

**FEDERAL COMMUNICATIONS COMMISSION
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In re: NEW(FM) Concord, CA
San Mateo County Community
College District ("San Mateo")
BPFT-19971219TC

Petition for Reconsideration

Dear Counsel:

We have before us a February 10, 1999, Petition for Reconsideration of the staff decision of January 11, 1999 ("Staff Decision"), dismissing the above-captioned application of San Mateo County Community College District ("San Mateo") for a new FM translator station in Concord, California and related pleadings.¹ For the reasons stated below, we grant the Petition for Reconsideration to the extent indicated herein, rescind the action dismissing the application, and grant the application.

Background

San Mateo is the licensee of noncommercial educational ("NCE") FM station KCSM(FM), operating on Channel 216B1 in San Mateo, California. On December 19, 1997, San Mateo filed application BPFT-19971219TC for authority to operate a new non-fill-in translator facility in Concord, California on Channel 216, the same channel as the commonly owned primary station KCSM(FM). By the Staff

¹ California State University ("CSU") filed an Opposition on February 25, 1999, and San Mateo filed a Reply on March 16, 1999.

Decision, the application was dismissed for violation of Section 74.1232(f) of the Commission's rules.² Specifically, the Staff Decision concluded that, by proposing a translator station on the same frequency as primary station KCSM(FM), San Mateo was, in effect, applying for an FM booster facility.³ Pursuant to Section 74.1232(f), FM booster stations will be authorized only to serve areas within the protected contour of the primary station. The Staff Decision dismissed the application because the proposed 60 dBu service contour was not entirely within the protected 60 dBu contour of primary station KCSM(FM).

On reconsideration, San Mateo asserts that it was not its intent to apply for an FM booster facility; rather, its application requested authority to operate an on-channel, non-fill-in FM translator station. By employing a limited effective radiated power of ten watts, San Mateo argues that its application meets the power limitations allowable under Section 74.1235(b)(1), and complies with all other FM translator technical requirements.⁴ Finally, San Mateo contends that the FM translator rules do not prohibit application for an on-channel translator facility and requests that its application be reinstated. In opposition, CSU argues that the rules "are clear" that a facility operating on the same frequency as its primary station is a booster facility.⁵ Further, CSU contends that the rules are no less clear that an FM booster station will only be authorized to serve areas within the protected contour of the primary station.⁶ CSU argues that, since San Mateo's proposal "extends the primary station's 60 dBu contour in direct violation of Section 74.1232(f)," the application is defective. Under the circumstances, CSU states, it was incumbent on San Mateo to request a waiver and this it did not do. CSU therefore requests that the Petition for Reconsideration be denied.

Discussion

An FM translator station is defined in 47 C.F.R. Section 74.1201(a). In pertinent part, the rule defines an FM translator as a station "in the broadcasting service operated for the purpose of retransmitting the signals of an FM radio broadcast station ... without significantly altering any characteristics of the incoming signal other than its frequency and amplitude" Clearly, the rule prohibits alteration of elements of the incoming signal other than the frequency and amplitude. The question at issue is whether Section 74.1201(a) requires an FM translator to alter the frequency and amplitude of the incoming signal, or whether the rule merely permits such alteration, while prohibiting any other signal characteristic alteration.

On reconsideration, we are persuaded that Section 74.1201(a) does not prohibit an FM translator station from using the same frequency (or amplitude) as the primary FM station. Rather, the rule limits

² 47 C.F.R. § 74.1232(f).

³ 47 C.F.R. § 74.1201(f) defines an FM broadcast booster station as a station operated for the sole purpose of retransmitting the signals of an FM radio broadcast station by amplifying and reradiating such signals, without significantly altering any characteristic of the incoming signal other than its amplitude.

⁴ 47 C.F.R. § 74.1235(b)(1).

⁵ CSU compares 47 C.F.R. § 74.1201(a) (translators retransmit FM signals without significantly altering any characteristics of the incoming signal other than its frequency and amplitude) with 47 C.F. R. § 74.1201(f) (boosters amplify and reradiate the signals of an FM station without significantly altering any characteristics of the incoming signal other than its amplitude) as support for this contention.

⁶ CSU cites 47 C.F.R. §§ 74.1231(h) and 74.1232(f).

permissible signal alteration to changes in frequency and amplitude, but does not necessarily compel such changes.

We note that in the 1990 FM translator service rulemaking proceeding, the Commission, *inter alia*, addressed the issue of expanded channel availability for FM translators.⁷ Prior to the rulemaking proceeding, commercial FM translator operation was restricted to the 20 channels of the FM broadcast band formerly authorized for Class A stations. In the *Translator Report and Order*, the Commission concluded that the public interest would best be served by expanding channel availability for FM translators, stating “we will allow all FM translators to operate on any of the 80 non-reserved commercial channels (with the 20 reserved noncommercial educational channels remaining available for NCE-FM translators’ use as well).”⁸ In so concluding, the Commission did not condition the expansion of translator channel availability with any express prohibition on same channel operation. Finally, in light of our determination that San Mateo’s application is acceptable as a proposed translator station, CSU’s reliance on *Big Island Broadcasting Co., Ltd.*,⁹ and its precedential significance regarding booster station waiver requests, is unavailing in the instant case.

In sum, an FM translator facility that is otherwise fully compliant with the Commission’s rules may be licensed as an FM translator station while operating on the same frequency as the FM primary station it rebroadcasts. Therefore, we will grant San Mateo’s request for reconsideration of our January 11, 1999, dismissal of its application for a new FM translator station.¹⁰

Accordingly, San Mateo’s February 10, 1999, Petition for Reconsideration IS HEREBY GRANTED to the extent indicated herein. The application (BPFT-19971219TC) filed by San Mateo County Community College District IS HEREBY REINSTATED and GRANTED.¹¹ These actions are taken pursuant to Section 0.283.¹²

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

⁷ *Amendment of Part 74 of the FM Commission Rules Concerning Translator Stations*, 5 FCC Rcd 7212, 7224-25 (1990) (“*Translator Report and Order*”), *recon. denied*, 8 FCC Rcd 5093 (1993).

⁸ *Id.*

⁹ 6 FCC Rcd 422 (1991).

¹⁰ Since this decision is of general applicability, we will publish the letter pursuant to Section 0.445(d) of the Commission’s rules. 47 C.F.R. § 0.445(d).

¹¹ BPFT-19971219TC has an “A” cut-off date of April 17, 1998.

¹² 47 C.F.R. § 0.283.

cc: San Mateo County Community College District
California State University