

2013 JUN 24 A 6:29

POSTED
#1473
ACCEPTED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 19 2013

Federal Communications Commission
Office of the Secretary

In re:)
)
 Carl Tutera) FCC File No. BNPFT- 20030317MBE
)
 NEW FM Translator Station) Facility ID No. 156694
 Miami, Florida)

To: The Secretary
 Attn: The Chief, Media Bureau

**PETITION FOR LEAVE TO FILE SUPPLEMENT
TO
PETITION FOR RECONSIDERATION OF DISMISSAL**

Carl Tutera (“Tutera”), by his attorney, hereby respectfully requests leave to file the instant Supplement to his May 18, 2013 Petition for Reconsideration in the captioned matter (the “Petition”).

As an initial matter, it is noted that the Petition for which supplementation is sought herein was not due until today, and so it is unclear whether leave is even required to file a supplement within the time-frame afforded for the initial pleading. Nonetheless, out of an abundance of caution, should leave be required it is respectfully requested. In support thereof, we note that the two matters raised herein have a significant constructive bearing upon the staff’s fashioning of the relief that had been requested in the Petition.

First, the Petition had noted that in a seemingly similar circumstance, rather than dismiss an amended translator application altogether for ostensible conflict with the channel specified in an earlier-filed amendment to a competing application, the staff had accepted the amendment and

created an MX Group comprising both conflicting applications, as amended. Petition at 6. Specifically, an application of Circuitwerkes, Inc. for West Palm Beach, Florida (BNPFT-20030317MWC) had been amended on April 2, 2013 to specify Channel 225. A second application of National Christian Network (BNPFT-20030314ADY) for West Palm Beach then had been amended on April 5, 2013 to specify the same Channel 225 at a nearby site. While the later-filed application, as amended, was accepted, Tutera's, in a comparable situation, was dismissed. On that basis, Tutera had requested comparable treatment – namely, reinstatement of his dismissed application.

It now appears that the National Christian Network application that had been amended was not only accepted and placed in an MX Group, but recently was afforded a further opportunity to settle its MX Group by amending to a non-conflicting channel (278). Consequently, Tutera respectfully suggests that the most efficient way to resolve the many issues raised in his Petition is to afford him a comparable opportunity to amend to a different channel in order to settle the mutual exclusivity between his subject application and that of the only other application with which, upon reinstatement, it would conflict (Charles E. Crawford – BNPFT-20030317MKU). As a result, both applications could be granted.

Second, we further note that earlier this week the staff was faced with another situation in western Arizona, in which an applicant (BPNFT-20030317LNZ) tendered an amendment to specify channel 298 that turned out to create a conflict with an existing channel 298 application (BNPFT-20030317JJO). Yet, according to CDBS, rather than dismiss the amended application, as it had done with Tutera's amendment, yesterday the staff denied the amendment, thus retaining the unamended application in pending status and presumably affording an opportunity to proffer another acceptable amendment. Tutera clearly is entitled to no lesser treatment.

In light of the foregoing, and in light of the matters raised in our June 18 Petition, Tutera respectfully submits that his application be reinstated *nunc pro tunc*.

Respectfully Submitted,

CARL TUTERA

By: 
Peter Gutmann
His Attorney

Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, NW, 5th Floor
Washington, DC 20036

(202) 857-4532
pgutmann@wcsr.com

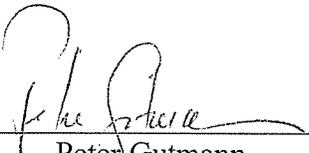
June 19, 2013

CERTIFICATE OF SERVICE

Peter Gutmann, an attorney in the law firm of Womble Carlyle Sandridge & Rice, LLP, certifies that on this 19th day of June, 2013 a copy of the foregoing "Petition for Leave to File Supplement to Petition for Reconsideration of Dismissal" has been served upon the following by first class mail (and a courtesy copy sent by email):

Charles E. Crawford
4553 Bordeaux Avenue
Dallas, TX 75205-3608

crawfordradio@aol.com



Peter Gutmann