



Federal Communications Commission
Washington, D.C. 20554

September 28, 2018

In Reply Refer To:
1800B3-SS

Mr. Mark Allen
Machine Project
1200 N. Alvarado Street, Suite D
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Mr. John Tayloe
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In re: **Machine Project**
KZUT-LP, Los Angeles, CA
Facility ID No. 197117
File No. BMPL-20170612ACF
File No. BLL-20170629AAW
File No. BMLL-20170725ACA

Petition for Reconsideration

Dear Licensee and Petitioner:

We have before us a petition for reconsideration (Petition) filed on July 26, 2017, by Strategic International Ministries (SIM).¹ SIM seeks reconsideration of the staff's grant of the referenced modification of construction permit application (Permit Modification Application), covering license application (License Application), and modification of license application (License Modification) filed by Machine Project (MP) for LPFM station KZUT-LP, Los Angeles, California (KZUT-LP or Station).² As discussed below, we dismiss the Petition.

Background. MP received a construction permit for the Station pursuant to a share-time agreement with three other applicants on April 25, 2016.³ Subsequently:

¹ SIM is the licensee of low power FM (LPFM) station KWSV-LP, Simi Valley, California, and permittee of booster station KWSV-LP-FM1, Chatsworth, California. The electronically filed Petition also includes a "Supplement" to the Petition. *See* n.9, *infra*.

² On August 2, 2017, SIM filed a "Second Supplement" (Second Supplement) – we note that CDBS indicates no filing of a "First Supplement" – to the Petition. On August 14, 2017, MP filed a Request for Extension of Time to Oppose the Petition, and on August 25, 2017, MP filed a "Request for Extension of Additional Time with Partial Response in Opposition to Petition for Reconsideration" (Partial Opposition), in which it also requested an additional extension of time to file a "full" Opposition to the Petition. On August 16, 2017, SIM filed a Reply to the Opposition (Reply). On August 30, 2017, SIM filed an "Opposition to Machine Project's Second Motion for Extension of Time" to file a "full" Opposition. CDBS indicates that MP has not filed a "full" Opposition.

³ *See* BNPL-20131114BKP. The Station shares Channel 256 (99.1 MHz) with KLDB-LP, Los Angeles, California, Facility ID No. 196172, owned by Future Roots, Inc. (FR); KFEP-LP, Los Angeles, Facility ID No. 196192, owned

- On June 29, 2017, the Media Bureau staff (staff) granted MP's Permit Modification Application to modify MP's construction permit for a new LPFM Station at Los Angeles.⁴
- On June 29, 2017, MP filed the License Application to cover the Station Permit, which was unopposed and which the staff granted on July 6, 2017.⁵
- On July 25, 2017, MP filed the License Modification, which also was unopposed and which the staff granted on July 26, 2017.⁶
- On July 26, 2017, SIM filed the Petition seeking reconsideration of the Permit Modification Application, License Application, and License Modification grants.⁷

In its Petition, SIM indicates that it is participating in this proceeding for the first time at the reconsideration stage because "the issues raised . . . were not realized until after KZUT-LP was granted the . . . construction permit and commenced operations and then further frustrated recently by the increase in transmitter power output that was authorized in BMLL-20170725ACA."⁸

Substantively, SIM first argues that the Station's actual transmitter site is not as authorized by the Permit Modification Application and is located on land currently owned by the Mountains Recreation and Conservation Authority, a California state agency, which designated it as a "wildlife corridor" and that the City of Los Angeles had flagged that location as requiring a Historic Preservation Review. SIM claims that MP is required to provide a full Environmental Assessment (EA), pursuant to Section 1.1307(a) of the FCC's rules (Rules).⁹ Next, SIM argues that MP's increase of the Station's power to 39 watts TPO to achieve 3 watts ERP, given the length and type of antenna feed line involved, would in fact

by Echo Park Film Center (Echo Park); and KTPC-LP, Venice, California, Facility ID No. 195799, owned by Reach for the Top, Inc. (Reach) (collectively, Time Sharers).

⁴ File No. BMPL-20170612ACF. *See Broadcast Actions*, Public Notice, Report No. 49020 (rel. Jul. 5, 2017). The Permit authorized a facility with an effective radiated power (ERP) of 0.003 watts and an antenna height above average terrain (HAAT) of 190 meters and a radiation center height above mean sea level of 389 meters at a location of 34° 7' 32.4" NL, 118° 22' 11" WL. We note that on June 13, 2017, REC Networks filed an Informal Objection (Objection) to MP's first modification to its site, necessitating the June 18, 2017, second modification of the Station Permit to the current site (34° 7' 32.5 N, 118° 22' 11 W); the Objection was withdrawn on June 19, 2017, because, *inter alia*, the objector's concerns about locating the station in the Briar Summit Wildlife Preserve had been addressed by virtue of an amendment to the Modification Application. *See Withdrawal of Informal Objection* (REC Networks, filed Jun. 1, 2017).

⁵ File No. BLL-20170629AAW. *See Broadcast Actions*, Public Notice, Report No. 49024 (rel. Jul. 6, 2017).

⁶ File No. BMLL-20170725ACA. *See Broadcast Actions*, Public Notice, Report No. 49038 (rel. Jul. 26, 2017). MP filed this application to modify KZUT-LP's licensed facilities to increase transmitter power output (TPO) from 19 watts to 39 watts in order to achieve 3 watts ERP.

⁷ Additionally, although not contested by SIM, on October 10, 2017, MP filed another application for modification of license to change only the hours of operation of each of the four time-shared stations. In this application, MP states that "[p]er 47 CFR 73.850(c) there is no simultaneous operation." *See* File No. BMLL-20171010AAQ at Exh. 1. The staff granted this uncontested application on January 12, 2018.

⁸ Petition at 1, n.2.

⁹ Petition at 3-4. *See also* 47 CFR § 1.1307(a)(1)-(4). SIM attaches to its Petition a "Supplement" containing an e-mail from California Park Ranger Matthew B. Wilken to the effect that "the operator" had to "remove the antenna, related equipment and repair damage to the park ASAP. IF this is not completed in the next week or two I will file criminal charges for Damage to park property and Commercial use of park . . ." Although this e-mail does not identify the addressee or the "operator," SIM indicates that it received that e-mail from the Mountains Recreation & Conservation Authority and that it "clearly confirms" that MP has been operating KZUT-LP from an unauthorized location.

cause the Station's ERP to increase to 12.9 watts, considerably in excess of its authorization.¹⁰ SIM argues that, as a result of this increased ERP, KZUT-LP places a 40 dBμ interfering contour over nearly the entire 60 dBμ contour of SIM's FM booster station KWSV-LP-FM1, "causing interference to its 122,966 listeners."¹¹ SIM claims that MP filed the three applications "in bad faith" and made false certifications regarding the physical location of the Station as well as in statements attesting to the TPO being appropriate for the authorized ERP in violation of Sections 301 and 312(a)(1) of the Communications Act of 1934, as amended (Act), and Sections 1.1307(a) and 73.875(b) of the Rules.¹²

Further, SIM asserts that MP "may have" engaged in an operating agreement with another Channel 256 Los Angeles-area LPFM licensee, FR, and that the real party in interest for the challenged applications is really FR, in violation of Section 73.860(e) of the Rules.¹³ In addition, SIM claims that MP is violating LPFM rules regarding legal identification and hours of operation.¹⁴ Finally, SIM argues that the Station is broadcasting commercial advertisements, submitting an exhibit of text of a commercial that allegedly aired on the Station.¹⁵

In its Partial Opposition, MP claims that, following a discussion with the antenna site owner, parks service personnel, and a state senator about residential and park boundaries, MP's pole placement is as authorized, or at least "less than 150 feet" from its authorized site and that it is still working with local authorities on the matter.¹⁶ MP also asserts that it does not engage in "simultaneous operations" with any other station.¹⁷ In addition, MP states that at the advice of colleagues and consultants, it has "modified" its underwriting announcements to be compliant with the Rules.¹⁸ Next, MP claims that it needs more

¹⁰ Petition at 5-7.

¹¹ Petition at 7 and Appendix A, Technical Affidavit of Michelle A. Bradley. SIM also claims that the unauthorized operation places a 40 dBμ interfering contour into the protected contours of authorizations for KLBP-LP (formerly KRNF-LP) Long Beach, California, and K256CX, Beaumont, California. *Id.*

¹² *Id.* at 7; *see also* 47 U.S.C. §§ 301, 312(a)(1) and 47 CFR §§ 1.1307(a) and 73.875(b).

¹³ Petition at 8; 47 CFR § 73.860(e). SIM alleges that all communications between KZUT-FM and SIM over the interference issues have been originated from Alejandro Cohen (Cohen), Executive Director of "Dublab Radio," which SIM identifies with FR, and not with representatives of MP. Petition at 8. It argues that the Station has been identifying itself as "Dublab Radio" and airing a station ID as follows: "KLDB 99.1 Los Angeles, KZUT Machine Project, KFEP Echo Park, KTPC Culver City." SIM alleges that these stations are engaged in "simultaneous operation" as identified by the station identification announcement, referencing an off-the-air recording made by Michelle Bradley on July 3, 2017, during which the station announcer intones "99.1 Dublab and Dublab.com" (17-22 seconds) and subsequently (40 seconds) states that "officially, you are listening to . . . KZUT Machine Project. . . ." *Id.* at 9, referencing <https://soundcloud.com/michelle-bradley-e/kzut2>. The announcer also identifies the Station as "Dublab Radio" twice between 25 and 33 seconds in a July 8, 2017, recording made by Ms. Bradley: <https://soundcloud.com/michelle-bradley-3/kzut2>. *Id.*

¹⁴ SIM states that "KZUT Machine Project" is not a legal station ID and that KZUT is not even the Station's valid call sign, *id.* at 9, and has "frequently" been observed operating outside its specified hours with an unmodulated carrier and no identification in violation of 47 CFR §§ 73.1201(a)(2); 73.1570(a); and 73.1745(a). *Id.* at 10.

¹⁵ *Id.* at 11; *see also* Petition at Appendix D.

¹⁶ Partial Opposition at 1-2.

¹⁷ *Id.*

¹⁸ *Id.*

time to respond to SIM's engineering and technical allegations against the Station;¹⁹ to date it has filed no additional information.

In its Reply, SIM argues that MP's Opposition is untimely pursuant to Section 1.106(g) and fails to include a certificate of service under Section 1.47(g) of the Rules.²⁰ SIM also reiterates its earlier arguments that: (1) MP is operating from an unauthorized location at a TPO that would result in an ERP exceeding authorized limits, thus causing harmful interference to SIM's KWSV-LP-FM1 and other area stations; (2) the Station impermissibly broadcasts commercials and improper station identifications; and (3) MP is engaged in an impermissible operation agreement with another Commission permittee.²¹

In its "Second Supplement," SIM reiterates its claim that MP is party to an unlawful operation and management agreement by alleging that Cohen, Executive Director of FR's Station KLDB-LP, Los Angeles, California, is managing the Station.²² SIM references an electronic mail correspondence from Cohen,²³ which indicates that all communications from SIM for KZUT-LP, MP, MP's Executive Director Mark Allen (Allen), and Cohen, be directed to attorney John Shaeffer. The e-mail indicates that this was made necessary "by your failure to honor our previous request made to you on July 3, 2017 that all communications regarding KZUT and it's [sic] antenna located at 3010 Paulcrest Drive be directed to [Cohen]."²⁴ SIM states that the continued communications from Cohen to SIM and no contact with SIM from MP principals demonstrates that there is an operation and management agreement between KZUT-LP and KLDB-LP in violation of 73.860 of the Rules and that FR, not MP, is in control of the Station.²⁵

Discussion. Reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.²⁶

Procedural Issue. Section 1.106(b)(1) of the Rules allows a petition for reconsideration to be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission.²⁷ Additionally, according to Section 1.106(e) of the Rules, "[w]here a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, *must* be accompanied by an affidavit of a qualified radio engineer."²⁸ Here, although the Petition and Second Supplement are timely filed, the Petition is not

¹⁹ *Id.* at 2.

²⁰ Reply at 1; *see also* 47 CFR §§ 1.106(g) and 1.47(g).

²¹ Reply at 2.

²² Second Supplement at 1.

²³ The electronic letterhead indicates that Dublab is "a program of Future Roots, Inc. . . ." Second Supplement, Appendix A.

²⁴ *Id.*

²⁵ Second Supplement at p. 1.

²⁷ 47 CFR § 1.106(b)(1). *Id.*

²⁸ *Id.* § 1.106(e) (emphasis added). *See also* C.L. Tadlock, Memorandum Opinion and Order, 8 FCC 2d 197 (1967) (finding a petition defective because "[p]aragraph (e) of section 1.106 requires that a claim of electrical interference

accompanied by an affidavit of a qualified radio engineer.²⁹ Accordingly, we will dismiss the Petition as procedurally defective.³⁰

Alternative Substantive Issue Discussion. Even were we to consider the Petition on its merits, we would find neither error in the staff's grant of the applications nor additional facts not previously known that would otherwise warrant overturning the staff actions. Regarding SIM's claim that MP is operating the Station from an unauthorized location and with unauthorized facilities, Section 73.845 of the Rules requires each LPFM station to maintain and operate its station in accordance with the terms of its station authorization.³¹ The Station's authorization specified its authorized transmitter location by geographic coordinates. MP does not deny the "confusion" surrounding the exact location of its transmitter site or that its transmitter may have been 150 feet away from its authorized location on more than one day. However, as recently as October 17, 2017, FCC Enforcement Bureau staff visited the Station and, upon specifically examining the station's technical facilities, found that the Station was operating with authorized facilities from an authorized location, noting violations only of Sections 11.35(a) and 11.52(d)(1) of the Rules regarding the Emergency Alert System (EAS).³² Although the Enforcement Bureau inspection conclusively resolves this issue, we will nonetheless admonish MP for willful and repeated violation of Section 301 of the Act³³ by acknowledging operation of the Station at an unauthorized location for an undetermined period of time "until the antenna pole was placed within the boundaries of the intended property."³⁴ However, we caution MP that future evidence of unauthorized operation may lead to enforcement action.

Additionally, in light of the Field Staff's finding that the station is operating from its authorized location, and witnessing no further communication from the California Mountains Recreation and Conservation Authority, SIM's claim that the station was constructed in an environmentally sensitive area requires no further discussion at this time.

Regarding SIM's claim that the Station is causing harmful interference to SIM's booster station KWSV-LP-FM1, with the few exceptions specified in Sections 73.807(e), 73.809(c), and 73.810(b) of the

in support of a petition for reconsideration be accompanied by an affidavit of a qualified radio engineer showing [...] that such interference will be caused to petitioner's station within its normally protected contour.").

²⁹ Although affiant Michelle Bradley states that she is "the founder of REC Networks, a leading [sic] LPFM advocacy and provider of professional services," and is "one of the most respected voices in the LPFM community," Bradley Affidavit at 17, she does not state that she holds an engineering degree or otherwise meets the "qualified radio engineer" requirement.

³⁰ *Calvary Chapel of Redlands d/b/a Packinghouse Christian FWP*, Letter Order, 31 FCC Rcd 12694 (MB 2016).

³¹ 47 CFR § 73.845.

³² See *Machine Project*, Notice of Violation, EB-FIELDWR-17-00024883 (EB rel. Dec. 18, 2017); see also 47 CFR §§ 11.35(a) and 11.52(d)(1).

³³ 47 U.S.C. § 301.

³⁴ See Opposition (filed Aug. 12, 2017) at 2; see also, e.g., *A-O Broad. Corp.*, Order, 23 FCC Rcd 11296, para. 1 (EB 2008) (licensee admonished for operating at a frequency not authorized by the Commission). We cannot find on the record here that MP was particularly punctilious about the location of its transmission facilities. We can state, however, that as of October 17, 2017, the station was operating in conformance with its authorization, and no further discussion of this issue is warranted.

Rules,³⁵ LPFM licensees are not required to solve individual interference complaints. SIM does not allege that the Station has violated those Rule sections. Therefore, the petition is not actionable with regard to this claim. Moreover, the Commission limits actionable interference complaints to those that are made by *bona fide* “disinterested” listeners (e.g., persons or entities without legal, economic or familial stakes in the outcome of the LPFM station licensing proceeding).³⁶ The only interference complaint in the record is from SIM. As a competing station owner, SIM cannot be considered “disinterested” under our Rules.

Additionally, SIM provides no support for its argument concerning the Station’s hours of operation.³⁷

Regarding SIM’s claim that MP’s station identification announcements violate Section 73.1201 of the Rules,³⁸ Section 73.1201(b)(1) states in part that official station identification shall consist of the station’s call letters immediately followed by the community or communities specified in its license as the station’s location.³⁹ The Commission also requires that the suffix “-LP” be appended to LPFM station call signs (e.g., “KZUT-LP”) to positively identify themselves.⁴⁰ We have listened to the evidence⁴¹ provided by SIM on this matter and find that in at least two instances, MP is in violation of our station identification rules. Because the guidelines in the *Forfeiture Policy Statement*,⁴² specify a base forfeiture amount of \$1,000 for failure to provide station identification, the Commission clearly views the failure to identify a station as a violation that can lead to a forfeiture. Here, however, MP has not failed to provide station identification; rather, it has provided improper station identification by not naming its community of license or its “-LP” designation. We therefore would admonish MP for its improper station identification announcements and warn MP that these violations, if repeated, will be regarded with serious concern and acted on accordingly.⁴³

With respect to SIM’s allegations concerning airing of commercials, Section 399 of the Act and Section 73.503(d) of the Rules prohibit the airing of commercial announcements on NCE stations such as

³⁵ 47 CFR §§ 73.807(e) (regarding second-adjacent channel waiver cases), 73.809(c) (interference to full-service FM stations within the principal community contour or community of license of the full-service station); 73.810(b) (interference to third-adjacent-channel full-power, FM Translator, or FM booster stations).

³⁶ See *Creation of Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15441, para. 109 (2012), citing *Ass’n for Cmty Educ.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16; see also *Richard J. Bodorff, Esq. et al.*, Letter Order, 27 FCC Rcd 4870, 4873 (MB 2012).

³⁷ See *Dr. Jon A. Gerbracht and Mr. Richard Snyder*, Letter Order, 25 FCC Rcd 15094, 15095 n.12 (MB 2010) (petitioner’s numerous unsupported and/or immaterial allegations regarding operation of LPFM station not considered).

³⁸ 47 CFR § 73.1201.

³⁹ 47 CFR § 73.1201(b)(1).

⁴⁰ See *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2274, para. 179 (2000).

⁴¹ See n.13, *supra*.

⁴² See *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) (*Forfeiture Policy Statement*).

⁴³ See, e.g., *Duchossois Comm’cns Co. of Maryland, Inc. (Assignor) and Liberty Broad. of Maryland, Inc. (Assignee)*, Memorandum Opinion and Order, 10 FCC Rcd 6688, 6694, para. 30 and n.28 (1995) (no designation for hearing where licensee corrects improper station identification after the filing of a petition to deny; forfeiture is one adequate sanction).

all LPFM stations.⁴⁴ SIM provides one transcript of a promotional announcement for “Sunpress Vinyl,” which it claims runs frequently and “includes qualitative and promotional information about the sponsor” and “ends with a call-to action” in violation of Section 73.503(d) of the Rules.⁴⁵ In its Partial Opposition, MP tacitly acknowledges that there was a problem with some of its underwriting announcements and indicates that, [a]t the advice of colleagues and consultants, our underwriting announcements have been modified to be more consistent with best practices of noncommercial broadcasters and compliant with the Commission’s Rules.”⁴⁶ In Reply, SIM notes only that “KZUT-LP *was engaged* in broadcasting commercials”⁴⁷ but does not press this issue any further. Accordingly, we would simply admonish MP for its acknowledged violation of the Commission’s underwriting rules.

Finally, with respect to the allegation that “Future Roots/Dublab” is managing KZUT-LP, and that continued communication from FR’s Cohen rather than from MP principal Allen evidences an unlawful operating agreement violative of Section 73.860 of the Rules,⁴⁸ on June 15, 2018, the staff issued the Time Sharers a letter of inquiry (LOI). The Media Bureau directed the Time Sharers to provide additional information on the preparation, and prosecution of their proposals and regarding the construction and, to the extent relevant, operation of KZUT-LP and the other respective stations.⁴⁹ After an extension of the deadline, Reach for the Top responded on August 13, 2018,⁵⁰ and other Time Sharers responded on August 6, 2018.⁵¹ On August 14, 2018, SIM filed its Reply to the LOI Responses.⁵² Among other things, the LOI requested the compilation of documents, affidavits and other information covering a period of five years regarding the finances, agreements, and performance of each of the Time Sharers’ broadcast facilities, the non-profit status of their organizations and the participation of Future Roots principals in the application, construction, and operation of each Time Sharer⁵³

In the Reach Response, Reach President Ivonne Guzman declares under penalty of perjury that Reach is “self-sustaining”; it does not share facilities with the other Time Sharers; it did not consent to become a Time Sharer until April 12, 2016, and that it does not have any programmatic, administrative or

⁴⁴ 47 U.S.C. § 399; 47 CFR § 73.503(d).

⁴⁵ Petition at 11 and Appendix B.

⁴⁶ Partial Opposition at 2.

⁴⁷ Reply at 2.

⁴⁸ 47 CFR § 73.860(e).

⁴⁹ See *Letter of Inquiry to Machine Project, Future Roots, Inc., Echo Park Film Center, and Reach for the Top, Inc.*, Ref. 1800B-SS (MB rel. Jun. 15, 2018).

⁵⁰ See *Reach for the Top, Inc., Response to Letter of Inquiry* (Reach Response).

⁵¹ MP, FR, and Echo Park filed their response Jointly. Response of Echo Park Film Center to June 15, 2018, Letter of Inquiry with Accompanying Declaration of Echo Park Film Center (Echo Park Response); Response of Alejandro Cohen to June 15, 2018 Letter of Inquiry with Accompanying Declarations of Alejandro Cohen and Jake Viator (Cohen Response); and Response of Mark Allen to June 15, 2018, Letter of Inquiry with Accompanying Declaration of Mark Allen (Allen Response) (collectively, LOI Responses).

⁵² See SIM Reply to Responses to the Letter of Inquiry, filed August 14, 2018 (SIM Reply to LOI Responses).

⁵³ The LOI also requested that MP address press reports that it had suspended operations in January of 2018. In its response to the LOI, MP states that although it closed its “store-front operations” in January 2018, it continues to operate as an Internal Revenue Service Code “[Section] 501(c)(3)” non-profit organization focusing on its radio programming on the Station. Allen Response at 14. No further discussion of this line of inquiry is warranted.

financial connection with FR, MP or Echo Park.⁵⁴ Consequently, Reach states that it has no knowledge of the alleged relationship between FR and MP and is unaware of Cohen's role with MP or any of the other Time Sharers.⁵⁵ Reach notes, however, that, on July 9, 2018, it was Cohen and not Allen who contacted Reach in an attempt to negotiate additional time for MP's KZUT-LP.⁵⁶

In the Echo Park Response, Echo Park Executive Director Paolo Davanzo declares under penalty of perjury that, regarding the questions presented in the LOI, Echo Park has no information available to provide related to MP.⁵⁷ Echo Park states that Cohen had no involvement in negotiating the terms of any agreements or in preparing the applications for its station and that, aside from the time-share agreement, Cohen's only involvement with Echo Park is as a volunteer "Facilities Coordinator."⁵⁸ In this capacity, Echo Park states that Cohen has overseen the day-to-day needs of its KFEF-LP, but he does not control or create the station's programming. Moreover, as "Facilities Coordinator," Cohen at times "interacts with FCC officials" on Echo Park's behalf.⁵⁹

In the Allen Response, MP Executive Director Allen declares under penalty of perjury that Cohen did not negotiate any agreements for the Station or prepare any Station applications.⁶⁰ Allen states that, pursuant to an oral agreement,⁶¹ Cohen's role with MP and Echo Park is solely voluntary and that Cohen is involved in the operations and activities of the Station on a regular basis as a "Facilities Coordinator," which might include periods where Cohen comes into contact with the FCC or other entities to help facilitate requests.⁶² Specifically, in his unpaid, volunteer role as facility coordinator, Allen states that Cohen "supports the administrative needs" of the Time Sharers (excluding Reach) regarding FCC and general administrative document filing; production assistance not related to programming and volunteer coordination regarding studio operations; and technical maintenance of the broadcast facilities, which MP and Echo Park share with FR.⁶³ MP states that although it has received no funding or assets of real

⁵⁴ Reach Response at 2, 8.

⁵⁵ *Id.* at 2.

⁵⁶ *Id.* at 6 and at n.12.

⁵⁷ Echo Park Response at 2-13. *See also* "Declaration of Paolo Davanzo" at Attachment.

⁵⁸ *Id.* at 2. He thus "oversees the day-to-day needs" of Echo Park's KFEF-LP and may at times interact with FCC officials or individuals" due to Echo Park staff's schedules and needs for personal travel. *Id.*

⁵⁹ *Id.*

⁶⁰ MP Response at 2. *See also* "Declaration of Mark Allen" at Attachment. However, FR's then employee Jake Viator prepared the technical portion of MP's original construction permit application. *See* n.69, *infra*.

⁶¹ Allen writes that, apart from the time-sharing agreement, the only agreement that exists between the licensees is "an oral agreement related to the facility that the Licensees made after the FCC license was granted. The terms of the . . . agreement were that the Licensees (excluding Reach) would cooperate in the use of the same facility for the operation of KZUT and assist each other with the facility as needed." MP Response at 3-4.

⁶² *Id.* at 2, 12. MP states that it was in his role as Facilities Coordinator, separate from his involvement with Future Roots, that Mr. Cohen cooperated with Commission field inspectors. *Id.* at 12.

⁶³ *Id.* at 7, 8. *See also* MP's Response to Notice of Violation in re File No. EB-FIELDWR-17-00024883 (dated Jan. 8, 2018):

Machine Project was assisted in the preparation of its application by??? personnel at Future Roots, Inc. Future Roots provided the technical data for Machine Project's application. I provided the non-technical data. The application form itself was primarily drafted by Jake Viator, an employee of Future Roots, with

property, securities, cash or cash equivalents from Cohen or from any other source, MP uses an FM antenna and transmitter initially purchased by FR for its own use,⁶⁴ and it uses FR's broadcasting studio "on a *gratis* basis" and "does not include any monetary payment obligations, including commitments for rent, utilities, etc."⁶⁵ MP indicates that it has incurred no costs with respect to real estate taxes, business taxes, utilities, insurance, programming costs, or purchase of equipment; it indicates that MP pays for its own telephone service and employee salaries.⁶⁶ It also indicates that in fact there are no monthly operating expenses incurred from the operation of the Station, nor are there any expenses from telephone services or utilities;⁶⁷ it similarly reports that it has no paid personnel and therefore there are no payroll records. MP states that Cohen has never had any role in KZUT-LP programming decisions, as Allen is the station's sole programming director.⁶⁸

In the Cohen Response, FR Director Cohen declares under penalty of perjury that, regarding the questions presented in the LOI, FR has no information available to provide related to MP.⁶⁹ Cohen states that he had no involvement in the application process of the Time Sharers, including FR's, as Jake Viator handled those matters for FR until Viator left FR in 2015.⁷⁰ Cohen states that in 2016, following the staff's grant of the Time Sharers' construction permit applications, an "informal oral agreement" was reached among the Time Sharers (excluding Reach) to share FR facilities and equipment *gratis*.⁷¹ In addition, Cohen states that at this time he also volunteered to be the FR, MP and Echo Park "Facility Coordinator," except in the areas of creation and content of programming, document signing on MP's and Echo Park's behalf, fundraising, and "critical" decision-making.⁷² Finally, Cohen states that following his April 16, 2018, meeting with FCC Enforcement Bureau inspectors at the Station, he reported the substance of the meeting with the FCC to Allen.⁷³

my input and approval. Although we relied on Future Roots for assistance in preparing our application, it is Machine Project's application. The application was reviewed and adopted by me.

Id., Declaration of Mark Allen.

⁶⁴ MP Response at 4-5.

⁶⁵ *Id.* at 4.

⁶⁶ *Id.* at 5.

⁶⁷ *Id.* at 6.

⁶⁸ *Id.* at 8. MP indicates that, when it commenced operations, it aired live programming from the FR studio location at 4519 Santa Monica Boulevard in Los Angeles, but "[a] couple of weeks later," the station found it more convenient to broadcast pre-recorded programs that are not produced at the FR studio but are loaded to a digital player located at the FR studio and aired from that location *via* an internet connection. *Id.* at 9, 10. MP states that it does not keep programming logs or engineering records, has no personnel records, and has no invoices or bills for studio or production expenses. *Id.*

⁶⁹ FR Response at 2-11, 15. *See also* "Declaration of Alejandro Cohen" at Attachment 1.

⁷⁰ *Id.* at 2. *See also* "Declaration of Jake M. Viator" at Attachment 2.

⁷¹ *Id.* at 4. Cohen notes that the substance of the informal oral agreement was never submitted to the Commission, the Time Sharers believing that it was not required. *Id.*

⁷² *Id.* at 7. Cohen states that his responsibilities as "Facility Coordinator" included: (1) finding a location for each of the transmitters and antennas; (2) coordinating volunteers to install such equipment; (3) ensuring that EAS equipment was properly installed and that tests were logged; (4) overseeing the signing of all paperwork; (5) coordinating the training of volunteer staff; and (6) acting as spokesman for FR, MP and Echo Park. *Id.*

⁷³ *Id.* at 13. Regarding his relationship with Allen. Cohen states that it has never involved "the exchange of monies or funds of any kind, or any other sort of compensation, financial or non-financial" and that they support each other

In its Reply to LOI Responses, SIM argues that Cohen retained an 11 percent voting interest in FR since the application process began in 2013 and that he has also been “front man” for MP and Echo Park since that time.⁷⁴ SIM therefore claims that Cohen, as Facility Coordinator, entered into an operating agreement with MP and Echo Park in violation of Section 73.860(e) of the Rules.⁷⁵ SIM also asserts that, despite Cohen’s and Allen’s statements to the contrary, FR purchased various assets, including a transmitter and antenna for MP.⁷⁶ Further, SIM argues that it is inconceivable that Cohen had no influence on KZUT-LP’s programming because the Station identified itself as “Dublab Radio,” and it was the only facility of the Time Sharers that was actually on the air.⁷⁷ SIM adds that Reach “was not involved in any operating agreement with FR and therefore should be absolved of any controversy in this specific proceeding.”⁷⁸ Also, SIM argues that FR’s KFEP-LP is located at a site “that they do not have access to” and that a review of the LOI Responses and other submitted material, as well as a listening of the “airchecks,” clearly evidences that KZUT-LP is controlled by FR.⁷⁹ Finally, SIM states that a preferable situation would be the abrogation of the time-sharing agreement with “three unlimited LPFM stations.”⁸⁰

Based on the record before us, regarding SIM’s claim that FR and its director Cohen are operating KZUT-LP in violation of Section 73.860(e) of the Rules, we disagree. Section 73.860(e) of the Rules states that no LPFM licensee may enter into an operating agreement of any type, including a time-brokerage or management agreement, with either a full power broadcast station or another LPFM station, such as FR here. Such agreements are generally defined as a type of contract that involves a station’s sale of blocks of airtime to a third-party broker, who then supplies the programming to fill that time and, if a commercial station, sells commercial spot announcements to support the programming.⁸¹ The question, then, is whether the “oral agreement” to use FR’s facilities and with Cohen as a volunteer “Facilities Coordinator” constitutes a prohibited operating agreement. Based on the record here, we conclude that it does not. An agreement to share technical facilities and studio space does not, in our opinion, constitute a prohibited “operating agreement.” Additionally, neither the LOI Responses nor SIM’s Reply to LOI Responses and accompanying material offer facts in support of SIM’s bare allegations that MP’s principal Allen entered into any such agreement allowing Cohen to operate the Station.

Finally, with respect to SIM’s contention that FR is the real-party-in-interest behind MP’s application and KZUT-LP, we acknowledge FR and MP have not been diligent about defining their respective responsibilities regarding KZUT-LP’s application, construction and operation. The test for determining whether a third person is a real party in interest is whether that person has an ownership interest or is or will be in a position to actually or potentially control the operation of the station. Questions of *de facto* control are examined on a case-by-case basis to determine who has operational

as members of the arts and cultural community of Los Angeles out of a sense of mission and service to the community. *Id.* at 14.

⁷⁴ SIM Reply to LOI at 2.

⁷⁵ *Id.* at 3.

⁷⁶ *Id.* at 4-5.

⁷⁷ *Id.* at 6. *See* n.13, *supra*.

⁷⁸ *Id.* at 7.

⁷⁹ *Id.* at 8.

⁸⁰ *Id.*

⁸¹ *See* “The Public and Broadcasting,” (revised July 2008) at “Time-Brokerage Agreements.”

control over an applicant's or licensee's basic policies on programming, personnel, and finances.⁸² In his duties pursuant to the informal oral agreement among MP, Echo Park and FR as an unpaid, volunteer "Facilities Coordinator," Cohen's responsibilities consist of overseeing and coordinating administrative and technical matters of three Time Sharers *except* in the crucial area of creation and content of programming. Thus, his presence during the inspection by Commission field staff is expected. We do not here discount the documented references to "Dublab Radio" submitted by SIM. However, those recordings appear to have been made when KZUT-LP actually was originating its programming from Dublab's internet radio studio, which is no longer the case, and there is no evidence in the record that those references have continued.

In creating the LPFM service, the Commission long ago realized that negotiations in this service would most likely be conducted by "inexperienced volunteers."⁸³ We therefore do not find it unusual that the Time Sharers came to rely heavily on the one volunteer; *i.e.*, Cohen, who had the most experience in navigating the administrative and technical issues in the LPFM service. We also note that FR had more than 15 years of experience as a live-streaming content provider before the time-share agreement was reached and that Cohen, who has been associated with FR in several official capacities over the years, clearly had much experience to voluntarily offer the less-experienced Time Sharers, which as the record indicates, they gladly accepted. Finally, because MP and Echo Park never received assets of real property, securities, cash and cash equivalents from Cohen of any kind, nor does FR appear to be staffing MP's operations, we find that there is no substantial and material question of fact calling for further inquiry into whether FR and/or Cohen are real parties in interest behind MP's station operation.⁸⁴

Conclusion/Actions. In light of the discussion above, we find that SIM has demonstrated no error in the Bureau staff's grant of the subject applications, and we will deny the Petition on its merits save for the station identification and commercial announcement issues. Nevertheless, the facts of this case highlight that MP has not been meticulous in defining particularly the role of Cohen *vis-à-vis* KZUT-LP's operations. Accordingly, in anticipation of future dealings with Commission staff, we strongly suggest that FR and MP:

- reduce the terms of their "oral agreement" to writing and define, to the extent possible: (1) the terms of MP's use of FR's transmission equipment and studio facilities; and (2) Cohen's role and responsibilities as "Facilities Coordinator";
- Ensure that Mark Allen (or some other subsequent MP principal), and not Alejandro Cohen or anyone involved with FR, responds to and deals with complainants/objectors and Commission staff regarding complaints, inquiries, or field inspections;
- To the extent still necessary, excise any reference to "Dublab" or FR from KZUT-LP programming, particularly its station identification announcements

⁸² See, e.g., *Catholic Social Club of Putnam County Tennessee, Inc.*, Letter Order, 26 FCC Rcd 5057, 5060-61 (MB 2011).

⁸³ See, e.g., *Creation of Low Power Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21924, para. 27 (2007).

⁸⁴ We note that it is not unusual for a licensee, such as FR here, to donate an antenna and transmitter to another licensee. See, e.g., *KQED, Inc.*, Initial Decision, 2 FCC Rcd 352, 352, para. 14 (ALJ 1986) (Metromedia donates its property, plant and equipment to public broadcaster, the license being an exclusive FCC concern).

Accordingly, IT IS ORDERED that, SIM's petition for reconsideration of the staff's grant of the license to KZUT-LP, Los Angeles, California, IS DISMISSED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Shuldiner", with a stylized flourish at the end.

Albert Shuldiner
Chief, Audio Division
Media Bureau