



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

May 1, 2017

In Reply Refer to:
1800B3-SS

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c/o Mr. Merkys Perdomo
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Providence, RI 02905

In re: **W221DS, Philadelphia, Pennsylvania**
Facility ID No. 151789
Aztec Capital Partners, Inc.

File No. BMPFT-20160129ALD
Petition for Reconsideration

File No. BMPFT-20160728AAW
Informal Objection

File No. BMPFT-20170410AAD
Informal Objection

Dear Counsel and Mr. Perdomo:

The Media Bureau (Bureau) has before it: (1) Clear Communications, Inc.'s (CCI) February 26, 2016, Petition for Reconsideration (Petition)¹ of the Bureau staff's grant of an uncontested application (January Modification Application) for minor modification of facilities for FM translator Station W221DS,² Philadelphia, Pennsylvania (Translator); (2) CCI's November 23, 2016, Informal Objection (November Objection) to Aztec Capital Partners, Inc.'s (Aztec) referenced amended application

¹ Aztec filed an Opposition to the Petition on March 10, 2016, to which CCI replied on March 22, 2016. In addition, Aztec filed a Supplement to its Opposition on April 14, 2016, to which CCI filed a Motion to Strike Supplement on April 29, 2016. On May 2, 2016, CCI filed a Motion for Leave to File Supplement and a Supplement to its Petition.

² Formerly W273CM.

(Amended July Modification Application)³ for a further minor modification of the facilities of the Translator;⁴ and (3) responsive pleadings related to the November Objection.⁵ We also have before us an April 11, 2017, Informal Objection to a further application (April Modification Application) for minor modification of the facilities of the Translator, filed by Merkys Perdomo (Perdomo Objection). For the reasons discussed below, we dismiss the Petition and the August and November Objections as moot and we dismiss the Amended July Modification Application. We also deny the Perdomo Objection, and we grant the April Modification Application.

Background. The Translator’s original construction permit authorized operation on Channel 273 (102.5 MHz) at Clayton, New Jersey, to rebroadcast noncommercial educational station WYRS(FM), Manahawkin, New Jersey.⁶ On January 29, 2016, WYRS Broadcasting⁷ filed the January Modification Application during the authorized filing window for FM translator modification applications,⁸ seeking to relocate the Translator to Philadelphia, Pennsylvania, change its frequency to Channel 221 (92.1 MHz), and operate as a “fill-in” translator for Aztec’s commercial Station WHAT(AM), Philadelphia, Pennsylvania. The staff released a *Public Notice* announcing the acceptance of the January Modification Application on February 1, 2016,⁹ and granted it on February 18, 2016.¹⁰ CCI timely sought reconsideration on February 26, 2016.

In the Petition, CCI argues that the proposed modified facilities will cause interference to 711,773 persons in the area where its co-channel Station WVLT(FM), Vineland, New Jersey, can be heard, in violation of Section 74.1204(f) of the Rules¹¹ and that because it could not participate as a party earlier in the proceeding, due to the “magnitude of the interference,” it has standing to file the Petition as “a party whose interests will be adversely affected,” under Section 1.106(b)(1) and for “good cause,” pursuant to Section 1.106(b)(1) of the Rules.¹²

³ File No. BMPFT-20160728AAW.

⁴ CCI also filed an August 8, 2016, Informal Objection to the Amended July Modification Application (August Objection), which Aztec opposed on August 20, 2016, to which CCI replied on August 31, 2016. Aztec also filed an “Opposition to Supplemental Objection” on October 14, 2016.

⁵ Aztec filed an Opposition to the Objection on November 30, 2016 (Opposition), to which CCI replied on December 15, 2016 (Reply).

⁶ See Permit No. BNPFT-200130826ADZ.

⁷ On April 1, 2016, the staff granted an application (File No. BAPFT-20160205ADQ) for consent to assign the Translator from WYRS Broadcasting to Aztec. The parties consummated the assignment on April 13, 2016.

⁸ 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); 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).

⁹ See *Broadcast Applications*, Public Notice, Report No. 28663 (rel. Feb. 3, 2016), p.101.

¹⁰ See *Broadcast Actions*, Public Notice, Report No. 48676, (rel. Feb. 23, 2016), p.11. The construction permit issued pursuant to grant of the January Modification Application specified an Effective Radiated Power (ERP) of 0.07 kW with an antenna radiation center height above ground level of 166 meters, at a location of 39° 57’ 05” NL, 75° 09’ 38” WL. See Permit No. BMPFT-20160129ALD.

¹¹ 47 CFR § 74.1204(f). Petition at 3.

¹² *Id.* at 3-5; see also 47 CFR §§ 1.106(b)(1) and 1.105(b)(1).

Thereafter, on July 28, 2016, Aztec filed the July Modification Application to further modify the Translator's authorization, by changing location, Effective Radiated Power (ERP), and antenna height.¹³ On August 8, 2016, CCI filed the August Objection to that proposal, again challenging the proposal under Section 74.1204(f) of the Rules¹⁴ and, after a round of pleadings, Aztec amended that application on November 9, 2016, to change the antenna specified and lower the antenna height above ground level from 69 meters to 58 meters.¹⁵ CCI then, on November 23, 2016, filed the November Objection against the Amended July Modification Application.

In the November Objection, CCI argues that the Translator's most recently proposed modified facilities will still cause "prohibited" interference to areas where its Station WVLT(FM) can be heard, in violation of Section 74.1204(f) of the Rules.¹⁶ CCI again attaches statements, made under penalty of perjury, from 30 WVLT(FM) listeners along with contour maps identifying the locations of these listeners within the 60 dB μ (1mV/m) signal proposed in the Amended July Modification Application, and calculations of the undesired-to-desired signal strength ratios (U/D ratios) at these locations with respect to the facilities authorized in the modified permit.¹⁷

On April 10, 2017, Aztec filed the April Modification Application to further modify the Translator's authorization by changing its frequency to Channel 260D (99.9 MHz) and specifying an ERP of 250 watts at the same antenna site as the Amended July Modification Application. It also requested that the Commission dismiss the Amended July Modification Application upon the grant of the April Modification Application.¹⁸

On April 11, 2017, Merkys Perdomo filed the Perdomo Objection challenging the proposal alleging that he intended to file for the same channel. Perdomo argues that the April Modification Application should be dismissed because Perdomo alleges that he contacted engineering consultant Charles M. Anderson (Anderson) on April 3, 2017, for the purpose of filing a modification application to move Perdomo's FM translator station W230AA (93.9 MHz), Atlantic City, New Jersey, to Channel 260D, but Anderson "used" that information instead to file Aztec's April Modification Application.¹⁹ Perdomo therefore argues that Anderson provided a "false statement" in the April Modification Application, pursuant to Section 312(a)(1) of the Communications Act of 1934, as amended (Act).²⁰

Discussion. Procedural Issue. The Petition and the August and November Objections allege violations of Section 74.1204(f) of the Rules. In light of the fact that the April Modification Application specifies different technical facilities, and a different channel, than were proposed in the January Modification Application or the Amended July Modification Application, we dismiss as moot in this

¹³ The July Modification Application originally proposed an ERP of 0.099 kW at an antenna radiation center height above ground level of 69 meters, at a location of 40° 0' 57" NL, 75° 6' 39" WL.

¹⁴ CCI noted that, of the 217 WVLT(FM) listeners who submitted declarations in support of the Petition, many (ultimately determined to be 35) would still be affected by the Translator's facilities under the July Modification Application. See August Objection, Engineering Statement at 1; Reply to Opposition to (August) Informal Objection at 3 and at Attachment ((August) Further Engineering Statement).

¹⁵ See Amended July Modification Application, Section III-A, Items 4-8.

¹⁶ November Objection at 1-3.

¹⁷ *Id.* at 3 and at Attachment ((November) Further Engineering Statement) and at Appendix 1, Attachment A (Listener Declarations).

¹⁸ April Modification Application at Exhibit 1.

¹⁹ Perdomo Objection at 7, 9-10.

²⁰ 47 U.S.C § 312(a)(1).

proceeding the Petition. Additionally, in light of our action below granting the April Modification Application, we will dismiss the Amended July Modification Application and dismiss as moot the August and November Objections. We thus will address only Perdomo's contentions regarding the facility that Aztec currently proposes in the April Modification Application.

Substantive Issues. Under Section 309(d) of the Act,²¹ informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity.²²

Unlike CCI, Perdomo has not challenged Aztec's April Modification Application under Section 74.1204(f) of the Rules. Regarding Perdomo's allegations that, Anderson, Aztec's consulting engineer, provided false statements to the Commission, we find that these unsupported allegations are too vague to be actionable. He points to no specific representation in the April Modification Application that allegedly is false or misleading. Moreover, to the extent that Perdomo is arguing that Anderson breached a contractual obligation by Anderson in allegedly taking the engineering data obtained for Perdomo and using it to support Aztec's April Modification Application, such disputes are within the province of a local court of competent jurisdiction, not the Commission.²³ Therefore, Perdomo's general and unsupported allegations alone do not warrant further inquiry. Accordingly, we reject these arguments on the basis of lack of evidence.²⁴

We have examined the April Modification Application and find that it fully complies with all pertinent statutory and regulatory requirements and that its grant will further the public interest, convenience, and necessity.

Conclusion/Actions. Accordingly, in light of the above discussion, IT IS ORDERED, that the Petition for Reconsideration filed by Clear Communications, Inc., on February 26, 2016, seeking reconsideration of the grant of the Modification Application (File No. BMPFT-20160129ALD), IS DISMISSED as moot.

IT IS FURTHER ORDERED, that the Application (File No. BMPFT-20160728AAW) of Aztec Capital Partners for minor modification of the facilities of FM translator station W221DS, IS DISMISSED.

IT IS FURTHER ORDERED, that the Informal Objection filed by Clear Communications, Inc., on August 8, 2016, IS DISMISSED as moot.

IT IS FURTHER ORDERED, that the Informal Objection filed by Clear Communications, Inc., on November 23, 2016, IS DISMISSED as moot.

²¹ 47 U.S.C. § 309(d).

²² See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

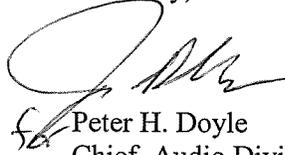
²³ See, e.g., *A.L.Z. Broad., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 23200, 23201, para. 3 (2000).

²⁴ See *Area Christian Television, Inc.*, *supra*, 60 RR 2d at 864, para. 6 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested); see also *Ithaca Cmty. Radio, Inc.*, Letter, 24 FCC Rcd 363, 364 n.5 (MB 2009) citing *William L. Zawila, Esq. and Sandra Soho*, Letter, Ref. No. 1800B3 (MMB rel. Feb. 4, 1999) (staff denied informal objection due to lack of evidence).

IT IS FURTHER ORDERED, that the Informal Objection filed by Merkys Perdomo on April 11, 2017, IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BMPFT-20170410AAD) of Aztec Capital Partners for minor modification of the facilities of FM translator station W221DS IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle", written over a horizontal line.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Clear Communications, Inc.
Aztec Capital Partners, Inc.