



Federal Communications Commission
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In Reply Refer To:
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In re: Station WQTA-LP, Tampa, FL
Facility ID No. 194557
File No. BLL-20190919AAP

Informal Objection

Counsel and Ms. Bradley,

We have before us the referenced application (Application) filed by North Tampa Community Radio (North Tampa) for a license to cover a construction permit for station WQTA-LP (Station), Tampa, Florida.¹ Also before us is an Informal Objection (Objection) filed by REC Networks (REC) and related responsive pleadings.² For the reasons set forth below, we dismiss the Objection and grant the Application.

¹ See File No. BLL-20190919AAP (filed Sept. 18, 2019). The Application was accepted for filing on September 20, 2019. See *Broadcast Applications*, Public Notice, Report No. 29578 (MB Sept. 24, 2019). The Station is authorized to broadcast on channel 295 (106.9 MHz).

² Informal Objection, REC Networks, File No. BLL-20190919AAP (filed Sept. 24, 2019); Opposition to Informal Objection, North Tampa Community Radio, File No. BLL-20190919AAP (filed Nov. 7, 2019).

Background. In the Objection, REC argues that the Application should be dismissed, and the construction permit forfeited, because the Station was not constructed as described in the construction permit.³ In support of this argument, REC states that it received information from a member of the broadcast community in the Tampa/St. Petersburg area that he/she was unable to hear a signal on channel 295 (106.9 MHz) and that the specified tower structure could not be seen at the facility's construction permit coordinates.⁴ REC therefore asks the Commission to determine if there was *mala fide* conduct on the part of the Applicant's legal representative and/or Antonia Cesar Guel (Guel), an engineer allegedly associated with the Application.⁵

In its Opposition, North Tampa states that the Station was constructed before the permit expiration date and therefore complies with section 73.3598 of the Commission's rules (Rules).⁶ North Tampa explains that due to delays in leasing tower space, it modified its construction permit and moved the tower to a different location near the original construction permit site.⁷ North Tampa acknowledges that the Station experienced operational difficulties, but states that it is not required to notify the Commission of brief periods of silence.⁸ North Tampa maintains that the Station is now operating 24 hours a day and is serving the Tampa community as intended by the Commission's low power FM (LPFM) rules.⁹ Additionally, North Tampa argues that REC provides no evidence justifying a denial of the Application but rather uses the Objection as a vehicle to continue its crusade against Hispanic LPFM operators utilizing the services of Guel.¹⁰ North Tampa asserts that it controls the Station's operation and staffing and is not affiliated with Guel in any way.¹¹

Discussion. Section 309(d)(1) of the Communications Act of 1934, as amended (Act), authorizes any party in interest to file a petition to deny any application as long as the petition "contain[s] specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest]."¹² Informal objections, like petitions to deny, also must allege properly supported facts that, if true, would establish a substantial and

³ Informal Objection at 1-2 (stating that the Commission should withhold processing the Application in light of the considerable number of recent license applications for facilities where photographic evidence and/or statements have suggested that the facilities have not actually been built).

⁴ *Id.* at 1. REC states that it observed a 425-meter tower approximately 1,650 feet due south of the construction permit coordinates. *Id.*

⁵ *Id.* (arguing that the ongoing pattern of filings on or near the construction permit expiration date, including some with a modification of the facility just prior to expiration, warrants further Commission inquiry into the validity of the applications, signatories and certifications).

⁶ Opposition at 2. *See also* 47 CFR § 73.3598 ("[e]ach original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.").

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 3, 5 and Attachment 1.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² 47 U.S.C. § 309(d)(1).

material question of fact that grant of the application would be inconsistent with the public interest.¹³ After reviewing the record, we find that REC has failed to meet this burden.

Section 319(c) of the Act¹⁴ imposes a stringent standard on challenges to license applications. So long as “all the terms, conditions, and obligations set forth in the application and permit have been fully met,” a permittee is entitled, as an applicant for a license to cover a construction permit, to a high degree of protection and a presumption that the public interest determination made during the underlying construction permit proceedings continues in effect unless circumstances have arisen that would make operation of the station against the public interest.¹⁵ The Commission traditionally is reluctant to designate license applications for hearing in these circumstances and, in most instances, considers the grant of such application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith.¹⁶

In this case, North Tampa encountered delays due to leasing issues and concluded that the issues could not be resolved in time to construct the facilities originally requested in 2016. Therefore, North Tampa amended its construction permit application, requesting and receiving authorization to construct facilities at an alternative site.¹⁷ North Tampa built these facilities in accordance with the terms of its authorization and has kept the facilities intact and operable after construction.

REC has failed to raise any specific violations pertaining to the construction of the authorized facilities. Furthermore, in its response, North Tampa has provided a declaration, under penalty of perjury, from Hector Alvito attesting to the Station’s timely construction and operation.¹⁸ REC has not responded to these assertions. We therefore see no basis for granting REC’s Objection, which rests solely on unsupported allegations that North Tampa’s facilities have not been constructed. Because REC has not raised any substantial or material questions of fact and has otherwise failed to demonstrate how grant of the Application would make operation of the Station inconsistent with the public interest, we dismiss the Objection.

¹³ 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), *rehearing denied* (Sept. 10, 1993); *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).

¹⁴ 47 U.S.C. § 319(c).

¹⁵ *Id.* (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest...”).

¹⁶ See, e.g., *Meyer Broadcasting Company*, Memorandum Opinion and Order, 65 FCC 2d 438, 441 (1977).

¹⁷ See File No. BNPL-20131112AHQ (filed Sept. 19, 2016) (application for construction permit); File No. BMPL-20190912ABF (MB Sept. 16, 2019) (modifying Permit No. BNPL-20131112AHQ).

¹⁸ Opposition at Attachment 1.

Conclusion/Action. For the reasons stated above, IT IS ORDERED that the Informal Objection filed by REC Networks on September 24, 2019, IS DISMISSED and the application for a license to cover filed by North Tampa Community Radio (File No. BLL-20190919AAP) IS GRANTED.

Sincerely,

Nazifa Sawez
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