



Federal Communications Commission
Washington, D.C. 20554

September 14, 2015

In Reply Refer to:
1800B3-ATS

David Oxenford, Esq.
Kelly Donohue, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037

Michael Couzens, Esq.
Michael Couzens Law Office
6536 Telegraph Avenue, Suite B201
Oakland, CA 94609

In re: **LPFM MX Group 34**

Centro Cultural de Mexico en el
Condado de Orange
New LPFM, Sana Ana, California
Facility ID No. 192477
File No. BNPL-20131114BFE

Latino Center for Prevention & Action
in Health & Welfare
New LPFM, Sana Ana, California
Facility ID No. 196543
File No. BNPL-20131114BNB

Application for Review

Dear Counsel:

We have before us the Application for Review (“AFR”) filed on August 20, 2015, by LC Media LP and Point Four, LLC (collectively, “Petitioners”). The AFR seeks Commission review of a staff decision¹ which denied the Consolidated Petition to Deny filed by Petitioners against the referenced applications of Centro Cultural de Mexico en el Condado de Orange and Latino Center for Prevention & Action in Health & Welfare (collectively, “Applicants”) for construction permits for new LPFM stations in Santa Ana, California, and granted those applications.² For the reasons discussed below, we dismiss the AFR as procedurally defective pursuant to Section 1.115(d) of the Commission’s Rules.³

Discussion. Section 1.115(d) states that an “application for review and any supplemental thereto shall be filed within 30 days of public notice of such action.”⁴ Requests for extension of filing deadlines must be submitted at least seven days before the applicable deadline and are not routinely granted.⁵ In

¹ See *LPFM MX Group 34*, Letter, 30 FCC Rcd 7343 (MB 2015) (“*Staff Decision*”).

² Applicants filed an Opposition to the AFR on August 31, 2015.

³ 47 C.F.R. § 1.115(d).

⁴ *Id.*

⁵ 47 C.F.R. §§ 1.46(a) and (c).

this case, the “action” of which the AFR is requesting review is the *Staff Decision*, which was released on July 20, 2015.⁶ The deadline for filing the AFR was thus August 19, 2015, and a request for extension of time was due August 12, 2015. However, Petitioners filed the AFR one day later, on August 20, 2015, and Petitioners did not request an extension of time in which to file the AFR until that day.

Petitioners acknowledge that the AFR is untimely, but argue that the Commission should exercise its discretion to consider the untimely filing because it would serve the public interest.⁷ An applicant seeking waiver of a Rule has the burden to plead with particularity the facts and circumstances that warrant such action,⁸ and must support its request with a compelling showing.⁹ An applicant for waiver “faces a high hurdle even at the starting gate.”¹⁰ Waiver is appropriate only when: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation better serves the public interest.¹¹

Petitioners have not met this burden because they fail to explain the special circumstances that resulted in the untimely filing of the AFR.¹² Professed public interest reasons for considering a pleading cannot alone provide adequate basis for a waiver where the waiver proponent fails to provide a sufficiently unique and compelling reason for the pleading’s late-filing.¹³ As the U.S. Court of Appeals for the D.C. Circuit has observed, “[w]hen an agency imposes a strict deadline for filings, as the FCC has done, many meritorious claims are not considered; that is the nature of a strict deadline.”¹⁴ The Court, thus, has repeatedly “discourage[d] the Commission from entertaining late-filed pleadings ‘in the absence of extremely unusual circumstances.’”¹⁵ The Court has opined that departures from the Commission’s Rules in the absence of unusual circumstances, even to achieve laudable aims, cannot be sanctioned because “therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action.”¹⁶ Accordingly, the “Commission does not abuse its discretion when it ‘declines to entertain a late-filed petition in the absence of extenuating circumstances prohibiting a timely

⁶ 47 C.F.R. § 1.4(b)(2).

⁷ AFR at 2, citing *The Polite Society*, Memorandum Opinion and Order, 55 FCC 2d 810 (1975) (“*Polite Society*”); *High Country Broadcasting Corporation*, Memorandum Opinion and Order, 4 FCC Rcd 1528 (1988) (“*High Country*”).

⁸ *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

⁹ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)). See 47 C.F.R. § 1.3.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“*WAIT Radio*”), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant’s proposal will not undermine the policy served by the rule). See *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

¹¹ *Network IP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008) (“*NetworkIP*”); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1159.

¹² *Cranesville Block Company, Inc.*, Letter, 27 FCC Rcd 6386 (MB 2012) (staff rejects waiver of Section 1.115(d) and dismisses untimely application for review where waiver request was based solely on “compelling substantive reasons” and did not demonstrate what special circumstances warranted a waiver).

¹³ See *NetworkIP*, 548 F.3d at 127.

¹⁴ *Id.*

¹⁵ *Id.*, citing *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (“*BDPCS*”) (quoting *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 200 (D.C. Cir. 2003)).

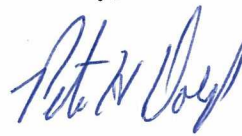
¹⁶ *NetworkIP*, 548 F.3d at 127 (quoting *Reuters Ltd. v. FCC*, 781 F.2d 946, 950-51 (D.C. Cir. 1986)).

filing.”¹⁷ Moreover, we find Petitioners’ reliance on *The Polite Society* and *High Country* misplaced. Both decisions precede *NetworkIP* and did not provide an explanation for what special circumstances warranted waiving Section 1.115(d). Therefore, we will dismiss the AFR as untimely pursuant to our authority to take such actions.¹⁸

We also find that Petitioners have not shown that the public interest would be served by waiving Section 1.115(d) and considering the merits of the AFR. Rather, enforcing filing deadlines and bringing new LPFM service to Santa Ana would better serve the public interest than entertaining an untimely filing. We will thus dismiss the AFR as untimely.

Conclusion/Action. Accordingly, IT IS ORDERED that the Application for Review filed on August 20, 2015, by LC Media LP and Point Four, LLC, IS DISMISSED as untimely, pursuant to 47 C.F.R. §§ 1.4 and 1.115(d).

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Ms. Carolina Sarmiento
Centro Cultural De Mexico en el Condado de Orange
313 N. Birch Street
Santa Ana, CA 92701

Ms. America Bracho
Latino Center for Prevention & Action in Health & Welfare
450 W 4th Street, Suite 130
Santa Ana, CA 92701

¹⁷ *BDPCS*, 351 F.3d at 1184 (quoting *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 200 (D.C. Cir. 2003)).

¹⁸ See *Garnerlynn Communications*, Memorandum Opinion and Order, 99 FCC 2d 1176, 1177 n.2 (1984) (staff may dismiss untimely application for review); *Hurricane Bible Church*, Letter, 21 FCC Rcd 1425 (MB 2006) (untimely application for review dismissed by the bureau staff). See also *Board of Education of the City of Atlanta*, Memorandum Opinion and Order, 11 FCC Rcd 7763, 7765-6 (1996) (application for review filed one day late dismissed by the Commission as untimely).