



Federal Communications Commission
Washington, D.C. 20554

In Reply Refer to:
1800B3-SS

Kona Coast Radio, LLC
c/o Victor A. Michael, Jr.
87 Jasper Lake Road
Loveland, CO 80537

NOV – 7 2019

Rocket Radio, Inc.
c/o John L. Low, Jr.
4501 Broadway
Miami, AZ 85539

In re: **KNIT(AM), Salt Lake City, UT**
Kona Coast Radio, LLC
Facility ID No. 53500

File No. BP-20180712ABP

Minor Modification Application

Informal Objection

Dear Messrs. Michael & Low:

We have before us an application for a construction permit for a minor modification of facilities (Application) for Station KNIT(AM), Salt Lake City, Utah, filed by Kona Coast Radio, LLC (Kona Coast). Also before us is an Informal Objection (Objection) filed against the Application on August 17, 2018, by Rocket Radio, Inc. (Rocket) and related pleadings.¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. Kona Coast filed the Application on July 12, 2018, and the staff accepted it for filing on July 16, 2018.²

In its Objection, Rocket claims that Victor A. Michael, Jr., owner of Mountain Community Translators, LLC (Mountain), and Kona Coast, failed to provide accurate information in several informal objections he filed in various proceedings involving Rocket's FM and AM stations located in Claypool,

¹ Kona Coast filed an Opposition to the Objection (Opposition) on August 27, 2018, and on February 15, 2019, Rocket filed a Reply to the Opposition (Reply). Subsequently, Kona Coast filed a Supplement to its Opposition on February 26, 2019 (Opposition Supplement), and Rocket filed a Supplement to its Reply on June 14, 2019 (Reply Supplement).

² See *Broadcast Applications*, Public Notice, Report No. 29428 (rel. Feb. 21, 2019).

Globe, and Tuba City, Arizona.³ Rocket argues that in each of the proceedings, Mr. Michael misrepresented his business relationship with Rocket's president, John L. Low, Jr.,⁴ either by stating that he "does not currently have, or ever had, any business relationship with [Mr.] Low"⁵ or by failing to disclose the existence of the business relationship altogether.⁶ Rocket argues that, due to this "blatant lack of candor, misrepresentation, and abuse of process," the Commission must review Mr. Michael's qualifications to be a licensee before taking action on any applications that he filed on behalf of Kona Coast.⁷

In its Opposition, Kona Coast states that Rocket fails to demonstrate a direct interest in the outcome of the Application as Rocket is headquartered in Arizona, hundreds of miles from the station at issue and does not own any broadcast facilities in the state of Utah.⁸ Kona Coast maintains that Rocket's only basis for its filing is that Mr. Michael allegedly made false statements to the Commission in other proceedings unrelated to the Application, and therefore Rocket has not standing or interest to objection to the Application, and its objection should be summarily dismissed.⁹ Kona Coast states that there was never a business relationship between Mr. Michael and Mr. Low and that Rocket fails to provide any evidence, such as a signed business agreement, to support its allegation.¹⁰ According to Kona Coast, the emails attached to Rocket's Objection do not support its assertion that the two men had a business relationship or engaged in any business negotiations.¹¹ Finally, Kona Coast states that, at its core, Rocket is asserting a civil claim that should be resolved in the courts.¹²

In its Reply, Rocket reiterates the arguments made in the Objection that Mr. Michael has a business relationship with Mr. Low and that Mr. Michael filed patently false statements with the Commission that he did not.¹³ Rocket submits additional evidence of e-mail exchanges between Mr. Low and Mr. Michael that "irrefutably establish" a business relationship between Mr. Low and Mr.

³ See Objection at 2-3, 5. On June 26, 2017, Kona Coast filed Informal Objections to Rocket's application to upgrade KIKO-FM, Claypool, Arizona (File No. BPH20170620ABH) and the KIKO-FM covering license application (File No. BLH-20181121AAM). Kona Coast also filed Informal Objections to Rocket's applications to modify K256DB, Globe, Arizona (License No. BPFT-20170710ABF) and K246CH, Tuba City, Arizona (License No. BPFT-20180625ABP) on June 8, 2018, and June 28, 2018, respectively.

⁴ Rocket asserts that Kona Coast and Mountain have also filed objections in various proceedings involving applications filed by 1TV.com, LLC, of which Mr. Low is sole member. *Id.* at 1, 6.

⁵ Objection at 2, Attachments 1-2. Rocket also alleges that the business relationship between Mr. Michael and Mr. Low also extended to Mr. Low's associate Mr. Todd Robinson. *Id.* at 3 and at n.5.

⁶ *Id.* at 5, Attachments A-Y (containing several emails from 2006-2007 and one email from July 2018 to show that Mr. Michael did, in fact, have a business relationship with Mr. Low).

⁷ *Id.* at 5.

⁸ See Opposition at 1.

⁹ *Id.* at 2, 3. Kona Coast states that Rocket repeats the same allegations of a past and existing contractual business relationship between Mr. Low and Mr. Michael in at least four other proceedings, and it appears that Rocket intends to obstruct any and all Michael filings, which constitutes an abuse of Commission processes. *Id.* at 2, 5-6, 7.

¹⁰ See *id.* at 3-5. Kona Coast asserts plainly that "Michael does not have any business relationship with Mr. Low. Not now, and not in the past." *Id.* at 3.

¹¹ *Id.* at 2, 5-6, 7.

¹² *Id.* at 5, 6.

¹³ Reply at 2-3.

Michael/Kona Coast.¹⁴ Rocket also claims for the first time that Mr. Michael's associate Mr. Robinson perjured himself before the Commission in order to hide an August 8, 2006, written and oral contract between Mr. Low, Mr. Michael, and Mr. Robinson evidencing their business relationship.¹⁵ Finally, Rocket claims that Mr. Michael and his associate Mr. Robinson have filed frivolous pleadings and false declarations with the intent to harm Mr. Low and delay the grant of his application to upgrade Station KIKO-FM.¹⁶

In its Opposition Supplement, Kona Coast states that Rocket's "[f]orty-four (44) page repetitive rambling [Reply]" offers no new evidence of any business relationship between Mr. Michael and Mr. Low.¹⁷ In addition, Kona Coast argues that despite Rocket's attempt to tie alleged offers made to Mr. Low by Mr. Robinson, Mr. Michael's only broadcasting connection to Mr. Robinson is a three per cent investment and non-managerial role in Mr. Robinson's KZLZ, LLC, and that Mr. Robinson has declared under penalty of perjury that Mr. Low declined Mr. Robinson's offer of part ownership in KZLZ, LLC.¹⁸ Finally, Kona Coast claims that Mr. Michael has never met personally with Mr. Low – something Mr. Michael "would require" if he were to enter into a business relationship with someone.¹⁹

In its Reply Supplement, Rocket reiterates the arguments made in the Objection and Reply that Mr. Michael has a business relationship with Mr. Low and that Mr. Michael filed patently false statements with the Commission that he did not.²⁰ In addition, Rocket contends for the first time that Mr. Michael's and Mr. Robinson's "motivation[s] . . . [are] driven by hatred" and that they clearly "carry a grudge, animosity, and hostility" towards Mr. Low because they are "outraged" that Mr. Low has entered into an agreement to buy a radio station that they coveted.

Discussion. An informal objection may be filed at any time prior to action on the subject application,²¹ and must, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 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.²² When reviewing these filings, the Commission is not required to

¹⁴ *Id.* at 3-4, 43 (Declaration of John Low), and Exhibits A-Y (exhibits from the Objection resubmitted here) and Exhibits Z-KK (copies of additional e-mails between Low and Michael and Low and Robinson). *See also* Reply at 4-42, in which Rocket details each of the attachments.

¹⁵ *Id.* at 37.

¹⁶ *Id.* at 42.

¹⁷ Opposition Supplement at 3.

¹⁸ *Id.* at 5-6, referencing the Declaration of Todd P. Robinson, included as Exhibit 2 to Kona Coast's Opposition, at Paragraphs 3 and 5.

¹⁹ *Id.* at 6.

²⁰ Reply Supplement at 3-4. In addition, Rocket contends for the first time that Mr. Michael's and Mr. Robinson's "motivation[s] . . . [are] driven by hatred" and that they clearly "carry a grudge, animosity, and hostility" towards Mr. Low because they are "outraged" that Mr. Low has entered into an agreement to buy a radio station that they coveted. *Id.* at 15-18.

²¹ 47 CFR § 73.3587.

²² *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) (informal objections, like petitions to deny, must also contain adequate and specific factual allegations sufficient to warrant the relief requested).

resolve, through a hearing, issues which the Commission finds are neither "substantial" nor "material,"²³ regardless of whether the facts involved are in dispute.²⁴

In this case, Rocket's Objection, Reply, and Reply Supplement do not contest the merits of the Application. Rather, Rocket asserts that Mr. Michael attempted to use FCC proceedings to attack a business associate (*i.e.*, Mr. Low),²⁵ and attempted to deceive the Commission by not disclosing the existence of a business relationship with Mr. Low.²⁶ We find that whether these men have some sort of business relationship such that Mr. Michael should have disclosed it in Commission filings opposing Mr. Low's applications is neither substantial nor material and that further inquiry is not warranted prior to rendering a determination on the Application. Mr. Low's claim that Mr. Michael misrepresented facts to the Commission²⁷ or lacked candor in his objections to other Low applications therefore requires no further discussion. To the extent these allegations arise from a private or contractual dispute between the parties, we defer those claims to the appropriate court for resolution as it is neither within the jurisdiction nor the expertise of this agency to address whether any breach of contract has occurred.²⁸

Conclusion/Actions. We have examined the Application, and we find that it complies with all pertinent statutory and regulatory requirements and that its grant would further the public interest, convenience, and necessity. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Informal Objection filed by Rocket Radio, Inc., on August 17, 2018, as supplemented, IS DENIED.

²³ A "substantial" question of fact is one in which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1985). A "material" fact is one in which the Commission finds relevant in making its public interest determination. *Stone v. FCC*, 466 F.2d 316, 323 n.18 (D.C. Cir. 1972), citing H.R. Rep. No. 1800, 86th Cong., 2d Sess. 12 (1960).

²⁴ *Stone v. FCC*, 466 F.2d at 323.

²⁵ Objection at 2.

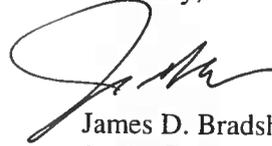
²⁶ *Id.* at 2-3.

²⁷ A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, nn.40-41 (2004) (subsequent history omitted). Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int'l Dev., Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816, n.39 (1981) (subsequent history omitted). In a case where all of the allegations are a matter of public record on file with the Commission, there is no logical basis to infer a motive to deceive unless there is other probative evidence of intent to deceive. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 16 and n.69 (2017).

²⁸ *Milford Broadcasting Co.*, Hearing Designation Order, 8 FCC Rcd 680, para. 2 (MB 1993) (private disputes are beyond the Commission's jurisdiction and must be resolved in a local court of competent jurisdiction); *Centel Corp., et al.*, Memorandum Opinion and Order, 8 FCC Rcd 1829, 1831, para. 10 (CCB 1993) (the Commission is not the proper forum for the resolution of private contractual disputes).

IT IS FURTHER ORDERED, that the application for a construction permit for a minor modification of the facilities of Station KNIT(AM), Salt Lake City, Utah (File No. BP-20180712ABP), filed on July 12, 2018, by Kona Coast Radio, LLC, IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bradshaw', written in a cursive style.

James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau