



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-ATS

Mr. William Berle
The Los Angeles Social Justice Radio Project
9120 Langdon Avenue, Suite 1
North Hills, CA 91343

Eve R. Pogoriler, Esq.
Paul Swain, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue N.W.
Washington, DC 20004

Mark A. Balkin, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, LA 70471

In re: The Los Angeles
Social Justice Radio Project
New LPFM, Los Angeles, California
Facility ID No. 196949
File No. BNPL-20131114BHE

Petitions to Deny

Dear Mr. Berle and Counsel:

We have before us: 1) the application of The Los Angeles Social Justice Radio Project (“SJRP”) for a new LPFM station at Los Angeles, California (“Application”); 2) the Petition to Deny the Application (“Calvary Petition”) filed by Calvary Chapel of Costa Mesa, Inc. (“Calvary”); 3) the Petition to Deny the Application (“KLVE Petition”) filed by KLVE-FM License Corp (“KLVE”).¹ For the reasons set forth below, we treat the Calvary Petition as an informal objection, grant it and the KLVE Petition, and dismiss the SJRP Application.

Background. SJRP filed the Application during the October 2013 LPFM filing window. The Bureau determined that the Application and six other applications submitted during the filing window were mutually exclusive and identified them as MX Group 40.² On July 9, 2014, the Bureau issued a public notice identifying the tentative selectees in 79 mutually exclusive groups and afforded all applicants in MX Group 40 a 90-day period in which to file major change amendments in order to resolve their mutual exclusivities.³ SJRP filed an amendment on October 8, 2014 (“October Amendment”), which changed its proposed channel from 256 to 300, thereby resolving its mutual exclusivities with all

¹ The Calvary Petition was filed on November 12, 2014, and the KLVE Petition was filed on November 14, 2014. SJRP filed an Opposition to both petitions on November 24, 2014. Calvary filed a Reply on December 5, 2014.

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; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 8665 (2014).

other applicants in MX Group 40, and requested a second-adjacent channel waiver with respect to Station KLVE-FM.⁴

Calvary and KLVE both raise the same argument against the Application: that SJRP lacked reasonable assurance of site availability at the time it was filed. Specifically, they argue that the site proposed by SJRP⁵ is located inside the Chatsworth Nature Preserve and that local zoning rules prohibit the construction of an FM transmitter at the site.⁶ Accordingly, they argue that the Application should be dismissed.⁷

SJRP first argues that Calvary and KLVE both lack standing to file petitions to deny because neither has demonstrated that they would suffer injury from the grant of the Application.⁸ SJRP also argues that the site identified in the Application and the October Amendment was an error caused “by the accidental supply of slightly incorrect coordinates to our engineer.”⁹ SJRP filed an amendment on November 24, 2014 (“November Amendment”) which identified a new location (“Revised Site”) several hundred feet from the site identified in the Application and the October Amendment.¹⁰

In the Reply, Calvary argues that it has standing to file the Calvary Petition because “KWVE-FM delivers a listenable signal to portions of the San Fernando Valley that may be affected by SJRP’s signal.”¹¹ Calvary also notes that SJRP has not provided any evidence to support its assertion that the site proposed in the Application prior to the November Amendment was an error, and that the documents provided in the October Amendment show a site clearly different from the Revised Site; thus, “[i]t is not believable that [SJRP] thought this was the same property.”¹²

Discussion. *Standing.* Section 309(d)(1) of the Communications Act of 1934, as amended (“Act”), provides that only a party in interest may file a petition to deny an application.¹³ The Commission accords party in interest status to a petitioner if grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.¹⁴ It is well established that a competitor of an applicant qualifies as a party in interest.¹⁵ Where standing is derived

⁴ October Amendment at Attachment 11.

⁵ See Application at Section VI, Question 2.

⁶ Calvary Petition at 2-3; KLVE Petition at 1-3.

⁷ Calvary and KLVE also argues that the Application is defective because SJRP incorrectly certified that the Application did not require environmental processing pursuant to Section 1.1306 of the Commission’s Rules (“Rules”). See Application at Section VI, Question 10; see also 47 C.F.R. § 1.1306. Because we are dismissing the Application on other grounds, we need not address this issue.

⁸ Opposition at 1.

⁹ *Id.* at 2.

¹⁰ November Amendment at Section VI, Question 2.

¹¹ Reply at 2.

¹² *Id.* at 3.

¹³ 47 U.S.C. § 309(d)(1).

¹⁴ See, e.g., *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063 (1992); *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC2d 696 (1978).

¹⁵ *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 476-477 (1940); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994 (1966).

from status as a competitor in the market, a petitioner “does not need to demonstrate that it will suffer a direct injury from grant” of an application.¹⁶ Nor, as a competitor, “must it demonstrate, or even allege . . . that it will be subjected to increased or materially different competition as a result of the proposed assignment.”¹⁷

KLVE is the licensee of Station KLVE-FM, Los Angeles, California, which serves the same market as SJRP’s proposed LPFM station. As such, KLVE has standing to file the KLVE Petition. We do not need to determine whether Calvary has standing; the Calvary Petition is defective because it is not supported by a signed declaration.¹⁸ We will therefore consider the Calvary Petition as an informal objection under Section 73.3587 of the Rules.¹⁹

Site Availability. 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.²⁰ Calvary and KLVE have met this requirement and we will dismiss the Application.

An applicant seeking a new broadcast facility must, in good faith, possess “reasonable assurance” of a transmitter site at the time it files its application.²¹ It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available.²² While some latitude is afforded such “reasonable assurance,” there must be, at a minimum, a “meeting of the minds resulting in some firm understanding as to the site’s availability.”²³ A mere possibility that the site will be available is not sufficient.²⁴

¹⁶ See *Waterman Broadcasting Corporation of Florida*, Letter, 17 FCC Rcd 15742, 15744 n.2 (MB 2002), citing *American Mobilphone, Inc. and Ram Technologies, Inc.*, Order, 10 FCC Rcd 12297, 12298 (WTB 1995) (“*American Mobilphone*”).

¹⁷ *American Mobilphone*, 10 FCC Rcd at 12298.

¹⁸ 47 U.S.C. § 309(d)(1) (“The petition shall contain 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 subsection (a) of this section. . . . Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.”).

¹⁹ See 47 C.F.R. § 73.3587.

²⁰ 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).

²¹ *Les Seraphim and Mana’o Radio*, Memorandum Opinion and Order, 25 FCC Rcd 2785, 2787 (MB 2010).

²² See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974) (“*Wallace*”) (“Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary.”).

²³ *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The “reasonable assurance” standard is satisfied by “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated . . .” *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

²⁴ See *Wallace*, 49 FCC 2d at 1425. The Commission does not require (and has never required) non-commercial educational (“NCE”) broadcast applicants to certify the availability of the transmitter site in its application procedures. See, e.g., *Carnegie-Mellon Student Government Corp.*, Hearing Designation Order, 7 FCC Rcd 3914, 3914 (MB 1992). Nonetheless, when an NCE applicant proposes a site, it must do so with reasonable assurance in good faith that the site will be available. See, e.g., *Midland Educational Broadcasting Foundation*, Hearing

We find that SJRP has failed to demonstrate that it had reasonable assurance of site availability at the time the Application. First, SJRP does not provide any documentation to show that the Revised Site was the site it intended to identify in the Application.²⁵ Allowing SJRP to identify a new tower site at this point without some evidence in the Application that the Revised Site was the intended site at the time SJRP filed the Application would allow a prohibited correction of a fatal defect.²⁶ Moreover, SJRP does not actually indicate that it had reasonable assurance at the Revised Site at the time it filed the Application; rather SJRP states that “[r]easonable assurance has been enjoyed since *prior to the close of the settlement window*. . .”.²⁷ This does not satisfy our requirement that an applicant have reasonable assurance of site availability at the time of filing. Accordingly, we will dismiss the Application.

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny filed by Calvary Chapel of Costa Mesa, Inc., on November 12, 2014, treated as an Informal Objection, and the Petition to Deny filed by KLVE-FM License Corp. on November 14, 2014, ARE GRANTED.

IT IS FURTHER ORDERED, that the application of The Los Angeles Social Justice Radio Project (BNPL-20131114BHE) for a new LPFM station at Los Angeles, California, IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

Designation Order, 4 FCC Rcd 5207 (MB 1989) (holding that applicant for an NCE FM station had reasonable assurance of site availability because it paid for a lease option on the proposed transmitter site).

²⁵ In a similar context, we have allowed LPFM applicants whose applications we dismissed for violations of Section 73.807 – which cannot be cured pursuant to Section 73.870(c) – to correct typographical errors in their tech box coordinates where the applicant was able to demonstrate the actual intended location of the transmitter. *See People of Progress, Inc.*, Memorandum Opinion and Order, FCC 14-198, n.12 (rel. Dec. 10, 2014). However, the Application did not contain any technical exhibit, and the second-adjacent waiver request in the October Amendment relied on the allegedly mistaken coordinates.

²⁶ We do not allow curative amendments in the full-service NCE context where the applicant lacked reasonable assurance of site availability at the time it filed its application. *See Nevada-Utah Conference of Seventh Day Adventists*, Letter, 26 FCC Rcd 15135, 15140 (MB 2011) (disallowing amendment of an NCE station application that lacked reasonable assurance of site availability).

²⁷ Opposition at 2 (emphasis added). *See also* November Amendment at Attachment 11, pg. 6 (“REC has been advised by the applicant, [SJRP] had received assurances by the site owner that this parcel would be available for the applicant in the event of a grant of a construction permit and that this site assurance was received prior to the amendment filing on October 8, 2014.”). SJRP has not identified the owner of the Revised Site.