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John Johnson
PO Box 612
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In re: **KCAI(FM), Linden, CA**
Facility ID No. 90988
File No. 0000088692

Informal Objection

Dear Counsel and Objector:

We have before us informal objection (Informal Objection) to the above-referenced application for a minor change (Modification Application) filed by John Johnson (Johnson) on December 2, 2019. The Modification Application was filed by Educational Media Foundation (EMF) on November 12, 2019, and seeks to modify the facilities of noncommercial education (NCE) station KCAI(FM), Linden, California (Station) by downgrading its facilities (from a Class B1 to Class A station) at a new transmitter site.¹ On January 3, 2020, EMF filed an opposition to the Informal Objection (Opposition). For the reasons below, we deny the Informal Objection and grant the Modification Application.

Background. On December 15, 2005, the Audio Division, Media Bureau (Bureau) licensed the Station with a community of license of East Sonora, California.² On June 24, 2010, the Bureau issued a modified license for the Station with downgraded facilities (Class B to Class B1) and a new community of license of San Andreas, California (2010 Site).³ On April 20, 2016, the Bureau issued the current Station license, with a community of license of Linden, California, and no change in facilities.⁴ The

¹ The Station was formerly identified by callsigns KEKL, KARQ, and KLRS.

² See *Broadcast Actions*, Public Notice, Report No. 46135 (MB Dec. 20, 2005) (granting File No. BLED-20050429AEP).

³ See *Broadcast Actions*, Public Notice, Report No. 47267 (MB June 29, 2010) (granting File No. BLED-20100609ABQ).

⁴ See *Broadcast Actions*, Public Notice, Report No. 48720 (MB Apr. 25, 2016) (granting File No. BLED-20160318ABS). On August 8, 2016, the Bureau granted a modification application to upgrade the Station at a new transmitter site with the same community of license, which expired without being constructed or licensed. See *Broadcast Actions*, Public Notice, Report No. 48796 (MB Aug. 11, 2016) (granting File No. BPED-

Modification Application specifies a new transmitter site without any change in community of license. The Station will continue to place a 60 dBu signal over at least 50% of Linden, California.⁵

In the Informal Objection, Johnson objects to the Modification Application on the basis that it: (1) fails to demonstrate a preferential arrangements of allotments under section 307(b) of the Communications Act of 1934, as amended (section 307(b));⁶ and (2) constitutes, as part of a series of minor modifications, an attempt to make an impermissible major change outside a filing window.⁷

In the Opposition, EMF responds that the Modification Application fully complies with the Commission's rules and that the Informal Objection in fact objects to "applications that were granted years ago."⁸ EMF notes that the Linden community of license was authorized in April 2016.⁹ EMF also states that—although not applicable to NCE stations—the Station complies with the prohibition on duplicate programming by commonly-owned stations set out in section 73.3556 of the rules.¹⁰

Discussion. An informal objection may be filed at any time prior to action the subject application¹¹ and 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.¹² As discussed below, we conclude that Johnson has not established a substantial and material question of fact that grant of the Modification Application would not be in the public interest.

Johnson's argument that Linden is not a preferential arrangement of allotments is procedurally impermissible. The Modification Application does not seek a change in community of license and thus does not require a section 307(b) analysis. Rather, this argument essentially seeks reconsideration of the 2016 allocation of Linden as the Station's community of license. With rare exceptions not applicable here,¹³ a petition for reconsideration must be filed within 30 days from the date of public notice of the final Commission action.¹⁴ In this case, the filing deadline for a petition for reconsideration of the Linden community of license allocation was May 25, 2016.¹⁵ Therefore, this argument is untimely and will not be further considered here.

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⁵ See 47 CFR § 73.515.

⁶ See 47 U.S.C. § 307(b) (requiring the Commission, when considering applications for licenses, modifications and renewals, to "provide a fair, efficient, and equitable distribution of radio service" to the various states and communities nationwide).

⁷ Informal Objection at 1, 10 (citing 47 CFR § 73.3575) (section 73.3575).

⁸ Opposition at 2.

⁹ Opposition at 2-3.

¹⁰ Opposition at 3-4 (citing 47 CFR § 73.3556); .

¹¹ 47 U.S.C. § 405(a); 47 CFR § 73.3587.

¹² 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).

¹³ See, e.g., *Gardner v. FCC*, 530 F. 2d 1086 (D.C. Cir. 1976).

¹⁴ 47 CFR § 1.106(f). Section 1.4(b)(2) defines the date of public notice of final Commission action as the release date of that notice. 47 CFR § 1.4(b)(2).

¹⁵ Specifically, 30 days after the April 25, 2016, public notice announcing the grant of File No. BLED-20160318ABS.

We also find that Johnson has not demonstrated that the Modification Application represents an attempt to circumvent the major change rule of section 73.3575. In cases where a station's facilities were not temporarily constructed and operated for more than a year at each location, the Bureau has found that such gradual changes were not the "functional equivalent of a single major change and therefore evidence of an attempt to evade the major change rule."¹⁶ In this case, the Station operated at the 2010 Site for over five years and at its currently authorized site for more than three years. Therefore, we conclude that Johnson has not established that EMF has attempted to evade the major change rule through a series of minor modifications.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the informal objection filed on December 2, 2019, by John Johnson IS DENIED and the modification application filed on November 12, 2019, by Educational Media Foundation (File No. 0000088692) IS GRANTED, pursuant to Section 0.283 of the Commission's Rules.¹⁷

Sincerely,

Rodolfo F. Bonacci

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Media Bureau

¹⁶ W256CL, *Park Forest, Illinois*, Letter Decision, 34 FCC Rcd 4594, 4598 (MB 2019).

¹⁷ 47 CFR § 0.283.