



**Federal Communications Commission
Washington, D.C. 20554**

May 1, 2012

DA 12-688

In Reply Refer to:

1800B3-RG/MFW

Released: May 1, 2012

Richard J. Bodorff, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006

Malcolm G. Stevenson, Esq.
Schwartz, Woods & Miller
Suite 610
The Lion Building
1233 20th Street, N.W.
Washington, DC 20036

Kevin F. Reed, Esq.
Dow Lohnes PLLC
Suite 800
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

Sally A. Buckman, Esq.
Lerman Senter, PLLC
Suite 600
2000 K Street, N.W.
Washington, DC 20006

In re: **NEW (FX), New London, CT
Facility ID No. 156163**

File No. BNPFT-20030827AMA

Petition to Deny
Informal Objections

Gentlemen:

This letter concerns: (1) the referenced application (the "Application") of Red Wolf Broadcasting Corporation ("Red Wolf") for a construction permit for a new FM translator station on Channel 258 in New London, Connecticut; (2) a Petition to Deny the Application, filed on February 18, 2004 by Greater Boston Radio ("Greater Boston") (the "Greater Boston Petition"); (3) Informal Objections to the Application filed on April 29, 2004, by Cox Radio, Inc. ("Cox") (the "Cox Objection") and on May 26, 2004, by Citadel Broadcasting Company ("Citadel")¹ (the "Citadel Objection") (collectively, "the

¹ Cumulus Media, Inc., acquired control of Citadel in September of 2011. *See Existing Shareholders of Cumulus Media, Inc., Transferors*, Memorandum Opinion and Order, 26 FCC Red 12956 (2011).

Objectors”); and (4) related responsive pleadings.² For the reasons set forth below, we deny the Objections and grant the Application.

Background. Red Wolf filed the Application during the 2003 FM Translator filing window.³ The application was accepted for filing on February 3, 2004.⁴ The Greater Boston Petition and the Cox and Citadel Objections make similar arguments: that Red Wolf’s proposed translator will cause substantial interference to the Objectors’ stations. Specifically, Greater Boston argues that Red Wolf’s translator would operate on a co-channel (Channel 258, 99.5 MHz) with its then-owned Class B Station WKLB-FM, Lowell, Massachusetts,⁵ and cause “serious interference” to the reception of WKLB-FM in an area that has substantial WKLB-FM listenership.⁶ Cox states that the proposed translator would interfere with the reception of its second-adjacent channel (Channel 256, 99.1 MHz) Class B Station WPLR(FM), New Haven, Connecticut.⁷ Citadel claims that the proposed translator would interfere with the regularly received off-air reception of its first-adjacent-channel (Channel 257, 99.3 MHz) Class A Station WSKO-FM,⁸ Wakefield-Peacedale, Rhode Island.⁹ Each of the Objectors claims that the Application violates Section 74.1204(f) of the Commission’s Rules (the “Rules”) and should be dismissed.¹⁰

In its various Oppositions, Red Wolf offers detailed rebuttals to the Objector’s arguments. It denies that the Application would cause any interference, maintains that there will be no prohibited overlap with any of the Objectors’ stations and that the Application complies with all Commission rules.

² Red Wolf filed an Opposition to the Greater Boston Petition on March 3, 2004, and its Oppositions to the Cox Informal Objection on May 13, 2004, and to the Citadel Objection on June 21, 2004. Citadel filed a Reply to Red Wolf’s Opposition on August 2, 2004 and a Supplement to that Reply on September 27, 2004.

³ *FM Translator Auction Filing Window and Application Freeze*, Public Notice, 18 FCC Red 1565 (MB 2003).

⁴ *See Broadcast Actions*, Public Notice, Report No. 25664 (Feb. 3, 2004).

⁵ Greater Boston subsequently assigned the station, Facility ID No. 23441, to Nassau Broadcasting III, LLC (“Nassau”). *See* File No. BALH-20060803AMR granted by the staff on October 16, 2006 and consummated on November 15, 2006. Nassau subsequently assigned the station to WGBH Educational Foundation (“WGBH”). *See* File No. BALH-20090928AHR, granted on November 13, 2009, and consummated on November 30, 2009. Neither Nassau nor WGBH has participated in this proceeding. Although this station’s call sign was changed to WCRB(FM) on December 1, 2006, for administrative convenience, we will refer to it by the call sign referenced in the pleadings, WKLB-FM.

⁶ Greater Boston Petition at 1

⁷ *See Cox Objection* at 2-3 and Exhibits 1, 2 and 3

⁸ The call sign of this station was changed to WEAN-FM on March 11, 2008. For administrative convenience, we will refer to the station by its previous call sign, WSKO-FM, as specified in all pleadings in this case.

⁹ *See Citadel Objection* at 1-2 and Attachment A.

¹⁰ 47 C.F.R. § 74.1204(f), which states, in pertinent part, that:

An application for an FM translator station will not be accepted for filing even though proposed operation would not involve overlap of field strength contours with any other station . . . if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second, or third adjacent channel broadcast station . . . and grant of the authorization will result in interference to the reception of such signal.

Finally, it contends that the Citadel filing is an abuse of process which is designed to delay action on the Application.¹¹

Discussion. Pursuant to Sections 309(d) and (e) of the Act,¹² petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of the Assignment Application would be *prima facie* inconsistent with Section 309(a) of the Act.¹³ This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.

In promulgating Section 74.1204(f) of the Rules, the Commission stated that it “will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap.”¹⁴ Under Section 74.1204(f), in order to demonstrate that grant of an FM translator construction permit application “will result in interference to the reception” of an existing full-service station, an opponent must provide, at a minimum: (1) the name and specific address of each potentially affected listener; (2) some demonstration that the address of each purported listener falls within the 60 dBμ service contour of the proposed translator station;¹⁵ (3) a declaration from each of the affected listeners that he or she listens to the full-service station at the specified location; and (4) some evidence that grant of the authorization will result in interference to the reception of the “desired” full-service station at that location.¹⁶

In this case, the Greater Boston petition fails to present a substantial and material question of fact regarding the Red Wolf Application. Greater Boston has failed to satisfy the Section 74.1204(f) objection

¹¹ See Red Wolf Opposition to Citadel Objection at 2.

¹² 47 U.S.C. § 309(e).

¹³ *Id.* § 309(a). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁴ See *The Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12685-6 (2004), citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7230 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993)

¹⁵ The staff generally requires demonstrations of actual or potential interference from listeners within the translator station's proposed 60 dBμ contour who are unconnected with the full-service station whose service allegedly will be disrupted. See *Association for Community Education, Inc.*, 19 FCC Rcd at 12688 n.37 (approving staff practice requiring that the complainant be “disinterested,” e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding).

¹⁶ *Id.*, 19 FCC Rcd at 12687.

requirement to identify and provide declarations from specific listeners within the Application's predicted 60 dBμ service contour.¹⁷

Cox similarly fails to present a substantial and material question of fact regarding the Red Wolf Application's compliance with Section 74.1204(f) of the Rules. As did Greater Boston, Cox fails to identify or provide any declarations from specific listeners falling within the Application's predicted 60 dBμ service contour. Even though WPLR(FM) may cover events in New London, Connecticut, has a measurable audience rating in that community, and receives telephone calls from that community, these facts do not satisfy the requirement to provide identifying and verifiable information *bona fide* listeners within the translator station's proposed 60 dBμ service contour.¹⁸

In its objection, Citadel correctly provides the names and addresses of three listeners who it claims receive service from its station WSKO-FM and who reside within the Application's proposed 60 dBμ contour.¹⁹ However, the Commission found in the 2007 *Citadel MO&O* that "[t]he staff may properly exclude" the May 12, 2004, letter from Peter Smith as unreliable.²⁰ Maureen Charles, signatory to a second letter, apparently is the mother-in-law of the program director of WQGN-FM, Groton, Connecticut, a Citadel station "that directly competes with Red Wolf."²¹ Thus, we believe that we may properly decline to credit Ms. Charles' letter based on her connection to objector Citadel. Finally, with respect to the letter from Mr. Green, the staff recently contacted Mr. Green to verify his statement. Mr. Green stated that, although he was a regular listener of WSKO-FM when Citadel filed its objection in 2004, the station has changed its format and he no longer listens to it.²² We will decline to credit Mr.

¹⁷ The e-mail communications indicate that the writers listen to WKLK(FM) at home or in the car, and they provide only the community and ZIP code in which the writers reside. Greater Boston provides no evidence that these ZIP codes are within the Red Wolf translator's proposed 60 dBμ contour, and the staff has determined that they are not.

¹⁸ See, e.g., *The Association for Community Education, supra*, 19 FCC Rcd at 12686 (full-service station's statement that it had subscribers within a ZIP Code partially encompassed by the proposed translator station's 60 dBμ contour is insufficient to demonstrate that the station had actual listeners within the translator station's protected service contour); see also *Calvary Chapel of Twin Falls, Inc.*, Letter, 3 FCC Rcd 25286, 25287 (MMB 1998) (Arbitron data does not demonstrate that any such listener is within the translator's [60 dBμ] contour).

¹⁹ Although Citadel also uses Longley-Rice methodology to support its claim that WSKO-FM has listeners within the Application's proposed 60 dBμ contour, its use of the supplemental engineering methodology does not appear to be designed to extend the protected service (60 dBμ) contour of WSKO-FM, but rather to support its claim that WSKO-FM has a listenable (54 dBμ) signal in an area within the 60 dBμ contour proposed in the Application.

²⁰ See *Citadel MO&O*, 22 FCC Rcd at 7091. In that document, the Commission also discussed the Charles and Green Letters, but only in the context of Red Wolf's allegation that Citadel intentionally concealed a relationship between Charles and Green and Citadel. The Commission, without finding that there was such a connection, simply opined that:

The submission of letters from listeners who happen to be connected in some way with the full-service station with which a proposed FM translator facility might interfere does not violate any statute or rule. Red Wolf cites no precedent, nor are we aware of any, that establishes that the submission of a listener letter that fails to disclose a relationship between the signing party and the licensee of the potentially affected full-service station constitutes an actionable lack of candor.

²¹ Red Wolf Opposition to Citadel Objection at 4 and Exhibit 1, *Complaint* filed on June 16, 2004, at 4.

²² Statement of Mr. Ed Green to Michael Wagner, Assistant Chief, Audio Division, in a telephone conversation taking place on Tuesday, February 15, 2011, beginning at 6:50 p.m. e.s.t.

Green's letter on that basis. Citadel therefore fails to satisfy the requirements for objections based on Section 74.1204(f).

Conclusion/Actions. In light of the discussion above, we find that neither Greater Boston, Cox, nor Citadel has raised a substantial and material question of fact calling for further inquiry regarding whether grant of the Application will further the public interest, convenience, and necessity. We will therefore deny the Greater Boston Petition and the Cox and Citadel Informal Objections. We note, however, that Section 74.1203(a) of the Rules²³ states that, should the translator commence operation and cause actual interference to WKLO-FM, WPLR(FM), or WSKO-FM (now WEAN(FM)) or any other full-service station, the translator will be required to eliminate the interference or cease operation.

Additionally, we have evaluated the Application and find that it complies with all pertinent statutory and regulatory requirements and that its grant would indeed further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, that the Petition to Deny filed on February 18, 2004, by Greater Boston Radio IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objection filed on April 29, 2004, by Cox Radio, Inc. IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objection filed on May 26, 2004, by Citadel Broadcasting Company IS DENIED.

IT IS FURTHER ORDERED, that the application (File No. BPNFT-20030827AMA) of Red Wolf Broadcasting Corporation for construction permit for a new FM translator station in New London, Connecticut, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Red Wolf Broadcasting Corporation
Greater Boston Radio
Cox Radio, Inc.
Citadel Broadcasting Company

²³ 47 C.F.R. § 74.1203(a).