



Federal Communications Commission
Washington, D.C. 20554

February 7, 2020

In Reply Refer to:
1800B3-KV

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In re: W221DG, Exton, PA
Broadcast Sciences, LLC
Facility ID No. 142298
File No. BLFT-20170106ACP

Informal Objection/Interference Complaint

Dear Counsel:

We have before us: (1) Broadcast Sciences, LLC's (BSL) referenced application for a license to cover (License Application) a modified construction permit for FM Translator W221DG, Exton, Pennsylvania;¹ and (2) Clear Communications, Inc.'s (CCI or Complaining Station)² informal objection titled "Interference Complaint and Request to Order Operations Suspended" (Objection-Complaint), filed January 23, 2017, alleging harmful interference caused by W221DG's permitted facilities. For the reasons discussed below, we deny the Objection-Complaint, as supplemented, and grant the License Application.

¹ On July 19, 2016, the Media Bureau (Bureau) granted BSL's July 16, 2019, application for a minor modification of construction permit (File No. BMPFT-20160714ABR). *See Broadcast Actions*, Public Notice, Report No. 48782 (rel. Jul. 22, 2016).

² CCI is the licensee of Station WVLT(FM), Vineland, New Jersey (WVLT(FM)).

Background. On January 6, 2017, BSL filed the License Application which is currently pending. On January 23, 2017, CCI filed the Objection-Complaint arguing that W221DG should be ordered to cease operations and the License Application denied, because of harmful interference caused to WVLT(FM). CCI states that on January 6, 2017, when W221DG commenced operations, under program test authority, it began receiving listener interference complaints; in support, it attached 24 listener complaints.³ CCI further reports that private efforts with BSL to resolve the interference were unsuccessful.

CCI's Objection-Complaint led to a series of filings between the parties. On January 30, 2017, BSL filed an "Opposition" (Opposition) reporting it was investigating whether the listener complaints were *bona fide* and, if so, how to remediate the interference. On February 1, 2017, CCI filed a "Reply to Opposition" (Reply) affirming the validity of the listener complaints and attaching seven new listener complaints.⁴ On February 7, 2017, BSL filed a "Notification of Suspension of Operations" (Notification) stating that on February 6, 2017, W221DG had ceased operations while it investigated the interference. On April 4, 2017, in response to the Bureau's March 29, 2017, letter to address the listeners complaints,⁵ BSL declared that due to W221DG's silent status investigation of the listener complaints was "impossible" and it was evaluating "various options" including filing an application for minor modification of W221DG's facilities.⁶

Translator Interference Rule Revisions. Recently, the Commission adopted certain changes to the FCC's rules (Rules) relating to the translator interference complaint resolution process.⁷ In the *Translator Interference Order*, the Commission stated that all then remaining unadjudicated complaints would be decided under the new Rules once they became effective.⁸

On August 20, 2019, the Bureau notified CCI that certain additional information was needed to continue processing the Complaint under the new Rules.⁹ The Bureau afforded CCI thirty days to file the requested information.¹⁰

³ Specifically, the following listeners: Theresa Gerlach (Gerlach); Joe Martin (Martin); Bob Pennington (Pennington); Alex Hendricks (Hendricks); Madelyn McNamee (M. McNamee); Harold Taylor (Taylor); Martin R. Frick (M. Frick); David McKinney (McKinney); Kathleen Frick (K. Frick); James Finley (Finley); William Frenzel (Frenzel); Michael Di Fonzo (Di Fonzo); Linda Robinson (L. Robinson); Richard Daniels (Daniels); Marie Kania (M. Kania); Benjamin Robinson (B. Robinson); Howard Weissman (Weissman); Stephen W. Gruner (Gruner); Greg Bonner (Bonner); Rosemarie Burke (R. Burke); Thomas Burke (T. Burke); Bob Lion (Lion); Joseph Kania (J. Kania); and James J. McNamee (J. McNamee). Objection-Complaint, Attachment A.

⁴ Specifically, the following listeners: Robert Pastore (Pastore); Leon M. Antonie (Antonie); Edward Kelly (Kelly); E. Richard Heintz (Heintz); Rick Williams (Williams); Lucille Webster (Webster); and Richard J. Corr (Corr). Reply, Attachment A. Collectively, the listener complaints filed in the Objection-Complaint and Reply will be referred to as the Original Listener Complaints.

⁵ See *Letter from James Bradshaw, Deputy Chief, Audio Division, Media Bureau to Broadcast Sciences, LLC* (dated Mar. 29, 2017) (2017 Bureau Letter).

⁶ On July 18, 2017, BSL filed an application for minor modification (File No. BPFT-20170718AEV) which CCI opposed. On August 9, 2019, the Bureau dismissed the contested modification application. See *Letter from James Bradshaw, Deputy Chief, Audio Division, Media Bureau to Broadcast Sciences, LLC* (dated Aug. 9, 2019).

⁷ See *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*).

⁸ *Id.* at 3482, para 49.

⁹ See *Letter from James Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Clear Communications, Inc.* (dated Aug. 20, 2019) (2019 Bureau Letter). The Bureau found that the Complaint lacked: detailed information on the Complaining Station's protected contour and the population located therein; the minimum number of listener

On October 18, 2019, CCI filed a “Supplement to Interference Complaint” (Supplement). In the Supplement, CCI states that, per Table 1 of 47 C.F.R. § 74.1203 of the Rules,¹¹ it is required to submit a minimum of eight listener complaints.¹² CCI has submitted 41 listener interference complaints¹³ which it claims comply with the current Rules.

On November 4, 2019, BSL filed an “Opposition to Supplement to Interference Complaint” (Supplement Opposition) arguing that the Supplement improperly makes a showing under section 74.1204(f)¹⁴ which applies only to applications for construction permit. BSL further asserts that per section 319(c) of the Communications Act of 1934, as amended (the Act), grant of the License Application is mandatory absent extraordinary circumstances. BSL declares that no such circumstances exist because after grant of the License Application CCI “will have an opportunity to file a new section 74.1203 showing after the translator resumes operation . . .”¹⁵

On November 15, 2019, CCI filed a “Reply to Opposition to Supplement to Interference Complaint” (Supplement Reply) arguing that interference showings under sections 74.1204(f) and 74.1203 of the Rules are “substantially similar.”¹⁶ CCI further claims that it has satisfied both Rules as the Complaint complies with section 74.1203 while the Supplement complies with sections 74.1204(f) and 74.1203. Citing section 319(c) of the Act, CCI also contends that new circumstances exist which preclude the grant of the License Application. CCI opines “[s]ince the W221DG construction permit was granted, the translator commenced program tests and caused destructive interference to WVLT. That new

complaints as determined by the population located within the Complaining Station’s protected contour; clear, concise, and accurate descriptions of the locations where interference is alleged; statements that the listener listens over-the-air to the desired station at least twice a month and has no legal, financial, employment, or familial affiliation or relationship with desired station; a map plotting the specific locations of the alleged interference in relation to the Complaining Station’s 45 dBμ contour; a statement that the Complaining Station is operating within its licensed parameters; and the undesired/desired data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second or third adjacent channel situations, calculated using the Commission’s standard contour prediction methodology. *Id.*

¹⁰ On September 17, 2019, Commission staff granted CCI’s request for extension until October 18, 2019, to respond to the 2019 Bureau Letter. See *Email from Kim Varner, Attorney-Advisor, to Melodie Virtue, Esq.* (dated Sep. 17, 2019).

¹¹ 47 CFR § 74.1203.

¹² CCI states that the population with WVLT(FM)’s 60 dbu contour is 330,011 persons. See Supplement, Attachment 1 at 1.

¹³ Specifically, the following listeners: Kevin Kostyk (K. Kostyk); Michael Kostyk (M. Kostyk); Deborah Kostyk (Deborah Kostyk); David Kostyk (David Kostyk); Nicholas Kostyk, Jr. (N. Kostyk); Matthew A. Rockle, Sr. (M. Rockle); Jamie Rockle (J. Rockle); Debbie Evans (Evans); Jack Scavicchio (Scavicchio); Gail J. Watson (Watson); Doris J. Chan (Chan); Gail Zaccarelli (Zaccarelli); James Hiadley (Hiadley); John Gentile (Gentile); Harriese Wesner (Wesner); Irene Bradley (Bradley); Irene Reardon (Reardon); Theresa Biancaniello (Biancaniello); Jacquelyn Powers (Powers); Ruth Cupples (Cupples); Mary Aileen Patterson (Patterson); Fred R. Cordova (Cordova); June M. Roman (Roman); James J. Garcia (Garcia); JoAnn T. Spata (Spata); Barbara Reina (Reina); Sarah Holcomb (Holcomb); Sherry Marshall (Marshall); Mikki Cavaliere (Cavaliere); Nicholas J. Veriabo (N. Veriabo); Maria Veriabo (M. Veriabo); John Roschetz (Roschetz); Barbara Rotella (Rotella); Louis G. Wheeler (Wheeler); Robert Kopp (R. Kopp); Carol Kopp (C. Kopp); Krystal Curry (Curry); Edward Heinemann (Heinemann); Marilyn Stratton (Stratton); Kenneth Cicala (Cicala); and JoAnn Harris (Harris). Collectively, these listener complaints will be referred to as the Supplemental Listener Complaints.

¹⁴ 47 CFR §74.1204(f).

¹⁵ Supplement Opposition at 3.

¹⁶ Supplement Reply at 3.

circumstance . . . is contrary to the public interest because granting the license and allowing W221DG to operate will cause listeners to lose existing service.”¹⁷

Discussion. Informal objections 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.¹⁸ Pursuant to section 319(c) of the Act,¹⁹ a permittee is entitled to a high degree of protection and a presumption that the public interest determination made during the construction permit proceeding continues in effect unless circumstances have arisen that would make operation of the station against the public interest.²⁰ The Commission traditionally is reluctant to designate license applications for hearing and, in most instances, considers the grant of a license application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith.²¹

Under this stringent standard, CCI’s challenge to the licensing of W221DG fails. CCI contends that the alleged interference to WVLT presents new circumstances precluding the grant of the License Application. We disagree. As discussed below, we find that CCI has failed to establish that W221DG is causing interference.

Based upon our review of CCI’s Supplement, we conclude that it is not a valid and complete interference claim package. Section 74.1203 of the Rules provides, in pertinent part, “an authorized FM translator . . . will not be permitted to continue to operate if it causes any actual interference to . . . the direct reception by the public of the off-the-air signals of any full service station . . .”²² CCI filed its Objection-Complaint, pursuant to section 74.1203 of the Rules, alleging that W221DG’s operations were causing actual interference to WVLT. In the *Translator Interference Order*, the Commission stated that “complaints that have not been acted upon as of the effective date of the Rules adopted [herein] . . . will be decided based on the new rules. If necessary, parties will be given an opportunity to submit supplemental materials to address the revised rules . . .”²³ The revised translator rules became effective on August 13, 2019.²⁴

Because the Objection-Complaint was unadjudicated as of August 13, 2019, the Bureau reviewed it and found it was not in compliance with the Rules. The Bureau, therefore, afforded CCI an opportunity to supplement the Objection-Complaint with certain specified materials.²⁵ Specifically, the Bureau directed CCI to file “a clear, concise, and accurate description of the location where the interference is

¹⁷ *Id.* at 5 (footnote omitted).

¹⁸ 47 U.S.C. § 309(e). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC 193, 197 n.10 (1990) *aff’d sub nom. Garden State Broad., L.P. v. FCC*, 996 F.2d 386 (D.C. Cir 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986).

¹⁹ 47 U.S.C. § 319(c).

²⁰ *Id.* (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest . . .”); *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

²¹ *See, e.g., Meyer Broad. Co.*, Memorandum Opinion and Order, 65 FCC 2d 438, 441, para. 9 (1977).

²² 47 CFR § 74.1203(a), (3).

²³ *Translator Interference Order*, 34 FCC Rcd at 3482, para 49.

²⁴ *See FM Translator Interference; Correction*, 84 Fed. Reg. 122 (Jun. 25, 2019).

²⁵ *See 2019 Bureau Letter.*

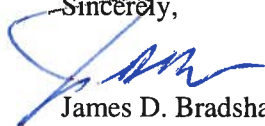
alleged.”²⁶ In the Supplement each listener complaint states, *inter alia*: “I am concerned that an application for a radio station pending at the FCC *may cause interference* to my ability to listen to the broadcast signal of Station WVLT.”²⁷ This statement alleges potential interference which is governed by section 74.1204(f) of the Rules,²⁸ not actual interference which is governed by section 74.1203 of the Rules. While it is true that in the *Translator Interference Order*, the Commission, harmonized sections 74.1204(f) and 74.1203, CCI’s Objection-Complaint did not allege predicted interference, but rather actual interference. In the *2019 Bureau Letter*, the Bureau gave CCI a one-time opportunity to update its Objection-Complaint. With the Supplemental Listener Complaints, however, CCI did not update its Objection-Complaint as directed, but rather fundamentally changed the nature of the Objection-Complaint. We conclude, therefore, that CCI has failed to submit the required minimum number of listener complaints.²⁹

Conclusion. In light of the foregoing, we find that CCI has not raised a substantial and material question of fact requiring further inquiry as to whether grant of the License Application would be *prima facie* inconsistent with the public interest, convenience and necessity. We further find that the License Application complies with all pertinent statutory and regulatory requirements and that grant would be in the public interest, convenience, and necessity. If at a future date, however, W221DG causes demonstrated, actual interference to WVLT(FM) or another full-service station, it will be required to eliminate the interference or cease operation.³⁰

Accordingly, IT IS ORDERED that Clear Communications, Inc.’s informal objection titled “Interference Complaint and Request to Order Operations Suspended” filed on January 23, 2017, as supplemented, IS DENIED.

IT IS FURTHER ORDERED, that the application for a license to cover (File No. BLFT-20170106ACP) for Station W221DG, Exton, Pennsylvania (Facility ID No. 142298) IS GRANTED.

Sincerely,



James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

²⁶ *Id.* at 2. (footnote omitted).

²⁷ Supplement, Attachment 3, Index 1-49 (emphasis added).

²⁸ 47 CFR § 74.1204(f) provides, in pertinent part, “[a]n application for an FM translator will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station . . . if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized . . . broadcast station . . .”

²⁹ As an aside, although W221DG is currently silent, CCI has not alleged that it was unable to obtain updated information concerning interference either from the Original Listener Complaints or other listeners. Moreover, in similar circumstances other Complaining Stations have successfully updated their complaints alleging interference by a now silent translator. See e.g. *Letter from James Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Multicultural Radio Broadcasting Licensee, LLC, et.al.* (dated Dec. 5, 2019).

³⁰ 47 CFR § 74.1203(a).