

power output (“TPO”) accordingly.⁴ But LCC neither identifies what antenna actually has been in use, nor provides what the TPO was reset to at that time. This is essential information necessary for the Commission to determine whether the combination of TPO and antenna produces a signal coverage contour that exceeds allowable parameters for a secondary, 100 watt LPFM station. The Commission should require LCC to disclose the operating parameters of WLCQ-LP.⁵ LCC filed a request (File No. BSTA-20151102AIK) for special temporary authority (“STA”) to operate the two-bay antenna, which Saga has opposed.⁶ The Commission should require WLCQ-LP to suspend operations until the Commission has completed its inquiry into the operations of WLCQ-LP.

Saga’s Petition, filed on October 7, 2015 (“Petition”) alleged that LCC: (1) failed to comply with NEPA; and (2) made a false certification regarding such compliance in its application for construction permit (File No. BNPL-20010613AGT). In response, LCC asserts that it did not make a false certification because NEPA was not effective at the time the permit

⁴ LCC Opposition at 2.

⁵ The Declaration of Gary Reiff, included with the LCC Opposition and executed under penalty of perjury, states that LCC is maintaining the station’s ERP at 100 kilowatts, which is **1,000 times** the authorized power limit for WLCQ-LP. Mr. Reiff either is admitting either that the LPFM station is operating with power far in excess of the parameters set forth on the WLCQ-LP station license, or the Declaration was not drafted by him and he executed that document without reading it carefully enough to catch the mistake. Either way, this is yet another example of the lack of care that LCC is exhibiting with respect to its responsibilities as a Commission licensee.

⁶ Saga filed an Opposition to Request for Special Temporary Authority on November 5, 2015, setting forth all of the reasons why LCC’s STA request cannot be granted, including that the request did not provide a description of the LPFM station’s proposed antenna and the request contained a false certification regarding alleged compliance with the National Environmental Policy Act (“NEPA”). On November 5, Saga received a copy of the LCC Opposition in this proceeding, although it was dated as of November 2, 2015. At the time Saga filed the Opposition to the STA Request, it was not aware (nor could it have been aware) of the arguments that LCC was going to make in its Opposition. In LCC’s Reply to Opposition to STA Request at 1-2, which was filed on November 10, 2015, LCC claims that Saga is engaging in “harassment” and that Saga’s charges regarding the fact that WLCQ-LP is operating with a greater power than authorized were “reckless.” But the purpose of Saga’s Opposition to STA was to demonstrate the public interest considerations for why WLCQ-LP should not be permitted to operate. That can hardly be considered harassment. Indeed, LCC’s Reply to Opposition at 2 also admits that WLCQ-LP is operating with **100 kW ERP**. If true, then LCC is, at a minimum, subject to monetary forfeitures of at least \$4,000 per day for every day since “2010 or 2011” that it has been operating with the two-bay antenna. 47 C.F.R. § 1.80. Given LCC’s callous disregard for compliance with Commission rules, such amount should be upwardly adjusted.

application was filed.⁷ However, NEPA compliance is based on the construction date of the antenna structure, not the date of grant of the construction permit.⁸ LCC filed the WLCQ-LP license to cover application in 2006 (File No. BLL-20061106AAA), meaning the tower had to have been in place by that date. Indeed, Mr. Reiff's Declaration confirms that the tower was erected in 2006.

NEPA took effect in 2005. Thus, NEPA was relevant at the time that the tower was built. LCC should have undertaken the environmental study at that time. However, it did not. Further, notwithstanding whether LCC's application was falsely certified, the fact that LCC made a significant change to the tower structure by installing a different antenna than initially authorized by the Commission triggered the NEPA requirements anew, and LCC failed to comply with those requirements.

Saga's Petition also provided evidence of LCC's failure to comply with the prohibition on the broadcast of commercial announcements on WLCQ-LP. The LCC Opposition at 4 tacitly admits those violations, indicating that three of the announcements no longer are on the air. Although corrective actions may have been taken to prevent future violations, this does not relieve LCC from liability for violations that have already occurred.⁹ LCC does not make any claim with respect to the other five announcements Saga included with its Petition, all of which violate 47 U.S.C. §399B, other than the unsupported claim that they "meet FCC standards."¹⁰ The existence of these illegal commercials on WLCQ-LP, in violation of 47 U.S.C. §399B, is further evidence of LCC's unfitness to serve as a broadcast licensee.

⁷ LCC Opposition at 3.

⁸ *See, e.g.*, 47 C.F.R. § 1.1307.

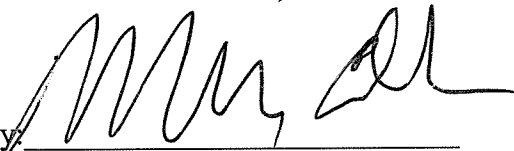
⁹ *See International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969) (permitting mitigation as an excuse based upon corrective action following a violation would "tend to encourage remedial rather than preventive action").

¹⁰ LCC Opposition at 5.

In view of the foregoing, Saga respectfully requests that the Audio Division issue an Order to Show Cause to LCC upon the issues set forth in its Petition, and upon conclusion of the hearing, to revoke the license of WLCQ-LP, cancel operating authority for WLCQ-LP and delete the call letters WLCQ-LP from all databases.

Respectfully submitted,

**SAGA COMMUNICATIONS
OF NEW ENGLAND, LLC**

By 

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November 23, 2015

CERTIFICATE OF SERVICE

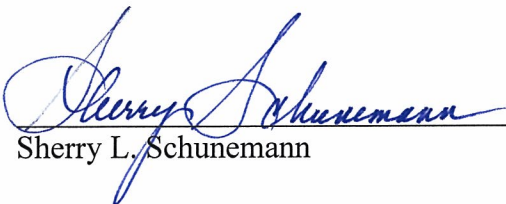
I, Sherry L. Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Reply to Opposition to Petition to Revoke License" was either hand delivered (as marked with an asterisk), or mailed by First Class U.S. Mail, postage prepaid, this 23rd day of November, 2015, to the following:

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