



Federal Communications Commission
Washington, D.C. 20554

January 23, 2024

In Reply Refer to:
1800B3-CEG

EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Darby Ventures, LLC
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SouthEast Texas Telecom
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Re: KHTW(AM), Lumberton, Texas
Facility ID No. 31108
Application File No. 222859

Informal Objection

Dear Applicant and Objector:

We have before us the above-referenced application (Modification Application) for a minor modification to the licensed facilities of station KHTW(AM), Lumberton, Texas (Station or KHTW), filed by previous licensee Carlos Lopez (Lopez) on October 13, 2023, and prosecuted by current licensee Darby Ventures, LLC (Darby).¹ We also have an informal objection (Objection) to the Modification Application, filed by SouthEast Texas Telecom (STT) on November 11, 2023.² For the reasons set forth below, we deny the Objection and grant the Modification Application.

Background. The Modification Application seeks to modify the Station's license to reduce KHTW's licensed operating power, downgrade from a Class B to Class D station, and broadcast omnidirectionally from a single tower rather than a three-tower directional array.³ In the Objection, STT claims that the proposed modification will reduce the Station's coverage area by over one half of the population of Hardin County, Texas,⁴ and leave the Station vulnerable to co-channel interference from other stations.⁵ STT also alleges that, on October 27, 2023, Lopez improperly removed two of the four KHTW towers after filing a request for special temporary authorization (STA Request) but before the

¹ Lopez consummated the assignment of the Station license to Darby on November 27, 2023. Notification of Consummation, File No. 227990, filed November 27, 2023; *see also Christopher W. Boone*, Letter Decision, Application File No. 204891, Ref. No. 1800B3-DB (MB Nov. 21, 2023) (*Assignment Letter*).

² Pleading File No. 225848.

³ Currently, the Station is operating with a single omnidirectional tower pursuant to special temporary authority (STA). *See Letter from Joseph Szczesny, Engineer, Audio Division, Media Bureau, FCC, to Carlos Lopez*, Application File No. BESTA-20230607AAB (June 30, 2023) (*Szczesny Letter*).

⁴ SST states that KHTW is the only AM station licensed in Hardin County.

⁵ Objection at 1.

STA Request had been granted.⁶ STT states that legal action is pending in the Hardin County court to return the license, transmitter site, and equipment to STT, and that the dismantling of the towers will cause STT financial hardship to return the Station to its previous condition if it prevails in court.⁷ Therefore, STT asks that the Application be denied and the Station ordered back to its full licensed power and operation.⁸

Discussion. Pursuant to section 309(e) of the Communications Act of 1934, as amended,⁹ an informal objection, like a petition to deny, must contain specific allegations of fact sufficient to show that grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity.¹⁰ These allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit or declaration under penalty of perjury of someone with personal knowledge of the facts alleged.¹¹ The Objection does not meet this standard.

STT cites to no rule or precedent supporting its argument that the Commission should order Darby to continue to serve its currently licensed coverage area with a full directional array despite the financial and technical obstacles to doing so, as set out in this and earlier proceedings.¹² Our engineering review indicates that the proposed operation will not cause or receive impermissible predicted interference to or from any other broadcast station. We find that the facility modifications allegedly carried out in October 2023 were in accordance with the STA granted on June 30, 2023.¹³ Finally, regarding the proceedings in state court, as we explained in the *Assignment Letter*, any Commission action based on this ongoing private contractual dispute would be inappropriate absent an injunction or final court determination.¹⁴ Grant of the Modification Application is permissive in nature and does not prejudice any relief to which the parties may ultimately be entitled under the civil suit.¹⁵

Conclusion/Actions. For the reasons stated above, IT IS ORDERED that the informal objection filed by SouthEast Texas Telecom (STT) on November 11, 2023, IS DENIED and the application for a

⁶ Objection at 1 (referring to STA File No. 223969). The STA Request was granted, although for less than the requested power, on December 5, 2023. Section 73.1680(b) of the rules limits temporary omnidirectional operation to 25% of the requesting station's licensed power, in this case, 500 watts. See 47 CFR § 73.1680(b).

⁷ Objection at 1.

⁸ *Id.* STT also alleges that Darby had *de facto* control of the Station prior to the assignment, but as it presents no factual support for this allegation, we will not consider it further here.

⁹ 47 U.S.C. § 309(e); see also 47 CFR § 1.939(d).

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

¹¹ See 47 U.S.C. § 309(d)(1) ("Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof"); 47 CFR §§ 1.939(d), 1.16 (allowing unsworn declarations in lieu of affidavits).

¹² See, e.g., Application File No. BESTA-20230607AAB, attachment entitled "Imported Letter" filed June 7, 2023, at 2.

¹³ *Szczesny Letter* at 1 (granting Application File No. BESTA-20230607AAB).

¹⁴ *Assignment Letter* at 6 (citing See *Northwest Broadcasting, Inc.*, Memorandum Opinion and Order, 6 Com. Reg. 685 (1997)).

¹⁵ See, e.g., *Mark Lipp, Esq.*, Letter Decision, 26 FCC Rcd 11138, 11141 (MB 2011); *Peggy Haley, N.C.M.*, Letter Decision, 23 FCC Rcd 12687, 12688 (MB 2008).

minor modification to the facilities of station KHTW(AM), Lumberton, Texas, filed on October 13, 2023 (Application File No. 222859), IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau