



Federal Communications Commission
Washington, D.C. 20554

September 10, 2014

In Reply Refer To:
1800B3-PPD

Mr. Paul Bame
Prometheus Radio Project
P.O. Box 42158
Philadelphia, PA 19101

Mr. Harry Stone
Clovis Seventh Day Adventist Church
1501 E. Llano Estacado Boulevard
Clovis, NM 88101

In re: **Application for Construction Permit
for a Low Power Broadcast FM
Station**

NEW-LP, Clovis, NM
Facility ID No. 197187
Clovis Seventh Day Adventist Church
File No. BNPL-20131114AOS

Informal Objection

Dear Messrs. Bame and Stone:

This letter refers to: (1) Clovis Seventh Day Adventist Church's ("Applicant") Form 318 application ("Application") for a new low power FM ("LPM") station ("Station") in Clovis, New Mexico; and (2) Prometheus Radio Project's ("Prometheus") informal objection ("Objection") to the Application.¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. Applicant timely filed the Application on November 14, 2013, prior to the close of the LPM window.² The Application was accepted for filing as a "singleton" on November 25, 2013. Prometheus filed its Objection on January 17, 2014.

The Application states that the Station will carry no locally originated programming, but rather programming from Three Angels Broadcasting Network ("3ABN"), which will be provided twenty four hours a day, seven days a week.³ In its Objection, Prometheus alleges that the lack of local programming

¹ Applicant filed no response to the Objection.

² See *Media Bureau Extends Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 15763 (MB 2013).

³ Application at Attachment 2, Educational Program Exhibit.

proposed by Applicant does not “[align] with the Commission’s LPFM local-focus policy.”⁴

Prometheus also argues that grant of the Application would violate the Commission’s prohibition on the cross-ownership of a LPFM station and any other non-LPFM broadcast station because 3ABN has an attributable interest in the Application.⁵ Prometheus argues that 3ABN has an attributable interest because 3ABN itself has media interests, including WDQN-FM, Duquoin, Illinois⁶ and 3ABN will provide at least fifteen percent of the Station’s weekly programming.⁷ As further evidence of 3ABN’s “cognizable interest” in the Application, Prometheus claims that most or all of listener financial contributions to the Station would go to 3ABN, rather than the Applicant.⁸

Prometheus further alleges that Applicant is a local chapter of the General Conference of Seventh Day Adventists (“General Conference”), and Applicant has failed to demonstrate that it is separate from the General Conference and that it has a distinct local presence and mission.⁹ Prometheus argues that Applicant is not separate from the General Conference because it relies on the incorporation status of its parent organization, the Texico Conference of Seventh Day Adventists (“Texico”) and has failed to prove that it is separately incorporated.¹⁰ Prometheus further argues that Applicant’s use of 3ABN content, instead of providing locally originated programming, is evidence of “no local distinction.”¹¹

Prometheus also argues that because Applicant cannot show separate incorporation and a distinct local purpose under Section 73.858 of the Rules, Applicant cannot qualify as a local entity under Section 73.853 of the Rules.¹² Without proof of separate incorporation, Prometheus claims that “the locality of the listed licensee address and board members [is] moot.”¹³ Prometheus further states that Applicant has provided insufficient information to judge whether its parent organization Texico, which, according to

⁴ Objection at 2.

⁵ Objection at 3, *citing* 47 C.F.R. § 73.860(a) (with exceptions, “no license shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions”).

⁶ *Id.* at 2. A search of CDBS showed that Duquoin, Illinois is the city of license for station WDQN-FM and that 3ABN is the licensee.

⁷ Objection at 2-3, *citing* 47 C.F.R. §§ 73.858, 73.3555 Note 2.

⁸ *Id.* at 3.

⁹ *Id.* *citing* 47 C.F.R. § 73.858(b).

¹⁰ *Id.* at 2-3. “The Clovis SDA Church is a constituent church under the umbrella of the Texico Conference of Seventh-day Adventists.” Application at Attachment 10, Tax Exempt Letter-01. Applicant states that its nonprofit status is provided through Texico, its “parent organization,” under the laws of New Mexico. Application at Attachment 2, Educational Program Exhibit. Texico is an incorporated entity, which “for IRS purposes is under the umbrella of the General Conference of Seventh-day Adventists.” Application at Attachment 10, Tax Exempt Letter-01. A search of the New Mexico Secretary of State’s website confirms that Texico is currently an active domestic non-profit corporation under New Mexico state law.

¹¹ *Id.* at 3.

¹² *Id.*, *citing* 47 C.F.R. § 73.853 (“an LPFM station may be licensed only to nonprofit educational organizations and upon a showing that the proposed station will be used for the advancement of an educational program,” and “only local organizations will be permitted to submit applications and to hold authorizations in the LPFM service” with locality being judged by the locations of the headquarters and residences of the board members).

¹³ *Id.*

Prometheus, might be “a legitimate, yet unlisted party to the application,” qualifies as a local organization under Section 73.853 of the Rules.¹⁴

Discussion. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended, (“Act”)¹⁵ provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, necessity, and convenience.¹⁶ Prometheus has failed to satisfy this threshold, thus for the reasons set forth below, we deny the Objection.

The Commission does not limit LPFM eligibility to entities that will provide locally originated programming.¹⁷ Prometheus has thus failed to show that Applicant’s choice of programming renders it ineligible to receive a LPFM authorization.

Prometheus has failed also to demonstrate that the filing of the Application violates the Commission’s cross-ownership prohibition.¹⁸ Section 73.3555 of the Commission’s rules (“Rules”) states that a debt or equity interest holder in an application with more than 33 percent of the total asset value¹⁹ will have their interests attributed²⁰ if they supply at least 15 percent of the weekly programming for a station.²¹ Prometheus provides no proof that 3ABN has an equity or debt interest in the Station. Moreover, Prometheus merely provides the bare allegation that a monetary flow between 3ABN and Applicant could mean that 3ABN is in control of the Application. Prometheus provides no evidence that financial contributions would flow to 3ABN instead of the Applicant or explain how a transfer of contributions from Applicant to 3ABN would result in an attributable interest for 3ABN in the Application.²² Prometheus has failed to provide sufficient evidence to indicate that 3ABN has an attributable interest in the Application, thus, the filing of the Application does not violate the Commission’s cross-ownership prohibition.²³

Next, Section 73.858(b) is only applicable when determining the attribution of LPFM interests, to ensure that the applicant does not violate the Commission’s prohibition on multiple ownership.²⁴ Here, Prometheus has failed to allege that the General Conference has any attributable LPFM assets. Therefore,

¹⁴ *Id.* at 4, citing 47 C.F.R. § 73.853.

¹⁵ 47 U.S.C. § 309(e).

¹⁶ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *affirmed sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (“informal objections . . . must . . . contain adequate and specific factual allegations sufficient to warrant the relief requested”).

¹⁷ *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15460-66 (2012) (in choosing among mutually exclusive applicants, however, the Commission will award a comparative point to applicants who pledge to “originate locally at least eight hours of programming per day”).

¹⁸ 47 C.F.R. § 73.860.

¹⁹ 47 C.F.R. §73.3555, Note 2(i)(1)(A).

²⁰ *Id.* at Note 2(i)(1).

²¹ *Id.* at Note 2(i)(1)(B)(ii).

²² *See, e.g.,* 47 C.F.R. §73.3555, Notes 2-10 (which do not provide for an attributable interest in cases of transfers of money between an applicant and another entity in the course of the regular operation of the station).

²³ 47 C.F.R. § 73.860.

²⁴ 47 C.F.R. § 73.855.

Section 73.858(b) is not applicable, and Applicant is not required to demonstrate that it is separately incorporated from the General Conference or that it has a distinct local presence.²⁵ Consequently, Prometheus' claim that Applicant cannot qualify as a local organization under Section 73.853 of the Rules because it has not proven separate incorporation and a distinct local presence under Section 73.858 of the Rules is moot.

Furthermore, under Section 73.853 of the Rules, an applicant may be considered local if its physical headquarters or campus is located within a certain distance of the transmitter site and that 75% of its board members reside within a certain distance²⁶ of the transmitter site.²⁷ Applicant has certified that both its headquarters and board members are located within the requisite distance of the transmitter site.²⁸ We, therefore, reject Prometheus' argument that Applicant is not sufficiently local to receive a grant of its Application.

Finally, Prometheus seems to suggest that Texico is a real party in interest in the Application.²⁹ The Commission requires applicants to disclose all parties to the application as defined by our attribution rules.³⁰ To determine whether a party is a real party in interest, the Commission may ascertain whether the party is in *de facto* control of the station.³¹ While there is no exact formula for evaluating whether a party is in *de facto*, or actual control, the Commission may look to whether the alleged real party in interest has the ability to make decisions regarding the station's personnel, programming and finances.³² Prometheus' bare allegation that the provision of federal tax-exempt status to Applicant by Texico, its parent organization, could mean that Texico is in control of the Application is insufficient to make a *prima facie* case that Texico has control over the personnel, programming, and or finances of the Applicant, the Application, or the proposed Station.³³ Thus, Prometheus has failed to demonstrate that Texico is a real party in interest.³⁴

²⁵ We note that Applicant is relying on the incorporation of its parent organization, Texico, as proof of its nonprofit status, thus for the purposes of attribution in the future, this LPFM station will be attributable to Texico.

²⁶ For both the headquarters and board members, the distance is "16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets." 47 C.F.R. §§ 73.853(b)(1)-(2).

²⁷ 47 C.F.R. §§ 73.853(b)(1)-(2).

²⁸ See Application.

²⁹ Objection at 4.

³⁰ See Instructions for FCC Form 318 at 4; 47 C.F.R. § 73.3555.

³¹ See *Hicks Broadcasting of Indiana, LLC*, Hearing Designation Order, 13 FCC Rcd 10662, 10676-10677 (MB 1998).

³² See *id.*, 13 FCC Rcd at 10676.

³³ Because Prometheus has failed to allege that Texico is a real party in interest, we reject Prometheus' argument that the locality of Texico is unproven.

³⁴ See, e.g., *Mt. Zion Education Ass'n*, Letter, 25 FCC 15088 (MB 2010) (finding that Objector had not presented a substantial and material question of fact that an organization that helped to file applications was actually a real party in interest).

Conclusion/Actions. Accordingly, IT IS ORDERED that the Objection IS DISMISSED. Furthermore, application BNPL-20131114AOS IS GRANTED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" with a stylized flourish at the end.

Peter H. Doyle
Chief, Audio Division
Media Bureau