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Washington, D.C. 20554

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In Reply Refer to:
1800B3-ATS

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In re: North San Antonio Community Radio

NEW-LP, San Antonio, TX
Facility ID No. 194556
File No. BNPL-20131112AHO

Columbia Hispanic Education
Family Fundation
NEW-LP, Columbia, SC
Facility ID No. 197568
File No. BNPL-20131114APY

South McAllen Hispanic Education
Family Fundation
NEW-LP, McAllen, TX
Facility ID No. 197533
File No. BNPL-20131115AFM

South Jacksonville Community Radio
NEW-LP, Jacksonville, FL
Facility ID No. 194268
File No. BNPL-20131112BDZ

Gary Hispanic Community Radio
NEW-LP, Gary, IN
Facility ID No. 193842
File No. BNPL-20131112AFY

North Longview Hispanic Education
Family Fundation
NEW-LP, Longview, TX
Facility ID No. 197552
File No. BNPL-20131115ANA

Wichita Falls Hispanic American
Family Fundation
NEW-LP, Wichita Falls, TX
Facility ID No. 195666
File No. BNPL-20131114APB

South Victoria Hispanic Education
Family Fundation
NEW-LP, Victoria, TX
Facility ID No. 197550
File No. BNPL-20131115AIB

**Petitions for Reconsideration, Informal
Objections, and Petitions to Deny**

Dear Counsel, Ms. Bradley, and Mr. Shaw:

We have before us the Petitions for Reconsideration (collectively, Petitions) filed by North San Antonio Community Radio (NSACR), Columbia Hispanic Education Family Fundation (CHEFF), South McAllen Hispanic Educational Family Fundation (SMHEFF), South Jacksonville Community Radio (SJCR), Gary Hispanic Community Radio (GHCR), North Longview Hispanic Education Family Fundation (NLHEFF), Wichita Falls Hispanic American Family Fundation (WFHAAF), and South Victoria Hispanic Education Family Fundation (SVHEFF) (collectively, Applicants),¹ which seek reconsideration of various Media Bureau (Bureau) decisions² dismissing the above-referenced applications for construction permits for new LPFM stations (respectively, NSACR Application, CHEFF Application, SMHEFF Application, SJCR Application, GHCR Application, NLHEFF Application, WWHAAF Application, and SVHEFF Application; collectively, Applications). We also have before us the Informal Objection filed by REC (REC Objection), and the Petition to Deny filed by Common Frequency (CF Petition).³ For the reasons set forth below, we grant the Petitions, reinstate the Applications, deny the REC Objection, deny the CF Petition, and grant the Applications.

¹ NSCAR, CHEFF, SMHEFF, SJCR, and GHCRF filed their petitions for reconsideration on April 4, 2016 (April Petitions). REC Networks (REC) filed oppositions to the April Petitions on April 12, 2016. NSCAR, CHEFF, SMHEFF, SJCR, and GHCRF filed replies on May 9, 2016. NLHEFF, WFHAAF, and VHEFF filed their petitions for reconsideration on May 3, 2016. No opposition was filed to these petitions.

² See *North San Antonio Community Radio*, Letter Order, Ref 1800B3-ATS (MB Mar. 1, 2016); *Columbia Hispanic Education Family Fundation*, Letter Order, Ref 1800B3-ATS (MB Mar. 1, 2016); *South McAllen Hispanic Educational Family Fundation* (MB Mar. 1, 2016); *South Jacksonville Community Radio*, Letter Order (MB Mar. 1, 2016); *Gary Hispanic Community Radio*, Letter Order, Ref 1800B3-ATS (MB Mar. 1, 2016); *North Longview Hispanic Education Family Fundation*, Letter Order, Ref 1800B3-ATS (MB Mar. 30, 2016); *Wichita Falls Hispanic American Family Fundation*, Letter Order, Ref 1800B3-ATS (MB Mar. 31, 2016); *South Victoria Hispanic Education Family Fundation*, Letter Order, Ref 1800B3-ATS (MB Mar. 30, 2016) (collectively, *Dismissal Letters*).

³ The REC Objection was filed on December 2, 2013, against all the Applications. The CF Petition was filed on January 9, 2014, against the SJCR Application and the NLHEFF Application. No opposition was filed to these pleadings.

Background. The Applications were filed during the 2013 LPFM filing window and all identified Antonio Cesar Guel (Guel) as the certifying engineer.⁴ The REC Objection was filed against 245 applications for which Guel served as the certifying engineer. REC argues that all 245 of these applications—including the Applications referenced in this letter—were not filed by the Applicants themselves but rather by Guel and Hispanic Christian Community Network, Inc., the licensee of several LPTV stations and of which Guel is the President.⁵ REC notes that the Applications contain identical educational statements that do not reference the local community.⁶ REC also notes that certain Applications were filed sequentially in alphabetical order, that all the Applications provided Guel's telephone number and e-mail address, and that all the Applicants were incorporated in Texas within several days of each other, even though not all of the Applicants are based in Texas.⁷ Finally, REC argues that some states where the Applicants propose to operate have restrictions on non-profits incorporated in other states operating within the state.⁸

The CF Objection was filed against 63 applications that identified Mr. Guel as their engineer. It raises arguments similar to those raised in the REC Objection: that the Applications “use the boiler-plate forms, uniform descriptions of purpose and uniform purpose of entity throughout” and all identify Guel as their registered agent and provide his contact information.⁹ CF also argues that the Applicants’ non-profit status “is sham” because their Articles allow “any director [fo] be compensated for proselytizing or *for almost any other activity*.”¹⁰ CF also opines that it is questionable whether the applicants have obtained reasonable assurance of site availability at the towers identified in the Applications.¹¹

In February and March of 2016, the Bureau contacted the owners of the properties identified by the Applicants as their headquarters to determine whether the Applicants were in fact headquartered at that location. Each property owner indicated that the Applicants were not located at the address specified in the Applications. Accordingly, in the *Dismissal Letters* the Bureau dismissed the Applications on the grounds that the Applicants had failed to demonstrate that they were local organizations according to Section 73.853(b) of the FCC’s rules (Rules).¹²

In the Petitions, the Applicants argue that the Bureau erred in dismissing the Applications because the *Dismissal Letters* relied on *ex parte* information—specifically telephone conversations Bureau staff had with the owners of the headquarter sites—that was not presented to the Applicants.¹³ The Petitions further note that the Applicants have all filed amendments to identify new addresses for

⁴ Applications at Section VI, Preparer’s Certification.

⁵ REC Objection at 1.

⁶ *Id.* at 2. The educational statements are included as Exhibit 2 in each Application.

⁷ *Id.* at 3.

⁸ *Id.* at 3. The REC Objection also raises specific allegations about certain applications not subject to this letter. *Id.* at 3-4.

⁹ CF Petition at 2-4.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 5.

¹² 47 CFR §73.853(b).

¹³ Petitions at 4-8. Additionally, counsel for the NSCAR, CHEFF, SMHEFF, SJCR, and GHCRF raised this argument in a letter to the Office of General Counsel. Letter from Dan J. Alpert, Esq., to Office of General Counsel (Jun. 2, 2016).

their headquarters and board members, and that the Applications should thus be reinstated *nunc pro tunc*.¹⁴

REC argues that the Applications should not be reinstated because the Applications had been pending for 30 months at the time they were dismissed, and any errors in the Applicants' addresses should have been corrected prior to that time.¹⁵ REC further argues that *Calvary Chapel* is inapplicable in this case because that case involved revising "cookie cutter" educational narratives included in multiple applications to demonstrate that the applicants were in fact independent local entities, whereas the amendments filed by the Applicants changes the addresses they provided in both their Applications and their corporate filings with the State of Texas.¹⁶ REC finally argues that *nunc pro tunc* reinstatement is inappropriate here because the policy was meant to benefit applicants who are unfamiliar with the Commission's application requirements and the Applicants were represented by an experienced engineering consultant and legal counsel.¹⁷

Discussion. *Petitions.* The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises new facts or changed circumstances not known or existing at the time of the petitioner's last opportunity to present such matters.¹⁸

The Bureau staff's telephone conversations with the property owners were exempt *ex parte* presentations, inasmuch as they were requested by the staff during the course of an investigation.¹⁹ However, we agree with the Applicants that, although the substance of these conversation were properly received on an *ex parte* basis, they should have been—but were not—promptly presented to the Applicants.²⁰ Accordingly, we will grant the Petitions to the extent that they argue that the Bureau erred in relying on these *ex parte* communications in dismissing the Applications. Moreover, the amendments to the Applications have eliminated the underlying localism defect.

We disagree with REC's argument that the Applications cannot be reinstated *nunc pro tunc*. The Commission allows timely curative amendments except where such a cure is precluded by a specific rule or by clearly established policy.²¹ There is no such clearly-established policy prohibiting an LPFM from applicant from identifying a new address for its headquarters or board members and the LPFM minor change rule permits such address changes.²² As a matter of due process, we cannot treat the apparently

¹⁴ Petitions at 2-3 (citing *Calvary Chapel Windward*, Letter Order, 20 FCC Rcd 12357, 12360 (MB 2005) (*Calvary Chapel*). See also *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984) (*Nunc Pro Tunc* Public Notice).

¹⁵ Opposition at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4-5.

¹⁸ 47 CFR § 1.106(c); *WWJZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Board of Trustees, Davis & Elkins College*, Memorandum and Order, 26 FCC Rcd 15555, 1556, para. 5 (MB 2011).

¹⁹ See 47 CFR § 1.1204(a)(10).

²⁰ See *id.* at § 1.1204(a)(10)(ii).

²¹ See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984).

²² See 47 CFR § 73.870(c)(5) (acceptable minor change amendments include "[o]ther changes in general and/or legal information"). Compare *Christian Churches Delverance Church*, Memorandum Opinion and Order, 30 FCC

erroneous addresses in the Applications as a fatal defect without having given the Applicants prior notice of such a policy.²³ Additionally, REC does not cite to any cases—and we are not aware of any—where the Bureau or the Commission has limited the *Nunc Pro Tunc* Public Notice to applicants without an engineering consultant or legal counsel. Accordingly, we will accept the curative amendments, reinstate the Applications *nunc pro tunc*, and consider the pleadings filed against them.

REC Objection and CF Petition. Pursuant to Section 309(d) of the Communications Act of 1934, as amended (Act),²⁴ petitions to deny and informal objections 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.²⁵

We reject the arguments that the Applications should be dismissed because of their similarities to each other or other applications filed by Guel as a consultant. REC and CF have failed to show that the Applicants have any actual affiliation beyond similar names, nor have they demonstrated that they are commonly controlled. Similarities in applications do not demonstrate common control of the applications.²⁶ Additionally, the common contact representative identified in the Applications—Guel—is an engineering consultant. We have previously noted that it is common for multiple applicants to have the same engineering consultant,²⁷ and many applicants will list their counsel or engineering consultants as their contact representatives. We also reject REC's argument involving the sequential nature of the filing of the Applications or the Applicants' incorporation in Texas. These matters are attributable to the Applicants' utilization of a common consultant and present no violation of any Commission rule or policy.

We also reject REC's argument that we should dismiss any applications for failure to comply with a state's foreign corporation rule. The Commission generally will not deny an application for a broadcast facility based on a licensee's or permittee's non-compliance with state corporate law "when no challenge has been made in the State Courts and the determination is one that is more appropriately a matter of state resolution."²⁸ We likewise reject CF's argument that the SJCR's and the NLHEFF's non-

Rcd 10548, 10550-51, para. 8 (2015) (Section 73.870(c) prohibits curative amendments to LPFM applications lacking second-adjacent channel spacing waivers); *Applications for Review of Decisions Regarding Six Applications for New LPFM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13400 n.88 (2013) (lack of reasonable assurance of transmitter site not cured by amendment specifying new transmitter site).

²³ See *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 632 (D.C. Cir. 2000).

²⁴ 47 U.S.C. § 309(d).

²⁵ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'ing denied* (Sep. 10, 1993); *Gencor, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁶ *Mt. Zion Educ. Assoc.*, Letter Order, 25 FCC Rcd 15088, 15091-92 (MB 2010) (similarities in applications prepared by a third-party—such as being filed the same day, using the same engineer, having similar exhibits—do not demonstrate common control of applicants). Additionally, all of the Applicants have amended their applications to provide revised and unique educational narratives.

²⁷ *Eternal Word Television Network, Inc.*, Letter Order, 24 FCC Rcd 4691, 4692 (MB 2009).

²⁸ *Abundant Life, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4972, 4974, para. 8 (2001); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17855, para. 10 (1997).

profit status “is sham.” CF has made no showing that these applicants were improperly incorporated or are otherwise not recognized by the State of Texas.²⁹

Finally, we give no weight to CF’s argument that the SJCR and the NLHEFF may have lacked site availability. This argument is entirely based on speculation, and CF does not identify a single application that actually apparently lacked site availability, nor does CF provide documentation to support its argument. Accordingly, we will deny the REC Objection and the CF Petition, and grant the Applications.


Conclusion/Action. Accordingly, IT IS ORDERED that the Petitions for Reconsideration filed on April 4, 2016, by North San Antonio Community Radio, Columbia Hispanic Education Family Foundation, South McAllen Hispanic Educational Family Foundation, South Jacksonville Community Radio and Gary Hispanic Community Radio and the Petitions for Reconsideration filed on May 3, 2016, by Wichita Falls Hispanic American Family Foundation, South Victoria Hispanic Education Family Foundation, and North Longview Hispanic Education Family Foundation ARE GRANTED TO THE EXTENT INDICATED HEREIN.

IT IS FURTHER ORDERED that the Informal Objection filed on December 2, 2013, by REC Networks IS DENIED, with respect to the applications filed by North San Antonio Community Radio, Columbia Hispanic Education Family Foundation, South McAllen Hispanic Educational Family Foundation, South Jacksonville Community Radio, Gary Hispanic Community Radio, Wichita Falls Hispanic American Family Foundation, South Victoria Hispanic Education Family Foundation, and North Longview Hispanic Education Family Foundation.

IT IS FURTHER ORDERED that the Petition to Deny filed on January 9, 2014, by Common Frequency IS DENIED, with respect to the applications filed by South Jacksonville Community Radio and North Longview Hispanic Education Family Foundation.

IT IS FURTHER ORDERED that the applications of North San Antonio Community Radio (File No. BNPL-20131112AHO), Columbia Hispanic Education Family Foundation (File No. BNPL-20131114APY), South McAllen Hispanic Education Family Foundation (File No. BNPL-20131115AFM), South Jacksonville Community Radio (File No. BNPL-20131112BDZ), Gary Hispanic Community Radio (File No. BNPL-20131112AFY), North Longview Hispanic Education Family Foundation (File No. BNPL-20131115ANA), Wichita Falls Hispanic American Family Foundation (File No. BNPL-20131114APB), and South Victoria Hispanic Education Family Foundation (File No. BNPL-20131115AIB) ARE RETURNED TO PENDING STATUS and ARE GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁹ Compare *Malibu FM Emergency and Cmty. Broad., Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7705 (2015) (affirming dismissal of LPFM applicant that had not completed incorporation process with State of California at the time it filed its application); *Robert Lund*, Letter Order, 30 FCC Rcd 14367 (MB 2015) (affirming dismissal of LPFM applications where Oregon Department of Justice determined applicants were not properly incorporated).

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