

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

In re Application of	)	
	)	
<b>BUSTOS MEDIA HOLDINGS, LLC</b>	)	File No. BNPFT-20180418ABI
Auburn, Washington	)	Facility ID # 202942
	)	
For Construction Permit for	)	
New FM Translator Station	)	
	)	
<b>NORTHWEST ROCK 'N' ROLL</b>	)	LMS File No. 0000115909
<b>PRESERVATION SOCIETY</b>	)	Facility ID # 150021
Olympia, Washington	)	
	)	
For Covering License for	)	
FM Translator Station K266BM	)	

TO:           Honorable Marlene H. Dortch  
              Secretary of the Commission

ATTN:       Chief, Audio Division, Media Bureau

**SUPPLEMENT**

Bustos Media Holdings, LLC ("Bustos"), licensee of AM Broadcast Station KMIA, Auburn-Federal Way, Washington, and applicant in the above-referenced case for a construction permit for a new FM Translator Station on 101.1 MHz at Auburn, Washington to rebroadcast station KMIA, by its attorney, hereby respectfully submits this Supplement to: (1) Bustos' May 28, 2020 "Petition for Reconsideration" of the dismissal of its application for a construction permit for a new FM Translator at

Auburn, Washington; and (2) its Informal Objection of June 12, 2020 to the application filed by Northwest Rock 'N' Roll Preservation Society (NWR) for a covering license for FM Translator Station K266BM, Olympia, Washington. Bustos has simultaneously filed a Motion for Leave to File Supplement. In support whereof, the following is shown:

1. Both Bustos and Bicoastal Media Licenses IV, LLC ("Bicoastal"), licensee of AM Broadcast Station KELA and permittee of associated FM Translator Station K267CX, Centralia, Washington, filed Informal Objections against NWR's above-captioned for a covering license for K266BM. Both Bustos and Bicoastal pointed out that NWR made a material misrepresentation in its application: NWR told the FCC that it was rebroadcasting AM Broadcast Station KGTK, 920 kHz, Olympia, Washington, when it was in fact rebroadcasting KGHO-LP, Centralia, Washington, a station controlled by a relative, in violation of 47 CFR §73.860.

2. When NWR realized that it had a disqualifying legal problem at the FCC, it prepared a pleading dated July 11, 2020 but filed on July 21, 2020. Therein, NWR described a bizarre test it claimed to have performed:

**[NWR claimed to have provided the FCC with] an MP3 file with K266BM broadcast on left channel and KGTK broadcast on the right channel. This was recorded in Olympia on July 11, 2020, with a Sony tuner on 101.1 FM and a Dennon tuner on 920 AM.**

3. Bustos and Bicoastal have been monitoring K266BM since June 12, 2020. So far as we are aware, other than the July 11, 2020 "test", K266BM has been off the air for more than the past 31 days. We have uploaded a video at our youtube site which shows the lack of transmissions over K266BM on August 2, 2020 (see: <https://www.youtube.com/watch?v=nopBFBGQc7w>) Furthermore, as to the "test" that was run, Bicoastal's Vice-President and CTO Kevin P. Mostyn made a personal examination of NWR's mp3 file, and found the following (see Exhibit A for Mr. Mostyn's supporting Declaration):

I have listened to this MP3 file by means of an audio editor which allowed me to listen to each channel separately. I found that the alleged station identification for K266BM was created by post-production mixing-in of a heavily obscured studio voice. There is a persistent loud hum throughout the recording, which greatly obscures the recording. The equipment alleged to have made the recording would not have had such a hum unless it was in grossly defective condition. I conclude therefore that this hum was added to further obscure the recording.

Mr. Mostyn also confirms that K266BM was off the air today (August 17, 2020).

4. K266BM has now been off the air for more than thirty days. This is in violation of Section 73.1740(a)(4), to wit:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in

the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

5. K266BM's silence is not through "causes beyond the control of a licensee". NWR took K266BM off the air when its long-time gambit of illegally rebroadcasting KGHO-LP was found out and brought to the attention of the FCC. Since K266BM has been off the air for more than 30 days without authorization of the FCC, the FCC must terminate K266BM's operating authority immediately. Furthermore, the FCC would be within its right to do so pursuant to 47 U.S.C. §312(g), since K266BM has not operated in accordance with its FCC license which requires rebroadcast of KGTK(AM) for over 365 consecutive days.

**Bustos Attempts to Mail Pleadings to NWR**

6. Bustos mailed its May 28, 2020 "Petition for Reconsideration" to the address which NWR provided when it filed its initial Petition to Deny, Post Office Box 5672, Lacey, Washington 98509-5672 (see Exhibit B). Likewise, Bustos mailed its June 12, 2020 "Informal Objection" to the same address. Both of these mailings have been returned to the undersigned as undeliverable. We would point out that we e-mailed both of these to NWR; neither e-mail was reported as inoperable, so we can assume that NWR received both of them.

7. NWR has used at least three addresses: in addition to the Lacey postal box, it also used Post Office Box 104, Tacoma, Washington 98401 (Exhibit C), as well as Post Office Box 2673, Olympia, Washington 98507-2673 (Exhibit D). The undersigned cannot determine whether it ever received a request for address change from NWR. What address was Bustos supposed to use to serve NWR by mail?

8. NWR has been playing a shell game with us, using a variety of addresses. Further, it violated the FCC's *ex parte* rules by failing to serve its January 3, 2020 and February 13, 2020 "Supplements" on Bustos. We have to assume that NWR believes that it has "white privilege"; that the FCC's *ex parte* rules don't apply to it when it comes to serving pleadings in restricted FCC proceedings upon Hispanic parties.

9. We have resent the two Bustos pleadings referenced herein to NWR's Olympia postal box address by USPS priority mail today.

**WHEREFORE,** Bustos Media Holdings, LLC urges that this Supplement **BE MADE A PART OF THE RECORD** in both above-captioned application proceedings.

Respectfully submitted,

**BUSTOS MEDIA HOLDINGS, LLC**

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

By \_\_\_\_\_  
Dennis J. Kelly  
Its Attorney

LAW OFFICE OF DENNIS J. KELLY  
Post Office Box 41177  
Washington, DC 20018  
Telephone: 202-293-2300  
dkellyfcclaw1@comcast.net

DATED: August 17, 2020

## EXHIBIT A

## **DECLARATION**

Kevin P. Mostyn, pursuant to Section 1.16 of the Commission's Rules, hereby declares as follows:

1. I am Vice-President and Chief Technology Officer of Bicoastal Media Licenses IV, LLC (Bicoastal), licensee of AM Broadcast Station KELA and permittee of FM Translator Station K267CX, both Centralia, Washington.

2. Station K267CX is authorized to operate on FM Channel 267, which is the first-adjacent channel to FM Channel 266, upon which FM Translator Station K266BM, Olympia, Washington is authorized to operate. Station K266BM is authorized to Northwest Rock 'N' Roll Preservation Society (NWR).

3. On June 12, 2020, Bicoastal filed an Informal Objection against the NWR application for license to operate K266BM with 250 watts of effective radiated power from Capitol Peak, southwest of Olympia, Washington (File No. 0000115909). This station will cause destructive interference to K267CX when it commences operations.

4. On July 21, 2020 NWR filed a pleading entitled "K266BM Opposition to Bicoastal Saturday July 11, 2020 10:40 AM". In that pleading, NWR wrote: "Attached you will find an MP3 file with K266BM broadcast on left channel and KGTK broadcast on the right channel. This was recorded in Olympia on July 11, 2020 with a Sony tuner on 101.1 FM and a Dennon tuner on 920 AM".

5. I have listened to this MP3 file by means of an audio editor which allowed me to listen to each channel separately. I found that the alleged station identification for K266BM was created by post-production mixing-in of a heavily obscured studio voice. There is a persistent loud hum throughout the recording, which greatly obscures the recording. The equipment alleged to have made the recording would not have had such a hum unless it was in grossly defective condition. I conclude therefore that this hum was added to further obscure the recording.

6. I have directed personnel at KELA to listen to K266BM who have reported back to me, as of today, August 17, 2020, that the K266BM translator is still off the air.



7. The foregoing statements in this Declaration are true and correct and are made under penalty of perjury.

DATED this 17<sup>th</sup> day of August, 2020

  
\_\_\_\_\_  
Kevin P. Mostyn

## EXHIBIT B

Federal Communications Commission Washington, D.C. 20554	Approved by OMB 3060-0423 (November 2005)	FOR FCC USE ONLY
<b>Informal Objection / Petition to Deny / Petition for Reconsideration / Application for Review / Opposition / Reply / Supplement</b>  Read Instructions/FAQ before filling out form		FOR COMMISSION USE ONLY FILE NO.

**Section I - General Information**

1.	Party Filing Pleading or Appeal NORTHWEST ROCK N ROLL PRESERVATION SOCIETY  Mailing Address P.O. BOX 5672  <table border="1"> <tr> <td data-bbox="134 604 558 678">City LACEY</td> <td data-bbox="558 604 1127 678">State or Country (if foreign address) WA</td> <td data-bbox="1127 604 1524 678">Zip Code 98509 - 5672</td> </tr> <tr> <td colspan="2" data-bbox="134 678 1127 762">Telephone Number (include area code) 2083011425</td> <td data-bbox="1127 678 1524 762">E-Mail Address (if available) NWRPS@OUTLOOK.COM</td> </tr> </table>			City LACEY	State or Country (if foreign address) WA	Zip Code 98509 - 5672	Telephone Number (include area code) 2083011425		E-Mail Address (if available) NWRPS@OUTLOOK.COM
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2.	Contact Representative BRIAN SPENCER  Mailing Address P.O. BOX 5672  <table border="1"> <tr> <td data-bbox="134 993 558 1066">City LACEY</td> <td data-bbox="558 993 1127 1066">State or Country (if foreign address) WA</td> <td data-bbox="1127 993 1524 1066">ZIP Code 98509 - 5672</td> </tr> <tr> <td colspan="2" data-bbox="134 1066 1127 1150">Telephone Number (include area code) 2083011425</td> <td data-bbox="1127 1066 1524 1150">E-Mail Address (if available) NWRPS@OUTLOOK.COM</td> </tr> </table>			City LACEY	State or Country (if foreign address) WA	ZIP Code 98509 - 5672	Telephone Number (include area code) 2083011425		E-Mail Address (if available) NWRPS@OUTLOOK.COM
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3.	Purpose: <input type="radio"/> Informal Objection <input checked="" type="radio"/> Petition to Deny <input type="radio"/> Petition for Reconsideration <input type="radio"/> Application for Review <input type="radio"/> Opposition <input type="radio"/> Reply <input type="radio"/> Supplement								
4.	<table border="1"> <tr> <td data-bbox="134 1570 558 1780">           [Enter File Number]             File Number: BNPFT - 20180418ABI         </td> <td data-bbox="558 1570 1036 1780">Pleading Filed Date :</td> <td data-bbox="1036 1570 1524 1780">Pleading Filer Name:</td> </tr> </table>			[Enter File Number]  File Number: BNPFT - 20180418ABI	Pleading Filed Date :	Pleading Filer Name:			
[Enter File Number]  File Number: BNPFT - 20180418ABI	Pleading Filed Date :	Pleading Filer Name:							
5.	Attach pleadings		[Exhibit 1]						

I hereby certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
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BRIAN SPENCER	PRESIDENT
Signature	Date 05/08/2018

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

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## Exhibits

### Exhibit 1

**Description:** PETITION TO DENY

SEE ATTACHED

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### Attachment 1

Description
<a href="#">Petition to deny.</a>

## EXHIBIT C

Federal Communications Commission Washington, D.C. 20554	Approved by OMB 3060-0423 (November 2005)	FOR FCC USE ONLY
<b>Informal Objection / Petition to Deny / Petition for Reconsideration / Application for Review / Opposition / Reply / Supplement</b>  Read Instructions/FAQ before filling out form		FOR COMMISSION USE ONLY FILE NO.

**Section I - General Information**

1.	Party Filing Pleading or Appeal NORTHWEST ROCK N ROLL PRESERVATION SOCIETY		
	Mailing Address P.O. BOX 104		
	City TACOMA	State or Country (if foreign address) WA	Zip Code 98401 -
	Telephone Number (include area code) 2083011425		E-Mail Address (if available) NWRPS@OUTLOOK.COM
2.	Contact Representative BRIAN SPENCER		Firm or Company Name NORTHWEST ROCK N ROLL PRESERVATION SOCIETY
	Mailing Address P.O. BOX 104		
	City TACOMA	State or Country (if foreign address) WA	ZIP Code 98401 -
	Telephone Number (include area code) 2083011425		E-Mail Address (if available) NWRPS@OUTLOOK.COM
3.	Purpose: <input type="radio"/> Informal Objection <input type="radio"/> Petition to Deny <input type="radio"/> Petition for Reconsideration <input type="radio"/> Application for Review <input type="radio"/> Opposition <input checked="" type="radio"/> Reply <input type="radio"/> Supplement		
4.	[Enter File Number]  File Number: BNPFT - 20180418ABI	Pleading Filed Date : 07/31/2018	Pleading Filer Name: NORTHWEST ROCK N ROLL PRESERVATION SOCIETY
5.	Attach pleadings		[Exhibit 1]

I hereby certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.

Typed or Printed Name of Person Signing

Typed or Printed Title of Person Signing

BRIAN SPENCER	PRESIDENT
Signature	Date 05/07/2019

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## Exhibits

### Exhibit 1

**Description:** MOTION FOR LEAVE TO FILE REPLY TO SUPPLEMENT

SEE ATTACHED

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### Attachment 1

Description
<a href="#">MOTION FOR LEAVE TO FILE REPLY TO SUPPLEMENT</a>

## EXHIBIT D



Federal Communications Commission Washington, D.C. 20554	Approved by OMB 3060-0423 (November 2005)	FOR FCC USE ONLY
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**Section I - General Information**

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Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
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BRAIN SPENCER	PRESIDENT
Signature	Date 02/13/2020

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## Exhibits

### Exhibit 1

**Description:** ADDENDUM #2 TO SUPPLEMENTAL INFORMATION AND WAIVER REQUEST

SEE ATTACHED

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### Attachment 1

Description
<a href="#">ADDENDUM #2 TO SUPPLEMENTAL INFORMATION and WAIVER REQUEST</a>
<a href="#">Listener Tabulation Table and Declarations</a>
<a href="#">Maps</a>

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing "Supplement" was served by United States Postal Service Priority Mail, postage prepaid, as well as by e-mail, on this 17<sup>th</sup> day of August, 2020 upon the following:

Brian Spencer, President  
Northwest Rock N Roll Preservation Society  
Post Office Box 2673  
Olympia, Washington 98507-2673

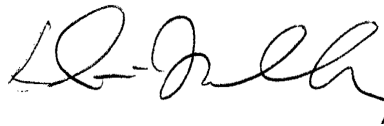
I have also served said "Informal Objection" by e-mail upon the following:

Albert Shuldiner, Esquire  
Chief, Audio Division, Media Bureau  
Federal Communications Commission  
Washington, DC 20554

Mr. Dale Bickel  
Senior Engineer, Audio Division, Media Bureau  
Federal Communications Commission  
Washington, DC 20554

Melodie A. Virtue, Esquire  
Foster Garvey, PC  
1000 Potomac Street, NW, Suite 200  
Washington, DC 20007

audiodivisionpleadings@fcc.gov



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Dennis J. Kelly