granted the July Modification Application on August 15, 2016 and BOL sought reconsideration on September 19, 2016. Centro proposed another modification to the Translator on October 5, 2016 (October Modification Application). BOL filed its Objection on October 11, 2016 but the Bureau, unaware of the Objection, granted a construction permit to Centro on October 21, 2016. Centro constructed and filed an application for a covering license on

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<sup>1</sup> BOL Informal Objection (Oct. 11, 2016) (Objection).

<sup>2</sup> BOL Petition for Reconsideration (Nov. 22, 2016) (Petition).

<sup>3</sup> File No. BMPFT-20160728AFX (filed July 28, 2016). The Translator's call sign at that time was K222CH.

October 28, 2016,<sup>4</sup> which the Bureau granted on November 21, 2016. The next day, November 22, 2016, BOL filed its Petition seeking reconsideration of the Bureau's October grants of the permit and license. Centro filed an Opposition on December 7, 2016.<sup>5</sup> On March 16, 2017, the Bureau dismissed BOL's pleadings against the July Modification Application as moot, because that application had been superseded by the grant of the October Modification Application, which BOL had similarly contested. We consider and grant BOL's objection to and petition for reconsideration of the October Modification and License Applications.

## II. DISCUSSION

**Procedural Standards.** Petitions for reconsideration may be filed by a party to a proceeding or by a person whose interests are adversely affected.<sup>6</sup> A non-party, such as an informal objector, must: (1) demonstrate the manner in which its interests are adversely affected; and (2) show good cause for why it was not possible to participate earlier.<sup>7</sup> Centro argues that BOL has not satisfied those requirements and, thus, that the Petition is barred.<sup>8</sup> However, we find that BOL has satisfied the two-part test. First, BOL alleges potential injury, *i.e.*, interference to its co-channel station KMAZ-LP. Second, BOL explains that it raised its concerns earlier in its Objection but that the Bureau granted the October Modification Application without considering BOL's arguments. Accordingly, we find that BOL has satisfied both prongs of the standard and we therefore will consider BOL's Petition.

**Alleged Error.** Reconsideration is appropriate where an applicant demonstrates new facts, changed circumstances, or a material error in the original decision.<sup>9</sup> BOL and Centro dispute whether the Bureau erred in granting the October Modification and License Applications. Each cites a different portion of Section 74.1204 of the Commission's rules (Rules) to support its position.<sup>10</sup> Section 74.1204(a),<sup>11</sup> upon which Centro relies, provides that an FM translator application is unacceptable if it is predicted to cause prohibited interference to the protected contour of an LPFM station, *i.e.*, in the case of co-channel facilities, if the translator's 0.1 mV/m (40 dBu) contour overlaps the LPFM station's 1 mV/m (60 dBu) contour. Centro argues, and BOL agrees, that there is no such overlap between the Translator and KMAZ-LP.<sup>12</sup> While Centro contends that this lack of predicted Subsection (a) interference should end the dispute, BOL argues that KMAZ-LP is entitled to protection under interference standards embodied in a different portion of the rule, Section 74.1204(f).<sup>13</sup> That provision protects existing FM stations from grant of a co-channel FM translator application upon: (1) a showing that a translator's new or modified 1 mV/m (60 dBu) contour would overlap a populated area already receiving a regularly used

<sup>4</sup> File No. BLFT-20161028ACL (filed Oct. 28, 2016) (License Application).

<sup>5</sup> Centro Opposition to Petition for Reconsideration (Dec. 7, 2016) (Opposition).

<sup>6</sup> See 47 CFR § 1.106(b)(1).

<sup>7</sup> *Id.*

<sup>8</sup> Opposition at 3.

<sup>9</sup> See 47 CFR § 1.106(c), (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 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).

<sup>10</sup> See 47 CFR § 74.1204.

<sup>11</sup> See 47 CFR § 74.1204(a) (Subsection (a)).

<sup>12</sup> Opposition at 2; Petition at 3.

<sup>13</sup> See 47 CFR § 74.1204(f) (Subsection (f)).

signal from the existing non-translator station; and (2) grant of the translator authorization will result in interference to the existing station. BOL submits names, addresses, and declarations from claimed regular listeners of KMAZ-LP, along with a statement from BOL's engineer that each listener resides within the Translator's 60 dBu contour and will receive co-channel interference at that location.

Centro responds, however, that Subsection (f) does not apply to LPFM stations because that rule was adopted ten years prior to creation of the LPFM service, does not mention LPFM, and LPFM stations are secondary services, co-equal with FM translators.<sup>14</sup> According to Centro, LPFM stations are only protected under Subsection (a), which was adopted upon creation of the LPFM service, explicitly mentions LPFM, and as discussed above, is inapplicable to the circumstances alleged by KMAZ-LP.<sup>15</sup>

We agree with BOL that Subsection (f) as well as Subsection (a) protect LPFM stations from interference by subsequently proposed new or modified FM translator stations. Each subsection appears under the general heading for Section 74.1204: "Protection of FM broadcast, FM Translator and LP100 stations."<sup>16</sup> "LP100" refers to the class of LPFM stations, including WMAZ-LP, authorized to operate with a maximum power of 100 watts.<sup>17</sup> Subsection (a) is phrased in terms of contour overlap, specifically references LP100 stations, and sets forth the interference standards for such stations.<sup>18</sup> Subsection (f) provides a distinct protection standard for situations in which there is no contour overlap but listeners within the proposed translator's protected service area would lose access to existing, regularly used broadcast signals. Although Subsection (f) does not explicitly state that its protection extends to LPFM stations, its plain language refers broadly to "any" station and cross-references Subsection (a) (which includes LPFM-specific language):

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.<sup>19</sup>

It is immaterial that Subsection (f) pre-dates creation of the LPFM service; the rule's existing language works equally well post-LPFM creation.<sup>20</sup> Centro's argument that LPFM stations, as secondary

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<sup>14</sup> Opposition at 2.

<sup>15</sup> *Id.*, citing *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2234, para. 71 (2000), 47 CFR § 74.1204(a).

<sup>16</sup> 47 CFR § 74.1204 (emphasis added)

<sup>17</sup> *See Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2211, para. 11 (2000) (subsequent history omitted); *see also* FCC File No. BLL-20150715ABS (licensing KMAZ-LP to operate as an LP100 Class station on Channel 273).

<sup>18</sup> 47 CFR § 74.1204(a)(4).

<sup>19</sup> 47 CFR § 74.1204(f) (emphasis added).

<sup>20</sup> For example, the Rules recognize that there are many broadcast regulations in Part 73 adopted prior to creation of the LPFM service that are nevertheless applicable thereto. *See* 47 CFR § 73.801 (Broadcast regulations applicable to LPFM stations). This is not to say that additional rules, embodied in other Parts of the Rules such as protections

services, are not eligible for Subsection (f) protection is unpersuasive. Subsection (f)'s specific inclusion of Class D (secondary) FM stations demonstrates that the rule's protection is not limited to full service stations. Moreover, Centro's reading of Subsection (f) is inconsistent with Section 5 the Local Community Radio Act of 2010 (LCRA), which provides that FM translators and LPFM stations are "equal in status."<sup>21</sup> Such co-equal status would bar a protection scheme that favors subsequently-filed FM translator applicants over existing LPFM stations.

**Section 74.1204(f) Showing.** In promulgating Section 74.1204(f), 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."<sup>22</sup> The Commission subsequently clarified that parties alleging interference under Subsection (f) 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 dBu contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person listens to the 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.<sup>23</sup> BOL has submitted documentation from listeners certifying that they are listeners of KMLZ-LP and that they live, work or travel within the 60 dBu contour of the Translator. We find that BOL's engineering exhibit demonstrates that there are listeners within the proposed 60 dBu contour of the Translator. Accordingly, we will rescind the grants of the October Application and License Application and dismiss those applications.

**Conclusion.** Accordingly, IT IS ORDERED, that the Informal Objection and Petition for Reconsideration filed by Bread of Life, Inc. on October 11, 2016 and November 22, 2016, respectively, with respect to applications to modify and license FM translator station K273CW, Houston, Texas (File Nos. BMPFT-20161005ABT and BLFT-20161028ACL) ARE GRANTED.

IT IS FURTHER ORDERED, that the grants of the modification and license applications ARE RESCINDED and that the applications ARE DISMISSED.

Sincerely,

  
Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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from interference by translators under Part 74, may not also apply to the LPFM service. For example, Centro has recognized that previously-adopted rules in Part 1, concerning the filing of petitions for reconsideration, apply to LPFM petitioners like BOL. See Opposition at 3.

<sup>21</sup> Pub. L. No. 111-371, 124 Stat. 4072, § 5(3) (2011).

<sup>22</sup> See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Memorandum Opinion and Order, 5 FCC Rcd 7212, 7230, para. 128 (1990), modified, 6 FCC Rcd 2334 (1991), recon. den., 8 FCC Rcd 5093 (1993); see also *Caron Broad., Inc.*, Letter Order, 32 FCC Rcd 5692, 5696 (MB 2017) (*Caron*).

<sup>23</sup> See *Association for Community Ed.*, Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12687, para. 13 (2004). See also *Caron*, 32 FCC Rcd at 5696.