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In re: **Bustos Media Holdings, LLC**
K266CP, Auburn, WA
Facility ID No. 202942
File No. BNPFT-20180418ABI

Petition for Reconsideration

Dear Counsel and Petitioner:

We have before us a Petition for Reconsideration (Petition) filed by Northwest Rock N Roll Preservation Society (NWR) on September 25, 2023.¹ NWR challenges a letter decision (*Reconsideration Decision*)² in which we (1) granted a petition for reconsideration (Bustos Petition) filed by Bustos Media Holdings, LLC (Bustos), (2) dismissed NWR's predicted interference claim against Bustos' proposed new FM translator at Auburn, Washington (Bustos Translator), and (3) reinstated and granted Bustos' application (Bustos Application) for a construction permit for the Bustos Translator.³ For the reasons discussed below, we deny the Petition.

Background. In 2013, we granted NWR a license (2013 License) to operate K266BM, Olympia, Washington (NWR Translator) at 10 watts.⁴ The license indicated that the NWR Translator would be rebroadcasting KGHO-LP, Hoquiam, Washington. The service contour for the facilities authorized in the

¹ Pleading File No. 221441 (Petition).

² *Bustos Media Holdings, LLC*, Letter Order, Application File No. BNPFT-20180418ABI (MB Aug. 25, 2023) (*Reconsideration Decision*).

³ See Application File No. BNPFT-20180418ABI (Bustos Application). See *Broadcast Applications*, Public Notice, Report No. 30566, at 1 (MB Sept. 1, 2023); *Broadcast Actions*, Public Notice, Report No. 50566, at 1 (MB Sept. 1, 2023). Upon grant of the Bustos Application, the new translator was assigned the call letters K266CP.

⁴ See Application File No. BLFT-20130402ACL; *Broadcast Actions*, Public Notice, Report No. 47978, at 10 (MB April 30, 2013).

2013 License (2013 Contour) extended roughly the same distance in all directions from the NWR Translator's transmitter site.

In 2016, NWR obtained a construction permit (2016 Permit) authorizing it to increase the NWR Translator's effective radiated power (ERP) from 10 watts to 70 watts and change its primary station to KGTK(AM).⁵ In 2017, at NWR's request, we modified the 2016 Permit to specify an increased ERP of 250 watts (2017 Permit).⁶ The service contour of the facilities authorized in the 2017 Permit primarily extended northeast of the NWR Translator's transmitter site.

In 2018, Bustos filed the Bustos Application.⁷ NWR then filed an Informal Objection (Objection) to the Bustos Application,⁸ which it later supplemented (2018 Supplement).⁹ NWR alleged that the Bustos Translator's proposed facilities would cause interference to listener reception of the NWR Translator in violation of section 74.1204(f) of the Rules. NWR's predicted interference claims were based on operation of the NWR Translator with the facilities specified in the 2013 License.

In May 2019, the Commission revised its FM translator interference rules. Among other things, it adopted a 45 dB μ outer signal strength contour limit for interference complaints, and required a station to submit a minimum number of listener complaints.¹⁰ The Commission also required that a station claiming predicted interference submit a statement that the station was operating with its licensed parameters, and a statement that it had "used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution."¹¹

Shortly thereafter, on June 18, 2019, NWR filed an application (2019 Modification Application) to modify the 2017 Permit.¹² Then, a few days after the new FM translator interference rules became effective,¹³ on August 19, 2019, NWR filed another supplement to the Objection (2019 Supplement).¹⁴ Among other things, NWR submitted a signal strength contour map "with the addition of the 45 dB μ

⁵ See Application File No. BPFT-20160729AKW; *Broadcast Actions*, Public Notice, Report No. 48811, at 15 (MB Sept. 1, 2016).

⁶ See Application File No. BMPFT-20170925ADX; *Broadcast Actions*, Public Notice, Report No. 49090, at 20 (MB Oct. 13, 2017).

⁷ Bustos later amended the Bustos Application. See *Broadcast Applications*, Public Notice, Report No. 29597, at 7-9 (MB Oct. 22, 2019).

⁸ Northwest Rock N Roll Preservation Society, Informal Objection, Application File No. BNPFT-20180418ABI (rec'd July 31, 2018).

⁹ Northwest Rock N Roll Preservation Society, Informal Objection, Application File No. BNPFT-20180418ABI (rec'd Oct. 5, 2018).

¹⁰ See *Amendment of Part 74 of the Commission's Rules Regarding Translator Interference*, MB Docket No. 18-119 Report and Order, 34 FCC Rcd 3457, 3463-66, paras. 12-15, 3475-78, paras. 36-40 (2019), *recon. denied*, 35 FCC Rcd 11561 (2020).

¹¹ *Id.* at 3469-70, para. 23. See also 47 CFR § 74.1204(f)(3), (4).

¹² See Application File No. BMPFT-20190618ABI.

¹³ See also *Media Bureau Announces August 13, 2019, Effective Date of Amended Rules for FM Translator Interference*, Public Notice, 34 FCC Rcd 7004 (MB 2019).

¹⁴ Northwest Rock N Roll Preservation Society, Supplemental Information to Informal Objection, Application File No. BNPFT-21080418ABI (rec'd Aug. 19, 2019).

contour.”¹⁵ This map was based on the 2013 Contour (*i.e.*, the signal strength contour of the NWR Translator’s licensed facilities at the time).¹⁶ NWR submitted 38 new listener complaints, and resubmitted six listener complaints that had accompanied the NWR Objection and/or the 2018 Supplement.¹⁷ Additionally, NWR included a statement that the NWR Translator was operating with its licensed parameters, and submitted a copy of an August 12, 2019, letter that NWR had sent to counsel for Bustos regarding its predicted interference claims.¹⁸

While the 2019 Modification Application remained pending, NWR applied for a license to cover the facilities specified in the 2017 Permit (2019 License Application).¹⁹ We granted the 2019 License Application on December 4, 2019, and issued a new license to cover the NWR Translator’s modified facilities (2019 License).²⁰

NWR then filed another supplement to the Objection (2020 Supplement). Therein, NWR acknowledged that the NWR Translator’s protected contour had changed, and proffered a new map depicting the specific location of the predicted interference to each identified listener in relation to NWR Translator’s newly licensed 45 dB μ contour (2019 Contour).²¹

On April 28, 2020, we issued an initial decision regarding the Bustos Application (*Letter Decision*).²² We found that NWR had “adequately substantiated its Section 74.1204(f) claims.”²³ As a result, we dismissed the Bustos Application.

Bustos filed the Bustos Petition on May 28, 2020. NWR opposed the Petition,²⁴ and Bustos replied.²⁵

On August 25, 2023, we issued the *Reconsideration Decision*. As discussed above, that decision granted the Bustos Petition, dismissed NWR’s predicted interference claims, and reinstated and granted

¹⁵ *Id.* at 2.

¹⁶ *Id.* at Map 1.

¹⁷ *Id.* at Listener Declarations Attach.

¹⁸ *Id.* at 6, 7.

¹⁹ See Application File No. BLFT-20190904ABL (2019 License Application).

²⁰ See *Broadcast Actions*, Public Notice, Report No. 49629, at 2 (MB Dec. 9, 2019).

²¹ Northwest Rock N Roll Preservation Society, Addendum to Supplemental Information to Informal Objection, Application File No. BNPFT-20180418ABI (rec’d Jan. 3, 2020).

²² *Bustos Media Holdings, LLC*, Letter Order, Application File No. BNPFT-20180418ABI MB April 28, 2020).

²³ *Id.* at 6.

²⁴ Northwest Rock N Roll Preservation Society, Opposition to Petition for Reconsideration & Supplement, and Motion to Strike, Application File No. BNPFT-21080418ABI (rec’d Sept. 8, 2020).

²⁵ Bustos Media Holdings, LLC, Reply to “Opposition to Petition for Reconsideration & Supplement, and Motion to Strike,” Application File No. BNPFT-21080418ABI (rec’d Sept. 17, 2020).

the Bustos Application. NWR then filed the Petition. Bustos opposed it,²⁶ and NWR replied.²⁷ We consider the Petition and Bustos' and NWR's related pleadings herein.

Discussion. Procedural Issue. We reject Bustos' allegation that NWR lacks standing to challenge the *Reconsideration Decision*.²⁸ Bustos incorrectly asserts that NWR was solely concerned about the Bustos Translator interfering with another NWR translator station's reception of the signal of its primary station (KGHO-LP) over the air via the NWR Translator.²⁹ Because the NWR Translator no longer rebroadcasts the KGHO-LP signal, and the other NWR translator no longer receives the KGHO-LP signal via the NWR Translator, Bustos argues that NWR no longer has standing.³⁰ It is true that, prior to filing the Objection, NWR filed a Petition to Deny the Bustos Application that raised only the issue of interference with the other NWR translator's reception of the signal of its primary station off the air via the NWR Translator.³¹ However, in every other pleading it has submitted in relation to the Bustos Application, NWR has asserted that the Bustos Translator would cause interference to listener reception of the NWR Translator's signal in violation of section 74.1204(f). NWR clearly continues to have standing to challenge the *Reconsideration Decision*.³²

Substantive Issues. In the *Reconsideration Decision*, we reversed our previous finding that NWR had adequately substantiated its predicted interference claims. We found that, at the time the *Letter Decision* was adopted, parts of NWR's interference claim package had become outdated or inaccurate due to issuance of the 2019 License, which authorized the NWR Translator to operate with a "vastly different contour."³³ We explained that grant of the 2019 License had rendered outdated both NWR's statement that the NWR Translator was operating within its licensed parameters and its statement regarding its efforts to inform Bustos and attempt private resolution.³⁴ We noted that, despite this, NWR had not submitted either a new statement that the NWR Translator was operating within the parameters of the 2019 License, or a new statement that NWR had attempted private resolution of the claimed predicted interference after grant of the 2019 License.³⁵ Given these circumstances, we held that we should have

²⁶ Pleading File No. 222169 (Opposition). The Opposition is a consolidated opposition filed in response to the Petition and another pleading filed by NWR on the same day. See Pleading File No. 221311. That pleading challenges a decision in which we, among other things, rejected Bustos' argument that NWR had violated section 73.860 of the Rules, which governs cross-ownership of LPFM and non-LPFM broadcast stations. *Northwest Rock N Roll Preservation Society*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-763 (MB Aug. 25, 2023). We will address the cross-ownership/real-party-in-interest argument that Bustos makes in the Opposition in our decision regarding that pleading.

²⁷ Pleading File No. 222904.

²⁸ Opposition at 5.

²⁹ *Id.* at 2, 5.

³⁰ *Id.* at 5.

³¹ *Northwest Rock N Roll Preservation Society*, Petition to Deny, Application File No. BNPFT-20180418ABI (rec'd May 9, 2018).

³² See, e.g., *Tribune Media Co.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019) (noting that, "[i]n 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").

³³ *Reconsideration Decision* at 5.

³⁴ *Id.* at 5-6.

³⁵ *Id.* at 6.

found NWR's interference claim package was not rule-compliant and should have dismissed it.³⁶ Then, after finding that the package remained incomplete, we dismissed it.³⁷

At the outset, we reject NWR's claim that the 2013 Contour and the 2019 Contour were not "vastly different."³⁸ A simple comparison of the contour maps available in the Commission's Licensing and Management System demonstrates that the two contours are quite different.³⁹

Having upheld our determination that the 2013 and 2019 Contours were "vastly different," we also uphold our finding that the interference claim package based on the facilities specified in the 2013 License became outdated or inaccurate when we issued the 2019 License. As we explained in the *Reconsideration Decision*, NWR should have submitted an updated statement that the NWR Translator was operating with its licensed parameters, and an updated statement that it had attempted to privately resolve its predicted interference claims after grant of the 2019 License.⁴⁰

We are not persuaded by NWR's argument that it did submit a statement that the NWR Translator was operating pursuant to the parameters specified in the 2019 License.⁴¹ We acknowledge that, as NWR points out, Commission staff did receive an email from NWR on June 16, 2020, which indicated the NWR Translator was operating at 250 watts ERP and rebroadcasting the signal of KGTK(AM).⁴² However, that email was not made a part of the record in this proceeding or otherwise associated with NWR's interference complaint package. Moreover, the email did not confirm that the NWR Translator was operating consistent with all of the technical parameters set forth in the 2019 License. For instance, the email did not state that the NWR Translator's antenna was located at the coordinates specified in the 2019 License, or confirm that the antenna was mounted at the height specified in that license.⁴³

³⁶ *Id.*

³⁷ *Id.* We note that the *Reconsideration Decision* also (1) dismissed certain pleadings submitted by Bustos and NWR as late-filed or unauthorized, (2) held NWR violated the Commission's *ex parte* rules when it filed the 2020 Supplement and a request for waiver of the contour limit for predicted interference complaints, Northwest Rock N Roll Preservation Society, Request for Waiver & Addendum 2 to Supplemental Information to Informal Objection, Application File No. BNPFT-20180418ABI (rec'd Feb. 13, 2020), (3) found that the waiver request should have been dismissed for failing to satisfy the requirements of section 74.1204(f) rather than as moot, and (4) determined certain allegations made by Bustos did not need to be addressed. *Reconsideration Decision* at 4, 5, 6-7. Neither NWR nor Bustos has challenged these findings. Accordingly, they are not discussed further herein.

³⁸ Petition at 1-2.

³⁹ See Facility Technical Data for BLFT-20130402ACL, available at <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityTechDetails.html?facilityId=150021&applicationId=9c7e9bce80fc47b98a89c1b6063ebeb7> (last visited Nov. 7, 2023) (2013 Contour); Facility Technical Data for BLFT-20190904ABL, available at <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityTechDetails.html?facilityId=150021&applicationId=d2e0243bc1ef4d388b3cc1b6063ebeb7> (last visited Nov. 7, 2023) (2019 Contour).

⁴⁰ *Reconsideration Letter* at 5-6, and n.41.

⁴¹ Petition at 1.

⁴² *Id.*

⁴³ The email likely did not discuss all of the licensed parameters because it was sent in response to a request that NWR clarify only two things: (1) the primary station being rebroadcast by the NWR Translator, and (2) the ERP at which the NWR Translator was operating. See Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Brian Spencer, President, Northwest Rock N Roll Preservation Society, Application File Nos. BSTA-20200213ABI, 115908, at 2 (dated June 11, 2020).

We also uphold our finding that the interference complaint package was not rule-compliant because NWR did not proffer the statement required by section 74.1204(f)(4) regarding efforts it had made after grant of the 2019 License to privately resolve the predicted interference.⁴⁴ While NWR claims that there is evidence in the record to support a finding that NWR attempted private resolution of its interference claim after grant of the 2019 License, we disagree. Two of the communications that NWR cites were made prior to grant of the 2019 License.⁴⁵ And, while NWR asserts that the third was included in the 2020 Supplement, the version of the 2020 Supplement received by the Commission does not include it.⁴⁶

In sum, we affirm our finding that NWR's interference claim package was not rule-compliant. Having considered and rejected NWR's challenges to the findings underpinning that holding, we uphold our dismissal of the interference claim package submitted by NWR. Accordingly, we will deny the Petition.

We again remind both Bustos and NWR that, should the Bustos Translator commence operation and cause actual interference to reception of the NWR Translator, such interference would be addressed under section 74.1203(a)(3).⁴⁷ That section prohibits an authorized FM translator station from "continu[ing] to operate" if it causes any actual interference to "[t]he direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station."⁴⁸

Ordering Clauses. Accordingly, for the reasons discussed above, **IT IS ORDERED** that the Petition for Reconsideration (Pleading File No. 221441) filed by Northwest Rock N Roll Preservation Society, on September 25, 2023, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴⁴ We reject NWR's argument that the *Reconsideration Decision* found "NWR had not attempted private resolution with Bustos." Petition at 1. In fact, the *Reconsideration Decision* held that NWR had failed to submit the statement required by section 74.1204(f)(4) that it had "used commercially reasonable efforts" to inform NWR of the claimed interference to the NWR Translator facilities authorized in the 2019 License, and "attempted private resolution." *Reconsideration Decision* at 5-6. The *Reconsideration Decision* focused on whether NWR had submitted a statement that it had attempted private resolution once grant of the 2019 License had rendered outdated the evidence it had previously submitted regarding its efforts to do so. *Id.*

⁴⁵ NWR cites to an email sent to counsel for Bustos on May 5, 2018, and an August 12, 2019, letter that was submitted with the 2019 Supplement. Petition at 1.

⁴⁶ It is worth noting that, while NWR specifies the dates of the other two communications it cites, NWR does not indicate the date of this third communication.

⁴⁷ 47 CFR § 74.1203(a).

⁴⁸ *Id.*