



Federal Communications Commission
Washington, D.C. 20554

March 7, 2023

In Reply Refer To:
1800B3-ARR

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In re: **Central Coast Media Education
Foundation**
KPCR-LP, Santa Cruz, California
Facility ID No. 195593
Application File No. 0000160617

**Minor Modification of License
Informal Objection**

Dear Applicant and Objector,

We have before us the above referenced application (Application) for a minor modification of the facilities of low power FM (LPFM) station KPCR-LP (Station), filed by Central Coast Media Education Foundation (CCMEF) on September 27, 2021.¹ We also have before us an Informal Objection (Objection) to the Application filed by Foundation for a Beautiful Life (FBL) on December 1, 2021, and a related responsive pleading.² For the reasons set forth below, we deny the Objection and grant the Application.

Background. In the Objection, FBL argues that the Application cannot be granted because the Station would be short-spaced to FBL's station DKQEK-LP, Cupertino, CA.³ FBL maintains that while the Commission issued an order affirming a Media Bureau (Bureau) decision dismissing DKQEK-LP's covering license application,⁴ the order is not yet final since FBL filed an appeal with the Court of

¹ Application File No. 0000160617 (filed Sept. 27, 2021).

² Pleading File No. 0000175540 (filed Dec. 1, 2021). CCMEF filed an Opposition to the Objection on December 9, 2021. Pleading File No. 0000177082 (filed Dec. 9, 2021).

³ Objection at 1-2.

⁴ *Foundation for a Beautiful Life*, Letter Order (MB Oct. 7, 2019) (dismissing FBL's application to license facilities constructed at an unauthorized site and separate application to modify its construction permit to reflect the facilities constructed), *aff'd*, Memorandum Opinion and Order, 36 FCC Rcd 15933 (2021) (dismissing in part and denying in

Appeals for the District of Columbia.⁵ FBL further argues that Daniel Roberts (Roberts), an individual previously found to have operated a radio station without Commission authorization, is listed as a legal representative, board member, and signing party on the Application, in violation of section 73.854 of the Commission's rules (Rules).⁶

In the Opposition, CCMEF counters that since FBL failed to construct the DKQEK-LP facility before expiration of the construction permit, FBL's permit and license dismissals are irreversible – notwithstanding FBL's pending appeal, and accordingly, DKQEK-LP will not share CCMEF's frequency.⁷ CCMEF further argues that FBL is not qualified to hold an LPFM license because FBL knowingly filed a license application despite clear evidence that it never constructed facilities according to the permit specifications, admitted to broadcasting from a facility and location that was never authorized and did not comply with spacing requirements, and has filed a series of frivolous and unfounded petitions.⁸ CCMEF maintains that: FBL's claims regarding Roberts's role at CCMEF are unsubstantiated, and Roberts has no ownership interest in CCMEF and is not a legal representative, board member, or party to the application.⁹ CCMEF also states that Roberts performs consulting and paperwork assistance on a voluntary, unpaid basis, and did not sign the application, as FBL claims.¹⁰

Discussion. An informal objection must 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.¹¹ FBL has failed to meet this burden.

Short-Spacing on Channel 225. We reject as moot FBL's argument that station DKQEK-LP will be short-spaced to KPCR-LP if the Application is granted. FBL appealed the *2021 Commission Decision* to the U.S. Court of Appeals for the District of Columbia, however, the appeal was dismissed on February 22, 2022.¹² Accordingly, the *2021 Commission Decision* is final, station DKQEK-LP has no authority to broadcast, and therefore, will not be short spaced to KPCR-LP if the Application is granted.

part FBL's 2019 application for review of Media Bureau Letter Order, and denying FBL's 2020 application for review of separate Media Bureau Order requiring FBL to stop broadcasts from unauthorized site, which FBL had resumed in March 2020) (*2021 Commission Decision*). See also Application File No. BLL-20180518APL (May 18, 2018) (covering license application); Application File No. BMPL-20180705AAQ (July 5, 2018) (modification application); FBL Application for Review (Nov. 6, 2019) (2019 AFR); FBL Cease Operation Order (MB Apr. 16, 2020); FBL Application for Review (Apr. 29, 2020) (2020 AFR).

⁵ *Id.* and Exh. B.

⁶ *Id.* at 2-3.

⁷ Opposition at 1-10, Attachs. E and F.

⁸ *Id.*

⁹ *Id.* at 10, Attachs. A, B, and C.

¹⁰ *Id.*

¹¹ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R.2d 862, 864, para. 6 (1986).

¹² *Foundation for a Beautiful Life v. FCC*, No. 21-1239, 2022 WL 564095 (D.C. Cir. Feb. 22, 2022).

Roberts' Interest in CCMEF. The Commission is prohibited from granting an LPFM authorization to an applicant that has previously engaged in unauthorized broadcast operations, in violation of sections 301 of the Act and 73.854 of the Rules.¹³ A party to the application includes any individual or entity whose ownership or positional interest in the applicant is attributable, meaning it confers influence or control over the applicant or licensee sufficient to implicate the Commission's multiple ownership rules.¹⁴ Characteristics of control include "governance of policies regarding (1) the personnel matters of a station, (2) the programming of a station, and (3) the finances of a station."¹⁵

FBL asserts that Roberts is legal representative, board member, and signing party on the Application. As an initial matter, Ellis Briery, not Roberts, signed the Application.¹⁶ FBL fails to provide any evidence that Roberts has an ownership or voting interest in CCMEF, or that he otherwise exercises control over CCMEF or the Station. While Roberts is listed in the contact section of the application as a "legal representative," his title is "Station Paperwork Representative."¹⁷ Further, CCMEF submits supporting declarations signed under penalty of perjury from Ellis Briery, a board member of CCMEF, and Roberts, explaining that while Roberts provides unpaid, volunteer consulting services, he has never been on the board, had a voting interest in, or been an employee of CCMEF.¹⁸ In further support of its claims, CCMEF submits corporate filings listing the CCMEF board with the California Registry of Charitable Trusts and the Secretary of State of California.¹⁹ FBL's unsupported claims are insufficient to establish that Roberts exhibits any control of CCMEF or the Station. Absent evidence that a party with a controlling interest in CCMEF has engaged in unauthorized operations, we conclude that grant of the Application is appropriate.²⁰

For these reasons, we find that the Objection fails to raise a substantial and material question of fact calling for further inquiry regarding the Application. Therefore, we deny the Objection and grant the Application.

Conclusion/Actions. For the reasons stated above, **IT IS ORDERED** that the informal objection filed by Foundation for a Beautiful Life on December 1, 2021 (Pleading File No. 0000175540), **IS**

¹³ 47 U.S.C. § 301; 47 CFR § 73.854.

¹⁴ See *Corporate Ownership Reporting and Disclosure by Broadcast Licensees, Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, MM Docket No. 83-46, Report and Order, 97 FCC 2d 997 (1984), *reconsideration granted in part*, 58 RR 2d 604 (1985), *further modified on reconsideration*, 61 RR 2d 739 (1986). See also 47 CFR § 73.3555.

¹⁵ See *Solar Broadcasting Co., Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5486, para. 71 (2002) ("Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for essential station matters, such as personnel, programming and finances, is nondelegable.").

¹⁶ Application at "Certification."

¹⁷ Application at "Contact Representatives (2)."

¹⁸ Opposition, Attachs. A and B.

¹⁹ *Id.* Attachs. C and D.

²⁰ Compare *WKMJ Radio Live The People Station, Inc.*, Letter Order, 30 FCC Rcd 13779 (MB 2015), *rev. denied*, Memorandum Opinion and Order, 30 FCC Rcd 13779 (2015), *recon. dismissed*, Memorandum Opinion and Order, 31 FCC Rcd 4306 (2016) (dismissal of the LPFM application was appropriate when the chief executive officer and a board member of WKMJ had previously engaged in the unlicensed operation of a radio station in violation of section 301).

DENIED, and the application for a minor modification of the facilities of low power FM station KPCR-LP, filed by Central Coast Media Education Foundation (Application File No. 0000160617), **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau