

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Application for Assignment of Radio Station ) File No.: 0000194661  
Licenses from Univision Radio San Francisco, Inc. )  
to Latino Media Network, LLC )

To: The Commission  
Attn: Media Bureau, Audio Division

**OPPOSITION TO INFORMAL OBJECTION**

Latino Media Network, LLC (“LMN”), by its counsel, and Univision Radio San Francisco, Inc. (“Univision”), by its counsel,<sup>1</sup> respectfully submit this Opposition (“Opposition”) responding to the Informal Objection (“Objection”) filed in the above-captioned proceeding by Dr. Pedro Roig on August 11, 2022.

**I. Introduction**

The Federal Communications Commission (“Commission” or “FCC”) should dismiss or deny the Objection because it is substantively meritless, procedurally defective, and does not contain specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest. First, contrary to Dr. Roig’s assertions, Section 73.1150 of the Commission’s rules (the “Reversionary Interest Rule”) is inapplicable here. Nothing in the assignment application or agreements therein provide the assignor with any right

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<sup>1</sup> Because the Objection was not served on the parties to this proceeding, the Objection was not timely filed. Moreover, Dr. Roig lacks standing as a party in interest to file a petition to deny. *See* 47 U.S.C. § 309(d); *see also infra* pp. 5–6. To the extent the Commission entertains the Objection, it may do so only as an informal objection. As such, there is no deadline for filing oppositions, and LMN’s Opposition is timely. *See* 47 C.F.R. § 73.3587; *see also Geraldine R. Miller*, Letter Order 24 FCC Rcd. 11814, 11815 (MB 2009) (treating a petition to deny as an informal objection because the objector failed to properly serve the pleading and because the objector did not provide an affidavit to support the allegations).

of reversion, or any future right regarding the stations whatsoever. Second, Dr. Roig's contention that the application is deficient because it does not include the schedules and exhibits to the Asset Purchase Agreement ("APA") is also without merit. Omitting purchase agreement schedules from FCC assignment applications is standard practice and consistent with FCC policy. Third, the Objection is procedurally deficient in several respects. Foremost of these deficiencies is that Dr. Roig has not demonstrated that he is a party in interest, and he therefore lacks standing. Finally, the Objection is not supported by an affidavit and was not served on either party to the application or either party's counsel, and the Objection does not comply with the pleading specifications set forth in Section 1.49 of the Commission's rules. Therefore, the Commission must deny the Objection as substantively baseless or dismiss it pursuant to Section 73.3584(e) as procedurally defective and, in either case, grant the assignment application.

## **II. Discussion**

As shown in greater detail below, the Objection itself is procedurally defective. However, even assuming Dr. Roig had filed a proper petition to deny, the substantive arguments lack merit.

### **a. The Reversionary Interest Rule is Inapplicable.**

Commission precedent makes clear that an assignee may, upon or after consummation of a Commission-approved assignment, execute a local marketing agreement with the seller of a broadcast station provided the agreement is not consideration for the station's sale and the agreement otherwise complies with the Commission's rules. Dr. Roig contends that, by agreeing to negotiate one or more local marketing agreements, pursuant to which the assignor would temporarily continue programming the station(s) subject to LMN's ultimate control, the assignor

has “reserve[d] the right to use the facilities of the station[(s)]”<sup>2</sup> in violation of Section 73.1150 of the Commission’s rules.<sup>3</sup> “[U]nder current Commission rules, a former licensee would not be prohibited from entering into various contractual arrangements subsequent to the sale of the station, such as an option to purchase the station at a future time, *or a time brokerage agreement.*”<sup>4</sup> Licensees are free under the Commission’s rules to enter into time brokerage and local marketing agreements, “so long as the ownership rules are not violated[,] the participating licensee maintains ultimate control over the facilities[,]”<sup>5</sup> and, in the case of a former licensee programming the station, the agreement is not “part of the consideration” for the station’s sale.<sup>6</sup> No Commission rule or precedent otherwise precludes a licensee from entering into this type of agreement, whether it be with a third party or a former licensee.

Because the local marketing agreement that the parties anticipate signing post-transaction is not part of the transaction’s consideration, LMN and the assignor are free to enter such an agreement. Here, the parties to the application have agreed to negotiate and enter into a local marketing agreement at closing, pursuant to which the assignor would temporarily (LMN anticipates that the local marketing agreement will be in place for no longer than a year) program one or more of the stations proposed to be assigned, subject at all times to LMN’s ultimate

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<sup>2</sup> Objection at ¶ 6.

<sup>3</sup> 47 C.F.R. § 73.1150(a).

<sup>4</sup> *Kidd Communications v. FCC*, 427 F.3d 1, 7 n.3 (D.C. Cir. 2005) (*Kidd*) (emphasis added).

<sup>5</sup> See *In Re Application of WLFA(FM), Asheville, North Carolina For Consent to Assignment of License from Asheville Educational Association, Inc., Assignor, to Radio Training Network, Inc., Assignee*, Order, 30 FCC Rcd.11483, 11486 (2015); see also *David D. Oxenford, Esq., David D. Burns, Esq., and Charles L. Spencer, Esq.*, Letter Order, 27 FCC Rcd. 13363, 13368 (MB 2012) (granting an assignment application where the assignee agreed to immediately enter into a local marketing agreement with the former licensee’s brother).

<sup>6</sup> *Kidd*, 427 F.3d at 4.

control over the stations and their programming, personnel, and finances. In doing so, the assignor has not reserved a “right” to use the station(s), and the local marketing agreement is not part of the consideration for the stations’ sale. In fact, the purpose of the local marketing agreement is not to compensate the assignor, but rather to accommodate LMN and foster a smooth transition, which is squarely in the public’s interest.<sup>7</sup> Therefore, Dr. Roig’s contention is without merit, and the Objection should be denied.

**b. Omitting Schedules to an Asset Purchase Agreement is Standard Practice and Consistent with Commission Policy.**

Consistent with countless applications granted before it,<sup>8</sup> the instant application properly omits exhibits and schedules to the APA that do not contain information relevant to whether the structure of the transaction complies with the Commission’s rules. Dr. Roig contends that the assignment application was deficient because the schedules and exhibits to the APA were omitted.<sup>9</sup> However, Dr. Roig does not identify any exhibit or schedule that would impact the Commission’s review of the application and cites no precedent supporting his claim that extraneous exhibits and schedules must be provided as part of an assignment application. On the contrary, Commission precedent clearly permits applicants to exclude immaterial schedules, exhibits, and other contract attachments, and “a failure, by itself, to submit such documents is neither a material omission (that would otherwise be cause for not accepting and processing an

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<sup>7</sup> LMN understands that it may be required to provide a copy of any LMA it enters to the Commission or members of the public after the LMA is executed. *See* 47 C.F.R. §§ 73.3613(a); 73.3526(e)(5) and (14). LMN and Univision are represented by experienced FCC counsel. LMN plans to rely on customary LMA terms that it is confident will withstand scrutiny if LMN enters an LMA. However, it is premature to evaluate an as yet unexecuted LMA during an assignment application proceeding.

<sup>8</sup> *See, e.g.*, FCC File Nos. 0000189605 (granted on July 1, 2022), 0000187203 (granted on May 10, 2022), 0000179939 (granted on March 14, 2022), 0000179937 (granted on March 14, 2022), and 0000138008 (granted on May 26, 2021).

<sup>9</sup> Objection at ¶¶ 7–8.

application) nor grounds for finding that a particular transaction is not in the public interest.”<sup>10</sup>

The instant application excluded exhibits and schedules because they contain confidential or proprietary information, are not germane to the Commission’s evaluation of the application, or, in the case of the local marketing agreement and warrants referenced in the Objection, have not been signed and will not be signed until closing.<sup>11</sup> Accordingly, Dr. Roig’s contention is again without merit, and the Objection should be denied.

**c. The Objection should be Dismissed as Procedurally Defective.**

Finally, if the Commission elects to consider Dr. Roig’s pleading as a petition to deny instead of an informal objection, it must dismiss the pleading because it is procedurally defective in numerous respects. Section 73.3584 of the Commission’s rules states that “procedurally defective” petitions to deny “are subject to return by the FCC’s staff without consideration.”<sup>12</sup>

As an initial matter, because the Objection does not make a *prima facie* showing that Dr. Roig is a party in interest, he lacks standing, and the Objection must therefore be dismissed. Section 309(d) of the Act limits the ability to file a petition to deny to parties in interest.<sup>13</sup> “Under this provision of the Act, a party in interest must essentially meet the same requirements

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<sup>10</sup> *In re LUJ, Inc. and Long Nine, Inc., Memorandum Opinion and Order*, 17 FCC Rcd. 16980, 16983 (2002) (affirming the grant of an assignment application where irrelevant schedules, exhibits, and other attachments were omitted from the asset purchase agreement submitted with the application).

<sup>11</sup> While the FCC does not routinely require third party financing documents to be submitted as part of an assignment application, LMN understands that the LMA and the warrant constitute contracts subject to Section 73.3613 of the Commission’s rules. *See* 47 C.F.R. § 73.3613(a). When the documents are executed, LMN will list them in its Stations’ OPIF and make them available upon request as required by the rules. *See* 47 C.F.R. § 73.3526(e)(5). Consequently, LMN would note that expeditious grant of the Application offers the remedy that would allow Dr. Roig to request the documents he seeks.

<sup>12</sup> 47 C.F.R. § 73.3584(e).

<sup>13</sup> *See* 47 U.S.C. § 309(d)(1); *see also* 47 C.F.R. § 1.939(d); § 73.3584(a).

as those required for standing to appeal a Commission decision to a federal court.”<sup>14</sup> Thus, a person or entity claiming standing “must allege and prove three elements: (1) personal injury; (2) the injury is ‘fairly traceable’ to the challenged action; and (3) there is a substantial likelihood that the relief requested will redress the injury claimed.”<sup>15</sup>

The Objection does not allege or prove any of the elements required to satisfy the Commission’s party in interest or standing requirements. While the Objection claims that Dr. Roig is “distraught,”<sup>16</sup> a petition to deny “must contain *specific* allegations of fact sufficient to show that the petitioner is, in fact, a party in interest.”<sup>17</sup> Simply put, the Objection contains no specific factual allegations regarding a personal injury suffered by Dr. Roig or any other party

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<sup>14</sup> *Timothy K. Brady, Esq., et al.*, Letter, 20 FCC Rcd. 11987, 11990 (Audio Division 2005) (citing, *inter alia*, *In re Application of MCI Communications Corp., Transferor, and Southern Pacific Telecommunications Company, Transferee for Consent to Transfer Control of Qwest Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd. 7790, 7794 (1997) (*MCI Communications*)) (*Brady*); see also *In re the Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee), et. al. for Transfer of Control of Tribune Media Company to Nexstar Media Group, Inc., and Assignment of Certain Broadcast Licenses and Transfer of Control of Certain Entities Holding Broadcast Licenses*, Memorandum Opinion and Order, 34 FCC Rcd. 8436, ¶ 23, n.103 (2019) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), *MCI Communications*, 12 FCC Rcd. at 7790, and *Brady*, 20 FCC Rcd. at 11987).

<sup>15</sup> *Brady*, 20 FCC Rcd. at 11990 (citing *Lujan*, 504 U.S. at 555, *MCI Communications*, 12 FCC Rcd. at 7794, and *In re Authorization of Conn-2 RSA Partnership, et. al.*, 9 FCC Rcd. 3295, 3297 (1994)).

<sup>16</sup> Objection at ¶ 1. To the extent Dr. Roig is “distraught” because he fears LMN may change the format or programming on WAQI-AM or WQBA-AM, an objection to a proposed change in the programming of a station does not constitute direct and immediate injury sufficient to confer standing. See *In re Application of Madeline M. Barton, Clark M. Barton, and T.K. Barton (Transferor); Mullins Broadcasting Co. (Transferee) for Transfer of Control of Arkansas Radio & Equipment Co., Licensee of Stations KARK AM, FM, and TV, Little Rock, Ark.*, Memorandum Opinion and Order, 2 F.C.C.2d 429 (1966) (holding a petitioner lacked standing where the petitioner argued the commercial terms of a proposed transaction would necessitate the buyer changing programming to run more advertising).

<sup>17</sup> *In re Liberman Television of Dallas License LLC, Debtor-in-Possession, et al.*, Order, 34 FCC Rcd. 8543, 8546 (Video Division 2019) (emphasis added).

due to this application.<sup>18</sup> Finally, even if Dr. Roig's Objection contained specific allegations of fact, Dr. Roig failed to provide an affidavit to support the Objection.<sup>19</sup>

In addition, the Objection should be dismissed for failure to comply with the Commission's service and formatting requirements. Section 1.47(d) of the Commission's rules requires petitioners to serve pleadings upon a party, the party's attorney, or the party's agent.<sup>20</sup> Section 1.49 requires that "[a]ll pleadings and documents filed" in paper or electronic form "be double spaced."<sup>21</sup> Dr. Roig did not serve the Objection on any party to the application or their representatives, and the entire body of the Objection is single spaced. Accordingly, the Commission must dismiss the Objection pursuant to Section 73.3584.<sup>22</sup>

### **III. Conclusion**

In light of the forgoing, LMN and Univision respectfully request that the Commission dismiss or deny the Objection and grant the assignment application.

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<sup>18</sup> While he alleges in the Objection that he is a listener of two stations proposed to be assigned by a separate assignment application (File No. 0000194638), Dr. Roig does not claim to be a listener of any stations proposed to be assigned by the instant application. The Commission has set out several categories that it typically accords party in interest status to in the broadcast context, including (1) market competitors suffering signal interference, (2) market competitors suffering economic harm, and (3) residents of the station's service area or regular listeners or viewers of the station. *Id.* at 8547. Dr. Roig does not satisfy any of the requirements.

<sup>19</sup> See 47 C.F.R. § 1.939(d).

<sup>20</sup> 47 C.F.R. § 1.47(d).

<sup>21</sup> 47 C.F.R. § 1.49(a).

<sup>22</sup> 47 C.F.R. § 73.3584(e).

Respectfully submitted,

/s/ Francisco R. Montero

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*Counsel for Univision Radio San Francisco, Inc.*

August 25, 2022

## Certificate of Service

I, Travis J. Andring, hereby certify that I have, this 25<sup>th</sup> day of August, 2022, caused a copy of the foregoing "Opposition to Informal Objection" to be sent via U.S. Mail or electronic mail, as indicated below, to:

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