



**Federal Communications Commission
Washington, D.C. 20554**

January 6, 2015

In Reply Refer To:
1800B3-ATS

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In re: Blue Ridge Free Media
New LPFM, Charlottesville, Virginia
Facility ID Number: 192547
File Number: BNPL-20131113AXE

Informal Objections

Dear Counsel, Ms. Patrick, and Mr. Magill:

We have before us: 1) the application of Blue Ridge Free Media ("Blue Ridge") for a new LPFM station at Charlottesville, Virginia ("Blue Ridge Application"); 2) the Informal Objection filed by Hannah Patrick ("Patrick") against the Blue Ridge Application ("Patrick Objection"); and 3) the Informal Objection filed by D.R. Tyler Magill against the Blue Ridge Application ("Magill Objection").¹ For the reasons set forth below, we grant the Patrick Objection, deny the Magill Objection and dismiss the Blue Ridge Application.

Background. Blue Ridge filed the Blue Ridge Application during the October 2013 LPFM filing window. The Bureau determined that the Blue Ridge Application and the application of Rectors & Visitors of the University of VA ("UVA")² were mutually exclusive and identified them as MX Group 385.³ The Application identifies Michael C. Friend as a board member and President of the organization.⁴ The Blue Ridge Application explains that Blue Ridge originally existed as a limited liability corporation ("Blue Ridge LLC") and incorporated as a nonprofit corporation in early 2012.⁵

The Magill Objection alleges Friend "is attempting to squat on multiple LPFM frequencies" and states that he harbors "personal animosity" towards Station WTJU(FM), Charlottesville, Virginia, which

¹ The Patrick Objection was filed in December 11, 2013, and the Magill Objection was filed on December 18, 2013. Blue Ridge filed an Opposition to both objections on January 29, 2014. No replies were filed.

² File No. BNPL- 20131113BJE.

³ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

⁴ Blue Ridge Application at Section II, Question 3.a. The other board members and officers identified are: David Dillenhunt, Kimberly S. Lo, John Pinter, and Jeremy Johnson.

⁵ *Id.* at Exhibit 10.

is licensed to UVA.⁶ Magill further states that Friend has previously been employed by STU-COMM, a commercial licensee of various stations in the area, and explains that Friend was dismissed by that company.⁷ Magill finally argues that Friend's actions show a "long-standing pattern of fraud and deceit."⁸

The Patrick Objection argues that the Blue Ridge Application and three other applications for new LPFM stations in the central Virginia area are "suspiciously similar to one another" and suggests that the four applicants colluded in filing their applications.⁹ Patrick also states that Catherine Patterson, the President of Big Deal, was a founding member of Blue Ridge LLC.¹⁰

The Opposition first argues that the both objection are procedurally defective because: 1) they are not supported by declarations; 2) Patrick and Magill did not sign their respective objections, and 3) they are untimely since "petitions against a [MX] LPFM application are to be filed 30 days after a tentative selectee in the MX group is named in a public notice. No such public notice has been issued."¹¹ The Opposition further argues that the Magill Petition does not raise allegations relevant to Blue Ridge's qualifications, and that Friend served as a consultant to those applicants identified by Patrick, but does not have any financial interests in the applicants.¹²

On September 5, 2014, the Bureau identified the Blue Ridge Application as the tentative selectees of MX Group 385 and afforded all mutually exclusive applicants 90-day periods in which to file major change amendments in order to resolve their mutual exclusivities.¹³ During this time, UVA filed a major amendment which resolved the mutual exclusivity between its application and the Blue Ridge Application.

Discussion. Initially, we find that both objections were timely filed because an informal objection may be filed at any point prior to the grant of an application.¹⁴ Additionally, there is no requirement that informal objections be supported by declarations as Blue Ridge states. Finally, both

⁶ Magill Objection at 1.

⁷ *Id.*

⁸ *Id.*

⁹ Patrick Objection at 1-2. The applications cited by Patrick were filed by Gateway Media (File No. BNPL-20131114ACU), Genesis Communications (File No. BNPL-20131113BUP); and Big Deal Productions ("Big Deal") (File No. BNPL-20131112CCY) ("Big Deal Application"). All these applications have been granted.

¹⁰ *Id.* at 2. The Big Deal Application identified Patterson as one of its board members. See Big Deal Application at Section II, Question 3.a. Patrick also alleges that Blue Ridge is not eligible for localism points because it has not existed for more than two years, and argues that Blue Ridge LLC and Blue Ridge are not in fact different entities. Because the Blue Ridge Application is now a singleton, this argument is moot.

¹¹ Opposition at 1. Blue Ridge characterizes the Patrick Objection as "untimely, speculative, and otherwise incompetent". Blue Ridge further states that the "incompetence of the [Patrick Objection] is an embarrassment to UVA". *Id.* at 2.

¹² *Id.* at 2-3. The Opposition includes a Declaration of Michael C. Friend in which he states that he acted as a consultant to the applicants listed in the Patrick Objection.

¹³ *Commission Identifies Tentative Selectees in 11 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 10847 (2014) ("September Public Notice").

¹⁴ See 47 C.F.R. § 73.3587.

objections were electronically filed, and thus Magill's and Patrick's certifications are electronically signed.¹⁵

We next find that the Magill Objection does not demonstrate that Blue Ridge violated any Commission Rules or that Blue Ridge lacks the character qualifications to hold an LPFM license. The Magill Objection merely airs Magill's personal grievances regarding Friend and provides no support for its vague allegations. We will thus deny the Magill Objection.

We also find that the Patrick Objection has not demonstrated that Blue Ridge colluded with the other applicants identified in the Patrick Objection. We have previously noted that it is common for applicants to share an engineer and to have similar programming.¹⁶ Likewise, there is no rule prohibiting applicants from utilizing a common consultant to prepare their applications. However, a review of the website for the Commonwealth of Virginia State Corporation Commission indicates that as of the filing of Blue Ridge's 2013 Annual Report on February 26, 2013, Patterson was a member of Blue Ridge's board of directors and its Secretary.¹⁷ There is no subsequent filing indicating that Patterson had resigned as a director and officer of Blue Ridge as of the time of the filing of the Blue Ridge Application, nor does the Blue Ridge Application or the Opposition indicate that she had resigned her positions with the organization.

The Rules prohibit the filing of inconsistent applications.¹⁸ An application is inconsistent with another pending application when grant of both would result in a violation of the Commission's multiple ownership rules.¹⁹ Section 73.855(a) of the Rules prohibits a party from having an attributable interest in more than one LPFM station.²⁰ Here, Blue Ridge violated Section 73.855(a) because Patterson was a board member of two organizations that filed LPFM applications during the filing window – Blue Ridge and Big Deal. As the later-filed application, the Blue Ridge Application is subject to dismissal.²¹ Moreover, a violation of the inconsistent application rule cannot be cured through a post-hoc amendment.²² We will accordingly dismiss the Blue Ridge Application.

¹⁵ The complete electronic filing of the objections, available through the Commission's CDBS Public Access website (http://licensing.fcc.gov/prod/cdbbs/pubacc/prod/app_sear.htm), contain the following certification: "I hereby certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations."

¹⁶ *Eternal Word Television Network, Inc.*, Letter, 24 FCC Rcd 4691, 4692-93 (MB 2009).

¹⁷ See 2013 Annual Report, available at <https://sccefile.scc.virginia.gov/07478043/AnnualReport/213509965.pdf>.

¹⁸ 47 C.F.R. § 73.3518 ("While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant, successor or assignee.").

¹⁹ See *Treasure Coast Media, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 5533 (1992).

²⁰ 47 C.F.R. § 73.855(a).

²¹ See *Media Bureau Announces Availability for the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8856-57 (MB 2013) ("For applicants subject to the one application filing limit, a second application filed by such an applicant in this window would be treated as a 'conflicting' application subject to dismissal under Section 73.3518.").

²² See *Big Wyoming Broadcasting Corp.*, Memorandum Opinion and Order, 2 FCC Rcd 3493 (1987) ("The graveman of the rule violation... was the filing of the inconsistent application itself and such a violation can never be cured by subsequent amendment because the act of filing cannot be undone.") (emphasis added). See also *Jersey Shore Broadcasting Corp. v. FCC*, 37 F.3d 1531, 1537 (D.C. Cir. 1994) (applicant cannot cure a violation of the inconsistent application rule by amendment).

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Informal Objection filed by D.R. Tyler Magill on December 18, 2013, IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objection filed by Hanna Patrick on December 11, 2013, IS GRANTED.

IT IS FURTHER ORDERED, that the application of Blue Ridge Free Media (BNPL-20131113AXE) for a new LPFM station at Charlottesville, Virginia, IS DISMISSED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a small mark that appears to be "M#".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Blue Ridge Free Media