



Federal Communications Commission
Washington, D.C. 20554

October 19, 2010

DA 10-2004

In Reply Refer To:

1800B3-MM

Released: October 19, 2010

John Wells King, Esq.
Garvey Schubert Barer
Fifth Floor
Flour Mill Building
1000 Potomac Street, N.W.
Washington, DC 20007

In re: KMBQ(AM), Wasilla, Alaska
Facility ID No. 161023

File Nos. BL-20081216BLM;
BMP-20081212AAP

License to Cover

Minor Modification Application

Dear Mr. King:

We have before us the captioned license to cover and minor modification applications (collectively, "Applications") of Spirit of Alaska Broadcasting, Incorporated ("Spirit") for station KMBQ(AM), Wasilla, Alaska ("Station").¹ Also before us are four informal objections from Bonnye L. Matthews ("First Matthews Objection," "Second Matthews Objection," etc.)² and one informal objection from Drew Lay and Karae Moore ("Lay/Moore Objection")³ questioning the sufficiency of the Commission's radio frequency ("RF") emissions standards. Spirit filed a reply on March 20, 2009,

¹ KMBQ(AM) operates with 1 kilowatt of power from a single antenna at a frequency of 1430 kilohertz.

² We received the First Matthews Objection on February 9, 2009. It included two addenda, received February 24, 2009, and May 6, 2009. The Second and Third Matthews Objections were reportedly filed as petitions pursuant to the National Environmental Policy Act ("NEPA") and were received on October 22, 2009. The Fourth Matthews Objection, also styled as a "NEPA petition," was filed February 3, 2010. Matthews sent an affidavit ("Matthews Affidavit"), a DVD and a doctor's report on May 13, 2010, as addenda to the Fourth Matthews Objection. Because petitions to deny do not lie against minor modification applications, Matthews' pleadings will be considered as informal objections under § 73.3587 of the Rules. *See* 47 U.S.C. § 309(c) and 47 C.F.R. §§ 73.3584, 73.3587; *see also Change of Community*, Report and Order, 21 FCC Rcd 14212, 14220 (2006); *CMP-Houston KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, 10660 n.31 (2008), citing *Cloud Nine Broadcasting, Inc.*, Letter, 10 FCC Rcd 11555, 11556 (1995).

³ Filed on Mar. 10, 2009. The Lay/Moore Objection noted that it "has the same concerns" as Matthews and agrees with her comments.

urging grant of the Applications because they fully comply with the Commission's Rules ("Rules"). For the reasons set forth below, we deny the objections and order Spirit to submit an amendment to its license application.

Background. Our Rules set limits on permissible levels of human exposure to RF radiation.⁴ Matthews claims that the Rules are inadequate, and therefore the Commission has shirked its duty under NEPA to account for all possible environmental hazards.⁵ She requests that the Commission cancel the Permit and bar the Station from being built, or offer Spirit another permit elsewhere.⁶ The Commission's Office of Engineering and Technology ("OET") has responded to two letters from Alaska Senator Murkowski on this matter.⁷

With one exception, Matthews does not question Spirit's Rule compliance.⁸ Her main argument is that the Commission's regulations and policies limiting the general population's exposure to RF radiation⁹ are inadequate. She claims that our position is outdated and challenges our reliance on allegedly industry-centric organizations like the Institute of Electrical and Electronics Engineers ("IEEE") and the National Council on Radiation Protection and Measurements ("NCRP").¹⁰ On a personal level, Matthews says that her abnormal brain waves are so sensitive to RF radiation that prolonged exposure to the radio tower could make her unable to function physically or mentally.¹¹ To support her claim that the

⁴ 47 C.F.R. §§ 1.1307(b), 1.1310, 2.1091, and 2.1093.

⁵ Third Matthews Objection at 2; 42 U.S.C. §§ 4321 *et. seq.* (1976).

⁶ Second Matthews Objection at 2.

⁷ *Letter to the Honorable Lisa Murkowski from Julius P. Knapp, Chief, Office of Engineering and Technology* (Jan. 6, 2009) ("*First Congressional*"); *Letter to the Honorable Lisa Murkowski from Julius P. Knapp, Chief, Office of Engineering and Technology* (May 12, 2009) ("*Second Congressional*").

⁸ The First Matthews Objection, as well as a separate Matthews objection filed with the Commission's Enforcement Bureau, claimed that Spirit failed to construct in accordance with the terms and conditions of the Permit and failed to place a safety fence around the antenna (Fourth Matthews Objection, Attachment 3 at 3). On February 5, 2009, and April 22, 2009, in response to the objection discussed above, Enforcement Bureau Resident Agents ("Agents") inspected the Station's facilities. The Agents found that Spirit had failed to erect a secure, locked fence around the antenna, a violation of Section 73.49 of the Rules, 47 C.F.R. § 73.49, that warranted a \$7,000 Notice of Apparent Liability; *see Spirit of Alaska Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, EB-08-AN-0111 (EB rel. Apr. 30, 2009). Soon after the Agents' visit, Spirit erected a Rule-compliant fence. Because the Enforcement Bureau has already addressed Matthews' concerns regarding the fence, we will not consider this issue further. However, we order that Spirit describe, in an amended FCC Form 302 within 30 days of the effective date of this letter, how the fence complies with the requirements of OET Bulletin 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" (Aug. 1997) ("*OET Bulletin 65*"), including how it will preclude casual or inadvertent access, and whether it posts warning signs at appropriate intervals which describe the nature of the hazard (*See also* 47 C.F.R. § 73.49). Assuming that the amended application complies with our Rules and filing requirements, we will thereafter grant the Applications without any further correspondence.

⁹ 47 C.F.R. § 1.1310; *OET Bulletin 65*.

¹⁰ First Matthews Objection at 3-4; Matthews Affidavit at 4-5.

¹¹ *See, e.g.*, Second Matthews Objection at 1; Matthews Affidavit at 2-3; DVD Brain Map of Quantitative Electroencephalography and Evoked Potentials for Bonnie Matthews.

current regulations are insufficient and harmful, she cites a journal article, the BioInitiative Report and the International Association of Firefighters' policy position on locating RF towers at fire stations.¹²

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended ("Act"), informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of an application would be *prima facie* inconsistent with Section 309(a) of the Act, which governs our evaluation of minor change applications.¹³ Specifically, Section 309(a) of the Act 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 granting such application.¹⁴

With respect to Matthews' concerns regarding her perceived unhealthy exposure to RF radiation from the Station's facilities and her concomitant concern that the Rules do not provide adequate protection, we observe first that Spirit's proposal included a certification that the proposed facility was excluded from environmental processing because it would not have a significant environmental impact and complied with the maximum permissible radiofrequency electromagnetic exposure limits.¹⁵ Matthews has failed to demonstrate that this conclusion was incorrect or that the Station is not in compliance with our Rules.

Moreover, we reject Matthews' contention (and by association, Lay/Moore's contention) that the Commission's RF exposure guidelines provide insufficient protection to members of the general public. The Commission's current environmental rules were first established in 1985, pursuant to a notice and comment rulemaking proceeding.¹⁶ The current, more restrictive, guidelines were finalized in 1997, based on the recommendations and advice of federal agencies and groups such as the IEEE and NCRP with extensive expertise in health-related areas and in standards setting.¹⁷ To the extent that Matthews believes that recent studies indicate that there are more significant effects of long-term low-level exposure

¹² Mina Ha et al., *Radio-Frequency Radiation Exposure from AM Radio Transmitters and Childhood Leukemia and Brain Cancer*, 166 AM. J. EPIDEMIOLOGY 3, 270-79 (2007); Sage, Cindy, ed., *Bioinitiative Report: A Rationale for a Biologically-based Public Exposure Standard for Electromagnetic Fields (ELF and RF)*, (2007) <http://www.bioinitiative.org/report/index.htm>; International Association of Firefighters Position on the Health Effects from Radio Frequency/Microwave (RF/MW) Radiation in Fire Department Facilities from Base Stations for Antennas and Towers for the Conduction of Cell Phone Transmissions, <http://www.iaff.org/hs/Facts/CellTowerFinal.asp>.

¹³ 47 U.S.C. § 309(a).

¹⁴ *Id.* at § 309(e).

¹⁵ See 47 C.F.R. §§ 1.1306 and 1.1310 and File No. BNP-20050118ALF, Exhibit 19.

¹⁶ *Responsibility of the Federal Communications Commission to Consider Biological Effects of Radiofrequency Radiation when Authorizing the Use of Radiofrequency Devices; Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation on FCC-Authorized Communications Services and Equipment*, Report and Order, 100 FCC 2d 543 (1985); *on reconsideration*, 58 RR 2d 1128 (Aug. 22, 1985).

¹⁷ *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, Report and Order, 11 FCC Rcd 15123, 15128 (1996); *Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(V) of the Communications Act of 1934; Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, Second Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 13494, 13496 (1997), *aff'd sub nom. Cellular Taskforce v. FCC*, 205 F.3d 82 (2d Cir. 2000) ("Cellular Taskforce").

to RF radiation from this broadcast facility, these issues should be raised in a petition for rulemaking rather than in the context of an adjudicatory proceeding. Finally, we note that Matthews' concerns have already been extensively addressed in U.S. Appeals Courts.¹⁸

Conclusion. Accordingly, IT IS ORDERED, that the informal objections filed by Matthews, Lay, and Moore ARE DENIED.

IT IS FURTHER ORDERED that Spirit of Alaska Broadcasting, Incorporated, file an amended FCC Form 302 within 30 days of the effective date of this letter which describes how the protective fence complies with Section 73.49 of the Rules and *OET Bulletin 65*.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Spirit of Alaska Broadcasting, Incorporated
Ms. Bonnye L. Matthews
Mr. Drew Lay
Mr. Karae Moore

¹⁸ Matthews' concerns also have been addressed in OET's Congressional responses. *See First Congressional and Second Congressional; Cellular Taskforce*, 205 F.3d at 90-92 (finding that the Commission acted reasonably in relying on health and safety standards for RF radiation issued by the American National Standards Institute, IEEE, and NCRP in setting its own guidelines for Commission-regulated transmitters and facilities); *EMR Network v. FCC*, 391 F.3d 269 (U.S. App. D.C. 2004), *cert. denied* 545 U.S. 1116 (2005) (finding that research articles and reports of possible non-thermal effects of RF radiation did not provide a basis for overturning agency's refusal to initiate rulemaking).