Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of	)	
	)	
HISPANIC FAMILY CHRISTIAN NETWORK, INC.	)	
	)	File No. BPFT-20181030ABI
For Modification of FM Translator K225CM, Dallas, Texas Facility ID No. 144076	)	File No. BMPFT-20181207AAN

To: The Secretary, Federal Communications Commission
Attn: The Chief, Audio Division, Media Bureau

PETITION FOR RECONSIDERATION AND INFORMAL OBJECTION

Bison Media, Inc. ("Bison"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby (1) petitions the Media Bureau (the "Bureau") to reconsider and rescind its November 15, 2018 grant of the above-captioned application by Hispanic Family Christian Network, Inc. ("HFCN") to modify the licensed facilities of FM translator station K225CM, Dallas, Texas (the "Mod Application"), and (2) objects to a grant of HFCN's currently pending application to modify the construction permit awarded as a result of the Mod Application's grant (the "CP Mod Application" and, collectively with the Mod Application, the "Applications").[1]

As demonstrated herein, good cause exists for the Bureau to reconsider its grant of the Mod Application and deny the CP Mod Application for a number of reasons. First, both Applications propose an impermissibly duplicative translator for the same primary station.

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[1] The Commission gave public notice of the Mod Application's grant on November 20, 2018. *See Public Notice*, "Broadcast Actions," Report No. 49366 (Nov. 20, 2018), p. 13. This pleading is therefore timely as a petition for reconsideration pursuant to Section 1.106(f) of the Commission's rules. The CP Mod Application remains pending as of the date of this filing.

Second, the Applications propose operation from a tower whose owner HFCN has never contacted about placing the K225CM facility, and who will not permit such placement. Third, there are facts to suggest that K225CM is an FM translator only on paper and has never actually been located (let alone operated) at the site for which it holds a license. Aside from the Applications' facial deficiency, the Bureau should not grant any further application for this translator without a thorough inquiry into its operational history and the veracity of HFCN's representations and certifications in connection therewith. For all these reasons, the Commission should rescind its grant of the Mod Application and deny both Applications.

I. The Commission Should Reconsider the Mod Application's Grant

The Commission gave public notice of the Mod Application's filing on November 2, 2018.[2] Bureau staff granted the Application on November 15, 2018. The Commission has accepted and considered petitions for reconsideration of a staff grant in cases where rapid action "effectively precludes participation during the initial consideration of an application."[3] While the Bureau has denied standing to a petition for reconsideration of a translator modification grant where the petitioner had more than thirty days to object before the initial grant,[4] that is not the case here. The Bureau's grant of the Mod Application less than two weeks after it appeared on public notice effectively precluded Bison's participation prior to grant.

In any case, Section 1.106(c) of the Commission's rules empowers the Bureau to grant a petition for reconsideration where it "determines that consideration of the facts or arguments

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2 *See Public Notice*, "Broadcast Applications," Report No. 29355 (Nov. 2, 2018), p. 16.

3 *See, e.g., Aspen FM, Inc.*, 12 FCC Rcd 17852, 17854 (1997); *Ted and Jana Tucker*, 4 FCC Rcd 2816 (1989).

4 *See Letter to Susan A. Marshall, et al.*, 29 FCC Rcd 2041 (Med. Bur. 2014).

relied on is required in the public interest.[5] As shown *infra*, such facts are present in abundance here. K225CM's Mod Application did not comply with Commission rules (and HFCN falsely certified that it did), it proposed a transmitter site at which HFCN will not be permitted to build, and there is considerable evidence to indicate that there is effectively no operating translator to modify. Under all these circumstances, the Bureau should consider and grant this Petition to the extent it seeks reconsideration of the Mod Application and should deny both that application and the CP Mod Application, which suffers from the same deficiencies.

II. The Applications Impermissibly Propose a Duplicative Translator for the Same Primary Station

In Section III-A, Item 2 of the Mod Application, HFCN indicated that K225CM would rebroadcast the signal of primary station KBFB(FM), Dallas, Texas.[6] The CP Mod Application likewise specifies KBFB(FM) as K225CM's primary station.[7] In both of the Applications, HFCN certified that "it does not have any interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator station."[8]

Yet since January 5, 2017, HFCN has held a license for a separate translator station serving Dallas, Texas, with call sign K293CM (formerly K237FY, Facility ID No. 150497).[9] That license authorizes K293CM to operate with an effective radiated power ("ERP") of 0.1 kw, with an antenna center of radiation above ground ("RCAG") of 290 meters, from a tower at

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5 47 C.F.R. §1.106(c)(2).

6 Mod Application, Section III-A, Item 2. The resulting construction permit reflects this specification.

7 CP Mod Application, Section III-A, Item 2.

8 Mod Application, Section III-A, Item 14; CP Mod Application, Section III-A, Item 14.

9 A CDBS copy of the K293CM license is attached hereto as Exhibit A.

coordinates 32° 35' 25" N, 96° 58' 23" W with antenna structure registration ("ASR") number 1053994. The license specifies KBFB(FM) as K293CM's primary station. The facilities sought by HFCN for K225CM in the Mod Application (and authorized via the Bureau's grant of that application) are virtually identical to the licensed facilities for K293CM: 99 watts ERP at 290 meters RCAG, from the exact coordinates and the exact same registered tower. KBFB(FM) is the specified primary station.[10]

Thus, at the time it filed its Mod Application, HFCN was (and still is) the licensee of a second FM translator authorized to rebroadcast the same primary station from the same tower at an identical antenna height. HFCN's certification in the Mod Application that it had no interest in another FM translator serving substantially the same area and rebroadcasting the same primary station was demonstrably false, and this resulted in the Bureau's erroneous authorization of multiple translators in violation of Section 74.1232(b) of the Rules. This in and of itself requires the Bureau to reconsider and rescind its grant of the Mod Application (and deny the CP Mod Application on the same ground).[11]

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[10] A CDBS copy of the K225CM construction permit resulting from grant of the Mod Application is attached hereto as Exhibit B. The recent CP Mod Application for K225CM proposes the same antenna site, RCAG and primary station as the construction permit, and proposes to modify only the ERP and directional pattern.

[11] Oddly, when in May 2018 HFCN lodged a petition to deny against Bison's application for a new FM translator in Dallas to rebroadcast KSKY(AM), Balch Springs, Texas on Channel 225 (*see* Section IV *infra*), HFCN claimed that K225CM was rebroadcasting a different primary station: low power FM station KEFW-LP, Fort Worth, TX. *See* HFCN's Petition to Deny re File No. BNPFT-20180418ADB (May 10, 2018) (the "HFCN Translator Petition"), at 2 & Attachment 2. If K225CM has been rebroadcasting KEFW-LP rather than KBFB(FM), this would raise a host of other questions. Among them is why HFCN, as far as Bison can tell, has never filed a notification of a change in K225CM's primary station to KEFW-LP and in fact, as recently as its December 7 CP Mod Application, continues to represent that KBFB(FM) is K225CM's primary. Another is how K225CM can legally be broadcasting KEFW-LP, a ten-watt LPFM station located 51 kilometers from the alleged K225CM licensed site, when an FM translator rebroadcasting an LPFM station must receive the LPFM station over the air and not through alternate methods. *See* Getz Statement, *infra* note 23, at 5-6 and Exhibit B.

III. HFCN Will Not Be Permitted to Construct K225CM at the Site Proposed in the Applications

As noted in Section II above, HFCN's Mod Application specified (and the CP Mod Application continues to specify) operation of K225CM from a tower with ASR number 1053994. This is the exact same tower, and the exact same location on the tower, as the licensed site of K293CM, a second FM translator licensed to HFCN.[12] Not only does the Mod Application propose precisely the same location on the Sonsinger Tower for the K225CM antenna,[13] but the recent CP Mod Application specifies the use of *two* skewed Scala antennas at that location, aimed in different directions, to create a new proposed directional pattern.[14]

The owner of ASR number 1053994 (hereafter the "Sonsinger Tower") is Sonsinger Broadcasting Company of Houston, L.P. ("Sonsinger"). Attached hereto as Exhibit C is a declaration by Brian J. Counsil, Sonsinger's CFO and General Counsel. As Mr. Counsil states, HFCN is the lessee and Sonsinger the lessor under a tower lease agreement dated June 1, 2016. This lease contemplates HFCN's operation of a single, specifically defined antenna—a Jampro JCLP 2 Full Wave Spaced Antenna—associated with FM translator station K237FY (now K293CM) at approximately the 950-1000 foot level of the Sonsinger Tower. The lease expressly provides that "[n]o other antennas . . . or antenna appurtenances shall be permitted, installed, erected or otherwise used by [HFCN] other than those" specifically set forth in the lease.[15]

Moreover, Mr. Counsil's declaration makes clear that the lease is for the operation of a single radio station, not two, and that the lessee may make no other uses of the leased tower

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12 Compare Exhibit A and Exhibit B hereto.

13 *See* Mod Application, Section III-A, Items 4-8.

14 *See* CP Mod Application, Exhibit 13.

15 Exhibit C, ¶ 3.

space without the lessor's prior written consent, which may be granted or withheld in the lessor's sole and arbitrary discretion. Mr. Counsil further confirms that, to his knowledge, (1) Sonsinger has not been contacted by HFCN representatives to enter into a new or expanded lease for K225CM at the Sonsinger Tower, and (2) if contacted, Sonsinger would choose not to enter into such a lease.[16]

HFCN, therefore, proposed in its Mod Application (and continues to propose in its CP Mod Application) a site for K225CM that is not contemplated in HFCN's existing lease with Sonsinger, with respect to which HFCN has never contacted Sonsinger, and at which Sonsinger will not allow it to construct. While Bison recognizes that certifications of a proposed transmitter site's "reasonable availability" are no longer technically required to be made in FCC Form 349 applications, the fact is that by granting the Mod Application, the Bureau has authorized a futile act. HFCN will not be allowed to construct K225CM at the Sonsinger Tower, and no purpose is served by allowing a Commission construction permit for that site to remain outstanding.

IV. There Is Substantial Reason to Doubt K225CM's Operational Status and HFCN's Representations with Respect Thereto

For purposes of the discussions in Sections I, II and III above, Bison has charitably assumed that K225CM is what FCC records and HFCN's underlying representations purport it to be: an FM translator licensed (and therefore by definition capable of operating) at the transmitter site specified in its license.[17] The licensed site of the K225CM antenna is a whopping 450

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[16] *Id.*, ¶ 4.

[17] On May 17, 2018, HFCN filed a request for silent authority stating that K225CM had left the air on May 15, 2018, allegedly due to interference from a Bison FM repeater facility for KSKY(AM) authorized under an STA. *See* File No. BLSTA-20180517AGB. HFCN has recently requested extension of K225CM's silent authority. *See* File No. BLESTA-20181207AAO.

meters (1,476 feet) above ground, on a tower at Cedar Hill, Texas with ASR number 1059733, owned by American Towers LLC.[18] HFCN filed its covering license application for this location on March 20, 2018, certifying that "[t]he facility was constructed as authorized in the underlying construction permit."[19] The Bureau granted the license on April 3, 2018. Bison, however, has previously presented the Commission with facts strongly suggesting that HFCN has never constructed K225CM's licensed facility.

On May 10, 2018, HFCN filed a petition in which it sought denial of Bison's AM Revitalization Window application to construct a new FM translator application on Channel 225 at Dallas.[20] HFCN based its petition on the claim that Bison's proposed co-channel translator would cause interference to alleged "listeners to primary station KEFW-LP via the translator signal on 92.9 MHz (*i.e.*, Station K225CM)."[21] Bison filed an opposition and motion to dismiss the HFCN Translator Petition on June 11, 2018.[22] That opposition included a statement from Bison's consulting engineer, William J. Getz of Carl T. Jones Corporation.[23] Among other things, Mr. Getz observed that the K225CM licensed site 1,476 feet above ground on the Cedar Hill tower was just high enough to achieve 60 dBu contour overlap with the translator's

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18 *See* Exhibit D hereto (CDBS copy of K225CM license, File No. BLFT-20180320ABJ).

19 *See* File No. BLFT-20180320ABJ, Section III, Item 4.

20 *See* HFCN Translator Petition, *supra* note 11.

21 *Id.* at 2. As noted *supra*, Bison can locate nothing in FCC records to indicate that K225CM is authorized to rebroadcast low power FM station KEFW-LP. The Mod Application and the recent CP Mod Application, as well as K225CM's license and modification construction permit, all specify full power station KBFB(FM) as K225CM's primary.

22 *See* Bison's Opposition and Motion to Dismiss re File No. BNPFT-20180418ADB (the "Bison Translator Opposition").

23 *See id.*, Exhibit A (the "Getz Statement") (reproduced in Exhibit E hereto).

previously licensed location some 32.9 kilometers away.[24] Moreover, the Getz Statement included a photograph of the space on the Cedar Hill tower where K225CM was licensed based on the representation that it was ready for operation. The photograph shows no antenna or transmission line for K225CM at that height, and it additionally demonstrates that the space is surrounded (among other things) by two 12-bay television antennas, each radiating over 2,000 kilowatts, that are shared by a total of six television stations.[25] Mr. Getz thus concluded that "installation and/or removal of the K225CM transmission facility would be a monumental undertaking involving all of the TV stations to coordinate work and many other complicated aspects associated with radio installations near the top of tall, multi-use towers."[26]

Because the Bureau granted HFCN's Mod Application less than two weeks after giving public notice of its filing, it seems apparent that the Bureau did not consider the evidence Bison submitted in the proceeding involving HFCN's challenge to its AM revitalization translator application. The Bureau should remedy that oversight now. There is abundant evidence to suggest that K225CM, rather than being the validly licensed and currently silent facility that Commission records would suggest, is instead a *non-facility* that was never constructed at its licensed site, and whose owner falsely certified that it was. If (as it appears) that is the case, the Mod Application's grant was erroneous (and the CP Mod Application is subject to dismissal) on yet another ground: pursuant to Section 74.1233(a)(1) of the Commission's rules, both Applications would be considered *major* changes because neither Application would provide 1 mV/m service to any portion of the 1 mV/m service area of the last valid license for the

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24 Getz Statement at 3.

25 *See id.* at 4 and Exhibit A.

26 *Id.* at 4-5.

translator.[27] Additionally, the questions surrounding the construction (or lack thereof) of K225CM's currently licensed facility may suggest a need for the Commission to examine HFCN's propensity for truthfulness and, therefore, its qualifications to be a Commission licensee.

Conclusion

The facts here demand reconsideration of the Bureau's premature grant of the Mod Application and the dismissal of the CP Mod Application. The Applications are both facially defective in that they propose a duplicative translator of the same primary station. Additionally, the tower owner will not allow construction of K225CM at the site proposed in the Applications. Beyond these factors, moreover, are serious questions about whether K225CM was ever constructed as it is presently licensed and, therefore, whether there is anything for the Applications to modify and whether the Applications both propose impermissible major changes. There are also questions regarding the veracity of HFCN's certifications in FCC filings related to the translator. The Bureau should rescind the Mod Application's grant, dismiss both the

[27] *See* Exhibit F hereto (a map prepared by Carl T. Jones Corporation showing the contours of the successive K225CM facilities authorized to or applied for by HFCN).

Application and the CP Mod Application, and withhold action on any future applications regarding K225CM until all of these matters have been resolved.

Respectfully submitted,

BISON MEDIA, INC.

By: _____

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Dated: December 20, 2018

EXHIBIT A

United States of America

FEDERAL COMMUNICATIONS COMMISSION

FM BROADCAST TRANSLATOR/BOOSTER STATION LICENSE

Authorizing Official:

Official Mailing Address:

HISPANIC FAMILY CHRISTIAN NETWORK, INC.
5430 LBJ HIGHWAY
SUITE 1200
DALLAS TX 75240

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

Facility Id: 150497

Call Sign: K293CM

License File Number: BLFT-20161230ABE

Grant Date: January 05, 2017

This license expires 3:00 a.m. local time, August 01, 2021.

This license covers permit no.: BPFT-20161107ABZ

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.