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February 28, 2022

VIA LMS

Federal Communications Commission
Ms. Marlene H. Dortch
Office of the Secretary
45 L St NE
Washington, D.C. 20002
Victoria.McCauley@fcc.gov

**Re: Media Power Group, Inc. – Reply to the Opposition to the Petition
for Reconsideration of W287DR License to Cover**

Dear Ms. Dortch and Ms. McCauley:

Pursuant to the rules of the Federal Communications Commission, Media Power Group, Inc. (“Media Power”) hereby respectfully submits, by its attorneys, the enclosed Reply to the Opposition to the Petition for Reconsideration of the license to cover application granted to W287DR (Facility Id No. 202952) on January 11, 2022. *See* FCC File No. 0000178388. Media Power filed its Petition for Reconsideration on February 10, 2022,¹ after which Mr. Wifredo Blanco-Pi filed an Opposition on February 14, 2022.²

Please contact the undersigned should any questions arise in connection with this matter.

Sincerely,

/s/ Francisco R. Montero

Francisco R. Montero
Sara L. Hinkle
Counsel for Media Power Group, Inc.

Enclosures

¹ *See* FCC File No. 0000184716.

² *See* FCC File No. 0000184788.

**Before the
Federal Communications Commission
Washington, D.C. 20002**

In the Matter of)	
)	
Application of Wifredo Getulio Blanco-Pi)	File No.: 0000178388
For License to Cover FM Station W287DR)	Facility ID: 202952
Barceloneta-Manatie, Puerto Rico)	

Directed to: Office of the Secretary
Attention: Chief, Audio Division, Media Bureau

REPLY TO OPPOSITION TO THE PETITION FOR RECONSIDERATION

Media Power Group, Inc. (“Media Power”), pursuant to Section 1.106 of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules, respectfully submits this Reply to the Opposition to the Petition for Reconsideration of W287DR’s license to cover granted on January 11, 2022 (“Reply”).¹ Media Power filed a Petition for Reconsideration of W287DR’s license to cover on February 10, 2022 because it was mutually exclusive with a construction permit held by Media Power for W287DP at the time it was filed.² Subsequently, Mr. Wifredo Blanco-Pi, the would-be licensee of W287DR, filed an Opposition to the Petition for Reconsideration on February 14, 2022.³ As demonstrated below, the Opposition and the W287DR LTC should both be dismissed because Mr. Blanco-Pi did not refute the arguments in Media Power’s Petition for Recon and because the Opposition is procedurally flawed.

¹ See FCC File No. 0000178388 (“W287DR LTC”).

² See FCC File No. 0000184716 (“Petition for Recon”).

³ See FCC File No. 0000184788 (“Opposition”).

I. DISCUSSION

The Commission should dismiss both the Opposition and the W287DR LTC because the Opposition did not dispute or successfully refute the arguments in Media Power's Petition for Recon and failed to follow the FCC's rules for filing pleadings.

A. **The Opposition failed to adequately refute the evidence presented in the Petition for Recon and did not dispute several of its arguments in their entirety.**

The Opposition not only failed to adequately refute the evidence provided by the 92-page Petition for Recon submitted by Media Power arguing to dismiss the W287DR LTC, but it failed to dispute several of the Petition for Recon's arguments entirely. The Opposition did not dispute that W287DP predated W287DR,⁴ that the Petition for Recon was filed timely,⁵ that Media Power had standing to submit the Petition for Recon,⁶ and that several other Media Power filings should have alerted FCC staff that W287DR's applications were not acceptable for filing.⁷ Media Power will not reiterate the arguments from the Petition for Recon that Mr. Blanco-Pi failed to address or dispute.⁸

However, the Opposition also asserted without evidence and without citing a single FCC rule that the Nov. 28 Tolling Request was unacceptable for filing, which potentially would have allowed the license modification for W287DR to be filed in the first instance.⁹ Specifically, the Opposition

⁴ See Petition for Recon at 5.

⁵ See *id.* at 7–8.

⁶ See *id.* at 4–5.

⁷ See *id.* at 3.

⁸ To the extent the FCC decides not to address the substance of Media Power's Petition for Recon arguments regarding whether the modification or license to cover were acceptable for filing, the Commission will have had an "opportunity to pass" on the arguments, and Media Power would be permitted to raise its arguments on appeal. See, e.g., 47 U.S.C. § 405; *FONES4ALL Corp., et al. v. FCC*, 561 F.3d 1031, 1033 (9th Cir. 2009); *All Am. Tel. Co. v. FCC*, 867 F.3d 81, 93–94 (D.C. Cir. 2017).

⁹ See Opposition at 1–2.

claims that the Nov. 28 Tolling Request was filed “irregularly” because it should have been filed in LMS, that it should have been filed “months” before the relevant construction permit was going to expire, and that the event giving rise to the need for tolling in Media Power’s case had occurred more than 30 days before the Nov. 28 Tolling Request. However, tolling requests for FM translators cannot be filed in LMS – that particular FCC system only permits tolling requests to be submitted for TV translators and TV stations. The Opposition then concedes that email is also an acceptable filing method for FM translator tolling requests¹⁰ and claims that such filings should have been emailed to a different individual at the FCC—without providing a single citation to an FCC rule, Order, or Public Notice to corroborate such claims. These unsubstantiated claims are unconvincing in light of the evidence presented in the Petition for Recon demonstrating that the Nov. 28 Tolling Request was properly filed.¹¹

Further, the Opposition states that the Nov. 28 Tolling Request should have been filed “months” before the relevant construction permits expired.¹² Once again, the Opposition cites to no FCC rule, Order, or Public Notice to substantiate this claim. Further, if a licensee filed a tolling request months prior to the expiration date of its construction permit, such a premature filing would raise questions with the Commission regarding whether the licensee was diligently striving to meet the construction deadline. Instead, filing months early would give the appearance that the licensee was not doing its best to construct during the time it was provided. Moreover, the Commission has entertained and granted numerous tolling requests that were filed shortly before the CP expired, especially in the past two years with the uncertainty and disruption caused by the COVID-19 pandemic.¹³

¹⁰ See Opposition at 1.

¹¹ See Petition for Recon at 2–3.

¹² See Opposition at 1–2.

¹³ See, e.g., Letter from Barbara Kreisman, Chief of the Video Div., Media Bureau, FCC, to Caguas Educational TV, Inc. (Oct. 7, 2021) (granting a tolling extension when WUJA requested the

When the Opposition at long last cites an FCC rule, it baldly states that the events giving rise to the need for tolling occurred more than 30 days prior to the Nov. 28 Tolling Request in violation of Section 73.3598(b) of the FCC’s rules.¹⁴ With respect to the Translators, however, Media Power was not convinced that tolling was required until very close to the date of the expiration of the construction permits. It was diligently attempting everything it could think of in order to meet its deadline, despite the delays and difficulties it had faced. If the status of a tolling event changes every day, such as in the case of the COVID-19 pandemic and the reopening of government agencies, it is impossible to precisely pinpoint the day that a tolling event begins. This is also why the rule provides some flexibility by requiring that tolling be requested “as promptly as possible.”¹⁵ In light of its particular hardships, Media Power filed the Nov. 28 Tolling Request, which was submitted two full days before the W287DP construction permit expired. This timing for filing a tolling request clearly is not prohibited by the FCC’s rules, and as noted above, the Commission has routinely granted tolling requests for licensees in situations similar to Media Power’s.¹⁶

In addition, if the FCC required tolling requests to be filed months in advance, as the Opposition claims, that timing would be at odds with the Commission’s siting rules requiring that tolling be requested “as promptly as possible” or within 30 days of the event giving rise to tolling.¹⁷ It

extension one day before tolling expired); Letter from Barbara Kreisman, Chief of the Video Div., Media Bureau, FCC, to Wanda Rolon (July 26, 2021) (granting a tolling extension when WSJN-CD requested the extension the same day tolling expired).

¹⁴ See 47 C.F.R. § 73.3598(b).

¹⁵ 47 C.F.R. § 73.3598(c).

¹⁶ The Opposition also implies that Media Power did not allege that a true tolling event occurred, which must be: “(1) An Act of God, defined in terms of natural disasters (2) administrative or judicial review of the grant of the permit (3) Litigation related to a necessary governmental requirement for construction or operation of the station (4) Failure of a condition precedent on the permit.” Opposition to Petition at 6 [sic]. However, the Nov. 28 Tolling Request clearly stated that administrative review was the impediment to the construction. See Nov. 28 Tolling Request at 2–3. See also *supra* note 13.

¹⁷ See § 73.3598(c).

would be extremely difficult for a licensee to predict that an event occurring months before a construction permit deadline would end up being the event that ultimately caused the need for tolling in many circumstances. This is especially true with respect to the COVID-19 pandemic's effect on government agency operations—the situation with the virus has changed on a daily basis, and throughout the Translators' construction periods, it was impossible to know how things would change months later.¹⁸

Lastly, while the Opposition stated that the Petition for Recon was an untimely collateral attack on the W287DR modification application,¹⁹ Media Power re-emphasizes that it had very little time over the holidays to respond to the modification because of the speed with which both the FCC granted the modification and the W287DR LTC was filed.²⁰

B. The Commission should dismiss the Opposition because it is procedurally flawed.

Not only did the Opposition fail to dispute or refute the Petition for Recon's arguments to dismiss the W287DR LTC, but it was also procedurally flawed and should, therefore, be dismissed. Section 1.49(a) of the Commission's rules indicate that "[a]ll pleadings and documents filed in paper form in any Commission proceeding shall be typewritten or prepared by mechanical processing methods"²¹ The Opposition, however, contains handwritten page numbers and Exhibit titles in direct violation of this rule. This rule continues by stating:

The printed material may be in any typeface of at least 12-point (0.42333 cm. or 12/72") in height. The body of the text must be double spaced with a minimum distance of 7/32 of an inch (0.5556 cm.) between each line of text . . . Counsel are cautioned against employing extended single spaced passages or excessive footnotes to evade prescribed pleading lengths. If single-spaced passages or footnotes are used in this manner the pleading will, at

¹⁸ See *supra* note 13.

¹⁹ See Opposition at 5.

²⁰ See Petition for Recon at 7–8.

²¹ 47 C.F.R. § 1.49(a).

the discretion of the Commission, either be rejected as unacceptable for filing or dismissed with leave to be refiled in proper form.²²

The Opposition is not double-spaced, which raises questions regarding whether Mr. Blanco-Pi was attempting to avoid other applicable Commission rules, such as the requirement to provide a table of contents or a summary.²³ Accordingly, the Commission should use its discretion to dismiss the Opposition.

II. CONCLUSION

In light of the foregoing, the FCC should dismiss both the W287DR LTC and the Opposition because the Opposition both failed to refute or dispute the Petition for Recon's arguments and is procedurally flawed.

Respectfully submitted,

/s/ Francisco R. Montero

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²² § 1.49(a).

²³ §§ 1.49(b), (c).

CERTIFICATE OF SERVICE

I, Sara L. Hinkle, hereby certify that a copy of this “Reply to the Opposition to the Petition for Reconsideration” was sent via email and first class mail, postage prepaid on February 28, 2022 to the following:

Wilfredo G. Blanco Pi
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The following member of Federal Communications Commission staff were served via email only:

Victoria McCauley (Victoria.McCauley@fcc.gov)
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/s/ Sara L. Hinkle _____

Sara L. Hinkle, Esq.