



Federal Communications Commission  
Washington, D.C. 20554

September 28, 2018

*In Reply Refer to:*  
1800B3-SS

Mr. B. J. Donaldson, Jr.  
P.O. Box 310841  
Houston, TX 77231

Mr. Sergio Presa, Jr.  
7420 1/2 Brace Street  
Houston, TX 77061

Mr. Claude B. Parker  
6905 Dillon Street  
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Dennis J. Kelly, Esq.  
Law Office of Dennis J. Kelly  
P.O. Box 41177  
Washington, DC 20018

In re: **NEW (FX), Houston, TX**  
**Facility ID No. 201261**

File No. BNPFT-20171212AAD

**Informal Objections**

Dear Counsel and Messrs. Donaldson, Parker and Presa:

This letter concerns: (1) the referenced application (Application) of Bustos Media Holdings, LLC (Bustos) for a construction permit for a new FM translator station on Channel 259 at Houston, Texas;<sup>1</sup> (2) three Informal Objections (collectively, Objections) to the Application, filed on December 21 and 30, 2017, by B. J. Donaldson, Jr. and Claude B. Parker, and on December 30, 2017, by Sergio Presa, Jr. (collectively, Objectors); and (3) related responsive pleadings.<sup>2</sup> For the reasons set forth below, we dismiss and otherwise deny the Objections and grant the Application.

**Background.** Bustos filed for a new FM Translator station at Houston during the filing window in July of 2017.<sup>3</sup> Bustos's proposal was determined to be a "singleton," and it was invited to file a long-

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<sup>1</sup> The proposed translator is a fill-in for Bustos's Station KREH(AM), Pecan Grove, Texas.

<sup>2</sup> Bustos filed a Consolidated Opposition to the Objections on January 8, 2018 (Opposition); on February 12, 2018, Bustos filed a Supplement to its Opposition (Supplement).

<sup>3</sup> See Application File No. BNPFT-20170731AJI; *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017*, Public Notice, 32 FCC Rcd 4663 (MB/WTB 2017).

form application,<sup>4</sup> which it did on December 12, 2017. The staff accepted the Application for filing on December 20, 2017.<sup>5</sup> On February 1, 2018, unaware of the filing of the Objections, the staff inadvertently granted the Application; it rescinded the grant that same day and returned the Application to accepted for filing status so that the Objections could be considered.<sup>6</sup>

In their Objections, Objectors argue that Bustos's proposed translator will interfere with the established listening audiences of Station KVST(FM), Huntsville, Texas, and of low power FM station KHGV-LP,<sup>7</sup> Houston, Texas; thus the Application should be dismissed.<sup>8</sup> As evidence of interference, Objector Donaldson assert that the signal of KVST(FM) is clearly receivable at the transmitter site of the proposed translator.<sup>9</sup> In addition, Objectors Parker and Presa argue that the proposed translator would likely cause interference to KHGV-LP because the proposed translator is on the same frequency as KHGV-LP and that its proposed transmitter site is only 7.8 miles from KHGV-LP's transmitter site.<sup>10</sup> Objector Donaldson states that he regularly listens to KVST(FM) "all over Houston," and Objector Presa states that he listens to KHGV-LP without divulging his location.<sup>11</sup>

In its Opposition, Bustos argues that the Objections should be dismissed because none of them were properly served on Bustos.<sup>12</sup> Bustos also argues that Objector Donaldson, as a listener, has no standing to file the Objection as a KVST(FM) listener because that he has provided no address indicating that he lives within KVST(FM)'s 60 dBμ contour.<sup>13</sup> Bustos also attaches the engineering exhibit of technical consultant Kevin Younger to assert that the proposed translator's 40 dBμ contour does not overlap the 60 dBμ contour of KVST(FM).<sup>14</sup> Concerning claims that the proposed translator will interfere with the signal of KHGV-LP, Bustos argues that Objector Presa's arguments fail for the same reasons as Donaldson's and that Objector Parker's assertions are not supported by engineering evidence and are merely speculative.<sup>15</sup>

In its Supplement, Bustos attaches another engineering exhibit by technical consultant Kevin Younger using a Longley-Rice contour-prediction study to demonstrate that the proposed translator on Channel 259 can be predicted to cause no interference to the reception of KVST(FM)'s signal.<sup>16</sup>

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<sup>4</sup> See *Media Bureau Announces Filing Window for Long-Form Applications*, Public Notice, 32 FCC Rcd 9248, 9265 (MB 2017).

<sup>5</sup> See *Broadcast Actions*, Public Notice, Report No. 29139 (rel. Dec. 26, 2017).

<sup>6</sup> See *Broadcast Actions*, Public Notice, Report No. 49167 (rel. Feb. 6, 2018); see also *Broadcast Applications*, Public Notice, Report No. 29167 (rel. Feb. 6, 2018).

<sup>7</sup> We note that our consolidated database system (CDBS) indicates that Objector Claude B. Parker is an officer and director of KHGV-LP.

<sup>8</sup> Objections at 1.

<sup>9</sup> Objections at 1; see also Attachment (to Donaldson Objection) offering alleged video evidence of signal interference ([https://www.youtube.com/watch?v=E\\_4guaFix0Y&feature=youtu.be](https://www.youtube.com/watch?v=E_4guaFix0Y&feature=youtu.be)) viewed April 6, 2018.

<sup>10</sup> *Id.*

<sup>11</sup> Objections at 1.

<sup>12</sup> Opposition at 1.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* and at Exh. A.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Supplement at 2 and at Attachment.

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended,<sup>17</sup> informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, establish a substantial and material question of fact that granting the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.<sup>18</sup> In this case, the Objections must establish a substantial and material question of fact that grant of the Application would be inconsistent with the Section 74.1204(f) of the FCC's rules (Rules).<sup>19</sup> The Objections have not met this burden.

Initially, we reject Bustos's procedural argument that the Objections must be dismissed because they were not served upon Bustos. We find that the Objectors' failure to serve their electronically filed Objections does not prejudice Bustos because Bustos was able to file an Opposition to the Objections, which we will consider herein.<sup>20</sup>

Substantively, regarding Objectors' interference claims, in promulgating Section 74.1204(f) of the Rules, 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>21</sup> Under Section 74.1204(f), in order to provide "convincing evidence" that grant of an FM translator construction permit application "will result in interference to the reception" of an existing station, an opponent must provide, at a minimum: (1) the name and specific address of each potentially affected listener; (2) some demonstration that the address of each purported listener falls within the 60 dBμ service contour of the proposed translator station;<sup>22</sup> (3) a declaration from each of the affected listeners that he or she listens to the station at the specified location; and (4) some evidence that grant of the authorization will result in interference to the reception of the "desired" station at that location.<sup>23</sup> The Commission has stated that "[t]he best method, of course, is to plot the specific addresses on a map depicting the translator station's 60 dBμ contour."<sup>24</sup>

We find that the declarations submitted by the Objectors are not probative that the proposed translator will interfere with either KVST(FM) or KHGV-LP. Initially, we note that these declarations (made within the text of each Objection), which were not made under penalty of perjury and were unsupported by technical showings, carry less probative weight than the technical engineering evidence

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<sup>17</sup> See 47 U.S.C. § 309(d).

<sup>18</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested); see also 47 CFR § 73.3587.

<sup>19</sup> 47 CFR § 74.1204(f).

<sup>20</sup> See, e.g., *M&M Cmty. Dev., Inc.*, Letter Order, 21 FCC Rcd 7983, 7984 n.7 (2006), citing *In re Josephine Broadcasting*, Hearing Designation Order, 5 FCC Rcd 3162, 3163, para. 3 (1990).

<sup>21</sup> See *Ass'n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6, paras. 7-9 (2004) (*Association*), citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7230 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993).

<sup>22</sup> The staff generally requires demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dBμ contour who are unconnected with the full-service station whose service allegedly will be disrupted. See *Association*, 19 FCC Rcd at 12688 n.37 (approving staff practice requiring that the complainant be "disinterested.")

<sup>23</sup> *Id.*, 19 FCC Rcd at 12687.

<sup>24</sup> *Id.*

submitted by Bustos in support of the Application's proposal.<sup>25</sup> In addition, none of the Objectors makes any demonstration that their address falls within the 60 dBμ service contour of the proposed translator station as required by Section 74.1204(f).<sup>26</sup> Finally, with respect to Parker's Objection, the Commission limits actionable listener complaints to those that are made by *bona fide* "disinterested" listeners (*e.g.*, persons or entities without legal, economic or familial stakes in the outcome of the licensing proceeding),<sup>27</sup> and Parker's statement fails under this standard because he is an officer of KHGV-LP.<sup>28</sup>

**Conclusion/Actions.** In light of the discussion above, we find that the Objections have not raised a substantial and material question of fact calling for further inquiry regarding whether grant of the Application will further the public interest, convenience, and necessity. We will therefore deny the Objections.

Additionally, we have evaluated the Application and find that it complies with all pertinent statutory and regulatory requirements and that its grant would indeed further the public interest, convenience, and necessity.

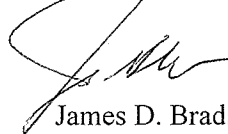
For these reasons, IT IS ORDERED, that the Informal Objection filed by B. J. Donaldson on December 21, 2017, IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objection filed by Claude B. Parker on December 21, 2017, IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objection filed by Sergio Presa, Jr., on December 30, 2017, IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BNPFT-20171212AAD) of Bustos Media Holdings, LLC, for a new FM Translator Station at Houston, Texas, IS GRANTED.

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

cc: Bustos Media Holdings, LLC

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<sup>25</sup> See, *e.g.*, *Richard Dean Hodson d/b/a Hodson Broad., Shamrock Comm., Inc., c/o Kenneth E. Satten, Esq.*, Letter Order, 23 FCC Rcd 8751, 8752 (MB 2008) (petitioner's unsworn allegations in affidavit do not provide sufficient indicia of reliability of bare assertions made in petition).

<sup>26</sup> See *Richard J. Bodorff, Esq. et al.*, Letter Order, 27 FCC Rcd 4870, 4873 (MB 2012) (*Bodorff*) (Section 74.1204(f) requires petitioners to identify and provide declarations from specific listeners within proposed translator's predicted 60 dBμ service contour).

<sup>27</sup> See *Association*, 19 FCC Rcd at 12688, para. 16 n.37; see also *Bodorff*, 27 FCC Rcd at 4872 n.15 (Section 74.1204(f) requires petitioners who are unconnected with the station whose service allegedly will be disrupted).

<sup>28</sup> See n.7, *supra*.