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In Re: **Centro Cultural de Mexico en el Condado de Orange**

New LPFM Station, Santa Ana, CA
Facility ID No. 192477
File No. BNPL-20131114BFE

Latino Center for Prevention & Action in Health & Welfare

New LPFM Station, Santa Ana, CA
Facility ID No. 196543
File No. BNPL-20131114BNB

New Hope Family Worship Center

New LPFM Station, Corona, CA
Facility ID No. 195230
File No. BNPL-20131106AUB

Calvary Chapel Huntington Beach

New LPFM Station, Huntington Beach, CA
Facility ID No. 195611
File No. BNPL-20131112ANS

**Petition to Deny
Waiver Requests**

Dear Counsel and Mr. Ashcraft:

We have before us the above-referenced applications for new low power FM (“LPFM”) stations at Santa Ana, Corona, and Huntington Beach, California. Also before us is a Consolidated Petition to Deny (“Petition”) three of these applications – those filed by Centro Cultural de Mexico en Condado de Orange (“Centro”), Latino Center for Prevention & Action in Health & Welfare (“Latino Center”) and New Hope Family Worship Center (“New Hope”) – filed by LC Media LP (“LC Media”). Finally, we have before us a time-share proposal submitted to the Commission by Centro and Latino Center. For the reasons stated below, we approve the time-share proposal, dismiss the application filed by New Hope and the application filed by Calvary Chapel Huntington Beach (“Calvary Chapel”), deny the Petition, and grant the applications filed by Centro and Latino Center.

Background. Centro, Latino Center, New Hope and Calvary Chapel submitted their applications during the most recent LPFM filing window. The Bureau determined that these applications – along with three other applications submitted during that same filing window – were mutually exclusive and designated them LPFM MX Group 34.¹ After offering the applicants in LPFM MX Group 34 an opportunity to resolve the conflicts among their applications, the Bureau conducted a point hearing and determined that the Centro, Latino Center, New Hope and Calvary Chapel applications were tied. On July 9, 2014, the Commission identified these four applicants as the tentative selectees in LPFM MX Group 34.² At the same time, it announced the 30-day period for filing petitions to deny against the tentative selectees and the 90-day period for filing of voluntary time-share proposals.

On August 8, 2014, LC Media filed the Petition, which seeks dismissal or denial of the Centro, Latino Center and New Hope applications. These applications include requests for waiver of the second-adjacent channel spacing requirements (“second-adjacent channel waivers”) set forth in Section 73.807 of the Commission’s rules (“Rules”). LC Media seeks dismissal or denial of the Centro, Latino Center and New Hope applications, arguing that neither Centro, Latino Center nor New Hope have satisfied the standard for second-adjacent waivers. Centro and Latino Center opposed the Petition on August 28, 2014, and LC Media replied on September 17, 2014. Subsequently, on October 6, 2014, Centro and Latino Center entered into a voluntary time-sharing agreement. They submitted the agreement to the Commission as a time-share proposal the following day.

Discussion. Time-Share Agreement. Centro and Latino Center submitted a time-share proposal to the Commission within the 90-day period for filing of voluntary time-share proposals. The proposal complies with the Commission’s requirements, which are set forth in Section 73.872(c) of the Commission’s rules.³ Accordingly, we will approve the proposal.

Because the proposal involves only two of the four tentative selectees identified by the Commission on July 9, 2014, we aggregate the points that the Commission previously awarded separately to Centro and Latino Center. The Commission previously awarded five points each to Centro, Latino Center, New Hope and Calvary Chapel. With their points aggregated, Centro and Latino Center have ten points. This breaks the four-way tie in MX Group 34. Accordingly, we will grant the Centro and Latino

¹ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

² *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications Filed in the LPFM Window*, Public Notice, FCC 14-96

³ 47 C.F.R. § 73.872(c) (requiring that time-share proposals be in writing and signed by each time-share proponent, and that time-share proposals specify the proposed hours of operation of each time-share proponent, not include simultaneous operation, and propose that each time-share proponent will operate for at least 10 hours per week).

Center applications and dismiss the Hope and Calvary Chapel applications.⁴

Waiver of the Second-Adjacent Channel Spacing Requirements. Section 3(b)(2)(A) of the Local Community Radio Act of 2010 (“LCRA”) requires an LPFM applicant seeking a second-adjacent channel waiver to demonstrate that its proposed LPFM facilities “will not result in interference to any authorized radio service.”⁵ Centro and Latino Center both submitted engineering exhibits along with their second-adjacent waiver requests. These exhibits purport to demonstrate that their proposed LPFM stations would not cause interference to any FM stations operating on second-adjacent channels. LC Media claims that these exhibits are “patently defective” because they fail to demonstrate that the proposed LPFM stations will not cause co-channel interference to two of its stations – KQIE(FM), Redlands, California, and KCAQ(FM), Oxnard, California.⁶

To reach this conclusion, though, LC Media construes Section 3(b)(2)(A) of the LCRA as requiring that an LPFM applicant seeking a second-adjacent waiver demonstrate that its proposed LPFM station “will not cause interference to any radio station, not just those operating on second-adjacent channels.”⁷ We cannot agree with LC Media’s reading of the second-adjacent waiver standard in the statute.

First, when the Commission created the LPFM service, it chose to use spacing requirements to “preserve the integrity and technical excellence of existing FM radio service.”⁸ It stated that “[t]he extent of interference protection from LPFM stations to existing FM, LPFM and FM translator and booster service generally will be that afforded by minimum station separation requirements” and noted that “[t]hese were designed to provide the same degree of interference protection that full-service stations provide each other.”⁹ The LCRA did not alter the co- or first-adjacent channel spacing requirements.¹⁰ Second, while the LCRA authorized the Commission to waive the second-adjacent spacing requirements in some circumstances, it prohibited the Commission from waiving the co- or first-adjacent channel spacing requirements.¹¹ Third, we find that the better, more reasonable way to construe “any authorized radio service” is to treat this language as a requirement that a waiver showing addresses all radio services, *i.e.*, all full-power, translator, booster and LPFM stations. Put another way, Section 3(b)(2)(A) requires an LPFM applicant seeking a second-adjacent waiver to demonstrate that grant of the waiver will not cause interference to any FM station in any service that operates on a second-adjacent channel to the proposed LPFM station. It does not require such an applicant to demonstrate that its proposed LPFM

⁴ LC Media seeks dismissal or denial of the Centro, Latino Center and New Hope applications. Because we dismiss New Hope’s application as a result of approving the time-share proposal submitted by Centro and Latino Center, we do not further discuss the New Hope application herein.

⁵ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁶ Petition at 6-8.

⁷ *Id.* at 4-5.

⁸ *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2233-34 ¶¶ 70-71 (2000) (“*LPFM Report and Order*”). In fact, the Commission incorporated a 20 km “buffer” into these requirements. *Id.* at 2234 ¶ 71.

⁹ *LPFM Report and Order*, 15 FCC Rcd at 2231 ¶ 64.

¹⁰ The shared proposed facilities of Centro and Latino Center *exceed* the minimum distance separation requirements to KQIE(FM) and KCAQ(FM) by 19.6 kilometers and 20.7 kilometers, respectively.

¹¹ LCRA, § 3(b)(1) (“The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on the date of enhancement of this Act between – (A) low power FM stations; and (B) full-service FM stations.”).

station – which must comply with the co- and first-adjacent channel spacing requirements – will not cause any interference to stations operating on co- or first-adjacent channels.

Our reading of Section 3(b)(2)(A) is consistent with the Commission’s construction of other sections of LCRA in which the applicability is uncertain. For instance, the Commission interpreted Sections 7(1) through (5) of the LCRA to apply only to third-adjacent channel interference.¹² It did so despite the fact that “Congress did not specify the type of interference to which these provisions apply.”¹³ The Commission relied on the fact that, in each of the provisions at issue, Congress referred specifically to LPFM stations on third-adjacent channels or LPFM stations that do not satisfy the third-adjacent channel spacing requirements.¹⁴ Thus, it found these references “reflect[ed] a focus on LPFM stations causing interference to stations located on third-adjacent channels.”¹⁵ Here, Section 3(b)(2)(A) is focused solely on proposed LPFM facilities that do not satisfy the second-adjacent channel spacing requirements. Accordingly, it is reasonable to conclude that Congress intended that applicants seeking a second-adjacent waiver only demonstrate that their proposed LPFM facilities would not interfere with the signals of any stations operating on second-adjacent channels.¹⁶

In interpreting the LCRA, the Commission also rejected the view that Sections 7(1) and 7(3) could apply to the same LPFM station.¹⁷ In doing so, the Commission noted that this would expose an LPFM station subject to the interference protection and remediation regime set forth in Section 7(1) “to different and conflicting interference protection and remediation obligations.”¹⁸ A similar issue would arise were we to adopt LC Media’s reading of Section 3(b)(2)(A) of the LCRA. If an LPFM station satisfied the third-adjacent channel spacing requirements but operated pursuant to a second-adjacent waiver, under Section 3(b)(2)(B)(ii) of the LCRA, it would be required to “eliminate” all third-adjacent channel interference but under Section 7(3) of the LCRA it would merely need to “address” such interference. The Commission further found it was reasonable to conclude that “Congress intended to impose more stringent interference protection and remediation obligations on LPFM stations that are located nearest to full-service FM stations and, therefore, have a greater potential to cause interference.”¹⁹

¹² *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15436 ¶ 95 (2012) (“*Sixth Report and Order*”).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ In its decision implementing the LCRA, the Commission did not directly address the question of whether an applicant seeking a second-adjacent waiver must show that its proposed LPFM facilities will not cause interference to any station or just second-adjacent channel stations. The Commission did, however, imply that the showing would be limited to second-adjacent channel stations. For instance, it “instruct[ed] the Media Bureau to identify specifically all potentially affected second-adjacent channel stations in the public notice that accepts for filing an application for an LPFM station that includes a request for a second-adjacent waiver.” *Sixth Report and Order*, 27 FCC Rcd at 15430 ¶ 79.

¹⁷ Sections 7(1) and 7(3) set forth interference protection and remediation obligations that LPFM stations have with respect to third-adjacent channel stations. Section 7(1) applies to “low-power FM stations licensed at locations that do not satisfy the third-adjacent channel spacing requirements” LCRA, § 7(1). It requires such LPFM stations to “eliminate” any actual interference that their operations cause to the signal of any authorized station in areas where that station’s signal is regularly used. *Id.* Section 7(3) applies to “[LPFM] stations on third-adjacent channels.” LCRA, § 7(3). It requires only that LPFM stations “address” complaints of interference within an affected station’s protected contour. *Id.*

¹⁸ *Sixth Report and Order*, 27 FCC Rcd at 15434 ¶ 88.

¹⁹ *Id.* at 15434 ¶ 89.

According to the Commission, “[t]he LCRA provides greater flexibility by eliminating third-adjacent channel spacing requirements for LPFM stations, but counterbalances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations.”²⁰ This same logic applies to Section 3(b)(2) of the LCRA and supports our conclusion that Section 3(b)(2) of the LCRA applies to second-adjacent channel interference only. Nothing in the record supports the view that there is a technical justification for using a second-adjacent waiver as a trigger for greater co- or first-adjacent channel protections.

We acknowledge the Commission did not directly speak to the question of whether Section 3(b)(2) of the LCRA addresses only second-adjacent channel interference.²¹ However, the Commission did include language in the order implementing the LCRA that lends additional support to our finding here. For instance, the Commission explained that, while applicants for second-adjacent waivers have the flexibility to propose a lower power level, antenna polarization and/or a directional antenna pattern, this flexibility “extends only to waiver applicants seeking to demonstrate that their proposed operations will not result in any *second-adjacent channel* interference.”²² Similarly, the Commission determined that it would “permit waiver applicants to show that ‘no actual interference will occur’ due to ‘lack of population’ and will allow waiver applicants to use an undesired/desired signal strength ratio methodology to define areas of potential interference when proposing to operate near another station *operating on a second-adjacent channel*.”²³ Likewise, the Commission required the Media Bureau to identify “all potentially affected *second-adjacent channel* stations in the public notice that accepts for filing an application for an LPFM station that includes a request for a second-adjacent waiver.”²⁴

Finally, we note that, in implementing the LCRA, the Commission did not consider whether the limited co- and first-adjacent channel interference protection rights afforded to full service FM stations under Section 73.809(a) are in conflict with the remediation requirements set forth in Section 3(b)(2)(B)(ii). Had the Commission shared LC Media’s view of Section 3(b)(2) of the LCRA, it would have revised Section 73.809(a) to provide different co- and first-adjacent channel interference protection rights where an LPFM station was operating pursuant to a second-adjacent channel waiver.

Because we find that the LCRA did not alter the interference protection regime for stations operating on co- and first-adjacent channels and that an LPFM applicant seeking a second-adjacent waiver need not demonstrate that its proposed facilities will not interfere with co- or first-adjacent channel stations,²⁵ we do not consider the engineering reports that LC Media proffered regarding co-

²⁰ *Id.* at 15434-35 ¶ 89.

²¹ We note, however, that the Small Entity Compliance Guide for Low Power FM does address this question. It states that “[a]n LPFM licensee operating pursuant to a second-adjacent waiver must eliminate any *second-adjacent channel* interference caused by its operations.” Small Entity Compliance Guide, Low Power FM, DA 13-49 (rel. Jan. 28, 2013)

²² *Sixth Report and Order* at 15430 ¶ 80 (emphasis added).

²³ *Id.*, at 15429 ¶ 78 (emphasis added).

²⁴ *Id.* at 15430 ¶ 79 (emphasis added).

²⁵ We note that our reading of Section 3(b)(2) of the LCRA is consistent with the requirements set forth in Section 5 that the Commission ensure that “FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.” LCRA, § 5. Equal in status does not mean subject to identical interference protection and remediation requirements. Indeed, the LCRA itself establishes different remediation standards between FM translators and LPFM and even between classes of LPFM stations. Where Congress intended to impose identical requirements upon FM translators and LPFM stations, it specifically did so in the text of the LCRA. *See* LCRA, § 7(1) (requiring that LPFM stations that do not satisfy the third-adjacent spacing requirements provide “the same interference protections that FM translator stations and FM

channel interference.²⁶ Similarly, we also do not consider LC Media's argument that the contour overlap restrictions applicable to translators and set forth in Section 74.1204(f) of the Rules should apply to LPFM applicants that seek second-adjacent waivers.²⁷ All Centro and Latino Center must show in relation to LC Media's co-channel stations is that they satisfy the spacing requirements set forth in Section 73.807. We have reviewed the engineering exhibits provided by Centro and Latino Center and conclude that their proposed LPFM stations will not cause interference to any FM station operating on a second-adjacent channel to their proposed LPFM stations. Accordingly, we will waive the second-adjacent channel spacing requirements.²⁸

Finally, we reject LC Media's argument that the framework for handling interference complaints set forth in Section 3(b)(2)(B) of the LCRA – and Section 73.807(e)(2) of the Rules, which implements that section of the LCRA -- apply not just to complaints of second-adjacent channel interference but to complaints of co- and first-adjacent channel interference.²⁹ As noted above, Section 3(b)(2) of the LCRA is focused on stations that do not satisfy the second-adjacent channel spacing requirements and thus are more likely to cause second-adjacent channel interference to other stations. It does not alter the interference protections for co- and first-adjacent channel stations nor does it alter the Commission's previous holding that "LPFM stations will not be required to eliminate interference caused to FM stations by their lawful operations."³⁰

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the time-share agreement filed on October 7, 2014, by Centro Cultural de Mexico en el Condado de Orange and Latino Center for Prevention & Action in Health & Welfare IS APPROVED pursuant to Section 47 C.F.R. § 73.872(c).

IT IS FURTHER ORDERED that the application for a new LPFM station at Corona, California, filed by New Hope Family Worship Center (File No. BNPL-20131106AUB) IS DISMISSED.

IT IS FURTHER ORDERED that the application for a new LPFM station at Huntington Beach, California, filed by Calvary Chapel Huntington Beach (File No. BNPL-20131112ANS) IS DISMISSED.

IT IS FURTHER ORDERED that the Petition to Deny filed by LC Media LP on August 8, 2014, IS DENIED.

booster stations are required to provide as set forth in section 74.1203" of the Rules). Further, we note that LPFM stations retain the singularly defining attribute of secondary stations, *i.e.*, they have no protection against subsequently proposed or authorized full service FM facilities.

²⁶ Petition at 6-8 & Attach. A; Reply at 6-7 & Attach. A.

²⁷ Petition at 8-9.

²⁸ We note that LC Media also appears to argue that waiver of the second-adjacent channel spacing requirements is not justified under the Commission's general waiver standard. Petition at 7-8. Because we find waiver is justified under the statutory waiver standard set forth in Section 3(b)(2)(A) of the LCRA, we need not address this issue.

²⁹ Petition at 9-10.

³⁰ *LPFM Report and Order*, 15 FCC Rcd at 2231 ¶ 64.

IT IS FURTHER ORDERED that the applications for a new LPFM station at Santa Ana, California, filed by Centro Cultural de Mexico en el Condado de Orange (File No. BNPL-20131114BFE) and Latino Center for Prevention & Action in Health & Welfare (File No. BNPL-20131114BNB), ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau