

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

In the Matter of)	
)	
All Pending Translator Applications)	File No.
)	
For Pending Construction Permits for)	Facility ID
New FM Translator Stations)	<i>Refer to Appendix A</i>
)	

JOINT OPPOSITION TO APPLICATION FOR REVIEW

This Joint Opposition to the August 10, 2018 Common Frequency, Inc. (“Common Frequency”) and Prometheus Radio Project (“Prometheus”) Application for Review (“the Application”) is timely submitted by counsel on behalf of the parties listed hereto in Appendix A (the “Parties”). Common Frequency and Prometheus originally jointly filed informal objections to 994 pending FM translator applications, fourteen of which were filed, on an individual basis, by the Parties hereto. The Commission dismissed the informal objections,¹ and Common Frequency and Prometheus jointly filed a Petition for Reconsideration of the dismissal, which the Commission swiftly dismissed on July 13, 2018.² The Application seeks review of the July 13 dismissal. The Parties oppose the Application on the basis that Common Frequency and Prometheus lack standing to challenge the Parties’ FM translator applications (the “Translator Applications”).

I. Background

¹ *Center for International Media Action; Common Frequency, Inc.; Prometheus Radio Project*, Letter Decision, DA 18-597 (MB June 8, 2018).

² *Center for International Media Action; Common Frequency, Inc.; Prometheus Radio Project*, Letter Decision, DA 18-729 (MB July 13, 2018).

The Parties to this Opposition each have at least one Translator Application against which Common Frequency and Prometheus filed an informal objection (the “Informal Objections”). Common Frequency and Prometheus objected to the Translator Applications on the basis that the Commission had failed to ensure filing opportunities for low-power FM stations (“LPFMs”). On June 8, 2018, the FCC dismissed each of the Informal Objections, finding them overbroad and failing to allege properly supported specific facts that call into question the public interest of the Translator Applications.

On July 7, 2018, Common Frequency and Prometheus petitioned for reconsideration (“Petition for Reconsideration”) of the Commission’s dismissal of the Informal Objections, reiterating many of their same arguments. The Commission dismissed the Petition for Reconsideration on July 13, noting *inter alia* that the Informal Objections did not confer standing upon Common Frequency and Prometheus to file a Petition for Reconsideration as “parties to the proceeding,” and that Common Frequency and Prometheus had failed to allege that the Translator Applications adversely affected their interests.

The Application at issue here seeks review of the Commission’s dismissal of the Petition for Reconsideration and claims that Common Frequency and Prometheus have standing to petition for reconsideration as “persons aggrieved” pursuant to Section 405(a) of the Communications Act.³ Common Frequency and Prometheus allege that the Commission neglected to consider their standing under Section 405(a), but do not go so far as to detail *how* they are aggrieved by the Translator Applications.

II. Discussion

³ 47 U.S.C. § 405(a).

In the broadcast regulatory context, standing is generally shown in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the station.⁴

Common Frequency and Prometheus have not identified themselves as competitors in or residents of the same markets as any of the Translator Applications. Rather, they rely on a very broad reading of Section 405(a), which confers standing upon “persons aggrieved.” While the Application does not specifically identify *how* Common Frequency and Prometheus are “aggrieved” by the Translator Applications, both parties seemingly feel deprived of equal filing opportunities for LPFMs.

The Informal Objections and the Petition for Reconsideration make abundantly clear that, if Common Frequency and Prometheus are in fact aggrieved, it is by the Commission’s AM Revitalization proceeding and related FM translator auctions – not the Translator Applications themselves. Their proper remedy was to seek reconsideration of the FCC’s proceedings that adopted and implemented the FM translator auctions. Failing to timely challenge the proper proceeding, Common Frequency and Prometheus have instead chosen the onerous undertaking of attacking 328 individual applications for FM translators. Doing so requires an individual standing showing for each application, which Common Frequency and Prometheus plainly have failed to provide.

Appendix A identifies the communities of license which the Parties propose to serve via the Translator Applications. Common Frequency and Prometheus do not claim to be competitors or residents in any of these markets. They have not identified how the Translator Applications

⁴ *Coe W. Ramsey, Esq. Steven L. White*, 32 FCC Rcd. 10105, 10109 (2017).

will reduce opportunities for low-power FM stations *in those communities*. They have made no effort whatsoever to raise any particular concerns posed by the individual Translator Applications themselves.

Common Frequency and Prometheus appear to read Section 405(a) to allow them to attack any proceeding by which they feel “aggrieved.” Such a broad reading of Section 405(a), however, would essentially defeat the entire purpose of standing. To determine if a party's interests have been adversely affected, the Commission relies upon a three-pronged standing test under which a party must establish: (1) a distinct and palpable injury-in-fact that is (2) traceable to the respondent's conduct, and (3) redressable by the relief requested.⁵

First, the injury claimed by Prometheus and Common Frequency, a lack of equal filing opportunity for LPFMs, is not “distinct” nor “palpable.” This injury is shared by every prospective LPFM licensee in the country. The injury is also not “palpable,” in that it is speculative at best as it applies to theoretical prospective LPFM applications, and certainly not as it applies to the individual Translator Applications, since no attempt is even made to show how any particular Translator Application causes injury here.

Second, Prometheus and Common Frequency have failed to trace their alleged injury to the Parties. In fact, the Application, the Informal Objections, and the Petition for Reconsideration make no mention of the Parties; the pleadings simply list the Translator Applications in an appendix among hundreds of other applications. The pleadings discuss the Commission's

⁵ *Mark N. Lipp, Esq. Christopher D. Imlay, Esq.*, 25 FCC Rcd. 2588, 2590 (2010); *Weblink Wireless, Inc.*, Order on Reconsideration, 17 FCC Rcd 24642 (WTB 2002); *AT&T Corp. v. Business Telecom, Inc.*, Order on Reconsideration, 16 FCC Rcd 21750 (2001); *Chris C. Hudgins*, Order on Reconsideration, 16 FCC Rcd 7941 (WTB 2001).

policies and its compliance with the Local Community Radio Act and the Administrative Procedure Act. Neither issue bears any relation to the actions of the Parties.

Finally, Prometheus and Common Frequency's alleged injury would not be redressed by reconsideration of the Translator Applications. Even if the Commission were to overturn the grant of the Translator Applications, hundreds of applications for FM translators would remain, as would the Commission's AM Revitalization proceeding and the regulations with which Prometheus and Common Frequency take issue.

For foregoing reasons, the Parties request that the Commission DISMISS the Application for Review.

By: _____/s/_____
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400
desantis@fhhlaw.com

Dated: August 28, 2018

Appendix A

Parties to this Opposition to Application for Review

1. Victoria RadioWorks, LLC (File No. BNPFT- 20180508AAV), Port Lavaca, TX
2. Family Stations, Inc. (File Nos. BNPFT-20180502AAU, BNPFT- 20180427ABN), New York, NY and San Francisco, CA
3. Christian Broadcasting System, Ltd. (File No. BNPFT- 20180418AFX), Florence, KY
4. Willamette Broadcasting Co., Inc. (File No. BNPFT- 20180507ABY), Keizer, OR
5. Packer Radio Greenville, Inc. (File No. BNPFT - 20180426AAN), Greenville, MI
6. Packer Radio WION, LLC (File No. BNPFT - 20180425AAL), Ionia, MI
7. Bott Communications, Inc. (File No. BNPFT - 20180502AAE), Reeds Spring, MO
8. OMG FCC Licenses LLC (File No. BNPFT - 20180424AAI), Astoria, OR
9. Truth Broadcasting Corporation (File Nos. BNPFT - 20180420AAF, BNPFT - 20180420AAH, BNPFT - 20180420AAJ), Freeport, UT; Davidson, NC; High Point, NC
10. WLBE 790, Inc. (File No. BNPFT - 20180503AAK), Leesburg-Eustis, FL
11. Community Broadcasting, Inc. (File No. BNPFT - 20180424ABC), Patillas, PR

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, of Fletcher, Heald & Hildreth, PLC, hereby certify that a true copy of the foregoing Interference Complaint to be sent this 28th day of August, 2018, via U.S. First Class Mail, postage prepaid, to the following individuals:

Paul Bame
Prometheus Radio Project
P.O. Box 42158
Philadelphia, PA 19101

Todd Urick
Common Frequency, Inc.
P.O. Box 42158
Philadelphia, PA 19101

_____/s/_____
Michelle Brown Johnson