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In re: **W265AV, Woodstock, Georgia**
Facility ID No. 28332
File Nos. BLFT-20140915AAD
BPFT-20170803ACM

Petitions for Reconsideration

Dear Counsel:

We have before us a petition for reconsideration (License Modification Petition) filed by Immanuel Broadcasting Network, Inc. (Immanuel) on July 25, 2017, seeking reconsideration of the July 18, 2017, letter decision (*License Modification Letter*) by the Audio Division, Media Bureau (Bureau) ordering Immanuel to reduce the effective radiated power (ERP) of FM translator station W265AV, Woodstock, Georgia (Station) to ten watts and reissuing the Station's license to specify an ERP of ten watts, and related pleadings.¹ We also have a petition for reconsideration (Facility Modification Petition) filed by Rodriguez on September 14, 2017, seeking reconsideration of the Bureau's August 18, 2017, grant of a modification application (Modification Application) filed by Immanuel on August 3, 2017, and related pleadings.² For the reasons stated below, we: (1) grant the License Modification Petition; (2) dismiss the Facility Modification Petition; (3) rescind the reissuance of the Station's license as ordered in the *License Modification Letter*; (4) reissue the Station's license to specify its original ERP of 105 watts; and (5) order Immanuel to suspend operation of the Station with its licensed facilities, pursuant to Section 74.1203(b) of the Commission's Rules, until all interference is eliminated.³

Background. On February 3, 2017, Rodriguez filed an "Interference Complaint," supported by 37 listener statements, alleging that the Station was causing actual interference to station WJES(FM), Maysville, Georgia (WJES), in violation of Section 74.1203 of the Rules. On March 21, 2017, Rodriguez filed an "Emergency Petition for Relief" stating that the interference was continuing and alleging that the president of Immanuel, Neil Hopper (Hopper), had indicated that he was unwilling to resolve the matter

¹ *Immanuel Broadcasting Network, Inc.*, Letter, Ref. No. 1800B3-PPD (July 18, 2017). On August 4, 2017, Nelson Rodriguez (Rodriguez), licensee of WJES(FM), Maysville, Georgia, filed an opposition to the License Modification Petition (License Modification Opposition). On August 11, 2017, Immanuel filed a reply to the License Modification Opposition (License Modification Reply).

² See File No. BPFT-20170803ACM (Facility Modification Application); *Broadcast Actions*, Public Notice, Report No. 49055 (MB Aug. 23, 2017). On September 25, 2017, Immanuel filed an opposition to the Facility Modification Petition (Facility Modification Opposition).

³ 47 CFR § 74.1203(b) (Section 74.1203(b)).

by reducing power or suspending operations of the Station. On March 24, 2017, Hopper submitted a declaration (Hopper Declaration) questioning whether the interference at issue was in fact caused by the Station and arguing that the complaints were not from *bona fide* disinterested listeners but from “relatives of Mr. Rodriguez or members of his congregation, doing him a favor.”⁴ Hopper also stated that Immanuel had reduced the Station’s power by “approximately 20 percent” in an effort to resolve the interference.⁵ On March 28, 2017, Rodriguez filed a “Supplement to Emergency Petition for Relief,” claiming that the Station’s power reduction had had “no discernable beneficial effect on the WJES signal” and submitting an additional 15 listener statements in support of this claim.⁶

On April 3, 2017, the Bureau issued a letter directing Immanuel to resolve all interference complaints within 30 days of the date of the letter (*Compliance Letter*).⁷ On May 3, 2017, Immanuel requested special temporary authority (STA) to operate at 50 percent power (52 watts), which was granted on May 5, 2017. On May 5, 2017, Rodriguez submitted a letter stating that Immanuel’s response to the *Compliance Letter* had been “inadequate and ineffective” and urging immediate suspension of the Station’s operations.⁸ On May 25, 2017, Rodriguez submitted another letter, objecting to the Bureau’s extension of time (until June 15, 2017) for Immanuel to resolve the interference complaints.⁹ On June 14, 2017, Immanuel proposed a “plan of action” involving a temporary power reduction, installation of a directional antenna, and/or relocation of WJES. This proposal was rejected by Rodriguez by email dated June 15, 2017. On July 18, 2017, the Bureau issued the *License Modification Letter*, which reissued the Station license to specify ten watts ERP. On July 25, 2017, Immanuel filed the License Modification Petition.

In the License Modification Petition and License Modification Reply, Immanuel states that it has “complied with the Audio Division’s Section 74.1203(a)(3) order to reduce power to 10 watts ERP, but such interim measure does not result in the permanent modification of the W265AV license unless and until the Section 316(a) process, also embodied in Section 1.87(a) of the Commission’s Rules, is formally complied with.”¹⁰ Section 316(a)(1) states:

Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice.

⁴ Hopper Declaration at 1.

⁵ *Id.* at 1.

⁶ Supplement to Emergency Petition for Relief at 1.

⁷ *Immanuel Broadcasting Network, Inc.*, Letter, Ref. No. 1800B3-PPD (Apr. 3, 2017).

⁸ *Letter from Donald E. Martin, Esq., to James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau* (May 5, 2017).

⁹ *Letter from Donald E. Martin, Esq., to James Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau* (May 25, 2017).

¹⁰ License Modification Reply at 2; *see also* License Modification Petition at 2 (citing 47 U.S.C. § 316(a) (Section 316(a)); 47 CFR § 1.87(a)).

Because this procedure was not followed in this case, Immanuel contends, the Bureau must reconsider and rescind its order to modify the Station license.¹¹

In its License Modification Opposition, Rodriguez claims that the Section 316(a) 30-day notice requirement was satisfied by Immanuel's opportunity to file a petition for reconsideration of the *License Modification Letter* and/or by letters and emails preceding the *License Modification Letter* from Bureau staff to Immanuel, indicating that Station operation would be suspended under Section 74.1203(b) if the subject interference were not eliminated.¹² Alternatively, Rodriguez argues that secondary stations such as translators are not entitled to Section 316(a) protections because "[p]rimary stations are routinely granted authorizations that conflict with those of secondary stations and thereby constructively alter the secondary stations' licenses."¹³ Rodriguez also alleges that the Station's reduction in power to 10 watts has not resolved the interference and submits 26 additional listener statements in support of this claim.¹⁴

On August 3, 2017, Immanuel filed the Modification Application, seeking to modify the Station's facilities to operate at 105 watts ERP using a directional antenna in order to "restore W265AV to ERP 105w by providing a custom directional antenna to reduce ERP in the direction of WJES and eliminate any interference to established listeners of WJES."¹⁵ No objection was filed to the Modification Application, which was placed on public notice on August 8, 2017,¹⁶ and granted on August 18, 2017.¹⁷ On September 14, 2017, Rodriguez filed the Facility Modification Petition, stating that the proposed modified facilities would still cause interference with WJES. On September 15, 2017, Immanuel filed the Facility Modification Opposition, arguing that the Facility Modification Petition is procedurally unacceptable under Section 1.106(b) of the Rules because Rodriguez failed to participate earlier in the proceeding.¹⁸ Immanuel also argues that Rodriguez's interference prediction methodology (Longley-Rice) is insufficient to show interfering overlap and lacks supporting evidence of regular listeners in the overlap area as required by Section 74.1204(f).¹⁹

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.²⁰ In this case, we find that Immanuel has shown material error in the *License Modification Letter*, as discussed in detail below.

¹¹ License Modification Petition at 3.

¹² License Modification Opposition at 1-3.

¹³ License Modification Opposition at 3.

¹⁴ See "Further Emergency Petition for Relief" filed by Rodriguez on August 4, 2017.

¹⁵ Modification Application, Exh. 1.

¹⁶ *Broadcast Applications*, Public Notice, Report No. 29044 (MB Aug. 8, 2017) (*Public Notice*).

¹⁷ *Broadcast Actions*, Public Notice, Report No. 49055 (MB Aug. 23, 2017).

¹⁸ See 47 CFR § 1.106(b) (Section 1.106(b)) ("If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.").

¹⁹ Facility Modification Opposition at 2; 47 CFR § 74.1204(f) ("An application for an FM translator station will not be accepted for filing even though the 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, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.").

²⁰ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

Therefore, we rescind the reissuance of the Station's license as ordered in the *License Modification Letter* and restore its original authorized ERP of 105 watts. However, we order Immanuel to suspend operations with its licensed facilities pursuant to Section 74.1203(b) until all interference is eliminated and the Bureau approves resumption of operations.

Section 316(a). First, we reject Rodriguez's argument that Section 316(a) does not apply to translators. By its terms, Section 316(a) applies to modification of "[a]ny station license or construction permit." In the *License Modification Letter*, the Bureau modified the Station's license by reissuing the license to specify an ERP of ten watts.²¹ Therefore, Section 316(a) governed this action. We likewise reject Rodriguez's argument that the various prior communications from the Bureau to Immanuel were equivalent to an order to show cause or otherwise satisfied the statutory notice requirement. First, these communications did not include a "proposed order of modification" (i.e., order to show cause) or provide express notice of an opportunity to protest such modification. Furthermore, the Bureau expressly referred to the sanction of suspension of operations under Section 74.1203(b) rather than license modification under Section 316(a).²² Therefore, we rescind the reissuance of the Station's license in the *License Modification Letter* and reissue the Station's license to specify its original ERP of 105 watts.

Section 74.1203(b). Section 74.1203(b) authorizes the Bureau to suspend a translator's operation if interference cannot be eliminated "by the application of suitable techniques." In this case, we find that, through listener statements, Rodriguez has adequately substantiated his claim that the Station, even when operating at 10 watts, continues to cause actual interference to WJES. Immanuel has not provided any evidence to support its "valid doubts" that the listener declarations provided by Rodriguez, made under penalty of perjury, are not from *bona fide* listeners of WJES. Therefore, because Immanuel has not resolved the interference complaints as directed in the *Compliance Letter*, we order it to suspend Station operations with its licensed facilities in accordance with Section 74.1203(b) until all interference is eliminated and the Bureau approves resumption of operations.

Modification Application. Although the Commission has allowed petitions for reconsideration in situations where expedient grant effectively precluded participation during the initial consideration of an application, in each case, the period between the filing of the application and grant was less than a week.²³ Here, Rodriguez had ten days after public notice of acceptance for filing of the Modification Application but before grant in which to file an informal objection. In determining whether Rodriguez was thus effectively precluded from filing an informal objection, we note that a number of Commission rules allow fewer than ten days to prepare and file a pleading.²⁴ Although we have accepted petitions for reconsideration from other non-parties in certain situations where special equitable considerations were at issue, no such considerations exist here.²⁵ Not only did the *Public Notice* serve as constructive notice of

²¹ See *Involuntary Modification of License of Station KFWR(FM), Jacksboro, Texas*, Order to Show Cause, 30 FCC Rcd 2625 (MB 2015) (issuing an order to show cause when proposing to reduce transmitted power output).

²² See, e.g., *Compliance Letter* at 2 ("Failure to correct *all* complaints within [30 days] may require W265AV to suspend operation pursuant to 47 CFR § 74.1203.").

²³ See, e.g., *Robert P. Sanborn III*, Letter, 30 FCC Rcd 38, 39 (MB 2015) (noting that to accept a petition for reconsideration where grant was 30 days after public notice of acceptance for filing "would be essentially to establish a formal 30-day filing window for informal objections, contravening the plain language of Section 73.3587 and in many cases delaying processing on minor modification applications").

²⁴ See, e.g., 47 CFR § 1.45(c) (providing that a reply to an opposition to any to any motion, petition, or request must be filed within five days after the time for filing oppositions has expired); 47 CFR § 1.106(h) (providing that a reply to an opposition for a petition for reconsideration must be filed within seven days after the opposition is filed); 47 CFR § 1.301(c)(2) (providing that interlocutory appeals must be filed with the Commission's Secretary within five days after the relevant order is released).

²⁵ See, e.g., *Frank Jazzo, Esq.*, Letter, 32 FCC Rcd 5692, 5695 (MB 2017) (accepting a petition for reconsideration where petitioner had failed to timely object to a 250-mile FM translator move).

the acceptance for filing of the Modification Application, but Rodriguez was already actively involved with concurrent proceedings involving the same issue and the same stations. In fact, Rodriguez had been served with a pleading stating that Immanuel intended to file such a modification application.²⁶ For these reasons, we conclude that Rodriguez was not “effectively precluded” from filing an informal objection to the Modification prior to grant of the Modification Application. Because Rodriguez had adequate opportunity to participate earlier in the proceeding, but failed to do so, the Facility Modification Petition is not acceptable under Section 1.106(b). Moreover, we find that reconsideration of the grant of the Modification Application is not required in the public interest under Section 1.106(c)(2). In this respect, we emphasize that Immanuel will continue to be subject to the provisions of Section 74.1203 with the Modification Application facilities. Any interference complaints received due to Station operation with the Modification Application facilities may, if not *immediately* resolved, result in prompt suspension of operating authority, including, as appropriate, suspension of program test authority for the Modification Application facilities.

Conclusion/Actions. For these reasons, IT IS ORDERED that the petition for reconsideration filed by Immanuel Broadcasting Network, Inc., on July 25, 2017, IS GRANTED.

IT IS FURTHER ORDERED that the license modification ordered by the Audio Division, Media Bureau, on July 18, 2017, Ref. No. 1800B3-PPD, IS RESCINDED.

IT IS FURTHER ORDERED that the petition for reconsideration filed by Nelson Rodriguez on September 14, 2017, IS DISMISSED.

IT IS FURTHER ORDERED that operating authority for FM translator W265AV, Woodstock, Georgia, with its currently licensed facilities, IS SUSPENDED pursuant to 47 CFR § 74.1203(b) until all interference is eliminated and the Bureau approves resumption of Station operations.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁶ See License Modification Petition at 3-4.