

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

In re Application of: )  
 )  
KSRM, INC. )  
 )  
For Construction Permit ) File No. BNPFT-20180418AFS  
For NEW FM Translator ) Facility ID No. 202927  
Soldonta, AK )  
 )  
 )  
 )  
To: Secretary  
Attn: Chief Audio Division, Media Bureau

**OPPOSITION TO PETITION TO DENY**

KSRM, Inc. (“KSRM”), the applicant for a construction permit for a new translator at Soldonta Alaska, Facility ID No. 202191, hereby respectfully opposes the Petition to Deny filed April 26, 2018 by Turquoise Broadcasting Company, LLC (TBC). The Commission must dismiss the TBC Petition because it fails to state facts sufficient to establish its own bona fides and or to establish a reasonable issue of interference that meets the standards of the Commission’s rules.

**Discussion**

TBC alleges that KSRM’s proposed translator will cause interference to the input frequency of its own FM translator, K283AB at Soldonta, AK based on TBC’s assertion that KSRM’s proposed translator will desensitize the off-air reception TBC’s primary station downconverter and thereby reduce the gain of its “IF” frequency in violation of Section 74.1203 of the Commission’s Rules.

However, TBC has failed to provide any facts that would support the claim of interference actually received, as required under Section 74.1203. Moreover, it is not evident

that TBC is actually operating the K283AB facilities it claims. As detailed at Attachment “A”, the declaration of engineering statement of Eric C. Swanson, a partner in the firm of Hatfield and Dawson Consulting Electrical Engineers, it is impossible to determine the validity of TBC’s allegations or to evaluate any potential for interference since K283AB is not constructed at its licensed transmitter site. As further detailed in Attachment “A”, there is no evidence of any tower at the licensed transmitter site, nor is there FAA clearance or an antennae structure registration record for the tower at the site detailed in the K283AB license. Furthermore, as detailed in Mr. Swanson’s declaration, the nearest registered tower (ASR #1264143) could not be used for TBC’s translator as that tower is physically incapable of supporting K283AB at its licensed parameters. Accordingly, it is questionable whether K283AB even exists, and if it does, whether it was constructed according to its license parameters and is not in violation of its construction permit and license.<sup>1</sup>

#### **Section 74.1203 Interference Analysis**

Petitioner TBC’s reliance on Section 74.1203 is misplaced. That Section is designed to protect existing broadcast facilities following construction of the facility and at a time when interference has already occurred such that reception of the regularly used signals of an existing licensed facility is impaired. As already noted, K283AB cannot qualify as an existing licensed facility as it is not possible to demonstrate that it has been constructed and is existing pursuant to its license.

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<sup>1</sup> Indeed there are several questions further surrounding K283AB. If it has not been operating from its licensed site, or at all, there may be a question whether its license is valid under Section 312(g) of the Communications Act. A search in CDBS does not list any STA applications. In fact, its last facilities based application was in 2001 for renewal of its license and that renewal application was dismissed. Although CDBS does show that Fac Id. 52155 is licensed to TBC, the CDBS applications list reveals no further requests for facilities changes.

Furthermore, Section 74.1203 is to be employed where the Petitioner brings forth evidence of actual interference between constructed facilities upon which the Commission can rely. The Commission has held that interference claims must be substantiated with “convincing evidence” meeting a four-part test with first-hand evidence from *bona fide* regular listeners to the licensed facility at the specified location.<sup>2</sup> It is impossible for TBD to meet this test, as it does not appear to have constructed its own facility in accordance with its license and since KSRM’s proposed translator has yet to be constructed, it could not yet be causing any interference even if K283AB was properly constructed and existing at its licensed site and parameters.

#### **Section 74.1204 Analysis**

Rather, the appropriate section of the Commission’s Rules upon which TBD should be relying is Section 74.1204(f) which is designed to deal with prospective interference in the face of a proposed construction permit. In promulgating Section 74.1204(f), the Commission stated the conditions that must be met to qualify for protection. It “will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap.” To provide “convincing evidence” under Section 74.1204(f) that grant of the translator construction permit “will result in interference to the reception” of an existing full-service station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBu contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person, in fact, listens to the full-service

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<sup>2</sup> See: *E.g., Letter to Richard J. Bodorff, Esq. (Red Wolf Broadcasting Corporation)*, D.A. 12-688, released May 1, 2012 (“*Bodorff*”), which describes the detail required to establish a material question of fact respecting interference to support denial of an application.

station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.<sup>4</sup> The Commission has stated that “[t]he best method, of course, is to plot the specific addresses on a map depicting the translator station's 60 dBu contour.”<sup>3</sup>

Clearly, TBD could not meet its burden under Section 74.1204(f) of the Commission’s Rules as it has not submitted the declarations of any claimed listeners to K283AB within the 60 dBu contour of KSRM’s proposed translator.

**WHEREFORE**, in view of the foregoing, KSRM respectfully submits that the Petition to Deny filed by TBC must be dismissed and KSRM’s application for a new FM translator at Soldonta, Alaska be granted. Following construction, should TBD experience interference to its properly constructed and validly existing facility K283AB, KSRM will cooperate to remove all interference pursuant to Section 73.1203.

Respectfully submitted,

  
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Gregg P. Skall  
Counsel to KSRM, Inc.

May, 9, 2018

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<sup>3</sup> See *The Association for Community Education, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 12682, 12685-6 (2004) (Community Education) (citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Report and Order*, 5 FCC Rcd 7212, 7230 (1990)).

**Attachment “A”**

THOMAS M. ECKELS, PE  
STEPHEN S. LOCKWOOD, PE  
DAVID J. PINION, PE  
ERIK C. SWANSON, PE

THOMAS S. GORTON, PE

JAMES B. HATFIELD, PE  
BENJAMIN F. DAWSON III, PE  
CONSULTANTS

HATFIELD & DAWSON  
CONSULTING ELECTRICAL ENGINEERS  
9500 GREENWOOD AVE. N.  
SEATTLE, WASHINGTON 98103

TELEPHONE (206) 783-9151  
FACSIMILE (206) 789-9834  
E-MAIL [hatdaw@hatdaw.com](mailto:hatdaw@hatdaw.com)

MAURY L. HATFIELD, PE  
(1942-2009)  
PAUL W. LEONARD, PE  
(1925-2011)

**Engineering Statement  
Opposition to Petition to Deny BNPFT-20180418AFS  
For a New FM Translator on Channel 277D at Soldotna, AK  
May 2018**

This Engineering Statement has been prepared on behalf of KSRM, Inc., applicant for a new FM translator station on Channel 277D (103.3 MHz) at Soldotna, Alaska (see FCC File No. BNPFT-20180418AFS), in support of an Opposition to Petition to Deny.

In a Petition to Deny filed on April 19, 2018, Turquoise Broadcasting Company, LLC (“Turquoise”) alleges that the proposed FM translator facility will cause interference to the input frequency of its FM translator station K283AB at Soldotna. According to Turquoise, K283AB receives FM station KWVV-FM Homer off-air on its frequency 103.5 MHz, which is the first-adjacent channel to the proposed operation. Turquoise also claims that the K283AB receive site is only 1.33 km from the proposed translator’s transmitter site.

The undersigned has attempted to evaluate Turquoise’s concerns. However, it is not possible to complete that evaluation because it is abundantly clear that K283AB is not constructed at its licensed transmitter site. Attached is an aerial image of the licensed K283AB transmitter site at NAD27 coordinates of N60-31-26 x W151-04-51, at the corner of the Kenai Spur Highway and Mooring Drive. While the K283AB license dates from 1992, there is no evidence of any tower at this location, nor any development of any kind.

Moreover, while the Commission’s database does not list the K283AB antenna height above ground, the antenna height above mean sea level is listed as 145 meters. Given that the ground elevation at this location is approximately 49 meters, this would require a tower of at least 96 meters in height. Such a tower would require FAA clearance, as well as FCC Antenna Structure

Registration, and there is no evidence of an FCC ASR record at this location. The nearest registered tower (ASR #1264143) is fully 370 meters away, and is only 55.5 meters tall and reached only 105.2 meters AMSL. Nor does the Commission's CDBS database indicate the grant of any engineering STA for operation of K283AB at an alternative site, nor any STA to remain silent.

Given that the actual transmitter location of FM translator K283AB is unknown, it is not possible to evaluate Turquoise's claim that the proposed Soldotna translator would cause interference to the K283AB input frequency. Furthermore, if K283AB is operating from an unauthorized transmitter site, it is difficult to imagine how §74.1204(g) would offer any protection to the K283AB input at such an unlicensed site.

### **Statement of Engineer**

This Engineering Statement has been prepared by Erik C. Swanson. I am a partner in the firm of Hatfield & Dawson Consulting Engineers and am registered as a Professional Engineer in the States of Washington and Colorado. I hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

Signed this 5<sup>th</sup> day of May, 2018



Erik C. Swanson, P.E.

Hatfield & Dawson Consulting Engineers

## K283AB License Tower Site

There is no tower at the licensed transmitter site coordinates.

### Legend

-  K283AB License Coordinates



Google Earth

© 2012 Google

100 m

**Exhibit “1”**

Application Search Results

File Number		Form	Paper/ Elect	Call Sign	Facility Id	Service	Status	Status Date	Details
BRFT	19970930YH	303	P	K283AB	52155	FX	DISMISSED	05/19/2001	<a href="#">Info</a>   Application
BRFT	19951124YU	303	P	K283AB	52155	FX	DISMISSED	05/19/2001	<a href="#">Info</a>   Application
BLFT	19920410TA	350	P	K283AB	52155	FX	GRANTED	04/24/1992	<a href="#">Info</a>   Application
BPFT	19910513TE	349	P	K283AB	52155	FX	GRANTED	09/06/1991	<a href="#">Info</a>   Application
BRFT	19881128TL	303	P	K283AB	52155	FX	GRANTED	03/15/1989	<a href="#">Info</a>   Application
BLFT	19870825TC	350	P	K283AB	52155	FX	GRANTED	09/02/1987	<a href="#">Info</a>   Application
BPFT	19870330TN	349	P	K283AB	52155	FX	GRANTED	07/30/1987	<a href="#">Info</a>   Application
BLFT	19860205TC	350	P	K283AB	52155	FX	GRANTED	03/11/1986	<a href="#">Info</a>   Application
BMPFT	19851121TB	349	P	K283AB	52155	FX	DISMISSED	12/16/1985	<a href="#">Info</a>   Application
BMPFT	19851106TC	349	P	K283AB	52155	FX	GRANTED	11/18/1985	<a href="#">Info</a>   Application
BPFT	19840410ME	349	P	K283AB	52155	FX	GRANTED	11/07/1984	<a href="#">Info</a>   Application
BLFT	19830824MV	350	P	K283AB	52155	FX	GRANTED	09/07/1983	<a href="#">Info</a>   Application
BPFT	19820414IA	349	P	K283AB	52155	FX	GRANTED	04/13/1983	<a href="#">Info</a>   Application

CERTIFICATE OF SERVICE

I, Gregg P. Skall hereby certify that on this 9<sup>th</sup> day of May, 2018, a copy of the foregoing Petition for reconsideration was served on the following parties by first-class mail, postage pre-paid (acceptance otherwise indicated below):

James D. Bradshaw\*  
Senior Deputy Chief  
Audio Division Media Bureau  
Federal Communications Commission  
445 12th Street, SW, Room 2-A360  
Washington, DC 20554

Mr. Robert Gates, Engineer\*  
Audio Division Media Bureau  
Federal Communications Commission  
445 12th Street, SW, Room 2-A230  
Washington, DC 20554

Gary A. Rose\*\*  
Turquoise Broadcasting Company, LLC  
P.O. Box 8125  
Tumacacori, AZ 85640-8125  
Gary.rose@tbcradio.com

\* via e-mail

\*\* via e-mail and first-class mail

  
Gregg P. Skall