



Federal Communications Commission
Washington, D.C. 20554

May 12, 2015

In Reply Refer To:
1800B3-ATS

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In re: Santa Clarita Public Service
Broadcasters Corporation
KZNQ-LP, Santa Clarita, California
Facility ID Number: 196331
File Nos: BNPL-20131112BLX,
BMPL-20150130AET

**Informal Objection and Petition for
Revocation of Construction Permit**

Dear Counsel:

We have before us: 1) the application ("Modification Application") of Santa Clarita Public Service Broadcasters Corporation ("Santa Clarita") to modify its construction permit for a new LPFM station at Santa Clarita, California ("KZNQ-LP"); and 2) the "Informal Objection and Petition for Revocation of Construction Permit" ("Objection") filed by AMFM Broadcasting Licenses, LLC ("AMFM"), seeking dismissal of the Modification Application and revocation of Santa Clarita's granted construction permit application ("CP Application").¹ For the reasons set forth below, we dismiss the Objection as it pertains to the CP Application, deny it as it pertains to the Modification Application, and dismiss the Modification Application.

Background. Santa Clarita filed the CP Application during the October 2013 LPFM filing window, proposing to operate on Channel 300. The Media Bureau ("Bureau") determined that the CP Application and the application filed by Santa Clarita Organization for Planning the Environment ("SCOPE Application") were mutually exclusive and identified them as LPFM MX Group 35.² On July 9, 2014, the Commission issued a Public Notice in which it conducted a point system analysis, identified the SCOPE Application as the tentative selectee of LPFM MX Group 35, and began a 90-day period in which both applicants could file major amendments to resolve their mutual exclusivities.³

¹ The Objection was filed on March 10, 2015. Santa Clarita filed a Motion for Extension of Time to File Opposition on March 25, 2015, and an Opposition on April 2, 2015. No Reply has been filed.

² *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

³ *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications filed in the LPFM Window*, Public Notice, 29 FCC Rcd 8665 (2014).

Santa Clarita amended the CP Application on July 10, 2014, to propose operation on Channel 268 and identify a new tower location, resulting in the CP Application becoming a singleton. The Bureau accepted the CP Application for filing on July 11, 2014,⁴ no petition to deny was filed, and the Bureau granted the CP Application on August 20, 2014.⁵

Santa Clarita filed the Modification Application on January 30, 2015, proposing to modify the construction permit by: 1) changing KZNQ-LP's channel from Channel 268 to Channel 256; and 2) relocating to a tower location 16 km away from the site specified in the CP Application.⁶ The Modification Application included an Engineering Narrative which requests a waiver of Section 73.870(a) of the Commission's Rules ("Rules").⁷ The Engineering Narrative states that a waiver of Section 73.870(a) is warranted because tropospheric ducting results in the presence of the signal from Station KGB-FM, San Diego, California, in KZNQ-LP's 60 dBu coverage area.⁸

In the Objection, AMFM alleges that Willie O. Walton, the President of Santa Clarita, was the subject of a Notice of Unlicensed Operation ("NUO") from the Commission's Enforcement Bureau in August of 2011.⁹ Accordingly, AMFM argues that Santa Clarita is ineligible to hold an LPFM license and made a misrepresentation to the Commission when it certified in the CP Application and the Modification Application that no party to the applications had engaged in unlicensed operation of any station in violation of Section 301 of the Communication Act of 1934, as amended ("Act").¹⁰ Santa Clarita thus requests that the Bureau rescind its grant of the CP Application and dismiss the Modification Application.

In the Opposition, Santa Clarita argues that the Objection, as filed against the CP Application, is an untimely petition for reconsideration and defective because AMFM did not object to the CP Application prior to its grant.¹¹ Santa Clarita further argues that the Objection fails against the Modification Application because the NUO indicated that Mr. Walton was operating a Part 15 device in violation of Section 15.219(b) – not Section 301 of the Act – and was therefore not engaged in illegal unlicensed broadcasting.¹²

Discussion. CP Application. We find that the Objection as filed against the CP Application is defective both because AMFM was not a party to the original proceeding and because it is untimely. Section 1.106(b)(1) of the Rules allows any party to an original proceeding, or any non-party whose interests are adversely affected by an action taken by the Commission, to file a petition for

⁴ See *Broadcast Applications*, Public Notice, Report No. 28282 (MB July 15, 2014) ("Acceptance Public Notice").

⁵ See *Broadcast Actions*, Public Notice, Report No. 48310 (MB Aug. 25, 2014) ("Grant Public Notice").

⁶ Modification Application at Section VII, Questions 1 and 2.

⁷ *Id.* at Attachment 11. See also 47 C.F.R. § 73.870(a) ("A minor change for an LPFM station authorized under this subpart is limited to transmitter site relocation of 5.6 kilometers or less.")

⁸ Engineering Narrative at 2-3.

⁹ Objection at 3 and Attachment A. The NUO states that agents from the Los Angeles Office inspected Walton's residence and found that the ground lead of a transmitter at the site connected to a cable running the length of the station's antenna tower, resulting in the total length of the antenna, transmission line, and ground lead exceeded 3 meters in violation of Section 15.219(b) of the Rules. See 47 C.F.R. § 15.219(b).

¹⁰ *Id.* at 2-3. See also CP Application and Modification Application at Section II, Question 8.

¹¹ Opposition at 2-3.

¹² Opposition at 3-5. The Opposition states that although Walton disputes the findings in the NUO, he nonetheless removed the cable in question and that no there was no further action by the Commission's Los Angeles Office.

reconsideration of the action taken.¹³ To qualify as a party, a petitioner for reconsideration must have filed a valid petition to deny against the application.¹⁴ Non-parties must state “with particularity” the manner in which their interests are adversely affected, and must show good reason why they were unable to participate in the earlier proceeding.¹⁵

AMFM fails to meet this burden, having provided no explanation as to why it did not object prior to the Bureau’s grant of the CP Application. While the Commission has accorded standing to petitioners whose failure to timely file a pre-grant objection was the result of unusually prompt staff action,¹⁶ such is not the case here. AMFM had 30 days to object to the CP Application after the *Acceptance Public Notice*, but failed to do so.¹⁷ Because the Bureau may dismiss a petition for reconsideration that does not show good cause for the petitioner’s inability to participate earlier in the proceeding,¹⁸ we dismiss the Objection as it pertains to the CP Application.

We also reject AMFM’s attempts to circumvent the 30-day period for filing a petition for reconsideration. Section 405 of the Act and Section 1.106 of the Rules require any petition for reconsideration to be filed within thirty days of the date upon which the Bureau gives public notice of the decision.¹⁹ The Commission generally lacks the authority to extend or waive the statutory 30-day filing period for petitions for reconsideration.²⁰ In this case, the action in question is the *Grant Public Notice* announcing the grant of the CP Application, which was issued on August 25, 2014.²¹ Any petition for reconsideration of the *Grant Public Notice*, therefore, was due on September 24, 2014. AMFM, however, did not file the Objection until March 10, 2015, six months after the filing deadline. Moreover, a petitioner cannot avoid filing deadlines by calling its petition something other than a petition for reconsideration when it, in effect, seeks reconsideration or review.²² We thus find the Objection, as filed against the CP Application, is also dismissible as untimely.

¹³ 47 C.F.R. § 1.106(b)(1).

¹⁴ See *University of North Carolina*, Memorandum Opinion and Order, 4 FCC Rcd 2780 (1989); *Montgomery County Broadcasting Corporation*, Memorandum Opinion and Order, 65 FCC 2d 876 (1977).

¹⁵ 47 C.F.R. § 1.106(b)(1).

¹⁶ See, e.g., *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854 (1997) (awarding standing to file petition for reconsideration without pre-grant objection when application granted five days after Public Notice of its acceptance); *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816 (1989) (standing for post-grant objection when application granted four days after Public Notice).

¹⁷ See 47 U.S.C. § 309(b), (d).

¹⁸ See, e.g., *Florida Public Radio*, Letter, 22 FCC Rcd 2305 (MB 2007) (dismissing petition for reconsideration for lack of standing where petitioner was not involved in the case prior to the grant, did not show adversely affected interests, and did not establish good cause for failing to participate in the original proceeding).

¹⁹ 47 U.S.C. § 405(a), 47 C.F.R. § 1.106(f).

²⁰ See *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (express statutory limitations barred the Commission from acting on a petition for reconsideration that was filed after the due date).

²¹ 47 C.F.R. § 1.4(b)(4) (“If the full text of an action document is not to be released by the Commission, but a descriptive document entitled “Public Notice” describing the action is released, the date on which the descriptive “Public Notice” is released.”)

²² See *Holy Family Oratory of St. Philip Neri*, Memorandum Opinion and Order, 29 FCC Rcd 13273, 13274 (2015) (finding that “Emergency Petition to Rescind Construction Permit Grant” was an untimely petition for reconsideration).

Modification Application. Pursuant to Section 309(d) of the Act, informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.²³ AMFM has not met this burden with regard to the Modification Application.

Section 632(a)(1)(B) of the Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act provides that the Commission must “prohibit any applicant from obtaining a low power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of Section 301 [of the Act].”²⁴ We find that the Objection fails to demonstrate that Mr. Walton, a principal of Santa Clarita, engaged in such conduct. As the NUO notes, Mr. Walton was operating pursuant to Part 15 of the Rules, which permits certain unlicensed broadcasting.²⁵ The Commission has held that such operations do not render an applicant ineligible to hold an LPFM license.²⁶ The NUO did not indicate that Mr. Walton violated Section 301 of the Act, but instead stated that he was in violation of Section 15.219(b) of the Rules. We will thus deny the Objection as it pertains to the Modification Application.

Waiver Request. The Commission's Rules may be waived only for good cause shown.²⁷ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”²⁸ and must support its waiver request with a compelling showing.²⁹ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.³⁰

While KZNQ-LP may, at times, be experiencing reception difficulties due to propagation anomalies, such disturbances to FM reception caused by changing atmospheric conditions are not uncommon occurrences in West Coast regions, as well as other areas of the country.³¹ Numerous FM broadcast stations on the Gulf Coast, in the Great Lakes Region, and other areas face similar reception problems within their respective service areas. Therefore, KZNQ-LP's situation is not a special circumstance. Furthermore, the Commission has rejected tropospheric ducting as a basis for granting waivers of the Rules.³² Thus, this propagation phenomenon does not provide sufficient justification to warrant waiver. We thus deny the waiver request and will dismiss the Modification Application.

²³ 47 U.S.C. § 309(d); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

²⁴ See Pub. L. No. 106-553, 114 Stat. 2762 (2000) (“Appropriations Act”). See also *Ruggiero v. FCC*, 278 F.3d 1323 (D.C. Cir. 2002), *rev'd en banc*, 317 F.3d 239 (D.C. Cir. 2003).

²⁵ See *Permitted Forms of Low Power Broadcast Operation*, Public Notice, Mimeo No. 14089 (July 24, 2001)

²⁶ *Casa de Oracion Getsemani*, Memorandum Opinion and Order, 23 FCC Rcd 4118, 4125 (2008).

²⁷ 47 C.F.R. § 1.3.

²⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

²⁹ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

³⁰ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

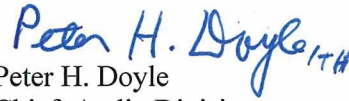
³¹ See *Revision of FM Rules, First Report and Order*, Docket 14185, 23 R.R. 1801, 1819 (1962).

³² *ECI License Company, L.P.*, Memorandum Opinion and Order, 11 FCC Rcd 3545 (1996); *aff'd*, *ECI License Co., L.P., v. FCC*, 106 F.3d 442 (D.C. Cir. 1996).

Conclusion. Accordingly, IT IS ORDERED the "Informal Objection and Petition for Revocation of Construction Permit" filed on March 10, 2015, by AMFM Broadcasting Licenses, LLC, IS DISMISSED to the extent indicated above and IS DENIED in all other respects.

IT IS FURTHER ORDERED that the application to modify the construction permit of Station KZNQ-LP, Santa Clarita, California (File No. BMPL-20150130AET) IS DISMISSED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" with a stylized "TH" at the end.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Santa Clarita Public Service Broadcasters Corporation
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Santa Clarita, CA 91350