

RECEIVED

M. Celenza Communications, Inc.

41 Kathleen Crescent

Coram, NY 11727

631-965-0816

msccommunications@yahoo.com

Received & Inspected

NOV 02 2016

FCC Mail Room

2016 NOV -4 A 11: 22

1010 SEP 10 11: 22

October 25, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
ATTN: Chief, Media Bureau, Audio Division

Re: FM Translator Station K245CB
Houston, Texas
Facility ID No. 148484
Request for Further Waiver of
Expiration of Construction Permit

Dear Ms. Dortch:

On behalf of Carlos Lopez ("CL"), permittee of FM Translator Station K245CB, Houston, Texas ("the Station") and Martin Broadcasting, ("Martin"), Licensee of AM Station KYOK Conroe, Texas, the proposed primary station specified in the pending Modification Application filed for the Station (BMPFT-20160921ACF),¹ and pursuant to Section 1.3 of the Commission's rules, this will request a waiver of Section 73.3598 of the Commission's rules to permit CL additional time to construct the station.

The original construction permit for the Station expired of April 29, 2016. The reasons we are requesting an additional 30 day extension is due to the following technical reason; CL filed on October 5, 2016 a Request For waiver Of The "One Application" Policy see attached and also the processing of the pending application for modification (BMPFT-20160921ACF) and the original request for filing the extension was the antenna site where CL was to construct the translator no longer will allow him to construct due to possible intermodulation issues with public safety radio communications equipment already on this site. Also, due to the fact that Martin Broadcasting never completed construction on their am construction permit for the city of license for Katy, TX File Number BP-20110407ABH. CL requires an additional 30 days for the Media Bureau to review and process the One application waiver and the new modification application (BMPFT-20160921ACF) to a new location and coexist with the primary stations KYOK Conroe, TX that has been filed (BMPFT-20160921ACF) for a fill in service. At note 36 of the *AM Revitalization First Report and Order*, the Commission states that there are approximately 1,300 outstanding construction permits for FM translators which are scheduled to expire in 2016 and that modification applicants who participate in AM/FM translator filing windows are encouraged to seek waivers of their construction deadlines.

¹ CL and Martin have entered into a rebroadcast agreement with respect to Stations K245CB and its proposed Primary station, KYOK (AM)

² See *Revitalization of the AM Radio Service* (First Report and Order), 30 FCC Rcd 12145 (2015) ("AM Revitalization First First Report and Order").

M. Celenza Communications, Inc.

Ms. Marlene H. Dortch

October 25, 2016

Page 2 of 2

The Commission has recognized that waivers would expand broadcasting opportunities for AM Stations, would allow AM licensees to realize service improvements quickly and would incentivize FM translator permittees to participate in the modification window process, thereby, providing a means to avoid the delays and administrative burdens of re-auctioning the spectrum.

All of those beneficial factors are present in the instant case. As such, a waiver of the Commission construction deadline would clearly be in the public interest with respect to Station K245CB. CL hereby commits to prompt construction and initiation of his broadcast operations by K245CB translator station.

In view of the above, CL and Martin request that the Commission waive its construction deadline rule for Station K245CB and extend the construction permit expiration date for that Station to a date that is thirty days from the Request for Waiver of Construction Permit Expiration Date of November 3, 2016 for December 3, 2016. Also, CL and Martin are ready to immediately construct upon FCC action on the pending application and waiver request. Counsel for CL has been notified that the FCC will not review or take any action on this waiver until after October 29, 2016. Therefore, the Commission's own internal review schedule will prohibit CL from complying with the construction permit schedule, even though CL is immediately willing and able to complete construction in time.

Sincerely,
Michael Celenza
Consultant

cc (via- e-mail): Robert Gates
Victoria McCauley
Peter Doyle
Dan Huber
Carlos Lopez
Cary Tepper

Att: One Application Policy

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

Received & Inspected

NOV 02 2016

FCC Mail Room

In re Application of)
)
CARLOS LOPEZ) FCC File No. BMPFT-20160921ACF
) Facility ID No. 148484
For Minor Modification of Construction Permit)
for K245CB at Houston, Texas to serve as)
a fill-in for Radio Station KYOK-AM at Conroe,)
Texas on new Channel 222.)

To: Division Chief, Audio Division
Media Bureau

REQUEST FOR WAIVER OF THE "ONE APPLICATION" POLICY

Carlos Lopez ("Lopez"), by counsel, hereby submits this "Request for Waiver of the One Application Policy" set forth in the Public Notice DA 1491 (released December 23, 2015) ("the Public Notice") with regard to the special filing windows for the relocation of FM translator stations to serve as fill-in facilities for AM radio stations. The Public Notice created two special filing windows – January 29 to July 28, 2016 and July 29 to October 31, 2016. In this instance, Lopez filed applications in both special filing windows that specified fill-in service for Class D Radio Station KYOK-AM due to unique circumstances beyond his control. Although the multiple application filings by Lopez violated the "one application" policy that governs these special filing windows, we submit that a waiver of that policy is warranted here.

In support hereof, Lopez submits the following:

1. On January 29, 2016, Lopez filed an application in the January 29 – July 28, 2016 special filing window for the proposed move of unbuilt FM translator station K256CB to Houston, Texas to serve as a fill-in for Radio Station KYOK-AM on Channel

245. KYOK-AM is owned by minority broadcaster Martin Broadcasting, Inc. ("Martin Broadcasting"). At that time Martin Broadcasting held Construction Permit BP-20110407ABH for the relocation of the station to Katy, Texas.

2. Lopez was granted Construction Permit BMPFT-20160129ABF to rebroadcast KYOK-AM at Katy, Texas. Unfortunately Martin Broadcasting did not move KYOK-AM to Katy, Texas because land restrictions prevented the build out of Construction Permit BP-20110407ABH. KYOK-AM remained licensed to Conroe, Texas but the K245CB facilities specified in Construction Permit BMPFT-20160129ABF are not located in a proper area to serve as a fill-in for KYOK-AM.

3. The failure of KYOK-AM to relocate to Katy, Texas left Lopez in limbo since he held a special filing window Construction Permit that could not be implemented. These matters were beyond Lopez' control. And, because Lopez had a written agreement with Martin Broadcasting to rebroadcast KYOK-AM another modification application was filed by Lopez to relocate his unbuilt FM translator station to another new area that would permit fill-in operations for KYOK-AM. That application was BMPFT-20160211ACB and it was dismissed on April 15, 2016 for violating the "one application" rule for the special filing window. The violation of the "one application" rule resulted in the application being considered a major change application rather than a minor change application, and it was dismissed per a Letter Ruling dated April 15, 2016, a copy of which is attached hereto as Exhibit No. 1.¹

¹ There was also an Informal Objection filed against BMPFT-20160211ACB by New Beginnings Fellowship Church.

4. Recently, in the July 29 – October 31, 2016 special filing window Lopez filed a new modification application (BMPFT-20160921ACF) to modify K245CB to Channel 222 to serve as a fill-in translator for KYOK-AM where it is currently licensed, and where KYOK-AM will remain.

5. Attached hereto as Exhibit No. 2 is the written Declaration of Carlos Lopez in support of this petition. We submit that the facts surrounding the course of events here were beyond the control of Lopez and the spirit of the AM Revitalization proceeding should allow Lopez the opportunity to fulfill his intentions to provide fill-in services to KYOK-AM.

6. Also attached hereto as Exhibit No. 3 is the written statement of Lopez' technical consultant wherein it is demonstrated that application BMPFT-20160921ACF is technically sound and is not mutually exclusive with any other pending application. Therefore, no other party will be prejudiced should the Commission decide to process and approve application BMPFT-20160921ACF.

7. In considering this waiver request, Lopez respectfully reminds the Commission that the AM Revitalization Order (*Revitalization of the AM Service, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, FCC 15-142 (released October 23, 2015)* ("AMR Order")) adopted a number of rule and policy changes to strengthen the AM service, thereby advancing the Commission's fundamental goals of localism, competition and diversity in broadcast media. A key component of the AMR Order was the special filing window that Lopez availed himself of for the benefit of Radio Station KYOK-AM.

8. The "one application" policy was initiated not only to prevent application

gamesmanship during the special filing windows but also spectrum hoarding that could prevent the largest number of parties to file applications. Here the facts clearly show that no gamesmanship took place. Lopez originally proposed to provide fill-in operations for an AM radio station that had FCC authority to relocate to the Houston, Texas area but, unfortunately, never implemented that move. Since Lopez has a written agreement to provide fill-in services to KYOK-AM he is pursuing this new modification application to an area where KYOK-AM has been licensed for years, and where KYOK-AM will remain. Also, it is important to note that by allowing Lopez' instant application to proceed no other party will be harmed or prejudiced because BMPFT-20160921ACF is not MX'd with any other application.²

9. Lopez understands that it is longstanding Commission policy that waivers are granted only when good cause is demonstrated, and that a waiver request faces a high hurdle even at the starting gate. See, 47 CFR § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Further, it is understood that a waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008). Lopez submits that the unique circumstances here qualify for a waiver.

10. The special circumstances at issue here is the unique filing opportunity for an FM translator station or FM translator construction permit to relocate up to 250 miles to serve as a fill-in for an AM radio station. Never before has the FCC allowed such modifications and, most likely, such a filing opportunity will not be offered again. Adding to the special circumstances of the situation is the fact that the unique filing opportunity was created as

² A copy of this petition is being served upon New Beginnings Fellowship Church since they previously objected to Lopez' application BMPFT-20160211ACB.

part of the AM Revitalization Proceeding and the many public interest reasons to save and promote the AM broadcast service. With those thoughts in mind, we must not lose sight of the fact that the current Lopez application is being pursued to serve as a fill-in for Radio Station KYOK-AM.

WHEREFORE, the foregoing premises considered, Lopez submits that good cause exists for the consideration and grant of this Waiver Request and the ultimate approval of modification application BMPFT-20160921ACF.

Respectfully submitted,

CARLOS LOPEZ

By: 

Cary S. Tepper
Tepper Law Firm, LLC
4900 Auburn Avenue
Suite 100
Bethesda, MD 20814-2632

(301) 718-1818

*Of Counsel to
Carlos Lopez.*

October 5, 2016

Exhibit No. 1

(FCC Letter Ruling dated April 15, 2016)

FEDERAL COMMUNICATIONS COMMISSION

**445 12th Street, S.W.
WASHINGTON DC 20554**

Received & Inspected

NOV 02 2016

FCC Mail Room

MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/media/radio/audio-division

PROCESSING ENGINEER: Larry Hannif-Ali
TELEPHONE: (202) 418-2143
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: Larry.Hannif-Ali@fcc.gov

April 15, 2016

Carlos Lopez
514 Greenway Drive
Corpus Christi, TX 78412

In re: K245CB, Shiner, TX
BMPFT-20160211ACB
Facility ID No. 148484
Informal Objection

Dear Applicant:

The staff has under consideration: (1) the above-captioned application (application) for K245CB, Houston, Texas, filed by Carlos Lopez (Lopez); and (2) the February 23, 2016 Informal Objection (objection) of the application filed by New Beginnings Fellowship Church. For the reasons set forth below, we dismiss the application and dismiss the objection as moot.

Review of the application reveals that the proposal violates the one-per-AM station limitation. Per the December 23, 2015 Public Notice announcing the windows for certain FM translator modification applications, the Media Bureau indicated that it would only permit the filing of one Modification Window application that proposes to rebroadcast a specific AM primary station.¹ It further stated that we will "...dismiss any Modification Window application that proposes to rebroadcast an AM station that has already been listed in a prior Modification Window application as the primary station." We note that Lopez filed a Modification Window application on January 29, 2016 (BMPFT-20160129ABF), proposing to relocate the station approximately 170 kilometers to Channel 245. Staff granted that application on February 10, 2016. Lopez now seeks to modify the granted construction permit by changing to Channel 222 and further modifying its transmitter location. We note that such a channel change is a major change, per Section 74.1233(b)(1) of the rules.² We also note that both applications propose to rebroadcast KYOK(AM). Therefore we must treat this application as a second Modification Window application. Lopez fails to address this deficiency. Therefore, we will dismiss the application. In light of this decision, we do not reach the merits of the objection and dismiss it as moot.

¹ 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 (2015). (Window PN)

² 47 C.F.R. Section 74.1233(b)(1).

Accordingly, the February 23, 2016 Informal Objection IS DISMISSED as moot and the application BMPFT-20160211ACB IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.




Sincerely,

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: Michael Celenza

Exhibit No. 2

(Declaration of Carlos Lopez)

[← Back to Message](#) CarlosLopezDeclaration-draft1... 1 / 1  

Declaration of Carlos Lopez

My name is Carlos Lopez and my address is 514 Greenway Drive, Corpus Christi, Texas 78412. I am an Hispanic minority broadcaster. I am the permittee of unbuilt FM translator station K245CB.

On January 29, 2016, I filed an application in the January 29 – July 28, 2016 special filing window for the proposed move of K256CB to Houston, Texas to serve as a fill-in for Radio Station KYOK-AM on Channel 245. KYOK-AM is owned by minority broadcaster Martin Broadcasting, Inc. At that time Martin Broadcasting held Construction Permit BP-20110407ABH for the relocation of the station to Katy, Texas. I was granted Construction Permit BMPFT-20160129ABF to rebroadcast KYOK-AM at Katy, Texas.

Unfortunately Martin Broadcasting did not move KYOK-AM to Katy, Texas because land restrictions prevented the build out of Construction Permit BP-20110407ABH. KYOK-AM remained licensed to Conroe, Texas but the K245CB facilities specified in Construction Permit BMPFT-20160129ABF are not located in a proper area to serve as a fill-in for KYOK-AM. The failure of KYOK-AM to relocate to Katy, Texas left me in limbo since I held a Construction Permit that could not be implemented. These matters were beyond my control and I should not be blamed. So, because I had a written agreement with Martin Broadcasting to rebroadcast KYOK-AM another modification application was filed to relocate my unbuilt FM translator station to another new area that would permit fill-in operations for KYOK-AM. That application was BMPFT-20160211ACB and it was dismissed on April 15, 2016 for violating the "one application" rule for the special filing window. There was also an Informal Objection filed against BMPFT-20160211ACB by New Beginnings Fellowship Church.

Recently, in the July 29 – October 31, 2016 special filing window I filed a new modification application (BMPFT-20160921ACF) to modify K245CB to Channel 222 to serve as a fill-in translator for KYOK-AM where it is currently licensed, and where KYOK-AM will remain. That is why I plea for relief and ask the FCC to grant me a waiver of the One Application Rule and approve my latest minor modification application. All I want to do is to fulfill the Commission's AM Revitalization goals and bring relief to radio station KYOK AM so that it can better serve the public interest.

The foregoing statement are true and are made under the penalty of perjury.


Carlos Lopez

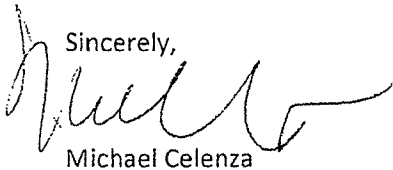
October 4, 2016

Exhibit No. 3

(Written Statement of Technical Consultant Michael Celenza)

K245CB
FACILITY ID 148484
Houston, TX
CARLOS LOPEZ
BMPFT-20160921ACF

On September 21, 2016 Celenza Communications prepared an application for modification to a construction permit for Mr. Lopez BMPFT-20160921ACF during the AM revitalization window when we prepared this application it met all F.C.C. rules. We re-ran the study today and it still meets all F.C.C. rules and the current U.S. and Mexico agreement. Please see the modification filed September 21, 2016 it is not MX with anyone. If you have any questions or concerns please contact the undersigned.

Sincerely,

Michael Celenza

October 4, 2016

M. Celenza Communications
41 Kathleen Crescent
Coram, NY 11727
(631) 965-0816

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 5th day of October, 2016, I have served a copy of the foregoing **"Request For Waiver Of The "One Application" Policy"** via email on the following:

Peter H. Doyle
Chief, Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.; Room 2-A360
Washington, D.C. 20554
(Peter.Doyle@fcc.gov)

James Bradshaw
Deputy Chief, Audio Services Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(James.Bradshaw@fcc.gov)

Joe Donalson
New Beginnings Fellowship Church
P.O. Box 310841
Houston, TX 77231
(JoeFM1@outlook.com)

Daniel A. Huber, Esq.
7523 Mustang Corral Drive
Humble, TX 77338
(dhuber1253@gmail.com)



Cary S. Tepper, Esq.