



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
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Family Stations, Inc.
c/o Davina Sashkin
Wilkinson, Barker, Knauer, LLP
802 San Antonio St. Ste 130
Austin, TX 78701

Press Communications, Inc.
c/o Scott Woodworth
Edinger Associates PLLC
1725 I Street NW, Ste 300
Washington, DC 20006

In re: **W292FV, New York, NY**
Facility ID No. 202971
Application File No. 255167 (Modification)
Application File No. 256300 (License)

Petition for Reconsideration
Informal Objection

Dear Applicant and Petitioner/Objector:

We have before us a petition for reconsideration (Petition) filed by Press Communications, Inc. (Press) on October 29, 2024.¹ Press seeks reconsideration of the October 25, 2024, grant of the above-referenced modification application (Modification Application) for FM translator station W292FV, New York, New York (Translator).² On November 7, 2024, Family Stations, Inc. (Family)³ filed an opposition to the Petition (Petition Opposition),⁴ to which Press replied on November 20, 2024 (Petition Reply).⁵ We also have an informal objection (License Objection)⁶ filed by Press on October 30, 2024, to the above-referenced license application (License Application).⁷ For the reasons set out below, we grant the Petition and the License Objection, accept Press's showing of predicted interference to co-channel full service FM station WKMK(FM), Eatontown, New Jersey (WKMK), rescind grant of the Modification Application and return it

¹ Pleading File No. 256382.

² Application File No. 255167. On October 17, 2024, Press filed an informal objection to the Modification Application (Pleading File No. 255970) (Modification Objection). On October 23, 2024, Press filed a supplement to the Modification Objection (Pleading File No. 256185) (Modification Objection Supplement).

³ Pursuant to a pro forma assignment consummated December 5, 2024, the Translator licensee is now Loam Media, Inc. See Application File No. 259540 (Notice of Consummation). For narrative consistency and convenience, we refer herein to both entities as "Family."

⁴ Pleading File No. 257783.

⁵ Pleading File No. 258284.

⁶ Pleading File No. 256411. The License Objection included a request to stay processing of the Licensing Application pending finality of the underlying construction permit.

⁷ Application File No. 256300.

to pending status, and dismiss the License Application as moot.⁸

Background. On December 8, 2023, Family submitted a request for silent special temporary authority (STA), reporting that the Translator had been silent since October 27, 2023, due to loss of its transmitter site lease.⁹ The Station’s license was set to automatically expire on October 27, 2024, after one year of continuous silence.¹⁰ On October 2, 2024, Family filed the Modification Application, specifying a new transmitter site. On October 17, 2024, Press filed the Modification Objection, claiming that the Translator’s modified facilities would cause predicted interference to the direct reception of FM station WKMK in violation of section 74.1204(f) of the Commission’s rules.¹¹ In the Modification Objection, Press included a map showing a potential “zone of interference” within WKMK’s 45 dBu signal strength contour that covers an estimated 3.9 million people across the greater New York metropolitan area.¹² Press also included the names, addresses, and locations of 15 WKMK listeners within this interference zone and stated that it was in the process of obtaining signed declarations from these listeners.

In response to the Modification Objection, on October 23, 2024, Family amended the Modification Application by reducing the Translator’s proposed operating power from 5 to 0.5 watts. This power reduction, Family alleged, would eliminate predicted interference to all but two of WKMK’s listener complainants.¹³ On the same day, October 23, 2024, Press filed the Modification Objection Supplement, arguing that: (1) the proposed facilities would still cause interference within the WKMK 45 dBu contour; (2) 1 watt is the lowest effective radiated power (ERP) authorized by section 73.212;¹⁴ and (3) FCC policy requires that the processing of an application requesting a *Mattoon* waiver be delayed by 90 days.¹⁵ In the Modification Objection Supplement, Press submitted a technical report showing a “zone of interference” within WKMK’s amended 45 dBu contour covering a population of about 1.5 million people.¹⁶ Press identified individual listeners that were likely to experience interference and stated that it would immediately start obtaining listener complaints located within the amended 45 dBu Translator contour. Press also argued that Family’s amendment “presumes that they may eliminate enough of the listeners to reduce the number below the ten (10) threshold . . . A review of the rule and the [*Translator*

⁸ See 47 CFR § 74.1204(f).

⁹ Application File No. 231186 (granted December 8, 2023). On June 4, 2024, Family filed an extension of its silent STA authority (Application File No. 245775), which was granted on June 12, 2024. On October 28, 2024, Family submitted another silent STA extension request, which was dismissed as moot on October 28, 2024 (Application File No. 256270).

¹⁰ See 47 U.S.C. 312(g).

¹¹ See 47 CFR § 74.1204(f).

¹² Modification Objection at 4.

¹³ Modification Application, Exh. entitled “W292FV Translator Amendment Exhibit Move to Montefiore.pdf” at 3-4.

¹⁴ 47 CFR § 73.212.

¹⁵ Modification Objection Supplement at 2. A *Mattoon* waiver waives certain restrictions on FM translator relocations upon a four-four factor showing, as set out in *John F. Garziglia, Esq.*, Letter, 26 FCC Rcd 12685 (MB 2011) and subsequent decisions.

¹⁶ Modification Objection Supplement at 2.

Interference Order] does not support that assumption.”¹⁷ For these reasons, Press requested that the amended Modification Application not be granted until Press has had “reasonable time to supplement its original [section 74.1204(f)] objection.”¹⁸

On October 25, 2024, the Bureau granted the amended Modification Application.¹⁹ Also on October 25, 2024, Family filed the License Application, which included automatic program test authority (PTA). On October 29, 2024, Press filed the Petition, contending that Family had “put the FCC in the position of having to quickly act on the application to prevent the W292FV license from expiring while leaving Press with only 2 days to document interference claims under Section 74.1204(f).”²⁰ The Petition includes the requisite listener complaints to complete Press’s section 74.1204(f) interference claim.²¹ Press contends that it “should have been afforded the reasonable opportunity to provide [listener complaints] prior to grant but was ‘effectively precluded’ from doing so by the FCC’s grant in a mere 2 days.”²² On October 30, 2024, Press filed the License Objection, accompanied by the Stay Request, in which it reiterates its interference concerns.

On November 7, 2024, Family filed the Petition Opposition, arguing that the Bureau had properly granted the Modification Application because the Modification Objection Supplement did not contain a sufficient number of listener statements for a complete section 74.1204(f) interference claim.²³ Regarding Press’s argument that it was “effectively precluded” from filing a predicted interference claim, Family contends that the *W262CY Letter* does not apply here, as it was decided prior to the *Translator Interference Order* and involved long-distance transmitter relocations that could not be reasonably anticipated by potential objectors.²⁴ Moreover, Family argues, the reasoning in the *W262CY Letter* does not apply because Press was not taken unawares by a long-distance move but was “very much aware” of the Modification Application. Finally, Family notes that Press has the option of submitting an actual interference claim under section 74.1203(a)(3) but has not yet done so.²⁵

On November 20, 2024, Press filed the Petition Reply, in which it emphasizes its position that “[t]he central issue in this proceeding is that the FCC failed to provide Press with any time to put together an interference package pursuant to Section 74.1204(f) of the Commission’s Rules . . . [thus] effectively precluding Press from participating in the [] proceeding.”²⁶ Press rejects Family’s claim that it had time because it was aware of the Modification Application, arguing that “it was not until the Application was

¹⁷ Modification Objection Supplement at 4 (citing *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*)).

¹⁸ Modification Objection Supplement at 6.

¹⁹ *Broadcast Applications*, Public Notice, Report No. PN-1-241025-01 (MB Oct. 25, 2024).

²⁰ Petition at 3 (citing *W262CY, Cleveland, Ohio*, Letter Decision, 32 FCC Rcd 5692 (MB 2017) (*W262CY Letter*) (granting a section 74.1204(f) interference claim submitted on reconsideration)).

²¹ See 47 CFR §§ 74.1201(k); 74.1203(a)(3)(1) (Table 1). Press submits 19 listener complaints, six of which lack phone numbers and three of which have a duplicative or non-specific location. Therefore, we find that Press has submitted the requisite 10 valid listener complaints for the population within its interference contour. See Petition, Attach. 4, at 1 (stating that WKMK has a 60 dBU population of 755,046 persons).

²² Petition at 5.

²³ Petition Opposition at 2.

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 4 (citing 47 CFR § 74.1203(a)(3)).

²⁶ Petition Reply at 1.

actually filed on October 23, 2024 (4:26PM) that it could start the process of analyzing the interference area and obtaining listener complaints” as the “proposed service area changed drastically from the original filing.”²⁷ Although the underlying facts in the *W262CY Letter* are distinguishable, Press contends, “the overarching legal concept is exactly the same . . . granting an application either before or immediately after public notice precludes interested parties from participating in the proceeding.”²⁸ Press concludes that allowing this precedent to stand would make the provisions of section 74.1204(f) meaningless by failing to prevent a translator from going on the air that would cause interference to a full power station.²⁹

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.³⁰ A petition for reconsideration may be filed by a party to a proceeding or “any other person aggrieved or whose interests are adversely affected by” the underlying decision.³¹ An informal objection must provide properly supported allegations of fact which, if true, would establish a substantial and material question of fact regarding whether grant of the application in question would be consistent with the public interest, convenience and necessity.³²

The rules do not provide a specific window of opportunity for a potentially affected station to file a predicted interference claim prior to application grant.³³ However, because Press’s interests are adversely affected by the grant of the Modification Application, it is entitled under section 1.106(b)(1) of the rules to file a petition for reconsideration.³⁴ Therefore, we consider all of the facts presented in the Petition that were not known or existing at the time of Press’s last opportunity to present such matters. This includes the listener complaints submitted with the Petition, since Press could not have produced the requisite number of listener statements in the brief time permitted.

Upon engineering review of the Petition, we find Press has satisfied the requirements of sections 74.1204(f) and 74.1201(k) and established that interference was predicted to occur to WKMK at the time the Petition was filed (and presumably has been actually occurring since the grant of the License

²⁷ Petition Reply at 2-3.

²⁸ *Id.* at 3.

²⁹ *Id.* at 4.

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

³¹ 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1).

³² *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

³³ Minor modification and license applications are not subject to the statutory 30-day petition to deny window but are eligible for grant as soon as accepted for filing. *See* 47 U.S.C. § 309(b), (c).

³⁴ *See* 47 CFR § 1.106(b)(1) (“Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken.”), *see also Translator Interference Order*, 34 FCC Rcd at 3569 (“However, a station licensee that files an interference claim package and, after being directed to do so by Commission staff, serves it on the translator, is considered a party to the resulting proceeding, as is the translator.”).

Application).³⁵ Therefore, we rescind grant of the Modification and License Applications, return the Modification Application to pending status, and dismiss the License Application as moot.³⁶

Because the Petition is acceptable under section 1.106(b)(2), we need not decide whether it would also be in the public interest to consider it under section 1.106(c)(2).³⁷ In the *W262CY Letter*, the petitioner had failed to file an informal objection prior to grant and therefore lacked standing to file a petition for reconsideration.³⁸ The Bureau exercised its discretion under section 1.106(c)(2) to consider a section 74.1204(f) interference claim included in the petition for reconsideration “as required in the public interest.”³⁹ The Bureau found that the public interest would be served by such consideration because: (1) the long-distance transmitter site change at issue affected the petitioner’s ability to object prior to grant; and (2) consideration of the interference claim would “facilitate resolution of this case on a more complete and accurate record.”⁴⁰ Accordingly, the Bureau rescinded grant of and dismissed the subject application. Although we do not rely on the *W262CY Letter*, we note that the reasoning therein supports consideration of Press’s predicted interference claim. As in the *W262CY Letter*, Press was similarly—in fact more severely—disadvantaged in filing an informal objection. Furthermore, consideration of the facts presented on reconsideration in this case would likewise facilitate resolution on a more complete and accurate record because it would take into account Press’s interference showing.⁴¹

Finally, we caution Family against future reliance on processing staff’s willingness to accommodate last-minute filings and emphasize that timely restoration of permanent facilities is the responsibility of the licensee and should be undertaken expeditiously.⁴²

Conclusion/Actions. For the reasons stated above, IT IS ORDERED that the petition for reconsideration filed by Press Communications, Inc. on October 29, 2024, Pleading File No. 256382, IS GRANTED.

IT IS FURTHER ORDERED that the informal objection filed by Press Communications, Inc. on

³⁵ In this respect, we reject Family’s contention that an interfering station may respond to a section 74.1204(f) claim by resolving some, but not all, listener complaints and then expecting the complaining station to “top up” its listener complaints to meet the threshold number set out in section 74.1203(a)(3)(1).

³⁶ These actions will necessarily return W292FV to its previously licensed facilities, which are those authorized under Application File No. 176857 (granted Dec. 6, 2021). We further note that these actions do not affect the fact that the Translator’s operation after grant of the License Application was authorized pursuant to PTA and therefore does not count as silence for 47 U.S.C. § 312(g) purposes.

³⁷ Because we grant the Petition and Informal Objection on other grounds, we do not reach Press’s arguments regarding minimum allowable operating power and routine delay of *Mattoon* waiver requests. However, we note that 47 CFR § 73.1203 does not obviate the need for 47 CFR § 74.1204(f), which performs the critical function of allowing potentially affected stations to identify and prevent potential interference issues *before* a translator commences operation. *See, e.g., Bustos Media Holdings, LLC*, Memorandum Opinion and Order, 35 FCC Rcd 11667, 11671, para. 8, n.35 (2020); *Emmanuel Communications, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 9294, 9297, para. 7, n.24 (2019).

³⁸ *See W262CY Letter*, 32 FCC Rcd at 5965; 47 CFR § 1.106(b)(1).

³⁹ *W262CY Letter*, 32 FCC Rcd at 5965 (citing 47 CFR § 1.106(c)(2)).

⁴⁰ *W262CY Letter*, 32 FCC Rcd at 5965.

⁴¹ *Id.*, *see also Nevada-Utah Conference of Seventh-Day Adventists*, Letter Decision, 26 FCC Rcd 15135, 15137 (MB 2011) (considering additional evidence raised in a petition for reconsideration as in the public interest).

⁴² *See, e.g., R&M Broadcasting Company*, Memorandum Opinion and Order, 26 FCC Rcd 10336, 10344, para. 29 n.52 (*R&M*).

October 30, 2024, Pleading File No. 256411, IS GRANTED.

IT IS FURTHER ORDERED that grant of the modification application filed by Family Stations, Inc. on October 2, 2024, Application File No. 255167, IS RESCINDED and the modification application returned to pending status.

IT IS FURTHER ORDERED that the license application filed by Family Stations, Inc. on October 25, 2024, Application File No. 256300, IS DISMISSED as moot.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau