

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In re Application of)	
)	
BUSTOS MEDIA HOLDINGS, LLC)	File No. BNPFT-20180418ABI
K266CP, Auburn, Washington)	Facility ID # 202942
)	
For Construction Permit for)	
<u>New FM Translator Station</u>)	
)	
NORTHWEST ROCK 'N' ROLL)	NAL/ACCT NO. MB20234140019
PRESERVATION SOCIETY)	FRN: 0009515602
)	
K266BM, Olympia, Washington)	Facility No. 150021
)	File No. 0000115909
Notice of Apparent Liability)	

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: Chief, Media Bureau

CONSOLIDATED OPPOSITION TO PETITIONS FOR RECONSIDERATION

Bustos Media Holdings, LLC ("Bustos"), licensee of AM Broadcast Station KMIA, Auburn-Federal Way, Washington, and permittee of FM Translator Station K266CP. Auburn, Washington by its attorney, hereby respectfully submits this Consolidated Opposition to two separate petitions related to actions of the Audio Division of the Chief, Audio Division, Media Bureau taken on August 25, 2023 filed by or on behalf of Northwest Rock 'n' Roll Preservation Society ("NWR") on September 25, 2023: (1)

a "Petition for Reconsideration" filed *pro se* by Brian Spencer of the unreported Audio Division letter ruling denying NWR's Informal Objection and granting the K266CP construction permit (2) a "Petition for Reconsideration of Notice of Apparent Liability for Forfeiture" filed by the Fletcher, Heald and Hildreth law firm (FHH) on behalf of NWR to a published order, DA 23-763. In support whereof, the following is shown:

1. We are filing a consolidated Opposition because there are common facts that the Commission must keep in mind as it rules on both petitions.

2. The litigation instigated over five years ago by NWR against Bustos had to do with exactly one issue: NWR's claim that, were the Bustos FM Translator construction permit on 101.1 MHz at Auburn, Washington to be granted, the resulting signal would interfere with the ability of NWR's FM Translator Station K281CI, 104.1 MHz, Tacoma, Washington, to receive off-air the signal of NWR's FM Translator Station K266BM, 101.1 MHz, Olympia, Washington. At the time, both K284CI and K266BM were used to rebroadcast the signal of Low Power FM Station KGHO-LP, 99.9 MHz, Hoquiam, Washington, licensed to Grays Harbor FM (GHFM), controlled by a John Spencer, believed to be a family member of Brian Spencer. KGHO-LP's format consisted of rock and roll oldies mostly from the 1950s, 1960s and 1970s.

3. At the time Bustos filed its Auburn application in 2018, K266BM was authorized to operate with effective radiated power of 10 watts. On October 10, 2017, NWR received a modified construction permit, File No. BMPFT-20170925ADX, to increase its effective radiated power to 250 watts and become a fill-in translator for AM Broadcast Station KGTK, 920 kHz, Olympia, Washington, which at the time had a news/talk format. NWR implicitly represented to the Commission that it was rebroadcasting KGTK on June 13, 2019 in File No. BMLFT-20190613AAH; this application was granted by the Commission on June 17, 2019.

4. However, K266BM was rebroadcasting the signal of KGHO-LP in May, 2020. NWR had a clear motive to deceive the Commission; it was trying to preserve its unique network of FM stations in the Aberdeen-Hoquiam, Olympia and Tacoma areas. This arrangement probably violated 47 C.F.R. §73.860(b), which provides: [next](#)

(b) A party that is not a Tribal Applicant, as defined in § 73.853(c), may hold attributable interests in one LPFM station and no more than two FM translator stations, two FM booster stations, or one FM translator station and one FM booster station provided that the following requirements are met:

(1) The 60 dBu contour of the LPFM station overlaps the 60 dBu contour of the commonly-owned FM translator station(s) and entirely encompasses the 60 dBu service contour of the FM booster station(s);

(2) The FM translator and/or booster station(s), at all times, synchronously rebroadcasts the primary analog signal of the commonly-owned LPFM station or, if the commonly-owned LPFM station operates in hybrid mode, synchronously rebroadcasts the digital HD-1 version of the LPFM station's signal;

(3) The FM translator station receives the signal of the commonly-owned LPFM station over-the-air and directly from the commonly-owned LPFM station itself. The FM booster station receives the signal of the commonly-owned LPFM station by any means authorized in § 74.1231(i) of this chapter; and

(4) The transmitting antenna of the FM translator and/or booster station(s) is located within 16.1 kilometers (10 miles) for LPFM stations located in the top 50 urban markets and 32.1 kilometers (20 miles) for LPFM stations outside the top 50 urban markets of either the transmitter site of the commonly-owned LPFM station or the reference coordinates for that station's community of license.

5. If NWR had kept its word to the Commission and started rebroadcasting KGTK, its objection to the Bustos FM translator application would become moot, as K281CI could no longer be able to receive KGHO-LP via K266BM off the air, and it certainly would not have been able to receive a 100 watt LPFM station from some 60 miles away with the presence of Class C FM KISW, 99.9 MHz, Seattle, Washington, in the Tacoma area. It should be noted here that K281CI is still playing rock and roll oldies, but it is unclear which station, if any, it is rebroadcasting. It is well known and understood in the industry that an FM Translator station may not originate more than 30 seconds per hour of its own programming. Thus, the only way for the FCC to

sort out the messes caused by KGHO-LP, K266BM and K281CI is to designate all of them for a hearing. As of today, the K266BM and K281CI renewal applications are pending; and while the KGHO-LP renewal application was granted, it is still subject to a Section 403 hearing and to revocation of its license pursuant to 47 U.S.C. §312(a)(2-3).

6. Furthermore, if the Commission were to determine that Brian Spencer was a real party in interest in KGHO-LP, it would be a violation of 47 C.F.R. §73.860(b)(4) for K266BM and K284CI to rebroadcast KGHO-LP, as neither of those stations is within 20 miles of KGHO-LP.

7. At present, NWR has no standing to challenge the grant of the K266CP construction permit, because K281CI no longer can receive the signal of KGHO-LP via K266BM. It should be noted here that K266BM was at last check rebroadcasting the signal of KBRD, 680 kHz, Tumwater, Washington, "K-BIRD", a station with a music format featuring "big band" and standards. Therefore, there is no longer an electrical interference issue which would confer standing. ***FCC v. National Broadcasting Company (KOA)***, 319 U.S. 239 (1943)

8. Therefore, not only are the two August 25, 2023 rulings of the Audio Division correct, DA 23-763 actually does not go far enough. It seems to us that if NWR wants to have its forfeiture reduced or rescinded, it should turn in the K266BM

and K281CI licenses for cancellation. In the alternative, the Commission should designate the pending renewal applications of these two stations for hearing on appropriate issues

WHEREFORE, Bustos Media Holdings, LLC urges that the two Petitions for Reconsideration filed by Northwest Rock 'N' Roll Preservation Society described above **BE DENIED.**

Respectfully submitted,

BUSTOS MEDIA HOLDINGS, LLC

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

By _____
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Its Attorney

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